

# THE INDIAN PENAL CODE

## CHAPTER I INTRODUCTION

The [Indian Penal Code](#) was drafted by the First Indian Law Commission presided over by Lord Thomas Babington Macaulay. The draft underwent further revision at the hands of well-known jurists, like Sir Barnes Peacock, and was completed in 1850. The [Indian Penal Code](#) was passed by the then Legislature on 6 October 1860 and was enacted as Act No. XLV of 1860.

Preamble.

**WHEREAS it is expedient to provide a general  
[Penal Code](#) for India; It is enacted as follows:—**

**COMMENT.**—The [Indian Penal Code, 1860 \(IPC, 1860\)](#) exhaustively codifies the law relating to offences with which it deals and the rules of the common law cannot be resorted to for inventing exemptions which are not expressly enacted.<sup>1</sup> It is not necessary and indeed not permissible to construe the [IPC, 1860](#) at the present day in accordance with the notions of criminal jurisdiction prevailing at the time when the Code was enacted. The notions relating to this matter have very considerably changed between then and now during nearly a century that has elapsed. It is legitimate to construe the Code with reference to the modern needs, wherever this is permissible, unless there is anything in the Code or in any particular section to indicate the contrary.<sup>2</sup>

### **[s 1] Title and extent of operation of the Code.**

This Act shall be called the [Indian Penal Code](#), and shall <sup>3</sup>[extend to the whole of India <sup>4</sup>[except the State of Jammu and Kashmir].]

### **COMMENT—**

Before 1860, the English criminal law, as modified by several Acts,<sup>5</sup> was administered in the Presidency towns of Bombay, Calcutta and Madras. But in the mofussil, the Courts were principally guided by the Mohammedan criminal law, the glaring defects of which were partly removed by Regulations of the local Governments. In 1827, the judicial system of Bombay was thoroughly revised and from that time the law which the criminal Courts administered was set forth in a Regulation<sup>6</sup> defining offences and specifying punishments. But in the Bengal and Madras Presidencies the Mohammedan criminal law was in force till the [Indian Penal Code](#) came into operation.

### **[s 1.1] Trial of offences under [IPC, 1860](#).—**

All offences under [IPC, 1860](#) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the [Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#).<sup>7</sup>

### **[s 1.2] Overlapping Offences.—**

Where there is some overlapping between offences contained in [IPC, 1860](#) and other enactments, the Supreme Court has held that it would not mean that the offender could not be tried under [IPC, 1860](#). The Court concerned can pronounce on such issues on the basis of evidence produced before it. There may be some overlapping of facts in the cases under [section 420 IPC, 1860](#) and [section 138 of the Negotiable Instruments Act, 1881](#) but ingredients of offences are entirely different. Thus, the subsequent case is not barred.<sup>8</sup> A "terrorist act" and an act of "waging war against the Government of India" may have some overlapping features, but a terrorist act may not always be an act of waging war against the Government of India, and *vice versa*. The provisions of Chapter IV of the [Unlawful Activities \(Prevention\) Act, 1967](#) and those of Chapter VI of the [IPC, 1860](#) including section 121, basically cover different areas.<sup>9</sup> The mere fact that the offence in question was covered by the [Customs Act, 1962](#) did not mean that it could not be tried under [IPC, 1860](#) if it also falls under it.<sup>10</sup>

1. *MC Verghese v Ponnai*, [AIR 1970 SC 1876 \[LNIND 1968 SC 339\]](#) : (1969) 1 SCC 37 [[LNIND 1968 SC 339](#)] : 1970 Cr LJ 1651 .
2. *Mobarik Ali v State of Bombay*, [AIR 1957 SC 857 \[LNIND 1957 SC 81\]](#) : 1957 Cr LJ 1346 (SC).
3. The original words have successively been amended by Act 12 of 1891, section 2 and Sch I, the A.O. 1937, the A.O. 1948 and the A.O. 1950 to read as above.
4. Subs. by Act 3 of 1951, section 3 and Sch, for "except Part B States" (w.e.f. 1-4-1951).
5. 9 Geo. IV, section 74; Acts VII and XIX of 1837; Act XXXI of 1838; Acts XXII and XXXI of 1839; Acts VII and X of 1844; Act XVI of 1852. See Pramod Kumar, *Perspectives of the New Bill on Indian Penal Code and Reflections on the Joint Select Committee Report—Some Comments*, (1980) 22 JILI 307.
6. XIV of 1827.
7. [Section 4\(1\) Code of Criminal Procedure, 1973](#). Also see commentary under [section 3 of IPC infra](#).
8. *Sangeetaben Mahendrabhai Patel v State of Gujarat*, [AIR 2012 SC 2844 \[LNIND 2012 SC 1473\]](#) : (2012) 7 SCC 621 [[LNIND 2012 SC 1473](#)] .
9. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [[LNIND 2012 SC 1215](#)] : [AIR 2012 \(SCW\) 4942](#) : [AIR 2012 SC 3565 \[LNIND 2012 SC 1215\]](#) : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [[LNIND 2012 SC 1215](#)] : 2012 (7) Scale 553 [**relied on** *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, [AIR 2005 SC 3820 \[LNIND 2005 SC 580\]](#) : (2005) 11 SCC 600 [[LNIND 2005 SC 580](#)] : (2005) 2 SCC (Cr) 1715]
10. *Natarajan v State*, (2008) 8 SCC 413 [[LNIND 2008 SC 1093](#)] : (2008) 3 SCC (Cr) 507.

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### [s 2] Punishment of offences committed within India.

**Every person** <sup>1</sup> shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within <sup>11</sup>.[\[India\]](#) <sup>12</sup>.[\[\\*\\*\\*\]](#).<sup>2</sup>

### COMMENT—

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

[Section 2](#) read with [section 4](#) of the [IPC, 1860](#) makes the provisions of the Code applicable to the offences committed "in any place without and beyond" the territory of India; (1) by a citizen of India or (2) on any ship or aircraft registered in India, irrespective of its location, by any person not necessarily a citizen. Such a declaration was made as long back as in 1898. By an amendment in 2009 to the said section, the Code is extended to any person in any place "without and beyond the territory of India", committing an offence targeting a computer resource located in India.<sup>13</sup>

**1. 'Every person'.—**Every person is made liable to punishment, without distinction of nation, rank, caste or creed, provided the offence with which he is charged has been committed in some part of India. A foreigner who enters the Indian territories and thus, accepts the protection of Indian laws virtually gives an assurance of his fidelity and obedience to them and submits himself to their operation. It is no defence on behalf of a foreigner that he did not know he was doing wrong, the act not being an offence in his own country. A foreigner who commits an offence within India is guilty and can be

punished as such without any limitation as to his corporal presence in India at the time.<sup>14</sup> Indian Courts have jurisdiction against foreigners residing in foreign countries but their acts connected with transaction or part of transaction arising in India.<sup>15</sup>

### [s 2.1] Corporate Criminal Liability

A company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the fact that the corporation cannot commit a crime, the generally accepted modern rule is that a corporation may be subject to indictment and other criminal process although the [criminal act](#) may be committed through its agent. The majority in the [Constitution](#) bench held that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment is mandatory imprisonment and fine.<sup>16</sup> When imprisonment and fine is prescribed as punishment the Court can impose the punishment of fine which could be enforced against the company.<sup>17</sup>

In *CBI v Blue Sky Tie-up Pvt Ltd*,<sup>18</sup> the question again came up for consideration before the Supreme Court and it was held that since the majority of the [Constitution](#) Bench ruled in *Standard Chartered Bank v Directorate of Enforcement* [*supra*] that the company can be prosecuted even in a case where the Court can impose substantive sentence as also fine, and in such case only fine can be imposed on the corporate body, the contrary view taken by the learned single Judge cannot be approved.

### [s 2.2] Vicarious Liability.—

[Indian Penal Code](#), save and except some matters does not contemplate any vicarious liability on the part of a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices.<sup>19</sup> Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.<sup>20</sup> The provisions of the [Essential Commodities Act, 1955](#), [Negotiable Instruments Act, 1881](#), [Employees' Provident Fund \(Miscellaneous Provision\) Act, 1952](#), etc., have created such vicarious liability. It is interesting to note that section 14A of the 1952 Act specifically creates an offence of criminal breach of trust in respect of the amount deducted from the employees by the company. In terms of the explanations appended to [section 405 of the IPC, 1860](#) a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Whereas a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling under [section 406 of the IPC, 1860](#) vicarious liability has been held to be not extendable to the Directors or officers of the company.<sup>21</sup>

There is no exception in favour of anyone in the [Penal Code](#), but the following persons are exempted from the jurisdiction of criminal Courts of every country:—

**(a) Foreign Sovereigns.**—The real principle on which the exemption, of every sovereign from the jurisdiction of every Court, has been deduced is that the exercise of such jurisdiction would be incompatible with his regal dignity—that is to say, with his absolute independence of every superior authority.<sup>22</sup>

**(b) Diplomats.**—United Nations Privileges and Immunities Act, 1947, and the [Diplomatic Relations \(Vienna Convention\) Act, 1972](#), gave certain diplomats, missions and their member's diplomatic immunity even from criminal jurisdiction. The [Diplomatic Relations \(Vienna Convention\) Act](#) had been enacted to give effect to the Vienna Convention on Diplomatic Relations, 1961. The effect of section 2 of the Act is to give the force of law in India to certain provisions set out in the Schedule to the Act.

A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction except in the case of:

- (i) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (ii) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (iii) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.<sup>23</sup> A diplomatic agent is not obliged to give evidence as a witness.<sup>24</sup> Privileges and immunities are conferred on United Nations and its Representatives as well as on other international organisations and their representatives by the United Nations (Privileges and Immunities) Act, 1947.<sup>25</sup>

**(c) Alien enemies.**—In respect of acts of war alien enemies cannot be tried by criminal Courts. If an alien enemy commits a crime unconnected with war, e.g., theft, he would be triable by ordinary criminal Courts.

**(d) Foreign army.**—When armies of one State are by consent on the soil of a foreign State they are exempted from the jurisdiction of the State on whose soil they are.

**(e) Warships.**—Men-of-war of a State in foreign waters are exempt from the jurisdiction of the State within whose territorial jurisdiction they are. The domestic Courts, in accordance with principles of international law, will accord to the ship and its crew and its contents certain immunities. The immunities can, in any case, be waived by the nation to which the public ship belongs.<sup>26</sup>

**(f) President and Governors.**—Under [Article 361](#) of the Indian [Constitution](#), the President and Governors are exempt from the jurisdiction of Courts.

**2. 'Within India'.—**If the offence is committed outside India it is not punishable under the [Penal Code](#), unless it has been made so by means of special provisions such as sections 3, 4, 108A, etc., of the Code. Under [section 179 of the Cr PC, 1973](#) even the place(s) wherein the consequence (of the [criminal act](#)) "ensues" would be relevant to determine the Court of competent jurisdiction. Therefore, even the Courts within whose local jurisdiction, the repercussion/effect of the [criminal act](#) occurs, would have jurisdiction in the matter. When the consequence of an act committed by a foreigner outside India if ensued in India, he can be tried in India.<sup>27</sup> Normally crime carries the person. The commission of a crime gives the Court of the place where it is committed jurisdiction over the person of the offender.<sup>28</sup>

**[s 2.3] Territorial jurisdiction.—**

The territory of India is defined under [Article 1 of the Constitution of India](#). [Article 1 of the Constitution of India](#) deals only with the geographical territory while [Article 297](#) deals with 'maritime territory'.

[Article 297\(3\)](#) authorises the Parliament to specify from time to time the limits of various maritime zones such as, territorial waters, continental shelf, etc. Clauses (1) and (2) of the said Article make a declaration that all lands, minerals and other things of value and all other resources shall vest in the Union of India.<sup>29</sup> [Section 18 of the IPC, 1860](#) defines India as the territory of India excluding the state of Jammu and Kashmir. These territorial limits would include the territorial waters of India.<sup>30</sup> Under the [General Clauses Act, 1897](#), India is defined to mean all territories for the time being comprised in the territory of India as defined in the [Constitution of India](#). Under the provisions of [Article 297 of the Constitution of India](#), all lands, minerals and other things of value underlying the ocean within the territorial waters or the continental shelf or the exclusive economic zone of India vest in the Union. The [Constitution of India](#) does not itself define the terms territorial waters, continental shelf, and exclusive economic zone. Clause (3) of [Article 297](#) states that their limits shall be such as may be specified by Parliament. In 1976, Parliament implemented the amendments to the [Constitution of India](#) by passing the Maritime Zones Act, 1976.<sup>31</sup> Insofar the Republic of India is concerned, the limit of the territorial waters was initially understood to be three nautical miles. It had been extended subsequently; up to six nautical miles by a Presidential proclamation dated 22 March 1952 and to 12 nautical miles by another proclamation dated 30 September 1967. By The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 80 of 1976, it was statutorily fixed at 12 nautical miles. Section 3 of the Act stipulates that the sovereignty of India extends to the territorial waters, the limit of which is 12 nautical miles. Section 5 of the Territorial Waters Act, 1976 defines the contiguous zone of India as an area beyond and adjacent to territorial waters to a distance of 24 nautical miles from the nearest point of the baseline. Section 7 of the Act defines the Exclusive economic zone of India as an area beyond and adjacent to territorial waters up to a limit of 200 nautical miles.<sup>32</sup>

#### [s 2.4] Jurisdiction beyond Territorial Waters

In the case of *British India Steam Navigation Co Ltd v Shanmughavilas Cashew Industries*,<sup>33</sup> the Supreme Court examined the effective operation of the statutes of a country in relation to foreigners and foreign ships.

In general, a statute extends territorially, unless the contrary is stated, throughout the country and will extend to the territorial waters, and such places as intention to that effect is shown. A statute extends to all persons within the country if that intention is shown. The Indian Parliament, therefore, has no authority to legislate for foreign vessels or foreigners in them on the high seas. Thus a foreign ship on the high seas, or her foreign owners or their agents in a foreign country, are not deprived of rights by our statutory enactment expressed in general terms unless it provides that a foreign ship entering an Indian port or territorial waters and thus coming within the territorial jurisdiction is to be covered. Without anything more Indian statutes are ineffective against foreign property and foreigners outside the jurisdiction.

It is this principle which is reflected in [section 2\(2\) of the Merchant Shipping Act, 1958](#).<sup>34</sup>

Earlier in *Aban Loyd Chiles Offshore Ltd v UOI*,<sup>35</sup> it was held that India has been given only certain limited sovereign rights and such limited sovereign rights conferred on India in respect of continental shelf and exclusive economic zone cannot be equated to extending the sovereignty of India over the continental shelf and exclusive economic zone as in the case of territorial waters.

1. *MC Verghese v Ponnaiyan*, AIR 1970 SC 1876 [LNIND 1968 SC 339] : (1969) 1 SCC 37 [LNIND 1968 SC 339] : 1970 Cr LJ 1651 .
2. *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC).
11. The original words "the said territories" have successively been amended by the A.O. 1937, the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 3-4-1951), to read as above.
12. The words and figures "on or after the said first day of May, 1861" rep. by Act 12 of 1891, section 2 and Sch I.
13. *Republic of Italy through Ambassador v UOI*, (2013) 4 SCC 721 : 2013 (1) Scale 462 [LNINDORD 2013 SC 9114] .
14. *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC). See also *State of Maharashtra v Mayer Hans George*, 1965 (1) SCR 123 [LNIND 1964 SC 415] : AIR 1965 SC 722 [LNIND 1964 SC 208] : 1965 (1) Cr LJ 641 .
15. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : 2012 Cr LJ 1551 .
16. *Standard Chartered Bank v Directorate of Enforcement*, (2005) 4 SCC 530 [LNIND 2005 SC 476] : AIR 2005 SC 2622 [LNIND 2005 SC 476] : 2005 SCC (Cr) 961; *Asstt Commr v Velliappa Textiles Ltd*, 2003 (11) SCC 405 [LNIND 2003 SC 794] : 2004 SCC (Cr) 1214 **Overruled**.
17. *Standard Chartered Bank v Directorate of Enforcement*, AIR 2006 SC 1301 [LNIND 2006 SC 145] : (2006) 4 SCC 278 [LNIND 2006 SC 145] : (2006) 2 SCC (Cr) 221. See also *CBI v Blue Sky Tie-up Pvt Ltd*, (2011) 6 Scale 436 : AIR 2012 (SCW) 1098 : 2012 Cr LJ 1216 . Also see *Aneeta Hada v Godfather Travels & Tours*, (2012) 5 SCC 66 : 2012 Cr LJ 2525 : AIR 2012 SC 2795 [LNIND 2012 SC 260] .
18. *CBI v Blue Sky Tie-up Pvt Ltd*, (2011) 6 Scale 436 : AIR 2012 (SCW) 1098 : 2012 Cr LJ 1216 . Also see *Aneeta Hada v Godfather Travels & Tours*, (2012) 5 SCC 66 : 2012 Cr LJ 2525 : AIR 2012 SC 2795 [LNIND 2012 SC 260] in which it is held that directors cannot be prosecuted without the Company being arraigned as an accused—138 NI Act.
19. *Keki Hormusji Gharda v Mehervan Rustom Irani*, (2009) 6 SCC 475 [LNIND 2009 SC 1276] : 2009 Cr LJ 3733 : AIR 2009 SC 2594 [LNIND 2009 SC 1276] .
20. *Maksud Saiyed v State of Gujarat*, (2008) 5 SCC 668 [LNIND 2007 SC 1090] : JT 2007 (11) SC 276 [LNIND 2007 SC 1090] : (2008) 2 SCC (Cr) 692.
21. *SK Alagh v State of UP*, AIR 2008 SC 1731 [LNIND 2008 SC 368] : (2008) 5 SCC 662 [LNIND 2008 SC 368] : 2008 Cr LJ 2256 : (2008) 2 SCC (Cr) 686.
22. *Per Brett, LJ in The Parlement Belge*, (1880) 5 PD 197 , 207.
23. Article 31 (1) of Diplomatic Relations (Vienna Convention) Act, 1972.
24. Article 31 (1) of Diplomatic Relations (Vienna Convention) Act, 1972.
25. United Nations (Privileges and Immunities) Act, Act No. XLV of 1947.
26. *Chung Chi Cheung*, (1939) AC 160 .
27. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : 2012 Cr LJ 1551 ; *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC) : 1958 SCR 328 [LNIND 1957 SC 81] .

28. *Kubic Dariusz v UOI*, AIR 1990 SC 605 [LNIND 1990 SC 25] : (1990) 1 SCC 568 [LNIND 1990 SC 25] : 1990 Cr LJ 796 .
29. *Republic of Italy through Ambassador v UOI*, (2013) 4 SCC 721 : 2013 (1) Scale 462 [LNINDORD 2013 SC 9114] .
30. *BK Wadeyar v Daulatram Rameshwarlal*, AIR 1961 SC 311 [LNIND 1960 SC 493] : 1961 (1) SCR 924 [LNIND 1960 SC 493] .
31. *Aban Loyd Chiles Offshore Ltd v UOI*, JT 2008 (5) SC 256 [LNIND 2008 SC 897] : 2008 (6) Scale 128 [LNIND 2008 SC 897] : (2008) 11 SCC 439 [LNIND 2008 SC 897] .
32. *UOI Republic of Italy through Ambassador v UOI*, (2013) 4 SCC 721 : 2013 (1) Scale 462 [LNINDORD 2013 SC 9114] .
33. *British India Steam Navigation Co Ltd v Shanmughavilas Cashew Industries*, 1990 (3) SCC 481 [LNIND 1990 SC 150] : JT 1990 (1) SC 528 [LNIND 1990 SC 150] : 1990 (1) SCR 884 .
34. *World Tanker Carrier Corp v SNP Shipping Services Pvt Ltd*, AIR 1998 SC 2330 [LNIND 1998 SC 461] : 1998 (5) SCC 310 [LNIND 1998 SC 461] .
35. *Aban Loyd Chiles Offshore Ltd v UOI*, (2008) 11 SCC 439 [LNIND 2008 SC 897] : JT 2008 (5) SC 256 [LNIND 2008 SC 897] : 2008 (6) Scale 128 [LNIND 2008 SC 897] .



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**[s 3] Punishment of offences committed beyond, but which by law may be tried within India.**

**Any person liable, by any <sup>36</sup>[Indian law], to be tried for an offence committed beyond <sup>37</sup>[India] shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within <sup>38</sup>[India].**

### COMMENT—

This section and section 4 relate to the extraterritorial operation of the Code. The words of this section postulate the existence of a law that an act constituting an offence in India shall also be an offence when committed outside India. Thus, taking part in a marriage which is prohibited by the [Child Marriage Restraint Act, 1929](#) by a citizen of India beyond India is not an offence which can be punished in India.<sup>39</sup> This section only applies to the case of a person who at the time of committing the offence charged was amenable to an Indian Court.<sup>40</sup> Thus, an Indian citizen who committed an offence outside India which was not an offence according to the laws of that country would still be liable to be tried in India if it was an offence under the Indian law.<sup>41</sup> An Indian citizen was murdered by another Indian citizen in a foreign country and the police refused to register an FIR on the ground that the offence was committed outside India. The Court held that the refusal was illegal and directed the police to register the crime and proceed with investigation in accordance with the law. The Court observed that [section 3 of the IPC, 1860](#) helps the authorities in India to proceed by treating the offence as one committed within India. No doubt it is by a fiction that such an assumption is made. But such an assumption was necessary for practical purposes.<sup>42</sup>

In a series of cases<sup>43</sup>, it was also held that an offence committed outside India by a citizen of India can be investigated by the local police even without prior sanction of the Central Government. Where both husband and wife are Indians residing at USA, a complaint against the husband alleging cruelty is maintainable.<sup>44</sup>

The operation of the section is restricted to the cases specified in the [Extradition Act, 1962](#) and the [Cr PC, 1973, sections 188 and 189](#).

1. *MC Verghese v Ponnai*, [AIR 1970 SC 1876 \[LNIND 1968 SC 339\]](#) : (1969) 1 SCC 37 [LNIND 1968 SC 339] : 1970 Cr LJ 1651 .
2. *Mobarik Ali v State of Bombay*, [AIR 1957 SC 857 \[LNIND 1957 SC 81\]](#) : 1957 Cr LJ 1346 (SC).
36. Subs. by the A.O. 1937 for "law passed by the Governor General of India in Council".
37. The original words "the limits of the said territories" have successively been amended by the A.O. 1937, the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 3 April 1951), to read as above.
38. The original words "the said territories" have successively been amended by the A.O. 1937, the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch, (w.e.f. 3-4-1951) to read as above.
39. *Sheikh Haidar v Syed Issa*, (1939) Ngp 241.
40. *Pirtai*, (1873) 10 BHC (Cr C) 356.
41. *Pheroze v State of Maharashtra*, [1964 \(2\) Cr LJ 533](#) (Bom).
42. *Remia v Sub-Inspector of Police, Tanur*, [1993 Cr LJ 1098](#) (Ker). The court referred to *State of WB v Jugal Kishore*, [AIR 1969 SC 1171 \[LNIND 1969 SC 8\]](#) : 1969 Cr LJ 1559 .
43. *Souda Beevi v Sub Inspector of Police*, [2012 Cr LJ 58](#) (NOC) : [2011 \(4\) Ker LT 52](#) ; *Muhammad Rafi v State of Kerala*, [2010 Cr LJ 592](#) : [2009 \(1\) Ker LT 943](#) ; *Vijaya Saradhi Vajja v Devi Sriroopa Madapati*, [2007 Cr LJ 636](#) (AP); *Samarudeen v Asst. Director of Enforcement*, [\(1999 \(2\) Ker LT 794 \[FB\]\)](#); *S Clara v State of TN*, [2008 Cr LJ 2477](#) (Mad).
44. *Harihar Narasimha Iyer v State of TN*, [2013 Cr LJ 378](#) ; *Rajesh Gupta v State of AP*, [2011 Cr LJ 3506](#) : [2011 \(3\) Crimes 236](#) .

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### **45. [s 4] Extension of Code to extraterritorial offences.**

**The provisions of this Code apply also to any offence committed by—**

**46. [(1) any citizen of India in any place without and beyond India;**

**(2) any person on any ship or aircraft registered in India wherever it may be;]**

**47. [(3) any person in any place without and beyond India committing offence targeting a computer resource located in India.]**

**48. [Explanation.—In this section—**

**(a) the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code;**

**(b) the expression "computer resource" shall have the meaning assigned to it in clause ( k ) of sub-section (1) of [section 2 of the Information Technology Act, 2000 \(21 of 2000\).](#)]**

**49. [ILLUSTRATION]**

**50. [\*\*\*] A, 51. [who is a 52. [citizen of India]], commits a murder in Uganda. He can be tried and convicted of murder in any place in 53. [India] in which he may be found.**

**54. [\*\*\*]**

## COMMENT—

This section shows the extent to which the Code applies to offences committed outside India. The Code applies to any offence committed by—

- (1) any citizen of India in any place, wherever he may be;
- (2) any person on any ship or aircraft registered in India wherever it may be; and
- (3) any person, whether or not a citizen of India, who commits any offence, from anywhere in the world, targeting a computer resource located in India.

Hence, except for the case of an offence committed against a computer resource located in India, to extend the scope of operation of [IPC, 1860](#) against persons, either the offender must be a citizen of India or he must have committed the offence on any ship or aircraft registered in India.

### [s 4.1] Crimes committed outside India.—

Where an offence is committed beyond the limits of India but the offender is found within its limits, then

- (I) he may be given up for trial in the country where the offence was committed (extradition) or
- (II) he may be tried in India (extraterritorial jurisdiction).

Where an offence was committed by an Indian citizen outside India, it was held that the offence was punishable under the [IPC, 1860](#). An investigation of such an offence would not require sanction of the Central Government under the proviso to [section 188, Cr PC, 1973](#). But an enquiry as contemplated by [section 202, Cr PC, 1973](#) could only be with the sanction of the Central Government.<sup>55</sup>

**(I) Extradition.**—Extradition is the surrender by one State to another of a person desired to be dealt with for crimes of which he has been accused or convicted and which are justiciable in the Courts of the other State. Surrender of a person within the State to another State—whether a citizen or an alien—is a political act done in pursuance of a treaty or an arrangement *ad hoc*.<sup>56</sup> Though extradition is granted in implementation of the international commitment of the State, the procedure to be followed by the Courts in deciding, whether extradition should be granted and on what terms, is determined by the municipal law of the land. Extradition is founded on the broad principle that it is in the interest of civilised communities that criminals should not go unpunished and on that account, it is recognised as a part of the comity of nations that one State should ordinarily afford to another State assistance towards bringing offenders to justice.<sup>57</sup> The procedure for securing the extradition from India is laid down in the [Extradition Act, 1962](#).

**(II) Extraterritorial jurisdiction.**—Indian Courts are empowered to try offences committed out of India on (A) land, (B) high seas or (C) aircraft.

**(A) Land.**—By virtue of [sections 3 and 4](#) of the [Penal Code](#), and [section 188 of the Cr PC, 1973](#) local Courts can take cognizance of offences committed beyond the territories of India. Where the Court is dealing with an act committed outside India by a citizen of India which would be an offence punishable under the [Penal Code](#) if it had been committed in India, section 4 constitutes the act an offence and it can be dealt with under [section 188 of the Cr PC, 1973](#).<sup>58</sup> If, however, at the time of commission of

the offence the accused person is not a citizen of India, the provisions of [section 4 of the Penal Code](#) and [section 188 of the Cr PC, 1973](#) have no application.<sup>59</sup>

[Section 188 of the Cr PC, 1973](#), provides that when an offence is committed outside India—

- (a) by a citizen of India, whether on high seas or elsewhere; or
- (b) by any person not being such citizen on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found.

The word 'found' in [section 188, Cr PC, 1973](#) means not where a person is discovered but where he is actually present.<sup>60</sup> A man brought to a place against his will can be said to be found there.<sup>61</sup> When a man is in the country and is charged before a Magistrate with an offence under the [Penal Code](#), it will not avail him to say that he was brought there illegally from a foreign country. The Bombay High Court has laid down this principle, following English precedents, in *Savarkar's case*.<sup>62</sup> The accused Savarkar had escaped at Marseilles from the custody of police officers charged with the duty of bringing him from London to Bombay, but was re-arrested there and brought to Bombay and committed for trial by the Special Magistrate at Nasik. The High Court held that the trial and committal were valid.<sup>63</sup> The provisions of the [IPC, 1860](#) have been extended to offences committed by any citizen of India in any place within and beyond India by virtue of section 4 thereof. Accordingly, offences committed in Botswana by an Indian citizen would also be amenable to the provisions of the [IPC, 1860](#) subject to the limitation imposed under the proviso to [section 188 Cr PC, 1973](#).<sup>64</sup> Section 4 gives extraterritorial jurisdiction but as the Explanation says the acts committed must amount to an offence under the [Penal Code](#).<sup>65</sup>

#### **[s 4.2] Acts done within Indian as well as foreign territory.—**

A person who is a citizen of India is liable to be tried by the Courts of this country for acts done by him, partly within and partly without the Indian territories, provided the acts amount together to an offence under the Code.<sup>66</sup>

**(B) Admiralty jurisdiction.**—The jurisdiction to try offences committed on the high seas is known as the admiralty jurisdiction. It is founded on the principle that a ship on the high seas is a floating island belonging to the nation whose flag she is flying.

Admiralty jurisdiction extends over—

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

Power to enforce claims against foreign ships is an essential attribute of admiralty jurisdiction and it is assumed over such ships while they are within the jurisdiction of the High Court by arresting and detaining them. Admiralty jurisdiction of the High Courts in India has been historically traced to the Charters of 1774 and 1728, as subsequently expanded and clarified by the Letters Patent of 1823, 1862 and 1865 read with the Admiralty Court Act, 1861, the Colonial Courts of Admiralty Act, 1890, and the Colonial Court of Admiralty (India) Act, 1891 and preserved by section 106 of the Government of India Act, 1915, section 223 of the Government of India Act, 1935 and

[Article 225 of the Constitution of India](#). The pre-[Constitution](#) enactments have continued to remain in force in India as existing laws.<sup>67.</sup>

The High Court as a Court of Admiralty is treated as a separate entity exercising a distinct and specific or prescribed or limited jurisdiction. This reasoning is based on the assumption that the continuance in force of the Colonial Courts of Admiralty Act, 1890 as an existing law carves out a distinct jurisdiction of the High Court limited in ambit and efficacy to what has been granted by the Admiralty Court Act 1861, and that jurisdiction has remained stultified ever since. This restrictive construction is not warranted by the provisions of the [Constitution](#). Accordingly, a foreign ship falls within the jurisdiction of the High Court where the vessel happens to be at the relevant time, i.e., at the time when the jurisdiction of the High Court is invoked, or, where the cause of action wholly or in part arises. The [Merchant Shipping Act](#) empowers the concerned High Court to arrest a ship in respect of a substantive right. This jurisdiction can be assumed by the concerned High Court, whether or not the defendant resides or carries on business, or the cause of action arose wholly or in part, within the local limits of its jurisdiction. Once a foreign ship is arrested within the local limits of the jurisdiction of the High Court, and the owner of the ship has entered appearance and furnished security to the satisfaction of the High Court for the release of the ship, the proceedings continue as a personal action. The conclusion is that all the High Courts in India have inherent admiralty jurisdiction and can invoke the same for the enforcement of a maritime claim.<sup>68.</sup>

Even while exercising extraordinary powers available under the [Constitution](#) the jurisdiction of the High Court is primarily circumscribed by its territorial limits, viz., the jurisdiction has to be in context of the territorial jurisdiction available to the High Court. If the overall scheme of [IPC, 1860](#) (section 4), [Cr PC, 1973](#) (section 188), The [Merchant Shipping Act, 1958](#) (section 437) and the Territorial Waters Act, 1976 (section 13) are taken into consideration read with sections 2(2) and 3(15) of the [Merchant Shipping Act](#), it is apparent that for a Court, including High Court, to be vested with jurisdiction, an offender or offending vessel have to be found within local territorial limits of such Court.<sup>69.</sup>

### **[s 4.3] Piracy**

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
  - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).<sup>70.</sup>

The Convention on the Law of Sea known as United National Convention on the Law of Sea, 1982 (UNCLOS) sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities. UNCLOS, 1982 is a

comprehensive code on the international law of sea. It codifies and consolidates the traditional law within a single, unificatory legal framework. It has changed the legal concept of continental shelf and also introduced a new maritime zone known as exclusive economic zone. Exclusive economic zone is a new concept having several new features.<sup>71</sup> The UNCLOS signed by India in 1982 and ratified on 29 June 1995, encapsulates the law of the sea and is supplemented by several subsequent resolutions adopted by the Security Council of the United Nations.

Before UNCLOS came into existence, the law relating to the seas which was in operation in India, was the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, which spelt out the jurisdiction of the Central Government over the Territorial Waters, the Contiguous Zones and the Exclusive Economic Zone. The provisions of the UNCLOS are in harmony with and not in conflict with the provisions of the Maritime Zones Act, 1976, in this regard. [Article 33](#) of the Convention recognises and describes the Contiguous Zone of a nation to extend to 24 nautical miles from the baseline from which the breadth of the territorial sea is measured. Similarly, [Articles 56](#) and [57](#) describe the rights, jurisdiction and duties of the coastal State in the Exclusive Economic Zone and the breadth thereof extending to 20 nautical miles from the baseline from which the breadth of the territorial sea is measured. This provision is also in consonance with the provisions of the 1976 Act. The area of difference between the provisions of the Maritime Zones Act, 1976, and the Convention occurs in [Article 97](#) of the Convention which relates to the penal jurisdiction in matters of collision or any other incident of navigation.<sup>72</sup>

#### **[s 4.4] Jurisdiction of Indian High Courts.—**

In view of the declaration of law made by the Supreme Court in *M V Elisabeth v Harwan Investment and Trading*,<sup>73</sup> the High Courts in India have inherent admiralty jurisdiction.

The offences which come within the admiralty jurisdiction are now defined by the [Merchant Shipping Act, 1958](#).

**(C) Aircraft.**—The provisions of the Code are made applicable to any offence committed by any person on any aircraft registered in India, wherever it may be.

#### **[s 4.5] Liability of foreigners in India for offences committed outside its limits.**

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The acts of a foreigner committed by him in territory beyond the limits of India do not constitute an offence against the [Penal Code](#), and, consequently, a foreigner cannot be held criminally responsible under that Code by the tribunals of India for acts committed by him beyond its territorial limits. Thus, when it is sought to punish a person, who is not an Indian subject, as an offender in respect of a certain act, the question is not 'where was the act committed,' but 'was that person at the time, when the act was done, within the territory of India'. For, if he was not, the act is not an offence, the doer of it is not liable to be punished as an offender, and he is, therefore, not subject to the jurisdiction of criminal Courts.<sup>74</sup> But if a foreigner in a foreign territory initiates an offence which is completed within Indian territory, he is, if found within Indian territory, liable to be tried by the Indian Court within whose jurisdiction the offence was completed.<sup>75</sup>

**[s 4.6] Section 4 IPC and section 188 of Cr PC.—**

Section 188 Cr PC, 1973 and section 4 of the IPC, 1860 spell out that if the person committing the offence at that point of time is a citizen of India, then, even if the offence is committed beyond the contours of India, he will be subject to the jurisdiction of the Courts in India. The rule enunciated under the two sections rests on the principle that qua citizens the jurisdiction of Courts is not lost by reason of the venue of the offence. However, section 188 of the Code places an interdiction in the enquiry or trial over offences committed outside India by a citizen of India insisting for sanction from the Central Government to do so.<sup>76</sup>

1. *MC Verghese v Ponnai*, AIR 1970 SC 1876 [LNIND 1968 SC 339] : (1969) 1 SCC 37 [LNIND 1968 SC 339] : 1970 Cr LJ 1651 .
2. *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC).
45. Subs. by Act 4 of 1898, section 2, for section 4.
46. Subs. by the A.O. 1950, for clauses (1) to (4).
47. Ins. by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51(a)(i) (w.e.f. 27-10-2009).
48. Subs. by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51(a)(ii), for Explanation (w.e.f. 27-10-2009). Explanation, before substitution, stood as under: "Explanation.—In this section the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code."
49. Subs. by Act 36 of 1957, section 3 and Sch II, for "Illustrations" (w.e.f. 17-9-1957).
50. The brackets and letter "(a)" omitted by Act 36 of 1957, section 3 and Sch II (w.e.f. 17-9-1957).
51. Subs. by the A.O. 1948, for "a coolie, who is a Native Indian subject".
52. Subs. by the A.O. 1950, for "a British subject of Indian domicile".
53. The words "British India" have been successively amended by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951), to read as above.
54. Illustrations (b), (c) and (d) omitted by the A.O. 1950.
55. *Muhammad Rafi v State of Kerala*, 2010 Cr LJ 592 Ker DB.
56. *State of WB v Jugal Kishore More*, (1969) 3 SCR 320 [LNIND 1969 SC 8] : 1969 Cr LJ 1559 : AIR 1969 SC 1171 [LNIND 1969 SC 8] .
57. *Abu Salem Abdul Qayoom Ansari v State of Maharashtra*, JT 2010 (10) SC 202 [LNIND 2010 SC 858] : 2010 (9) Scale 460 : (2011) 3 SCC (Cr) 125 : (2011) 11 SCC 214 [LNIND 2010 SC 858] .
58. *Ajay Aggarwal v UOI*, 1993 (3) SCC 609 [LNIND 1993 SC 431] : AIR 1993 SC 1637 [LNIND 1993 SC 431] : 1993 Cr LJ 2516 .
59. *Central Bank of India Ltd v Ram Narain*, (1955) 1 SCR 697 [LNIND 1954 SC 126] : 1955 Cr LJ 152 : AIR 1955 SC 36 [LNIND 1954 SC 126] .
60. *Maganlal v State*, (1882) 6 Bom 622.
61. *Lopez and Sattler*, (1858) 27 LJ (MC) 48.
62. *Vinayak D Savarkar*, (1910) 13 Bom LR 296 , 35 Bom 225.



63. *Supra*. Also see *Om Hemrajani v State of UP*, (2005) 1 SCC 617 [LNIND 2004 SC 1181] : AIR 2005 SC 392 [LNIND 2004 SC 1181] .
64. *Thota Venkateswarlu v State of AP*, AIR 2011 SC 2900 [LNIND 2011 SC 850] : (2011) 9 SCC 527 [LNIND 2011 SC 850] : 2011 Cr LJ 4925 : (2011) 3 SCC (Cr) 772.
65. *Rambharthi*, (1923) 25 Bom LR 772 [LNIND 1923 BOM 115] : 47 Bom 907; *Sheikh Haidar v Syed Issa*, (1939) Nag 241.
66. *Moulvie Ahmudoollah*, (1865) 2 WR (Cr) 60.
67. See *Kamalakar Mahadev Bhagat v Scindia Steam Navigation Co Ltd*, AIR 1961 Bom 186 [LNIND 1960 BOM 71] : (1960) 62 Bom LR 995 ; *Sahida Ismail v Petko R Salvejkov*, AIR 1973 Bom 18 [LNIND 1971 BOM 74] : (1972) 74 Bom LR 514 ; *Jayaswal Shipping Co v SS Leelavati*, AIR 1954 Cal 415 [LNIND 1953 CAL 202] ; *Reena Padhi v 'Jagdhir'*, AIR 1982 Ori 57 [LNIND 1981 ORI 93] .
68. *M V Elisabeth v Harwan Investment and Trading*, 1993 Supp (2) SCC 433 : AIR 1993 SC 1014 [LNIND 1992 SC 194] ; *MV Al Quamar v Tsavliris Salvage (International) Ltd*, AIR 2000 SC 2826 [LNIND 2000 SC 1119] : (2000) 8 SCC 278 [LNIND 2000 SC 1119] : 2000 (5) Scale 618 [LNIND 2000 SC 1119] ; *MV Free Neptune v DLF Southern Towns Private*, 2011 (1) Ker LT 904 : 2011 (1) KHC 628 .
69. *MG Forests Pte Ltd v "MV Project Workship"*, Gujarat High Court Judgement dated 24 February 2004.
70. **Article 100**. United Nations Convention on the Law of the Sea (UNCLOS), 1982.
71. *Aban Loyd Chiles Offshore Ltd v UOI*, JT 2008 (5) SC 256 [LNIND 2008 SC 897] : 2008 (6) Scale 128 [LNIND 2008 SC 897] : (2008) 11 SCC 439 [LNIND 2008 SC 897] .
72. *Republic of Italy through Ambassador v UOI*, (2013) 4 SCC 721 : 2013 (1) Scale 462 [LNINDORD 2013 SC 9114] .
73. *M V Elisabeth v Harwan Investment and Trading*, 1993 Supp (2) SCC 433 : AIR 1993 SC 1014 [LNIND 1992 SC 194] .
74. *Musst. Kishen Kour*, (1878) PR No. 20 of 1878; *Jameson*, (1896) 2 QB 425 .
75. *Chhotalal*, (1912) 14 Bom LR 147 [LNIND 1912 BOM 26] .
76. *P T Abdul Rahiman v State of Kerala*, 2013 Cr LJ 893 (Ker).

# THE INDIAN PENAL CODE

## CHAPTER I INTRODUCTION

The [Indian Penal Code](#) was drafted by the First Indian Law Commission presided over by Lord Thomas Babington Macaulay. The draft underwent further revision at the hands of well-known jurists, like Sir Barnes Peacock, and was completed in 1850. The [Indian Penal Code](#) was passed by the then Legislature on 6 October 1860 and was enacted as Act No. XLV of 1860.

Preamble.

**WHEREAS it is expedient to provide a general Penal Code for India; It is enacted as follows:—**

**COMMENT.**—The [Indian Penal Code, 1860 \(IPC, 1860\)](#) exhaustively codifies the law relating to offences with which it deals and the rules of the common law cannot be resorted to for inventing exemptions which are not expressly enacted.<sup>1.</sup> It is not necessary and indeed not permissible to construe the [IPC, 1860](#) at the present day in accordance with the notions of criminal jurisdiction prevailing at the time when the Code was enacted. The notions relating to this matter have very considerably changed between then and now during nearly a century that has elapsed. It is legitimate to construe the Code with reference to the modern needs, wherever this is permissible, unless there is anything in the Code or in any particular section to indicate the contrary.<sup>2.</sup>

**77. [[s 5] Certain laws not to be affected by this Act.**

**Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law<sup>1</sup> .]**

### COMMENT—

This section is a saving clause to section 2. Though the Code was intended to be a general one, it was not thought desirable to make it exhaustive, and hence, offences defined by local and special laws were left out of the Code, and merely declared to be punishable as theretofore.<sup>78.</sup> Thus, the personnel of the Army, Navy and Airforce are governed by the provisions of the [Army Act, 1950](#), The [Navy Act, 1957](#), and The [Indian Air Force Act, 1950](#) in regard to offences of mutiny and desertion committed by them.<sup>79.</sup>

**1. 'Special or local law'.—**A special law is a law relating to a particular subject;<sup>80.</sup> whereas a local law is a law which applies only to a particular part of the country.<sup>81.</sup> The distinction between a statute creating a new offence with a particular penalty and a statute enlarging the ambit of an existing offence by including new acts within it with a particular penalty is well settled. In the former case the new offence is punishable by the new penalty only; in the latter it is punishable also by all such penalties as were applicable before the Act to the offence in which it is included. The Principle is that where a new offence is created and the particular manner in which proceedings should be taken is laid down, then proceedings cannot be taken in any other way.<sup>82.</sup> However, a person cannot be punished under both the [Penal Code](#) and a special law for the same

offence,<sup>83</sup> and ordinarily the sentence should be under the special Act.<sup>84</sup> This is, however, confined to cases where the offences are coincident or practically so.<sup>85</sup>

*The Supreme Court issued specific guidelines regarding the interpretation of general law and special law. See the Box below for these Guidelines.*

### **Supreme Court Guidelines on Interpretation of General law and Special law**

- (i) When a provision of law regulates a particular subject and a subsequent law contains a provision regulating the same subject, there is no presumption that the later law repeals the earlier law. The rule-making authority while making the later rule is deemed to know the existing law on the subject. If the subsequent law does not repeal the earlier rule, there can be no presumption of an intention to repeal the earlier rule;
- (ii) When two provisions of law – one being a general law and the other being special law govern a matter, the court should endeavour to apply a harmonious construction to the said provisions. But where the intention of the rule-making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect.
- (iii) If the repugnancy or inconsistency subsists in spite of an effort to read them harmoniously, the prior special law is not presumed to be repealed by the later general law. The prior special law will continue to apply and prevail in spite of the subsequent general law. But where a clear intention to make a rule of universal application by superseding the earlier special law is evident from the later general law, then the later general law, will prevail over the prior special law.
- (iv) Where a later special law is repugnant to or inconsistent with an earlier general law, the later special law will prevail over the earlier general law.

[*Maya Mathew v State of Kerala*<sup>86</sup>. and *P Raghava Kurup v V Ananthakumari*<sup>87</sup>.]

### **[s 5.1] Contempt of Court**

**Contempt of Courts Act, 1971** (Act 70 of 1971) makes it clear that, Contempt of Court means 'Civil contempt' or 'Criminal contempt'.<sup>88</sup> 'Civil contempt' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an Undertaking given to a Court.<sup>89</sup> "Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which – (i) scandalises or tends to scandalise or lowers or tends to lower the authority of any Court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.<sup>90</sup> The provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law relating to contempt of Courts.<sup>91</sup> Contempt proceeding is *sui generis* (of its own kind or class or unique). It has peculiar features which are not found in criminal proceedings. The respondent does not stand in the position of a person accused of an offence. Initiation of contempt proceedings against the respondent who is already accused in a criminal proceedings, does not amount to double jeopardy.<sup>92</sup> *Mens rea* is not necessary for committing contempt of Court. The main ingredient of the offence of contempt of Court is the result of one's contumacious act of offending the prestige and dignity of the judiciary so as to lower it in the estimation of the general public. Whether the contemnor intended it or not is of no consequence.<sup>93</sup>

## [s 5.2] Contempt of Supreme Court and High Courts

Articles 129 and 215 preserve all the powers of the Supreme Court and the High Court, respectively, as a Court of Record which includes the power to punish the contempt of itself. There are no curbs on the power of the High Court to punish for contempt of itself except those contained in the [Contempt of Courts Act, 1971](#).<sup>94</sup> For the judiciary to carry out its obligations effectively and true to the spirit with which it is sacredly entrusted the task, constitutional Courts have been given the power to punish for contempt, but greater the power; higher the responsibility.<sup>95</sup>

## [s 5.3] Contempt of Subordinate Courts

Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of Courts subordinate to it as it has and exercises in respect of contempt of itself provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the [IPC, 1860](#) [[section 10 Contempt of Courts Act, 1971](#)]. The procedure prescribed either under the [Cr PC, 1973](#) or under the [Indian Evidence Act, 1872](#) is not attracted to the proceedings initiated under [section 15 of the Contempt of Courts Act](#). The High Court can deal with such matters summarily and adopt its own procedure. The only caution that has to be observed by the Court in exercising this inherent power of summary procedure is that the procedure followed must be fair and the contemnors are made aware of the charges levelled against them and given a fair and reasonable opportunity.<sup>96</sup>

## [s 5.4] Section 228 IPC vis-a-vis Contempt of Courts Act

What is made punishable under [section 228 IPC, 1860](#)<sup>97</sup> is the offence of intentional insult to a Judge or interruption of Court proceedings but not as a contempt of Court. The definition of criminal contempt is wide enough to include any act by a person which would either scandalise the Court or tend to interfere with the administration of justice. It would also include any act which lowers the authority of the Court or prejudices or interferes with the due course of any judicial proceedings. It is not limited to the offering of intentional insult to the Judge or interruption of the judicial proceedings.<sup>98</sup>

1. *MC Verghese v Ponnai*, [AIR 1970 SC 1876](#) [[LNIND 1968 SC 339](#)] : (1969) 1 SCC 37 [[LNIND 1968 SC 339](#)] : 1970 Cr LJ 1651 .

2. *Mobarik Ali v State of Bombay*, [AIR 1957 SC 857](#) [[LNIND 1957 SC 81](#)] : 1957 Cr LJ 1346 (SC).

77. Subs. by the A.O. 1950, for section 5.

78. *Ramachandrappa*, (1883) 6 Mad 249; *Motilal Shah*, (1930) 32 Bom LR 1502 : 55 Bom 89.

79. *UOI v Anand Singh Bisht*, AIR 1997 SC 361 [LNIND 1996 SC 1341] : (1996) 10 SCC 153 [LNIND 1996 SC 1341] : 1996 Cr LJ 4435 : (1996) 1 SCC (Cr) 1198.
80. Section 41 IPC, 1860.
81. Section 42 IPC, 1860.
82. *Bhalchandra Ranadive*, (1929) 31 Bom LR 1151 , 1178 : 54 Bom 35.
83. *Hussun Ali*, (1873) 5 NWP 49.
84. *Kuloda Prosad Majumdar*, (1906) 11 Cal WN 100; *Bhogilal*, (1931) 33 Bom LR 648 .
85. *Joti Prasad Gupta*, (1931) 53 All 642 , 649; *Suchit Raut v State*, (1929) 9 Pat 126.
86. *Maya Mathew v State of Kerala*, (2010) 4 SCC 498 [LNIND 2010 SC 190] : (2010) 3 SCR 16 [LNIND 2010 SC 190] : AIR 2010 SC 1932 [LNIND 2010 SC 190] : 2010 (2) Scale 833 [LNIND 2010 SC 190] .
87. *P Raghava Kurup v V Ananthakumari*, (2007) 9 SCC 179 [LNIND 2007 SC 215] : 2007 (2) SCR 1058 [LNIND 2007 SC 215] : (2007) 3 Scale 431 [LNIND 2007 SC 215] .
88. Section 2(a).
89. Section 2(b).
90. Section 2(c).
91. Section 22.
92. *Delhi Judicial Service, Association, Tis Hazari Court v State of Gujarat*, AIR 1991 SC 2176 [LNIND 1991 SC 446] : 1991 (4) SCC 406 [LNIND 1991 SC 446] .
93. VG Ramachandran, *Contempt of Court*, 6th Edn, p 319 quoted in *Re MV Jayarajan*, 2012 (1) Ker LT SN 23 : 2011 (4) KHC 585 .
94. *V G Peterson v O V Forbes*, AIR 1963 SC 692 [LNIND 1962 SC 298] : 1963 Supp (1) SCR 40 : 1963 (1) Cr LJ 633 .
95. *HG Rangangoud v State Trading Corp of India*, AIR 2012 SC 490 : 2012 (1) SCC 297 .
96. *Daroga Singh v BK Pandey*, AIR 2004 SC 2579 [LNIND 2004 SC 485] : (2004) 5 SCC 26 [LNIND 2004 SC 485] : 2004 Cr LJ 2084 .
97. [s 228] - **Intentional insult or interruption to public servant sitting in judicial proceeding.**—  
Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
98. *Daroga Singh v BK Pandey*, AIR 2004 SC 2579 [LNIND 2004 SC 485] : (2004) 5 SCC 26 [LNIND 2004 SC 485] : 2004 Cr LJ 2084 .

# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

### **[s 6] Definitions in the Code to be understood subject to exceptions.**

**Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision, or illustration.**

#### ILLUSTRATION

- (a) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences, but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.
- (b) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

#### COMMENT—

The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of the definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lies on the accused.<sup>1</sup>

Section 6 is a convenient formula to avoid reproduction of lengthy exceptions in the description of offences. In other words, all the offences must be read subject to Chapter IV relating to General Exceptions (sections. 76–106 [IPC, 1860](#)). So when an act falls within any one of these exceptions by virtue of section 6 of the Code, the accused has to be given benefit of the appropriate General Exception even though it is not specifically stated over again in the description of the offence committed.<sup>2</sup> [Section 6 of the Indian Penal Code](#) imposes an obligation on the court to consider the case of exceptions on its own so far as it relates to the burden of proving legal insanity under section 106 of the Act. If the case of the accused comes within the purview of [section 84 IPC, 1860](#), which is one of the provisions in Chapter IV of the General Exceptions of

the [Indian Penal Code](#), the court is to give due consideration and find out as to whether at the time of the occurrence the accused had any mental disability so as not to know what he was doing.<sup>3</sup>

The provisions of section 6 should be read as a proviso to [section 105 of the Evidence Act 1872](#).<sup>4</sup> When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the [Indian Penal Code \(XIV of 1860\)](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>5</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .

2. *Abdul Latif v State of Assam*, 1981 Cr LJ 1205 (Gau); see also *Patras Mardi v State*, 1982 Cr LJ NOC 7 (Gau).

3. *Khageswar Pujari v State of Orissa*, 1984 Cr LJ 1108 (Orissa), see also *Smt. Sandhya Rani Bardhan v State*, 1977 Cr LJ NOC 245 (Gau). *Subodh Tewari v State of Assam*, 988 Cr LJ 223 (Assam).

4. *Khurajam Somat Singh v State*, 1997 Cr LJ 1461 (Gau).

5. [Section 105 Evidence Act](#).

# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

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### [s 7] Sense of expression once explained.

**Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.**

### COMMENT—

[Section 7 of IPC, 1860](#) provides that 'every expression' which is explained in any part of the Code, is used in every part of the Code in conformity with the explanation. Let it be noted that unlike the modern statute, section 7 does not provide 'unless the context otherwise indicate' a phrase that prefaces the dictionary clauses of a modern statute. Therefore, the expression 'Government' in section 21(12)(a) must mean either the Central Government or the Government of a State.<sup>6</sup>

6. *RS Nayak v AR Antulay*, (1984) 2 SCC 183 [LNIND 1984 SC 43] : AIR 1984 SC 684 [LNIND 1984 SC 43] .



## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

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#### [s 8] Gender.

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

#### COMMENT—

[Section 8 of the Indian Penal Code](#) lays down that the pronoun 'he' and its derivatives are used for any person whether male or female. Thus, in view of [section 8, IPC, 1860](#) read with section 2(y), [Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#) the pronoun 'his' in clause (d) of [section 125\(1\), Cr PC, 1973](#) also indicates a female.<sup>7</sup>

<sup>7</sup>. *Vijaya (Dr.) v Kashirao Rajaram Sawai*, 1987 Cr LJ 977 : AIR 1987 SC 1100 [LNIND 1987 SC 200] ; *M Areefa Beevi v Dr. K M Sahib*, 1983 Cr LJ 412 (Ker) : See also *Girdhar Gopal v State*, 1953 Cr LJ 964 (MB) (Section 354 IPC, 1860).

# **THE INDIAN PENAL CODE**

## **CHAPTER II GENERAL EXPLANATIONS**

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### **[s 9] Number.**

**Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.**

## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

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#### [s 10] "Man" "Woman".

**The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.**

#### COMMENT—

A female child of seven and a half months was held to be a "woman" for the purpose of [section 354 IPC, 1860](#).<sup>8</sup>

<sup>8</sup>. *State of Punjab v Major Singh*, AIR 1967 SC 63 [LNIND 1966 SC 130] : 1967 Cr LJ 1 .

## THE INDIAN PENAL CODE

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#### [s 11] "Person".

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

#### COMMENT—

The term 'person' has been defined in [section 11, IPC, 1860](#), and the same is *in pari materia* with [section 3\(42\) of the General Clauses Act 1897](#). Obviously, the definition is inclusive.<sup>9</sup> A natural person, an incorporated person or even an unincorporated association or body of persons like a partnership can be a person under [section 11 of IPC, 1860](#).<sup>10</sup> The Supreme Court has held in *Standard Chartered Bank v Directorate of Enforcement*,<sup>11</sup> that, as regards corporate criminal liability, there is no doubt that a corporation or company could be prosecuted for any offence punishable under law, whether it is coming under the strict liability or under absolute liability. A juristic person has been held to come within the meaning of the word "person" for the purposes of section 415 (cheating).<sup>12</sup>

The State and its instrumentalities are juristic persons,<sup>13</sup> but by implication, the State stands excluded from the purview of the word 'person' for the purpose of limiting its right to avail the revisional power of the High Court under [section 397\(1\) of Cr PC, 1973](#) for the reason that the State, being the prosecutor of the offender, is enjoined to conduct prosecution on behalf of the society and to take such remedial steps as to deems proper.<sup>14</sup> Chief Educational Officer is an artificial person/ juristic person falling under [section 11 of IPC, 1860](#).<sup>15</sup>

#### [s 11.1] Accused person.—

Though the word "person" is defined in the [Indian Penal Code section 11](#) and the [General Clauses Act section 3\(42\)](#) which are identical and are not exhaustive but an inclusive one. The words "accused" or "accused person" or "accused of an offence" are not defined either in the [Indian Penal Code](#) or in the [Indian Evidence Act](#) or in the [General Clauses Act 1897](#).<sup>16</sup>

#### [s 11.2] Complainant.—

A complaint can be filed in the name of a juristic person because it is also a person in the eye of law. It is clear that complainant must be a corporeal person who is capable of making a physical presence in the court. Its corollary is that even if the complaint is

made in the name of incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the court and it is that natural person who is looked upon, for all practical purposes, to be the complainant in the case. In other words, when the complainant is a body corporate it is the *de jure* complainant, and it must necessarily associate a human being as *de facto* complainant to represent the former in court proceedings.<sup>17</sup> A company is a person in law and not in fact. A person in law is always required to be represented by a person in fact. A company can file a complaint for Defamation ([section 500 IPC, 1860](#)) through its authorised representative.<sup>18</sup>

9. *Chief Education Officer, Salem v K S Palanichamy*, [2012 Cr LJ 2543](#) (Mad).
10. *B Raman v M/S. Shasun Chemicals and Drugs Ltd*, [2006 Cr LJ 4552](#) (Mad); *Target Overseas Exports Pvt Ltd v A M Iqbal*, [2005 Cr LJ 1931](#) (Ker).
11. *Standard Chartered Bank v Directorate of Enforcement*, [AIR 2005 SC 2622](#) [[LNIND 2005 SC 476](#)].
12. *Reji Michael v Vertex Securities Ltd*, [1999 Cr LJ 3787](#) (Ker).
13. *Common Cause, A Registered Society v UOI*, (1999) 6 SCC 667 [[LNIND 1999 SC 637](#)] : [AIR 1999 SC 2979](#) [[LNIND 1999 SC 637](#)].
14. *Krishnan v Krishnaveni*, [AIR 1997 SC 987](#) [[LNIND 1997 SC 1883](#)] : [1997 Cr LJ 1519](#) : (1997) 4 SCC 241 [[LNIND 1997 SC 1883](#)].
15. *Chief Education Officer, Salem v K S Palanichamy*, [2012 Cr LJ 2543](#) (Mad).
16. *Directorate of Enforcement v Deepak Mahajan*, [AIR 1994 SC 1775](#) [[LNIND 1993 SC 656](#)] : (1994) 3 SCC 440 : [1994 Cr LJ 2269](#).
17. *Associated Cement Co Ltd v Keshvanand*, [AIR 1998 SC 596](#) [[LNIND 1997 SC 1634](#)] : (1998) 1 SCC 687 [[LNIND 1997 SC 1634](#)] : [1998 Cr LJ 856](#).
18. *CM Ibrahim v Tata Sons Ltd*, [2009 Cr LJ 228](#) (Kar).

## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

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#### **[s 12] "Public."**

**The word "public" includes any class of the public, or any community.**

#### **COMMENT—**

This definition is inclusive and does not define the word 'public'. It only says that any class of public or any community is included within the term 'public'. A body or class of persons living in a particular locality may come within the term 'public'.<sup>19.</sup>

<sup>19.</sup> *Harnandan Lal v Rampalak Mahto*, (1938) 18 Pat 76.

## **THE INDIAN PENAL CODE**

### **CHAPTER II GENERAL EXPLANATIONS**

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**[s 13] *[Repealed]***

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

# THE INDIAN PENAL CODE

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### **20. [[s 14] "Servant of Government".**

The words "servant of Government" denote any officer or servant continued, appointed or employed in India by or under the authority of Government.]

20. Subs. by the A.O. 1950, for section 14.



# THE INDIAN PENAL CODE

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**[s 15] *[Repealed]***

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

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**[s 16] *[Repealed]***

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

# THE INDIAN PENAL CODE

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### **21.** [s 17] "Government"

The word "Government" denotes the Central Government or the Government of a **22.** [\*\*\*] State.]

### COMMENT—

Legislature of a State cannot be comprehended in the expression 'State Government'. **23.**

**21.** Subs. by A.O. 1950, for section 17.

**22.** The word and letter "Part A" omitted by Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951).

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#### 24. **[s 18] "India."**

"India" means the territory of India excluding the State of Jammu and Kashmir.]

#### COMMENT—

This exclusion of the State of Jammu and Kashmir in this section is not violative of [Article 1](#) and the First Schedule of the [Constitution of India](#).<sup>25</sup> In fact, *Fazal Ali*, CJ, as he then was, held that exclusion of a territory postulates the existence of a territory itself; State of Jammu and Kashmir cannot be taken as a foreign territory.<sup>26</sup> Since the First Schedule to the [Constitution of India](#) specifically includes Jammu and Kashmir as a part of the territories of India, the exclusion of the State of Jammu and Kashmir from [section 18 of the Penal Code](#) only means that for the purposes of application of the provisions of the [Indian Penal Code](#), that State shall not be considered as a part of India. In fact, section 1 of the Code itself makes this position abundantly clear. The State of Jammu and Kashmir has a separate [Penal Code](#) of its own. It is known as the Ranbir [Penal Code](#), which is almost same as the [Indian Penal Code](#).

24. Subs. by Act 3 of 1951, section 3 and Sch, for section 18 (w.e.f. 1-4-1951). Earlier section 18 was repealed by the A.O. 1937 and was again inserted by the A.O. 1950.

25. *KRK Vara Prasad v UOI*, [AIR 1980 AP 243](#) [[LNIND 1980 AP 27](#)].

26. *Virender Singh v General Officer Commanding*, 1974 J & K LR 101 (FB).

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### **[[s 19] "Judge."**

**[s 19] The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person,—**

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

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

### ILLUSTRATIONS

- (a) A Collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.
- (b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.
- (c) A member of a panchayat which has power, under <sup>27</sup>.Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.
- (d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

### COMMENT—

[Section 19 IPC, 1860](#) defines a 'Judge' as denoting not only every person who is officially designated as a Judge, but also every person who is empowered by law to give in any legal proceedings, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons empowered by law to give such a judgment. The Collector is neither a Judge as defined under section 19 nor does he act judicially, when discharging any of the functions under the [Land Acquisition Act](#).<sup>28</sup> Regional Provident Fund Commissioner while passing an order under section 7-A of Employees' Provident Funds and Miscellaneous Provisions Act 1952 was 'Judge' within definition under [section 19 of IPC, 1860](#).<sup>29</sup> The right to pronounce a definitive judgment is considered the *sine qua non* of a Court.<sup>30</sup>



Illustration (d) is very important as it indicates that a Magistrate, who has power to try and determine cases, is a Court of Justice, but is not a Court of Justice when sitting in committal proceedings.

27. Rep. by the Madras Civil Courts Act, 1873 (3 of 1873).

28. *Surendra Kumar Bhatia v Kanhaiya Lal*, AIR 2009 SC 1961 [LNIND 2009 SC 209] : (2009)12 SCC 184 [LNIND 2009 SC 209] .

29. *E S Sanjeeva Rao v CBI, Mumbai*, 2012 Cr LJ 4053 (Bom) : 2013 (1) RCR (Criminal) 284.

30. *Brajnandan Sinha v Jyoti Narain*, AIR 1956 SC 66 [LNIND 1955 SC 98] : 1956 SCJ 155 .

# THE INDIAN PENAL CODE

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### [s 20] "Court of Justice."

**The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.**

#### ILLUSTRATION

A panchayat acting under <sup>31</sup> Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

#### COMMENT—

The word 'court' is a generic term and embraces a Judge but the *vice versa* is not true. Therefore, the words 'court' and 'Judge' are frequently used interchangeably because a Judge is an essential constituent of a court since there can be no dispensation of justice without a Judge. But that is not to say that when a Judge demits office the court ceases to exist *Supreme Court Legal Aid Committee v UOI*.<sup>32</sup>

<sup>31</sup> Rep. by the Madras Civil Courts Act, 1873 (3 of 1873).

<sup>32</sup> *Supreme Court Legal Aid Committee v UOI*, (1994) 6 SCC 731 [LNIND 1994 SC 955] : JT 1994 (6) SC 544 [LNIND 1989 SC 165] .

# THE INDIAN PENAL CODE

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### [s 21] "Public servant."

The words "public servant" denote a person falling under any of the descriptions hereinafter following; namely:—

33. [\*\*\*]

34. **Second.**—Every Commissioned Officer in the Military, <sup>35.</sup>[Naval or Air] Forces <sup>36.</sup>[<sup>37.</sup> [\*\*\*] of India];

38. **[Third.**—Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]

**Fourth.**—Every officer of a Court of Justice <sup>39.</sup>[(including a liquidator, receiver or commissioner)] whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

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

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

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

**Eighth.**—Every officer of <sup>40.</sup>[the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

**Ninth.**—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of <sup>41.</sup>[the Government], or to make any survey, assessment or contract on behalf of <sup>42.</sup>[the Government], or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of <sup>43.</sup>[the Government], or to make, authenticate or keep any document relating to the pecuniary interests of <sup>44.</sup>[the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of <sup>45.</sup>[the Government]<sup>46.</sup>[\*\*\*];

**Tenth.**—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any

secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

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

48. [Twelfth.—Every person—

- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;
- (b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in [section 617 of the Companies Act, 1956](#) (Act 1 of 1956).]

#### ILLUSTRATION

A Municipal Commissioner is a public servant.

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

**Explanation 2.**—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

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

50. [\*\*\*]

#### STATE AMENDMENT

**Rajasthan.**—In section 21, after clause twelfth, add the following clause, namely:— "Thirteenth.—Every person employed or engaged by any public body in the conduct and supervision of any examination recognised or approved under any law.

*Explanation.*—The The expression 'Public Body' includes—

- (a) a University, Board of Education or other body, either established by or under a Central or State Act or under the provisions of the [Constitution of India](#) or constituted by the Government; and
- (b) a local authority."

[Vide Rajasthan Act, 4 of 1993, sec. 2 (w.e.f. 11-2-1993)].

*Public Servant.*—A line is drawn between the great mass of the community and certain classes of persons in the service and pay of Government, or exercising various public functions, who are here included in the words "public servant." There are several offences which can only be committed by public servants and, on the other hand, public servants in the discharge of their duties have many privileges peculiar to themselves.<sup>51.</sup>

The test to determine whether a person is a public servant is (1) whether he is in the service or pay of the Government and (2) whether he is entrusted with the performance of any public duty.<sup>52.</sup> The definition is not exhaustive. A person may be a public servant in terms of another statute.<sup>53.</sup>

*Illustration.*—The illustration at the end of the section relates to clause (10). The word "Commissioner" is used in the sense of a Municipal Councillor or member and not merely an officer designated as "Commissioner."<sup>54.</sup>

The definition of the term "public servant" cannot be extended to the provisions of the [Representation of the People Act](#) where this Act makes reference to persons in the service of the Government.<sup>55.</sup>

### **[s 21.1] Enlargement of concept under [Prevention of Corruption Act 1988.](#)—**

Section 2(i) of the [Prevention of Corruption Act 1988](#) has enlarged the concept of public servant wider than that contained in [section 21 IPC, 1860](#). A comparison of the definition of 'public servant' contained in [section 21 of IPC, 1860](#) and that contained in section 2(c) of the 1988 Act would show that [section 21 of IPC, 1860](#) did not include persons falling under sub-clause (ix), (x), (xi) and (xii) of section 2(c). Sub-clause (viii) of section 2(c) is also wider in amplitude than clause (12)(a) of [section 21 of IPC, 1860](#).<sup>56.</sup> Definition of 'public servant' is of no relevance under the [PC Act 1988](#).<sup>57.</sup>

### **[s 21.2] Definition not exhaustive.—**

The definition under the section has been held to be not exhaustive. A person may be a public servant in terms of some other statute.<sup>58.</sup>

### **[s 21.3] Judges [clause "Third"].—**

Examining the scope of clause "third", the Supreme Court has laid down in *K Veeraswami v UOI*,<sup>59.</sup> that this category of public servants would include judges of the High Courts and Supreme Court. The words "every judge", as used in the clause, the Court said, indicates "all judges and judges of all courts". "It is a general term... and should not be narrowly construed. It must receive comprehensive meaning. A judge of the superior court cannot ... be excluded from the definition of "public servant". It is not necessary that there should be master and servant relationship to constitute a person as a "public servant". The court noted that [section 21 IPC, 1860](#) does not define the expression "public servant" as a concept. It enumerates only the categories of public servants. Each category is different from the other and in some of the categories there is hardly any relationship of master and servant. In the view of the Andhra Pradesh High Court the Central Government is not a competent authority for sanctioning the prosecution of a High Court Judge.<sup>60.</sup>

#### [s 21.4] Explanation 2.—

The person who in fact discharges the duties of the office which brings him under some one of the descriptions of public servant, is for all the purposes of the Code rightfully a public servant, whatever legal defect there may be in his right to hold the office.<sup>61</sup> But even if a person is in actual possession of the situation of a public servant, he is not a public servant unless he has a right to hold that situation, although in determining that right the legal defect, if any, has to be ignored.<sup>62</sup> A public servant under suspension does not cease to be a public servant within the meaning of this section.<sup>63</sup>

#### [s 21.5] CASES.—

<sup>64</sup>.

The following persons are held to be Public Servants:

- (1) Member of Parliament (MP)<sup>65</sup>.
- (2) Chief Minister and Ministers<sup>66</sup>.
- (3) Judges of Superior Courts<sup>67</sup>.
- (4) Speaker of Legislative Assembly<sup>68</sup>.
- (5) Employee of a Nationalised Bank<sup>69</sup>.
- (6) All Railway Servants<sup>70</sup>.
- (7) Teacher in a Government school<sup>71</sup>.
- (8) Chairman of Managing Committee of a Municipality<sup>72</sup>.
- (9) Employees of Life Insurance Corporation<sup>73</sup>.
- (10) Member of Auxiliary Air Force<sup>74</sup>.
- (11) Employee of Bharat Heavy Electricals (India) Limited<sup>75</sup>.
- (12) Employees of Government Company<sup>76</sup>.
- (13) Officers of State Electricity Board<sup>77</sup>.
- (14) An employee of a Co-operative Society which is controlled or aided by the government, is a public servant covered under [section 2\(c\) of the IPC Act 1988](#)<sup>78</sup>. as also the manager for the commission of offence under [section 409 of the IPC, 1860](#)<sup>79</sup>.
- (15) Secretary, Health Supervisor of Municipality<sup>80</sup>.
- (16) Drug Inspector<sup>81</sup>.
- (17) Any surveyor while performing his legitimate function under any of the Revenue Civil Court<sup>82</sup>.
- (18) Government Pleaders<sup>83</sup>.

(19) An IAS officer posted as the managing director of a State Financial Corporation<sup>84</sup>.

(20) The sarpanch of a Gram Panchayat.<sup>85</sup>

The following persons are not Public Servants:

(1) University Examiner<sup>86</sup>.

(2) Elected office bearers with President and Secretary of a registered Co-operative Society.<sup>87</sup>

(3) A Chartered Accountant who had been appointed as an Investigator by the Central Government under the [Insurance Act 1938](#).<sup>88</sup>

(4) Municipal Councillor<sup>89</sup>.

(5) Laboratory Officer in Municipal Corporation<sup>90</sup>.

(6) Member of IAS whose service placed at the disposal of Co-operative Society.<sup>91</sup>

(7) A Government Company is not a public servant though its employees are public servants Government Company.<sup>92</sup>

(8) Chairperson and Standing Committee Chairman of Municipality.<sup>93</sup>

(9) Leader of Opposition.<sup>94</sup>

(10) Hospital or the Authorization Committee constituted by the Government under [section 9\(4\) of the Transplantation of Human Organs Act 1994](#).<sup>95</sup>

(11) Branch Manager under the Assam State Warehousing Corporation.<sup>96</sup>

(12) Commissioner appointed by Civil Court to seize account book.<sup>97</sup>

(13) A panel doctor under the ESI Scheme.<sup>98</sup>

33. Clause First omitted by the A.O. 1950.

34. Clause *First* omitted by the A.O. 1950.

35. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Naval".

36. The original words "of the Queen while serving under the Government of India, or any Government" have successively been amended by the A.O. 1937, the A.O. 1948 and the A.O.1950 to read as above.

37. The words "of the Dominion" omitted by the A.O. 1950.

38. Subs. by Act 40 of 1964, section 2, for clause *Third* (w.e.f. 18-12-1964).

39. Ins. by Act 40 of 1964, section 2 (w.e.f. 18-12-1964).

40. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".

41. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".
42. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".
43. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".
44. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".
45. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for "the word Government".
46. Certain words omitted by Act 40 of 1964, section 2 (w.e.f. 18-12-1964).
47. Ins. by Act 39 of 1920, section 2.
48. Subs. by Act 40 of 1964, section 2, for clause *Twelfth* (w.e.f. 18-12-1964).
49. Ins. by Act 39 of 1920, section 2.
50. *Explanation 4* omitted by Act 40 of 1964, section 2 (w.e.f. 18-12-1964). Earlier *Explanation 4* was inserted by Act 2 of 1958, section 2 (w.e.f. 12-2-1958).
51. M&M 20.
52. *GA Monterio*, AIR 1957 SC 13 [LNIND 1956 SC 66] : 1957 Cr LJ 1956 . See further *Lakshmimansingh (Dr.) v Naresh KC Jah*, 1990 Cr LJ 1921 : AIR 1990 SC 1976 [LNIND 1990 SC 370] : (1990) 4 SCC 169 [LNIND 1990 SC 370] ; where a municipal officer working on deputation on a Government post (public analyst) committed an act entailing his removal and it was held that his removal would have to be effected by the Municipality and there he was not a public servant and hence, permission of the State under s 197(1) of Cr PC, 1973 was not necessary. *Mohinder Singh v State of Punjab*, 2001 Cr LJ 2329 (P&H), sanction is necessary only when the offence occurs in the course of the performance of official duty. For offences connected with cheating, preparing false records, misappropriation of public funds, including criminal conspiracy against a public servant, no prior sanction is necessary.
53. *Naresh Kumar Madan v State of MP* AIR 2008 SC 385 [LNIND 2007 SC 452] : (2007) 4 SCC 766 [LNIND 2007 SC 452] .
54. *Banshilal Luhadia*, AIR 1962 Raj 250 [LNIND 1962 RAJ 124] .
55. *Abdul Rehman v State of Kerala*, 1999 Cr LJ 4801 (Ker).
56. *PV Narsimha Rao v State (CBI/SPE)*, AIR 1998 SC 2120 [LNIND 1998 SC 1259] : 1998 Cr LJ 2930 .
57. *State of Maharashtra v Prabhakar Rao*, (2002) 7 SCC 636 : JT 2002 (Supp1 ) SC 5.
58. *Naresh Kumar Madan v State of MP*, (2007) 4 SCC 766 [LNIND 2007 SC 452] : AIR 2008 SC 385 [LNIND 2007 SC 452] : (2007) 2 KLT 539 : (2007) 54 AIC 87 .
59. *K. Veeraswami v Union of India*, (1991) 3 SCC 655 [LNIND 1991 SC 320] : 1991 SCC (Cr) 734 : 1991 Cr LR (SC) 677 .
60. *Advocate General, AP v Rachapudi Subba Rao*, 1991 Cr LJ 613 AP.
61. *Ramkrishna Das*, (1871) 7 Beng LR 446, 448.
62. *Bira Kishore*, AIR 1964 Orissa 202 .
63. *Dhanpal Singh*, AIR 1970 Punj & Haryana 514.
64. *M Karunanidhi v UOI*, 1979 Cr LJ 773 : AIR 1979 SC 598 ; See also *Shiv Bahadur*, 1954 Cr LJ 910 : AIR 1954 SC 322 [LNIND 1954 SC 30] ; *AR Antulay*, (1984) Cr LJ 613 : AIR 1984; *Rajendra Kumar Singh v State of MP*, 1999 Cr LJ 2807 (MP).
65. *PV Narasimha Rao v State (CBI/SPE)*, AIR 1998 SC 2120 [LNIND 1998 SC 1259] : (1998) 4 SCC 626 [LNIND 1998 SC 1259] (CB) Though another Constitution Bench in *RS Nayak v AR*



*Antulay*, AIR 1984 SC 684 [LNIND 1984 SC 43] : (1984) 2 SCC 183 [LNIND 1984 SC 43] that MLA is not a public servant within the meaning of Section 21 IPC, 1860, in view of the Narasimha Rao case (Supra) MLA and MPs are public servant within the meaning of Section 2 (i) of PC Act. See also *Habibulla Khan v State of Orissa*, 1993 Cr LJ 3604 ; *L. K. Advani v Central Bureau of Investigation*, 1997 Cr LJ 2559 (Del) : 1997 (4) Crimes 1 [LNIND 1997 DEL 319] .

66. *M Karunanidhi v UOI*, AIR 1979 SC 898 [LNIND 1979 SC 135] : (1979) 3 SCC 431 [LNIND 1979 SC 135] ; *R Sai Bharathi v J Jayalalitha*, AIR 2004 SC 692 [LNIND 2003 SC 1023] : (2004) 2 SCC 9 [LNIND 2003 SC 1023] , Minister is a Public Servant -*R Balakrishna Pillai v State of Kerala*, AIR 1996 SC 901 [LNIND 1995 SC 1239] : (1996) 1 SCC 478 [LNIND 1995 SC 1239] , *Dattatraya Narayan Patil v State of Maharashtra*, AIR 1975 SC 1685 [LNIND 1975 SC 157] : (1976) 1 SCC 11 [LNIND 1975 SC 157] ; *Rajendra Kumar Singh and etc. v State of MP*, 1999 Cr LJ 2807 (MP).

67. *K Veeraswami v UOI*, (1991) 3 SCC 655 [LNIND 1991 SC 320] : (1991) 1 SCC (Cr) 734.

68. *P Nallammal v State*, 1999 Cr LJ 1591 (Mad).

69. *UOI v Ashok Kumar Mitra*, AIR 1995 SC 1976 [LNIND 1995 SC 295] : (1995) 2 SCC 768 [LNIND 1995 SC 295] ; *Mir Nagvi Askari v CBI*, AIR 2010 SC 528 [LNIND 2009 SC 1651] : (2009) 15 SCC 643 [LNIND 2009 SC 1651] ; *State (Delhi Administration) v S R Vij*, 1999 Cr LJ 4762 (Del).

70. *Ram Krishan v State of Delhi*, AIR 1956 SC 476 [LNIND 1956 SC 157] : 1956 Cr LJ 837 , *Shamrao Vishnu Parulekar v The District Magistrate*, AIR 1957 SC 23 [LNIND 1956 SC 60] : 1957 Cr LJ 5 ; *GA Monterio v State of Ajmer*, AIR 1957 SC 13 [LNIND 1956 SC 66] : 1957 Cr LJ 1 ; *Bajrang Lal v State of Rajasthan* AIR 1976 SC 1008 [LNIND 1976 SC 57] : (1976) 2 SCC 217 [LNIND 1976 SC 57] . But see *KN Shukla v Navnit Lal Manilal Bhatt*, AIR 1967 SC 1331 [LNIND 1966 SC 310] : 1967 Cr LJ 1200 .

71. *State of Ajmer v Shiv Lal*, AIR 1959 SC 847 [LNIND 1959 SC 67] : 1959 Cr LJ 1127 .

72. *Maharudrappa Danappa Kesarappanavar v The State of Mysore*, AIR 1961 SC 785 [LNIND 1961 SC 60] : 1961 Cr LJ 857 .

73. *State through Central Bureau of Investigation v D P Dogra*, AIR 1986 SC 312 : (1985) 4 SCC 319 .

74. *State (SPE, Hyderabad) v Air Commodore Kailash Chand*, AIR 1980 SC 522 [LNIND 1979 SC 504] : (1980) 1 SCC 667 [LNIND 1979 SC 504] .

75. *State of MP v M v Narasimhan*, AIR 1975 SC 1835 [LNIND 1975 SC 212] : (1975) 2 SCC 377 [LNIND 1975 SC 212] .

76. *National Small Industries Corporation Ltd v State* AIR 2009 SC 1284 [LNIND 2008 SC 2243] : (2009) 1 SCC 407 [LNIND 2008 SC 2243] .

77. *Bihar State Electricity Board v Nand Kishore Tamakhuwala*, AIR 1986 SC 1653 [LNIND 1986 SC 82] : (1986) 2 SCC 414 [LNIND 1986 SC 82] , *Naresh Kumar Madan v State of MP* AIR 2008 SC 385 [LNIND 2007 SC 452] : (2007) 4 SCC 766 [LNIND 2007 SC 452] .

78. *Govt. of AP v P Venken Reddy* AIR 2002 SC 3346 : (2002) 7 SCC 631 .

79. *Haridas Mondal v State of WB*, 2016 Cr LJ 4335 : 2016 (4) Crimes 530 (Cal).

80. *Chairperson, Kanhangad Municipality v State of Kerala*, 2012 Cr LJ 4366 (Ker); *G S K Janardhana Rao v Guntupalli Guru Prasad*, 2000 Cr LJ 2927 (A.P) - officers of Municipal Corporation.

81. *Laxmi Medical Distributors v State of AP*, 2005 Cr LJ 1601 (A.P).

82. *Ram Avtar Sah v State of Bihar*, 2002 Cr LJ 3899 (Pat).

83. *Appadurai v State*, Rep. By The Station House Officer, Cid Branch, Pondicherry 2001 Cr LJ 3129 (Mad).

84. *Girish Chandra Patra v Pinakee Enterprises Ltd*, 1989 Cr LJ 527 (Ori).

85. *Sarat Chandra Dehury v Sankirtan Behera*, 1989 Cr LJ (NOC) 162 Orissa; *Sukhdev Singh v State of Punjab*, 1988 Cr LJ 265 P&H.

86. *Dilaver Babu Khurana v State of Maharashtra*, AIR 2002 SC 564 [LNIND 2002 SC 1739] : (2002) 2 SCC 135 [LNIND 2002 SC 1739] ; *State of Gujarat v Manshanker Prabhashanker Dwivedi*, AIR 1973 SC 330 [LNIND 1972 SC 257] : (1972) 2 SCC 392 [LNIND 1972 SC 257] .
87. *Govt. of AP v P Venken Reddy*, AIR 2002 SC 3346 : (2002) 7 SCC 631 : *Rabindra Nath Bera v State Of WB*, 2012 Cr LJ 913 (Cal); *Haladhar Sasml v State Of WB*, 2012 Cr LJ 1726 (CAL) A 'public servant' within the meaning of Maharashtra [Co-operative Societies Act](#), 1960 is not a public servant under [Section 21 of IPC, 1860](#); *State of Maharashtra v Laljit Rajshi Shah*, AIR 2000 SC 937 [LNIND 2000 SC 387] : (2000) 2 SCC 699 [LNIND 2000 SC 387] .
88. *Ram Krishna Dalmia v Delhi Administration*, (1963 (1) SCR 253 [LNIND 1962 SC 146] : AIR 1962 SC 1821 [LNIND 1962 SC 146] ; Insurance surveyer is not public servant- 1988 Cr LJ 311 Delhi).
89. *State of TN v T Thulasingham*, AIR 1995 SC 1314 [LNIND 1994 SC 1256] : (1994) Supp 2 SCC 405; *Ramesh Balkrishna Kulkarni v State of Maharashtra*, 1985 (3) SCC 606 [LNIND 1985 SC 235] : AIR 1985 SC 1655 [LNIND 1985 SC 235] .
90. *Lakshmansingh Himatsingh Vaghela v Naresh Kumar Chandrashanker Jha*, AIR 1990 SC 1976 [LNIND 1990 SC 370] : (1990) 4 SCC 169 [LNIND 1990 SC 370] .
91. *SS Dhanoa v Municipal Corporation Delhi*, AIR 1981 SC 1395 [LNIND 1981 SC 282] : (1981) 3 SCC 431 [LNIND 1981 SC 282] .
92. *National Small Industries Corporation Ltd v State*, AIR 2009 SC 1284 [LNIND 2008 SC 2243] : (2009) 1 SCC 407 [LNIND 2008 SC 2243] .
93. *Chairperson, Kanhangad Municipality v State of Kerala*, 2012 Cr LJ 4366 (Ker).
94. *Sushil Modi v Mohan Guruswamy*, 2008 Cr LJ 541 (Del).
95. *Santosh Hospitals Private Ltd Chennai v State Human Rights Commission*, TN AIR 2005 Mad. 348 [LNIND 2005 MAD 935] .
96. *Ghulam Rabbani v State of Assam*, 2001 Cr LJ 2331 : 2002 (1) Crimes 132 [LNIND 2001 GAU 403] (Gau).
97. *Padam Sen v State of UP* AIR 1961 SC 218 [LNIND 1960 SC 221] : 1961 Cr LJ 322 .
98. *State of Maharashtra v Dr. Rustom Franrose Hakim*, 2000 Cr LJ 3401 (Bom).

# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

### [s 22] "Movable property."

**The words "movable property" are intended to include corporeal property<sup>1</sup> of every description, except land and things attached to the earth<sup>2</sup> or permanently fastened to anything which is attached to the earth.**

### COMMENT—

This definition is restricted to corporeal property; it excludes all choices in action. The definition of "movable property" in the section is not exhaustive.<sup>99</sup> The definition of "movable property" given in the [Indian Penal Code](#) is basically meant for the provisions contained in the [Indian Penal Code](#) itself ([section 125 Cr PC, 1973](#)).<sup>100</sup>

1. '**Corporeal property**' is property which may be perceived by the senses, in contradistinction to incorporeal rights, which are not so perceivable, as obligations of all kinds. Thus, salt produced on a swamp,<sup>101</sup> and papers forming part of the record of a case,<sup>102</sup> are movable property within the meaning of this section. Even if an assessment order is not 'property' in the hands of the Income-tax Officer, it is 'property' in the hands of the assessee ([section 420 IPC, 1860](#)).<sup>103</sup>

2. '**Land and things attached to the earth**'.—This section does not exempt "earth and things attached to the earth", but "land and things attached to the earth"; "land" and "earth" are not synonymous terms, and there is a great distinction between "the earth", and "earth". By severance, things that are immovable become movable; and it is perfectly correct to call those things attached which can be severed; and undoubtedly it is possible to sever earth from the earth and attach it again thereto. Earth, that is soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth or land to which it was attached, are movable property capable of being the subject of theft.<sup>104</sup> Any part of "the earth", whether it is stones or sand or clay or any other component, when severed from "the earth", is movable property.<sup>105</sup> Standing crop, so long as it is attached to the earth is not movable property as defined in the Code, but the moment it is severed from the earth its character is changed and it can become the subject of theft.<sup>106</sup>

Fish in any water are corporeal property and they become subject of theft as soon as they are separated from the waters, dead or alive, and are moved.<sup>107</sup>

99. *RK Dalmia v Delhi Administration*, AIR 1962 SC 1821 [LNIND 1962 SC 146] : (1962) 2 Cr LJ 805 .
100. *Bhagwat Baburao Gaikwad v Baburao Bhaiyya Gaikwad*, 1993 Cr LJ 2393 (Bom).
101. *Tamma Ghantaya*, (1881) 4 Mad 228.
102. *Ramaswami Aiyer v Vaithiling Mudali*, (1882) 1 Weir 28.
103. *Ishwarlal Girdharilal Parekh v State of Maharashtra*, AIR 1969 SC 40 [LNIND 1968 SC 143] : 1969 Cr LJ 271 .
104. *Shivram*, (1891) 15 Bom 702.
105. *Suri Venkatappayya Sastri v Madula Venkanna*, (1904) 27 Mad 531, 535 (FB), **overruling** *Kotayya*, (1887) 10 Mad 255. It has been said that the words "corporeal property of every description" were not supposed to apply for all purposes. The matter before the court was that of attachment of salary for payment of maintenance.
106. *Kunhayu v State*, 1965 KLT 66 : 1965 KLJ 51 .
107. *State of Rajasthan v Pooran Singh*, 1977 Cr LJ 1055 .

# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

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### [s 23] "Wrongful gain."

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

### **"Wrongful loss."**

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

### **Gaining wrongfully, Losing wrongfully**

**A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property,<sup>1</sup> as well as when such person is wrongfully deprived of property.**

## COMMENT—

The word 'wrongful' means prejudicially affecting a party in some legal right. For either wrongful loss or gain, the property must be lost to the owner, or the owner must be wrongfully kept out of it. Thus, where a pledgee used a turban that was pledged, it was held that the deterioration of the turban by use was not 'wrongful loss' of property to the owner, and the wrongful beneficial use of it by the pledgee was not a 'wrongful gain' to him.<sup>108</sup> The gain or loss contemplated need not be a total acquisition or a total deprivation but it is enough if it is a temporary retention of property by the person wrongfully gaining or a temporary "keeping out" of property from the person legally entitled.<sup>109</sup> Forcible and illegal seizure of bullocks of a widow in satisfaction of a debt due to the accused by her deceased husband was held to be a 'wrongful loss'.<sup>110</sup> Where a person, who purchased rice from a famine relief officer, at a certain rate on condition that he should sell it at a pound the rupee less, did not sell it at the rate agreed upon, but at four pounds the rupee less, it was held that no wrongful gain or wrongful loss had been caused to anyone within the meaning of this section. The rice having been sold to the accused, and he having paid for it, it was not unlawful for him to sell it again at such price as he thought fit.<sup>111</sup> Where the accused removed jute kept in a pond of the complainant for wetting and requested the complainant to take it away as the accused *bona fide* claimed the ownership of the pond, it was held that no wrongful loss was caused to the complainant.<sup>112</sup>

The words "gaining wrongfully," or "losing wrongfully" would cover cases of wrongful detention of property in the one case and wrongfully being kept out of property in the

other.<sup>113.</sup>

**1. 'Wrongfully kept out of any property'.—**When the owner is kept out of possession of his property with the object of depriving him of the benefit arising from the possession even temporarily, the case will come within the definition. If a creditor by force or otherwise takes the goods of his debtor out of his possession against his will in order to put pressure on him to compel him to discharge his debt he will be guilty of theft by causing wrongful loss to the debtor.<sup>114.</sup> The loss must be caused wrongfully. Thus, whose municipal officers demolished an unauthorised construction as the complainant refused to remove the structure in spite of notice, they could not be held guilty of committing an offence of mischief within the meaning of [section 425, IPC, 1860](#), for there was no intention to cause wrongful loss to the complainant as the demolition was done lawfully in exercise of powers under sections 179 and 189 of the Maharashtra Municipalities Act.<sup>115.</sup>

Fees payable to a college for attending lectures are "property" within the meaning of this section.<sup>116.</sup>

<sup>108.</sup> (1866) 3 MHC (Appx.) 6.

<sup>109.</sup> *KN Mehra v State of Rajasthan*, [AIR 1957 SC 369 \[LNIND 1957 SC 14\]](#) : 1957 Cr LJ 552 .

<sup>110.</sup> *Preonath Banerjee*, (1866) 5 WR (Cr) 68.

<sup>111.</sup> *Lal Mohomed*, (1874) 22 WR (Cr) 82.

<sup>112.</sup> *Paltu Goswami v Ram Kumar*, [AIR 1960 Tripura 40](#) .

<sup>113.</sup> *Krishan Kumar*, (1960) 1 SCR 452 [[LNIND 1959 SC 135](#)] : 1959 Cr LJ 1508 : [AIR 1960 SC 1390](#) .

<sup>114.</sup> *Sri Churn Chungo*, (1895) 22 Cal 1017 , FB; *Ganpat Krishnaji*, (1930) 32 Bom LR 351 .

<sup>115.</sup> *Shriram v Thakurdas*, 1978 Cr LJ 715 (Bom).

<sup>116.</sup> *Soshi Bhushan*, (1893) 15 All 210 , 216.

# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

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### [s 24] "Dishonestly".

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

### COMMENT—

From this definition it will appear that the term 'dishonestly' is not used in the Code in its popular significance. Unless there is wrongful gain to one person, or wrongful loss to another, an act would not be 'dishonest'. Wrongful gain includes wrongful retention and wrongful loss includes being kept out of the property as well as being wrongfully deprived of property.<sup>117</sup> An act done with the intention to cause 'wrongful gain' can be said to be dishonest.<sup>118</sup> Deceit is not an ingredient of the definition of the word "dishonestly". "Dishonestly" involves a pecuniary or economic gain or loss.<sup>119</sup> Thus, "dishonestly" means an intention to cause either wrongful gain or wrongful loss. So where municipal officers demolished and removed an unauthorised structure lawfully by virtue of powers given to them under the Municipal Act, it could not be said that they committed the offence of theft under [section 380, IPC, 1860](#), as their act was not committed dishonestly within the meaning of [section 24](#) read with [section 23, IPC, 1860](#). And since "dishonesty" is an essential ingredient of the offence of theft, they could not be charged with that offence.<sup>120</sup> A mere erroneous belief and persistence in a wrong or perverse opinion cannot be said to be offence tainted with a dishonest or fraudulent intent.<sup>121</sup>

### [s 24.1] Cheating.—

Two main ingredients of [section 420 IPC, 1860](#) are dishonest and fraudulent intention.<sup>122</sup> For the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation.<sup>123</sup>

### [s 24.2] Breach of Trust.—

The element of 'dishonest intention' is an essential element to constitute the offence of Criminal Breach of Trust.<sup>124</sup>

### [s 24.3] Hire-purchase.—

The element of 'dishonest intention' which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer.<sup>125</sup>.

117. *Krishan Kumar v UOI*, 1959 Cr LJ 1508 : AIR 1959 SC 1390 [LNIND 1959 SC 135] .
118. *Venkatakrishnan v CBI*, AIR 2010 SC 1812 [LNIND 2009 SC 1653] : (2009) 11 SCC 737 [LNIND 2009 SC 1653] .
119. *Dr. Vimala*, AIR 1963 SC 1572 [LNIND 1962 SC 397] : (1963) 2 Cr LJ 434 .
120. *Shriram v Thakurdas*, 1978 Cr LJ 715 (Bom). See also *Narendra Pratap Narain Singh v State of UP*, AIR 1991 SC 1394 [LNIND 1991 SC 186] : 1991 Cr LJ 1816 ; *N Vaghul v State of Maharashtra*, 1987 Cr LJ 385 (Bom).
121. *N Vaghul v State of Maharashtra*, 1987 Cr LJ 385 (Bom).
122. *Annamalai v State of Karnataka*, (2010) 8 SCC 524 [LNIND 2010 SC 745] : 2011 Cr LJ 692 .
123. *B Suresh Yadav v Sharifa Bee*, AIR 2008 SC 210 [LNIND 2007 SC 1238] : (2007) 13 SCC 107 [LNIND 2007 SC 1238] ; *Indian Oil Corporation v NEPC India Ltd*, JT 2006 (6) SC 474 [LNIND 2006 SC 537] ) : (2006) 6 SCC 736 [LNIND 2006 SC 537] .
124. *Venkatakrishnan v CBI*, AIR 2010 SC 1812 [LNIND 2009 SC 1653] : (2009) 11 SCC 737 [LNIND 2009 SC 1653] .
125. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] : (2001) 7 SCC 417 [LNIND 2001 SC 2906] ; *Sardar Trilok Singh v Satya Deo Tripathi*, (1979) 4 SCC 396 : AIR 1979 SC 850 ; *KA Mathai v Kora Bibbikutty*, (1996) 7 SCC 212 : (1996) 1 SCC (Cr) 281.



# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

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### [s 25] "Fraudulently".

**A person is said to do a thing fraudulently if he does that thing with intent to defraud<sup>1</sup> but not otherwise.**

### COMMENT—

The intention with which an act is done is very important in determining whether the act is done 'dishonestly' or 'fraudulently'.

**1. 'Intent to defraud'.—**The terms 'fraud' and 'defraud' are not defined in the [Penal Code](#). The word 'defraud' is of double meaning in the sense that it either may or may not imply deprivation, and, as it is not defined, its meaning must be sought by a consideration of the context in which the word 'fraudulently' is found.<sup>126.</sup>

Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud and deception are synonymous.<sup>127.</sup>

To 'defraud' or do something fraudulently is not by itself made an offence under the [Penal Code](#), but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

- (i) Fraudulent removal or concealment of property (sections 206, 421, 424)
- (ii) Fraudulent claim to property to prevent seizure (section 207).
- (iii) Fraudulent suffering or obtaining a decree (sections 208 and 210)
- (iv) Fraudulent possession/delivery of counterfeit coin (sections 239, 240, 242 and 243).
- (v) Fraudulent alteration/diminishing weight of coin (sections 246–253)
- (vi) Fraudulent acts relating to stamps (sections 261–261)
- (vii) Fraudulent use of false instruments/weight/measure (sections 264–266)
- (viii) Cheating (sections 415–420)
- (ix) Fraudulent prevention of debt being available to creditors (section 422).
- (x) Fraudulent execution of deed of transfer containing false statement of consideration (section 423).
- (xi) Forgery making or executing a false document (sections 463–471 and 474)

(xii) Fraudulent cancellation/destruction of valuable security, etc. (section 477)

(xiii) Fraudulently going through marriage ceremony (section 496).

It follows therefore, that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.<sup>128.</sup>

The expression 'defraud' involves two elements, namely, deceit and injury to the person deceived. The injury may even comprise a non-economic or non-pecuniary loss. Even in those rare cases where the benefit to the deceiver does not cause corresponding loss to the deceived, the second condition is satisfied.<sup>129.</sup> The expression "intent to deceive" is different from the expression "intent to defraud".<sup>130.</sup> "Intent to defraud" is established only when the deception has as its aim some advantage or the likelihood of advantage to the person who causes the deceit or some kind of injury or the possibility of injury to another.<sup>131.</sup> Thus, where an expert deposing before a court as a defence witness was asked to produce his credentials before the court and it appeared from the documents produced that they were not genuine, it was held that as he acted under the orders of the court and not voluntarily, it could not be said that his intention was to cause any one to act to his disadvantage. In the circumstances, he did not act with "intent to defraud". He was, therefore, held liable under sections 193 and 196 but not under sections 465 and 471, IPC, 1860.<sup>132.</sup>

#### **[s 25.1] 'Fraudulently'; 'dishonestly'.—**

According to the Supreme Court "the word "defraud" includes an element of deceit. Deceit is not an ingredient of the definition of the word "dishonestly" while it is an important ingredient of the definition of the word "fraudulently". The former involves a pecuniary or economic gain or loss while the latter by construction excludes that element. Further, the juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicate their close affinity and therefore, the definition of one may give colour to the other. To illustrate, in the definition of "dishonestly", wrongful gain or wrongful loss is the necessary ingredient. Both need not exist, one would be enough. So too, if the expression "fraudulently" were to be held to involve the element of injury to the person or persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and *vice versa*, it need not necessarily be so."<sup>133.</sup>

Where the accused, after the execution and registration of a document, which was not required by law to be attested, added his name to the document as an attesting witness, it was held that his act was neither fraudulent nor dishonest and the accused was, therefore, not guilty of forgery.<sup>134.</sup> A person who is not a member of Scheduled Caste or Scheduled Tribes obtains a false certificate with a view to gain undue advantage to which he or she was not otherwise entitled to would amount to commission of fraud<sup>135.</sup> Suppression of a material document would also amount to a fraud on the court.<sup>136.</sup>

126. *Abbas Ali, supra.*
127. *Meghmala v G Narasimha Reddy*, 2010 (8) SCC 383 [LNIND 2010 SC 761] ; *Inderjit Singh Grewal v State of Punjab*, (2011) 12 SCC 588 [LNIND 2011 SC 801] : (2011) 10 SCR 557 [LNIND 2011 SC 801] : 2012 Cr LJ 309 (SC).
128. *Mohd. Ibrahim v State of Bihar*, (2009) 8 SCC 751 [LNIND 2009 SC 1774] : (2009) 3 SCC (Cr) 929.
129. *Dr. Vimala*, AIR 1963 SC 1572 [LNIND 1962 SC 397] : (1963) 2 Cr LJ 434 ; *State of UP v Ranjit Singh*, AIR 1999 SC 1201 : 1999 (2) SCC 617 .
130. *S Dutt v State of UP*, 1966 Cr LJ 459 : AIR 1960 SC 523 .
131. *Re: BV Padmanabha Rao*, 1970 Cr LJ 1502 (Mysore).
132. *S Dutt, Supra.*
133. *Dr. Vimla*, AIR 1963 SC 1572 [LNIND 1962 SC 397] : (1963) 2 Cr LJ 434 .
134. *Surendra Nath Ghosh*, (1910) 14 CWN 1076 . See also *TR Arya v State of Punjab*, 1987 Cr LJ 222 (P&H); *Pramod Malhotra v UOI*, (2004) 3 SCC 415 [LNIND 2004 SC 1543] : AIR 2004 SC 3338 [LNIND 2004 SC 1543] : (2004) 111 DLT 605 .
135. *Lilly Kutty v Scrutiny Committee*, AIR 2005 SC 4313 [LNIND 2005 SC 989] : (2005) *Ibrahim v State of Bihar*, (2009) 8 SCC751 : (2009) 3 SCC 8 SCC 283 Also see- *Bhaurao Dagdu Paralkar v State of Maharashtra*, AIR 2005 SC 3330 : (2005) 7 SCC 605 [LNIND 2005 SC 624] .
136. *Gowrishankar v Joshi Amba Shankar Family Trust*, (1996 (3) SCC 310) [LNIND 1996 SC 447] For meaning of fraud See :*Ram Chandra Singh v Savitri Devi*, (2003 (8) SCC 319) *Roshan Deen v Preeti Lal*, (2002 (1) SCC100) *Ram Preeti Yadav v UP Board of High School and Intermediate Education*, (2003 (8) SCC 311) [LNIND 2003 SC 741] ,*Ashok Leyland Ltd v State of TN*, (2004 (3) SCC 1) [LNIND 2004 SC 1556] .

## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

#### [s 26] "Reason to believe."

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

#### COMMENT—

"Reason to believe" is another facet of the state of mind. It is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. It is a higher level of state of mind. It means that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned.<sup>137</sup> The word "believe" is a very much stronger word than "suspect" and that it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the note with which he was dealing was a forged one and that it was not sufficient to show that the accused was careless or he had reason to suspect or that he did not make sufficient enquiry to ascertain the fact.<sup>138</sup> A person can be supposed to know something where there is a direct appeal to his senses. Suspicion or doubt cannot be raised to the level of "reason to believe."<sup>139</sup> "Reason to believe" in [section 42 of NDPS Act](#) is a question of fact and depends upon the facts and circumstances of each case.<sup>140</sup>

<sup>137</sup>. *Joti Parshad v State of Haryana*, AIR 1993 SC 1167 : 1993 Cr LJ 413 .

<sup>138</sup>. *Hamid Ali v State*, 1961 (2) Cr LJ 801 .

<sup>139</sup>. *Prabha Malhotra v State*, 2000 Cr LJ 549 (All), the Court was examining the conduct of doctors in reference to a patient and found no departure from the normal medical practices.

<sup>140</sup>. *State of Punjab v Balbir Singh*, AIR 1994 SC 1872 [LNIND 1994 SC 283] : (1994) 3 SCC 299 [LNIND 1994 SC 283] ; *Noor Aga v State of Punjab*, (2008) 16 SCC 417 [LNIND 2008 SC 1363] : JT 2008 (7) SC 409 [LNIND 2008 SC 1363] .

# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

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### **[s 27] Property in possession of wife, clerk or servant.**

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

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

### **COMMENT—**

Under this section property in the possession of a person's wife, clerk, or servant, is deemed to be in that person's possession. The possession must be conscious and intelligent possession and not merely the physical presence of the accused near the object.<sup>141.</sup>

Corporeal property is in a person's possession when he has such power over it that he can exclude others from it, and intends to exercise, if necessary, that power on behalf of himself or of some person for whom he is a trustee.

A man's goods are in his possession not only while they are in his house or on his premises, but also when they are in a place where he may usually send them (as when horses and cattle feed on common land), or in a place where they may be lawfully deposited by him, e.g., when he buries money or ornaments in his own land, or puts them in any other secret place of deposit.

**1. 'Wife'.—**A permanent mistress may be regarded as a 'wife'. When a man furnishes a house for his mistress' occupation, he may reasonably be presumed to be in possession of all articles therein which can reasonably be inferred to belong to him or to be in possession of his mistress on his behalf. But the inference must be inapplicable to articles of which the mistress is in possession illegally or contrary to the provisions of law, especially when the article in question is such that he might well remain in ignorance that it was in his mistress' possession.<sup>142.</sup>

Under this section the possession of the wife or servant must be shown to be on account of the accused otherwise he cannot be held liable for possession by his wife or servant of any incriminatory thing even in his own house. In other words, it must be shown that the accused was in conscious possession of the thing in question through his wife or servant. Moreover, it must also be shown that the possession of the incriminatory thing amounted to an offence under the [Indian Penal Code](#). Thus, possession of illicit liquor or an unlicensed pistol by the wife of the accused in his house would not make him liable for an offence under the Prohibition Act or the [Arms Act](#). The mere fact that the accused was the head of the family would not go to show

that the accused must have been in conscious possession of the incriminatory thing.<sup>143</sup>

141. *Wahib Basha*, AIR 1961 Mad 162 [LNIND 1960 MAD 38] .

142. *Banwari Lal*, (1913) PR No. 20 of 1914; see also *Narendra Nath Majumdar*, AIR 1951 Cal 140 [LNIND 1951 CAL 14] ; *Dharam Singh*, 1961 Cr LJ 152 (Pun) where the wife alone was held responsible as she produced the key.

143. *Chela Ram v State of Rajasthan*, 1984 Cr LJ 17 .1143 (Raj); *Narendra Nath Majumdar*, AIR 1951 Cal 140 [LNIND 1951 CAL 14] .

# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

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### [s 28] "Counterfeit".

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

<sup>144.</sup> [Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

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

### COMMENT—

The aforesaid definition states that imitation is not required to be exact. It also says that it is not necessary that counterfeit note should be made with primary intention of its being looked as genuine. It is sufficient if resemblance to genuine currency note is so caused that it is capable to being passed as such.<sup>145.</sup> In order to apply section 28, what the Court has to see is whether one thing is made to resemble another thing and if that is so and if the resemblance is such that a person might be deceived by it, there will be a presumption of the necessary intention or knowledge to make the thing counterfeit, unless the contrary is proved. The difference between the counterfeit and the original is not therefore, limited to a difference existing only by reason of faulty reproduction.<sup>146.</sup> The main ingredients of counterfeiting as laid down in [section 28, IPC, 1860](#), are:

- (i) causing one thing to resemble another thing,
- (ii) intending by means of such resemblance to practice deception, or
- (iii) knowing it to be likely that deception will thereby be practised.

There can be counterfeiting even though the imitation is not exact and there are differences in detail between the original and the imitation so long as the resemblance is so close that deception may thereby be practised. And if the resemblance is such that a person might be deceived thereby, it shall be presumed until the contrary is proved that the person causing one thing to resemble another thing was intending by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.<sup>147.</sup>

The word 'counterfeit' occurs in offences relating to coin provided in Chapter XII and offences relating to property marks and currency notes in Chapter XVIII.

If coins are made to resemble genuine coins and the intention of the makers is merely to use them in order to foist a false case upon their enemies, those coins do not come within the definition of counterfeit coins.<sup>148</sup> The prosecution must establish that the coins manufactured resemble the original. It must also establish that there is an intention to deceive, or the knowledge that deception would be caused by such resemblance.<sup>149</sup>

### **[s 28.1] Foreign Currency.—**

The Supreme Court has observed that the word "counterfeit" has been defined in this provision in very wide terms and the same has been further supplemented by the Explanation which draws an adverse inference against the maker of the counterfeit matter. There being no restriction as to the subject-matter of the offence, quite obviously the offence of imitating a foreign currency would be within the scope of the expression.<sup>150</sup>

<sup>144</sup>. Subs. by Act 1 of 1889, section 9, for *Explanation*.

<sup>145</sup>. *Narayan Maruti Waghmode v State of Maharashtra*, 2011 Cr LJ 3318 (Bom).

<sup>146</sup>. *Liyakat Ali v State of Rajasthan* 2010 Cr LJ 2450 (Raj); *Golo Mandla Ram Rao v State of Jharkhand*, > 2003 Cr LJ 1738 (Jha); *Local Government v Seth Motilal Jain*, (1938) Nag 192.

<sup>147</sup>. *State of UP v HM Ismail*, 1960 Cr LJ 1017 : AIR 1960 SC 669 [LNIND 1960 SC 29] ; *K Hasim v State of TN*, 2005 Cr LJ 143 : AIR 2005 SC 128 [LNIND 2004 SC 1142] : (2005) 1 SCC 237 [LNIND 2004 SC 1142] , exact reproduction is not necessary.

<sup>148</sup>. *Velayudham*, (1938) Mad 80.

<sup>149</sup>. *Shahid Sultan Khan v State of Maharashtra*, 2007 Cr LJ 568 (Bom).

<sup>150</sup>. *State of Kerala v Mathai Verghese*, (1986) 4 SCC 746 [LNIND 1986 SC 461] : AIR 1987 SC 33 [LNIND 1986 SC 461] : 1987 Cr LJ 308 .



# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

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### [s 29] "Document."

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

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

#### ILLUSTRATIONS

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

A cheque upon a banker is a document. A power-of-attorney is a document.

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

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

#### ILLUSTRATION

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

### COMMENT—

An assessment order is certainly a 'document', under [section 29, IPC, 1860](#).<sup>151</sup> An agreement in writing, which purported to be entered into between five persons, was signed by only two of them. It was held that it was a 'document' within the meaning of this section though it was not signed by all the parties thereto.<sup>152</sup> Letters or marks imprinted on trees and intended to be used as evidence that the trees had been passed for removal by the Ranger of a forest are documents.<sup>153</sup> Currency notes would be included in the definition of "documents."<sup>154</sup> A charge ticket for overseas calls which a telephone operator has to prepare for accounting purposes is a document.<sup>155</sup>

151. *Ishwarlal Girdharilal Parekh v State Of Maharashtra*, AIR 1969 SC 40 [LNIND 1968 SC 143] : 1969 Cr LJ 271 (SC).

152. *Ramaswami Ayyar v State*, (1917) 41 Mad 589. *Boraiah v State*, 2003 Cr LJ 1031 (Kant), post mortem report which was marked without objection was allowed to be read in evidence without its author being produced.

153. *Krishtappa*, (1925) 27 Bom LR 599 .The definition includes anything done by pen, by engraving, by printing or otherwise, whereby, it is made on paper, parchment, wood or other substance. Similar definitions of the word 'document' are found in [Section 3, Evidence Act](#), and also in Section 3 (16), [General Clauses Act](#). *L K Siddappa v Lalithamma* 1954 Cr LJ 1235 (Mys).

154. *Shyama Charan*, AIR 1962 Tripura 50 .

155. *RV Sharma*, (1990) 2 All ER 602 (CA).

## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

**156.** [s 29A] "Electronic record."

**The words "electronic record" shall have the meaning assigned to them in clause (t) of sub-section (1) of [section 2 of the Information Technology Act, 2000.](#)]**

#### COMMENT—

This section has been inserted by the [Information Technology Act 2000](#) (Act No. 21 of 2000), which came into force on 17 October, 2000. With the on-going electronic and communicational developments, electronic commerce requires the use of electronic record. Section 29A simply refers to the definition of 'electronic record' as the meaning assigned to these words in clause (t) of sub-section (1) of [section 2 of the Information Technology Act 2000](#). It reads thus;

"(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated microfiche;"

While giving meaning to the words "electronic record" and its definition under section 29A one has to resort to the meaning of the words "computer" and "data" as given in sections 2(1)(i) and 2(1)(o) of the [Information Technology Act 2000](#). The words "electronic form" used in the definition of electronic record have further been defined in [section 2\(1\)\(r\) of the Information Technology Act](#), which reads thus,

"2(1)(r) "electronic form" with reference to informations, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated microfiche or similar device."

156. Ins. by Act 21 of 2000, section 91 and Sch. I (w.e.f. 17-10-2000).

## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

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# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

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### [s 30] "Valuable security".

**The words "valuable security" denote a document which is, or purports to be, <sup>1</sup> a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right.**

#### ILLUSTRATION

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

#### COMMENT—

The words "valuable security" also occurs in sections 329–331, 347, 348, 420, 467 and 471. Account books containing entries not signed by a party are not "valuable security."<sup>157</sup> A copy of a valuable security is not a valuable security.<sup>158</sup> An 'order of assessment' is a 'valuable security'.<sup>159</sup>

**1. 'Which is, or purports to be'.—**The use of the words "which is, or purports to be" indicates that a document which, upon certain evidence being given, may be held to be invalid, but on the face of it creates, or purports to create, a right in immoveable property, although a decree could not be passed upon the document, comes within the purview of this section.<sup>160</sup> The words "purports to be" are wide enough to include a document which is not in conformity with the provisions of the [Registration Act](#). Such a document though not otherwise receivable in evidence would still be receivable in evidence for the purpose of the [Indian Penal Code](#).<sup>161</sup> However, certificates which the accused had forged in order to get admission in a college could not be described as "valuable security" and as such their conviction under section 471 read with section 467 had to be changed to one under [section 471](#) read with [section 465, IPC, 1860](#).<sup>162</sup> A lottery ticket is a valuable security.<sup>163</sup>

<sup>157</sup>. *Hari Prasad v State*, (1955) 1 All 749 ; *Moosa v State of Kerala*, AIR 1963 Ker. 68 .

<sup>158</sup>. *Gobinda Prasad v State*, AIR 1962 Cal 174 [LNIND 1961 CAL 76] .

159. *Ishwarlal Girdharilal Parekh v State Of Maharashtra*, AIR 1969 SC 40 [LNIND 1968 SC 143] : 1969 Cr LJ 271 (SC).
160. *Ram Harakh Pathak*, (1925) 48 All 140 .
161. *Kalimuddin v State*, 1977 Cr LJ NOC 261 (Cal).
162. *BK Patil v State of Maharashtra*, 1980 Cr LJ 1312 : AIR 1981 SC 80 ; *Noor Mohamad v State of Maharashtra*, 1980 Cr LJ 1345 AIR 1981 SC 297 ;
163. *Farzeen Sulthana v Government of Kerala*, 2012 (1) KLT 309 ; *Chacko v State of Kerala*, 1970 KLT358; **relied** on *Central Government of India v Krishnaji Parvetesh Kulkarni*, AIR 2006 SC 1744 [LNIND 2006 SC 253] : (2006) 4 SCC 275 [LNIND 2006 SC 253] .

## THE INDIAN PENAL CODE

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**[s 31] "A will".**

**The words "a will" denote any testamentary document.**

#### COMMENT—

'Will' is the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.<sup>164.</sup>

<sup>164.</sup> The [Indian Succession Act](#) (XXXIX of 1925), section 2(h).

# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

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### **[s 32] Words referring to acts include illegal omissions.**

**In every part of this Code, except where a contrary intention appears from the context, words which refer to acts <sup>1</sup> done extend also to illegal omissions. <sup>2</sup>**

### **COMMENT—**

This section puts an illegal omission on the same footing as a positive act.

**1. 'Acts'.—**An 'act' generally means something voluntarily done by a person. 'Act' is a determination of the will, producing an effect in the sensible world. This word includes writing and speaking, or, in short, any external manifestation. In the Code it is not confined to its ordinary meaning of positive conduct of doing something, but includes also illegal omissions.

**2. 'Omissions'.—**Liability for an omission requires a legal duty to act; a moral duty to act is not sufficient. A duty arises from the former when an offence is defined in terms of omission. This is the situation where the legislature has made it an offence. A legal duty to act may also be created by a provision of either criminal or civil separate from the offence charged. Since there is no moral difference between (i) a positive act and (ii) an omission when a duty is established, it is to be borne in mind that cases of omissions, the liability should be exceptional and needs to be adequately justified in each instance. Secondly, when it is imposed this should be done by clear statutory language. Verbs primarily denoting (and forbidding) active conduct should not be construed to include omissions except when the statute contains a genuine implication to this effect. <sup>165.</sup>

An 'act' generally means something voluntarily done by a person, but in [IPC, 1860](#) the term 'act' is not confined to its ordinary meaning of positive conduct of doing something but includes also illegal omission. The effect of [sections 32 and 33, IPC, 1860](#) taken together is that the term 'act' comprises one or more 'acts' or one or more illegal omissions. The Code ([IPC, 1860](#)) makes punishable omissions which have caused, which have been intended to cause or which have been known to be likely to cause certain evil effect in the same manner as it punishes acts provided they were illegal and when the law imposes on a person a duty to act, his illegal omission to act renders (him) in liable to punishment. <sup>166.</sup>

### **[s 32.1] Penalty for omission.—**

Maximum penalties applied to active wrongdoing should not automatically be transferred to corresponding omissions; penalties for omissions should be re-thought



in each case. Indeed, the [Indian Penal Code, 1860](#) does include explicitly the liability due to omissions. And even Indian courts have affirmed so.<sup>167</sup>

<sup>165</sup>. *Dr PB Desai v State of Maharashtra*, 2013 (11) Scale 429 [LNIND 2013 SC 815] .

<sup>166</sup>. *Raj Karan Singh v State of UP* 2000 Cr LJ 555 (All).

<sup>167</sup>. *Dr PB Desai v State of Maharashtra*, 2013 (11) Scale 429 [LNIND 2013 SC 815] .

## THE INDIAN PENAL CODE

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**[s 33] "Act" "Omission";**

**The word "act" denotes as well a series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.**

#### COMMENT—

An omission is sometimes called a negative act, but this seems dangerous practice, for it too easily permits an omission to be substituted for an act without requiring the special requirement for omission liability such as legal duty and the physical capacity to perform the act. Criminal liability for an omission is also well accepted where the actor has a legal duty and the capacity to act. It is said that this rather fundamental exception to the act requirement is permitted because an actor's failure to perform a legal duty of which he is capable, satisfies the purposes of the act requirement or at least satisfies them as well as an act does. Specifically these two special requirements for omission liability help to exclude from liability cases of fantasizing and irresolute intentions, important purposes of the act requirement.<sup>168</sup> The effect of section 32 and this section taken together is that the term 'act' comprises one or more acts or one or more illegal omissions. The word 'act' does not mean only any particular, specific, instantaneous act of a person, but denotes, as well, a series of acts.<sup>169</sup>

<sup>168</sup>. *Dr PB Desai v State of Maharashtra*, 2013 (11) Scale 429 [LNIND 2013 SC 815].

<sup>169</sup>. *Om Parkash v State Of Punjab*, AIR 1961 SC 1782 [LNIND 1961 SC 201] : 1961 (2) Cr LJ 848

# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

### **170. [s 34] Acts done by several persons in furtherance of common intention.**

**When a [criminal act](#) is done by several persons in furtherance of the common intention<sup>1</sup> of all, each of such persons is liable for that act in the same manner as if it were done by him alone.]**

### COMMENT—

**Introduction.**—Ordinarily, no man can be held responsible for an independent act and wrong committed by another. However, [section 34 of the IPC, 1860](#) makes an exception to this principle. It lays down a principle of joint liability in the doing of a [criminal act](#). The essence of that liability is to be found in the existence of common intention, animating the accused leading to the doing of a [criminal act](#) in furtherance of such intention. It deals with the doing of separate acts, similar or adverse by several persons, if all are done in furtherance of common intention. In such situation, each person is liable for the result of that as if he had done that act himself.<sup>171</sup> The soul of [section 34, IPC, 1860](#) is the joint liability in doing a [criminal act](#).<sup>172</sup>

### **[s 34.1] History.—**

[Section 34 IPC, 1860](#) is part of the original Code of 1860 as drafted by Lord Macaulay. The original section as it stood was "When a [criminal act](#) is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone." However, on account of certain observations made by Sir Barnes Peacock, CJ, in *Queen v Gora Chand Gope*,<sup>173</sup> it was necessary to bring about a change in the wordings of the section. Accordingly, in the year 1870 an amendment was brought which introduced the following words after "when a [criminal act](#) is done by several persons..." "...in furtherance of the common intention...". After this change, the section has not been changed or amended ever.

### **[s 34.2] Object.—**

The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. The true contents of the section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in *Ashok Kumar v State of Punjab*,<sup>174</sup> the existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with

commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.<sup>175</sup> *Barendra Kumar Ghosh v King Emperor*,<sup>176</sup> stated the true purport of section 34 as:

The words of s.34 are not to be eviscerated by reading them in this exceedingly limited sense. By s.33 a [criminal act](#) in s.34 includes a series of acts and, further, 'act' includes omission to act, for example, an omission to interfere in order to prevent a murder being done before one's very eyes. By s.37, when any offence is committed by means of several acts whoever intentionally cooperates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. Even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things 'they also serve who only stand and wait'.<sup>177</sup>

### **[s 34.3] Principle.—**

This section is only a rule of evidence and does not create a substantive offence. [Section 34 IPC, 1860](#) lays down the principle of constructive liability. The essence of [section 34 IPC, 1860](#) is a simultaneous consensus of the minds of the persons participating in criminal action to bring about a particular result. [Section 34 IPC, 1860](#) stipulates that the act must have been done in furtherance of the common intention. In fact, the section is intended to cover a case where a number of persons act together and on the facts of the case it is not possible for the prosecution to prove as to which of the persons who acted together actually committed the crime. Little or no distinction exists between a charge for an offence under a particular section and a charge under that section read with section 34.<sup>178</sup> Therefore, [section 34, IPC, 1860](#), would apply even if no charge is framed under that section provided of course from the evidence it becomes clear that there was pre-arranged plan to achieve the commonly intended object.<sup>179</sup> Thus, where six persons were charged under sections 148, 302/149 and 307/149, [IPC, 1860](#), but two were acquitted, the remaining four accused could be convicted on the charges of murder and attempt to murder with the aid of [section 34 of the Penal Code](#).<sup>180</sup> This section really means that if two or more persons intentionally do a thing jointly, it is just the same as if each of them had done it individually.<sup>181</sup> If the [criminal act](#) was a fresh and independent act springing wholly from the mind of the doer, the others are not liable merely because when it was done they were intending to be partakers with the doer in a different [criminal act](#).

### **[s 34.4] Scope, ambit and applicability.—**

[Section 34 of the Indian Penal Code](#) recognises the principle of vicarious liability in criminal jurisprudence. The said principle enshrined under Section 34 of the Code would be attracted only if one or more than one accused person act conjointly in the commission of offence with others. It is not necessary that all such persons should be named and identified before the liability under [Section 34 of the Indian Penal Code](#) can be invoked. So long as the evidence brought by the prosecution would disclose that one or more accused persons had acted in concert with other persons not named or identified, the liability under Section 34 of the Code would still be attracted. Once the other accused stands acquitted in absence of said evidence, the vicarious liability under section 34 of the Code would not be attracted so as to hold the accused liable for the offence with the aid of Section 34 of the Code. However, the accused would still be liable for the offence if the injury or injuries leading to offence can be attributed to him.<sup>182</sup> A bare reading of this section shows that the section could be dissected as follows:

- (a) **Criminal act** is done by several persons;
- (b) Such act is done in furtherance of the common intention of all; and
- (c) Each of such persons is liable for that act in the same manner as if it were done by him alone.
- (d) But, it is not necessary that all such persons should be named and identified before the liability under **Section 34 of the Indian Penal Code** can be invoked.<sup>183.</sup>

In other words, these three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of section 34. While first two are the acts which are attributable and have to be proved as actions of the accused, the third is the consequence. Once the **criminal act** and common intention are proved, then by fiction of law, criminal liability of having done that act by each person individually would arise. The **criminal act**, according to **section 34 IPC, 1860** must be done by several persons. The emphasis in this part of the section is on the word "done".<sup>184.</sup> The section does not envisage the separate act by all the accused persons for becoming responsible for the ultimate **criminal act**. If such an interpretation is accepted, the purpose of section 34 shall be rendered infructuous.<sup>185.</sup> Under **section 34 of the Indian Penal Code**, a pre-concert in the sense of a distinct previous plan is not necessary to be proved.<sup>186.</sup> It is a well settled law that mere presence or association with other members is not *per se* sufficient to hold each of them criminally liable for the offences committed by the other members, unless there is sufficient evidence on record to show that one such member also intends to or knows the likelihood of commission of such an offending act.<sup>187.</sup>

### [s 34.5] Three leading Cases.—

The case of *Barendra Kumar Ghosh v King Emperor*,<sup>188.</sup> is a *locus classicus* and has been followed by number of High Courts and the Supreme Court in a large number of cases. In this case, the Judicial Committee dealt with the scope of section 34 dealing with the acts done in furtherance of the common intention, making all equally liable for the results of all the acts of others. It was observed that section 34 when it speaks of a **criminal act** done by several persons in furtherance of the common intention of all, has regard not to the offence as a whole, but to the **criminal act**, that is to say, the totality of the series of acts which result in the offence. In the case of a person assaulted by many accused, the **criminal act** is the offence which finally results, though the achievement of that **criminal act** may be the result of the action of several persons.

In another celebrated case *Mehub Shah v King-Emperor*,<sup>189.</sup> the court held that:

Section 34 lays down a principle of joint liability in the doing of a **criminal act**. The section does not say "the common intentions of all," nor does it say "an intention common to all." Under the section, the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a **criminal act** in furtherance of such intention. To invoke the aid of s.34 successfully, it must be shown that the **criminal act** complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the **criminal act** was done in concert pursuant to the pre-arranged plan.

Approving the judgments of the Privy Council in *Barendra Kumar Ghosh (Barendra Kumar Ghosh v King Emperor)*,<sup>190.</sup> and *Mahbub Shah*<sup>cases</sup><sup>191</sup> a three-Judge Bench of Supreme Court in *Pandurang v State of Hyderabad*,<sup>192.</sup> held that to attract the applicability of section 34 of the Code the prosecution is under an obligation to

establish that there existed a common intention which requires a pre-arranged plan because before a man can be vicariously convicted for the [criminal act](#) of another, the act must have been done in furtherance of the common intention of all. The Court had in mind the ultimate act done in furtherance of the common intention

### **[s 34.6] Common intention and *mens rea*.—**

Under section 34, every individual offender is associated with the [criminal act](#) which constitutes the offence both physically as well as mentally i.e. he is a participant not only in what has been described as a common act but also what is termed as the common intention and, therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different. But referring to the common intention, it needs to be clarified that the courts must keep in mind the fine distinction between "common intention" on the one hand and *mens rea* as understood in criminal jurisprudence on the other. Common intention is not alike or identical to *mens rea*. The latter may be coincidental with or collateral to the former but they are distinct and different.<sup>193.</sup>

### **[s 34.7] Participation.—**

Participation of several persons in some action with the common intention of committing a crime is an essential ingredient; once such participation is established, section 34 is at once attracted.<sup>194.</sup> Thus, the dominant feature of section 34 is the element of intention and participation in action. This participation need not in all cases be by physical presence.<sup>195.</sup> The Supreme Court has held that it is the essence of the section that the person must be physically present at the actual commission of the crime. He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape, but he must be physically present at the scene of the occurrence and must actually participate in the commission of the offence in some way or other at the time crime is actually being committed.<sup>196.</sup>

The Supreme Court has emphasised that proof of participation by acceptable evidence may in circumstances be a clue to the common intention and that it would not be fatal to the prosecution case that the culprits had no community of interests.<sup>197.</sup>

Sometimes, however, absence of actual participation may serve an important purpose as it happened, for example, where in a love triangle the paramour killed the woman's husband and she remained sitting with the dead body inside the house without opening the door. The main accused having been acquitted, the Supreme Court held that the woman alone could not be convicted under section 302 read with section 34 particularly in view of the fact that the nature of the injuries (*gandasa* blows with a heavy hand) made it explicit that they were the handiwork of masculine power and not that of feminine hands.<sup>198.</sup> It is also necessary to remember that mere presence of the offender at the scene of murder without any participation to facilitate the offence is not enough.<sup>199.</sup> By merely accompanying the accused one does not become liable for the crime committed by the accused within the meaning of [section 34, IPC, 1860](#).<sup>200.</sup> The degree of participation is also an important factor.<sup>201.</sup> The court restated the two ingredients for application of the section which are:

common intention to commit a crime, and

- (ii) participation by all the accused in the act or acts in furtherance of the common intention. These two things establish their joint liability.<sup>202.</sup>

Where one of the accused persons focussed light on the victim with a torch so as to enable others to assault him, otherwise it is a dark night. The court said that his conduct prior and subsequent to the occurrence clearly showed that he shared the common intention so far as the assault on the deceased was concerned. Hence, he was rightly roped in under section 34.<sup>203.</sup> If participation is proved and common intention is absent, section 34 cannot be invoked.<sup>204.</sup> The co-accused was standing outside the house, where the incident took place, while the others committed the murder. There is no evidence of his having played any part in the crime. He did not even act as a guard; he did not prevent the witness from entering the house. There is no evidence of the formation or sharing of any common intention with the other accused. No weapon was seized from him, nor was any property connected with the crime, confiscated from him. It was therefore, held that, it was not safe to convict the co-accused of the offence of murder with the aid of sub-sections 34 and 120(B).<sup>205.</sup>

### **[s 34.8] Physical Presence not *sine qua non*. –**

Physical presence at the very spot is not always a necessary ingredient to attract the action. The Supreme Court decision in *Shreekantiah Ramayya v State of Bombay*,<sup>206.</sup> is the authority for the aforesaid proposition. Vivian Bose, J, speaking for the Bench of three Judges stated thus:

He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape.

What is required is his actual participation in the commission of the offence in some way or other at the time when the crime is actually being committed. The participation need not in all cases be by physical presence. In offence involving physical violence, normally presence at the scene of offence may be necessary, but such is not the case in respect of other offences when the offence consists of diverse acts which may be done at different times and places. The physical presence at the scene of offence of the offender sought to be rendered liable under this section is not one of the conditions of its applicability in every case.<sup>207.</sup> Even the concept of presence of the co-accused at the scene is not a necessary requirement to attract [section 34 of the IPC, 1860](#), e.g., the co-accused can remain a little away and supply weapons to the participating accused either by throwing or by catapulting them so that the participating accused can inflict injuries on the targeted person. There may be other provisions in the [IPC, 1860](#) like sub-sections 120B or 109 which could be invoked then to catch such non-participating accused. Thus, participation in the crime in furtherance of the common intention is *sine qua non* for [section 34 IPC, 1860](#). Exhortation to other accused, even guarding the scene etc. would amount to participation. Of course, when the allegation against an accused is that he participated in the crime by oral exhortation or by guarding the scene the court has to evaluate the evidence very carefully for deciding whether that person had really done any such act.<sup>208.</sup>

The absence of any overt act of assault, exhortation or possession of weapon cannot be singularly determinative of absence of common intention.<sup>209.</sup>

### [s 34.9] In furtherance of common intention.—

The Supreme Court referred to the Oxford English Dictionary where the word "furtherance" is defined as an "action of helping forward." Russell, in his book on Criminal Law adopted this definition and said:

It indicates some kind of aid or assistance proceeding an effect in future and that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken for the purpose of effecting the felony." The Supreme Court has also construed the word "furtherance" as "advancement or promotion."<sup>210.</sup>

**1. 'Common intention'.—**The phrase 'common intention' means a pre-oriented plan and acting in pursuance to the plan. The common intention to give effect to a particular act may even develop at the spur of moment between a number of persons with reference to the facts of a given case.<sup>211.</sup> In *Amrik Singh's* case it has further been held that though common intention may develop in course of the fight but there must be clear and unimpeachable evidence to justify that inference.<sup>212.</sup> Before a Court can convict a person for any offence read with section 34, it should come to a definite conclusion that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence.<sup>213.</sup> Where the act of murder by the main accused was facilitated by two others by catching hold of the victim but without knowing nor having the intention of causing death, it was held that the only common intention that could be inferred was that of causing grievous hurt.<sup>214.</sup> Where the accused had inflicted *lathi* blows causing injuries only on the eyewitness and not on the deceased, he could not be said to have shared the common intention of committing murder of the deceased. He was acquitted for the charge of murder and was convicted under section 325.<sup>215.</sup>

Common intention does not mean similar intention of several persons. To constitute common intention it is necessary that the intention of each one of them be known to the rest of them and shared by them.<sup>216.</sup>

What to speak of similar intention even same intention without sharing each other's intention is not enough for this section.<sup>217.</sup> In a case like this each will be liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others.<sup>218.</sup> In fine, if common intention cannot be inferred from the evidence of facts and circumstances of the case, [section 34, IPC, 1860](#), cannot be invoked.<sup>219.</sup> A party of farmers was cutting their crop. The deceased took away a portion of the harvested crop. That night when he was returning from a *barat* 16 persons waited for him on the way. They came towards him and the convict who was carrying a knife gave him a stab wound on the neck which proved fatal. The others did not know that he had a knife and all of them being with bare hands, it could not be said that they had the common intention of causing death. They could as well have thought that after surrounding the accused he would be called upon to return or pay for the harvest taken away by him.<sup>220.</sup> A person gifted his land to one of his grandsons. His other son along with his wife fully armed, the man with a *lathi* and the woman with a *gandasa* came to protest. The man lost control and both grandson and his father intervened to save the situation but they received *lathi* blows and died. The woman struck only her brother-in-law with the *gandasa* causing a non-fatal injury. Her husband was convicted for murder but her punishment was reduced to causing grievous hurt because it appeared that the whole thing was a spot happening and not a planned affair.<sup>221.</sup>

Where the genesis of the verbal wrangle between the neighbours was not known, but it appeared to have arisen suddenly, there being no chance for common intention to be formulated, each attacker was held to be punishable for his individual acts.<sup>222.</sup>



Where common intention was established the mere fact that one of the culprits distanced himself from the scene could not absolve him from liability.<sup>223.</sup>

It is not necessary for bringing a case within the scope of section 34 to find as to who in fact inflicted the fatal blow. A conviction under the section read with the relevant substantive provision can be made when the ingredients required by the section are satisfied and it is not necessary to mention the section number in the judgment.<sup>224.</sup> Death of two persons was caused by unprovoked firing by appellants who are police officials and grievous gunshot injuries to another person. It was not necessary to assign a specific role to each individual appellant as the firing at the Car was undoubtedly with a clear intent to annihilate those in it and was resorted to in furtherance of common intention of all the appellants. The accused were liable to conviction under [section 302/34 IPC, 1860.](#)<sup>225.</sup> The acts of all the accused need not be the same or identically similar. All that is necessary is that they all must be actuated by the one and the same common intention. The fact that two of them caused injuries at the back of their victim and the injury at the head which proved to be fatal was caused by the third person, the two co-accused could not claim to be absolved of liability for murder.<sup>226.</sup>

It is not necessary for bringing about the conviction of the co-accused to show that he also committed an *overt act* for the achievement of their object. The absence of any overt act or possession of weapon cannot be singularly determinative of absence of common intention. If common intention by meeting of minds is established in the facts and circumstances of the case there need not be an overt act or possession of weapon required, to establish common intention.<sup>227.</sup>

The accused caught hold of the victim and exhorted the main accused to strike him. On such exhortation the main accused inflicted a *Kirpan* wound. The victim died. It was held that the instigation was only to strike. It could not be said that the accused shared the intention of the main accused to kill. The conviction was altered from under sections 202/34 to one under section 324.<sup>228.</sup> The victim woman was murdered by her father-in-law and brother-in-law. The third person helped them to conceal the dead body to screen them. The conviction of the two accused for murder was upheld but that of the third one only for concealment of evidence under sections 201/34.<sup>229.</sup>

### **[s 34.10] Common Intention: How Proved.—**

The common intention can be inferred from the circumstances of the case and that the intention can be gathered from the circumstances as they arise even during an incident.<sup>230.</sup> Common intention is a state of mind. It is not possible to read a person's mind. There can hardly be direct evidence of common intention. The existence or non-existence of a common intention amongst the accused has to be deciphered cumulatively from their conduct and behaviour in the facts and circumstances of each case. Events prior to the occurrence as also after, and during the occurrence, are all relevant to deduce if there existed any common intention. There can be no straight jacket formula.<sup>231.</sup> The Court has to examine the prosecution evidence in regard to application of section 34 cumulatively and if the ingredients are satisfied, the consequences must follow. It is difficult to state any hard and fast rule which can be applied universally to all cases. It will always depend on the facts and circumstances of the given case whether the person involved in the commission of the crime with a common intention can be held guilty of the main offence committed by them together.<sup>232.</sup> Courts, in most cases, have to infer the intention from the act(s) or conduct of the accused or other relevant circumstances of the case. However, an inference as to the common intention shall not be readily drawn; the criminal liability

can arise only when such inference can be drawn with a certain degree of assurance.<sup>233</sup> In most cases it has to be inferred from the act or conduct or other relevant circumstances of the case in hand.<sup>234</sup> This inference can be gathered by the manner in which the accused arrived on the scene and mounted the attack, the determination and concert with which the beating was given or the injuries caused by one or some of them, the acts done by others to assist those causing the injuries, the concerted conduct subsequent to the commission of the offence, for instance all of them left the scene of the incident together and other acts which all or some may have done as would help in determining the common intention. In other words, the totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence of which they could be convicted.<sup>235</sup> Manner of attack shows the common intention of accused.<sup>236</sup> The Supreme Court has reiterated:

We reiterate that for common intention, there could rarely be direct evidence. The ultimate decision, at any rate would invariably depend upon the inference deducible from the circumstances of each case. It is settled law that the common intention or the intention of the individuals concerned in furtherance of the common intention could be proved either from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties.<sup>237</sup>

### **[s 34.11] Complaint.—**

In order to attract [section 34 of the IPC, 1860](#), the complaint must, *prima facie*, reflect a common prior concert or planning amongst all the accused.<sup>238</sup>

### **[s 34.12] Effect of no charge under section 34.—**

Even if section 34 has not been included in a charge framed for the offence under [section 302 IPC, 1860](#) against the accused, a conviction for the offence under section 302 with the aid of section 34 is not bad as no prejudice would be caused to him.<sup>239</sup> Where the appellants caused injuries not enough to cause the death but the same were caused by another, in the absence of a charge under section 34, they were found to be guilty under [section 326 of IPC, 1860](#).<sup>240</sup>

[Sections 34, 114 and 149](#) of the [IPC, 1860](#) provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by five Judge [Constitution Bench](#) of in *Willie Slavey v The State of MP*,<sup>241</sup> the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.<sup>242</sup> But before a court can convict a person under section 302, read with section 34, of the [Indian Penal Code](#), it should come to a definite conclusion that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence. A few illustrations will bring out the impact of section 34 on different situations.

(1) A, B, C and D are charged under section 302, read with section 34, of the [Indian Penal Code](#), for committing the murder of E. The evidence is directed to establish that the said four persons have taken part in the murder.

(2) A, B, C and D and unnamed others are charged under the said sections. But evidence is adduced to prove that the said persons, along with others, named or unnamed, participated jointly in the commission of that offence.

(3) A, B, C and D are charged under the said sections. But the evidence is directed to prove that A, B, C and D, along with 3 others, have jointly committed the offence. As regards the third illustration, a Court is certainly entitled to come to the conclusion that one of the named accused is guilty of murder under section 302, read with section 34, of the [Indian Penal Code](#), though the other three named accused are acquitted, if it accepts the evidence that the said accused acted in concert along with persons, named or unnamed, other than those acquitted, in the commission of the offence. In the second illustration the Court can come to the same conclusion and convict one of the named accused if it is satisfied that no prejudice has been caused to the accused by the defect in the charge. But in the first illustration the Court certainly can convict two or more of the named accused if it accepts the evidence that they acted conjointly in committing the offence. But what is the position if the Court acquits 3 of the 4 accused either because it rejects the prosecution evidence or because it gives the benefit of doubt to the said accused? Can it hold, in the absence of a charge as well as evidence, that though the three accused are acquitted, some other unidentified persons acted conjointly along with one of the named persons? If the Court could do so, it would be making out a new case for the prosecution: it would be deciding contrary to the evidence adduced in the case. A Court cannot obviously make out a case for the prosecution which is not disclosed either in the charge or in regard to which there is no basis in the evidence. There must be some foundation in the evidence that persons other than those named have taken part in the commission of the offence and if there is such a basis the case will be covered by the third illustration.<sup>243</sup> Absence of charge under section 34 is not fatal by itself unless prejudice to the accused is shown.<sup>244</sup>

#### **[s 34.13] Alternative Charge.—**

The trial Court framed charges under sections 302/307 r/w 120B [IPC, 1860](#) and an alternative charge under sections 302/307 r/w [section 34 IPC, 1860](#) without opining on the alternative charge, convicted the accused under sections 302/307 r/w 120B. The contention that accused is deemed to be acquitted for charges under sections 302/307/34 [IPC, 1860](#) of the charge of common intention of committing murder and there was no appeal by the State against the deemed acquittal against that charge, it was not open to the High Court to alter or modify the conviction under sections 302/307/34 [IPC, 1860](#), repelled by holding that charges had indeed been framed in the alternative and for cognate offences having similar ingredients as the main allegation of murder.<sup>245</sup>

#### **[s 34.14] Distinction between sections 34 and 149, IPC, 1860.—**

Though both these sections relate to the doctrine of vicarious liability and sometimes overlap each other there are substantial points of difference between the two. They are under:—

- (i) Section 34 does not by itself create any specific offence, whereas [section 149, IPC, 1860](#), does so (see discussion under sub-para "principle" ante).
- (ii) Some active participation, especially in a crime involving physical violence is necessary under section 34 but [section 149, IPC, 1860](#), does not require it and the liability arises by reason of mere membership of the unlawful assembly with a common object and there may be no active participation at all in the preparation and commission of the crime.
- (iii) Section 34 speaks of common intention but [section 149, IPC, 1860](#),

contemplates common object which is undoubtedly wider in its scope and amplitude than intention. If the offence committed by a member of an unlawful assembly is in prosecution of the common object of the unlawful assembly or such as the members of that assembly knew to be likely to be committed in prosecution of the common object, all other members of the unlawful assembly would be guilty of that offence under [section 149, IPC, 1860](#), although they may not have intended to do it or participated in the actual commission of that offence.<sup>246.</sup>

- (iv) Section 34 does not fix a minimum number of persons who must share the common intention, whereas [section 149, IPC, 1860](#), requires that there must be at least five persons who must have the same common object (see also discussion under sub-head "Sections 34 and 149" under [section 149, IPC, 1860, infra](#)).<sup>247.</sup>

### **[s 34.15] Effect of conviction or acquittal of one or more or others.—**

Several persons involved in a criminal adventure may be guilty of different offences depending upon their respective acts. If the act is done in furtherance of their common intention, all of them become equally liable for the act. Similarly, if they are members of an unlawful assembly, an act done by any one in prosecution of the common object or any act which the members knew could happen in such prosecution, every member would be liable for the act. If any one of them happens to be wrongly acquitted and no appeal has been filed against it, it would not *ipso facto* impede the conviction of others. Likewise, the conviction of any one or more them does not automatically result in the conviction of others.<sup>248.</sup>

### **[s 34.16] Substitution of conviction from section 149 to section 34.—**

Following some earlier rulings,<sup>249.</sup> the Supreme Court has stated the law in the following terms:<sup>250.</sup>

It is true that there was no charge under s. 302 read with s. 34... but the facts of the case are such that the accused could have been charged alternatively either under s. 302 read with s. 149 or under s. 302 read with s. 34 and one of the accused having been acquitted, the conviction under s. 302/149 can be substituted with one under s. 302/34. No prejudice is likely to be caused to the accused whose appeal is being dismissed.<sup>251.</sup>

### **[s 34.17] Robbery.—**

Provision under section 397 inevitably negates the use of the principles of constructive or vicarious liability engrafted under section 34. The sentence for offence under [section 397 of the IPC, 1860](#) cannot be awarded to those of the members of the group of dacoits who did not use any deadly weapon. A plain reading of [section 397 of the IPC, 1860](#) would make it clear that such guilt can be attributed only to that offender who uses any deadly weapon or causes grievous hurt to any person during course of the commission of the robbery. The provision postulates that only the individual act of accused will be relevant to attract [section 397 of the IPC, 1860](#).<sup>252.</sup> In a sudden quarrel over payment, person sitting inside the car pulled the petrol pump attendant into the car and drove away. The occupants of the car escaped punishment. It was held that the driver alone could not be held guilty of the offence of robbery and abduction with the aid of section 34.<sup>253.</sup> In a serial highway robbery and murder in which same persons

were involved, it was found as a fact that the self-same two persons were seen by a witness together in a different town before the occurrence. One of their victims survived and he also testified that he saw both of them together. Both of them were held to be guilty of successive crimes and convicted for murder with the aid of section 34 without any need of knowing who played what part.<sup>254.</sup>

#### **[s 34.18] Mob action.—**

A mob of 200 persons armed with different weapons came to the field with the object of preventing the prosecution party from carrying on transplantation operations. Some of them caused death of a person at the spur of the moment for some spot reason. The whole mob could not be convicted for it.<sup>255</sup> A mob chased the members of the rival community up to their locality. A part of the mob started burning their houses and the other part kept on chasing and caused deaths. The court said that the two parts of the mob could not be said to have shared the intention of burning or causing death.<sup>256.</sup>

#### **[s 34.19] Misappropriation.—**

Where the accused the Sarpanch and Secretary of a Gram Panchayat misappropriated the funds of the Panchayat and the circumstances and evidence showed patent dishonest intention on the part of the accused persons, the conviction and sentence of the accused under section 409/34, was not interfered with.<sup>257.</sup>

#### **[s 34.20] Rape cases.—**

In Gang Rape it is not necessary that the intention should exist from the beginning. It can be developed at the last minute before the commission of the offence.<sup>258.</sup>

#### **[s 34.21] Exhortation.—**

One of the accused exhorted while the other immobilised the deceased and the third accused delivered the fatal injuries. It was held that each one shared a common intention.<sup>259.</sup> Section 34 was held to have been rightly applied where two of the accused persons caught hold of the deceased and on their exhortation the third accused shot him on the right temple resulting in death.<sup>260.</sup>

Mere exhortation by one of the accused persons saying that they would not leave the victim till he died was held to be not a basis for roping into the common intention of the others.<sup>261.</sup> The only allegation against the appellant was her exhortation. Enmity between the family of the deceased and that of the accused proved. In such a situation, where the eye witnesses have not narrated any specific role carried by the appellant, rather the specific role of assaulting with the sword has been attributed to the co-accused, it cannot be ruled out that the name of the appellant has been added due to enmity with the main accused.<sup>262.</sup>

#### **[s 34.22] Pre-conceived common intention.—**

Only when a court with some certainty holds that a particular accused must have pre-conceived or pre-meditated the result which ensued or acted in concert with others in order to bring about that result, that section 34 may be applied.<sup>263.</sup>

### [s 34.23] Common intention and private defence.—

If two or more persons had common intention to commit murder and they had participated in the acts done by them in furtherance of that common intention, all of them would be guilty of murder. [Section 96 IPC, 1860](#) says that nothing is an offence which is done in the exercise of the right of private defence. Though all the accused would be liable for committing the murder of a person by doing an act or acts in furtherance of the common intention, they would not be liable for the act or acts if they had the right of private defence to voluntarily cause death of that person. Common intention, therefore, has relevance only to the offence and not to the right of private defence. What would be an offence by reason of constructive liability would cease to be one if the act constituting the offence was done in exercise of the right of private defence.

If the voluntary causing of death is not permissible under the right of private defence under section 96, then the common intention in regard thereto will lead to the result that the accused persons must be held guilty by reason of constructive liability under the relevant section (in this case section 304 Part I [IPC, 1860](#)). If, however, the common intention was only to commit an act which was permissible within the confines of s. 96 read with s. 98, then constructive liability under section 34 cannot be said to have been accrued to the accused. If the right of private defence was exceeded by some persons, the guilt of each of the accused proved to have exceeded the right of private defence would have to be dealt with separately. The instant case came under the former situation, and hence, such persons were guilty under section 304, Part I [IPC, 1860](#). They, therefore, must be held to have had a common object for causing death of *P*. They were sentenced to undergo ten years' rigorous imprisonment each.<sup>264.</sup>

170. Subs. by Act 27 of 1870, section 1, for section 34.

171. *Goudappa v State of Karnataka*, (2013) 3 SCC 675 [LNIND 2013 SC 177] ; *Satyavir Singh Rathi v State Thr. CBI*, AIR 2011SC 1748 : (2011) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ. 2908 ; *Abdul Sayeed v State of MP*, 2010 (10) SCC 259 [LNIND 2010 SC 872] : 2010(9) Scale 379 : (2010) 3 SCC (Cr) 1262.

172. *Kuria v State of Rajasthan*, AIR 2013 SC 1085 [LNIND 2012 SC 678] : (2012) 10 SCC 433 [LNIND 2012 SC 678] : 2012 Cr LJ 4707 (SC).

173. *Queen v Gora Chand Gope*, (1866) 5 South WR (Cr) 45.

174. *Ashok Kumar v State of Punjab*, AIR 1977 SC 109 : (1977)1 SCC 746 .

175. *Babulal Bhagwan Khandare v State Of Maharashtra* AIR 2005 SC 1460 [LNIND 2004 SC 1203] : (2005) 10 SCC 404 [LNIND 2004 SC 1203] .

176. *Barendra Kumar Ghosh v King Emperor*, AIR 1925 PC 1 [LNIND 1924 BOM 206] .

177. *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .

178. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .
179. *Garib Singh v State of Punjab*, 1972 Cr LJ 1286 : AIR 1973 SC 460 [LNIND 1972 SC 187] .  
See also *Yogendra v State of Bihar*, 1984 Cr LJ 386 (SC).
180. *Ram Tahal v State of UP*, 1972 Cr LJ 227 : AIR 1972 SC 254 [LNIND 1971 SC 579] relied in *Thoti Manohar v State of AP*, 2012, (7) Scale 215 : (2012) 7 SCC 723 [LNIND 2012 SC 365] : 2012 Cr LJ 3492 ; see also *Amar Singh v State of Haryana*, 1973 Cr LJ 1409 : AIR 1973 SC 2221 ; *Dharam Pal v State of UP*, 1975 Cr LJ 1666 : AIR 1975 SC 1917 [LNIND 1975 SC 314] ; *Amir Hussain v State of UP*, 1975 Cr LJ 1874 : AIR 1975 SC 2211 *State of Rajasthan v Arjun Singh*, (2011) 9 SCC 115 [LNIND 2011 SC 855] : AIR 2011 SC 3380 [LNIND 2011 SC 855] .
181. *BN Srikantiah v State of Mysore*, AIR 1958 SC 672 [LNIND 1958 SC 49] : 1958 Cr LJ 1251 .
182. *Killer Thiayagu v. State*, AIR 2017 SC 612 [LNINDORD 2017 SC 1134] .
183. *Killer Thiayagu v. State*, AIR 2017 SC 612 [LNINDORD 2017 SC 1134] .
184. *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] ; *NandKishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] ; *Baldeo Singh v State of Bihar*, AIR 1972 SC 464 : 1972 Cr LJ 262 ; *Rana Pratap v State of Haryana*, AIR 1983 SC 680 [LNIND 1983 SC 157] : 1983 Cr LJ 1272 : (1983) 3 SCC 327 [LNIND 1983 SC 157] ,
185. *Syed Yousuf Hussain v State of AP*, AIR 2013 SC 1677 [LNIND 2013 SC 275] : 2013 Cr LJ 2172 : 2013 (5) Scale 346 [LNIND 2013 SC 275] , (2013)4 SCC 517 [LNIND 2013 SC 275] ; *Suresh v State of UP*, 2001 (3) SCC 673 [LNIND 2001 SC 623] ; *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .
186. *Sudip Kr. Sen v State of WB*, AIR 2016 SC 310 [LNIND 2016 SC 10] : 2016 Cr LJ 1121 .
187. *Nagesar v State of Chhatisgarh*, 2014 Cr LJ 2948 .
188. *Barendra Kumar Ghosh v King Emperor*, AIR 1925 PC 1 [LNIND 1924 BOM 206] .
189. *Mehbub Shah v King-Emperor*, AIR 1945 PC 148 .
190. *Supra*. 191. *Supra*.
192. *Pandurang v State of Hyderabad*, AIR 1955 SC 216 [LNIND 1954 SC 171] : 1955 Cr LJ 572 .
193. *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] *NandKishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] .
194. *Vijendra Singh v State of UP*, AIR 2017 SC 860 [LNIND 2017 SC 16] ; *Bharwad Mepa Dana v State of Bombay*, AIR 1960SC 289.
195. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .
196. *Shreekantiah Ramayya*, (1954) 57 Bom LR 632 (SC); *Shiv Prasad*, AIR 1965 SC 264 [LNIND 1964 SC 51] : (1965) 1 CrLJ 249 .
197. *Baba Lodhi v State of UP*, (1987) 2 SCC 352 : AIR 1987 SC 1268 : 1987 Cr LJ 1119 ; *MA AbdullaKunhi v State of Kerala*, AIR 1991 SC 452 [LNIND 1991 SC 24] : 1991 Cr LJ 525 : (1991) 2 SCC 225 [LNIND 1991 SC 24] ; *Noor v State of Karnataka*, (2007) 12 SCC 84 [LNIND 2007 SC 639] : (2008) 2 SCC Cr 221 : 2007 Cr LJ 4299 .
198. *Tara Devi v State of UP*, (1990) 4 SCC 144 : AIR 1991 SC 342 . See also *Hem Raj v State Delhi Admn.*, 1990 Cr LJ 2665 : 1990 Supp SCC 291 : AIR 1990 SC 2252 , one of the accused alone proved to have given the fatal blow, the participation of others not proved, others not convicted under section 302/34.
199. *Bishan Singh v State of Punjab*, 1983 Cr LJ 973 : AIR 1983 SC 748 : 1983 Cr LJ (SC) 327 : 1983 SCC (Cr) 578; *Ghanshyam v State of UP*, 1983 Cr LJ 439 (SC) : AIR 1983 SC 293 : (1982) 2

SCC 400 .

200. *Dasrathlal v State of Gujarat*, 1979 Cr LJ 1078 (SC) : AIR 1979 SC 1342 . See further *Rangaswami v State of TN*, AIR 1989 SC 1137 : 1989 Cr LJ 875 : 1989 SCC (Cr) 617 : 1989 Supp (1) SCC 686 . *Gulshan v State of Punjab*, 1989 Cr LJ 120 : AIR 1988 SC 2110 : 1990 Supp SCC 682 .

201. *Jarnail Singh v State of Punjab*, (1996) 1 SCC 527 [LNIND 1995 SC 1172] : AIR 1996 SC 755 [LNIND 1995 SC 1172] : 1996 Cr LJ 1139 .

202. *Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd* (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ 8 ; *Chandrakant Murgyappa Umrani v State of Maharashtra*, 1998 SCC (Cr) 698; *Hamlet @ Sasi. v State of Kerala*, (2003) 10 SCC 108 [LNIND 2003 SC 688] ; *Surendra Chauhan v State of MP*, (2000) 4 SCC 110 [LNIND 2000 SC 515] : AIR 2000 SC 1436 [LNIND 2000 SC 515] ; *Ramjee Rai v State of Bihar*, (2006) 13 SCC 229 [LNIND 2006 SC 647] : 2006 Cr LJ 4630 ; *Prakash v State of MP*, (2006) 13 SCC 508 [LNIND 2006 SC 1071] : 2007 Cr LJ 798 ; *Sham Shankar Kankaria v State of Maharashtra*, (2006) 13 SCC 165 [LNIND 2006 SC 684] ; *Manik Das v State of Assam*, (2007) 11 SCC 403 [LNIND 2007 SC 769] : AIR 2007 SC 2274 [LNIND 2007 SC 769] , participation proved.

203. *Chacko v State of Kerala*, (2004) 12 SCC 269 [LNIND 2004 SC 86] : AIR 2004 SC 2688 [LNIND 2004 SC 86] ; *Abdul Wahid v State of Rajasthan*, (2004) 11 SCC 241 [LNIND 2004 SC 1454] : AIR 2004 SC 3211 [LNIND 2004 SC 1454] : 2004 Cr LJ 2850 ; *Janak Singh v State of UP*, (2004) 11 SCC 385 [LNIND 2004 SC 515] : AIR 2004 SC 2495 [LNIND 2004 SC 515] : 2004 Cr LJ 2533 ; *Parsuram Pandey v State of Bihar*, 2005 SCC (Cr) 113 : AIR 2004 SC 5068 [LNIND 2004 SC 1075] .

204. *Suresh Sakharam Nangare v State of Maharashtra*, 2012 (9) Scale 245 [LNIND 2012 SC 574] : (2012) 9 SCC 249 [LNIND 2012 SC 574] .

205. *Raju v State of Chhatisgarh*, 2014 Cr LJ 4425 .

206. *Shreekantiah Ramayya v State of Bombay*, AIR 1955 SC 287 [LNIND 1954 SC 180] : 1955 SCR (1) 1177 .

207. *Parasa Raja Manikyala Rao v State of AP*, (2003) 12 SC 306 : AIR 2004 SC 132 [LNIND 2003 SC 888] : 2004 Cr LJ 390 ; *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 ; *Jaikrishnadas Desai*, (1960) 3 SCR 319 [LNIND 1960 SC 79] : AIR 1960 SC 889 [LNIND 1960 SC 79] : 1960 Cr LJ 1250 ; *Dani Singh v State of Bihar*, AIR 2004 SC 4570 [LNIND 2004 SC 1490] : (2004) 13 SCC 203 [LNIND 2004 SC 1490] .

208. *Suresh v State of UP*, 2001 (3) SCC 673 [LNIND 2001 SC 623] : AIR 2001 SC 1344 [LNIND 2001 SC 623] ; *Ramaswami Ayyangar v State of TN*, AIR 1976 SC 2027 [LNIND 1976 SC 128] : 1976 Cr LJ 1536 (the presence of those who in one way or the other facilitate the execution of the common design itself tantamounts to actual participation in the "criminal act").

209. *Rajkishore Purohit v State of Madhya Pradesh*, AIR 2017 SC 3588 [LNIND 2017 SC 362] .

210. *Parasa Raja Manikyala Rao v State of AP*, (2003) 12 SC 306 : AIR 2004 SC 132 [LNIND 2003 SC 888] : 2004 Cr LJ 390 , citing *Shankarlal Kacharabhai*, AIR 1965 SC 1260 [LNIND 1964 SC 230] : 1965 (2) Cr LJ 226 .

211. *Dharnidhar v State of UP*, (2010) 7 SCC 759 [LNIND 2010 SC 584] : 2010 (7) Scale 12 ; *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] .

212. *Amrik Singh v State of Punjab*, 1972 Cr LJ 465 (SC) : (1972) 4 SCC (N) 42 (SC).

213. *Krishna Govind Patil v State of Maharashtra*, AIR 1963 SC 1413 [LNIND 1963 SC 12] : 1964 (1) SCR 678 [LNIND 1963 SC 12] : 1963 Cr LJ 351 (SC); *State of Maharashtra v Jagmohan Singh Kuldip Singh Anand*, (2004) 7 SCC 659 [LNIND 2004 SC 862] : AIR 2004 SC 4412 [LNIND 2004 SC 862] , the prosecution is not required to prove in every case a pre-arranged plan or prior concert.



*Preetam Singh v State of Rajasthan*, (2003) 12 SCC 594 , prior concert can be inferred, common intention can develop on the spot.

214. *Harbans Nonia v State of Bihar*, AIR 1992 SC 125 : 1992 Cr LJ 105 .

215. *Dharam Pal v State of UP*, AIR 1995 SC 1988 [LNIND 1995 SC 198] : 1995 Cr LJ 3642 .

216. *Hanuman Prasad v State of Rajasthan*, (2009) 1 SCC 507 [LNIND 2008 SC 2256] : (2009) 1 SCC Cr 564, the Supreme Court distinguishes common intention from similar intention and also explains the meaning and applicability of the expression.

217. *Dajya Moshaya Bhil v State of Maharashtra*, 1984 Cr LJ 1728 : AIR 1984 SC 1717 : 1984 Supp SCC 373 . The Supreme Court applied the distinction between common intention and similar intention in *State of UP v Rohan Singh*, (1996) Cr LJ 2884 (SC) : AIR 1996 SCW 2612 . In *Mohan Singh v State of Punjab*, AIR 1963 SC 174 [LNIND 1962 SC 118] it was held that persons having similar intention which is not the result of pre-concerted plan cannot be held guilty for the "criminal act" with the aid of Section 34.

218. *Parichhat v State of MP*, 1972 Cr LJ 322 : AIR 1972 SC 535 ; *Amrik Singh v State of Punjab*, 1972 Cr LJ 465 (SC). **Followed** in *Khem Karan v State of UP*, 1991 Cr LJ 2138 All where each accused hit differently at the behest of one of them, hence, no common intention.

219. *Mitter Sen v State of UP*, 1976 Cr LJ 857 : AIR 1976 SC 1156 ; see also *Gajjan Singh v State of Punjab*, 1976 Cr LJ 1640 : AIR 1976 SC 2069 [LNIND 1976 SC 72] ; *Jarnail Singh v State of Punjab*, 1982 Cr LJ 386 : AIR 1982 SC 70 (SC).

220. *Rambilas Singh v State of Bihar*, AIR 1989 SC 1593 [LNIND 1989 SC 216] : (1989) 3 SCC 605 [LNIND 1989 SC 216] : 1989 Cr LJ 1782 . The conviction under sub-sections 34/149 and 34/302 was set aside.

221. *Tripta v State of Haryana*, AIR 1992 SC 948 : 1992 Cr LJ 3944 . See also *Major Singh v State of Punjab*, AIR 2003 SC 342 [LNIND 2002 SC 742] : 2003 Cr LJ 473 : (2002) 10 SCC 60 [LNIND 2002 SC 742] ; *Balram Singh v State of Punjab*, AIR 2003 SC 2213 [LNIND 2003 SC 514] : (2003) SCC 286 .

222. *Devaramani v State of Karnataka*, (1995) 2 Cr LJ 1534 SC. See also *Gopi Nath v State of UP*, AIR 2001 SC 2493 : 2001 Cr LJ 3514 ; *Pal Singh v State of Punjab*, AIR 1999 SC 2548 [LNIND 1999 SC 604] : 1999 Cr LJ 3962 ; *Prem v Daula*, AIR 1997 SC 715 [LNIND 1997 SC 64] : 1997 Cr LJ 838 ; *Muni Singh v State of Bihar*, AIR 2002 SC 3640 ; *Mahesh Mahto v State of Bihar*, AIR 1997 SC 3567 [LNIND 1997 SC 1103] : 1997 Cr LJ 4402 .

223. *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .

224. *Narinder Singh v State of Punjab*, AIR 2000 SC 2212 [LNIND 2000 SC 615] : 2000 Cr LJ 3462 , *Sheelam Ramesh v State of AP*, AIR 2000 SC 118 [LNIND 1999 SC 926] : 2000 Cr LJ 51 ; *State of Haryana v Bhagirath*, AIR 1999 SC 2005 [LNIND 1999 SC 541] : 1999 Cr LJ 2898 ; *Asha v State of Rajasthan*, AIR 1997 SC 2828 [LNIND 1997 SC 844] : 1997 Cr LJ 3561 .

225. *Satyavir Singh Rathi v State Thr. CBI*, AIR 2011 SC 1748 [LNIND 2011 SC 475] : (2011) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ 2908 .

226. *Krishnan v State*, (2003) 7 SCC 56 [LNIND 2003 SC 587] : AIR 2003 SC 2978 [LNIND 2003 SC 587] : 2003 Cr LJ 3705 .

227. *Rajkishore Purohit v State of MP*, AIR 2017 SC 3588 [LNIND 2017 SC 362] .

228. *Ajay Sharma v State of Rajasthan*, AIR 1998 SC 2798 [LNIND 1998 SC 879] : 1998 Cr LJ 4599 . See also *State of Karnataka v Maruthi*, AIR 1997 SC 3797 : 1997 Cr LJ 4407 ; *Bhupinder Singh v State of Haryana*, AIR 1997 SC 642 : 1997 Cr LJ 958 .

229. *State of UP v Balkrishna Das*, AIR 1997 SC 225 [LNIND 1996 SC 1753] : 1997 Cr LJ 73 .

230. *State of AP v M Sobhan Babu*, 2011 (3) Scale 451 [LNIND 2010 SC 1219] : 2011 Cr LJ 2175 (SC).

231. *Rajkishore Purohit v State of MP*, AIR 2017 SC 3588 [LNIND 2017 SC 362] ; *State of AP v M. Sobhan Babu*, 2011 (3) Scale 451 [LNIND 2010 SC 1219] : 2011 Cr LJ 2175 (SC).
232. *Kuria v State of Rajasthan*, (2012) 10 SCC 433 [LNIND 2012 SC 678] : 2012 Cr LJ 4707 (SC); *Hemchand Jha v State of Bihar*, (2008) 11 SCC 303 [LNIND 2008 SC 1299] : (2008) Cr LJ 3203 ; *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] ; *Nand Kishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] .
233. *Bengai Mandal v State of Bihar*, AIR 2010 SC 686 [LNIND 2010 SC 39] : (2010) 2 SCC 91 [LNIND 2010 SC 39] .
234. *Maqsoodan v State of UP*, 1983 Cr LJ 218 : AIR 1983 SC 126 [LNIND 1982 SC 199] : (1983) 1 SCC 218 [LNIND 1982 SC 199] ; *Aizaz v State of UP*, (2008) 12 SCC 198 [LNIND 2008 SC 1621] : 2008 Cr LJ 4374 , *Lala Ram v State of Rajasthan*, (2007) 10 SCC 225 [LNIND 2007 SC 803] : (2007) 3 SCC Cr 634, *Harbans Kaur v State of Haryana*, AIR 2005 SC 2989 [LNIND 2005 SC 211] : 2005 Cr LJ 2199 (SC), *Dani Singh v State of Bihar*, 2004 (13) SCC 203 [LNIND 2004 SC 1490] : 2004 Cr LJ 3328 (SC).
235. *Ram Tahal v State of UP*, 1972 Cr LJ 227 : AIR 1972 SC 254 [LNIND 1971 SC 579] ; see also *Nitya Sen v State of WB*, 1978 Cr LJ 481 : AIR 1978 SC 383 ; *Sivam v State of Kerala*, 1978 Cr LJ 1609 : AIR 1978 SC 1529 ; *Jagdeo Singh v State of Maharashtra*, 1981 Cr LJ 166 : AIR 1981 SC 648 (SC); *Aher Pitha Vajshi v State of Gujarat*, 1983 Cr LJ 1049 : AIR 1983 SC 599 [LNIND 1983 SC 98] : 1983 SCC (Cr) 607; *Manju Gupta v MS Paintal*, AIR 1982 SC 1181 [LNIND 1982 DEL 128] : 1982 Cr LJ 1393 : (1982) 2 SCC 412 . Another instance of failed prosecution under the Act is *Harendra Narayan Singh v State of Bihar*, AIR 1991 SC 1842 [LNIND 1991 SC 307] : 1991 Cr LJ 2666 . *Ghana Pradhan v State of Orissa*, AIR 1991 SC 1133 : 1991 Cr LJ 1178 . Common intention not established even when the two accused were striking the same person in their own ways.
236. *Raju @ Rajendra v State of Rajasthan*, 2013 Cr LJ 1248 (SC) : (2013) 2 SCC 233 [LNIND 2013 SC 25] .
237. *Jhinku Nai v State of UP*, AIR 2001 SC 2815 [LNIND 2001 SC 1587] at p. 2817. See also *Jagga Singh v State of Punjab*, (2011) 3 SCC 137 [LNIND 2011 SC 288] : AIR 2011 SC 960 [LNIND 2011 SC 288] .
238. *Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd*, (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ 8 : (2010) 12 SCR 551 : (2011) 1 SCC (Cr) 68.
239. *Darbara Singh v State of Punjab*, 2012 (8) Scale 649 [LNIND 2012 SC 545] : (2012) 10 SCC 476 [LNIND 2012 SC 545] ; *Gurpreet Singh v State of Punjab*, AIR 2006 SC 191 [LNIND 2005 SC 887] : (2005) 12 SCC 615 [LNIND 2005 SC 887] .
240. *Vijay Singh v State of MP*, 2014 Cr LJ 2158 .
241. *Willie Slavey v The State of MP*, 1955 (2) SCR 1140 [LNIND 1955 SC 90] at p 1189 : AIR 1956 SC 116 [LNIND 1955 SC 90] .
242. *Santosh Kumari v State of J&K*, (2011) 9 SCC 234 [LNIND 2011 SC 901] : AIR 2011 SC 3402 [LNIND 2011 SC 901] : (2011) 3 SCC (Cr) 657.
243. *Krishna Govind Patil v State of Maharashtra*, AIR 1963 SC 1413 [LNIND 1963 SC 12] : 1963 Cr LJ 351 **relied** in *Chinnam Kameswara Rao v State of AP* 2013 Cr LJ 1540 : JT 2013 (2) SC 398 [LNIND 2013 SC 57] : 2013 (1) Scale 643 [LNIND 2013 SC 57] .
244. *Anil Sharma v State of Jharkhand*, (2004) 5 SCC 679 [LNIND 2004 SC 590] : AIR 2004 SC 2294 [LNIND 2004 SC 590] : 2004 Cr LJ 2527 .
245. *Satyavir Singh Rathi v State Thr. CBI*, AIR 2011 SC 1748 [LNIND 2011 SC 475] : (2011) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ 2908 .
246. *Barendra Kumar Ghosh v Emp.*, AIR 1925 PC 1 [LNIND 1924 BOM 206] (7) : 26 Cr LJ 431; *Nanak Chand v State of Punjab*, 1955 Cr LJ 721 (SC); *Anam Pradhan v State*, 1982 Cr LJ 1585

(Ori). *Chittaramal v State of Rajasthan*, (2003) 2 SCC 266 [LNIND 2003 SC 14] : AIR 2003 SC 796 [LNIND 2003 SC 14] : 2003 Cr LJ 889 , points of similarity and distinction explained in the case.

247. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .

248. *Surinder Singh v State of Punjab*, (2003) 10 SCC 66 [LNIND 2003 SC 652] .

249. *Lachman Singh v The State*, 1952 SCR 839 [LNIND 1952 SC 21] : AIR 1952 SC 167 [LNIND 1952 SC 21] : 1952 Cr LJ 863 and *Karnail Singh v State of Punjab*, 1954 SCR 904 [LNIND 1953 SC 126] : AIR 1954 SC 204 [LNIND 1953 SC 126] : 1954 Cr LJ 580 .

250. *Sangappa Sanganasappa v State of Karnataka* (2010) 11 SCC 782 [LNIND 2010 SC 866] : (2011) 1 SCC (Cr) 256; *Baital Singh v State of UP*, AIR 1990 SC 1982 : 1990 Cr LJ 2091 : 1990 Supp SCC 804 ; *Ramdeo Rao Yadav v State of Bihar*, AIR 1990 SC 1180 [LNIND 1990 SC 126] : 1990 Cr LJ 1983 .

251. *Dahari v State of UP*, AIR 2013 SC 308 2012 (10) Scale 160, (2012)10 SCC 256 [LNIND 2012 SC 638] ; *Jivan Lal v State of MP*, 1997 (9) SCC 119 [LNIND 1996 SC 2679] ; and *Hamlet @ Sasi v State of Kerala*, AIR 2003 SC 3682 [LNIND 2003 SC 688] ; *Gurpreet Singh v State of Punjab*, AIR 2006 SC 191 [LNIND 2005 SC 887] ; *Sanichar Sahni v State of Bihar*, AIR 2010 SC 3786 [LNIND 2009 SC 1350] ; *S Ganesan v Rama Raghuraman*, 2011 (2) SCC 83 [LNIND 2011 SC 5] ; *Darbara Singh v State of Punjab*, 2012 (8) Scale 649 [LNIND 2012 SC 545] : (2012)10 SCC 476 [LNIND 2012 SC 545] : JT 2012 (8) SC 530 [LNIND 2012 SC 545] .

252. *Manik Shankarrao Dhotre v State of Maharashtra*, 2008 Cr LJ 1505 (Kar); *State of Maharashtra v Mahipal Singh Satyanarayan Singh*, 1996 Cr LJ 2485 .

253. *Brahmjit Singh v State*, 1992 Cr LJ 408 (Del).

254. *Prem v State of Maharashtra*, 1993 Cr LJ 1608 (Bom). 255. *Dukhmochan Pandey v State of Bihar*, AIR 1998 SC 40 [LNIND 1997 SC 1255] : 1998 Cr LJ 66 .

256. *State of Gujarat v Chandubhai Malubhai Parmar*, AIR 1997 SC 1422 [LNIND 1997 SC 627] : 1997 Cr LJ 1909 (SC).

257. *Ghaura Chandra Naik v State of Orissa*, 1992 Cr LJ 275 (Ori). See *Rameshchandra Bhogilal Patel v State Of Gujarat*, 2011 Cr LJ 1395 (Guj) (Section 420/34).

258. *Dev Cyrus Colabawala v State of Maharashtra*, 2010 Cr LJ 758 (Bom).

259. *Atambir Singh v State of Delhi*, 2016 Cr LJ 568 (Del).

260. *Vinay Kumar Rai v State of Bihar*, (2008) 12 SCC 202 [LNIND 2008 SC 1646] : 2008 Cr LJ 4319 : AIR 2008 SC 3276 [LNIND 2008 SC 1646] .

261. *Nagaraja v State of Karnataka*, (2008) 17 SCC 277 [LNIND 2008 SC 2484] : AIR 2009 SC 1522 [LNIND 2008 SC 2484] : one accused struck on the road with an iron rod, two others used fists and kicks, there was nothing more common, the two could be convicted under section 323. See also *Mohan Singh v State of MP* AIR 1999 SC 883 [LNIND 1999 SC 69] : (1999) 2 SCC 428 [LNIND 1999 SC 69] , *Abdul Wahid v State of Rajasthan*, AIR 2004 SC 3211 [LNIND 2004 SC 1454] : (2004) 11 SCC 241 [LNIND 2004 SC 1454] ; *Ajay Sharma v State of Rajasthan*, AIR 1998 SC 2798 [LNIND 1998 SC 879] : (1999) 1 SCC 174 [LNIND 1998 SC 879] .

262. *Chandra Kaur v State of Rajasthan*, 2016 Cr LJ 3346 : AIR 2016 SC 2926 [LNINDU 2015 SC 139] .

263. *Suresh v State of UP* AIR 2001 SC 1344 [LNIND 2001 SC 623] : (2001) 3 SCC 673 [LNIND 2001 SC 623] quoted from *Shatrughan Patar v Emperor*. See also *Sewa Ram v State of UP*, 2008 Cr LJ 802 : AIR 2008 SC 682 [LNIND 2007 SC 1452] ; *Abaram v State of MP*, (2007) 12 SCC 105 [LNIND 2007 SC 546] : (2008) 2 SCC Cr 243 : 2007 Cr LJ 2743 .

264. *Bhanwar Singh v State of MP*, (2008) 16 SCC 657 [LNIND 2008 SC 1246] : AIR 2009 SC 768 [LNIND 2008 SC 1246] ; *Vajrapu Sambayya Naidu v State of AP*, AIR 2003 SC 3706 [LNIND 2003 SC 176] : (2004) 10 SCC 152 [LNIND 2003 SC 176] .



# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

### **170. [s 34] Acts done by several persons in furtherance of common intention.**

**When a [criminal act](#) is done by several persons in furtherance of the common intention<sup>1</sup> of all, each of such persons is liable for that act in the same manner as if it were done by him alone.]**

### COMMENT—

**Introduction.**—Ordinarily, no man can be held responsible for an independent act and wrong committed by another. However, [section 34 of the IPC, 1860](#) makes an exception to this principle. It lays down a principle of joint liability in the doing of a [criminal act](#). The essence of that liability is to be found in the existence of common intention, animating the accused leading to the doing of a [criminal act](#) in furtherance of such intention. It deals with the doing of separate acts, similar or adverse by several persons, if all are done in furtherance of common intention. In such situation, each person is liable for the result of that as if he had done that act himself.<sup>171</sup> The soul of [section 34, IPC, 1860](#) is the joint liability in doing a [criminal act](#).<sup>172</sup>

#### [s 34.1] **History.**—

[Section 34 IPC, 1860](#) is part of the original Code of 1860 as drafted by Lord Macaulay. The original section as it stood was "When a [criminal act](#) is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone." However, on account of certain observations made by Sir Barnes Peacock, CJ, in *Queen v Gora Chand Gope*,<sup>173</sup> it was necessary to bring about a change in the wordings of the section. Accordingly, in the year 1870 an amendment was brought which introduced the following words after "when a [criminal act](#) is done by several persons..." "...in furtherance of the common intention...". After this change, the section has not been changed or amended ever.

#### [s 34.2] **Object.**—

The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. The true contents of the section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in *Ashok Kumar v State of Punjab*,<sup>174</sup> the existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common

intention in order to attract the provision.<sup>175.</sup> *Barendra Kumar Ghosh v King Emperor*,<sup>176.</sup> stated the true purport of section 34 as:

The words of s.34 are not to be eviscerated by reading them in this exceedingly limited sense. By s.33 a [criminal act](#) in s.34 includes a series of acts and, further, 'act' includes omission to act, for example, an omission to interfere in order to prevent a murder being done before one's very eyes. By s.37, when any offence is committed by means of several acts whoever intentionally cooperates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. Even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things 'they also serve who only stand and wait'.<sup>177.</sup>

#### [s 34.3] **Principle.**—

This section is only a rule of evidence and does not create a substantive offence. [Section 34 IPC, 1860](#) lays down the principle of constructive liability. The essence of [section 34 IPC, 1860](#) is a simultaneous consensus of the minds of the persons participating in criminal action to bring about a particular result. [Section 34 IPC, 1860](#) stipulates that the act must have been done in furtherance of the common intention. In fact, the section is intended to cover a case where a number of persons act together and on the facts of the case it is not possible for the prosecution to prove as to which of the persons who acted together actually committed the crime. Little or no distinction exists between a charge for an offence under a particular section and a charge under that section read with section 34.<sup>178.</sup> Therefore, [section 34, IPC, 1860](#), would apply even if no charge is framed under that section provided of course from the evidence it becomes clear that there was pre-arranged plan to achieve the commonly intended object.<sup>179.</sup> Thus, where six persons were charged under sections 148, 302/149 and 307/149, [IPC, 1860](#), but two were acquitted, the remaining four accused could be convicted on the charges of murder and attempt to murder with the aid of [section 34 of the Penal Code](#).<sup>180.</sup> This section really means that if two or more persons intentionally do a thing jointly, it is just the same as if each of them had done it individually.<sup>181.</sup> If the [criminal act](#) was a fresh and independent act springing wholly from the mind of the doer, the others are not liable merely because when it was done they were intending to be partakers with the doer in a different [criminal act](#).

#### [s 34.4] **Scope, ambit and applicability.**—

[Section 34 of the Indian Penal Code](#) recognises the principle of vicarious liability in criminal jurisprudence. The said principle enshrined under Section 34 of the Code would be attracted only if one or more than one accused person act conjointly in the commission of offence with others. It is not necessary that all such persons should be named and identified before the liability under [Section 34 of the Indian Penal Code](#) can be invoked. So long as the evidence brought by the prosecution would disclose that one or more accused persons had acted in concert with other persons not named or identified, the liability under Section 34 of the Code would still be attracted. Once the other accused stands acquitted in absence of said evidence, the vicarious liability under section 34 of the Code would not be attracted so as to hold the accused liable for the offence with the aid of Section 34 of the Code. However, the accused would still be liable for the offence if the injury or injuries leading to offence can be attributed to him.<sup>182.</sup> A bare reading of this section shows that the section could be dissected as follows:

- (a) [Criminal act](#) is done by several persons;
- (b) Such act is done in furtherance of the common intention of all; and
- (c) Each of such persons is liable for that act in the same manner as if it were done by him alone.

- (d) But, it is not necessary that all such persons should be named and identified before the liability under [Section 34 of the Indian Penal Code](#) can be invoked.<sup>183.</sup>

In other words, these three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of section 34. While first two are the acts which are attributable and have to be proved as actions of the accused, the third is the consequence. Once the [criminal act](#) and common intention are proved, then by fiction of law, criminal liability of having done that act by each person individually would arise. The [criminal act](#), according to [section 34 IPC, 1860](#) must be done by several persons. The emphasis in this part of the section is on the word "done".<sup>184.</sup> The section does not envisage the separate act by all the accused persons for becoming responsible for the ultimate [criminal act](#). If such an interpretation is accepted, the purpose of section 34 shall be rendered infructuous.<sup>185.</sup> Under [section 34 of the Indian Penal Code](#), a pre-concert in the sense of a distinct previous plan is not necessary to be proved.<sup>186.</sup> It is a well settled law that mere presence or association with other members is not *per se* sufficient to hold each of them criminally liable for the offences committed by the other members, unless there is sufficient evidence on record to show that one such member also intends to or knows the likelihood of commission of such an offending act.<sup>187.</sup>

#### [s 34.5] **Three leading Cases.—**

The case of *Barendra Kumar Ghosh v King Emperor*,<sup>188.</sup> is a *locus classicus* and has been followed by number of High Courts and the Supreme Court in a large number of cases. In this case, the Judicial Committee dealt with the scope of section 34 dealing with the acts done in furtherance of the common intention, making all equally liable for the results of all the acts of others. It was observed that section 34 when it speaks of a [criminal act](#) done by several persons in furtherance of the common intention of all, has regard not to the offence as a whole, but to the [criminal act](#), that is to say, the totality of the series of acts which result in the offence. In the case of a person assaulted by many accused, the [criminal act](#) is the offence which finally results, though the achievement of that [criminal act](#) may be the result of the action of several persons.

In another celebrated case *Mehubub Shah v King-Emperor*,<sup>189.</sup> the court held that:

Section 34 lays down a principle of joint liability in the doing of a [criminal act](#). The section does not say "the common intentions of all," nor does it say "an intention common to all." Under the section, the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a [criminal act](#) in furtherance of such intention. To invoke the aid of s.34 successfully, it must be shown that the [criminal act](#) complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the [criminal act](#) was done in concert pursuant to the pre-arranged plan.

Approving the judgments of the Privy Council in *Barendra Kumar Ghosh (Barendra Kumar Ghosh v King Emperor)*,<sup>190.</sup> and *Mahbub Shah* cases<sup>191</sup> a three-Judge Bench of Supreme Court in *Pandurang v State of Hyderabad*,<sup>192.</sup> held that to attract the applicability of section 34 of the Code the prosecution is under an obligation to establish that there existed a common intention which requires a pre-arranged plan because before a man can be vicariously convicted for the [criminal act](#) of another, the act must have been done in furtherance of the common intention of all. The Court had in mind the ultimate act done in furtherance of the common intention

#### [s 34.6] **Common intention and *mens rea*.—**

Under section 34, every individual offender is associated with the [criminal act](#) which constitutes the offence both physically as well as mentally i.e. he is a participant not only in what has been described as a common act but also what is termed as the common intention and, therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different. But referring to the common intention, it needs to be clarified that the courts must keep in mind the fine distinction between "common intention" on the one hand and *mens rea* as understood in criminal jurisprudence on the other. Common intention is not alike or identical to *mens rea*. The latter may be coincidental with or collateral to the former but they are distinct and different.<sup>193.</sup>

#### [s 34.7] **Participation.—**

Participation of several persons in some action with the common intention of committing a crime is an essential ingredient; once such participation is established, section 34 is at once attracted.<sup>194.</sup> Thus, the dominant feature of section 34 is the element of intention and participation in action. This participation need not in all cases be by physical presence.<sup>195.</sup> The Supreme Court has held that it is the essence of the section that the person must be physically present at the actual commission of the crime. He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape, but he must be physically present at the scene of the occurrence and must actually participate in the commission of the offence in some way or other at the time crime is actually being committed.<sup>196.</sup>

The Supreme Court has emphasised that proof of participation by acceptable evidence may in circumstances be a clue to the common intention and that it would not be fatal to the prosecution case that the culprits had no community of interests.<sup>197.</sup>

Sometimes, however, absence of actual participation may serve an important purpose as it happened, for example, where in a love triangle the paramour killed the woman's husband and she remained sitting with the dead body inside the house without opening the door. The main accused having been acquitted, the Supreme Court held that the woman alone could not be convicted under section 302 read with section 34 particularly in view of the fact that the nature of the injuries (*gandasa* blows with a heavy hand) made it explicit that they were the handiwork of masculine power and not that of feminine hands.<sup>198.</sup> It is also necessary to remember that mere presence of the offender at the scene of murder without any participation to facilitate the offence is not enough.<sup>199.</sup> By merely accompanying the accused one does not become liable for the crime committed by the accused within the meaning of [section 34, IPC, 1860](#).<sup>200.</sup> The degree of participation is also an important factor.<sup>201.</sup> The court restated the two ingredients for application of the section which are:

- (i) common intention to commit a crime, and
- (ii) participation by all the accused in the act or acts in furtherance of the common intention. These two things establish their joint liability.<sup>202.</sup>

Where one of the accused persons focussed light on the victim with a torch so as to enable others to assault him, otherwise it is a dark night. The court said that his conduct prior and subsequent to the occurrence clearly showed that he shared the common intention so far as the assault on the deceased was concerned. Hence, he was rightly roped in under section 34.<sup>203.</sup> If participation is proved and common intention is absent, section 34 cannot be invoked.<sup>204.</sup> The co-accused was standing outside the house, where the incident took place, while the others committed the



murder. There is no evidence of his having played any part in the crime. He did not even act as a guard; he did not prevent the witness from entering the house. There is no evidence of the formation or sharing of any common intention with the other accused. No weapon was seized from him, nor was any property connected with the crime, confiscated from him. It was therefore, held that, it was not safe to convict the co-accused of the offence of murder with the aid of sub-sections 34 and 120(B).<sup>205</sup>.

[s 34.8] **Physical Presence not *sine qua non*.**—

Physical presence at the very spot is not always a necessary ingredient to attract the action. The Supreme Court decision in *Shreekantiah Ramayya v State of Bombay*,<sup>206</sup> is the authority for the aforesaid proposition. Vivian Bose, J, speaking for the Bench of three Judges stated thus:

He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape.

What is required is his actual participation in the commission of the offence in some way or other at the time when the crime is actually being committed. The participation need not in all cases be by physical presence. In offence involving physical violence, normally presence at the scene of offence may be necessary, but such is not the case in respect of other offences when the offence consists of diverse acts which may be done at different times and places. The physical presence at the scene of offence of the offender sought to be rendered liable under this section is not one of the conditions of its applicability in every case.<sup>207</sup> Even the concept of presence of the co-accused at the scene is not a necessary requirement to attract [section 34 of the IPC, 1860](#), e.g., the co-accused can remain a little away and supply weapons to the participating accused either by throwing or by catapulting them so that the participating accused can inflict injuries on the targeted person. There may be other provisions in the [IPC, 1860](#) like sub-sections 120B or 109 which could be invoked then to catch such non-participating accused. Thus, participation in the crime in furtherance of the common intention is *sine qua non* for [section 34 IPC, 1860](#). Exhortation to other accused, even guarding the scene etc. would amount to participation. Of course, when the allegation against an accused is that he participated in the crime by oral exhortation or by guarding the scene the court has to evaluate the evidence very carefully for deciding whether that person had really done any such act.<sup>208</sup>

The absence of any overt act of assault, exhortation or possession of weapon cannot be singularly determinative of absence of common intention.<sup>209</sup>

[s 34.9] **In furtherance of common intention.**—

The Supreme Court referred to the Oxford English Dictionary where the word "furtherance" is defined as an "action of helping forward." Russell, in his book on Criminal Law adopted this definition and said:

It indicates some kind of aid or assistance proceeding an effect in future and that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken for the purpose of effecting the felony." The Supreme Court has also construed the word "furtherance" as "advancement or promotion."<sup>210</sup>

**1. 'Common intention'.—**The phrase 'common intention' means a pre-oriented plan and acting in pursuance to the plan. The common intention to give effect to a particular act may even develop at the spur of moment between a number of persons with reference to the facts of a given case.<sup>211</sup> In *Amrik Singh's* case it has further been held that though common intention may develop in course of the fight but there must be clear and unimpeachable evidence to justify that inference.<sup>212</sup> Before a Court can convict a person for any offence read with section 34, it should come to a definite conclusion

that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence.<sup>213</sup> Where the act of murder by the main accused was facilitated by two others by catching hold of the victim but without knowing nor having the intention of causing death, it was held that the only common intention that could be inferred was that of causing grievous hurt.<sup>214</sup> Where the accused had inflicted *lathi* blows causing injuries only on the eyewitness and not on the deceased, he could not be said to have shared the common intention of committing murder of the deceased. He was acquitted for the charge of murder and was convicted under section 325.<sup>215</sup>

Common intention does not mean similar intention of several persons. To constitute common intention it is necessary that the intention of each one of them be known to the rest of them and shared by them.<sup>216</sup>

What to speak of similar intention even same intention without sharing each other's intention is not enough for this section.<sup>217</sup> In a case like this each will be liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others.<sup>218</sup> In fine, if common intention cannot be inferred from the evidence of facts and circumstances of the case, [section 34, IPC, 1860](#), cannot be invoked.<sup>219</sup> A party of farmers was cutting their crop. The deceased took away a portion of the harvested crop. That night when he was returning from a *barat* 16 persons waited for him on the way. They came towards him and the convict who was carrying a knife gave him a stab wound on the neck which proved fatal. The others did not know that he had a knife and all of them being with bare hands, it could not be said that they had the common intention of causing death. They could as well have thought that after surrounding the accused he would be called upon to return or pay for the harvest taken away by him.<sup>220</sup> A person gifted his land to one of his grandsons. His other son along with his wife fully armed, the man with a *lathi* and the woman with a *gandasa* came to protest. The man lost control and both grandson and his father intervened to save the situation but they received *lathi* blows and died. The woman struck only her brother-in-law with the *gandasa* causing a non-fatal injury. Her husband was convicted for murder but her punishment was reduced to causing grievous hurt because it appeared that the whole thing was a spot happening and not a planned affair.<sup>221</sup>

Where the genesis of the verbal wrangle between the neighbours was not known, but it appeared to have arisen suddenly, there being no chance for common intention to be formulated, each attacker was held to be punishable for his individual acts.<sup>222</sup>

Where common intention was established the mere fact that one of the culprits distanced himself from the scene could not absolve him from liability.<sup>223</sup>

It is not necessary for bringing a case within the scope of section 34 to find as to who in fact inflicted the fatal blow. A conviction under the section read with the relevant substantive provision can be made when the ingredients required by the section are satisfied and it is not necessary to mention the section number in the judgment.<sup>224</sup> Death of two persons was caused by unprovoked firing by appellants who are police officials and grievous gunshot injuries to another person. It was not necessary to assign a specific role to each individual appellant as the firing at the Car was undoubtedly with a clear intent to annihilate those in it and was resorted to in furtherance of common intention of all the appellants. The accused were liable to conviction under [section 302/34 IPC, 1860](#).<sup>225</sup> The acts of all the accused need not be the same or identically similar. All that is necessary is that they all must be actuated by the one and the same common intention. The fact that two of them caused injuries at the back of their victim and the injury at the head which proved to be fatal was caused

by the third person, the two co-accused could not claim to be absolved of liability for murder.<sup>226.</sup>

It is not necessary for bringing about the conviction of the co-accused to show that he also committed an *overt act* for the achievement of their object. The absence of any overt act or possession of weapon cannot be singularly determinative of absence of common intention. If common intention by meeting of minds is established in the facts and circumstances of the case there need not be an overt act or possession of weapon required, to establish common intention.<sup>227.</sup>

The accused caught hold of the victim and exhorted the main accused to strike him. On such exhortation the main accused inflicted a *Kirpan* wound. The victim died. It was held that the instigation was only to strike. It could not be said that the accused shared the intention of the main accused to kill. The conviction was altered from under sections 202/34 to one under section 324.<sup>228.</sup> The victim woman was murdered by her father-in-law and brother-in-law. The third person helped them to conceal the dead body to screen them. The conviction of the two accused for murder was upheld but that of the third one only for concealment of evidence under sections 201/34.<sup>229.</sup>

#### [s 34.10] **Common Intention: How Proved.—**

The common intention can be inferred from the circumstances of the case and that the intention can be gathered from the circumstances as they arise even during an incident.<sup>230.</sup> Common intention is a state of mind. It is not possible to read a person's mind. There can hardly be direct evidence of common intention. The existence or non-existence of a common intention amongst the accused has to be deciphered cumulatively from their conduct and behaviour in the facts and circumstances of each case. Events prior to the occurrence as also after, and during the occurrence, are all relevant to deduce if there existed any common intention. There can be no straight jacket formula.<sup>231.</sup> The Court has to examine the prosecution evidence in regard to application of section 34 cumulatively and if the ingredients are satisfied, the consequences must follow. It is difficult to state any hard and fast rule which can be applied universally to all cases. It will always depend on the facts and circumstances of the given case whether the person involved in the commission of the crime with a common intention can be held guilty of the main offence committed by them together.<sup>232.</sup> Courts, in most cases, have to infer the intention from the act(s) or conduct of the accused or other relevant circumstances of the case. However, an inference as to the common intention shall not be readily drawn; the criminal liability can arise only when such inference can be drawn with a certain degree of assurance.<sup>233.</sup> In most cases it has to be inferred from the act or conduct or other relevant circumstances of the case in hand.<sup>234.</sup> This inference can be gathered by the manner in which the accused arrived on the scene and mounted the attack, the determination and concert with which the beating was given or the injuries caused by one or some of them, the acts done by others to assist those causing the injuries, the concerted conduct subsequent to the commission of the offence, for instance all of them left the scene of the incident together and other acts which all or some may have done as would help in determining the common intention. In other words, the totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence of which they could be convicted.<sup>235.</sup> Manner of attack shows the common intention of accused.<sup>236.</sup> The Supreme Court has reiterated:

We reiterate that for common intention, there could rarely be direct evidence. The ultimate decision, at any rate would invariably depend upon the inference deducible from the circumstances of each case. It is settled law that the common intention or the intention of the individuals concerned in furtherance of the common intention could be proved either

from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties.<sup>237.</sup>

**[s 34.11] Complaint.—**

In order to attract [section 34 of the IPC, 1860](#), the complaint must, *prima facie*, reflect a common prior concert or planning amongst all the accused.<sup>238.</sup>

**[s 34.12] Effect of no charge under section 34.—**

Even if section 34 has not been included in a charge framed for the offence under [section 302 IPC, 1860](#) against the accused, a conviction for the offence under section 302 with the aid of section 34 is not bad as no prejudice would be caused to him.<sup>239.</sup> Where the appellants caused injuries not enough to cause the death but the same were caused by another, in the absence of a charge under section 34, they were found to be guilty under [section 326 of IPC, 1860](#).<sup>240.</sup>

[Sections 34, 114 and 149](#) of the [IPC, 1860](#) provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by five Judge [Constitution Bench](#) of in *Willie Slavey v The State of MP*,<sup>241.</sup> the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.<sup>242.</sup> But before a court can convict a person under section 302, read with section 34, of the [Indian Penal Code](#), it should come to a definite conclusion that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence. A few illustrations will bring out the impact of section 34 on different situations.

(1) A, B, C and D are charged under section 302, read with section 34, of the [Indian Penal Code](#), for committing the murder of E. The evidence is directed to establish that the said four persons have taken part in the murder.

(2) A, B, C and D and unnamed others are charged under the said sections. But evidence is adduced to prove that the said persons, along with others, named or unnamed, participated jointly in the commission of that offence.

(3) A, B, C and D are charged under the said sections. But the evidence is directed to prove that A, B, C and D, along with 3 others, have jointly committed the offence. As regards the third illustration, a Court is certainly entitled to come to the conclusion that one of the named accused is guilty of murder under section 302, read with section 34, of the [Indian Penal Code](#), though the other three named accused are acquitted, if it accepts the evidence that the said accused acted in concert along with persons, named or unnamed, other than those acquitted, in the commission of the offence. In the second illustration the Court can come to the same conclusion and convict one of the named accused if it is satisfied that no prejudice has been caused to the accused by the defect in the charge. But in the first illustration the Court certainly can convict two or more of the named accused if it accepts the evidence that they acted conjointly in committing the offence. But what is the position if the Court acquits 3 of the 4 accused either because it rejects the prosecution evidence or because it gives the benefit of doubt to the said accused? Can it hold, in the absence of a charge as well as evidence, that though the three accused are acquitted, some other unidentified persons acted conjointly along with one of the named persons? If the Court could do so, it would be making out a new case for the prosecution: it would be deciding contrary to the evidence adduced in the case. A Court cannot obviously make out a case for the prosecution which is not disclosed either in the charge or in regard to which there is no basis in the evidence. There must be some foundation in the evidence that persons other than those named have taken part in the commission of the offence and if there

is such a basis the case will be covered by the third illustration.<sup>243</sup> Absence of charge under section 34 is not fatal by itself unless prejudice to the accused is shown.<sup>244</sup>

**[s 34.13] Alternative Charge.—**

The trial Court framed charges under sections 302/307 r/w 120B IPC, 1860 and an alternative charge under sections 302/307 r/w section 34 IPC, 1860 without opining on the alternative charge, convicted the accused under sections 302/307 r/w 120B, The contention that accused is deemed to be acquitted for charges under sections 302/307/34 IPC, 1860 of the charge of common intention of committing murder and there was no appeal by the State against the deemed acquittal against that charge, it was not open to the High Court to alter or modify the conviction under sections 302/307/34 IPC, 1860, repelled by holding that charges had indeed been framed in the alternative and for cognate offences having similar ingredients as the main allegation of murder.<sup>245</sup>

**[s 34.14] Distinction between sections 34 and 149, IPC, 1860.—**

Though both these sections relate to the doctrine of vicarious liability and sometimes overlap each other there are substantial points of difference between the two. They are as under:—

- (i) Section 34 does not by itself create any specific offence, whereas section 149, IPC, 1860, does so (see discussion under sub-para "principle" ante).
- (ii) Some active participation, especially in a crime involving physical violence is necessary under section 34 but section 149, IPC, 1860, does not require it and the liability arises by reason of mere membership of the unlawful assembly with a common object and there may be no active participation at all in the preparation and commission of the crime.
- (iii) Section 34 speaks of common intention but section 149, IPC, 1860, contemplates common object which is undoubtedly wider in its scope and amplitude than intention. If the offence committed by a member of an unlawful assembly is in prosecution of the common object of the unlawful assembly or such as the members of that assembly knew to be likely to be committed in prosecution of the common object, all other members of the unlawful assembly would be guilty of that offence under section 149, IPC, 1860, although they may not have intended to do it or participated in the actual commission of that offence.<sup>246</sup>
- (iv) Section 34 does not fix a minimum number of persons who must share the common intention, whereas section 149, IPC, 1860, requires that there must be at least five persons who must have the same common object (see also discussion under sub-head "Sections 34 and 149" under section 149, IPC, 1860, *infra*).<sup>247</sup>

**[s 34.15] Effect of conviction or acquittal of one or more or others.—**

Several persons involved in a criminal adventure may be guilty of different offences depending upon their respective acts. If the act is done in furtherance of their common intention, all of them become equally liable for the act. Similarly, if they are members of an unlawful assembly, an act done by any one in prosecution of the common object or any act which the members knew could happen in such prosecution, every member would be liable for the act. If any one of them happens to be wrongly acquitted and no appeal has been filed against it, it would not *ipso facto* impede the conviction of others.

Likewise, the conviction of any one or more them does not automatically result in the conviction of others.<sup>248.</sup>

**[s 34.16] Substitution of conviction from section 149 to section 34.—**

Following some earlier rulings,<sup>249.</sup> the Supreme Court has stated the law in the following terms:<sup>250.</sup>

It is true that there was no charge under s. 302 read with s. 34... but the facts of the case are such that the accused could have been charged alternatively either under s. 302 read with s. 149 or under s. 302 read with s. 34 and one of the accused having been acquitted, the conviction under s. 302/149 can be substituted with one under s. 302/34. No prejudice is likely to be caused to the accused whose appeal is being dismissed.<sup>251.</sup>

**[s 34.17] Robbery.—**

Provision under section 397 inevitably negates the use of the principles of constructive or vicarious liability engrafted under section 34. The sentence for offence under [section 397 of the IPC, 1860](#) cannot be awarded to those of the members of the group of dacoits who did not use any deadly weapon. A plain reading of [section 397 of the IPC, 1860](#) would make it clear that such guilt can be attributed only to that offender who uses any deadly weapon or causes grievous hurt to any person during course of the commission of the robbery. The provision postulates that only the individual act of accused will be relevant to attract [section 397 of the IPC, 1860](#).<sup>252.</sup> In a sudden quarrel over payment, person sitting inside the car pulled the petrol pump attendant into the car and drove away. The occupants of the car escaped punishment. It was held that the driver alone could not be held guilty of the offence of robbery and abduction with the aid of section 34.<sup>253.</sup> In a serial highway robbery and murder in which same persons were involved, it was found as a fact that the self-same two persons were seen by a witness together in a different town before the occurrence. One of their victims survived and he also testified that he saw both of them together. Both of them were held to be guilty of successive crimes and convicted for murder with the aid of section 34 without any need of knowing who played what part.<sup>254.</sup>

**[s 34.18] Mob action.—**

A mob of 200 persons armed with different weapons came to the field with the object of preventing the prosecution party from carrying on transplantation operations. Some of them caused death of a person at the spur of the moment for some spot reason. The whole mob could not be convicted for it.<sup>255</sup> A mob chased the members of the rival community up to their locality. A part of the mob started burning their houses and the other part kept on chasing and caused deaths. The court said that the two parts of the mob could not be said to have shared the intention of burning or causing death.<sup>256.</sup>

**[s 34.19] Misappropriation.—**

Where the accused the Sarpanch and Secretary of a Gram Panchayat misappropriated the funds of the Panchayat and the circumstances and evidence showed patent dishonest intention on the part of the accused persons, the conviction and sentence of the accused under section 409/34, was not interfered with.<sup>257.</sup>

**[s 34.20] Rape cases.—**

In Gang Rape it is not necessary that the intention should exist from the beginning. It can be developed at the last minute before the commission of the offence.<sup>258.</sup>

**[s 34.21] Exhortation.—**

One of the accused exhorted while the other immobilised the deceased and the third accused delivered the fatal injuries. It was held that each one shared a common intention.<sup>259</sup> Section 34 was held to have been rightly applied where two of the accused persons caught hold of the deceased and on their exhortation the third accused shot him on the right temple resulting in death.<sup>260</sup>

Mere exhortation by one of the accused persons saying that they would not leave the victim till he died was held to be not a basis for roping into the common intention of the others.<sup>261</sup> The only allegation against the appellant was her exhortation. Enmity between the family of the deceased and that of the accused proved. In such a situation, where the eye witnesses have not narrated any specific role carried by the appellant, rather the specific role of assaulting with the sword has been attributed to the co-accused, it cannot be ruled out that the name of the appellant has been added due to enmity with the main accused.<sup>262</sup>

[s 34.22] **Pre-conceived common intention.—**

Only when a court with some certainty holds that a particular accused must have pre-conceived or pre-meditated the result which ensued or acted in concert with others in order to bring about that result, that section 34 may be applied.<sup>263</sup>

[s 34.23] **Common intention and private defence.—**

If two or more persons had common intention to commit murder and they had participated in the acts done by them in furtherance of that common intention, all of them would be guilty of murder. [Section 96 IPC, 1860](#) says that nothing is an offence which is done in the exercise of the right of private defence. Though all the accused would be liable for committing the murder of a person by doing an act or acts in furtherance of the common intention, they would not be liable for the act or acts if they had the right of private defence to voluntarily cause death of that person. Common intention, therefore, has relevance only to the offence and not to the right of private defence. What would be an offence by reason of constructive liability would cease to be one if the act constituting the offence was done in exercise of the right of private defence.

If the voluntary causing of death is not permissible under the right of private defence under section 96, then the common intention in regard thereto will lead to the result that the accused persons must be held guilty by reason of constructive liability under the relevant section (in this case section 304 Part I [IPC, 1860](#)). If, however, the common intention was only to commit an act which was permissible within the confines of s. 96 read with s. 98, then constructive liability under section 34 cannot be said to have been accrued to the accused. If the right of private defence was exceeded by some persons, the guilt of each of the accused proved to have exceeded the right of private defence would have to be dealt with separately. The instant case came under the former situation, and hence, such persons were guilty under section 304, Part I [IPC, 1860](#). They, therefore, must be held to have had a common object for causing death of *P*. They were sentenced to undergo ten years' rigorous imprisonment each.<sup>264</sup>

170. Subs. by Act 27 of 1870, section 1, for section 34.

171. *Goudappa v State of Karnataka*, (2013) 3 SCC 675 [LNIND 2013 SC 177] ; *Satyavir Singh Rathi v State Thr. CBI*, AIR 2011SC 1748 : (2011) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ.

2908 ; *Abdul Sayeed v State of MP*, 2010 (10) SCC 259 [LNIND 2010 SC 872] : 2010(9) Scale 379 : (2010) 3 SCC (Cr) 1262.

172. *Kuria v State of Rajasthan*, AIR 2013 SC 1085 [LNIND 2012 SC 678] : (2012) 10 SCC 433 [LNIND 2012 SC 678] : 2012 Cr LJ 4707 (SC).

173. *Queen v Gora Chand Gope*, (1866) 5 South WR (Cr) 45.

174. *Ashok Kumar v State of Punjab*, AIR 1977 SC 109 : (1977)1 SCC 746 .

175. *Babulal Bhagwan Khandare v State Of Maharashtra* AIR 2005 SC 1460 [LNIND 2004 SC 1203] : (2005) 10 SCC 404 [LNIND 2004 SC 1203] .

176. *Barendra Kumar Ghosh v King Emperor*, AIR 1925 PC 1 [LNIND 1924 BOM 206] .

177. *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .

178. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .

179. *Garib Singh v State of Punjab*, 1972 Cr LJ 1286 : AIR 1973 SC 460 [LNIND 1972 SC 187] . See also *Yogendra v State of Bihar*, 1984 Cr LJ 386 (SC).

180. *Ram Tahal v State of UP*, 1972 Cr LJ 227 : AIR 1972 SC 254 [LNIND 1971 SC 579] relied in *Thoti Manohar v State of AP*, 2012, (7) Scale 215 : (2012) 7 SCC 723 [LNIND 2012 SC 365] : 2012 Cr LJ 3492 ; see also *Amar Singh v State of Haryana*, 1973 Cr LJ 1409 : AIR 1973 SC 2221 ; *Dharam Pal v State of UP*, 1975 Cr LJ 1666 : AIR 1975 SC 1917 [LNIND 1975 SC 314] ; *Amir Hussain v State of UP*, 1975 Cr LJ 1874 : AIR 1975 SC 2211 *State of Rajasthan v Arjun Singh*, (2011) 9 SCC 115 [LNIND 2011 SC 855] : AIR 2011 SC 3380 [LNIND 2011 SC 855] .

181. *BN Srikantiah v State of Mysore*, AIR 1958 SC 672 [LNIND 1958 SC 49] : 1958 Cr LJ 1251 .

182. *Killer Thiayagu v. State*, AIR 2017 SC 612 [LNINDORD 2017 SC 1134] .

183. *Killer Thiayagu v. State*, AIR 2017 SC 612 [LNINDORD 2017 SC 1134] .

184. *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] ; *NandKishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] ; *Baldeo Singh v State of Bihar*, AIR 1972 SC 464 : 1972 Cr LJ 262 ; *Rana Pratap v State of Haryana*, AIR 1983 SC 680 [LNIND 1983 SC 157] : 1983 Cr LJ 1272 : (1983) 3 SCC 327 [LNIND 1983 SC 157] ,

185. *Syed Yousuf Hussain v State of AP*, AIR 2013 SC 1677 [LNIND 2013 SC 275] : 2013 Cr LJ 2172 : 2013 (5) Scale 346 [LNIND 2013 SC 275] , (2013)4 SCC 517 [LNIND 2013 SC 275] ; *Suresh v State of UP*, 2001 (3) SCC 673 [LNIND 2001 SC 623] ; *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .

186. *Sudip Kr. Sen v State of WB*, AIR 2016 SC 310 [LNIND 2016 SC 10] : 2016 Cr LJ 1121 .

187. *Nagesar v State of Chhatisgarh*, 2014 Cr LJ 2948 .

188. *Barendra Kumar Ghosh v King Emperor*, AIR 1925 PC 1 [LNIND 1924 BOM 206] .

189. *Mehbub Shah v King-Emperor*, AIR 1945 PC 148 .

190. *Supra*. 191. *Supra*.

192. *Pandurang v State of Hyderabad*, AIR 1955 SC 216 [LNIND 1954 SC 171] : 1955 Cr LJ 572 .

193. *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] *NandKishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] .

194. *Vijendra Singh v State of UP*, AIR 2017 SC 860 [LNIND 2017 SC 16] ; *Bharwad Mepa Dana v State of Bombay*, AIR 1960SC 289.

195. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .



196. *Shreekantiah Ramayya*, (1954) 57 Bom LR 632 (SC); *Shiv Prasad*, AIR 1965 SC 264 [LNIND 1964 SC 51] : (1965) 1 CrLJ 249 .
197. *Baba Lodhi v State of UP*, (1987) 2 SCC 352 : AIR 1987 SC 1268 : 1987 Cr LJ 1119 ; *MA AbdullaKunhi v State of Kerala*, AIR 1991 SC 452 [LNIND 1991 SC 24] : 1991 Cr LJ 525 : (1991) 2 SCC 225 [LNIND 1991 SC 24] ; *Noor v State of Karnataka*, (2007) 12 SCC 84 [LNIND 2007 SC 639] : (2008) 2 SCC Cr 221 : 2007 Cr LJ 4299 .
198. *Tara Devi v State of UP*, (1990) 4 SCC 144 : AIR 1991 SC 342 . See also *Hem Raj v State Delhi Admn.*, 1990 Cr LJ 2665 : 1990 Supp SCC 291 : AIR 1990 SC 2252 , one of the accused alone proved to have given the fatal blow, the participation of others not proved, others not convicted under section 302/34.
199. *Bishan Singh v State of Punjab*, 1983 Cr LJ 973 : AIR 1983 SC 748 : 1983 Cr LJ (SC) 327 : 1983 SCC (Cr) 578; *Ghanshyam v State of UP*, 1983 Cr LJ 439 (SC) : AIR 1983 SC 293 : (1982) 2 SCC 400 .
200. *Dasrathlal v State of Gujarat*, 1979 Cr LJ 1078 (SC) : AIR 1979 SC 1342 . See further *Rangaswami v State of TN*, AIR 1989 SC 1137 : 1989 Cr LJ 875 : 1989 SCC (Cr) 617 : 1989 Supp (1) SCC 686 . *Gulshan v State of Punjab*, 1989 Cr LJ 120 : AIR 1988 SC 2110 : 1990 Supp SCC 682 .
201. *Jarnail Singh v State of Punjab*, (1996) 1 SCC 527 [LNIND 1995 SC 1172] : AIR 1996 SC 755 [LNIND 1995 SC 1172] : 1996 Cr LJ 1139 .
202. *Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd* (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ 8 ; *Chandrakant Murgyappa Umrani v State of Maharashtra*, 1998 SCC (Cr) 698; *Hamlet @ Sasi. v State of Kerala*, (2003) 10 SCC 108 [LNIND 2003 SC 688] ; *Surendra Chauhan v State of MP*, (2000) 4 SCC 110 [LNIND 2000 SC 515] : AIR 2000 SC 1436 [LNIND 2000 SC 515] ; *Ramjee Rai v State of Bihar*, (2006) 13 SCC 229 [LNIND 2006 SC 647] : 2006 Cr LJ 4630 ; *Prakash v State of MP*, (2006) 13 SCC 508 [LNIND 2006 SC 1071] : 2007 Cr LJ 798 ; *Sham Shankar Kankaria v State of Maharashtra*, (2006) 13 SCC 165 [LNIND 2006 SC 684] ; *Manik Das v State of Assam*, (2007) 11 SCC 403 [LNIND 2007 SC 769] : AIR 2007 SC 2274 [LNIND 2007 SC 769] , participation proved.
203. *Chacko v State of Kerala*, (2004) 12 SCC 269 [LNIND 2004 SC 86] : AIR 2004 SC 2688 [LNIND 2004 SC 86] ; *Abdul Wahid v State of Rajasthan*, (2004) 11 SCC 241 [LNIND 2004 SC 1454] : AIR 2004 SC 3211 [LNIND 2004 SC 1454] : 2004 Cr LJ 2850 ; *Janak Singh v State of UP*, (2004) 11 SCC 385 [LNIND 2004 SC 515] : AIR 2004 SC 2495 [LNIND 2004 SC 515] : 2004 Cr LJ 2533 ; *Parsuram Pandey v State of Bihar*, 2005 SCC (Cr) 113 : AIR 2004 SC 5068 [LNIND 2004 SC 1075] .
204. *Suresh Sakharam Nangare v State of Maharashtra*, 2012 (9) Scale 245 [LNIND 2012 SC 574] : (2012) 9 SCC 249 [LNIND 2012 SC 574] .
205. *Raju v State of Chhatisgarh*, 2014 Cr LJ 4425 .
206. *Shreekantiah Ramayya v State of Bombay*, AIR 1955 SC 287 [LNIND 1954 SC 180] : 1955 SCR (1) 1177 .
207. *Parasa Raja Manikyala Rao v State of AP*, (2003) 12 SC 306 : AIR 2004 SC 132 [LNIND 2003 SC 888] : 2004 Cr LJ 390 ; *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 ; *Jaikrishnadas Desai*, (1960) 3 SCR 319 [LNIND 1960 SC 79] : AIR 1960 SC 889 [LNIND 1960 SC 79] : 1960 Cr LJ 1250 ; *Dani Singh v State of Bihar*, AIR 2004 SC 4570 [LNIND 2004 SC 1490] : (2004) 13 SCC 203 [LNIND 2004 SC 1490] .
208. *Suresh v State of UP*, 2001 (3) SCC 673 [LNIND 2001 SC 623] : AIR 2001 SC 1344 [LNIND 2001 SC 623] ; *Ramaswami Ayyangar v State of TN*, AIR 1976 SC 2027 [LNIND 1976 SC 128] : 1976 Cr LJ 1536 (the presence of those who in one way or the other facilitate the execution of the common design itself tantamounts to actual participation in the "criminal act").

209. *Rajkishore Purohit v State of Madhya Pradesh*, AIR 2017 SC 3588 [LNIND 2017 SC 362] .
210. *Parasa Raja Manikyala Rao v State of AP*, (2003) 12 SC 306 : AIR 2004 SC 132 [LNIND 2003 SC 888] : 2004 Cr LJ 390 , citing *Shankarlal Kacharabhai*, AIR 1965 SC 1260 [LNIND 1964 SC 230] : 1965 (2) Cr LJ 226 .
211. *Dharnidhar v State of UP*, (2010) 7 SCC 759 [LNIND 2010 SC 584] : 2010 (7) Scale 12 ; *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] .
212. *Amrik Singh v State of Punjab*, 1972 Cr LJ 465 (SC) : (1972) 4 SCC (N) 42 (SC).
213. *Krishna Govind Patil v State of Maharashtra*, AIR 1963 SC 1413 [LNIND 1963 SC 12] : 1964 (1) SCR 678 [LNIND 1963 SC 12] : 1963 Cr LJ 351 (SC); *State of Maharashtra v Jagmohan Singh Kuldip Singh Anand*, (2004) 7 SCC 659 [LNIND 2004 SC 862] : AIR 2004 SC 4412 [LNIND 2004 SC 862] , the prosecution is not required to prove in every case a pre-arranged plan or prior concert. *Preetam Singh v State of Rajasthan*, (2003) 12 SCC 594 , prior concert can be inferred, common intention can develop on the spot.
214. *Harbans Nonia v State of Bihar*, AIR 1992 SC 125 : 1992 Cr LJ 105 .
215. *Dharam Pal v State of UP*, AIR 1995 SC 1988 [LNIND 1995 SC 198] : 1995 Cr LJ 3642 .
216. *Hanuman Prasad v State of Rajasthan*, (2009) 1 SCC 507 [LNIND 2008 SC 2256] : (2009) 1 SCC Cr 564, the Supreme Court distinguishes common intention from similar intention and also explains the meaning and applicability of the expression.
217. *Dajya Moshaya Bhil v State of Maharashtra*, 1984 Cr LJ 1728 : AIR 1984 SC 1717 : 1984 Supp SCC 373 . The Supreme Court applied the distinction between common intention and similar intention in *State of UP v Rohan Singh*, (1996) Cr LJ 2884 (SC) : AIR 1996 SCW 2612 . In *Mohan Singh v State of Punjab*, AIR 1963 SC 174 [LNIND 1962 SC 118] it was held that persons having similar intention which is not the result of pre-concerted plan cannot be held guilty for the "criminal act" with the aid of Section 34.
218. *Parichhat v State of MP*, 1972 Cr LJ 322 : AIR 1972 SC 535 ; *Amrik Singh v State of Punjab*, 1972 Cr LJ 465 (SC). **Followed** in *Khem Karan v State of UP*, 1991 Cr LJ 2138 All where each accused hit differently at the behest of one of them, hence, no common intention.
219. *Mitter Sen v State of UP*, 1976 Cr LJ 857 : AIR 1976 SC 1156 ; see also *Gajjan Singh v State of Punjab*, 1976 Cr LJ 1640 : AIR 1976 SC 2069 [LNIND 1976 SC 72] ; *Jarnail Singh v State of Punjab*, 1982 Cr LJ 386 : AIR 1982 SC 70 (SC).
220. *Rambilas Singh v State of Bihar*, AIR 1989 SC 1593 [LNIND 1989 SC 216] : (1989) 3 SCC 605 [LNIND 1989 SC 216] : 1989 Cr LJ 1782 . The conviction under sub-sections 34/149 and 34/302 was set aside.
221. *Tripta v State of Haryana*, AIR 1992 SC 948 : 1992 Cr LJ 3944 . See also *Major Singh v State of Punjab*, AIR 2003 SC 342 [LNIND 2002 SC 742] : 2003 Cr LJ 473 : (2002) 10 SCC 60 [LNIND 2002 SC 742] ; *Balram Singh v State of Punjab*, AIR 2003 SC 2213 [LNIND 2003 SC 514] : (2003) SCC 286 .
222. *Devaramani v State of Karnataka*, (1995) 2 Cr LJ 1534 SC. See also *Gopi Nath v State of UP*, AIR 2001 SC 2493 : 2001 Cr LJ 3514 ; *Pal Singh v State of Punjab*, AIR 1999 SC 2548 [LNIND 1999 SC 604] : 1999 Cr LJ 3962 ; *Prem v Daula*, AIR 1997 SC 715 [LNIND 1997 SC 64] : 1997 Cr LJ 838 ; *Muni Singh v State of Bihar*, AIR 2002 SC 3640 ; *Mahesh Mahto v State of Bihar*, AIR 1997 SC 3567 [LNIND 1997 SC 1103] : 1997 Cr LJ 4402 .
223. *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .
224. *Narinder Singh v State of Punjab*, AIR 2000 SC 2212 [LNIND 2000 SC 615] : 2000 Cr LJ 3462 , *Sheelam Ramesh v State of AP*, AIR 2000 SC 118 [LNIND 1999 SC 926] : 2000 Cr LJ 51 ; *State of*

*Haryana v Bhagirath*, AIR 1999 SC 2005 [LNIND 1999 SC 541] : 1999 CrLJ 2898 ; *Asha v State of Rajasthan*, AIR 1997 SC 2828 [LNIND 1997 SC 844] : 1997 Cr LJ 3561 .

225. *Satyavir Singh Rathi v State Thr. CBI*, AIR 2011 SC 1748 [LNIND 2011 SC 475] : (2011) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ 2908 .

226. *Krishnan v State*, (2003) 7 SCC 56 [LNIND 2003 SC 587] : AIR 2003 SC 2978 [LNIND 2003 SC 587] : 2003 Cr LJ 3705 .

227. *Rajkishore Purohit v State of MP*, AIR 2017 SC 3588 [LNIND 2017 SC 362] .

228. *Ajay Sharma v State of Rajasthan*, AIR 1998 SC 2798 [LNIND 1998 SC 879] : 1998 Cr LJ 4599 . See also *State of Karnatakav Maruthi*, AIR 1997 SC 3797 : 1997 Cr LJ 4407 ; *Bhupinder Singh v State of Haryana*, AIR 1997 SC642 : 1997 Cr LJ 958 .

229. *State of UP v Balkrishna Das*, AIR 1997 SC 225 [LNIND 1996 SC 1753] : 1997 Cr LJ 73 .

230. *State of AP v M Sobhan Babu*, 2011 (3) Scale 451 [LNIND 2010 SC 1219] : 2011 Cr LJ 2175 (SC).

231. *Rajkishore Purohit v State of MP*, AIR 2017 SC 3588 [LNIND 2017 SC 362] ; *State of AP v M. Sobhan Babu*, 2011 (3) Scale 451 [LNIND 2010 SC 1219] : 2011 Cr LJ 2175 (SC).

232. *Kuria v State of Rajasthan*, (2012) 10 SCC 433 [LNIND 2012 SC 678] : 2012 Cr LJ 4707 (SC); *Hemchand Jha v State of Bihar*, (2008) 11 SCC 303 [LNIND 2008 SC 1299] : (2008) Cr LJ 3203 ; *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] ; *Nand Kishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] .

233. *Bengai Mandal v State of Bihar*, AIR 2010 SC 686 [LNIND 2010 SC 39] : (2010) 2 SCC 91 [LNIND 2010 SC 39] .

234. *Maqsoodan v State of UP*, 1983 Cr LJ 218 : AIR 1983 SC 126 [LNIND 1982 SC 199] : (1983) 1 SCC 218 [LNIND 1982 SC 199] ; *Aizaz v State of UP*, (2008) 12 SCC 198 [LNIND 2008 SC 1621] : 2008 Cr LJ 4374 , *Lala Ram v State of Rajasthan*, (2007) 10 SCC 225 [LNIND 2007 SC 803] : (2007) 3 SCC Cr 634, *Harbans Kaur v State of Haryana*, AIR 2005 SC 2989 [LNIND 2005 SC 211] : 2005 Cr LJ 2199 (SC), *Dani Singh v State of Bihar*, 2004 (13) SCC 203 [LNIND 2004 SC 1490] : 2004 Cr LJ 3328 (SC).

235. *Ram Tahal v State of UP*, 1972 Cr LJ 227 : AIR 1972 SC 254 [LNIND 1971 SC 579] ; see also *Nitya Sen v State of WB*, 1978 Cr LJ 481 : AIR 1978 SC 383 ; *Sivam v State of Kerala*, 1978 Cr LJ 1609 : AIR 1978 SC 1529 ; *Jagdeo Singh v State of Maharashtra*, 1981 Cr LJ 166 : AIR 1981 SC 648 (SC); *Aher Pitha Vajshi v State of Gujarat*, 1983 Cr LJ 1049 : AIR 1983 SC 599 [LNIND 1983 SC 98] : 1983 SCC (Cr) 607; *Manju Gupta v MS Paintal*, AIR 1982 SC 1181 [LNIND 1982 DEL 128] : 1982 Cr LJ 1393 : (1982) 2 SCC 412 . Another instance of failed prosecution under the Act is *Harendra Narayan Singh v State of Bihar*, AIR 1991 SC 1842 [LNIND 1991 SC 307] : 1991 Cr LJ 2666 . *Ghana Pradhan v State of Orissa*, AIR 1991 SC 1133 : 1991 Cr LJ 1178 . Common intention not established even when the two accused were striking the same person in their own ways.

236. *Raju @ Rajendra v State of Rajasthan*, 2013 Cr LJ 1248 (SC) : (2013) 2 SCC 233 [LNIND 2013 SC 25] .

237. *Jhinku Nai v State of UP*, AIR 2001 SC 2815 [LNIND 2001 SC 1587] at p. 2817. See also *Jagga Singh v State of Punjab*, (2011) 3 SCC 137 [LNINDORD 2011 SC 288] : AIR 2011 SC 960 [LNINDORD 2011 SC 288] .

238. *Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd*, (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ 8 : (2010) 12 SCR 551 : (2011) 1 SCC (Cr) 68.

239. *Darbara Singh v State of Punjab*, 2012 (8) Scale 649 [LNIND 2012 SC 545] : (2012) 10 SCC 476 [LNIND 2012 SC 545] ; *Gurpreet Singh v State of Punjab*, AIR 2006 SC 191 [LNIND 2005 SC 887] : (2005) 12 SCC 615 [LNIND 2005 SC 887] .

240. *Vijay Singh v State of MP*, 2014 Cr LJ 2158 .

241. *Willie Slavey v The State of MP*, 1955 (2) SCR 1140 [LNIND 1955 SC 90] at p 1189 : AIR 1956 SC 116 [LNIND 1955 SC 90] .
242. *Santosh Kumari v State of J&K*, (2011) 9 SCC 234 [LNIND 2011 SC 901] : AIR 2011 SC 3402 [LNIND 2011 SC 901] : (2011) 3 SCC (Cr) 657.
243. *Krishna Govind Patil v State of Maharashtra*, AIR 1963 SC 1413 [LNIND 1963 SC 12] : 1963 Cr LJ 351 **relied** in *Chinnam Kameswara Rao v State of AP* 2013 Cr LJ 1540 : JT 2013 (2) SC 398 [LNIND 2013 SC 57] : 2013 (1) Scale 643 [LNIND 2013 SC 57] .
244. *Anil Sharma v State of Jharkhand*, (2004) 5 SCC 679 [LNIND 2004 SC 590] : AIR 2004 SC 2294 [LNIND 2004 SC 590] : 2004 Cr LJ 2527 .
245. *Satyavir Singh Rathi v State Thr. CBI*, AIR 2011 SC 1748 [LNIND 2011 SC 475] : (2011) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ 2908 .
246. *Barendra Kumar Ghosh v Emp.*, AIR 1925 PC 1 [LNIND 1924 BOM 206] (7) : 26 Cr LJ 431; *Nanak Chand v State of Punjab*, 1955 Cr LJ 721 (SC); *Anam Pradhan v State*, 1982 Cr LJ 1585 (Ori). *Chittaramal v State of Rajasthan*, (2003) 2 SCC 266 [LNIND 2003 SC 14] : AIR 2003 SC 796 [LNIND 2003 SC 14] : 2003 Cr LJ 889 , points of similarity and distinction explained in the case.
247. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .
248. *Surinder Singh v State of Punjab*, (2003) 10 SCC 66 [LNIND 2003 SC 652] .
249. *Lachman Singh v The State*, 1952 SCR 839 [LNIND 1952 SC 21] : AIR 1952 SC 167 [LNIND 1952 SC 21] : 1952 Cr LJ 863 and *Karnail Singh v State of Punjab*, 1954 SCR 904 [LNIND 1953 SC 126] : AIR 1954 SC 204 [LNIND 1953 SC 126] : 1954 Cr LJ 580 .
250. *Sangappa Sanganasappa v State of Karnataka* (2010) 11 SCC 782 [LNIND 2010 SC 866] : (2011) 1 SCC (Cr) 256; *Baital Singh v State of UP*, AIR 1990 SC 1982 : 1990 Cr LJ 2091 : 1990 Supp SCC 804 ; *Ramdeo Rao Yadav v State of Bihar*, AIR 1990 SC 1180 [LNIND 1990 SC 126] : 1990 Cr LJ 1983 .
251. *Dahari v State of UP*, AIR 2013 SC 308 2012 (10) Scale 160, (2012)10 SCC 256 [LNIND 2012 SC 638] ; *Jivan Lal v State of MP*, 1997 (9) SCC 119 [LNIND 1996 SC 2679] ; and *Hamlet @ Sasi v State of Kerala*, AIR 2003 SC 3682 [LNIND 2003 SC 688] ; *Gurpreet Singh v State of Punjab*, AIR 2006 SC 191 [LNIND 2005 SC 887] ; *Sanichar Sahni v State of Bihar*, AIR 2010 SC 3786 [LNIND 2009 SC 1350] ; *S Ganesan v Rama Raghuraman*, 2011 (2) SCC 83 [LNIND 2011 SC 5] ; *Darbara Singh v State of Punjab*, 2012 (8) Scale 649 [LNIND 2012 SC 545] : (2012)10 SCC 476 [LNIND 2012 SC 545] : JT 2012 (8) SC 530 [LNIND 2012 SC 545] .
252. *Manik Shankarrao Dhotre v State of Maharashtra*, 2008 Cr LJ 1505 (Kar); *State of Maharashtra v Mahipal Singh Satyanarayan Singh*, 1996 Cr LJ 2485 .
253. *Brahmjit Singh v State*, 1992 Cr LJ 408 (Del).
254. *Prem v State of Maharashtra*, 1993 Cr LJ 1608 (Bom). 255. *Dukhmochan Pandey v State of Bihar*, AIR 1998 SC 40 [LNIND 1997 SC 1255] : 1998 Cr LJ 66 .
256. *State of Gujarat v Chandubhai Malubhai Parmar*, AIR 1997 SC 1422 [LNIND 1997 SC 627] : 1997 Cr LJ 1909 (SC).
257. *Ghousa Chandra Naik v State of Orissa*, 1992 Cr LJ 275 (Ori). See *Rameshchandra Bhogilal Patel v State Of Gujarat*, 2011 Cr LJ 1395 (Guj) (Section 420/34).
258. *Dev Cyrus Colabawala v State of Maharashtra*, 2010 Cr LJ 758 (Bom).
259. *Atambir Singh v State of Delhi*, 2016 Cr LJ 568 (Del).
260. *Vinay Kumar Rai v State of Bihar*, (2008) 12 SCC 202 [LNIND 2008 SC 1646] : 2008 Cr LJ 4319 : AIR 2008 SC 3276 [LNIND 2008 SC 1646] .
261. *Nagaraja v State of Karnataka*, (2008) 17 SCC 277 [LNIND 2008 SC 2484] : AIR 2009 SC 1522 [LNIND 2008 SC 2484] : one accused struck on the road with an iron rod, two others used fists and kicks, there was nothing more common, the two could be convicted under section 323.

See also *Mohan Singh v State of MP* AIR 1999 SC 883 [LNIND 1999 SC 69] : (1999) 2 SCC 428 [LNIND 1999 SC 69] , *Abdul Wahid v State of Rajasthan*, AIR 2004 SC 3211 [LNIND 2004 SC 1454] : (2004) 11 SCC 241 [LNIND 2004 SC 1454] ; *AjaySharma v State of Rajasthan*, AIR 1998 SC 2798 [LNIND 1998 SC 879] : (1999) 1 SCC 174 [LNIND 1998 SC 879] .

262. *Chandra Kaur v State of Rajasthan*, 2016 Cr LJ 3346 : AIR 2016 SC 2926 [LNINDU 2015 SC 139] .

263. *Suresh v State of UP* AIR 2001 SC 1344 [LNIND 2001 SC 623] : (2001) 3 SCC 673 [LNIND 2001 SC 623] quoted from *Shatrughan Patar vEmperor*. See also *Sewa Ram v State of UP*, 2008 Cr LJ 802 : AIR 2008 SC682 [LNIND 2007 SC 1452] ; *Abaram v State of MP*, (2007) 12 SCC 105 [LNIND 2007 SC 546] : (2008) 2 SCC Cr 243 : 2007 Cr LJ 2743 .

264. *Bhanwar Singh v State of MP*, (2008) 16 SCC 657 [LNIND 2008 SC 1246] : AIR 2009 SC 768 [LNIND 2008 SC 1246] ; *Vajrapu Sambayya Naidu vState of AP*, AIR 2003 SC 3706 [LNIND 2003 SC 176] : (2004) 10 SCC 152 [LNIND 2003 SC 176] .

## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

**[s 35] When such an act is criminal by reason of its being done with a criminal knowledge or intention.**

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

#### COMMENT—

The preceding section provided for a case in which a [criminal act](#) was done by several persons in furtherance of the common intention of all. Under this section several persons who actually perform the act must be shown to have the *particular* intent or knowledge, if the act is criminal only by reason of its being done with a criminal knowledge or intention. If several persons, having one and the same criminal intention or knowledge, jointly commit murder or an assault, each is liable for the offence as if he has acted alone; but if several persons join in an act, each having a different intention or knowledge from the others, each is liable according to his own criminal intention or knowledge, and he is not liable further. If an act which is an offence in itself and without reference to any criminal knowledge or intention on the part of the doers is done by several persons, each of such persons is liable for the offence.

Neither section 34 nor this section provides that those who take part in the act are jointly liable for the same offence. They merely provide that each of the performers shall be liable for the act in the same manner as if the act were done by him alone. In this section also, the responsibility is shared by each offender individually if the act which is criminal only by reason of certain criminal knowledge or intention is done by each person sharing that knowledge or intention.<sup>265</sup> A mere look at that section shows that if the act alleged against these accused becomes criminal on account of their sharing common knowledge about the defective running of Plant at Bhopal by the remaining accused who represented them on the spot and who had to carry out their directions from them and who were otherwise required to supervise their activity. [Section 35 of the Indian Penal Code](#) could at least prima facie be invoked against accused 2, 3, 4 and 12 to be read with [section 304-A Indian Penal Code](#).<sup>266</sup>

265. *Afrhim Sheikh v State of WB*, AIR 1964 SC 1263 [LNIND 1964 SC 1] : 1964 Cr LJ 350 ; *State v Bhimshankar Siddannappa Thobde*, 1968 Cr LJ 898 (Bom).

266. *Keshub Mahindra v State of MP*, (1996) 6 SCC 129 [LNIND 1996 SC 2462] : JT 1996 (8) SC 136 [LNIND 1996 SC 2462] (1996) 1 SCC (Cri) 1124 (Bhopal Gas Tragedy case) against which a curative petition was filed by the CBI and it was dismissed by the Constitution bench in *CBI v Keshub Mahindra*, AIR 2011 SC 2037 [LNINDORD 2011 SC 209] : (2011) 6 SCC 216 [LNIND 2011 SC 514] .

## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

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#### **[s 36] Effect caused partly by act and partly by omission.**

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

#### ILLUSTRATION

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

#### COMMENT—

This section follows as a corollary from section 32. The legal consequences of an 'act' and of an 'omission' being the same, if an offence is committed partly by an act and partly by an omission the consequences will be the same as if the offence was committed by an 'act' or by an 'omission' alone. Fire in the transformer installed in a cinema hall led to multiple deaths but was not the *causa causans* of the tragedy. The absence of rapid dispersal facilities, various acts of omission and commission, violation of rules and bye-laws meant for public safety were other causes which contributed to the tragedy in equal proportion. A charge under this section was held to be justifiable.<sup>267</sup>

<sup>267</sup>. *Sushil Ansal v State*, 2002 Cr LJ 1369 . Also see *Association of Victims of Uphaar Tragedy v Gopal Ansal*, (2008) 14 SCC 611 [LNIND 2008 SC 1818] : (2009) 2 SCC (Cr) 878.



## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

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#### **[s 37] Co-operation by doing one of several acts constituting an offence.**

**When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.**

#### ILLUSTRATIONS

- (a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.
- (b) A and B are joint jailors, and as such have the charge of Z, a prisoner, alternatively for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose, Z dies of hunger. Both A and B are guilty of the murder of Z.
- (c) A, a jailor, has the charge of a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B. A is guilty only of an attempt to commit murder.

#### COMMENT—

This section follows as a corollary from section 35 as appears from the illustrations. It provides that, when several acts are done so as to result together in the commission of an offence, the doing of any one of them, with an intention to co-operate in the offence (which may not be the same as an intention common to all), makes the actor liable to be punished for the commission of the offence.<sup>268</sup> By co-operating in the doing of several acts which together constitute a single **criminal act**, each person who co-operates in the commission of that offence by doing any one of the acts is either singly or jointly liable for that offence.<sup>269</sup> If common intention is the hub of section 34, intentional cooperation is the spindle of [section 37 of the Penal Code](#). One who shares common intention can as well cooperate in the commission of the offence

intentionally. In that sense the two sections are not contradictory to each other. The former does not necessarily exclude the latter. Co-operation in the commission of the offence need not be for the entire gamut of the offence committed. It is enough if he cooperates in one of the several acts which constitute the offence. Sections 34–38 of the [Penal Code](#) delineate the parameters of constructive or vicarious penal liability in different situations. Therefore, it is not imperative that the charge should contain the particular section of the [Penal Code](#) with which constructive liability is fastened.<sup>270</sup>

268. *Barendra Kumar Ghosh*, (1924) 52 IA 40 : 52 Cal 197 : 211, 27 Bom LR 148.

269. *Afrachim Sheikh v State of WB*, AIR 1964 SC 1263 [LNIND 1964 SC 1] : 1964 (6) SCR 172 [LNIND 1964 SC 1] : 1964 Cr LJ 350 .

270. *Justus v State*, 1987 (2) KLT 330 [LNIND 1987 KER 337] : ILR 1988 (1) Ker 98 .

# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

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### **[s 38] Persons concerned in criminal act may be guilty of different offences.**

**Where several persons are engaged or concerned in the commission of a [criminal act](#), they may be guilty of different offences by means of that act.**

#### ILLUSTRATION

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

#### COMMENT—

Section 38 provides that the responsibility for the completed [criminal act](#) may be of different grades according to the share taken by the different accused in the completion of the [criminal act](#) and this section does not mention anything about intention common or otherwise or knowledge.<sup>271.</sup>

Sections 34–38 lay down principles similar to the English law of 'principals in the first and second degrees.' See Comment on section 107.

The basic principle which runs through sections 32 to 38 is that in certain circumstances an entire act is attributed to a person who may have performed only a fractional part of it. This axiom is laid down in section 34 in which emphasis are on the act. Sections 35–38 take up this axiom as the basis of a further rule by which the criminal liability of the doer of a fractional part (who is to be taken as the doer of the entire act) is to be adjudged in different situations of *mens rea*. Without the axiom itself, however, the other sections would not work, inasmuch as it is the foundation on which they all stand.<sup>272.</sup>

This section provides for different punishments for different offences as an alternative to one punishment for one offence, whether the persons engaged or concerned in the commission of a [criminal act](#) are set in motion by the one intention or by the other.<sup>273.</sup> The section applies where a [criminal act](#) jointly done by several persons and the several persons have different intentions or states of knowledge in doing the joint act.<sup>274.</sup> Where three accused assaulted the deceased but only two used their weapons in a determined manner which clearly showed their common intention to kill the deceased and the third accused who had a *lathi* in his hand did not even use it to cause any injury to the victim, it was held that the former two were liable to be convicted under [section 302](#) read with [section 34, IPC, 1860](#), and the third accused was only liable under section 304, Part II read with [section 38, IPC, 1860](#), as he had intentionally joined the

other two in the commission of the act with the knowledge that the assault was likely to cause death of the deceased even though he did not have the intention to kill him.<sup>275</sup>.

271. *Afrahim Sheikh v State of WB*, AIR 1964 SC 1263 [LNIND 1964 SC 1] : 1964 (6) SCR 172 [LNIND 1964 SC 1] : 1964 Cr LJ 350 .

272. *Ibra Akanda*, (1944) 2 Cal 405 .

273. *Barendra Kumar Ghosh*, (1924) 52 IA 40 : 52 Cal 197 211 : 27 Bom LR 148.

274. *State v Bhimshankar Siddannappa Thobde*, 1968 Cr LJ 898 (Bom).

275. *Bhaba Nanda v State of Assam*, 1977 Cr LJ 1930 : AIR 1977 SC 2252 [LNIND 1977 SC 291] .  
*Mano Dutt v State of UP*, JT 2012 (2) SC 573 : 2012 (3) Scale 219 [LNIND 2012 SC 160] : (2012) 4 SCC 79 [LNIND 2012 SC 160] .

## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

#### [s 39] "Voluntarily".

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

#### ILLUSTRATION

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

#### COMMENT—

Bare reading of this section shows that a person need not intend to cause a certain effect. If an act is the probable consequence of the means used by him, he is said to have caused it voluntarily whether he really means to cause it or not. Section implicitly lays down the principle that a man is presumed to intend the probable consequences of his act.<sup>276</sup> Following this it has been held that if the accused was not aware that the person whom they confined was a public servant, section 332 (voluntarily causing hurt to deter public servant from his duty) would not be attracted. The accused would be guilty of causing hurt under section 323.<sup>277</sup> The Supreme Court has given a new meaning to the word "voluntary" by holding in *Olga Tellis v Bombay MC*,<sup>278</sup> that the act of slum dwellers putting up their huts on public footpaths and pavements cannot be described to be "voluntary" for the purposes of the definition of "criminal trespass" in section 441, it being the result of utter helplessness and their moral right of survival.

<sup>276</sup>. *Dr.Meenu Bhatia Prasad v State*, 2002 Cr LJ 1674 (Del).

<sup>277</sup>. *Abdul Majeed v State of Kerala*, (1994) 2 Cr LJ 1404 (Ker).

<sup>278</sup>. *Olga Tellis v. Bombay MC*, (1985) 3 SCC 545 [LNIND 1985 SC 215] : 1986 CrLR (SC) 23 : AIR 1986 SC 180 [LNIND 1985 SC 215] .

# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

**279.** [[s 40] "Offence".

Except in the **280.** [Chapters] and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, **281.** [Chapter VA] and in the following sections, namely, sections **282.** [64, 65, 66, **283.** [67], 71], 109, 110, 112, 114, 115, 116, 117, **284.** [118, 119, 120] 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

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

### COMMENT—

"Offence" means 'an act or instance of offending'; 'commit an illegal act' and illegal means, 'contrary to or forbidden by law'. "Offence" has to be read and understood in the context as it has been prescribed under the provisions of sub-section 40, 41 and 42 IPC, 1860 which cover the offences punishable under IPC, 1860 or under special or local law or as defined under section 2(n) Cr PC, 1973 or section 3(38) of the General Clauses Act 1897. There is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of 'adultery' as defined under section 497 IPC, 1860.<sup>285</sup> In *Joseph Shine v UOI*<sup>286</sup>. a five judge Constitution bench of the Supreme Court struck down section 497 of the Indian Penal Code as manifestly discriminatory and arbitrary. Section 2(n) of Cr PC, 1973 defines offence as any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be under section 20 of the Cattle Trespass Act 1871 (1 of 1871). Thus, the definition of 'offence' under section 2(n), Cr PC, 1973, is wider enough to enable the police to investigate into offences under other enactments also, apart from those under the IPC, 1860.<sup>287</sup> An offence seldom consists of a single act. It is usually composed of several elements and, as a rule; a whole series of acts must be proved before it can be established.<sup>288</sup> There is a basic difference between the offences under the Penal Code and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, *mens rea* is not an essential ingredient; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished. But for framing a charge for an offence under the Penal Code, the

traditional rule of existence of *mens rea* is to be followed.<sup>289</sup> In the absence of a definition in a special act, the term 'offence' should be understood in the context of [section 40 of the Indian Penal Code](#) as an act that is criminally punishable and [section 3\(38\) of the General Clauses Act](#) as an act made punishable by any law and the essential ingredient is that it should be a [criminal act](#) as understood.<sup>290</sup> In *Naz Foundation v NCT Delhi*,<sup>291</sup> [section 377 of IPC, 1860](#) in so far it criminalised consensual sexual acts of adults in private, was held violative of [Article 21](#), [Article 14](#) and [Article 15 of the Constitution](#) by the Delhi High Court.<sup>292</sup> This judgement of the Delhi High Court was later overruled by the Supreme Court on 12 December 2013 in *Suresh Kumar Koushal* case.<sup>293</sup> Finally in *Navtej Singh Johar v UOI*,<sup>294</sup> a five-judge bench of the Supreme Court declared [section 377 of the Indian Penal Code](#) unconstitutional, insofar as it criminalises consensual sexual acts of adults of same sex in private. However, other parts of Section 377 relating to sex with minors and bestiality remain in force.

#### **[s 40.1] Offences under Special law.—**

A plain reading of this provision of law makes it crystal clear that the effect of clause (2) of section 40 is to make everything punishable under the special law as an offence within the meaning of the [Indian Penal Code](#). The offences under the [NDPS Act](#) thus, become offences under the [Indian Penal Code](#) as the term "offence" in certain cases is extended to the things made punishable under any special or local law.<sup>295</sup>

#### **[s 40.2] Article 20(1).—**

The word 'offence' under [Article 20](#) sub-clause (1) of the [Constitution](#) has not been defined under the [Constitution](#). But [Article 367 of the Constitution](#) states that unless the context otherwise requires, the [General Clauses Act 1897](#) shall apply for the interpretation of the [Constitution](#) as it does for the interpretation of an Act.<sup>296</sup>

#### **[s 40.3] Offence and breach of duty distinguished.—**

Offence generally implies infringement of public, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the [Evidence Act](#). Converse is the case of departmental enquiry. The enquiry in departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law.<sup>297</sup>

#### **[s 40.4] Suicide.—**

Suicide by itself is not an offence under either English or Indian Criminal Law, though at one time it was a felony in England.<sup>298</sup>

#### **[s 40.5] Euthanasia.—**

In India active euthanasia is illegal and a crime under section 302 or at least [section 304 IPC, 1860](#). Physician assisted suicide is a crime under [section 306 IPC, 1860](#) (abetment to suicide).<sup>299</sup>. But in *Aruna Ramchandra Shanbaug v UOI*,<sup>300</sup> the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court. In March 2018, a five-judge [Constitution Bench](#) of the Supreme Court gave legal sanction to passive euthanasia, permitting 'living will' by patients.<sup>301</sup>

#### **[s 40.6] Sections 40 and 141 IPC, 1860.—**

Section 40 specifically mentions as to how the term 'offence' will have to be construed. In the main clause of the said section it has been clearly set out that the word "offence" denotes a thing made punishable by this Code except the chapters and sections mentioned in clauses 2 and 3 of the said section. Therefore, going by the main clause of section 40, the word "offence" since denotes the thing made punishable under the Code, 'other offence' mentioned in section 141 'third', can only denote to offences, which are punishable under any of the provisions of the Code. Therefore, by applying the main clause of section 40, it can be straight away held that all offences referred to in any of the provisions of the Code for which the punishment is provided for would automatically fall within the expression "other offence", which has been used in section 141 'third'. Therefore, a conspectus reading of section 40 makes the position abundantly clear that for all offences punishable under the [Indian Penal Code](#), the main clause of section 40 would straight away apply in which event the expression "other offence" used in section 141 'third', will have to be construed as any offence for which punishment is prescribed under the Code. To put it differently, whosoever is proceeded against for any offence punishable under the provisions of the [Indian Penal Code](#), [section 40](#) sub-clause 1 would straight away apply for the purpose of construing what the offence is and when it comes to the question of offence under any other special or local law, the aid of sub-clause 2 and 3 will have to be applied for the purpose of construing the offence for which the accused is proceeded against. Therefore, having regard to sub-clause 1 of section 40 of the Code read along with section 141 'third', the argument of learned senior counsel for the Appellants will have to be rejected. Only such a construction would be in tune with the purport and intent of the law makers while defining an unlawful assembly for commission of an offence with a common object, as specified under section 141 of the Code.<sup>302</sup>

<sup>279</sup>. Subs. by Act 27 of 1870, section 1, for section 40.

<sup>280</sup>. Subs. by Act 8 of 1930, section 2 and Sch I, for "Chapter".

<sup>281</sup>. Ins. by Act 8 of 1913, section 2.

<sup>282</sup>. Ins. by Act 8 of 1882, section 1.

<sup>283</sup>. Ins. by Act 10 of 1886, section 21(1).

<sup>284</sup>. Ins. by Act 10 of 2009, section 51(b) (w.e.f. 27-10-2009).

<sup>285</sup>. *S Khushboo v Kanniammal*, (2010) 5 SCC 600 [LNIND 2010 SC 411] : AIR 2010 SC 3196 [LNIND 2010 SC 411] : (2010) 2 SCC (Cr) 1299; *VijaySingh v State of UP*, (2012) 5 SCC 242 [LNIND 2012 SC 1216] : AIR 2012 SC 2840 [LNINDORD 2012 SC 356] .



286. *Joseph Shine v UOI*, decided by Hon'ble Supreme Court of India.
287. *Dharma Reddy v State*, 1990 Cr LJ 1476 . (AP); *Director of Enforcement v MCT M Corporation PvtLtd*, AIR 1996 SC 1100 [LNIND 1996 SC 63] : (1996) 2 SCC 471 [LNIND 1996 SC 63] .
288. *Shreekantiah Ramayya Munipalli v State of Bombay*, AIR 1955 SC 287 [LNIND 1954 SC 180] : 1955 (1) SCR 1177 [LNIND 1954 SC 180] : 1955Cr LJ 857.
289. *Radhey Shyam Khemka v State of Bihar*, (1993) 3 SCC 54 [LNIND 1993 SC 276] : 1993 Cr LJ 2888 .
290. *Standard Chartered Bank v Directorate of Enforcement*, AIR 2006 SC 1301 [LNIND 2006 SC 145] : (2006) 4 SCC 278 [LNIND 2006 SC 145] .
291. *Naz Foundation v NCT Delhi*, 2010 Cr LJ 94 (Del).
292. *Naz Foundation v NCT Delhi*, 2010 Cr LJ 94 (Del).
293. *Suresh Kumar Koushal v Naz Foundation*, (2014) 1 SCC 1 [LNIND 2013 SC 1059] .
294. *Navtej Singh Johar v UOI*, 2018 (10) Scale 386 [LNIND 2018 SC 451] .
295. *Daulat Raghunath Derale v State of Maharashtra*, 1991 Cr LJ 817 (Bom).
296. *SEBI v Ajay Agarwal*, AIR 2010 SC 3466 [LNIND 2010 SC 203] : (2010) 3 SCC 765 [LNIND 2010 SC 203] .
297. *Depot Manager, AP State Road Transport Corporation v Mohd. Yousuf Miya*, AIR 1997 SC 2232 [LNINDORD 1996 SC 4] : (1997) 2 SCC 699 [LNINDORD 1996 SC 4] .
298. *Gangula Mohan Reddy v State of AP*, AIR 2010 SC 327 [LNIND 2010 SC 3] : (2010) 1 SCC 327 ; *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] : AIR 1996 SC 946 [LNIND 1996 SC 653] .
299. The Constitution Bench in *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] held that both euthanasia and assisted suicide are not lawful in India, overruling the two Judge Bench decision of the Supreme Court in *P Rathinam v UOI*, AIR 1994 SC 1844 [LNIND 1994 SC 1533] : 1994 (3) SCC 394 [LNIND 1994 SC 1533] . The Court held that the right to life under Article 21 of the Constitution does not include the right to die.
300. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .
301. *Common Cause (A Registered Society) v UOI*, (2018) 5 SCC 1 [LNIND 2018 SC 87] .
302. *Manga @ Man Singh v State of Uttarakhand*, (2013) 7 SCC 629 [LNIND 2013 SC 529] : 2013 Cr LJ 3332 (SC).

# THE INDIAN PENAL CODE

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**279.** [[s 40] "Offence".

Except in the **280.** [Chapters] and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, **281.** [Chapter VA] and in the following sections, namely, sections **282.** [64, 65, 66, **283.** [67], 71], 109, 110, 112, 114, 115, 116, 117, **284.** [118, 119, 120] 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

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

### COMMENT—

"Offence" means 'an act or instance of offending'; 'commit an illegal act' and illegal means, 'contrary to or forbidden by law'. "Offence" has to be read and understood in the context as it has been prescribed under the provisions of sub-section 40, 41 and 42 IPC, 1860 which cover the offences punishable under IPC, 1860 or under special or local law or as defined under section 2(n) Cr PC, 1973 or section 3(38) of the General Clauses Act 1897. There is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of 'adultery' as defined under section 497 IPC, 1860.<sup>285</sup> In *Joseph Shine v UOI*<sup>286</sup>. a five judge Constitution bench of the Supreme Court struck down section 497 of the Indian Penal Code as manifestly discriminatory and arbitrary. Section 2(n) of Cr PC, 1973 defines offence as any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be under section 20 of the Cattle Trespass Act 1871 (1 of 1871). Thus, the definition of 'offence' under section 2(n), Cr PC, 1973, is wider enough to enable the police to investigate into offences under other enactments also, apart from those under the IPC, 1860.<sup>287</sup> An offence seldom consists of a single act. It is usually composed of several elements and, as a rule; a whole series of acts must be proved before it can be established.<sup>288</sup> There is a basic difference between the offences under the Penal Code and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, *mens rea* is not an essential ingredient; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished. But for framing a charge for an offence under the Penal Code, the

traditional rule of existence of *mens rea* is to be followed.<sup>289</sup> In the absence of a definition in a special act, the term 'offence' should be understood in the context of [section 40 of the Indian Penal Code](#) as an act that is criminally punishable and [section 3\(38\) of the General Clauses Act](#) as an act made punishable by any law and the essential ingredient is that it should be a [criminal act](#) as understood.<sup>290</sup> In *Naz Foundation v NCT Delhi*,<sup>291</sup> [section 377 of IPC, 1860](#) in so far it criminalised consensual sexual acts of adults in private, was held violative of [Article 21](#), [Article 14](#) and [Article 15 of the Constitution](#) by the Delhi High Court.<sup>292</sup> This judgement of the Delhi High Court was later overruled by the Supreme Court on 12 December 2013 in *Suresh Kumar Koushal* case.<sup>293</sup> Finally in *Navtej Singh Johar v UOI*,<sup>294</sup> a five-judge bench of the Supreme Court declared [section 377 of the Indian Penal Code](#) unconstitutional, insofar as it criminalises consensual sexual acts of adults of same sex in private. However, other parts of Section 377 relating to sex with minors and bestiality remain in force.

#### [s 40.1] **Offences under Special law.—**

A plain reading of this provision of law makes it crystal clear that the effect of clause (2) of section 40 is to make everything punishable under the special law as an offence within the meaning of the [Indian Penal Code](#). The offences under the [NDPS Act](#) thus, become offences under the [Indian Penal Code](#) as the term "offence" in certain cases is extended to the things made punishable under any special or local law.<sup>295</sup>

#### [s 40.2] **Article 20(1).—**

The word 'offence' under [Article 20](#) sub-clause (1) of the [Constitution](#) has not been defined under the [Constitution](#). But [Article 367 of the Constitution](#) states that unless the context otherwise requires, the [General Clauses Act 1897](#) shall apply for the interpretation of the [Constitution](#) as it does for the interpretation of an Act.<sup>296</sup>

#### [s 40.3] **Offence and breach of duty distinguished.—**

Offence generally implies infringement of public, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the [Evidence Act](#). Converse is the case of departmental enquiry. The enquiry in departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law.<sup>297</sup>

#### [s 40.4] **Suicide.—**

Suicide by itself is not an offence under either English or Indian Criminal Law, though at one time it was a felony in England.<sup>298</sup>

#### [s 40.5] **Euthanasia.—**

In India active euthanasia is illegal and a crime under section 302 or at least [section 304 IPC, 1860](#). Physician assisted suicide is a crime under [section 306 IPC, 1860](#) (abetment to suicide).<sup>299</sup> But in *Aruna Ramchandra Shanbaug v UOI*,<sup>300</sup> the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court. In March 2018, a five-judge [Constitution](#) Bench of the Supreme Court gave legal sanction to passive euthanasia, permitting 'living will' by patients.<sup>301</sup>

#### [s 40.6] **Sections 40 and 141 IPC, 1860.—**

Section 40 specifically mentions as to how the term 'offence' will have to be construed. In the main clause of the said section it has been clearly set out that the word "offence" denotes a thing made punishable by this Code except the chapters and sections mentioned in clauses 2 and 3 of the said section. Therefore, going by the main clause of section 40, the word "offence" since denotes the thing made punishable under the Code, 'other offence' mentioned in section 141 'third', can only denote to offences, which are punishable under any of the provisions of the Code. Therefore, by applying the main clause of section 40, it can be straight away held that all offences referred to in any of the provisions of the Code for which the punishment is provided for would automatically fall within the expression "other offence", which has been used in section 141 'third'. Therefore, a conspectus reading of section 40 makes the position abundantly clear that for all offences punishable under the [Indian Penal Code](#), the main clause of section 40 would straight away apply in which event the expression "other offence" used in section 141 'third', will have to be construed as any offence for which punishment is prescribed under the Code. To put it differently, whosoever is proceeded against for any offence punishable under the provisions of the [Indian Penal Code](#), [section 40](#) sub-clause 1 would straight away apply for the purpose of construing what the offence is and when it comes to the question of offence under any other special or local law, the aid of sub-clause 2 and 3 will have to be applied for the purpose of construing the offence for which the accused is proceeded against. Therefore, having regard to sub-clause 1 of section 40 of the Code read along with section 141 'third', the argument of learned senior counsel for the Appellants will have to be rejected. Only such a construction would be in tune with the purport and intent of the law makers while defining an unlawful assembly for commission of an offence with a common object, as specified under section 141 of the Code.<sup>302</sup>.

279. Subs. by Act 27 of 1870, section 1, for section 40.

280. Subs. by Act 8 of 1930, section 2 and Sch I, for "Chapter".

281. Ins. by Act 8 of 1913, section 2.

282. Ins. by Act 8 of 1882, section 1.

283. Ins. by Act 10 of 1886, section 21(1).

284. Ins. by Act 10 of 2009, section 51(b) (w.e.f. 27-10-2009).

285. *S Khushboo v Kanniammal*, (2010) 5 SCC 600 [LNIND 2010 SC 411] : AIR 2010 SC 3196 [LNIND 2010 SC 411] : (2010) 2 SCC (Cr) 1299; *VijaySingh v State of UP*, (2012) 5 SCC 242 [LNIND 2012 SC 1216] : AIR 2012 SC 2840 [LNINDORD 2012 SC 356] .

286. *Joseph Shine v UOI*, decided by Hon'ble Supreme Court of India.

287. *Dharma Reddy v State*, 1990 Cr LJ 1476 . (AP); *Director of Enforcement v MCT M Corporation PvtLtd*, AIR 1996 SC 1100 [LNIND 1996 SC 63] : (1996) 2 SCC 471 [LNIND 1996 SC 63] .

288. *Shreekantiah Ramayya Munipalli v State of Bombay*, AIR 1955 SC 287 [LNIND 1954 SC 180] : 1955 (1) SCR 1177 [LNIND 1954 SC 180] : 1955Cr LJ 857.

289. *Radhey Shyam Khemka v State of Bihar*, (1993) 3 SCC 54 [LNIND 1993 SC 276] : 1993 Cr LJ 2888 .

290. *Standard Chartered Bank v Directorate of Enforcement*, AIR 2006 SC 1301 [LNIND 2006 SC 145] : (2006) 4 SCC 278 [LNIND 2006 SC 145] .

291. *Naz Foundation v NCT Delhi*, 2010 Cr LJ 94 (Del).

292. *Naz Foundation v NCT Delhi*, 2010 Cr LJ 94 (Del).

293. *Suresh Kumar Koushal v Naz Foundation*, (2014) 1 SCC 1 [LNIND 2013 SC 1059].
294. *Navtej Singh Johar v UOI*, 2018 (10) Scale 386 [LNIND 2018 SC 451].
295. *Daulat Raghunath Derale v State of Maharashtra*, 1991 Cr LJ 817 (Bom).
296. *SEBI v Ajay Agarwal*, AIR 2010 SC 3466 [LNIND 2010 SC 203] : (2010) 3 SCC 765 [LNIND 2010 SC 203].
297. *Depot Manager, AP State Road Transport Corporation v Mohd. Yousuf Miya*, AIR 1997 SC 2232 [LNINDORD 1996 SC 4] : (1997) 2 SCC 699 [LNINDORD 1996 SC 4].
298. *Gangula Mohan Reddy v State of AP*, AIR 2010 SC 327 [LNIND 2010 SC 3] : (2010) 1 SCC 327 ; *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] : AIR 1996 SC 946 [LNIND 1996 SC 653].
299. The Constitution Bench in *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] held that both euthanasia and assisted suicide are not lawful in India, overruling the two Judge Bench decision of the Supreme Court in *P Rathinam v UOI*, AIR 1994 SC 1844 [LNIND 1994 SC 1533] : 1994 (3) SCC 394 [LNIND 1994 SC 1533]. The Court held that the right to life under Article 21 of the Constitution does not include the right to die.
300. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265].
301. *Common Cause (A Registered Society) v UOI*, (2018) 5 SCC 1 [LNIND 2018 SC 87].
302. *Manga @ Man Singh v State of Uttarakhand*, (2013) 7 SCC 629 [LNIND 2013 SC 529] : 2013 Cr LJ 3332 (SC).

# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

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**[s 41] "Special law".**

**A "special law" is a law applicable to a particular subject.**

### COMMENT—

Laws dealing with special subjects are called special laws. The special laws contemplated in section 40 and this section are only laws, such as the Excise, Opium, Cattle Trespass, Gambling and Railway Acts, creating fresh offences, that is, laws making punishable certain things which are not already punishable under the [Penal Code](#). [Negotiable Instruments Act](#) being a special statute has overriding effect over the provisions of [Cr PC, 1973](#).<sup>303</sup> Since nothing in [Factories Act](#) (Special Law) which prescribes punishment for rash and negligent act of occupier or manager of factory which resulted into death of any worker or any other person, the general Law, i.e., [IPC, 1860](#) will apply.<sup>304</sup>

<sup>303</sup>. *Rajan K Moorthy v M Vijayan*, 2008 Cr LJ 1254 (Mad).

<sup>304</sup>. *Ejas Ahmed v State of Jharkhand*, 2010 Cr LJ 1953 (Jha) also see the comments under [Section 5 of IPC, 1860](#).

## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

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**[s 42] "Local law".**

A "local law" is a law applicable only to a particular part of <sup>305.</sup>~~306.~~<sup>307.</sup>[India].

#### COMMENT—

Laws applicable to a particular locality only are termed local laws, e.g., Port Trust Acts.

<sup>305.</sup> Subs. by the A.O. 1948, for "British India".

<sup>306.</sup> The words "the territories comprised in" omitted by Act 48 of 1952, section 3 and Sch II (w.e.f. 2-8-1952).

<sup>307.</sup> Subs. by Act 3 of 1951, section 3 and Sch, for "the States" (w.e.f. 3-4-1951). Earlier the words "the States" were substituted by the A.O. 1950, for "the Provinces".

## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

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#### [s 43] "Illegal." "Legally bound to do."

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

#### COMMENT—

The word 'illegal' in the section has been given a very wide meaning. It consists of three ingredients: (1) everything which is an offence; (2) everything which is prohibited by law and (3) everything which furnishes ground for civil action.<sup>308</sup> The words "legally bound" do not necessarily only mean the law made by the legislature or statutory law. [Section 43 IPC, 1860](#) contains a definition of a person being legally bound to do, that is, a person is stated to be legally bound to do whatever it is illegal in him to omit.<sup>309</sup>

The expression "legally bound to do" carries very wide meaning where any ground for civil action can be founded on the basis of any act or omission on the part of a person, his act may be held to be illegal or it may be held that he was legally bound to do an act which he had omitted to do. If a person breaches a departmental order, he may be held guilty as he was legally bound to act in terms of the order.<sup>310</sup>

Sexual contact between two persons with consent but out of marriage does not amount to an illegal act.<sup>311</sup>

#### [s 43.1] "Ground for civil action."—

In order to constitute a ground for a civil action there must be the right in a party which can be enforced. It may be breach of a contract or a claim for damages or any such similar right accruing under the law. There is no law which debars the Chief Minister from participating in a sale conducted by any Government Department or any of the corporation or any public sector undertaking affording a cause for civil action particularly when no fraud or illegal gain is involved. There was nothing in the charge to indicate, nor did the prosecution take a specific stand that the purchase of the property of the Government company furnished a ground for a civil action. The nature of the civil action should not be left to a guess work. The accused could not be expected to meet such a case at any subsequent stage.<sup>312</sup>

#### [s 43.2] "Illegal" and "unlawful".—



The expression "illegal" and "unlawful" are synonymous and convey the same idea in language - ordinary and legal. But when a statute employs an expression with intention of conveying a special meaning and with the said purpose defines the expression in such statute as the expression "illegal" is defined in [section 43 of the IPC, 1860](#), such meaning is to be ascertained for that expression specially and specifically for such a statute and for the purpose of such statute. Merely because two expressions mean the same ordinarily in language and law, both cannot be held to have the same meaning when one of them is specially and specifically defined and explained in one statute. So reckoned, it cannot be accepted that the definition of the expression "illegal" in [section 43 of the IPC, 1860](#) must straightaway be mechanically imported into [section 98 of the Cr PC, 1973](#) when we consider the ambit and play of the expression "unlawful" in [section 98 of the Cr PC, 1973](#).<sup>313</sup>.

308. *R Venkatakrishnan v Central Bureau of Investigation*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] : AIR 2010 SC 1812 [LNIND 2009 SC 1653] : (2010) 1 SCC (Cr) 164.

309. *R Sai Bharathi v J Jayalalitha*, AIR 2004 SC 692 [LNIND 2003 SC 1023] : (2004) 2 SCC 9 [LNIND 2003 SC 1023] : JT 2003 (9) SC 343 [LNIND 2003 SC 1023] .

310. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646 : AIR 2009 SC 480 [LNIND 2008 SC 2235] .

311. *S Khushboo v Kanniammal*, (2010) 5 SCC 600 [LNIND 2010 SC 411] : 2010 Cr LJ 2828 : AIR 2010 SC 3196 [LNIND 2010 SC 411] : (2010) 2 SCC(Cr) 1299; *Mailsami v State*, (1994) 2 Cr LJ 2238 (Mad).

312. *R Sai Bharathi v J Jayalalitha*, (2004) 2 SCC 9 [LNIND 2003 SC 1023] : AIR 2004 SC 692 [LNIND 2003 SC 1023] : 2004 Cr LJ 286 .

313. *Zeenath v Khadeeja*, 2007 Cr LJ 600 .

# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

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### [s 44] "Injury".

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

### COMMENT—

'Injury' is an act contrary to law.<sup>314</sup> It will include any tortious act.

A Magistrate imposed a fine in addition to a sentence of imprisonment on a conviction for the offence of causing death by a rash and negligent act and gave compensation to the widow of the deceased out of the fine imposed. It was held that compensation could not be given to her for she did not suffer any injury as here defined.<sup>315</sup> It may, however, be argued that nothing could be more harmful to the mind of a woman than the death of her husband, and the section speaks of harm to the mind as 'injury'. The former Chief Court of the Punjab held that loss of her husband's support affected a widow prejudicially in a legal right, and was therefore, an injury as defined in the [Penal Code](#).<sup>316</sup> The context of section 125(1)(c) does not require reference to the definition of 'injury' rendered in [section 44 IPC, 1860](#). The words "physical or mental abnormality" will prima facie take in congenital defects while 'injury' leading to inability to maintain itself can have reference, be at any point of time even after the attaining of majority. It may even be possible to take in all cases of physical or mental abnormality which need not necessarily be congenital.<sup>317</sup> As defined in [section 44 IPC, 1860](#), "injury" denotes any harm whatever illegally caused to any person in body, mind, reputation or property. Now, if a person wants to save himself from injury, such as conviction in a criminal case, it does not mean that he caused injury to another.<sup>318</sup> Harm caused to a reputation has been held to constitute an injury, within the purview of section 44.<sup>319</sup>

<sup>314</sup>. *Svami Nayudu v Subramania Mudali*, (1864) 2 MHC 158 .

<sup>315</sup>. *Yalla Gangulu v Mamidi Dali*, (1897) 21 Mad 74 (FB).

<sup>316</sup>. *Saif Ali v State*, (1989) PR No. 17 of 1898 (FB).

<sup>317</sup>. *TPSH Selva Saroja v TPSH Sasinathana*, 1989 Cr LJ 2032 (Mad).

<sup>318</sup>. *Prayag Das v State*, 1963 (1) Cr LJ 279 .

<sup>319</sup>. *Subramanian Swamy v UOI*, 2016 Cr LJ 3214 .



# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

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### [s 45] "Life".

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

### COMMENT—

Section 45 of the IPC, 1860 defines life as denoting the life of a human being, unless the contrary appears from the context. Therefore, when a punishment for murder is awarded under section 302 of the IPC, 1860, it might be imprisonment for life, where life denotes the life of the convict or death. The term of sentence spanning the life of the convict, can be curtailed by the appropriate Government for good and valid reasons in exercise of its powers under section 432 of the Cr PC, 1973.<sup>320</sup> Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years or even 30 years, rather it always means the whole natural life.<sup>321</sup> The expression 'imprisonment for life' must be read in the context of section 45, IPC, 1860.<sup>322</sup> The Court may feel that the punishment more just and proper, in the facts of the case, would be imprisonment for life with life given its normal meaning and as defined in section 45 of the Indian Penal Code.<sup>323</sup>

### [s 45.1] Imprisonment for the remainder of Accused's natural life.—

As per the Criminal Law (Amendment) Act 2013<sup>324</sup>, the punishment for rape (section 376) is rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, *which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine*. In sub-sections 370, 376(A), 376(D), 376(E) also it is specifically mentioned that 'Life' shall mean imprisonment for the remainder of that person's natural life. Parliament has enacted the Criminal Law (Amendment) Act, 2018 which provides for enhanced punishment in rape cases. The Amendment Act provides stringent punishment for perpetrators of rape particularly of girls below 12 years. Gang rape of a girl under 12 years of age is now made punishable with a jail term for remainder of guilty person's natural life or death.<sup>325</sup>

The right to claim remission, commutation, reprieve, etc., as provided under Article 72 or Article 161 of the Constitution will always be available, being guaranteed Constitutional remedies, which are untouchable by the Court.<sup>326</sup>

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320. *Sangeet v State Of Haryana*, (2013) 2 SCC 452 [LNIND 2012 SC 719] : 2013 Cr LJ 425 .
321. *Mohinder Singh v State of Punjab*, (2013) 3 SCC 294 [LNIND 2013 SC 71] : 2013 Cr LJ 1559 (SC); *Life Convict Bengal @Khoka @Prasanta Sen v BK Srivastava*, 2013 Cr LJ 1446 (SC) : AIR 2013 SC 1163 , JT 2013 (3) SC20 : 2013 (2) Scale 467 : (2013) 3 SCC 425 [LNINDORD 2013 SC 6760] ; *Zahid Hussein v State of WB*, AIR 2001 SC 1312 [LNIND 2001 SC 692] : (2001)3 SCC 750 [LNIND 2001 SC 692] ; *Munna v UOI*, AIR 2005 SC 3440 [LNIND 2005 SC 701] : (2005) 7 SCC 417 [LNIND 2005 SC 701] - A plea for premature release after 21 years of imprisonment rejected.
322. *Ashok Kumar v UOI*, (1991) 3 SCC 498 [LNIND 1991 SC 288] : 1991 SCC (Cr) 845 (3 Judge Bench); *Gopal Vinayak Godse v State of Maharashtra*, 1961 (3) SCR 440 [LNIND 1961 SC 11] : AIR 1961 SC (Const. Bench) : But a two judge bench in *Ramraj v State of Chhattisgarh*, (2010) 1 SCC 573 [LNIND 2009 SC 2093] : AIR 2010 SC 420 [LNIND 2009 SC 2093] held that life imprisonment is not to be interpreted as being imprisonment for the whole of a convict's natural life within the scope of Section 45.
323. *Swamy Shraddananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 CrLJ 3911 .
324. Act No. 13 of 2013 w.e.f 2-4-2013.
325. Refer Chapter XVI infra.
326. *UOI v V Sriharan*, (2016) 7 SCC 1 [LNIND 2015 SC 677] : 2016 Cr LJ 845 .

## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

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#### **[s 46] "Death."**

**The word "death" denotes the death of a human being, unless the contrary appears from the context.**

#### **COMMENT—**

A present day understanding of death as the irreversible end of life must imply total brain failure, such that neither breathing, nor circulation is possible any more.<sup>327</sup>

<sup>327</sup>. *Aruna ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265].

## **THE INDIAN PENAL CODE**

### **CHAPTER II GENERAL EXPLANATIONS**

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**[s 47] "Animal".**

**The word "animal" denotes any living creature, other than a human being.**

## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

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#### [s 48] "Vessel".

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

#### COMMENT—

The word "vessel" has been defined in [section 48 of the Indian Penal Code](#) to denote anything made for the conveyance by water of human beings or of property. The train compartment is not a building, tent or vessel used as a human building neither a place for worship nor a place used for the custody of property.<sup>328.</sup>

<sup>328.</sup> *P Balaraman v The State*, [1991 Cr LJ 166](#) (Mad).



## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

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**[s 49] "Year." "Month."**

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

#### COMMENT—

A person sentenced to imprisonment for the space of one calendar month is entitled to be discharged on the day in the succeeding month immediately preceding the day corresponding to that from which his sentence takes effect.<sup>329</sup> The day on which a sentence is passed on a prisoner is calculated as a whole day.

<sup>329</sup>. *Migotti v Colvill*, (1879) 4 CPD 233 .

# **THE INDIAN PENAL CODE**

## **CHAPTER II GENERAL EXPLANATIONS**

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**[s 50] "Section."**

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

## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

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#### [s 51] "Oath."

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

#### COMMENT—

An oath is a religious asseveration, by which a person renounces the mercy, and imprecates the vengeance of heaven, if he does not speak the truth.<sup>330</sup> The form of oath differs according to the religious persuasion of the swearer. A Christian swears on the Bible, a Jew upon the Pentateuch, a Mahomedan upon the Koran, and a Hindu on the Gita. A Hindu or a Mahomedan has the statutory right to be affirmed instead of taking an oath.

<sup>330</sup>. *White v White*, (1786) 1 Leach 430; *U Vali Basha v Mohd. Bashu*, (2008) Cr LJ 1011 (Karn).

## THE INDIAN PENAL CODE

### CHAPTER II GENERAL EXPLANATIONS

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#### [s 52] "Good faith".

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

#### COMMENT—

The expression "good faith" in criminal jurisprudence has a definite connotation. Its import is totally different from saying that the person concerned has honestly believed the truth of what is said. See the language of the law in this regard. It starts in the negative tone excluding all except what is allowed to be within its amplitude. Insistence sought to be achieved through the commencing words of the definition "nothing is said to be done or believed in good faith" is that the solitary item included within the purview of the expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the care sought to be exercised. In Black's Law Dictionary, "reasonable care" is explained as "such a degree of care, precaution, or diligence as may fairly and properly be expected or required, having regard to the nature of the action, or of the subject matter and the circumstances surrounding the transaction. It is such care as an ordinary prudent person would exercise under the conditions existing at the time he is called upon to act".<sup>331</sup> The element of honesty which is introduced by the definition prescribed by the [General Clauses Act](#) is not introduced by the definition of the [Penal Code](#); and we are governed by the definition prescribed by section 52 of that Code.<sup>332</sup> Nothing is an offence which is done by any person who is justified by law, or who by reason of mistake of fact and not by reason of mistake of law, in good faith, believes himself to be justified by law, in doing it.<sup>333</sup>

Some parents made poisonous propaganda against an educational institution. The court said that this could not have been done by them in good faith. Hence, the exception to section 499 was not attracted. The complaint of defamation against them could not be quashed.<sup>334</sup>

#### [s 52.1] Burden of proof.—

The burden is on the accused to prove this fact. Whether a person took due care and attention before he made the imputation is a matter most often within the personal knowledge of that person himself. The accused must prove that he made due enquiries before he published the imputation. It is not enough to say that he made a formal enquiry in a slipshod manner. The words 'due care and attention' imply that the accused must have made the enquiry in a reasonable manner with all circumspection. It is true that the accused is not bound to prove that the enquiry made by him was fool-proof or without the possibility of any error or chance of mistake. However, the accused must show that he got the information from proper source and he had reasonable grounds to

believe the truth of the statement he made. The accused must prove by preponderance of probability that there was good faith on his part. The accused also should show that there was no malice on his part, that is to say, that there was no ill-will or spite towards the person against whom he made the imputation. What must ultimately be decided is the honesty of the accused in publishing the words complained of. So also the accused are not entitled to exception 9 of [section 499, IPC, 1860](#) merely on the reason that the publications were not made in good faith.<sup>335.</sup>

Good faith is a question of fact to be considered and decided on the facts of each case. [Section 52 of the Penal Code](#) emphasizes due care and attention in relation to the good faith. In the [General Clauses Act](#) emphasis is laid on honesty.<sup>336.</sup> The meaning of the expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the care sought to be exercised. So, before a person proposes to make an imputation, he must first make an enquiry into the factum of the imputation which he proposes to make. It is not enough that he does just a make believe show for an enquiry. The enquiry expected of him is of such a depth as a reasonable and prudent man would make with the genuine intention in knowing the real truth of the imputation. If he does not do so he cannot claim that what he did was bona fide i.e. done in good faith. Thus, a contemner, if he is to establish "good faith" has to say that he conducted a reasonable and proper enquiry before making an imputation.<sup>337.</sup> The question of good faith must be considered with reference to the position of the accused and the circumstances under which he acted. 'Good faith' requires not logical infallibility but due care and attention.<sup>338.</sup>

<sup>331.</sup> *Re: SK Sundaram*, AIR 2001 SC 2374 [LNIND 2000 KER 575] : (2001) 2 SCC 171 [LNIND 2000 SC 1889] .

<sup>332.</sup> *Harbhajan Singh v State of Punjab*, AIR 1966 SC 97 [LNIND 1965 SC 65] : 1966 Cr LJ 82 .

<sup>333.</sup> [Section 79 IPC, 1860.](#)

<sup>334.</sup> *Dogar Singh v Shobha Gupta*, 1998 Cr LJ 1541 (P&H).

<sup>335.</sup> *Damodra Shenoji v Public Prosecutor, Ernakulam*, 1989 Cr LJ 2398 at 2400 (Ker). A declaration in newspapers 2½ months; after selling land by registered sale deed that the sale was under compulsion was held to be not made in good faith. The defence of exception 9 to section 499 (defamation) was not available. *P Swaminathan v Lakshmanan*, 1992 Cr LJ 990 (Mad).

<sup>336.</sup> *R K Mohammed Ubaidullah v Hajee C Abdul Wahab*, AIR 2001 SC 1658 [LNIND 2000 SC 924] : (2000) 6 SCC 402 [LNIND 2000 SC 924] See *Assistant Commissioner Anti Evasion Commercial Taxes Bharatpur v Amtek India Ltd*, (2007) 11 SCC 407 [LNIND 2007 SC 210] : JT 2007 (4) SC 297 [LNIND 2007 SC 210] for definition of "good faith" in various enactments.

<sup>337.</sup> *In the matter of R Karuppan*, 2004 Cr LJ 4284 (Mad)(FB).

<sup>338.</sup> *State of Orissa v Bhagaban Barik*, AIR 1987 SC 1265 [LNIND 1987 SC 366] : (1987) 2 SCC 498 [LNIND 1987 SC 366] ; *Chaman Lal v State of Punjab*, AIR 1970 SC 1372 [LNIND 1970 SC 106] : 1970 Cr LJ 1266 .

# THE INDIAN PENAL CODE

## CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

### 339. [[s 52A] "Harbour."

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

### COMMENT—

There are two hurdles in the way to adopt the [IPC, 1860](#) definition of the word "harbour" as for TADA. First is that TADA permits reliance to be made only on the definitions included in the Procedure Code and not on the definitions in the [IPC, 1860](#). Second is, the word "harbour" as such has not been used in the Procedure Code and hence, the question of side-stepping to [Penal Code](#) definitions does not arise. [Sections 136](#) and [312](#) of [IPC, 1860](#) are the provisions incorporating two of the offences involving "harbour" in which the common words used are "whoever knowing or having reason to believe. Another offence in the [Penal Code](#) involving "harbour" is section 157 wherein also the words "whoever harbours knowing that such person etc." are available. It was contended that *mens rea* is explicitly indicated in the said provisions in the [Penal Code](#) whereas no such indication is made in section 3(4) of TADA and therefore, the element of *mens rea* must be deemed to have been excluded from the scope of section 3(4) of TADA. The word "harbours" used in TADA must be understood in its ordinary meaning as for penal provisions.<sup>340.</sup>

339. Ins. by Act 8 of 1942, section 2 (w.e.f. 14-2-1942).

340. *Kalp Nath Rai v State*, [AIR 1998 SC 201](#) [[LNIND 1997 SC 1396](#)]: (1997) 8 SCC 732 .

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# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

[s 53] "Punishments."

The punishments to which offenders are liable under the provisions of this Code are—

First.—Death;

<sup>1</sup>. [Secondly.—Imprisonment for life;]

<sup>2</sup>. [\*\*\*]

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

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly.—Forfeiture of property;

Sixthly.—Fine.

### COMMENT—

The object of punishment in the scheme of modern social defence is correction of the wrongdoer and not wrecking gratuitous punitive vengeance on the criminal. Some attempts have been made to modernise our penal system through piecemeal legislation at best for the first offenders, the children and the juvenile delinquents example the [Probation of Offenders Act 1958](#), the [Juvenile Justice \(Care and Protection of Children\) Act 2000](#), [Juvenile Justice \(Care and Protection of Children\) Act, 2015](#) etc. In the [Indian Penal Code](#), there is no scope for individualising the punishment; rather these five forms of punishment have to be doled out to the offenders irrespective of their psycho-social problems and needs of individual offenders. Commenting on this unhappy aspect of our penal system *Krishna iyer, J*, observed in *Shivaji's case*.<sup>3</sup>

Two men in their twenties thus stand convicted of murder and have to suffer imprisonment for life because the punitive strategy of our [Penal Code](#) does not sufficiently reflect the modern trends in correctional treatment and personalised sentencing. When accused persons are of tender age then even in a murder case it is not desirable to send them beyond the high prison walls and forget all about their correction and eventual reformation.

In *Inder Singh's case*.<sup>4</sup> the Supreme Court issued directions to the State Government to see that the young accused of the case are not given any degrading work and they are given the benefit of liberal parole every year if their behaviour shows responsibility and trustworthiness. Moreover, the Sessions Judge was directed to make jail visits to ensure compliance with these directions.

### [s 53.1] Object of Punishment.—

One of the prime objectives of criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and



the manner in which the crime is done.<sup>5</sup> Undue sympathy by means of imposing inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of law.<sup>6</sup> The object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.<sup>7</sup> The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and re-claim him as a law-abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal.<sup>8</sup>

### **[s 53.2] Different Approaches.—**

Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. On the commission of crime, three types of reactions may generate; the traditional reaction of universal nature which is termed as punitive approach. It regards the criminal as a notoriously dangerous person who must be inflicted severe punishment to protect the society from his criminal assaults. The other approach is the therapeutic approach. It regards the criminal as a sick person requiring treatment, while the third is the preventive approach, which seeks to eliminate those conditions from the society, which were responsible for crime causation. Under the punitive approach, the rationalisation of punishment is based on retributive and utilitarian theories. Deterrent theory, which is also part of the punitive approach, proceeds on the basis that the punishment should act as a deterrent not only to the offender, but also to others in the community. The therapeutic approach aims at curing the criminal tendencies, which were the product of a diseased psychology. Therapeutic approach has since been treated as an effective method of punishment, which not only satisfies the requirements of law that a criminal should be punished and the punishment prescribed must be meted out to him, but also reforms the criminal through various processes, the most fundamental of which is that in spite of having committed a crime, may be a heinous crime, he should be treated as a human being entitled to all the basic human rights, human dignity and human sympathy. It was under this theory that this Court in a stream of decisions, projected the need for prison reforms, the need to acknowledge the vital fact that the prisoner, after being lodged in jail, does not lose his fundamental rights or basic human rights and that he must be treated with compassion and sympathy.<sup>9</sup> Imposing a hard punishment on the accused serves a limited purpose, but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead life of a normal, useful member of society and make his contribution in that regard.<sup>10</sup> In *Dhannajoy Chatterjee v State of WB*,<sup>11</sup> the Supreme Court has observed that shockingly large number of criminals go unpunished, thereby increasingly encouraging the criminals and ultimately making justice suffer by weakening the system's credibility. Realising that it is not the brutality of punishment but its surety that serves as a greater deterrent, our Supreme Court held

that a barbaric crime does not have to be visited with a barbaric penalty such as public hanging which will be clearly violative of [Article 21 of the Constitution](#).<sup>12</sup> With regards the question of punishment, it should be noted that punishment in one matter cannot be the guiding factor for punishment in another. Punishment has a co-relation with facts and in each case where punishment is imposed, the same must be the resultant effect of the acts complained of. More serious the violation, more severe is the punishment and that has been the accepted norm, in matters though, however, within the prescribed limits.<sup>13</sup>

### **[s 53.3] Reformation Theory.—**

The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being.<sup>14</sup> Theory of reformation through punishment is grounded on the sublime philosophy that every man is born good but circumstances transform him into a criminal. The aphorism that "if every saint has a past every sinner has a future" is a tested philosophy concerning human life. *VR Krishna Iyer, J*, has taken pains to ornately fresco the reformatory profile of the principles of sentencing in *Mohammad Giasuddin v State of AP*.<sup>15</sup> Reformation should hence be the dominant objective of a punishment and during incarceration, every effort should be made to recreate the good man out of convicted prisoner. An assurance to him that his hard labour would eventually snowball into a handsome saving for his own rehabilitation would help him to get stripped of the moroseness and desperation in his mind while toiling with the rigours of hard labour during the period of his jail life. Thus, reformation and rehabilitation of a prisoner are of great public policy. Hence, they serve a public purpose.<sup>16</sup> Punishment is also to reform such wrongdoers not to commit such offence in future.<sup>17</sup>

### **[s 53.4] Deterrence.—**

Deterrence is one of the vital considerations of punishment. Law demands that the offender should be adequately punished for the crime, so that it can deter the offender and other persons from committing similar offences. Nature and circumstances of the offence; the need for the sentence imposed to reflect the seriousness of the offence; to afford adequate deterrence to the conduct and to protect the public from such crimes are certain factors to be considered while imposing the sentence.<sup>18</sup> Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time or personal inconveniences in respect of such offences will be result-wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence built in the sentencing system.<sup>19</sup> For instance, a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. However, an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence.<sup>20</sup> Protection of society and deterring the criminal is the avowed object of law and is required to be achieved by imposing an appropriate sentence. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of heinous crimes like rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. To show mercy in the case of such a heinous crime would be a travesty of justice.<sup>21</sup> To give a lesser punishment to the appellants would be to render the justice system of this country suspect. The common man will lose

faith in the Courts. In such cases, he understands and appreciates the language of deterrence more than the reformatory jargon.<sup>22</sup> Punishment to an accused in criminal jurisprudence is not merely to punish the wrongdoer but also to strike warning to those who are in the same sphere of crime or to those intending to join in such crime.<sup>23</sup>

### **[s 53.5] Principles of sentencing.—**

Sentencing is an important task in the matters of crime. There is no straitjacket formula for sentencing an accused on proof of crime. In practice, there is much variance in the matter of sentencing. In many countries, there are laws prescribing sentencing guidelines, but there is no statutory sentencing policy in India.<sup>24</sup> The [Indian Penal Code](#) provides discretion to Indian Judges while awarding the sentence.<sup>25</sup> Courts have wide discretion in awarding sentence within the statutory limits.<sup>26</sup> The Courts have evolved certain principles: twin objective of the sentencing policy is deterrence and correction.<sup>27</sup> There are many philosophies behind sentencing justifying penal consequences. The philosophical/jurisprudential justification can be retribution, incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration. Anyone or a combination thereof can be the goal of sentencing. However, when it comes to sentencing a person for committing a heinous crime, the deterrence theory as a rationale for punishing the offender becomes more relevant. In such cases, the role of mercy, forgiveness and compassion becomes secondary and while determining the quantum of sentence, discretion lies with the Court. While exercising such a discretion, the Court has to govern itself by reason and fair play, and discretion is not to be exercised according to whim and caprice. It is the duty of the Court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. While considering as to what would be the appropriate quantum of imprisonment, the Court is empowered to take into consideration mitigating circumstances, as well as aggravating circumstances.<sup>28</sup> What sentence would meet the ends of justice depends on the facts and circumstances of each case and the Court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.<sup>29</sup> The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice, sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably, these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.<sup>30</sup> Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction, drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.<sup>31</sup> The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence.

As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The Court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.<sup>32</sup> Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.<sup>33</sup> Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every Court to award proper sentence keeping in mind the nature of the offence and the manner in which it was executed or committed etc. Thus, it is evident that Criminal Law requires strict adherence to the rule of proportionality in providing punishment according to the culpability of each kind of criminal conduct keeping in mind the effect of not awarding just punishment on the society.<sup>34</sup> An undeserved indulgence or liberal attitude in not awarding adequate sentence in such cases would amount to allowing or even to encouraging 'potential criminals'. The society can no longer endure under such serious threats. Courts must hear the loud cry for justice by society in cases of heinous crime of rape and impose adequate sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court.<sup>35</sup>

#### **[s 53.6] Factors to be considered.—**

These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:

- (a) Motive or previous enmity;
- (b) Whether the incident had taken place on the spur of the moment;
- (c) The intention/knowledge of the accused while inflicting the blow or injury;
- (d) Whether the death ensued instantaneously or the victim died after several days;
- (e) The gravity, dimension and nature of injury;
- (f) The age and general health condition of the accused;
- (g) Whether the injury was caused without pre-meditation in a sudden fight;
- (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
- (i) The criminal background and adverse history of the accused;

(j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;

(k) Number of other criminal cases pending against the accused;

(l) Incident occurred within the family members or close relations;

(m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.

The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the Court. The endeavour of the Court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused.<sup>36</sup> The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.<sup>37</sup>

### **[s 53.7] Judicial Discretion:<sup>38</sup> Cases.—**

A Judge has wide discretion in awarding the sentence within the statutory limits. Since in many offences, only the maximum punishment is prescribed and for some offences the minimum punishment is prescribed, each Judge exercises his discretion accordingly.<sup>39</sup> In case where for an offence, maximum imprisonment is prescribed and there is no provision for minimum imprisonment, the Court can exercise wide discretion imposing any imprisonment which may be from one day (or even till the rising of the court) to ten years/life.<sup>40</sup> However, the Courts will have to take into account certain principles while exercising their discretion in sentencing, such as proportionality, deterrence and rehabilitation. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender.<sup>41</sup> Though punishment is the discretion of the Court, yet it must be exercised judicially and where circumstances call for a deterrent punishment, it ought to be awarded in an appropriate case.<sup>42</sup> Thus where the accused, a young man of 22 committed multiple murders for sheer gain in a most cruel, callous and fiendish fashion, there was no way to show him any mercy as it was rarest of the rare cases where a sentence of death was fully justified.<sup>43</sup> In exercising this discretion, the Court must consider the gravity of the offence, the mitigating or the extenuating circumstances of the case which may justify the award of the lesser or maximum sentence.<sup>44</sup> Where the accused was a youth of 19, the Supreme Court while upholding conviction under section 304-Part I, [Indian Penal Code, 1860, \(IPC, 1860\)](#) reduced his sentence to the period already undergone which was 18 and a half months in the instant case. The accused, a Government servant, who will lose pensionary benefits due to conviction, deserves to be treated leniently.

The Supreme Court has laid down that in cases of death in custody on account of third degree methods, deterrent punishment should be awarded.<sup>45</sup> Where certain police officials, who took a man illegally in their custody and gave him beating due to which he

died, were convicted under section 342, it was held that the facts that one of the accused was recipient of a medal from the President for saving a life, was awarded Rs. 5,000 by the State Government also and was suffering from T.B. and the other accused had acted on the direction of his superior, were not mitigating circumstances and the accused were liable to be punished with the maximum sentence.<sup>46.</sup>

Where due to dire poverty the accused killed his ailing wife, as he could not provide money for her operation and thereafter killed his two children, as they would be neglected after their mother's death, it was held the accused deserved to be awarded life imprisonment and not capital punishment.<sup>47.</sup> Where the murder in question showed signs of ruthless, unrelenting and determined vindictiveness and though the accused was 55 at the time of occurrence and 70 at the time of this appeal, the Supreme Court did not think it necessary to modify his sentence of life imprisonment.<sup>48.</sup> Similarly, where murders were committed for gain, the Supreme Court refused to interfere with death sentence only because the condemned prisoners were very young and their wives and children and aged parents were dependent on them. Such considerations, the Court said, are present in most cases.<sup>49.</sup> Where, for the offence of dacoity under section 395, the trial Court awarded three years' R.I., the High Court acquitted the offenders, but the Supreme Court restored the conviction after a long gap during which they got married and had resumed normal life, the period already undergone was considered to be sufficient, but a fine of Rs. 3,000 was imposed on each of them.<sup>50.</sup>

Where a conviction under [section 161, IPC, 1860](#) read with [section 5\(2\) of the Prevention of Corruption Act, 1988](#) was confirmed, the Gujarat High Court modified the sentence of R.I. for one year and ordered that the appellant shall undergo sentence of R.I. for six months only. This was done in view of his age of 60 years and a number of illnesses he was suffering from.<sup>51.</sup> The accused had been out of job for nearly 16 years and had undergone the trial for a number of years. He was 65 years old but had received no pension and had a large family to maintain. Hence, the Supreme Court while confirming the conviction, reduced the sentence of one year R.I. each under section 161 and the [Prevention of Corruption Act](#) to 15 days R.I. on each count. The sentence of fine was however confirmed.<sup>52.</sup> Where the accused had accepted a very small amount of Rs. 30 as bribe about 16 years back and underwent the agony of trial for a long time and had to support his family, he had been in jail for some time during trial, considering these facts his sentence of imprisonment was reduced from three months R.I. to the period already undergone.<sup>53.</sup>

Imposition of proper and appropriate sentence is bounded obligation and duty of the Court. The endeavour of the Court must be to ensure that the accused received appropriate sentence. The sentence must be accorded to the gravity of the offence.<sup>54.</sup>

### **[s 53.8] Minimum Sentence.—**

In order to exercise the discretion of reducing the sentence the statutory requirement is that the Court has to record "adequate and special reasons" in the judgment and not fanciful reasons, which would permit the Court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no straitjacket formula can be indicated.<sup>55.</sup> Mere absence of provisions for minimum sentence is no reason or justification to treat the offence under the Act (NDPS) as any less serious.<sup>56.</sup>

For the offence of murder, minimum sentence is 'life imprisonment'. Thus, the High Court cannot modify the sentence of life imprisonment awarded by the Trial Court to the one already undergone.<sup>57.</sup>

To the five kinds of punishments in the section, two more were added by subsequent enactments, viz., whipping (now abolished) and detention in reformatories.

**1. Death.**—Death punishment is awarded for murder in rarest of the rare cases.<sup>58</sup> It may be awarded as punishment for the following offences:—

- (1) Waging war against the Government of India (section 121).
- (2) Abetting mutiny actually committed (section 132).
- (3) Giving or fabricating false evidence upon which an innocent person suffers death (section 194).
- (4) Threatening or inducing any person to give false evidence- if innocent person is convicted and sentenced in consequence of such false evidence, with death (195A-Part II)
- (5) Murder (section 302).
- (6) Abetment of suicide of a minor, or an insane or an intoxicated person (section 305).
- (7) Attempt to murder by life convicts (section 307-Part II)
- (8) Kidnapping for ransom, etc. (section 364A)
- (9) Causing death or resulting in persistent vegetative state of rape victim (section 376A)
- (10) Repeat offenders of offences punishable under section 376 or section 376A or section 376D (section 376E)
- (11) Dacoity accompanied with murder (section 396).
- (12) Attempt to murder by a person under sentence of imprisonment for life, if hurt is caused (section 307). [For the detailed discussion on Death Penalty See Comments under [section 302 IPC](#)].

In addition to this, Death penalty can be imposed by virtue of [section 34, 149, 109 and 120B](#) of [IPC](#).

**2. Imprisonment for life** is now substituted for transportation. "Imprisonment for life" in the Code means "rigorous imprisonment for life" and not "simple imprisonment for life".<sup>59</sup>

**3. Imprisonment.**—Imprisonment is of two kinds: (a) rigorous and (b) simple. In the case of rigorous imprisonment, the offender is put to hard labour such as grinding corn, digging earth, drawing water, cutting firewood, bowing wool, etc. In the case of simple imprisonment, the offender is confined to jail and is not put to any kind of work. Imposition of hard labour on prisoners undergoing rigorous imprisonment has been held to be legal.<sup>60</sup>

The minimum term of imprisonment, however, is fixed in the following two cases: (1) If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, he is punished with imprisonment of not less than seven years (section 397).

(2) If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, he is punished with imprisonment of not less than seven years (section 398).

The [Criminal Law \(Amendment\) Act 2013](#) [Act No. 13 of 2013 w.e.f 2 April 2013] provides minimum punishment for the following offences:

- (1) Public servant disobeying direction under law- Imprisonment for a term, which shall not be less than six months. (section 166A)
- (2) Voluntarily causing grievous hurt by use of acid, etc.- Imprisonment for not less than ten years. (section 326A)
- (3) Outraging the modesty of a woman- Imprisonment of either description for a term which shall not be less than one year (section 354)
- (4) Assault or use of criminal force to woman with intent to disrobe- Imprisonment of not less than three years. (section 354B)
- (5) Voyeurism- Imprisonment of not less than one year. (section 354C)
- (6) Trafficking of person- Seven years [section 370(2)], ten years [sections 370(3), (4)], 14 years [section 370(5)],
- (7) Exploitation of a trafficked child- Imprisonment of not less than five years but which may extend to seven years and with fine. (section 370A)
- (8) Rape- Seven years [section 376(1)], ten years [section 376(2)].
- (9) Causing death or resulting in persistent vegetative state of victim- Imprisonment for a term which shall not be less than 20 years (section 376A)
- (10) Sexual intercourse by husband upon his wife during separation- Imprisonment of either description for a term which shall not be less than two years (section 376B)
- (11) Sexual intercourse by a person in authority- Imprisonment of either description for a term which shall not be less than five years. (section 376C)
- (12) Gang rape- Imprisonment for a term, which shall not be less than 20 years. (section 376D).

The Criminal Law (Amendment) Act, 2018 has further amended the [Indian Penal Code 1860](#). The Criminal Law (Amendment) Act, 2018 has increased the minimum sentence in section 376(1) from seven years to ten years. The 2018 Amendment Act has inserted sections 376AB, 376DA and 376DB which provide for enhanced punishment in certain aggravated forms of rape. Refer Chapter XVI *infra*.

An offender is punished with rigorous imprisonment without the alternative of simple imprisonment, in the cases of—

- (1) Giving or fabricating false evidence with intent to procure conviction of an offence, which is capital by this Code (section 194).
- (2) Rape (sections 376, 376A, 376AB, 376C, 376D, 376DA, 376DB and 376E)
- (3) House-trespass in order to the commission of an offence punishable with death (section 449).

The following offences are punishable with simple imprisonment only:—

- (1) Public servant unlawfully engaging in trade; or unlawfully buying or bidding for property (sections 168, 169).
- (2) A person absconding to avoid service of summons or other proceedings from a public servant or preventing service of summons or other proceedings, or preventing



publication thereof; or not attending in obedience to an order from a public servant (sections 172, 173, 174).

(3) Intentional omission to produce a document to a public servant by a person legally bound to produce such document; or intentional omission to give notice or information to a public servant by a person legally bound to give; or intentional omission to assist a public servant when bound by law to give assistance (sections 175, 176, 187).

(4) Refusing oath when duly required to take oath by a public servant; or refusing to answer a public servant authorised to question or refusing to sign any statement made by a person himself before a public servant (sections 178, 179, 180).

(5) Disobedience to an order duly promulgated by a public servant if such disobedience causes obstruction, annoyance, or injury (section 188).

(6) Escape from confinement negligently suffered by a public servant; or negligent omission to apprehend, or negligent sufferance of escape, on the part of a public servant in cases not otherwise provided for (sections 223, 225-A).

(7) Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding (section 228).

(8) Continuance of nuisance after injunction to discontinue (section 291).

(9) Wrongful restraint (section 341).

(10) Defamation: printing or selling defamatory matter known to be so (sections 500, 501, 502).

(11) Uttering any word, or making any sound or gesture, with an intention to insult the modesty of a woman (section 509).

(12) Misconduct in a public place by a drunken person (section 510).<sup>61.</sup>

### **[s 53.9] Imprisonment for the remainder of the Accused's natural life.—**

As per the [Criminal Law \(Amendment\) Act, 2013](#),<sup>62.</sup> the punishment for rape (section 376) is rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, *which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine*. In sections 370, 376(A), 376(D), 376(E) it is also specifically mentioned that 'Life' shall mean imprisonment for the remainder of that person's natural life. The Criminal Law (Amendment) Act, 2018 has increased the minimum sentence in section 376(1) from seven years to ten years as well as inserted sections 376AB, 376DA and 376DB which provide for enhanced punishment in certain aggravated forms of rape. Refer Chapter XVI *infra*.

Spending 13 and half years in jail does not mean that the petitioner has undergone a sentence for life.<sup>63.</sup>

**4. Forfeiture.—**The punishment of absolute forfeiture of all property of the offender is now abolished. [Sections 61](#) and [62](#) of the [IPC, 1860](#) dealing with such forfeiture are repealed by Act XVI of 1921.

There are, however, three offences in which the offender is liable to forfeiture of specific property. They are sections 126, 127 and 169 of the Code.<sup>64.</sup>

**5. Fine.**—Fine is the only punishment in the following cases:—

- (1) A person in charge of a merchant vessel, negligently allowing a deserter from the Army or Navy or Air Force to obtain concealment in such vessel, is liable to a fine not exceeding Rs. 500 (section 137).
- (2) The owner or occupier of land on which a riot is committed or an unlawful assembly is held, and any person having or claiming any interest in such land, and not using all lawful means to prevent such riot or unlawful assembly, is punishable with a fine not exceeding Rs. 1,000 (section 154).
- (3) The person for whose benefit a riot has been committed not having duly endeavoured to prevent it (section 155).
- (4) The agent or manager of such person under like circumstances (section 156).
- (5) False statements in connection with an election (section 171-G).
- (6) Illegal payments in connection with an election (section 171-H).
- (7) Failure to keep election accounts (section 171-I).
- (8) Voluntarily vitiating the atmosphere so as to render it noxious to the public health, is punishable with a fine up to Rs. 500 (section 278).
- (9) Obstructing a public way or line of navigation, is punishable with a fine not exceeding Rs. 200 (section 283).
- (10) Committing of a public nuisance not otherwise punishable is punishable with a fine not exceeding Rs. 200 (section 290).
- (11) Publication of a proposal regarding a lottery, is punishable with a fine not exceeding Rs. 1,000 (section 294-A).

Where the accused partners of a firm were acquitted on a charge under section 420 of making substantial gains for themselves and an appeal against their acquittal was decided against them 15 years after the acquittal, fine and not imprisonment was considered proper punishment.<sup>65</sup> Where the murder accused remained in prison for sometime and was on bail for 13 years, he was not committed to prison; a fine of Rs. 50,000 in addition to the imprisonment already undergone was imposed, he being a young man.<sup>66</sup> Where the accused along with others convicted under section 323 for six months' imprisonment had already undergone an imprisonment of one year and, looking at his good conduct inside jail and lest he should lose his service, he was given the benefit of [section 3 of the Probation of Offenders Act 1958](#) so to assure that his conviction should not affect his service.<sup>67</sup>

**[s 53.10] Rigorous and Simple imprisonment.—**

[Section 53 of the IPC, 1860](#) defines five kinds of punishment which includes punishment for life and two other kinds of imprisonment, i.e., rigorous and simple imprisonment. Rigorous imprisonment is one which is required by law to be completed with hard labour. There are principally two categories of prisoners: (1) under trial prisoners and (2) convicted prisoners (Besides them there are those detained as preventive measure, and those undergoing detention for default of payment of fine). A person sentenced to simple imprisonment cannot be required to work unless he volunteers himself to do the work. However, the Jail officer who requires a prisoner

sentenced to rigorous imprisonment to do hard labour would be doing so as enjoined by law and mandated by the Court.<sup>68</sup> Thus, while a person sentenced to simple imprisonment has the option of choosing to work, a person sentenced to rigorous imprisonment is required by law to undergo hard labour. The under trials are not required to work in Jail.<sup>69</sup> [Section 60 of the Indian Penal Code](#) confers power on a sentencing Court to direct that "such imprisonment shall be wholly rigorous or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple." The sentence of "imprisonment for life" tagged along with a number of offences delineated in the [IPC, 1860](#) is interpreted as "rigorous imprisonment for life" and not simple imprisonment.<sup>70</sup>

#### **Supreme Court Guidelines regarding employment of prisoners and wages.—**

(1) It is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not.

(2) It is open to the jail officials to permit other prisoners also to do any work which they choose to do provided such prisoners make a request for that purpose.

(3) It is imperative that the prisoner should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners the State concerned shall constitute a wage fixation body for making recommendations. We direct each State to do so as early as possible.

(4) Until the State Government takes any decision on such recommendations every prisoner must be paid wages for the work done by him at such rates or revised rates as the Government concerned fixes in the light of the observations made above. For this purpose we direct all the State Governments to fix the rate of such interim wages within six weeks from today and report to this Court of compliance of this direction.

(5) We recommend to the State concerned to make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in any other feasible mode.

[*State of Gujarat v Hon'ble High Court of Gujarat.*<sup>71</sup>.]

#### **[s 53.11] Rights of Convicts.—**

Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to "practise" a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the [Constitution](#) guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment, likewise, even a convict is entitled to the precious right guaranteed by [Article 21 of the Constitution](#) that he shall not be deprived of his life or personal liberty except according to procedure established by law.<sup>72</sup>

#### **[s 53.12] Cases of Leniency.—**

In a given situation, where it is demonstrated that during the pendency of the proceedings the accused has undergone a lot of suffering such as where the accused was in custody or for that matter, in situations where the accused is suspended and is on a subsistence allowance or where as a result of the prosecution the consequences have been so disastrous that the accused has suffered virtual ruination, these aspects alone would be valid justification on which a plea for leniency could be based. On the other hand, one needs to bear in mind that the consequences of criminal acts catch up with the accused particularly when the crimes are against the society the ethical concept of forgive and forget merely because the incident took place in the distant past will not hold good in a Court of Law.<sup>73</sup> Where there was acquittal in the same year in which the crime was committed but the acquittal was reversed after eight years and conviction and jail terms were awarded and appeal against this order was disposed of in the 20th year of the crime, the Supreme Court reduced the sentence to the period already undergone and imposed a fine which if not paid, the original sentence was to be restored.<sup>74</sup> Where the guilt of the accused under sections 406 and 120-B were established beyond all reasonable doubt, the Supreme Court did not interfere with their conviction. However, in view of the fact that the accused had undergone proceedings for a period of two decades, their sentence was reduced to one already undergone.<sup>75</sup> Where the accused was convicted for criminal conspiracy and breach of trust and about 48 years had elapsed since the accused was charged for the offences, keeping in view his advanced age he was sentenced to imprisonment till rising of the Court with a fine of Rs. 5,000.<sup>76</sup> Where a man of 20 was convicted under section 324 and sentenced to undergo imprisonment for four months whereas he had already undergone imprisonment of one year and two months, his sentence was reduced to one already undergone.<sup>77</sup> Where the accused were convicted under section 326 for causing grievous hurt to the victim, considering the lapse of about six years from the incident, accused not being habitual criminals or previous convicts and there being no misuse of liberty during bail, the sentence was reduced to the period already undergone with a fine of Rs. 5,000 each.<sup>78</sup> Where the accused convicted and sentenced under sections 379 and 411, were found to be the sole earning member of their families and they had no past criminal records, the Court directed that one year's rigorous imprisonment instead of two would meet the ends of justice.<sup>79</sup> Where the accused seeing his wife in a compromising position with a man assaulted both of them as a result of grave and sudden provocation resulting in the death of both, his conviction under section 304, Part II was upheld but the sentence of five years' R.I. was reduced to one years' R.I. with the recommendation that the State Government might remit such a portion of sentence as it deemed fit and proper.<sup>80</sup>

### **[s 53.13] Offences against women.—**

Where the accused had outraged the modesty of a woman, his conviction under section 354 was upheld but considering the lapse of eight years, it was not found desirable to send him back to jail to be in midst of hardened criminals. He was sentenced to sit in the Court of Judicial Magistrate First Class for five days continuously, during the entire working hours.<sup>81</sup> Where the accused, in his late fifties, betraying the confidence of the prosecutrix committed rape on her, it was held that he deserved no sympathy. However, as the accused remained in jail for eight years, the Court took a liberal view and considering his age and helplessness sentenced him to the period for which he had already been in jail.<sup>82</sup> Where the victim of rape belonged to a tribal (Bhilla) community and the act of the accused did not cast any serious stigma on the girl and she was married to a different person sometime after the incident by her father, it was held that sentence much below the minimum sentence prescribed could be inflicted on the accused.<sup>83</sup> Where the conviction and sentence of the accused

husband to rigorous imprisonment for six months under section 498-A was substituted with a fine of Rs. 6,000, taking into consideration the age, occupation and family conditions of the husband, it was held that though the appellate Court was justified in substituting the jail sentence, the Court ought not have awarded a modest fine. The fine was raised to Rs. 30,000.<sup>84</sup> Where a person was married in childhood and was subjected to a second marriage under the pressure exerted by his parents as well as the woman who became his second wife, it was held that a lesser sentence of six months instead two years' R.I. and a fine of Rs. 2,000 to the accused husband and imprisonment till the rising of the Court and a fine of Rs. 1,500 to the accused parents and the second wife in place of the original sentence of six months' R.I. and a fine of Rs. 1,000 would meet the ends of justice.<sup>85</sup>

#### **[s 53.14] Conversion of death sentence into life imprisonment.—**

Where the accused, being dissatisfied with the partition of family property, committed ghastly murders of four members of his family and there was no evidence that the crime was pre-planned and the circumstances indicated that he was under the influence of some kind of extreme mental or emotional disturbance which impaired his capacity to appreciate criminality of his conduct, death sentence awarded to him was converted into imprisonment for life.<sup>86</sup> Where three accused persons conspired to kill the wife and two minor children of one of the accused but one of the accused was not a party to actual commission of murder and the part played by the other accused was not definitely proved, the sentence of death imposed on both the accused was commuted to that of life imprisonment. The death sentence of the main accused, the father, was not interfered with.<sup>87</sup> Where the accused shot his two younger brothers dead on a petty quarrel, as there was no pre-plan to commit murder, the death sentence awarded to the accused was altered into life imprisonment with a fine of Rs. 30,000.<sup>88</sup>

#### **[s 53.15] Award of compensation.—**

Power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system.<sup>89</sup> The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other.<sup>90</sup>

In the BMW Case, the Supreme Court directed the accused to pay an amount of Rs. 50 lakh to the Union of India which will be utilized within for providing compensation to the victims of motor accidents, where the vehicles owner, driver etc. could not be traced, like victims of hit and run cases.<sup>91</sup> Where a doctor was convicted for an attempt to cause miscarriage and sentenced to undergo rigorous imprisonment for one year and pay a fine of Rs. 5,000, the sentence of imprisonment was found to be excessive and was set aside but the fine was enhanced to Rs. 15,000 out of which, if realised Rs. 10,000 was to be paid to the mother of the deceased for the maintenance of the children of the deceased shown to be living with her.<sup>92</sup> The accused, an agriculturist, assaulted his sister's husband with a knife giving a blow in his abdomen resulting in death. The accused was convicted and sentenced to imprisonment for life under section 302. However, on overall appraisal of material on record and the accused having no criminal antecedents, his conviction under section 302 was set aside and he

was convicted under section 304 and directed to undergo 10 years' R.I. But on special facts of the case an option was given to the accused to pay a fine of Rs. 40,000 in all and in default to undergo R.I. for seven years and, if the fine was paid within 12 weeks, jail sentence was to be reduced to three years' R.I. Out of the fine, if paid, Rs. 10,000 were to be given to the mother of the deceased and Rs. 30,000 utilised for the benefit of the three minor children of the deceased in sum of Rs. 10,000 each.<sup>93</sup> Where the accused caused a serious injury in the abdomen of a man and was convicted under section 307 but considering that he had a widowed mother and two children and was willing to compensate the victim substantially, sentence imposed upon him was modified into one of fine in the way of compensation of Rs. One lakh.<sup>94</sup> Where in a case under section 304, Part II the accused remained in custody for over a year after conviction by the High Court and also for sometime during investigation, the Apex Court reduced the sentence to the period already undergone but imposed a fine of Rs. 20,000 payable to the widow of the deceased as compensation.<sup>95</sup>

### **[s 53.16] Reform and rehabilitation.—**

Where the accused caused several incised injuries to a man, he was convicted under section 326 but as there was no previous enmity between the accused and the injured person and it was the first offence committed by him, besides 14 years had lapsed since the commission of the offence, he was given an opportunity to reform and rehabilitate in society and his sentence was reduced to the period already undergone.<sup>96</sup> Where the accused convicted under section 302 was only 15 years old at the time of offence and at the time of appeal he was over 30, he could not be sent to approved school or jail. His conviction was upheld but the sentence was quashed.<sup>97</sup>

### **[s 53.17] Separate trial for child offender.—**

One of the members of an unlawful assembly was of 13 years at the time of the incident. His trial was conducted along with other members who were not children. This was held to be illegal. The plea of child offender was not raised before the trial court or the High Court. The Supreme Court, therefore, confirmed the conviction but set aside the sentence imposed on him.<sup>98</sup>

### **[s 53.18] Cases of no leniency.—**

In a multiple murder case, it was argued that the accused had donated to the social organisations and that he was not a hardened criminal and not a menace to the society and at any rate by wiping him out the crime cannot be wiped out. The Supreme Court observed that the accused was involved in "organised criminal activity" and he had acquired social status through crime. The accused had no regard for the value of human life. It was held that there were no mitigating circumstances. The main cause of his conviction was illicit arrack business and brothel. The fact that for this reason he became the victim of police cruelty was also considered to be not a mitigating circumstance.<sup>99</sup> In a double murder case, the accused was awarded death sentence but the execution was postponed. It was held that pain, agony and horror suffered by the prisoner after he was informed about execution was no ground for substituting death sentence.<sup>100</sup> Where the accused constructed a water tank which collapsed due to use of low quality material resulting in the death of several persons and the accused was sentenced to the maximum of two years of R.I. provided under section 304A, it

was held that the sentence could not be reduced merely because the matter was more than seven years old and that it would also be a grave injustice to the victims of the crime.<sup>101</sup> Where the accused formed an unlawful assembly with the common object of killing three members of a family and one of the accused killed all the three on the spot one after the other in few minutes while others caught hold of the victims, the sentence of life imprisonment awarded to them under sections 302/149 was confirmed but the High Court observed that it was a fit case to award the maximum penalty of death sentence as the accused had acted like a butcher in a slaughter house.<sup>102</sup> Where the accused were convicted under section 328 r/w. section 34 for robbing a simple innocent lady of 50 years by administering a stupefying drug through sugarcane juice, the Court refused to take a lenient view and reduce the sentence.<sup>103</sup> Where the accused committed a high-handed and broad daylight robbery on a public road, the Court declined to take a lenient view.<sup>104</sup> Voluntary intoxication by itself neither absolves the offender of the consequences of his act nor does it makes him liable for lesser offence.<sup>105</sup> The mere fact that the accused inflicted a single injury resulting in death is not sufficient in itself to convert the offence from one under sections 300–304, Part II.<sup>106</sup> When the victim has sustained a grievous injury on a vital portion of the body and the injury is life-threatening imposition of sentence of six days only which was the period already undergone by the accused in confinement is too lenient. However, as the parties have forgotten their differences and are living peacefully since 25 years, the Court taking into consideration the aggravating as well as mitigating factors under the facts of this case, imposed a sentence of six months' R.I. and a fine of Rs. 25,000/- against the accused.<sup>107</sup>

#### **[s 53.19] No leniency—Offences against women.—**

Where the accused committed rape on a woman and killed her and it was found that he had behaved like an animal, it was held that it was not a fit case for showing leniency.<sup>108</sup> Where in a case of bride burning, the mother-in-law of the victim was sentenced to life imprisonment, the Supreme Court refused to show any leniency on the ground that the accused mother-in-law had remained in jail for more than a decade. The Court observed that it would be a travesty of justice if sympathy was shown when a cruel act like bride burning is committed. It is rather strange that the mother-in-law who herself is a woman should resort to killing another woman. Undue sympathy would be harmful to the cause of justice.<sup>109</sup> Where the accused himself killed his wife by burning and made his two children motherless, no lenient view could be taken on the ground that he had two children.<sup>110</sup>

#### **[s 53.20] Enhancement of sentence.—**

Where in a group clash due to old enmity, the accused killed ten persons of a community indiscriminately within a span of two hours and accused took the leading part, sentence of life imprisonment imposed upon him was enhanced to death penalty in the facts and circumstances of the case but life imprisonment awarded to the co-accused under sections 302/149 was confirmed.<sup>111</sup>

#### **[s 53.21] Guidelines for sentencing policy.—**

Currently, India does not have a structured sentencing guidelines that have been issued either by the legislature or the judiciary. However, the Courts have framed certain guidelines in the matter of imposition of sentence. The Courts will have to take into account certain principles while exercising their wide discretion in sentencing, such as proportionality, deterrence and rehabilitation. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender.<sup>112</sup> Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime.<sup>113</sup> Law regulates social interests, arbitrates conflicting claims and demand. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the Courts are required to mould the sentencing system to meet the challenges.<sup>114</sup>

The principle governing the imposition of punishment will depend upon the facts and circumstances of each case. However, the sentence should be appropriate, adequate, just, proportionate and commensurate with the nature and gravity of the crime and the manner in which the crime is committed. The gravity of the crime, motive for the crime, nature of the crime and all other attending circumstances have to be borne in mind while imposing the sentence.<sup>115</sup> An offence, which affects the morale of the society, should be severely dealt with. Socio-economic status, religion, race, caste or creed of the accused and the victim although may not be wholly irrelevant, should be eschewed in a case of this nature (abduction and rape of minor), particularly when Parliament itself has laid down minimum sentence.

One of the principles that the judiciary had all along kept in its mind that rape being a violation with violence of the private person of a woman causes mental scar, thus, not only a physical injury but also a deep sense of some deathless shame is also inflicted.<sup>116</sup>

The Court cannot afford to be casual while imposing the sentence, inasmuch as both the crime and the criminal are equally important in the sentencing process. The Courts must see that the public does not lose confidence in the judicial system. Imposing inadequate sentences will do more harm to the justice system and may lead to a state where the victim loses confidence in the judicial system and resorts to private vengeance.<sup>117</sup>

**6. Whipping.**—This form of punishment is now abolished.

**7. Detention in reformatories.**—Juvenile offenders sentenced to imprisonment may be sentenced to, and detained in, a Reformatory School for a period of three–seven years.<sup>118</sup>

#### **[s 53.22] Detention during trial.—**

Every confinement of a person and every restraint of the liberty of a free man is imprisonment. Thus, "imprisonment" would include under trial detention. "Under trial detention of a prisoner is undoubtedly an imprisonment."<sup>119</sup>

#### **[s 53.23] Postponement of sentence.—**

Where all the members of the family of the deceased were convicted and nobody was left to take care of his daughter, the Court upheld the sentence of the daughter's



grandmother but granted her six months' time to arrange for the daughter and then to surrender to serve the sentence.<sup>120.</sup>

### **[s 53.24] Community Service for Avoiding Jail Sentence.—**

Convicts in various countries, now, voluntarily come forward to serve the community, especially in crimes relating to motor vehicles. Graver the crime greater the sentence. But, serving the society actually is not a punishment in the real sense where the convicts pay back to the community which he owes. Conduct of the convicts will not only be appreciated by the community, it will also give a lot of solace to him, especially in a case where because of one's action and inaction, human lives have been lost. In the facts and circumstances of the case, where six human lives were lost, Court felt to adopt this method would be good for the society rather than incarcerating the convict further in jail. The Court ordered to do community service for two years, which will be arranged by the Ministry of Social Justice and Empowerment within two months. On default, the convict will have to undergo simple imprisonment for two years.<sup>121.</sup>

### **[s 53.25] Probation.—**

[Probation of Offenders Act, 1958](#) ('PO Act') is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of the criminal law is more to reform the individual offender than to punish him. Broadly stated that the PO Act distinguishes offenders below 21 years of age and those above that age, and offenders who are not guilty of having committed an offence punishable with death or that imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the Court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the PO Act. In case of offender below the age of 21 years, an injunction is issued to the Court not to sentence them to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under sections 3 and 4 of the PO Act.<sup>122.</sup> The PO Act introduced a very basic change in the criminal law of the country. At the same time, Courts were also to be careful about the impact on the society consequent on letting offenders on probation. Indiscriminate application of provisions of the PO Act to anti-social and white collar offenders may have an adverse effect on the security of the society. Application of the PO Act is specifically barred in some cases.<sup>123.</sup> Provisions of the PO Act should be applied having regard to the nature of offence and age, character and antecedents of the offender.<sup>124.</sup>

1. Subs. by Act 26 of 1955, section 117 and Sch, for "Secondly—Transportation" (w.e.f. 1-1-1956).

2. Clause "Thirdly" omitted by Act 17 of 1949, section 2 (w.e.f. 6-4-1949).

3. *Shivaji v State of Maharashtra*, 1973 Cr LJ 1783 : AIR 1973 SC 2622 [LNIND 1973 SC 249] .
4. *Inder Singh v State*, AIR 1978 SC 1091 : 1978 Cr LJ 766 (SC), see also *Ram Prasad*, 1980 Cr LJ 10 : AIR 1980 SC 83 [LNIND 1979 SC 404] ; *Ashok Kumar*, 1980 Cr LJ 444 : AIR 1980 SC 636 [LNIND 1980 SC 36] .
5. *Alister Anthony Pereira v State of Maharashtra*, 2012 Cr LJ 1160 : (2012) 2 SCC 648 [LNIND 2012 SC 15] : (2012) 1 SCC (Cr) 953 : AIR 2012 SC 3802 [LNIND 2012 SC 15] .
6. *State of Punjab v Bawa Singh*, 2015 Cr LJ 1701 .
7. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056] ; *State of MP v Ghanshyam Singh*, JT 2003 (Supp.1 ) SC 129 : 2003 (8) SCC 13 [LNIND 2003 SC 772] ; *Jashubha Bharatsinh Gohil v State of Gujarat*, JT 1994 (3) SC 250 [LNIND 1994 SC 415] : 1994 (4) SCC 353 [LNIND 1994 SC 415] .
8. *BG Goswami v Delhi Administration*, 1974 (3) SCC 85 [LNIND 1973 SC 194] : AIR 1973 SC 1457 [LNIND 1973 SC 194] : 1973 SCC (Cr) 796 1974 Cr LJ 243 .
9. *TK Gopal alias Gopi v State of Karnataka*, AIR 2000 SC 1669 [LNIND 2000 SC 826] : (2000) 6 SCC 168 [LNIND 2000 SC 826] : JT 2000 (6) SC 177 [LNIND 2000 SC 826] : 2000 Cr LJ 2286 : *Sunil Batra (I) v Delhi Administration*, AIR 1978 SC 1675 [LNIND 1978 SC 215] : (1978) 4 SCC 494 [LNIND 1978 SC 215] : 1979 (1) SCR 392 [LNIND 1978 SC 215] : ( 1978 Cr LJ 1741 ) ; *Sunil Batra (II) v Delhi Administration*, AIR 1980 SC 1579 : (1980) 3 SCC 488 [LNIND 1978 SC 215] : 1980 (2) SCR 557 [LNIND 1978 SC 215] : ( 1980 Cr LJ 1099 ) ; *Charles Sobraj v Superintendent, Central Jail, Tihar*, AIR 1978 SC 1514 [LNIND 1978 SC 218] : ( 1978 Cr LJ 1534 ) and *Francis Coralie Mullin v The Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 [LNIND 1981 SC 27] : AIR 1981 SC 746 [LNIND 1981 SC 27] : 1981 (2) SCR 516 [LNIND 1981 SC 27] : ( 1981 Cr LJ 306 ) etc.
10. *Karamjit Singh v State*, AIR 2000 SC 3467 [LNIND 2000 SC 707] : (2001) 9 SCC 161 [LNIND 2000 SC 707] .
11. *Dhannajoy Chatterjee v State of WB*, (1994) (2) SCC 220 [LNIND 1994 SC 34] : 1994 (3) RCR (Cr) 359 (SC).
12. *Attorney General of India v Lachma Devi*, 1986 Cr LJ 364 : AIR 1986 SC 467 .
13. *Murray and Co v Ashok Kr Newatia*, AIR 2000 SC 833 [LNIND 2000 SC 159] : (2000) 2 SCC 367 [LNIND 2000 SC 159] .
14. *Karamjit Singh v State*, AIR 2000 SC 3467 [LNIND 2000 SC 707] : (2001) 9 SCC 161 [LNIND 2000 SC 707] .
15. *Mohammad Giasuddin v State of AP*, (1977) 3 SCC 287 [LNIND 1977 SC 211] : AIR 1977 SC 1926 [LNIND 1977 SC 211] .
16. *State of Gujarat v Hon'ble High Court of Gujarat*, (1998) 7 SCC 392 [LNIND 1998 SC 920] : AIR 1998 SC 3164 [LNIND 1998 SC 920] : JT 1998 (6) SC 530 : 1998 Cr LJ 4561 .
17. *Gurdeep Singh alias Deep v State*, AIR 1999 SC 3646 [LNIND 1999 SC 837] : (2000) 1 SCC 498 [LNIND 1999 SC 837] : JT 1999 (7) SC 191 [LNIND 1999 SC 837] : 1999 Cr LJ 4573 .
18. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [LNIND 2012 SC 459] : 2012 Cr LJ 4174 : AIR 2012 SC 3104 [LNIND 2012 SC 459] .
19. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056] .
20. *Sahdev v Jaibar*, (2009) 11 SCC 798 [LNIND 2009 SC 476] : (2010) 1 SCC (Cr) 215.
21. *State of Karnataka v Krishnappa*, 2000 Cr LJ 1793 : AIR 2000 SC 147 .
22. *Mahesh v State of MP*, AIR 1987 SC 1346 ; *State of Punjab v Rakesh Kumar*, AIR 2009 SC 391 [LNIND 2008 SC 1729] .
23. *Gurdeep Singh alias Deep v State*, AIR 1999 SC 3646 [LNIND 1999 SC 837] : (2000) 1 SCC 498 [LNIND 1999 SC 837] : JT 1999 (7) SC 191 [LNIND 1999 SC 837] : 1999 Cr LJ 4573 .

24. *Mohd Arif v The Registrar, Supreme Court of India*, 2014 Cr LJ 4598 .
25. *State of HP v Nirmala Devi*, AIR 2017 SC 1981 [LNIND 2017 SC 189] .
26. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
27. *Alister Anthony Pareira v State of Maharashtra*, AIR 2012 SC 3802 [LNIND 2012 SC 15] : (2012) 2 SCC 648 [LNIND 2012 SC 15] : (2012) 1 SCC (Cr) 953 : 2012 Cr LJ 1160 .
28. *State of HP v Nirmala Devi*, AIR 2017 SC 1981 [LNIND 2017 SC 189] .
29. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 : (2012) 2 SCC 648 [LNIND 2012 SC 15] : (2012) 1 SCC (Cr) 953 : AIR 2012 SC 3802 [LNIND 2012 SC 15] .
30. *Sahdev v Jaibar*, (2009) 11 SCC 798 [LNIND 2009 SC 476] : (2010) 1 SCC (Cr) 215.
31. *Sahdev v Jaibar*, (2009) 11 SCC 798 [LNIND 2009 SC 476] : (2010) 1 SCC (Cr) 215.
32. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 : (2012) 2 SCC 648 [LNIND 2012 SC 15] : (2012) 1 SCC (Cr) 953 : AIR 2012 SC 3802 [LNIND 2012 SC 15] .
33. *State of MP v Saleem alias Chamaru*, 2005 (5) SCC 554 [LNIND 2005 SC 1070] 61.
34. *C Muniappan v State of TN*, (2010) 9 SCC 567 [LNIND 2010 SC 809] : AIR 2010 SC 3718 [LNIND 2010 SC 809] : (2010) 10 SCR 262 [LNIND 2010 SC 809] : (2010) 3 SCC (Cr) 1402.
35. *Dinesh v State of Rajasthan*, 2006 (3) SCC 771 [LNIND 2006 SC 151] : AIR 2006 SCW 1123 : AIR 2006 SC 1267 [LNIND 2006 SC 151] .
36. *Gurmukh Singh v State of Haryana*, JT 2009 (11) SC 122 : 2009 (11) Scale 688 [LNIND 2009 SC 1725] .
37. *Jameel v State of UP*, 2010 Cr LJ 2106 : (2010) 12 SCC 532 [LNIND 2009 SC 1960] : AIR 2010 SC (Supp) 303 : (2011) 1 SCC (Cr) 582.
38. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056] . Meaning of Judicial discretion explained.
39. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
40. *State of HP v Nirmala Devi*, AIR 2017 SC 1981 [LNIND 2017 SC 189] .
41. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
42. *State v Narayan Bisoi*, 1975 Cr LJ 1399 (Ori).
43. *Javed Ahmed*, 1983 Cr LJ 960 : AIR 1983 SC 594 [LNIND 1983 SC 119] : (1983) 3 SCC 39 [LNIND 1983 SC 119] : 1983 SCC (Cr) 559; see also *Henry Westmuller*, 1985 Cr LJ 1079 : AIR 1985 SC 823 [LNIND 1985 SC 105] : (1985) 3 SCC 291 [LNIND 1985 SC 105] ; *Lok Pal Singh*, 1985 Cr LJ 1134 (SC) : AIR 1985 SC 823 [LNIND 1985 SC 105] .
44. *Munnalal*, 1977 Cr LJ NOC 108 (MP).
45. *Gauri Shanker Sharma v State of UP*, AIR 1990 SC 709 [LNIND 1990 SC 8] : 1990 (2) SCC 502 [LNIND 1990 SC 100] , the acquittal granted by the High Court was set aside and the sentence of 7-year RI restored.
46. *State v Balkrishna*, 1992 Cr LJ 1872 (Mad).
47. *State of UP v MK Anthony*, 1985 Cr LJ 493 : AIR 1985 SC 48 . For an account of the perplexities of criminal justice, see S Venugopal Rao, *Perplexities of Criminal Justice*, (1985) 27 JILI 458. See also *Pandurang Dhondu Bhuwad v State of Maharashtra*, 1991 Cr LJ 3177 Bom, domestic servants committing day-light robbery in an apartment resulting in the death of an inmate, life imprisonment, no concession for young age or poverty.
48. *Guvala China Venkatesu v State of AP*, AIR 1991 SC 1926 : 1991 Cr LJ 2326 .
49. *Sevaka Perumal v State of TN*, AIR 1991 SC 1463 [LNIND 1991 SC 269] : 1991 Cr LJ 1845 .
50. *State of Rajasthan v Sukhpal Singh*, (1983) 1 SCC 393 [LNIND 1982 SC 206] : 1983 SCC (Cr) 213 : AIR 1984 SC 207 [LNIND 1982 SC 206] ; *Philip Bhimsen Aind v State*, (1995) Cr LJ 1694 (Bom).
51. *Babarali Ahmedali Sayed v State of Gujarat*, 1991 Cr LJ 1269 Guj.

52. *TM Joseph v State of Kerala*, AIR 1992 SC 1922 : 1992 Cr LJ 3166 . The court referred to its own decision in *BC Goswami v Delhi Administration*, AIR 1973 SC 1457 [LNIND 1973 SC 194] : 1974 Cr LJ 243 .
53. *Ajit Kumar Vasantlal Zaveri v State of Gujarat*, AIR 1992 SC 2064 : 1992 Cr LJ 3593 .
54. *Gurmukh Singh v State of Haryana*, 2010 Cr LJ 450 : AIR 2009 SC 2697 [LNIND 2009 SC 847] .
55. *State of MP v Sheikh Shahid*, AIR 2009 SC 2951 [LNIND 2009 SC 867] : (2009) 12 SCC 715 [LNIND 2009 SC 867] : (2010) 1 SCC (Cr) 704.
56. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056] .
57. *Jitendra v State of Govt of NCT of Delhi*, AIR 2018 SC 5253 [LNIND 2018 SC 537] .
58. *Bachan Singh v State of Punjab*, 1980 Cr LJ 636 : AIR 1980 SC 898 [LNIND 1980 SC 260] . The minimum sentence awardable under section 302 being life imprisonment, it has been held that the sentence cannot be reduced. *Dori v State of UP*, 1991 Cr LJ 3139 (All); *Dadasaheb Misal v State of Maharashtra*, 1987 Cr LJ 1512 (Bom). See *Triveniben v State of Gujarat*, 1990 Cr LJ 273 (Guj); *Sham Sunder v Puran*, (1990) 4 SCC 731 [LNIND 1990 SC 994] : 1991 SCC (Cr) 38 : 1990 Cr LJ 2600 ; *Kannan v State of TN*, 1989 Cr LJ 825 : AIR 1989 SC 396 [LNIND 1982 SC 73] : 1989 Supp (1) SCC 81 .
59. *Laxman Naskar v State of WB*, 2000 Cr LJ 4017 : AIR 2000 SC 2762 [LNIND 2000 SC 1180] .
60. *State of Gujarat v Hon'ble High Court of Gujarat*, 1998 Cr LJ 4561 : AIR 1998 SC 3164 [LNIND 1998 SC 920] .
61. For an example of early release see *Iqbal Singh v State of Punjab*, 1990 Cr LJ 1460 .
62. Act No. 13 of 2013 w.e.f 2 April 2013.
63. *Mohd Arif v The Registrar, Supreme Court of India*, 2014 Cr LJ 4598 : (2014) 9 SCC 737 [LNIND 2014 SC 769] .
64. *R S Joshi v Ajit Mills*, AIR 1977 SC 2279 [LNIND 1977 SC 260] : 1977 SCC (Tax) 536 : (1978) 1 SCJ 239 .
65. *State of Maharashtra v Chandra Prakash Keshavdeo*, 1991 Cr LJ 3187 (Bom).
66. *Kapoor Lal v State of UP*, 1991 Cr LJ 2159 (All).
67. *Rajbir v State of Haryana*, 1985 Cr LJ 1495 : 1985 Guj LH 117 : AIR 1985 SC 1278 . Referred to in *Dhansukh Chhotalal Joshi v State of Gujarat*, 1990 Cr LJ 2333 to reduce the sentence of a 19 year- old boy convicted under section 304-II to that already undergone who was a member of a party which caused death without any intention to do so.
68. *State of Gujarat v Hon'ble High Court of Gujarat*, (1998) 7 SCC 392 [LNIND 1998 SC 920] : AIR 1998 SC 3164 [LNIND 1998 SC 920] See the box.
69. *Phool Kumari v Office of the Superintendent Central Jail, Tihar New Delhi*, (2012) 8 SCC 183 [LNINDORD 2012 SC 410] : 2012 Cr LJ 4261 : AIR 2012 SC 3198 [LNINDORD 2012 SC 410] .
70. *Constitution Bench in GV Godse v State*, AIR 1961 SC 600 [LNIND 1961 SC 11] and *Naib Singh v State of Punjab*, AIR 1983 SC 855 [LNIND 1983 SC 116] .
71. *State of Gujarat v Hon'ble High Court of Gujarat*, (1998) 7 SCC 392 [LNIND 1998 SC 920] : AIR 1998 SC 3164 [LNIND 1998 SC 920] : JT 1998 (6) SC 530 : 1998 Cr LJ 4561 .
72. *Bhuvan Mohan Patnaik v State of AP*, (1975) 3 SCC 185 [LNIND 1974 SC 269] : AIR 1974 SC 2092 [LNIND 1974 SC 269] .
73. *State of Maharashtra v Jethmat Himatmal Jain*, 1994 Cr LJ 2613 (Bom).
74. *Chanda Lal v State of Rajasthan*, AIR 1992 SC 597 : 1992 Cr LJ 523 .
75. *Ramanlal Baldevdas Shah v State of Gujarat*, 1992 Cr LJ 3164 : AIR 1992 SC 1916 . See also *State of Karnataka v Bhojappa Hanamanthappa*, 1994 Cr LJ 1543 .

76. *Sushil Kumar Sanghi v State*, [1995 Cr LJ 3457](#) (Del).
77. *Babloo v State of MP*, [1995 Cr LJ 3534](#) (MP). *Jaya Mala v Home Secy, Govt of J&K*, [AIR 1982 SC 1297](#) [[LNIND 1982 SC 109](#)] : [1982 Cr LR \(SC\) 441](#) relied upon.
78. *Pratapsingh Rathod v State of Maharashtra*, [1996 Cr LJ 790](#) (Bom). Incident of causing stab wound taking place 24 years back and the injury being of simple nature, the sentence was reduced into one already undergone, *Pritam Singh v State*, [1996 Cr LJ 7](#) (Del).
79. *Rasananda Bindhani v State of Orissa*, [1992 Cr LJ 121](#) (Ori).
80. *BY Deshmukh v State of Maharashtra*, [1996 Cr LJ 1108](#) (Bom), **relying** on in *Re Vadivel Padayachi*, [1972 Cr LJ 1641](#) (Mad).
81. *Panchu Parida v State of Orissa*, [1993 Cr LJ 953](#) (Ori). The court referred to *Ippili Trinadha Rao v State of AP*, [1984 Cr LJ 1254](#) .
82. *State of Orissa v Gangadhar Behuria*, [1992 Cr LJ 3814](#) (Ori).
83. *Dayaram v State of MP*, [1992 Cr LJ 3154](#) (MP).
84. *Madhuri Mukund Chitnis v Mukund Martand Chitnis*, [1992 Cr LJ 111](#) (Bom).
85. *Kashiram v Sonvati*, [1992 Cr LJ 760](#) (MP).
86. *MS Sheshappa v State of Karnataka*, [1994 Cr LJ 3372](#) (Kant).
87. *SC Bahri v State of Bihar*, [AIR 1994 SC 2020](#) : [1994 Cr LJ 3271](#) .
88. *State v Banwari Lal*, [1996 Cr LJ 1078](#) (Raj).
89. *Manish Jalan v State of Karnataka*, [JT 2008 \(7\) SC 643](#) [[LNIND 2008 SC 1396](#)] .
90. *Dilip S Dahanukar v Kotak Mahindra Co Ltd*, ((2007) 6 SCC 528 [[LNIND 2007 SC 451](#)] 65) See also *Alister Anthony Pareira v State of Maharashtra*, [2012 Cr LJ 1160](#) : (2012) 2 SCC 648 [[LNIND 2012 SC 15](#)] : (2012) 1 SCC (Cr) 953 : [AIR 2012 SC 3802](#) [[LNIND 2012 SC 15](#)] .
91. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [[LNIND 2012 SC 459](#)] : [2012 Cr LJ 4174](#) : [AIR 2012 SC 3104](#) [[LNIND 2012 SC 459](#)] .
92. *Akhil Kumar v State of MP*, [1992 Cr LJ 2029](#) (MP).
93. *Madhukar Chandar v State of Maharashtra*, [1993 Cr LJ 3281](#) (Bom).
94. *Joshi v State of Kerala*, [1996 Cr LJ 143](#) (Ker).
95. *Sarup Singh v State of Haryana*, [AIR 1995 SC 2452](#) : [1995 Cr LJ 4168](#) .
96. *Raja Ram v State of Rajasthan*, [1993 Cr LJ 1016](#) (Raj).
97. *Lal Diwan v State of UP*, [1995 Cr LJ 3899](#) (All).
98. *Umesh Singh v State of Bihar*, [AIR 2000 SC 2111](#) [[LNIND 2000 SC 871](#)] : [2000 Cr LJ 6167](#) .
99. *Shankar v State of TN*, (1994) 4 SCC 478 [[LNIND 1994 SC 377](#)] : [1994 Cr LJ 3071](#) .
100. *Sharomani Akali Dal (Mann) v State of JK*, [1993 Cr LJ 927](#) (J&K).
101. *Bhimabhai Kalabhai v State of Gujarat*, [1992 Cr LJ 2585](#) (Guj).
102. *Arjunan v State*, [1993 Cr LJ 3113](#) (Mad).
103. *Madhukar Damu Patil v State of Maharashtra*, [1996 Cr LJ 1062](#) (Bom).
104. *Jaivir Singh v State of UP*, [1996 Cr LJ 1494](#) (All).
105. *Dedekula Khabala Saheb v State of AP*, [1996 Cr LJ 2196](#) (AP).
106. *Gochipathula Samudralu v State of AP*, [1992 Cr LJ 2488](#) (AP).
107. *State of Rajasthan v Mohan Lal*, [AIR 2018 SC 3564](#) .
108. *Jagat Bahadur v State of HP*, [1994 Cr LJ 3396](#) (HP).
109. *Paniben v State of Gujarat*, [AIR 1992 SC 1817](#) [[LNIND 1992 SC 248](#)] : [1992 Cr LJ 2919](#) .
110. *Venkappa K Chowdari v State of Karnataka*, [1996 Cr LJ 15](#) (Kant).
111. *Jodha Khoda Rabari v State of Gujarat*, [1992 Cr LJ 3298](#) (Guj).
112. *State of Rajasthan v Mohan Lal*, [AIR 2018 SC 3564](#) .
113. *Jameel v State of UP*, [2010 Cr LJ 2106](#) : (2010) 12 SCC 532 [[LNIND 2009 SC 1960](#)] : [AIR 2010 SC \(Supp\) 303](#) : (2011) 1 SCC (Cr) 582.

114. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056] .
115. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
116. *State of MP v Babu Natt*, (2009) 2 SCC 272 [LNIND 2008 SC 2471] : (2009) 1 SCC (Cr) 713 : AIR 2009 SC 1810 [LNIND 2008 SC 2471] : (2009) 1 Ker LJ 686 : 2009 Cr LJ 1722 .
117. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
118. Act VIII of 1897, section 8. Where the accused was a child of 14 at the time of the incident and, therefore, the benefit of being sent to an approved school under the U.P. Children Act (1 of 1952) would have been available to him but he became a man of 28 by the time of the final judgment, and, therefore, not fit for the school, his conviction was sustained and the sentence reduced to already undergone. *Pachrangi v State of UP*, 1991 Cr LJ 3232 (All), **relying** on *Bhoop Ram v State of UP*, 1989 All Cr R 276 : 1990 Cr LJ 2671 : AIR 1990 SC 1329 [LNIND 1990 SC 277] .
119. *Prahlad G Gajbhiye v State of Maharashtra*, (1994) 2 Cr LJ 2555 at p 2561 (Bom).
120. *Harkori v State of Rajasthan*, 1998 Cr LJ 814 : AIR 1998 SC 2821 [LNIND 1997 SC 1368] .
121. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [LNIND 2012 SC 459] : 2012 Cr LJ 4174 : AIR 2012 SC 3104 .
122. *Rattan Lal v State of Punjab*, AIR 1965 SC 444 [LNIND 1964 SC 135] : 1964 (7) SCR 676 [LNIND 1964 SC 135] : 1965 (1) Cr LJ 360 ; *DalbirSingh v State of Haryana*, AIR 2000 SC 1677 [LNIND 2000 SC 810] : 2000 (5) SCC 82 [LNIND 2000 SC 810] : 2000 Cr LJ 2283 .
123. *Nalinakshan v Rameshan*, 2009 Cr LJ 1703 (Ker).
124. *MCD v State of Delhi*, 2005 (4) SCC 605 [LNIND 2005 SC 445] : AIR 2005 SC 2658 [LNIND 2005 SC 445] : 2005 SCC (Cr) 1322 : 2005 Cr LJ3077; *Sitaram Paswan v State of Bihar*, 2005 (13) SCC 110 [LNIND 2005 SC 703] : AIR 2005 SC 3534 [LNIND 2005 SC 703] : 2005 Cr LJ 4135 .

# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

### **125. [[s 53A] Construction of reference to transportation.**

- (1) Subject to the provisions of sub-section (2) and sub-section (3), any reference to "transportation for life" in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to "imprisonment for life".**
- (2) In every case in which a sentence of transportation for a term has been passed before the commencement of the [Code of Criminal Procedure \(Amendment\) Act, 126. \[1955\]](#) (26 of 1955), the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.**
- (3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.**
- (4) Any reference to "transportation" in any other law for the time being in force shall,—**
  - (a) if the expression means transportation for life, be construed as a reference to imprisonment for life;**
  - (a) if the expression means transportation for any shorter term, be deemed to have been omitted.]**

### **COMMENT—**

This section has been inserted by Act XXVI of 1955. It deals with a sentence of transportation wherever it occurs in a statute. After this amendment of the Code 'transportation' as a sentence has been done away with as a punishment.

**125.** Ins. by Act 26 of 1955, section 117 and Sch. (w.e.f. 1-1-1956).

**126.** Subs. by Act 36 of 1957, section 3 and Sch. II, for "1954" (w.e.f. 17-9-1957).

# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

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## THE INDIAN PENAL CODE

### CHAPTER III OF PUNISHMENTS

#### [s 54] Commutation of sentence of death.

In every case in which sentence of death shall have been passed, <sup>127.</sup> [the appropriate Government] may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

#### COMMENT—

The law governing suspension, remission and commutation of sentence is both statutory and constitutional.<sup>128.</sup> The stage for the exercise of this power generally speaking is post-judicial, i.e., after the judicial process has come to an end. After the judicial function ends, the executive function of giving effect to the judicial verdict commences. Constitutional power under [Article 72/161](#) would override the statutory power contained in sections 432 and 433 and the limitation of section 433A of the Code as well as the power conferred by [sections 54 and 55, IPC, 1860.](#)<sup>129.</sup> No convict has a fundamental right of remission or shortening of sentence. The State in exercise of its executive power of remission must consider each individual case keeping in view the relevant factors. The power of the State to issue general instructions, so that no discrimination is made, is also permissible in law.<sup>130.</sup> Exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege.<sup>131.</sup> A right to be considered for remission, keeping in view the constitutional safeguards of a convict under [Articles 20 and 21](#) of the [Constitution of India](#), must be held to be a legal one. Such a legal right emanates from not only the [Prisons Act](#) but also from the Rules framed thereunder.<sup>132.</sup> The power of remission vested in the Government under [section 433A Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#) is not in conflict with [Articles 72 and 162](#) of the [Constitution.](#)<sup>133.</sup> Granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an executive action that mitigates or sets aside the punishment for a crime. It eliminates the effect of conviction without addressing the defendant's guilt or innocence.<sup>134.</sup> It is open to the President in the exercise of the power vested in him by [Article 72 of the Constitution](#) to scrutinize the evidence on the record of the criminal case and come to a different conclusion from that recorded by the Court in regard to the guilt of, and sentence imposed on, the accused.<sup>135.</sup>

#### [s 54.1] Delay in Execution whether entitle commutation of Death sentence to Life Imprisonment.—

In *TV Vatheeswaran's case*, [AIR 1983 SC 361 \[LNIND 1983 SC 43\] : 1983 SCR \(2\) 348](#)<sup>136.</sup> a two-Judge Bench of SC considered whether the accused, who was convicted for an offence of murder and sentenced to death, kept in solitary confinement for about eight years was entitled to commutation of death sentence. It was held that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke [Article 21](#) and demand the quashing of the sentence of death.<sup>137.</sup> But a three-Judge in *Sher Singh v State of Punjab*,<sup>138.</sup> held that though prolonged delay in the execution of a death sentence is

unquestionably an important consideration for determining whether the sentence should be allowed to be commuted, no hard and fast rule that "delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke [Article 21](#) and demand the quashing of the sentence of death" can be laid down as has been done in *Vatheeswaran Javed Ahmed v State of Maharashtra*,<sup>139</sup> re-iterated the proposition laid down in *Vatheeswaran (supra)* case and doubted the competence of the three-Judge Bench to **overrule** the *Vatheeswaran Case*. The conflicting views are finally settled by the [Constitution Bench](#) in *Triveni Ben v State of Gujarat*.<sup>140</sup> It **overruled** *Vatheeswaran (supra)* holding that undue long delay in execution of the sentence of death will entitle the condemned person to approach this Court under [Article 32](#) but the Court will only examine the nature of delay caused and circumstances that ensued after sentence was finally confirmed by the judicial process and will have no jurisdiction to reopen the conclusions reached by the Court while finally maintaining the sentence of death. Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable and to this extent the decision in *Vatheeswaran* case cannot be said to lay down the correct law. In *Madhu Mehta v UOI*,<sup>141, 142</sup> Supreme Court commuted the death sentence on the ground that the mercy petition was pending for eight years after disposal of the criminal appeal by Supreme Court.

#### **[s 54.1.1] Devender Singh Bhullar and Mahendra Das. —**

In *Devender Pal Singh Bhullar v State of NCT of Delhi*,<sup>143</sup> the convict appealed to the President for clemency in 2003. The President, after a lapse of over eight years, dismissed his mercy plea in 2011. Bhullar had sought commutation of his death penalty to life sentence by the Supreme Court on the ground that there was inordinate delay by the President over his plea for clemency. A two-Judge Bench<sup>144</sup> by order dated 12 April 2013 dismissed his plea, by holding that the rule enunciated in *Sher Singh's case (supra)*, *Triveniben's case (supra)* and some other judgments that long delay may be one of the grounds for commutation of the sentence of death into life imprisonment cannot be invoked in cases where a person is convicted for offence under TADA or similar statutes. Two weeks later in *Mahendra Nath Das v UOI*,<sup>145</sup> the same Bench held that the convict's death sentence could be commuted to life imprisonment because much of the inordinate delay of 12 years in the rejection of his mercy petition by the President was unexplained, and therefore, inexcusable.

#### **[s 54.2] Modification of death sentence to a particular period with the further direction that the convict must not be released from prison for the rest of his life or before actually serving out the term. —**

It was in *Swamy Shraddananda (2) v State of Karnataka*,<sup>146</sup> the three-Judge Bench held that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of 14 years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be. But a two-Judge Bench in *Sangeet v State of Haryana*<sup>147</sup> in which it was held that:

a reading of some recent decisions delivered by this Court seems to suggest that the remission power of the appropriate Government has effectively been nullified by awarding sentences of 20 years, 25 years and in some cases without any remission. Is this permissible? Can this Court (or any Court for that matter) restrain the appropriate Government from granting remission of a sentence to a convict? What this Court has done

in *Swamy Shraddananda* and several other cases, by giving a sentence in a capital offence of 20 years or 30 years imprisonment without remission, is to effectively injunct the appropriate Government from exercising its power of remission for the specified period. In our opinion, this issue needs further and greater discussion, but as at present advised, we are of the opinion that this is not permissible. The appropriate Government cannot be told that it is prohibited from granting remission of a sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever the reason. In this case, though the Division Bench raised a doubt about the decision of a three-Judge Bench in *Swamy Shraddananda* (*supra*), yet the same has not been referred to a larger Bench.

In *Sahib Hussain @ Sahib Jan v State of Rajasthan*,<sup>148</sup> another two-Judge Bench reiterated the position held in *Swamy Shraddananda* (*supra*) by holding that the observations in *Sangeet* (*supra*) are not warranted. In *Gurvail Singh @ Gala v State of Punjab*,<sup>149</sup> another two Judge also termed the remarks in *Sangeet* (*supra*) were 'unwarranted' and opined that if the two-Judge Bench was of the opinion that earlier judgments, even of a larger Bench were not justified, the Bench ought to have referred the matter to the larger Bench.

### **[s 54.3] Cases where the death sentence was modified to a particular period (or life) with further direction to avoid premature release**

1. *Subhash Chander v Krishan Lal* <sup>150</sup>.
2. *Shri Bhagwan v State of Rajasthan* <sup>151</sup>.
3. *Ram Anup Singh v State of Bihar* <sup>152</sup>.
4. *Mohd. Munna v UOI* <sup>153</sup>.
5. *Jayawant Dattatraya Suryarao v State of Maharashtra* <sup>154</sup>.
6. *Nazir Khan v State of Delhi* <sup>155</sup>.
7. *Swamy Shraddananda (2) v State of Karnataka* <sup>156</sup>.
8. *Haru Ghosh v State of WB* <sup>157</sup>.
9. *Ramraj v State of Chattisgarh* <sup>158</sup>.
10. *Neel Kumar @ Anil Kumar v The State of Haryana* <sup>159</sup>.
11. *Sandeep v State of UP* <sup>160</sup>.
12. *Gurvail Singh @ Gala v State of Punjab* <sup>161</sup>.
13. *Brajendra Singh v State of MP* <sup>162</sup>.
14. *State of UP v Sanjay Kumar* <sup>163</sup>.

<sup>127</sup>. Subs. by the A.O. 1950, for "the Central Government or the Provincial Government of the Province within which the offender shall have been sentenced". The words in italics were

substituted by the A.O. 1937, for "the Government of India or the Government of the place".

128. The Law Commission of India in its 41st report proposed that sections 54, 55 and 55A may be omitted from the [IPC](#) and their substance incorporated in [Section 402 Criminal Procedure Code](#)- See *State (Govt of NCT of Delhi) v Prem Raj*, (2003) 7 SCC 121 [LNIND 2003 SC 632] : JT 2003 (8) SC 17 [LNIND 2003 SC 632] .
129. *Ashok Kumar v UOI*, AIR 1991 SC 1792 [LNIND 1990 SC 319] : (1991) 3 SCC 498 [LNIND 1991 SC 288] .
130. *State of Haryana v Mahender Singh*, (2007) 13 SCC 606 [LNIND 2007 SC 1295] : 2008 Cr LJ 444 : (2009) 1 SCC (Cr) 221.
131. *Epuru Sudhakar v Govt of AP*, (2006) 8 SCC 161 [LNIND 2006 SC 807] : AIR 2006 SC 3385 [LNIND 2006 SC 807] .
132. *State of Mysore v H Srinivasmurthy*, (1976) 1 SCC 817 [LNIND 1976 SC 29] : AIR 1976 SC 1104 [LNIND 1976 SC 29] .
133. *Maru Ram v UOI*, AIR 1980 SC 2147 [LNIND 1980 SC 446] : 1981 SCR (1) 1196.
134. *Devender Pal Singh Bhullar v State of NCT of Delhi*, AIR 2013 SC 1975 [LNIND 2013 SC 1281] : (2013) 6 SCC 195 [LNIND 2008 SC 2975] .
135. *Kehar Singh v UOI*, AIR 1989 SC 653 [LNIND 1988 SC 586] : (1989) 1 SCC 204 [LNIND 1988 SC 586] .
136. **Overruled** in *Triveni Ben v State of Gujarat*, AIR 1989 SC 1335 [LNIND 1989 SC 885] : (1989) 1 SCC 678 [LNIND 1989 SC 885] .
137. In *Ediga Annamma's case*, (1974 (3) SCR 329), two years was considered sufficient to justify interference with the sentence of death. In *Bhagwan Baux's case* ( AIR 1978 SC 34 ), two and a half years and in *Sadhu Singh's case* ( AIR 1978 SC 1506 ), three and a half years were taken as sufficient to justify altering the sentence of death into one of imprisonment for life, **See also** *KP Mohammed v State of Kerala*, (1985) 1 SCC (Cr) 142 : 1984 Supp SCC 684.
138. *Sher Singh v State of Punjab*, AIR 1983 SC 465 [LNIND 1983 SC 89] : (1983) 2 SCC 344 [LNIND 1983 SC 89] .
139. *Javed Ahmed v State of Maharashtra*, AIR 1985 SC 231 [LNIND 1984 SC 310] : (1985) 1 SCC 275 [LNIND 1984 SC 310] .
140. *Triveni Ben v State of Gujarat*, AIR 1989 SC 1335 [LNIND 1989 SC 885] : (1989) 1 SCC 678 [LNIND 1989 SC 885] : JT 1989 (1) SC 314 [LNIND 1989 SC 885] : 1990 Cr LJ 1810 : (1989) 1 SCC (Cr) 248.
141. *Madhu Mehta v UOI*, (1989) 3 SCR 775 [LNIND 1989 SC 390] .
142. See also *Daya Singh v UOI*, (1991) 3 SCC 61 [LNIND 1991 SC 231] .
143. *Devender Pal Singh Bhullar v State of NCT of Delhi*, AIR 2013 SC 1975 [LNIND 2013 SC 1281] : (2013) 6 SCC 195 [LNIND 2008 SC 2975] .
144. GS Singhvi and S J Mukhopadhaya, JJ.
145. *Mahendra Nath Das v UOI*, (2013) 6 SCC 253 [LNIND 2013 SC 522] : 2013 (6) Scale 591 [LNIND 2013 SC 522] .
146. *Swamy Shraddananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911; Also see *State of UP v Sanjay Kumar*, (2012) 8 SCC 537 [LNIND 2012 SC 416] .
147. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] : 2013 Cr LJ 425 .
148. *Sahib Hussain @ Sahib Jan v State of Rajasthan*, 2013 Cr LJ 2359 : 2013 (6) Scale 219 [LNIND 2013 SC 474] .
149. *Gurvail Singh @ Gala v State of Punjab*, 2013 (10) Scale 671 [LNIND 2013 SC 1147] .

150. *Subhash Chander v Krishan Lal*, (2001) 4 SCC 458 [LNIND 2001 SC 853] .
151. *Shri Bhagwan v State of Rajasthan*, (2001) 6 SCC 296 [LNIND 2001 SC 1234] .
152. *Ram Anup Singh v State of Bihar*, (2002) 6 SCC 686 [LNIND 2002 SC 482] .
153. *Mohd Munna v UOI*, (2005) 7 SCC 417 [LNIND 2005 SC 701] .
154. *Jayawant Dattatraya Suryarao v State of Maharashtra*, (2001) 10 SCC 109 [LNIND 2001 SC 2510] .
155. *Nazir Khan v State of Delhi*, (2003) 8 SCC 461 [LNIND 2003 SC 696] .
156. *Swamy Shraddananda (2) v State of Karnataka*, AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 (13) SCC 767 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 .
157. *Haru Ghosh v State of WB*, (2009) 15 SCC 551 [LNIND 2009 SC 1734] .
158. *Ramraj v State of Chattisgarh*, (2010) 1 SCC 573 [LNIND 2009 SC 2093] .
159. *Neel Kumar @ Anil Kumar v The State of Haryana*, (2012) 5 SCC 766 [LNIND 2012 SC 298] .
160. *Sandeep v State of UP*, (2012) 6 SCC 107 [LNIND 2012 SC 306] .
161. *Gurvail Singh @ Gala v State of Punjab*, (2013) 2 SCC 713 [LNIND 2013 SC 94] .
162. *Brajendra Singh v State of MP*, (2012) 4 SCC 289 [LNIND 2012 SC 159] .
163. *State of UP v Sanjay Kumar*, (2013)8 SCC 537 .

# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

### [s 55] Commutation of sentence of imprisonment for life.

In every case in which sentence of <sup>164.</sup>[imprisonment] for life shall have been passed, <sup>165.</sup>[the appropriate Government] may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

#### COMMENT—

In the absence of an order under [section 55 IPC, 1860](#) or [section 433\(b\) Cr PC, 1973](#) a life convict cannot be released even after expiry of 14 years, for a sentence of life imprisonment means rigorous imprisonment for the rest of convict's life.<sup>166.</sup> It is now conclusively settled by a catena of decisions that the punishment of imprisonment for life handed down by the Court means a sentence of imprisonment for the convict for the rest of his life.<sup>167.</sup> However, Supreme Court has been, for quite some time, conscious of the liberal approach and sometimes discriminatory too, taken by the States in exercise of their power under [sections 432 and 433 of Cr PC, 1973](#) in remitting or commuting sentences. In *Jagmohan Singh v State of UP*,<sup>168.</sup> Court had expressed concern about such approach made by the States in remitting life sentences that led to the amendment in [Cr PC](#) introducing [section 433A](#) by Act 45 of 1978. Under [section 433A of Cr PC, 1973](#) a sentence of imprisonment for life is imposed for an offence for which death is one of the punishments or where a death sentence is commuted to life under [section 433](#), he shall not be released unless he has served 14 years of imprisonment.

It appears that the provision has been generally understood to mean that life sentence would only be 14 years of incarceration. Taking judicial notice of such a trend, the Supreme Court has, in cases where imposition of death sentence would be too harsh and imprisonment for life (the way it is understood as above) too inadequate, in several cases, has adopted different methods to ensure that the minimum term of life imprisonment ranges from at least 20 years to the end of natural life. However, in some cases, the Court had also been voicing concern about the statutory basis of such orders.<sup>169.</sup> In the case of *State of Rajasthan v Jamil Khan*,<sup>170.</sup> the Supreme Court opined that:

We are of the view that it will do well in case a proper amendment under [section 53 of IPC](#) is provided, introducing one more category of punishment - life imprisonment without commutation or remission. Dr. VS Malimath, J, in the Report on 'Committee of Reforms of Criminal Justice System', submitted in 2003, had made such a suggestion but so far no serious steps have been taken in that regard. There could be a provision for imprisonment till death without remission or commutation.

#### [s 55.1] The power of High Court to commute.—

Exercise of power under [section 433](#) is an executive discretion. The High Court in exercise of its revisional jurisdiction had no power conferred on it to commute the sentence imposed where a minimum sentence was provided for offence. The mandate of [section 433 Cr PC, 1973](#) enables the Government in an appropriate case to commute

the sentence of a convict and to prematurely order his release before expiry of the sentence as imposed by the Courts.<sup>171</sup> In *State (Govt. of NCT of Delhi) v Prem Raj*,<sup>172</sup> Supreme Court was called upon to consider whether in a case involving conviction under section 7 read with [section 13\(1\)\(d\) of the Prevention of Corruption Act 1988](#), the High Court could commute the sentence of imprisonment on deposit of a specified amount by the convict and direct the State Government to pass appropriate order under [section 433\(c\) Cr PC, 1973](#). It was held that the question of remission lay within the domain of the appropriate government and it was not open to the High Court to give a direction of that kind even if the High Court could give such a direction, it could only direct consideration of the case of premature release by the Government and could not have ordered the premature release of the respondent itself. The right to exercise the power under [section 433 Cr PC, 1973](#) vests in the Government and has to be exercised by the Government in accordance with the rules and established principles. The impugned order of the High Court cannot, therefore, be sustained and is hereby set aside.<sup>173</sup>

### **[s 55.2] Power to commute, when minimum sentence is provided in the Statute.—**

Punishment has a penological purpose. Reformation, retribution, prevention, and deterrence are some of the major factors in that regard. Parliament is the collective conscience of the people. If it has mandated a minimum sentence for certain offences, the Government being its delegate, cannot interfere with the same in exercise of their power for remission or commutation. Neither section 432 nor [section 433 of Cr PC, 1973](#) hence contains a non-obstante provision. Therefore, the minimum sentence provided for any offence cannot be and shall not be remitted or commuted by the Government in exercise of their power under [sections 432 or 433 of the Cr PC, 1973](#). Wherever the [Indian Penal Code](#) or such penal statutes have provided for a minimum sentence for any offence, to that extent, the power of remission or commutation has to be read as restricted; otherwise the whole purpose of punishment will be defeated and it will be a mockery on sentencing.<sup>174</sup>

<sup>164</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for transportation (w.e.f. 1-1-1956).

<sup>165</sup>. Subs. by the A.O. 1950, for "*the Provincial Government of the Province* within which the offender shall have been sentenced". The words in italics were substituted by the A.O. 1937, for the Government of India or the Government of the place.

<sup>166</sup>. *Naib Singh v State of Punjab*, 1983 Cr LJ 1345 : AIR 1983 SC 855 [LNIND 1983 SC 116] : 1983 Cr LR (SC) 348 : (1983) 2 SCC 454 [LNIND 1983 SC 116] : 1983 SCC (Cr) 536. The provisions of these sections are subject to the overriding power conferred by [Articles 72 and 161](#) of the [Constitution of India](#). *Ashok Kumar v UOI*, AIR 1991 SC 1792 [LNIND 1990 SC 319] : 1991 Cr LJ 2483 , where the court also emphasised that imprisonment for life means imprisonment for the full span of life. **Affirming**, *Gopal Vinayak Godse v State of Maharashtra*, AIR 1961 SC 600 [LNIND 1961 SC 11] : (1961) 3 SCR 440 [LNIND 1961 SC 11] : (1961) 1 Cr LJ 736 . In the absence of an order the section is not applicable because there can be no order by

inference or implication, *Sat Pal v State of Haryana*, AIR 1993 SC 1218 [LNIND 1992 SC 526] : 1993 Cr LJ 314 : (1992) 4 SCC 172 [LNIND 1992 SC 526] .

167. *Gopal Vinayak Godse v The State of Maharashtra*, (1961) 3 SCR 440 [LNIND 1961 SC 11] (Constitution Bench); *Dalbir Singh v State of Punjab*, (1979) 3 SCC 745 [LNIND 1979 SC 281] ; *Maru Ram v UOI*, (1981) 1 SCC 107 [LNIND 1980 SC 446] (Constitution Bench); *Naib Singh v State of Punjab*, (1983) 2 SCC 454 [LNIND 1983 SC 116] ; *Ashok Kumar alias Golu v UOI*, (1991) 3 SCC 498 [LNIND 1991 SC 288] ; *Laxman Naskar (Life Convict) v State of WB*, (2000) 7 SCC 626 [LNIND 2000 SC 1180] ; *Zahid Hussein v State of WB*, (2001) 3 SCC 750 [LNIND 2001 SC 692] ; *Kamalanantha v State of TN*, (2005) 5 SCC 194 [LNIND 2005 SC 337] ; *Mohd Munna v UOI*, (2005) 7 SCC 416 [LNIND 2005 SC 701] and *CA Pious v State of Kerala*, (2007) 8 SCC 312 [LNIND 2007 SC 1070] .

168. *Jagmohan Singh v State of UP*, (1973) 1 SCC 20 [LNIND 1972 SC 477] .

169. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] : 2013 Cr LJ 425 .

170. *State of Rajasthan v Jamil Khan*, 2013 (12) Scale 200 [LNIND 2013 SC 883] .

171. *Delhi Administration (Now NCT of Delhi) v Madan Lal*, 2002 (6) Supreme 77 [LNIND 2002 SC 533] .

172. *State (Govt of NCT of Delhi) v Prem Raj*, (2003) 7 SCC 121 [LNIND 2003 SC 632] .

173. *State of Punjab v Kesar Singh*, 1996 (5) SCC 495 [LNIND 1996 SC 1091] .

174. *State of Rajasthan v Jamil Khan*, 2013 (12) Scale 200 [LNIND 2013 SC 883] .



# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

**175.** **[[s 55A] Definition of "appropriate Government".**

In sections 54 and 55 the expression "appropriate Government" means,—

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

### COMMENT—

This section was substituted for the old section by the Adaptation of Laws Order 1950.

The appropriate Government empowered to remit the sentence of a person convicted of offences under [sections 489-A to 489-D](#) of the [IPC, 1860](#) is the Central Government not the State Government.<sup>176.</sup>

<sup>175.</sup> Subs. by the A.O. 1950, for section 55A. Earlier section 55A was inserted by the A.O. 1937.

<sup>176.</sup> *GV Ramanaiah v Superintendent of Central Jail, Rajahmundry*, [AIR 1974 SC 31](#) [[LNIND 1973 SC 300](#)] : (1974) 3 SCC 531 [[LNIND 1973 SC 300](#)] ; *Hanumant Dass v Vinay Kumar*, [AIR 1982 SC 1052](#) : (1982) 2 SCC 177 -the appropriate Government is the Government of the State where the conviction took place and not the Government of the State where the offence was committed ([Section 432\(7\) Cr PC](#)).

# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

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<sup>176.</sup> *GV Ramanaiah v Superintendent of Central Jail, Rajahmundry*, [AIR 1974 SC 31](#) [[LNIND 1973 SC 300](#)] : (1974) 3 SCC 531 [[LNIND 1973 SC 300](#)] ; *Hanumant Dass v Vinay Kumar*, [AIR 1982 SC 1052](#) : (1982) 2 SCC 177 -the appropriate Government is the Government of the State where the conviction took place and not the Government of the State where the offence was committed ([Section 432\(7\) Cr PC](#)).

## **THE INDIAN PENAL CODE**

### **CHAPTER III OF PUNISHMENTS**

**[s 56] Sentence of Europeans and Americans to penal servitude. Proviso as to sentence for term exceeding ten years but not for life.**

**[Rep. by the Criminal Law (Removal of Racial Discriminations) Act, 1949 (17 of 1949), sec. 2 (w.e.f. 6-4-1949).]**

# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

### [s 57] Fractions of terms of punishment.

In calculating fractions of terms of punishment, <sup>177.</sup>[imprisonment] for life shall be reckoned as equivalent to <sup>178.</sup>[imprisonment] for twenty years.

### COMMENT—

Section 57 of the IPC, 1860 does not in any way limit the punishment of imprisonment for life to a term of 20 years. Section 57 is only for calculating fractions of terms of punishment and provides that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. The object and purpose of section 57 will be clear by simply referring to sections 65, 116, 119, 129 and 511 of the IPC, 1860.<sup>179.</sup> The accused has thus no right to be released after a period of 20 years. The remissions granted under the rules made under the Prison Act or under the Jail Manual are merely administrative orders of the appropriate Government and fall exclusively within the discretion of the Government under section 401 (now section 432) Cr PC, 1973. In the case of a prisoner who is convicted in one State but transferred to the jail of another State to serve out the sentence, the appropriate Government to grant remission would be the Government of the State where the accused was convicted and not that of the transferee Government.<sup>180.</sup>

### [s 57.1] Life imprisonment.—

Life imprisonment means imprisonment for the whole of a convict's natural life. It does not automatically expire on his serving sentence of 14 years or 20 years, unless, of course, the sentence is remitted or commuted by the Government in accordance with the law<sup>181.</sup> The Court said that life imprisonment means imprisonment for the whole of the remaining period of the convict's life. The fact that the West Bengal Correctional Services Act 1992, equates life imprisonment with imprisonment for 20 years does not entitle the convict to automatic release on expiry of such term of imprisonment including remission.<sup>182.</sup>

### [s 57.2] Punishment for attempt Under Section 511 when the offence attempted is punishable with Life imprisonment.—

Section 57 of the IPC, 1860 provides that in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. In view of this, for the offence of attempt to commit rape punishable under section 376(2)(a) read with section 511 maximum sentence would be rigorous imprisonment for ten years.<sup>183.</sup>

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177. Subs. by Act 26 of 1955, sec. 117 and Sch., for "transportation" (w.e.f. 1-1-1956).
178. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation" (w.e.f. 1-1-1956).
179. *Swamy Shraddananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 .
180. *State of MP v Ratan Singh*, 1976 Cr LJ 1192 : AIR 1976 SC 1552 [LNIND 1976 SC 215] ; see also *Naib Singh v State of Punjab*, (1983) 2 SCC 454 [LNIND 1983 SC 116] : AIR 1983 SC 855 [LNIND 1983 SC 116] : 1983 Cr LJ 1345 ; *Gopal Vinayak Godse*, AIR 1961SC 600 : (1961) 1 Cr LJ 736 : (1961) 63 Bom LR 517 [LNIND 1961 SC 11] SC.
181. *Life Convict, Laxman Naskar v State of WB*, AIR 2000 SC 2762 [LNIND 2000 SC 1180] : 2000 Cr LJ 4017 .
182. See the comments under section 45 and section 55.
183. *Chandrakant Vithal Pawar v State of Maharashtra*, 2011 Cr LJ 4900 (Bom); *Syed Ghouse Alias Babu v State of AP*, 2009 Cr LJ 311 (AP)(DB).

## THE INDIAN PENAL CODE

### CHAPTER III OF PUNISHMENTS

[s 58] Offenders sentenced to transportation how dealt with until transported.

[Rep. by the [Code of Criminal Procedure \(Amendment\) Act, 1955 \(26 of 1955\)](#), sec. 117 and Sch. (w.e.f. 1-1-1956).]

# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

[s 59] Transportation instead of imprisonment.

[Rep. by the [Code of Criminal Procedure \(Amendment\) Act, 1955 \(26 of 1955\)](#), sec. 117 and Sch. (w.e.f. 1-1-1956).]

## THE INDIAN PENAL CODE

### CHAPTER III OF PUNISHMENTS

**[s 60] Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.**

**In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.**

#### COMMENT—

Life imprisonment means rigorous imprisonment for life.<sup>184</sup> A distinction between 'imprisonment for life' and 'imprisonment for a term' has been maintained in the [Indian Penal Code](#) in several of its provisions. Second, by its very terms section 60 is applicable to a case where 'an offender is punishable with imprisonment which may be of either description' and it is only in such case that it is competent for the Court to direct that 'such imprisonment shall be either wholly rigorous or wholly simple or that any part of such imprisonment shall be rigorous and the rest simple'. And it is clear that whenever an offender is punishable with 'imprisonment for life' he is not punishable with 'imprisonment which may be of either description', in other words section 60 would be inapplicable. The position in law as regards the nature of punishment involved in a sentence of imprisonment for life is well settled and the sentence of imprisonment for life has to be equated to rigorous imprisonment for life.<sup>185</sup>

<sup>184</sup>. *Mohd Munna v UOI*, (2005) 7 SCC 417 [LNIND 2005 SC 701] : AIR 2005 SC 3440 [LNIND 2005 SC 701].

<sup>185</sup>. *Naib Singh case*, (1983 (2) SCC 454 [LNIND 1983 SC 116] : 1983 SCC (Cr) 536.



# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

[s 61] Sentence of forfeiture of property.

[Rep. by the [Indian Penal Code](#) (Amendment) Act, 1921 (XVI of 1921), sec. 4.]

## THE INDIAN PENAL CODE

### CHAPTER III OF PUNISHMENTS

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

[Rep. by the [Indian Penal Code \(Amendment\) Act, 1921 \(XVI of 1921\)](#), sec. 4.]

#### COMMENT—

These sections were deleted by the [Indian Penal Code \(Amendment\) Act of 1921](#). They imposed the sentence of forfeiture of property. The Court recommended reintroduction of these sections because they have become necessary to combat the cancerous growth of corruption. These provisions would have a determined effect on those who are bent upon to accumulate wealth at the cost of the society by misusing their position of power.<sup>186</sup>

<sup>186</sup>. *Shobha Suresh Jumani v Appellate Tribunal, Forfeited Property*, [AIR 2001 SC 2288 \[LNIND 2001 SC 1184\]](#): [2001 Cr LJ 2583](#) .

## THE INDIAN PENAL CODE

### CHAPTER III OF PUNISHMENTS

#### [s 63] Amount of fine.

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

#### COMMENT—

A fine is fixed with due regard to circumstances of the case in which it is imposed and the condition of life of the offender. When the legislature has not fixed any upper limit for the quantum of fine in respect of a particular offence, the Court has freedom to fix any amount but then the Court must see that the fine imposed is not excessively high or repulsively low. Financial capacity of the accused, enormity of the offence and extent of damage caused to the victim of the offences etc. are relevant considerations in fixing up the amount.<sup>187.</sup>

#### [s 63.1] Fine not to be harsh or excessive.—

The general principle of law running through sections 63 to 70 is that the amount of fine should not be too harsh or excessive. Where a substantial term of imprisonment is inflicted, an excessive fine should not be imposed except in exceptional cases.<sup>188.</sup> Section 63 does not prescribe any limit to the amount of fine, but it should not be excessive. In the present case having regard to the gravity of the offence and the illegal gains made by the accused, the fine imposed to the tune of Rs. 60 crores was held to be not excessive.<sup>189.</sup>

#### [s 63.2] Applicability in other Statutes.—

Sections 63–70 [IPC, 1860](#) and provision of [Cr PC, 1973](#) relating to the award of imprisonment in default of payment of fine would apply to all cases wherein fines have been imposed on an offender unless 'the Act, Regulation, Rules or Bye-law contains an express provision to the contrary'.<sup>190.</sup>

<sup>187.</sup> *Sebastian v State of Kerala*, [1992 Cr LJ 3642 \(Ker\)](#) : [1992 \(3\) Crimes 864 \(Ker\)](#)

<sup>188.</sup> *Shahejadhkhan Maheubkhan Pathan v State of Gujarat*, [JT 2012 \(10\) SC 8 \[LNIND 2012 SC 630\]](#) : [2012 \(10\) Scale 21 \[LNIND 2012 SC 630\]](#) : [AIR 2012 \(SCW\) 5875](#) (In this judgment the SC

quoted the previous edition of this book). See also *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] : 2008 Cr LJ 386 .

189. *Association of Victims of Uphaar Tragedy v Sushil Ansal*, AIR 2017 SC 976 .

190. *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] : 2008 Cr LJ 386 : (2008) 1 SCC (Cr) 1.

# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

### [s 64] Sentence of imprisonment for non-payment of fine.

**191.** [In every case, of an offence punishable with imprisonment as well as fine,<sup>1</sup> in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable **192.**[with imprisonment or fine, or] with fine only, in which the offender is sentenced to a fine,] it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, in which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

### COMMENT—

The term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in other appropriate judicial proceedings or "otherwise". A term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. It is, therefore, not only the power, but also the duty of the Court to keep in view the nature of offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine.<sup>193.</sup> A default sentence is no punishment under law. It is only a method of enforcement of the direction for payment of amounts directed to be paid as fine. Wherever the Criminal Court has the jurisdictional competence to impose a fine, sections 64–70, IPC, and [section 30 Cr PC, 1973](#) stipulate that the Court can recover the same by imposition of a default sentence. The jurisdiction to impose a default sentence is only incidental to the power to impose a fine and the duty of the Court to recover the same.<sup>194.</sup> The wording of the section is not happy, but the Legislature intended by it to provide for the award of imprisonment in default of payment of fine in all cases in which fine can be imposed to induce the offender to pay the fine.

The cases falling under this section are:—

Where the offence is punishable with (a) imprisonment with fine, or (b) imprisonment or fine, or (c) fine only, and the offender is sentenced to (i) imprisonment, or (ii) fine, or both, the Court may sentence the offender to a term of imprisonment in default of payment of fine. A term of imprisonment for non-payment of fine is not a substantive sentence. It is only a penalty for the default. It cannot be added to the substantive sentence so as to see whether the maximum imprisonment that could be awarded for the offence is not being exceeded.<sup>195.</sup>

**1. 'Imprisonment as well as fine.'**—Magistrates cannot award compensation in addition to fine.<sup>196.</sup>

The full Bench of Madras High Court held that imprisonment in default of payment of fine cannot be directed to run concurrently with substantive sentence because both the sentences are distinct in view of [sections 53 and 64 IPC, 1860](#).<sup>197.</sup>

#### **[s 64.1] Sentence and penalty distinguished.—**

The term of imprisonment in default of payment of fine is not a sentence. It is penalty incurred for non-payment of fine. A sentence is a term of imprisonment, which the offender has to undergo unless it is remitted in a further judicial proceeding or otherwise. A term of imprisonment on default in payment of fine stands on a different footing. The further imprisonment is due to non-payment by refusal or otherwise. The convict can pay the amount and get rid of further imprisonment.<sup>198.</sup>

#### **[s 64.2] Fine and Compensation.—**

There exists a distinction between fine and compensation, although, in a way it seeks to achieve the same purpose. An amount of compensation can be directed to be recovered as a 'fine' but the legal fiction raised in relation to recovery of fine only, it is in that sense 'fine' stands on a higher footing than compensation awarded by the Court.<sup>199.</sup>

#### **[s 64.3] Power of Magistrate to impose Sentence of imprisonment in default of fine.—**

As per [section 30 of Cr PC, 1973](#) the Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law: provided that the term is not in excess of the powers of the Magistrate under [section 29 Cr PC, 1973](#); and shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine. The imprisonment awarded may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under [section 29 of Cr PC, 1973](#). The default sentence is not to be in excess to the limitations imposed under [section 30 Cr PC, 1973](#).<sup>200.</sup>

#### **[s 64.4] Default sentence on non-payment of Compensation.—**

Undoubtedly, there is no specific provision in the Code which enables the Court to sentence a person who commits breach of the order of payment of compensation. But in *Hari Singh v Sukhbir Singh*,<sup>201.</sup> Supreme Court held that since the imposition of compensation under [section 357\(3\) Cr PC, 1973](#) was on account of social concern, the Court could enforce the same by imposing sentence in default, particularly when no mode had been prescribed in the Code for recovery of sums awarded as compensation in the event the same remained unpaid. The position is re-iterated in *Sugnathi Suresh Kumar v Jagdeeshan*.<sup>202.</sup> The provisions of sections 357(3) and 431 [Cr PC, 1973](#) when read with [section 64 IPC, 1860](#) empower the Court, while making an order for payment of compensation, to also include a default sentence in case of non-payment of the same.<sup>203.</sup>

191. Subs. by Act 8 of 1882, section 2, for "In every case in which an offender is sentenced to a fine".
192. Ins. by Act 10 of 1886, section 21(2).
193. *Shahejadkhan Mahebubkhan Pathan v State of Gujarat*, 2012 (10) Scale 21 [LNIND 2012 SC 630] : (2013) 1 SCC 570 [LNIND 2012 SC 630] : JT 2012 (10) SC 8 [LNIND 2012 SC 630] : *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] : 2008 Cr LJ 386 : (2008) 1 SCC (Cr) 1.
194. *C Ganga v Lakshmi Ammal*, 2008 Cr LJ 3359 (Ker).
195. *P Balaraman v State of TN*, 1991 Cr LJ 166 Mad at pp 176-177.
196. *Dilip S Dahanukar v Kotak Mahindra Co Ltd*, (2007) 6 SCC 528 [LNIND 2007 SC 451] : 2007 Cr LJ 2417 : 2007 (4) SCR1122 : (2007) 3 SCC (Cr) 209.
197. *Donatus Tony Ikwanusi v The Investigating Officer, NCB* 2013 Cr LJ 1938 (Mad FB) : 2013 (2) CTC1. See also *Sukumaran v State*, 1993 Cr LJ 3228 (Ker) ; *Madappen Muhassin v State of Kerala*, 2016Cr LJ 4792 (Ker).
198. *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] : (2008) 1 SCC Cri 1 [LNIND 2007 SC 1171] .
199. *Dilip S Dahanukar v Kotak Mahindra Co Ltd*, (2007) 6 SCC 528 [LNIND 2007 SC 451] : 2007 Cr LJ 2417 : 2007 (4) SCR1122 : (2007) 3 SCC (Cr) 209.
200. *Kuna Maharana v State*, 1996 Cr LJ 170 (Ori).
201. AIR 1988 SC 2127 [LNIND 1988 SC 411] : (1988) 4 SCC 551 [LNIND 1988 SC 411] .
202. *Sugnathi Suresh Kumar v Jagdeeshan*, AIR 2002 SC 681 [LNIND 2002 SC 1622] : (2002) 2 SCC 420 [LNIND 2002 SC 1622] .
203. *Vijayan v Sadanandan*, (2009) 6 SCC 652 [LNIND 2009 SC 1119] : 2009 Cr LJ 2957 : (2009) 3 SCC (Cr) 296; *C Ganga v Lakshmi Ammal*, 2008 Cr LJ 3359 (Ker).

# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

### **[s 65] Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.**

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

#### **COMMENT—**

This section applies to all cases where the offence is 'punishable with imprisonment as well as fine', i.e., cases where fine and imprisonment can be awarded, and also those where the punishment may be either fine or imprisonment, but not both. The only cases that it does not apply to are those dealt with in section 67 where fine only can be awarded.<sup>204</sup> Section 33 (now 30) of the [Cr PC, 1973](#) acts as a corollary to this section. Thus under [section 65, IPC, 1860](#) the imprisonment in default of fine cannot exceed one-fourth of the maximum term of imprisonment that can be awarded for the offence. Thus, where the High Court altered the conviction of the appellant to one under [section 419](#) read with [section 109 IPC](#), from a conviction recorded by the trial Court under sections 420/511, 467, 468 and 471 read with [section 120B IPC](#), and awarded a sentence of two years' rigorous imprisonment while maintaining the fine of Rs. 3,000 and by implication the default imprisonment of two years as awarded by the trial Court, it was held that, though the trial Court's order regarding two years' imprisonment in default of payment of fine was quite in order in view of the fact that the five offences for which the trial Court recorded a conviction were each punishable with seven years' imprisonment and the fine of Rs. 3,000 was only a part of the cumulative sentence for the commission of those five offences, yet the sentence of three years' imprisonment in default of payment of fine became illegal the moment the High Court altered the conviction to one under [section 419](#) read with [section 109 IPC](#), as under these sections the accused could be sentenced to a maximum of three years' imprisonment and, therefore, the default imprisonment could under no circumstance exceed nine months, that is, one-fourth of the maximum sentence of three years that could be awarded under [section 419, IPC](#).<sup>205</sup> While a Magistrate's powers are specifically limited by [section 33\(old\) Cr PC](#) they must also be exercised so as not to contravene [section 65 IPC](#).<sup>206</sup> [Section 326, IPC](#) is punishable with 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. However, because of [section 29\(2\), Cr PC](#) the learned Magistrate, First Class, cannot impose the maximum amount of imprisonment prescribed by this section; he also cannot, by resorting to [section 65, IPC](#), award a period of imprisonment, in default of payment of fine, on the erroneous assumption that he has the power to award the maximum sentence prescribed by [section 326, IPC](#).<sup>207</sup> [Section 65 IPC](#) that puts a limit of imprisonment for default sentence upto one-fourth of the term of imprisonment, the grievance against higher default sentence, if any, can be only by the accused and not by the State.<sup>208</sup>



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204. *Yakoob Sahib v State*, (1898) 22 Mad 238.
205. *Ram Jas v State of UP*, 1974 Cr LJ 1261 : AIR 1974 SC 1811 [LNIND 1970 SC 363] ; see also *Partap Kumar*, 1976 Cr LJ 818 (P&H).
206. *Chhajulal v State of Rajasthan*, AIR 1972 SC 1809 [LNIND 1972 SC 179] : (1972) 3 SCC 411 [LNIND 1972 SC 179] . See *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] : 2008 Cr LJ 386 : (2008) 1 SCC (Cr) 1 in which the period of three years imprisonment for default of fine was reduced to six months.
207. *Bidhan Bisoi v State of Orissa*, 1989 Cr LJ 1038 (Ori).
208. *Association of Victims of Uphaar Tragedy v Sushil Ansal*, AIR 2017 SC 976 .

## **THE INDIAN PENAL CODE**

### **CHAPTER III OF PUNISHMENTS**

#### **[s 66] Description of imprisonment for non-payment of fine.**

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

#### **COMMENT—**

The imprisonment in default of payment of a fine may be either rigorous or simple.

## THE INDIAN PENAL CODE

### CHAPTER III OF PUNISHMENTS

**[s 67] Imprisonment for non-payment of fine when offence punishable with fine only.**

If the offence be punishable with fine only,<sup>209</sup> [the imprisonment which the Court imposes in default of payment of the fine shall be simple, and] the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

#### COMMENT—

This section refers solely to cases in which the offence is punishable with fine only and has no application to an offence punishable either with imprisonment or with fine, but not with both. Such offences are governed by section 65. For a consideration under this section of the [Narcotic Drugs and Psychotropic Substances Act](#) (61 of 1985), section 21 of which imposes a fine and imprisonment in default, see *Daulat Raghunath Derale v State of Maharashtra*.<sup>210</sup>

#### **[s 67.1] Default sentence on non-payment of Maintenance.—**

The sentence is imposed under [section 125\(3\) of Cr PC, 1973](#) only as a mode of enforcement of the direction to pay the amount of maintenance and not as a punishment. The Supreme Court was considering the question whether the default sentence, if undergone shall wipe off the liability.<sup>211</sup> It is impermissible to impose a sentence of rigorous imprisonment on a defaulter under [section 125\(3\) Cr PC, 1973](#). Only a sentence of simple imprisonment can be imposed under [section 125\(3\) of Cr PC, 1973](#).<sup>212</sup>

<sup>209</sup> Ins. by Act 8 of 1882, section 3.

<sup>210</sup> *Daulat Raghunath Derale v State of Maharashtra*, 1991 Cr LJ 817 .

<sup>211</sup> *Kuldip Kaur v Surinder Singh*, ( AIR 1989 SC 232 [LNIND 1988 SC 987] ) : 1989 Cr LJ 794 . It was held that the purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. A sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears.

<sup>212</sup> *Moideenkutty Kunhankutty Haji v State of Kerala*, 2008 Cr LJ 3402 (Ker).



# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

### [s 68] Imprisonment to terminate on payment of fine.

**The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.**

#### COMMENT—

The person sentenced to pay a fine must deposit the fine forthwith, but may be, permitted to deposit it after some time in the discretion of the Court. Even in that event he must deposit the amount before the period specifically fixed by the Court and if he does not do so, he immediately incurs the liability of being sent to prison. It would be the duty of the Court to arrest him and confine him into the prison. Only when such confinement in the prison has commenced that the accused can have a legal right to deposit the amount whereupon [section 68 IPC, 1860](#) would come into operation and his imprisonment would terminate.<sup>213</sup> The time given by the High Court or the Sessions Judges in appeal or revision for payment of fine merely means that the realisation is deferred till the time granted. However, this cannot take away the rights of the convicts as provided under [section 68](#) and [section 69](#) of the [IPC, 1860](#). If the convict offers to deposit the fine imposed on him beyond the period provided, the Courts cannot refuse to accept the same. It must apply the provisions of [section 68](#) and [section 69](#) of the [IPC, 1860](#).<sup>214</sup> The period to deposit the amount of fine cannot be extended by the High Court under [section 482 Cr PC, 1973](#) and the petitioners can avail the remedy of provisions of [section 68 of IPC, 1860](#).<sup>215</sup>

<sup>213</sup>. *Ram Lakhan v State*, [1986 Cr LJ 617](#) (All); *Usman v State of UP*, [2007 Cr LJ 3868](#) (All).

<sup>214</sup>. *State of Assam v Bir Bahadur Singh*, [2005 Cr LJ 4345](#) (Gau).

<sup>215</sup>. *Prahalad Singh v State of MP*, [2009 Cr LJ 3161](#) (MP); *Ram Lakhan v State*, [1986 Cr LJ 617](#) (All).

# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

### [s 69] Termination of imprisonment on payment of proportional part of fine.

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

#### ILLUSTRATION

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

#### COMMENT—

If the fine imposed on an accused is paid or levied while he is imprisoned for default of payment, his imprisonment will immediately terminate: and if a proportion of the fine be paid during the imprisonment, a proportional abatement of the imprisonment will take place. The Court has, however, no power to refund fine. If the time limit had been set by the Court for payment of fine and the fine amount is not paid within the time so fixed, then it goes without saying that the petitioner-accused has to either surrender before the Court or the prosecuting agency will be in a position to arrest him and produce before Court for his detention in prison for undergoing the default sentence.<sup>216</sup> In case of default in payment of fine accused not obeying specific directions as to making payment and postponing payment without surrendering into Court. Accused is guilty of abuse of process of Court.<sup>217</sup>

<sup>216</sup>. *Prahalad Singh v State of M P*, 2009 Cr LJ 3161 (MP).

<sup>217</sup>. *Ram Lakhan v The State*, 1986 Cr LJ 617 (All).

## THE INDIAN PENAL CODE

### CHAPTER III OF PUNISHMENTS

**[s 70] Fine leviable within six years, or during imprisonment. Death not to discharge property from liability.**

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

#### COMMENT—

Imprisonment in default of fine does not liberate the offender from his liability to pay the full amount of fine imposed on him. Such imprisonment is not a discharge or satisfaction of the fine but is imposed as a punishment for non-payment or contempt or resistance to the due execution of the sentence. The offender cannot be permitted to choose whether he will suffer in his person or his property. His person will cease to be answerable for the fine. Nevertheless, his property will for a time continue to do so. The bar of six years may save the property of the accused but not his personal arrest. The liability for any sentence of imprisonment awarded in default of payment of fine continues after the expiration of six years.<sup>218</sup> Any proceeding taken after six years to recover the fine by sale of immoveable property of the offender is time-barred.<sup>219</sup> The limitation starts from the date of passing of the sentence of conviction by the trial Court and not the date of dismissal of the appeal or revision preferred by the accused.<sup>220</sup> The property of the accused is liable for the payment of fine even if he has undergone imprisonment in default of fine and as such even on death of the offender does not discharge any property which would after his death, be legally liable for his debts due from him (including liability) to discharge the fine.<sup>221</sup>

The expression "levy" in this section means "to seize" for the purpose of collecting the fine or to enforce execution for a certain sum and not actual realisation.<sup>222</sup> Any stay or suspension obtained from the higher Court has to be excluded in computing the period of six years' limitation under [section 70 IPC](#).<sup>223</sup> Section 70 says that State shall levy fine within six years from the date of sentence. What is contemplated is that the State shall commence recovery proceedings within six years; and, need not be completed it within six years of the sentence. Therefore, once a distress warrant is issued within six years of the sentence, the plea of limitation is out of bounds for the sentence.<sup>224</sup>

<sup>218</sup>. *Ganu Sakharam*, (1884) Unrep. Cr C 207.

<sup>219</sup>. *Collector of Broach v Ochhavlal Bhikalal*, (1940) 43 Bom LR 122, (1941) Bom 147. *State v Krishna Pillai Madhavan Pillai*, 1953 Cr LJ 1265

220. *Palakdhari Singh*, AIR 1962 SC 1145 [LNIND 1962 SC 17] : (1962) 2 Cr LJ 256 .
221. *P R Anjanappa v Yurej Agencies Pvt Ltd*, 2004 Cr LJ 2565 (Kar).
222. *Ramaswamy*, (1962) 64 Bom LR 440 : 1963 (1) Cr LJ 152
223. *Mahtab Singh v State of UP*, 1979 Cr LJ 1077 : AIR 1979 SC 1263 [LNIND 1978 SC 186] .
224. *Mahtab Singh*, *Supra*; see also *Brahameshwar Prasad Sinha*, 1983 Cr LJ 8 (Pat).



# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

### [s 71] Limit of punishment of offence made up of several offences.

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

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

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

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

#### ILLUSTRATIONS

- (a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.
- (b) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

#### COMMENT—

The section says that where an offence is made up of parts, each of which constitutes an offence, the offender should not be punished for more than one offence unless expressly provided. Where an offence falls within two or more separate definitions of offences; or where several acts of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence, the offender should not be punished with a more severe punishment than the Court which tries him could award for any one of such offences. The section governs the whole Code and regulates the limit of punishment in cases in which the greater offence is made up of two or more minor offences. It is not a rule of adjective law or procedure, but a rule of substantive law regulating the measure of punishment, and it does not, therefore, affect the question of conviction, which relates to the province of procedure. [Section 71 IPC, 1860](#) as well as [section 26 of the General Clauses Act, 1897](#) talk only of punishment and not of conviction. Thus, conviction of the accused in respect of the same act for two different offences is quite legal.<sup>226</sup> The section contemplates separate punishments for an offence against the same law and not under different laws. Where offences are committed under two separate enactments, [section 71 IPC, 1860](#) is not helpful to the accused and as such, two separate sentences cannot be

questioned by pressing section 71 into service.<sup>227</sup> In order to attract provisions of [Article 20\(2\) of the Constitution](#), i.e., doctrine of *autrefois acquit* or [section 300 Cr PC, 1973](#) or [section 71 IPC, 1860](#) or [section 26 of the General Clauses Act, 1897](#) ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not identity of the allegations but the identity of the ingredients of the offence.<sup>228</sup>

The rules for assessment of punishment are laid down in [sections 71 and 72 of the IPC, 1860](#) and [section 31 of the Cr PC, 1973](#). [Section 31 of the Code of Criminal Procedure](#) provides that when a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of [section 71 of the IPC, 1860](#), sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; and in the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offence being in excess of the punishment which it is competent to inflict on conviction of a single offences, to send the offender for trial before a higher Court. It, therefore, enhances the ordinary powers of sentences given to Magistrates by [section 29, Cr PC, 1973](#); but in order to bring a case within the purview of this section, the accused must have been convicted of two or more offences in the same trial, and the sentence for any one of these offences should not exceed the limits of their ordinary powers. The limits fixed by this section refer to sentences passed simultaneously, or upon charges which are tried simultaneously. Sentences of imprisonment passed under it may run concurrently. When an accused is convicted at one trial of two or more offences, [section 31\(1\) of Cr PC, 1973](#) vests discretion in Court to direct that punishment shall run concurrently. Court may sentence the accused for such offences to several punishments prescribed therefor, and such punishment would consist of imprisonment to commence, one after expiration of other in such order as the Court may direct, subject to limitation contained in [section 71 of IPC, 1860](#).<sup>229</sup>

#### **[s 71.1] Illustration (a).—**

"A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up whole beating. If A were liable to punishment for every blow, he might be imprisoned for 50years, one for each blow. But he is liable only to one punishment for the whole beating." It is to be noted that the whole beating is considered to constitute one offence while each of the blows also amounted to the offence of voluntarily causing hurt. It can be said, therefore, that while the obtaining of money by cheating on the presentation of an individual bill did constitute the offence of cheating the obtaining of the entire money in pursuance of the terms of the single contract and the single conspiracy entered into also constituted the offence of cheating. When the accused could not be punished with the punishment for more than one such offence it cannot be the intention of law that the accused be charged with each of the offences, which were in a way included in the complete offence made up by the entire course of conduct of the accused in pursuance of the conspiracy.<sup>230</sup>

#### **[s 71.2] Section 71 IPC and section 220 Cr PC.—**

[Section 71 of the IPC, 1860](#) has to be read in conjunction with [section 220 of the Cr PC, 1973](#). It should, however, be remembered that [section 220 Cr PC, 1973](#) contains only rules of criminal pleading in regard to joinder of charges and does not deal with the sentence to be passed on the charges of the offences mentioned in the several illustrations thereunder. Sub-section (5) of [section 220 Cr PC, 1973](#) makes this position abundantly clear. A joint reading of [section 71 IPC, 1860](#) and [section 220 Cr PC, 1973](#) clearly shows that clause (2) of [section 71 IPC, 1860](#) approximates sub-section (3) of

section 220 Cr PC, 1973 and clause (3) of section 71 IPC, 1860 corresponds to sub-section (4) of section 220 Cr PC, 1973. It, therefore, follows that the embargo on separate sentence under section 71 IPC, 1860 applies only to cases falling within sub-sections (3) and (4) of section 220 Cr PC, 1973 and not under, for example, sub-section (1) of that section.<sup>231</sup> Thus in cases covered by illustrations (i), (j) and (k) to sub-section (3) and illustration (m) to sub-section (4) of section 220 Cr PC, though the offences mentioned therein could be tried together and conviction recorded in regard to each one of them, yet no separate sentences could be passed in view of the embargo contained in section 71 IPC, 1860. Similarly, where the accused was convicted and sentenced under section 147 IPC, 1860 a separate sentence under section 143 IPC, 1860 could not be passed.<sup>232</sup> In the same way when an accused is convicted for a more serious offence, e.g., under section 148 IPC, 1860 a separate sentence under section 147 IPC, 1860 is not only uncalled for but illegal.<sup>233</sup> It, therefore, means that cases falling under sub-section (1) of section 220 Cr PC, 1973 where several distinct offences are committed in course of the same transaction, the accused cannot only be tried and convicted of all of them at one trial but even separate sentences can be passed in regard to each one of them. Thus, where a person commits lurking house-trespass by night (section 457 IPC, 1860) and also commits theft (section 380 IPC, 1860) in course of the same transaction, he can be convicted and sentenced separately for both of them.<sup>234</sup> Though the offence under section 420, IPC, 1860 and offence under section 138, N.I. Act are very distinct and their ingredients are different, still both the offences were committed during the same transaction; accused could have been charged and tried for both the offences during single trial as per section 220, Cr PC, 1973. However, from the language of section 220, it appears to be enabling provision whereby two or more different offences may be tried together by the Court and not mandatory.<sup>235</sup>

### [s 71.3] CASES.—

1. It was contended that the accused having caused the evidence of the two offences under sections 330 and 348 to disappear, committed two separate offences under section 201 and are punishable accordingly. Taking a strict view of the matter, it must be said that by the same act the appellants committed two offences under section 201. The case is not covered either by section 71 of the IPC, 1860 or by section 26 of the General Clauses Act, and the punishment for the two offences cannot be limited under those sections. But, normally, no Court should award two separate punishments for the same act constituting two offences under section 201. The appropriate sentence under section 201 for causing the evidence of the offence under section 330 to disappear should be passed, and no separate sentence need be passed under section 201 for causing the evidence of the offence under section 348 to disappear.<sup>236</sup> Where death was caused by rash and negligent driving of a truck and the accused could be convicted under sections 279 and also under sections 304A, it was held that a separate sentence under sections 279 could not be imposed.<sup>237</sup>

### [s 71.4] Rioting and grievous hurt.—

The illustration (a) to section 71 IPC makes it clear that where only an offence is made up of many parts, and then only, the offender shall not be punished for more than one such offence. When the offences are separate and distinct and do not constitute parts of one offence, the accused can be convicted separately for each one of the offences. Therefore, the argument that the sentence both under sections 148 and 324, IPC is opposed to section 71, IPC is not acceptable.<sup>238</sup>

The provisions of [section 31 of the Code of Criminal Procedure](#) have to be read subject to the provisions of this section and that where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the offender shall not be punished with more severe punishment than the Court which tries him could award for anyone of such offences.<sup>239.</sup>

**3. Same facts constituting different offences.**—It has been held that although the act of the petitioner is only one, namely plying of overloaded vehicle on the public road, he had committed two distinct offences punishable under two different enactments, namely (i) violation of the terms of permit and certificate of registration granted by the authorities which is punishable under the [Motor Vehicles Act, 1988](#) and (ii) causing damage to the public property which is punishable under the [Prevention of Damage to Public Property Act, 1984](#). Hence, the claim of the petitioner that he is being punished more than once for the same offence violating [Article 20\(2\) of the Constitution of India](#) is neither factually correct nor legally tenable as he is being proceeded against for two distinct offences punishable under two separate Acts and no parallel procedure for the same offence is being adopted.<sup>240.</sup> Prosecution under sections 5 and 6 of [Rajasthan Sati \(Prevention\) Act 1987](#) not barred since section 5 makes the commission of an act an offence and punishes the same while the provisions of section 6 are preventive in nature and make provision for punishing contravention of prohibitory order so as to make the prevention effective. The two offences have different ingredients.<sup>241.</sup>

**4. An act giving rise to an offence and an aggravated form of the same offence.**—Section 457 makes punishable lurking house trespass by night or house breaking by night in order to the committing of any offence punishable with imprisonment and if the offence intended to be committed is theft, the punishment is higher. Section 380 makes punishable a theft committed in a dwelling house. The two offences do not, in our opinion, fall under section 71 and, therefore, the conviction under both the sections is not illegal.<sup>242.</sup>

<sup>225.</sup> Added by Act 8 of 1882, sec. 4.

<sup>226.</sup> *Ramanaya v State*, [1977 Cr LJ 467](#) (Pat).

<sup>227.</sup> *Re Natarajan*, [1976 Cr LJ 1502](#) (Mad); see also *Sukhnandan v State*, [\(1917\) 19 Cr LJ 157](#) .

<sup>228.</sup> *Mahendrabhai v State of Gujarat*, [AIR 2012 SC 2844](#) [[LNIND 2012 SC 1473](#)] : [\(2012\) 7 SCC 621](#) [[LNIND 2012 SC 1473](#)] : [2012 Cr LJ 2432](#) .

<sup>229.</sup> *Satnam Singh Puransing Gill v State of Maharashtra*, [2009 Cr LJ 3781](#) .

<sup>230.</sup> *Banwarilal Jhunjhunwala v UOI*, [AIR 1963 SC 1620](#) [[LNIND 1962 SC 382](#)] : 1963 (Supp2) SCR 338 : [1963 Cr LJ 529](#) .

<sup>231.</sup> *Nirichan*, 12 M. 36; *Kalidas*, 38 C 453 : *Wazir*, 10A 58.

<sup>232.</sup> *Poovappa*, [1981 Cr LJ NOC 107](#) (Kant).

<sup>233.</sup> *Re Thangavelu*, [1972 Cr LJ 390](#) (Mad).

<sup>234.</sup> *Udai Bhan*, [1962 \(2\) Cr LJ 251](#) : [AIR 1962 SC 1116](#) [[LNIND 1962 SC 37](#)] ; see also *Ramanaya v State*, [1977 Cr LJ 467](#) (Pat).

<sup>235.</sup> *Sharan P Khanna v Oil & Natural Gas Corp Ltd*, [2010 Cr LJ 4256](#) (Bom).

236. *Roshan Lal v State of Punjab*, AIR 1965 SC 1413 [LNIND 1964 SC 339] : 1965 (2) Cr LJ 426 .  
See also *Nafe Singh v State of Haryana*, (1971) 3 SCC 934 : (1972) 1 SCC (Cr) 182; *Kharkan v State of UP*, AIR 1965 SC 83 [LNIND 1963 SC 205] : 1965 (1) Cr LJ 116 .
237. *Kantilal Shivabhai v State of Gujarat*, 1990 Cr LJ 2500 (Guj).
238. *Angadi Chennaiah v State of AP*, 1985 Cr LJ 1366 (AP).
239. *Puranmal*, AIR 1958 SC 935 [LNIND 1958 SC 89] : 1958 Cr LJ 1432 .
240. *Vikash Kumar Singh v State of Bihar*, AIR 2011 Pat 72 [LNINDORD 2011 PAT 7073] .
241. *State of Rajasthan v Hat Singh*, 2003 (2) SCC 152 [LNIND 2003 SC 7] : AIR 2003 SC 791 [LNIND 2003 SC 7] .
242. *Udai Bhan v State of UP*, AIR 1962 SC 1116 [LNIND 1962 SC 37] : 1962 Cr LJ 251 .

## THE INDIAN PENAL CODE

### CHAPTER III OF PUNISHMENTS

**[s 72] Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.**

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

#### COMMENT—

This provision is intended to prevent an offender whose guilt is fully established from eluding punishment on the ground that the evidence does not enable the tribunal to pronounce with certainty under what penal provision his case falls. The section applies to cases in which the law applicable to a certain set of facts is doubtful. The doubt must be as to which of the offences the accused has committed, not whether he has committed any. Moreover, this rule would apply even if one of the alternatives were an offence of murder.<sup>243</sup>

<sup>243</sup>. *Sahel Singh*, 3 Cr LJ 364; see also *Nesti Mondal*, [AIR 1940 Pat 289](#) .

## THE INDIAN PENAL CODE

### CHAPTER III OF PUNISHMENTS

#### [s 73] Solitary confinement.

Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that

the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

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

a time not exceeding two months if the term of imprisonment shall exceed six months and <sup>244.</sup>[shall not exceed one] year;

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

#### COMMENT—

Solitary confinement amounts to keeping the prisoner thoroughly isolated from any kind of contact with the outside world. It is inflicted in order that a feeling of loneliness may produce wholesome influence and reform the criminal. This section gives the scale according to which solitary confinement may be inflicted. Where the petitioner, an undertrial prisoner, who was arrested in connection with the assassination of a former Prime Minister was put in a separate cell only as a precautionary measure, to ensure his non-mingling with other prisoners and for his security, it was held that it did not amount either to solitary confinement or cellular confinement.<sup>245.</sup> The well-known principle of law is that the convict carrying death punishment is not deemed to be 'prisoner under sentence of death' unless death sentence becomes final, conclusive and beyond judicial scrutiny. Such convict is handed over to the jail authority to be kept in safe and protected custody with purpose that he may be available for execution of the sentence eventually confirmed. This custody is different from custody of a convict suffering from simple or rigorous imprisonment. Therefore, he cannot be kept in Cell or solitary confinement which itself is a separate punishment.<sup>246.</sup>

#### [s 73.1] Convicts on death row.—

The question about solitary confinement or keeping condemned prisoner alone under strict guard as provided in various jail manual has been considered in depth by the [Constitution Bench](#) in *Sunil Batra v Delhi Administration*<sup>247.</sup> and *Triveniben v State of Gujarat*.<sup>248.</sup> In *Batra's* case, it has been held that if the prisoner under sentence of death is held in jail custody, punitive detention cannot be imposed upon him by jail authorities except for prison offences. When a prisoner is committed under a warrant for jail custody under [section 366\(2\) Cr PC, 1973](#) and if he is detained in solitary confinement which is a punishment prescribed by [section 73, IPC, 1860](#) it will amount to imposing punishment for the same offence more than once which would be violative of [Article](#)

20(2). Practice of keeping prisoners in condemned cell before confirmation is a pre-constitutional practice and such practices should be avoided. Therefore, practice adopted in the jail until now cannot be a ground of putting the petitioners in solitary confinement or separate condemned cells.<sup>249</sup>.

The Supreme Court in *Shatrughan Chauhan v UOI*<sup>250</sup>. held that to be 'under sentence of death' means 'to be under a finally executable death sentence'. The Court, in this case also issued guidelines for safeguarding the rights of the death row convicts.

244. Subs. by Act 8 of 1882, section 5, "for be less than a".

245. *Perrivalan v IG of Prisons, Madras*, 1992 Cr LJ 3125 (Mad).

246. *Anand Mohan v State of Bihar*, 2008 Cr LJ 1273 (Pat).

247. *Sunil Batra v Delhi Administration*, AIR 1978 SC 1675 [LNIND 1978 SC 215] : 1978 Cr LJ 1741 .

248. *Triveniben v State of Gujarat*, AIR 1989 SC 1335 [LNIND 1989 SC 885] : 1990 Cr LJ 1810 .

Also see *Kishor Singh Ravinder Dev v State of Rajasthan*, AIR 1981 SC 625 [LNIND 1980 SC 436] : (1981) 1 SCC 503 [LNIND 1980 SC 436] .

249. *Acharapambath Pradeepan v State of Kerala*, 2004 Cr LJ 755 (Ker).

250. *Shatrughan Chauhan v UOI*, 2014 Cr LJ 1327 .



# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

### [s 74] Limit of solitary confinement.

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

### COMMENT—

Solitary confinement if continued for a long time is sure to produce mental derangement.

The section limits the solitary confinement, when the substantive sentence exceeds three months, to seven days in any one month. Solitary confinement must be imposed at intervals. A sentence inflicting solitary confinement for the whole imprisonment is illegal, though not more than 14 days is awarded.<sup>251</sup>

<sup>251</sup>. *Nyan Suk Mether*, (1869) 3 Beng LR 49.

## THE INDIAN PENAL CODE

### CHAPTER III OF PUNISHMENTS

**252.**[[s 75] Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.

Whoever, having been convicted, <sup>1</sup> –

- (a) by a Court in <sup>253.</sup>[India], of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, <sup>254.</sup>[\*\*\*]

<sup>255.</sup> [\*\*\*]

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to <sup>256.</sup>[imprisonment for life], or to imprisonment of either description for a term which may extend to ten years.]

#### COMMENT—

**Principle.**—This section does not constitute a separate offence but only imposes a liability to enhanced punishment. What [section 75 IPC, 1860](#) contemplates is that where a person who has been, previously convicted of an offence punishable under Chapter XII (which deals with offences relating to coin and Government stamps) or Chapter XVII. (which relates to offences against property) with imprisonment of either description for a term of three years or up-wards, is once again found guilty of a similar offence, he shall be liable to enhanced punishment which may extend to imprisonment for life or to imprisonment of either description for a term which may extend to ten years. The section is concerned with a previous conviction for a similar offence but it does not postulate that in respect of the previous conviction, the punishment imposed should have been one of not less than three years. All that it posits is that the previous conviction should have been in respect of an offence punishable with a term of imprisonment for a term of three years or upwards, but it does not lay down that the offender should have been actually punished with such a term of imprisonment. <sup>257.</sup> It does not apply to offences under other Acts. <sup>258.</sup>

**1. 'Having been convicted'.**—A plain reading of this provision goes to show that the previous conviction ought to be for offence punishable under Chapter XII or Chapter XVII and the sentence imposed is three years or more than that. If the sentence is less than three years or the offence does not fall within any of the two Chapters then [section 75, IPC, 1860](#) would not be applicable. If any authority is required then reference may be made to *Re Kamya*, <sup>259.</sup> wherein it has been held that the minimum required for enhancement of punishment under [section 75, IPC, 1860](#) is that the previous conviction of the accused should have resulted in punishment of three years or more. <sup>260.</sup> Section 75 is invoked for enhancement of the sentence and that can come only at the time the sentence is to be imposed. The fact that the accused is an old offender is not to be taken note of by the Court at the trial. Only at the conclusion of the

trial after entering the conviction, that question can be taken up for imposing the sentence.<sup>261</sup> Simply because the provisions of [section 75 of the Indian Penal Code](#) are attracted in a particular case, is no ground for inflicting the extreme punishment provided in that section. The provisions of this section are only permissive and not obligatory. They do confer jurisdiction on the Courts to inflict enhanced punishment but then that jurisdiction is to be exercised in a judicial manner after taking into consideration the circumstances and the factors narrated above.<sup>262</sup> [Section 75, IPC, 1860](#) does not prescribe that a severe sentence should be imposed for repetition of any crime by an offender. It does not prescribe a minimum sentence for any event. It does not say that a convict of a petty theft committed without any violence should be given a severe sentence if he had half a dozen previous convictions for like offences to his credit.<sup>263</sup>

#### **[s 75.1] Clause (a).—**

For the application of this section it is not necessary to show that the previous sentence was for three years or upwards. What is required is that the previous conviction was for an offence punishable under Chapter XII or XVII, for which sentence of imprisonment could have been three years or upwards. The key word being "punishable" the actual sentence awarded for the first offence is not of any consequence so long the offence was punishable with imprisonment for three years or upwards.<sup>264</sup> It is also necessary to remember that the conviction for the earlier offence must remain in operation on the date of conviction for second offence. Thus if the previous conviction is set aside on appeal, the accused cannot be awarded enhanced punishment under this section.<sup>265</sup> Non-applicability of [section 75, IPC](#) has nothing to do with the proof or guilt of the main offence. If [section 75, IPC](#) is found to be inapplicable then it would not mean that the finding of guilt for certain offences recorded by the Magistrate will also go away. The conviction for the offences would stand and the accused would be liable to be sentenced for the main offence and the sentence cannot be enhanced with the aid of [section 75, IPC, 1860](#).<sup>266</sup>

#### **[s 75.2] Section 75 and Section 236 of Cr PC.—**

Under section 236 (310 of old Code) of the [Code of Criminal Procedure](#) and under [section 75 of the Indian Penal Code](#), it is enough if the person concerned has been earlier convicted. It is not necessary that the sentence should be in force. Bearing in mind that [section 75 of the IPC](#) and section 236 (310 of old code) of the [Code of Criminal Procedure](#) deal with persons with previous conviction and the previous sentence need not necessarily be in force when the subsequent offence is committed—it would be clear that the latter section is intended to be applicable only to cases to which [section 75 of the Indian Penal Code](#) applies.<sup>267</sup>

<sup>252</sup>. Subs. by Act 3 of 1910, section 2, for section 75.

<sup>253</sup>. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec. 3 and Sch (w.e.f. 1-4-1951), to read as above.

<sup>254</sup>. The word "or" omitted by Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951).

255. Clause (b) omitted by Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951).
256. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).
257. *Re Sugali Nage Naik*, 1965 (1) Cr LJ 508 .
258. *Manaklal Jhamaklal v State*, 1966 Cr LJ 1139 (MP).
259. *Re Kamy*, AIR 1960 AP 490 [LNIND 1959 AP 115] : 1960 Cr LJ 1302 .
260. *Jagdish v State of Rajasthan*, 1991 Cr LJ 2989 (Raj).
261. *State v Tampikannu*, AIR 1970 Ker 251 [LNIND 1969 KER 110] .
262. *Daulat Singh v The State of HP*, 1981 Cr LJ 1347 (HP).
263. *Kalarikkal Narayana Panicker Accused v State of Kerala*, 1976 Cr LJ 410 .
264. *Ghisulal v State of MP*, 1977 Cr LJ 88 (MP).
265. *Dilip Kumar Sharma*, AIR 1976 SC 133 [LNIND 1975 SC 412] : 1976 Cr LJ 184 .
266. *Jagdish v State of Rajasthan*, 1991 Cr LJ 2989 (Raj).
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## THE INDIAN PENAL CODE

### CHAPTER III OF PUNISHMENTS

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shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to <sup>256.</sup>[imprisonment for life], or to imprisonment of either description for a term which may extend to ten years.]

#### COMMENT—

**Principle.**—This section does not constitute a separate offence but only imposes a liability to enhanced punishment. What [section 75 IPC, 1860](#) contemplates is that where a person who has been, previously convicted of an offence punishable under Chapter XII (which deals with offences relating to coin and Government stamps) or Chapter XVII. (which relates to offences against property) with imprisonment of either description for a term of three years or up-wards, is once again found guilty of a similar offence, he shall be liable to enhanced punishment which may extend to imprisonment for life or to imprisonment of either description for a term which may extend to ten years. The section is concerned with a previous conviction for a similar offence but it does not postulate that in respect of the previous conviction, the punishment imposed should have been one of not less than three years. All that it posits is that the previous conviction should have been in respect of an offence punishable with a term of imprisonment for a term of three years or upwards, but it does not lay down that the offender should have been actually punished with such a term of imprisonment.<sup>257.</sup> It does not apply to offences under other Acts.<sup>258.</sup>

**1. 'Having been convicted'.**—A plain reading of this provision goes to show that the previous conviction ought to be for offence punishable under Chapter XII or Chapter XVII and the sentence imposed is three years or more than that. If the sentence is less than three years or the offence does not fall within any of the two Chapters then [section 75, IPC, 1860](#) would not be applicable. If any authority is required then reference may be made to *Re Kamya*,<sup>259.</sup> wherein it has been held that the minimum required for enhancement of punishment under [section 75, IPC, 1860](#) is that the previous conviction of the accused should have resulted in punishment of three years or more.<sup>260.</sup> Section 75 is invoked for enhancement of the sentence and that can come only at the time the sentence is to be imposed. The fact that the accused is an old offender is not to be taken note of by the Court at the trial. Only at the conclusion of the

trial after entering the conviction, that question can be taken up for imposing the sentence.<sup>261</sup> Simply because the provisions of [section 75 of the Indian Penal Code](#) are attracted in a particular case, is no ground for inflicting the extreme punishment provided in that section. The provisions of this section are only permissive and not obligatory. They do confer jurisdiction on the Courts to inflict enhanced punishment but then that jurisdiction is to be exercised in a judicial manner after taking into consideration the circumstances and the factors narrated above.<sup>262</sup> [Section 75, IPC, 1860](#) does not prescribe that a severe sentence should be imposed for repetition of any crime by an offender. It does not prescribe a minimum sentence for any event. It does not say that a convict of a petty theft committed without any violence should be given a severe sentence if he had half a dozen previous convictions for like offences to his credit.<sup>263</sup>

[s 75.1] **Clause (a).—**

For the application of this section it is not necessary to show that the previous sentence was for three years or upwards. What is required is that the previous conviction was for an offence punishable under Chapter XII or XVII, for which sentence of imprisonment could have been three years or upwards. The key word being "punishable" the actual sentence awarded for the first offence is not of any consequence so long the offence was punishable with imprisonment for three years or upwards.<sup>264</sup> It is also necessary to remember that the conviction for the earlier offence must remain in operation on the date of conviction for second offence. Thus if the previous conviction is set aside on appeal, the accused cannot be awarded enhanced punishment under this section.<sup>265</sup> Non-applicability of [section 75, IPC](#) has nothing to do with the proof or guilt of the main offence. If [section 75, IPC](#) is found to be inapplicable then it would not mean that the finding of guilt for certain offences recorded by the Magistrate will also go away. The conviction for the offences would stand and the accused would be liable to be sentenced for the main offence and the sentence cannot be enhanced with the aid of [section 75, IPC, 1860](#).<sup>266</sup>

[s 75.2] **Section 75 and Section 236 of Cr PC.—**

Under section 236 (310 of old Code) of the [Code of Criminal Procedure](#) and under [section 75 of the Indian Penal Code](#), it is enough if the person concerned has been earlier convicted. It is not necessary that the sentence should be in force. Bearing in mind that [section 75 of the IPC](#) and section 236 (310 of old code) of the [Code of Criminal Procedure](#) deal with persons with previous conviction and the previous sentence need not necessarily be in force when the subsequent offence is committed—it would be clear that the latter section is intended to be applicable only to cases to which [section 75 of the Indian Penal Code](#) applies.<sup>267</sup>

<sup>252</sup>. Subs. by Act 3 of 1910, section 2, for section 75.

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<sup>256</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

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258. *Manaklal Jhamaklal v State*, 1966 Cr LJ 1139 (MP).
259. *Re Kamy*, AIR 1960 AP 490 [LNIND 1959 AP 115] : 1960 Cr LJ 1302 .
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263. *Kalarikkal Narayana Panicker Accused v State of Kerala*, 1976 Cr LJ 410 .
264. *Ghisulal v State of MP*, 1977 Cr LJ 88 (MP).
265. *Dilip Kumar Sharma*, AIR 1976 SC 133 [LNIND 1975 SC 412] : 1976 Cr LJ 184 .
266. *Jagdish v State of Rajasthan*, 1991 Cr LJ 2989 (Raj).
267. *Pratap v State of UP*, AIR 1973 SC 786 [LNIND 1972 SC 595] : (1973) 3 SCC 690 [LNIND 1972 SC 595] .

# THE INDIAN PENAL CODE

## CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.<sup>1</sup>

The following acts are exempted under the Code from criminal liability:–

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).



18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

**[s 76] Act done by a person bound, or by mistake of fact believing himself bound, by law.**

**Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact <sup>1</sup> and not by reason of a mistake of law <sup>2</sup> in good faith believes himself to be,**

**bound by law<sup>3</sup> to do it.**

#### ILLUSTRATIONS

- (a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.
- (b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

#### COMMENT.—

Sections 76 and 79 are based on the maxim *ignorantia facti doth excusat* and *ignorantia juris non excusat*. Section 76 excuses a person who has done what by law is an offence, under a misconception of facts, leading him to believe in good faith that he was commanded by law to do it. See Comment on section 79, *infra*.

This section and sections 77, 78 and 79 deal with acts of a person bound or justified by law. This section as well as sections 78 and 79 deal with acts of a person under a mistake.

1. **'Mistake of fact'**.—See Comment under section 79, *infra*.

2. **'Mistake of law'**.—See Comment under section 79, *infra*.

3. **'In good faith believes himself to be, bound by law'**.—In order to entitle a person to claim the benefit of this section it is necessary to show the existence of a state of facts which would justify the belief in good faith, interpreting the latter expression with reference to section 52, that the person to whom the order was given was bound by law to obey it. Thus, in the case of a soldier, the [Penal Code](#) does not recognize the mere duty of blind obedience to the commands of a superior as sufficient to protect him from the penal consequences of his act. But in certain circumstances a soldier receives absolute protection under [section 132 of the Cr PC, 1973](#).

For illegal acts, however, neither the orders of a parent nor a master nor a superior will furnish any defence. Nothing but fear of instant death is a defence for a policeman who tortures anyone by order of a superior. The maxim *respondeat superior* has no application to such a case.<sup>6</sup> The net position appears to be that if superior order is in conformity with the law no further question arises and the subordinate officer is protected by [section 76 IPC, 1860](#), if he carries out that order. It is only when the order is not in accordance with the law but the subordinate officer who carries out that order in good faith, on account of a mistake of fact and not on ground of mistake of law, believes himself to be bound by law to carry out such an order, that a further question arises as to whether the subordinate officer will not still get protection of [section 76 IPC, 1860](#), because of his mistake of fact. Thus, where the order was legal in the circumstances of the case, e.g., where the police patrol party opened fire under the order of the Deputy Commissioner of Police after it had been attacked on a dark night and an Assistant Commissioner of Police had been injured as a result of such attack, really no question arose for the application of [section 76 IPC, 1860](#), as the order was both legal and justified by the circumstances of the case.<sup>7</sup> The Indian law as contained in [sections 76 and 79](#) of the [Penal Code](#) appears to be the same as in England. This point has, however, not been clearly decided in any case including the decision of the Supreme Court in *Shew Mangal Singh's case*.<sup>8</sup> There are, however, enough indications

in *Shew Mangal Singh's* case and in [sections 76 and 79 IPC, 1860](#), that if the subordinate due to a mistake of fact and not due to a mistake of law honestly believed that he was bound or justified by law in carrying out the superior order which though not manifestly illegal was nevertheless illegal, perhaps he would still get the benefit of superior order. Obedience to an illegal order can only be used in mitigation of punishment but cannot be used as a complete defence.<sup>9</sup> If on account of any abnormal reaction, the employee has committed suicide, the conduct of the complainant or of higher officer of taking departmental action by way of resorting to legal remedy or enforcement of law, cannot be termed as leaving no option to the delinquent employee but to commit suicide and, therefore, cannot be said as abetment or incitement to suicide under such circumstances. In any case any action for resorting to legal remedy for grievances or for enforcement of law in exercise of powers or purported exercise of power cannot be said to contain any element of criminality unless such action is *ex facie* without any competence, authority or jurisdiction.<sup>10</sup>

### **[s 76.1] Protection of private persons assisting police.—**

Private persons who are bound to assist the police under [section 42 of the Cr PC, 1973](#) will be protected under this section.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, [AIR 2004 SC 1966 \[LNIND 2004 SC 1370\]](#) : [2004 Cr LJ 1778](#) : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The [Indian Evidence Act](#), I of 1872, section 105.
3. *Musammat Anandi*, (1923) 45 All 329 ; *Babulal*, [1960 Cr LJ 437](#) (All).
4. *A K Chaudhary v State of Gujarat*, [2006 Cr LJ 726](#) (Guj).
5. *A K Chaudhary v State of Gujarat*, [2006 Cr LJ 726](#) (Guj).
6. *Latifkhan v State*, (1895) 20 Bom 394; *Gurdit Singh*, (1883) PR No. 16 of 1883.
7. *State of WB v Shew Mangal Singh*, [1981 Cr LJ 1683](#) : [AIR 1981 SC 1917 \[LNIND 1981 SC 355\]](#) : (1981) 4 SCC 2 [LNIND 1981 SC 355] .
8. *Shew Mangal Singh*, *Supra*.
9. *Chaman Lal*, (1940) 21 Lah 521.
10. *A K Chaudhary v State of Gujarat*, [2006 Cr LJ 726](#) (Guj).

# THE INDIAN PENAL CODE

## CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.<sup>1</sup>

The following acts are exempted under the Code from criminal liability:–

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
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**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2.</sup>

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**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4.</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5.</sup>

**[s 77] Act of Judge when acting judicially.**

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

## COMMENT.—

Under this section a Judge is exempted not only in those cases in which he proceeds irregularly in the exercise of a power which the law gives him, but also in cases where he, in good faith, exceeds his jurisdiction and has no lawful powers. It protects judges from criminal process just as the [Judicial Officers Protection Act, 1850](#), saves them from civil suits. Judicial Officers' Protection Act affords protection to two broad categories of acts done or ordered to be done by a judicial officer in his judicial capacity. In the first category fall those acts which are within the limits of his jurisdiction. The second category encompasses those acts which may not be within the jurisdiction of the judicial officer, but are, nevertheless, done or ordered to be done by him, believing in good faith that he had jurisdiction to do them or order them to be done.<sup>11</sup>

A Collector who exercises powers of enquiry and award under the [Land Acquisition Act, 1894](#) is not acting judicially because he is not a judge. He is not entitled to the protection of section 77.<sup>12</sup> Regional Provident Fund Commissioner while passing order under section 7-A of 1952 Act is entitled to get protection as envisaged under [section 77 of IPC, 1860](#) and [section 3\(1\) of Judges \(Protection\) Act, 1985](#).<sup>13</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .

2. The [Indian Evidence Act](#), I of 1872, section 105.

3. *Musammat Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).

4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).

5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).

11. *Rachapudi Subba Rao v Advocate General*, (1981) 2 SCC 577 [LNIND 1980 SC 481] : AIR 1981 SC 755 [LNIND 1980 SC 481] .

12. *Surendera Kumar Bhatia v Kanhaiya Lal*, (2009) 12 SCC 184 [LNIND 2009 SC 209] : AIR 2009 SC 1961 [LNIND 2009 SC 209] .

13. *E S Sanjeeva Rao v CBI*, Mumbai, 2012 Cr LJ 4053 (Bom).

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**[s 78] Act done pursuant to the judgment or order of Court.**

**Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice; if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such**



**judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.**

### **COMMENT.—**

This section is merely a corollary to section 77. It affords protection to officers acting under the authority of a judgment, or order of a Court of Justice. It differs from section 77 on the question of jurisdiction. Here, the officer is protected in carrying out an order of a Court which may have no jurisdiction at all, if he believed that the Court had jurisdiction; whereas under section 77 the Judge must be acting within his jurisdiction to be protected by it.

Mistake of law can be pleaded as a defence under this section.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, [AIR 2004 SC 1966](#) [[LNIND 2004 SC 1370](#)] : [2004 Cr LJ 1778](#) : (2005) 9 SCC 71 [[LNIND 2004 SC 1370](#)] .
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**[s 79] Act done by a person justified or by mistake of fact believing himself justified, by law.**

**Nothing is an offence which is done by any person who is justified by law<sup>1</sup>, or who by reason of a mistake of fact<sup>2</sup> and not by reason of a mistake of law<sup>3</sup> in good faith, believes himself to be justified by law, in doing it.**

## ILLUSTRATION

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

## COMMENT.—

**Distinction between Sections 76 and 79.**—The distinction between section 76 and this section is that in the former a person is assumed to be bound, and in the latter to be justified, by law; in other words, the distinction is between a real or supposed legal obligation and a real or supposed legal justification, in doing the particular act. Under both (these sections) there must be a *bona fide* intention to advance the law, manifested by the circumstances attending the act which is the subject of charge; and the party accused cannot allege generally that he had a good motive, but must allege specifically that he believed in good faith that he was bound by law (section 76) to do as he did, or that being empowered by law (section 79) to act in the matter, he had acted to the best of his judgment exerted in good faith.<sup>14</sup>

**1. Any person who is justified by law.**—Jurisprudentially viewed, an act may be an offence, definitionally speaking but a forbidden act may not spell inevitable guilt if the law itself declares that in certain special circumstances it is not to be regarded as an offence. The chapter on General Exceptions operates in this province. Section 79 makes an offence a non-offence. When? Only when the offending act is actually justified by law or is *bona fide* believed by mistake of fact to be so justified.<sup>15</sup> It is easy to see that if the act complained of is wholly justified by law, it would not amount to an offence at all in view of the provisions of [section 79 of the IPC, 1860](#). Many cases may however arise wherein acting under the provisions of the [Police Act](#) or other law conferring powers on the police, the police officer or some other person may go beyond what is strictly justified in law. Though [section 79 of the IPC, 1860](#) will have no application to such cases, [section 53 of the Police Act](#) will apply. But section 53 applies to only a limited class of persons. So, it becomes the task of the Court, whenever any question whether this section applies or not arises to bestow particular care on its decision. In doing this it has to ascertain first, what act is complained of and then to examine, if there is any provision of the [Police Act](#) or other law conferring powers on the police, under which it may be said to have been done or intended to be done. The Court has to remember in this connection that an act is not "under" a provision of law merely because the point of time at which it is done coincides with the point of time when some act is done in the exercise of the powers granted by the provision or in performance of the duty imposed by it. To be able to say that an act is done "under" a provision of law, one must discover the existence of a reasonable relationship between the provisions and the act. In the absence of such a relation the act cannot be said to be done "under" the particular provision of law.<sup>16</sup> But unless there is a reasonable connection between the act complained of and the powers and duties of the office, it cannot be said that the act was done by the accused officer under the colour of his office.<sup>17</sup> In *Bhanuprasad Hariprasad Dave's case*,<sup>18</sup> wherein the allegations against the police officer was of taking advantage of his position and attempting to coerce a person to give him a bribe. The plea of colour of duty was negatived by the Supreme Court. In *Prof. Sumer Chand v UOI*, [1994 \(1\) SCC 64 \[LNIND 1993 SC 665\]](#) Supreme Court on facts endorsed the opinion of the High Court that the act of the Police Officer complained of fell within the description of 'colour of duty'. The argument is irresistible that if the performance of the act which constitutes the offence is justified by law, i.e.,

by some other provision, then section 79 exonerates the doer because the act ceases to be an offence. Likewise, if the act were done by one 'who by reason of a mistake of fact in good faith believes himself to be justified by law in doing it' then also, the exception operates and the *bona fide* belief, although mistaken, eliminates the culpability. If the offender can irrefutably establish that he is actually justified by law in doing the act or, alternatively, that he entertained a mistake of fact and in good faith believed that he was justified by law in committing the act, then, the weapon of section 79 demolishes the prosecution.<sup>19</sup>

**2. 'Mistake of fact'.—**Under this section, although an act may not be justified by law, yet if it is done under a mistake of fact, in the belief in good faith that it is justified by law it will not be an offence. Such cases are not uncommon where the Courts in the facts and circumstances of the particular case have exonerated the accused under section 79 on the ground of having acted in good faith under the belief, owing to a mistake of fact that he was justified in doing the act which constituted an offence. As laid down in [section 52 of the IPC, 1860](#), nothing is said to be done or believed in good faith which is done or believed without due care and attention. The question of good faith must be considered with reference to the position of the accused and the circumstances under which he acted. 'Good faith' requires not logical infallibility but due care and attention. The question of good faith is always a question of fact to be determined in accordance with the proved facts and circumstances of each case.<sup>20</sup>

'Mistake' is not mere forgetfulness.<sup>21</sup> It is a slip "made, not by design, but by mischance."<sup>22</sup> Under sections 76 and 79 a mistake must be one of fact and not of law. At common law an honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent act has always been held to be a good defence. Honest and reasonable mistake stands in fact on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy.<sup>23</sup> It may be laid down as a general rule that an alleged offender is deemed to have acted under that state of facts which he in good faith and on reasonable grounds believed to exist when he did the act alleged to be an offence.<sup>24</sup> *Ignorantia facti doth excusat*, for such ignorance many times makes the act itself morally involuntary.<sup>25</sup> Where a man made a thrust with a sword at a place where, upon reasonable grounds, he supposed a burglar to be, and killed a person who was not a burglar, it was held that he had committed no offence.<sup>26</sup> In other words, he was in the same situation as far as regards the homicide as if he had killed a burglar. The accused while guarding his maize field shot an arrow at a moving object in the *bona fide* belief that it was a bear and in the process caused the death of a man who was hiding there. It was held that he could not be held liable for murder as his case was fully covered by section 79 as well as [section 80 IPC, 1860](#).<sup>27</sup> Similarly, where the accused while helping the police stopped a cart which they in good faith believed to be carrying smuggled rice but ultimately their suspicion proved to be incorrect, it was held that they could not be prosecuted for wrongful restraint under section 341 as their case was covered by [section 79 IPC, 1860](#).<sup>28</sup> Section 79 makes an offence a non-offence. Thus, where the Board of Censors, acting within their jurisdiction and on an application made and pursued in good faith sanctions the public exhibition of a film, the producer and the connected agencies do enter the statutory harbour and are protected from prosecution under [section 292 IPC, 1860](#), because section 79 of the Code exonerates them at least in view of their *bona fide* belief that the certificate is justificatory.<sup>29</sup>

**3. 'Mistake of law'.—**Mistake in point of law in a criminal case is no defence. Mistake of law ordinarily means mistake as to the existence or otherwise of any law on a relevant subject as well as mistake as to what the law is.<sup>30</sup>

Ignorance of the municipal law of the Kingdom, or of the penalty thereby inflicted upon offenders, doth not excuse any, that is of the age of discretion and *compos mentis*, from the

penalty of the breach of it; because every person of the age of discretion and *compos mentis* is bound to know the law, and presumed so to do.<sup>31.</sup>

If any individual should infringe the statute law of the country through ignorance or carelessness, he must abide by the consequences of his error; it is not competent to him to aver in a Court of Justice that he was ignorant of the law of the land, and no Court of Justice is at liberty to receive such a plea.<sup>32.</sup>

The maxim *ignorantia juris non excusat*, in its application to criminal offences, admits of no exception, not even in the case of a foreigner who cannot reasonably be supposed in fact to know the law of the land.<sup>33.</sup> The legal presumption that everyone knows the law of the land is often untrue as a matter of fact. But then why such a presumption subsists? The reason for this seems to be nothing but expediency; otherwise there is no knowing of the extent to which the excuse of ignorance of law might be carried. Indeed, it might be urged almost in every case.<sup>34.</sup> This rule of expediency has been put to use even in a case where the accused could not have possibly known the law in the circumstances in which he was placed. Thus, a person who was on the high seas and as such could not have been cognizant of a recently passed law might be convicted for contravening it.<sup>35.</sup>

Whenever the question of justification of an offence either due to mistake of fact or mistake of law arises, the guiding rules are: (1) that when an act is in itself plainly criminal, and is more severely punishable if certain circumstances co-exist, ignorance of the existence of such circumstances is no answer to a charge for the aggravated offence. (2) That where an act is *prima facie* innocent and proper, unless certain circumstances co-exist, then ignorance of such circumstances is an answer to the charge. (3) That the state of the defendant's mind 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) Where an act which is in itself wrong is, under certain circumstances, criminal, a person who does the wrong act cannot set up as a defence that he was ignorant of the facts which turned the wrong into a crime. (5) Where a statute makes it penal to do an act under certain circumstances, it is a question upon the wording and object of the particular statute, whether the 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.<sup>36.</sup>

### **[s 79.1] Ignorance of statute newly passed.—**

Although a person commits an act which is made an offence for the first time by a statute so recently passed as to render it impossible that any notice of the passing of the statute could have reached the place where the offence has been committed, yet his ignorance of the statute will not save him from punishment.<sup>37.</sup> For an Indian law to operate and be effective in the territory where it operates namely, the territory of India, it is not necessary that it should either be published, or be made known outside the country.<sup>38.</sup>

### **[s 79.2] Act of State.—**

An act of State is an act injurious to the person or to the property of some person who is not at the time of that act a subject of the Government; which act is done by any representative of the Government's authority, civil or military, and is either previously sanctioned or subsequently ratified by the Government. The doctrine as to acts of State can apply only to acts which affect foreigners, and which are done by the orders or with the ratification of the Government. As between the State and its subjects there can be

no such thing as an act of State. Courts of law are established for the express purpose of limiting public authority in its conduct towards individuals.

Persons carrying out an act of State under proper orders will be protected by the [Penal Code](#), in the same way as if they were carrying out a lawful order under the municipal law. To support a plea of this nature two things are essential:—

- (1) that the defendant had authority to act on behalf of the State in the matter; and
- (2) that in so acting, he was professing to act as a matter of policy, outside the law, and not as a matter of right within the law.

### **[s 79.3] Protection of private persons.—**

Private persons acting under [sections 38, 43, 72 and 73](#) of the [Cr PC, 1973](#) will be protected under this section.

### **[s 79.4] Fake Encounters. —**

Unprovoked firing by appellants who were police officials caused death of two persons and grievous gun-shot injuries to another person. Seven police officers admitted firing into the vehicle. But the defence case was that they had done so only on the direction of ACP, a superior officer. The Supreme Court held that it cannot, by any stretch of imagination, be claimed by anybody that a case of murder would fall within the expression 'colour of duty'.<sup>39.</sup>

### **[s 79.5] CASES.—Mistake of fact.—**

*Good Defence.*—Where an accused owing to a defect in his vision and the effect of a fall *bona fide* believed that his son of whom he was very fond was a tiger and caused fatal injuries to him with an axe in a moment of delusion, he was protected under this section, and his act being done under a *bona fide* mistake, he could not be convicted of an offence of murder.<sup>40.</sup> Once the Board of Censors, acting within their jurisdiction and on an application made and pursued in good faith, sanctions the public exhibition of a film, the producer and connected agencies enter the statutory harbour and are protected because section 79 exonerates them in view of the *bona fide* belief that the certificate is justificatory.<sup>41.</sup>

### **[s 79.6] English case.—**

The accused was convicted of bigamy, having gone through the ceremony of marriage within seven years after she had been deserted by her husband. She believed in good faith and on reasonable grounds that her husband was dead. It was held that a *bona fide* belief on reasonable grounds in the death of the husband at the time of the second marriage afforded a good defence to the indictment, and that the conviction was wrong.<sup>42.</sup> Where the question was whether the accused was to be held liable for injuring a person whom he thought was belabouring another when in fact he was only trying to immobilise a person who had attempted to rob a woman, the Court said that if W was labouring under a mistake of fact as to the circumstances when he committed

the alleged offence, he was to be judged according to his mistaken view of the facts regardless of whether his mistake was reasonable or unreasonable. The reasonableness or otherwise of the belief was only material to the question of whether the belief was in fact held by the defendant at all.<sup>43</sup>

### [s 79.7] Bad defence.—

Deceased attempted to steal coconut from the garden of which accused was a watchman. Accused contended that, he while discharging his duties as a watchman in good faith and under mistake of fact inflicted an injury which unfortunately resulted in the death of the victim. Explaining the applicability of section 79, Supreme Court held that there was no mistake of fact which could even if existed or found true could warrant or justify in law, the imposition of such a serious injury as found inflicted on the victim.<sup>44</sup> A police-officer saw a horse tied up in B's premises and because it happened to resemble one which his father had lost a short time previously, he jumped at once to the conclusion that B had either stolen the horse himself, or purchased it from the thief, and compelled B to account for his possession. The officer found that B had bought the animal from one S; so he sent for S, charged him with the theft, and compelled him to give bail whilst an investigation was pending. The officer never sent for the supposed owner of the horse, or took the trouble of getting any credible information as to whether it was his father's horse or not. It was held that the police-officer had not acted in good faith, that is, with due care and attention and that this section did not protect him.<sup>45</sup> The accused struck a person with a full force *lathi* blow thinking that he was a thief and he had to do so to safeguard his property. The incident took place outside the house near a pond. The place was away from the house. There being no occasion for private defence of property and the blow being given on the head with severity, it was held that the accused was liable to be convicted under section 304 Part II. He was sentenced to three years RI.<sup>46</sup>

### [s 79.8] English case.—

The accused took an unmarried girl under the age of 16 years out of the possession, and against the will, of her father. The defence of the accused was that he was *bona fide* and reasonably believed that the girl was older than 16. It was held that the taking of the girl was unlawful the defence was bad.<sup>47</sup> This case may be distinguished from *Tolson's* case, in which a woman married believing her husband to be dead. There the conduct of the woman was not in the smallest degree immoral, but was, on the other hand, perfectly natural and legitimate.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The Indian Evidence Act, I of 1872, section 105.
3. *Musammat Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).



5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
14. 1st Rep. section 114, p 219.
15. *Raj Kapoor v Laxman*, AIR 1980 SC 605 [LNIND 1979 SC 492] : (1980) 2 SCC 175 [LNIND 1979 SC 492] : 1980 (2) SCR 512 [LNIND 1979 SC 492] : 1980 Cr LJ 436 ; *Jayantilal K Katakia v P Govindan Nair*, AIR 1981 SC 1196 : (1981) 2 SCC 423 .
16. *State of AP v N Venugopal*, AIR 1964 SC 33 [LNIND 1963 SC 159] .
17. *State of Maharashtra v Narhar Rao*, AIR 1966 SC 1783 [LNIND 1966 SC 85] ; *State of Maharashtra v Atma Ram*, AIR 1966 SC 1786 [LNIND 1978 SC 193] .
18. *Bhanuprasad Hariprasad Dave v State of Gujarat*, AIR 1968 SC 1323 [LNIND 1968 SC 119] .
19. *Raj Kapoor v Laxman*, AIR 1980 SC 605 [LNIND 1979 SC 492] : (1980) 2 SCC 175 [LNIND 1979 SC 492] : 1980 (2) SCR 512 [LNIND 1979 SC 492] : 1980 Cr LJ 436 .
20. *State of Orissa v Bhagaban Barik*, AIR 1987 SC 1265 [LNIND 1987 SC 366] : (1987) 2 SCC 498 [LNIND 1987 SC 366] .
21. Per Lord Esher, MR, in *Barrow v Isaacs*, (1891) 1 QB 417 , 420.
22. Per Lord Russell, CJ, in *Sandford v Beal*, (1899) 65 LJQB 73 , 74, 73 LT 406.
23. Per Cave, J, in *Tolson*, (1889) 23 QBD 168 , 181.
24. Per Stephen, J, in *Ibid.*, p 188.
25. 1 Hale PC pp 42, 43.
26. *Levett*, (1839) Cro Car 538.
27. *State of Orissa v Khora Ghasi*, 1978 Cr LJ 1305 (Ori).
28. *Keso Sahu v Saligram*, 1977 Cr LJ 1725 (Ori).
29. *Raj Kapoor v Laxman*, 1980 Cr LJ 436 : AIR 1980 SC 605 [LNIND 1979 SC 492] .
30. *Tustipada Mandal*, (1950) Cut 75.
31. 1 Hale PC 42.
32. *Fischer*, (1891) 14 Mad 342, 354, FB.
33. *Esop*, (1836) 7 C & P 456.
34. *Bilbie v Lumley*, (1802) 2 East 469.
35. *Bailey v Bailey*, (1800) Russ & Ry 1; C & J cases, see also *State of Maharashtra v MH George*, 1965 (1) Cr LJ 641 : AIR 1965 SC 722 [LNIND 1964 SC 208] .
36. *Tustipada Mandal*, (1950) Cut. 75.
37. *Bailey's Case*, (1800) Russ. & Ry 1.
38. *Mayer Hans George*, (1964) 67 Bom LR, 583 : AIR 1965 SC 722 [LNIND 1964 SC 208] : (1965) 1 Cr LJ 641 .
39. *Satyavir Singh Rathi v State Thr. CBI*, AIR 2011 SC 1748 [LNIND 2011 SC 475] : (2011) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ 2908 : (2011) 2 SCC(Cr) 782 : (2011) 6 SCR 138 [LNIND 2011 SC 475] .
40. *Chirangi*, (1952) Nag 348.
41. *Raj Kapoor v Laxman*, AIR 1980 SC 605 [LNIND 1979 SC 492] : (1980) 2 SCC 175 [LNIND 1979 SC 492] : 1980 (2) SCR 512 [LNIND 1979 SC 492] : 1980 Cr LJ 436 .
42. *Tolson*, (1889) 23 QBD 168 .
43. *R. v Williams*, (1987) 3 All ER 411 Ch, following dictum of LAWTON LJ in *R. v Kimber*, (1983) 1 All ER 320 . See also *Beckford v R*, (1987) 3 All ER 425 PC, where the same test was applied in a situation in which a person acted in self defence under a mistaken, but honestly held belief, that the person whom he shot dead was a dangerous gunman.
44. *Pitchai v State*, (2004) 13 SCC 579 : (2006) 1 SCC(Cr) 505 See also *Nagraj v State of Mysore*, AIR 1964 SC 269 [LNIND 1963 SC 153] : 1964 (3) SCR 671 [LNIND 1963 SC 153] : 1964 Cr LJ 161 .

45. *Sheo Surun Sahai v. Mohomed Fazil Khan*, (1868) 10 WR (Cr) 20.
46. *State of Orissa v Bhagbhan Barik*, (1987) 2 SCC 498 [LNIND 1987 SC 366] : AIR 1987 SC 1265 [LNIND 1987 SC 366] : 1987 Cr LJ 1115 . The Court **relied** on Russel On Crimes, 76 (vol 1).
47. *Prince*, (1875) LR 2 CCR 154.

# THE INDIAN PENAL CODE

## CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.<sup>1</sup>

The following acts are exempted under the Code from criminal liability:–

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

### **[s 80] Accident in doing a lawful act.**

**Nothing is an offence which is done by accident<sup>1</sup> or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.**

## ILLUSTRATION

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

## COMMENT.—

This section exempts the doer of an innocent or lawful act in an innocent or lawful manner and without any criminal intention or knowledge from any unforeseen evil result that may ensue from accident or misfortune.<sup>48</sup> To claim the benefit of this provision it has to be shown:

- (1) that the act in question was without any criminal intention or knowledge;
- (2) that the act was being done in a lawful manner by lawful means; and
- (3) that act was being done with proper care and caution.<sup>49</sup>

**1. 'Accident'.—**An effect is said to be accidental when the act by which it is caused is not done with the intention of causing it, and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precautions against it.<sup>50</sup> An accident is something that happens out of the ordinary course of things.<sup>51</sup> The idea of something fortuitous and unexpected is involved in the word 'accident'.<sup>52</sup> Where two brothers were sleeping together and one of them while in a state of semi-sleep felt that somebody was throttling him, picked up the *dao*, kept on the head of the bed, and administered a blow which was received by his sleeping brother who died, there being neither intention nor motive, the accused was let off under this section. His act was not voluntary.<sup>53</sup>

An injury is said to be accidentally caused whensoever it is neither wilfully nor negligently caused.<sup>54</sup> Where the accused fired a shot at his assailant who escaped but four other persons were injured and one of them unfortunately expired, it was held that the accused was not liable for the fatal injury to an innocent person as his case fell within the scope of section 80 read with [sections 96 and 100, IPC, 1860](#).<sup>55</sup> Shooting with an unlicensed gun does not debar an accused from claiming immunity under this section.<sup>56</sup>

## [s 80.1] Medical Negligence.—

To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.<sup>57</sup> In *Dr. Suresh Gupta v Govt. of NCT of Delhi*,<sup>58</sup> the Apex Court held that where the medical practitioner failed to take appropriate steps, viz., "not putting a cuffed endotracheal tube of proper size" so as to prevent aspiration of blood blocking respiratory passage, the act attributed to him may be described as negligent act but not so reckless as to make him criminally liable. In *Kusum Sharma v Batra Hospital and Medical Research Centre*,<sup>59</sup> the Supreme Court reiterated the legal position after taking survey of catena of case law. In the context of issue pertaining to criminal liability of a medical practitioner, it is laid

down that the prosecution of a medical practitioner would be liable to be quashed if the evidence on record does not project substratum enough to infer gross or excessive degree of negligence on his/her part. The criminal liability cannot be fastened on the Medical Practitioner unless the negligence is so obvious and of such high degree that it would be culpable by applying the settled norms.<sup>60.</sup>

### **[s 80.2] CASES.—**

Deceased allegedly dashed by offending tractor and crushed by its wheels. The Steering bolt of steering wheel was evidently broken all of a sudden. Offending vehicle became free and was out of control. Incident was merely an accident and not an act of rashness or negligence on the part of the accused.<sup>61.</sup> Where the act of the accused is itself of criminal nature, the protection of this section cannot be availed. In this case, the accused picked up his gun, unlocked it, loaded it with cartridges, aimed at the chest of the victim from a close range of 4–5 feet and shot it. Quite naturally this section was held to be not applicable. There could be no suggestion of an accident.<sup>62.</sup> Where the Death is caused by shooting an arrow under *bona fide* belief that object aimed at was an animal, accused is entitled to the benefit under sections 79 or 80.<sup>63.</sup> The accused was attacked when he was asleep at night by his brother who tried to strangle him. Apprehending imminent death, the accused aimed a blow at his assailant brother with a piece of bamboo on which he could lay hand and the blow accidentally struck the head of his intervening father as a result of which he ultimately died. It was held that the accused exercised his lawful right of self- defence and the blow fell on the head of his father by accident and misfortune and he was fully protected by sections 80 and 106. His conviction under section 304 Part II was set aside.<sup>64.</sup>

### **[s 80.3] Burden of Proof.—**

The prosecution alleges that the accused intentionally shot the deceased; but the accused pleads that, though the shots emanated from his revolver and hit the deceased, it was by accident, that is, the shots went off from the revolver in the course of a struggle in the circumstances mentioned in [section 80 of the IPC, 1860](#) and hit the deceased resulting in his death. The Court then shall presume the absence of circumstances bringing the case within the provisions of [section 80 of the IPC, 1860](#), that is, it shall presume that the shooting was not by accident, and that the other circumstances bringing the case within the exception did not exist. But this presumption may be rebutted by the accused by adducing evidence to support his plea of accident in the circumstances mentioned therein. This presumption may also be rebutted by admissions made or circumstances elicited by the evidence led by the prosecution or by the combined effect of such circumstances and the evidence adduced by the accused. But the section does not in any way affect the burden that lies on the prosecution to prove all the ingredients of the offence with which the accused is charged and that burden never shifts.<sup>65.</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The *Indian Evidence Act*, I of 1872, section 105.
3. *Musammat Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
48. *Sukhdev Singh v Delhi State (Govt. of NCT of Delhi)*, (2003) 7 SCC 441 [LNIND 2003 SC 728] : AIR 2003 SC 3716 [LNIND 2003 SC 728] , if either of these elements is missing, the act is not to be excused on the ground of accident.
49. *Atmendra v State of Karnataka*, 1998 Cr LJ 2838 : AIR 1998 SC 1985 [LNIND 1998 SC 386] (SC).
50. *Stephen's Digest of Criminal Law*, 9th Edn, Article 316.
51. *Fenwick v Schmalz*, (1868) LR 3 CP 313, 316. *Atmendra v State of Karnataka*, 1998 Cr LJ 2838 : AIR 1998 SC 1985 [LNIND 1998 SC 386] (SC); *Sita Ram v State of Rajasthan*, 1998 Cr LJ 287 (Raj), the accused labourer was digging earth by spade, another labourer came close to him to remove the soil and became the victim of one spade blow of which he died. It was held that the act of the accused came neither within section 302 nor section 304. It fell within section 304A being an act of criminal negligence. Sentence imposed upon him was reduced to the period already undergone.
52. *Per Lord Halsbury in Hamilton, Fraser & Co v Pandorf & Co*, (1887) 12 AC 518 , 524.
53. *Patreswar Basumatary v State of Assam*, 1989 Cr LJ 196 (Gau).
54. 10th Parl Rep 16.
55. *Raja Ram*, 1977 Cr LJ NOC 85 (All); see also *Khora Ghasi*, 1978 Cr LJ 1305 (Ori) under section 79 ante.
56. *Rangaswamy*, (1952) Nag 93.
57. *Jacob Mathew v State of Punjab*, AIR 2005 SC 3180 [LNIND 2005 SC 587] : 2005 (6) SCC 1 [LNIND 2005 SC 587] in this case SC issued guidelines regarding the prosecution of Doctors for medical Negligence; See comments in section 304A.
58. *Dr. Suresh Gupta v Govt. of NCT of Delhi*, (2004) 6 SCC 422 [LNIND 2004 SC 744] : 2004 AIR SCW 4442 : AIR 2004 SC 4091 [LNIND 2004 SC 744] .
59. *Kusum Sharma v Batra Hospital and Medical Research Centre*, 2010 (3) SCC 480 [LNIND 2010 SC 164] .
60. *Dr. Saroja Patil v State of Maharashtra*, 2011 Cr LJ 1060 (Bom).
61. *Mahadev v State of MP*, 2006 Cr LJ 4246 (MP).
62. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
63. *State of Orissa, v Khora Ghasi*, 1978 Cr LJ 1305 ; *State of MP v Rangaswami* 1952 Cr LJ 1191 .
64. *Girish Saikia v State of Assam*, 1993 Cr LJ 3808 (Gau).
65. *K M Nanavati v State of Maharashtra*, AIR 1962 SC 605 [LNIND 1961 SC 362] : 1962 (Supp1) SCR 567 : 1962 Cr LJ 521 ; *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .

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The following acts are exempted under the Code from criminal liability:–

1. Act of a person bound by law to do a certain thing (section 76).
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7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

**[s 81] Act likely to cause harm, but done without criminal intent, and to prevent other harm.**

**Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention<sup>1</sup> to cause harm, and**

**in good faith for the purpose of preventing or avoiding other harm to person or property.**

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

#### ILLUSTRATIONS

- (a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.
- (b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act. A is not guilty of the offence.

#### COMMENT.—

An act which would otherwise be a crime may in some cases be excused if the person accused can show that it was done only in order to avoid consequences which could not otherwise be avoided, and which, if they had followed, would have inflicted upon him or upon others whom he was bound to protect inevitable and irreparable evil, that no more was done than was reasonably necessary for that purpose, and that the evil inflicted by it was not disproportionate to the evil avoided.<sup>66</sup> As in self-defence so in the prevention of harm the accused is faced with two choices both resulting in some harm and of sheer necessity to avoid a greater harm he has to commit an act which would otherwise be an offence. The test really is like this: there must be a situation in which the accused is confronted with a grave danger and he has no choice but to commit the lesser harm may be even to an innocent person, in order to avoid the greater harm. Here the choice is between the two evils and the accused rightly chooses the lesser one.<sup>67</sup>

**1. 'Without any criminal intention'.—**Under no circumstances can a person be justified in intentionally causing harm; but if he causes the harm without any criminal intention, and merely with the knowledge that it is likely to ensue, he will not be held responsible for the result of his act, provided it be done in good faith to avoid or prevent other harm to person or property.

'Criminal intention' simply means the purpose of design or doing an act forbidden by the criminal law without just cause or excuse. An act is intentional if it exists in idea before it exists in fact, the idea realizing itself in the fact because of the desire by which it is accompanied. The motive for an act is not a sufficient test to determine its criminal character. By a motive is meant anything that can contribute to give birth to, or even to

prevent, any kind of action. Motive may serve as a clue to the intention; but although the motive is pure, the act done under it may be criminal. Purity of motive will not purge an act of its criminal character.

Where an offence depends upon proof of intention the Court must have proof of facts sufficient to justify in coming to the conclusion that the intention existed. No doubt one has usually to infer intention from conduct, and one matter that has to be taken into account is the probable effect of the conduct. But that is never conclusive.<sup>68</sup>

Where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance.<sup>69</sup>

### **[s 81.1] Mens rea. –**

It is a well settled principle of common law that *mens rea* is an essential ingredient of criminal offence. A statute can exclude that element, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excludes *mens rea*. There is a presumption that *mens rea* is an essential ingredient of a statutory offence; but this may be rebutted by the express words of a statute creating the offence or by necessary implication. But the mere fact that the object of a statute is to promote welfare activities or to eradicate grave social evils is in itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of the offence. It is also necessary to enquire whether a statute by putting a person under strict liability helps him to assist the State in the enforcement of the law; can he do anything to promote the observance of the law? *Mens rea* by necessary implication can be excluded from a statute only where it is absolutely clear that the implementation of the object of a statute would otherwise be defeated and its exclusion enables those put under strict liability by their act or omission to assist the promotion of the law. The nature of *mens rea* that will be implied in a statute creating an offence depends upon the object of the Act and the provisions thereof.<sup>70</sup>

It is, however, held that *mens rea* is an essential ingredient in every offence except in three cases:

- (1) cases not criminal in any real sense but which in the public interest are prohibited under a penalty;
- (2) public nuisance; and
- (3) cases criminal in form but which are really only a summary mode of enforcing a civil right.

The maxim *actus non facit reum, nisi mens sit rea* has, however, no application in its technical sense to the offences under the [Penal Code](#), as the definitions of various offences contain expressly a proposition as to the state of mind of the accused. In other words, each offence under the Code except offences like waging war (section 121), sedition (section 124A), kidnapping and abduction (sections 359, 363) and counterfeiting coins (section 232) prescribes a *mens rea* of a specific kind which is not exactly the same as *mens rea* in the sense of being a guilty mind under the common law. Thus, throughout the web of the [IPC, 1860](#) the doctrine of *mens rea* runs as a running thread in the form of "intentionally", "voluntarily", "knowingly", "fraudulently", "dishonestly" and the like. It is, therefore, not entirely correct to say that the doctrine of *mens rea* is inapplicable to the offence under the [Penal Code](#). What the Code requires is not negation of *mens rea* but *mens rea* of a specific kind and this may differ from offence-to-offence.

In this section and in sections 87, 88, 89, 91, 92, 93, 95, 100, 104 and 106, 'harm' can only mean physical injury.<sup>71.</sup>

As to the doctrine of compulsion and necessity, see comment on section 94, *infra*.

### **[s 81.2] CASES.—**

Where a Chief Constable not in his uniform came to a fire and wished to force his way past the military sentries placed round it, was kicked by a sentry, it was held that as the sentry did not know who he was, the kick was justifiable for the purpose of preventing much greater harm under this section and as a means of acting up to the military order.<sup>72.</sup> A person placed poison in his toddy pots, knowing that if taken by a human being it would cause injury, but with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from his pots. The toddy was drunk by and caused injury to some soldiers who purchased it from an unknown vendor. It was held that the person was guilty under section 328, and that this section did not apply.<sup>73.</sup> Where a Village Magistrate arrested a drunken person whose conduct was at the time a grave danger to the public, it was held that he was not guilty of an offence by reason of the provisions of this section or sections 96 or 105.<sup>74.</sup>

### **[s 81.3] English cases.—**

A man who, in order to escape death from hunger, kills another for the purpose of eating his flesh, is guilty of murder; although at the time of the act he is in such circumstances that he believes and has reasonable ground for believing that it affords the only chance of preserving his life. At the trial of an indictment for murder it appeared that the prisoners D and S, seamen, and the deceased, a boy between 17 and 18, were cast away in a storm on the high seas, and compelled to put into an open boat; that the boat was drifting on the ocean and was probably more than 1,000 miles from land; that on the 18th day, when they had been seven days without food and five days without water, D proposed to S that lots should be cast who should be put to death to save the rest, and that they afterwards thought it would be better to kill the boy that their lives should be saved; that on the 20th day, D with the assent of S, killed the boy, and both D and S fed on his flesh for four days; that at the time of the act there was no sail in sight nor any reasonable prospect of relief; that under these circumstances there appeared to the prisoners every probability that unless they then or very soon fed upon the boy, or one of themselves, they would die of starvation. It was held that upon these facts there was no proof of any such necessity as could justify the prisoners in killing the boy, and that they were guilty of murder.<sup>75.</sup> A and B, swimming in the sea after shipwreck, get hold of a plank not large enough to support both; A pushes off B, who is drowned. This, in the opinion of *Sir James Stephen*, is not a crime as A thereby does B no direct bodily harm but leaves him to his chance of getting another plank. According to *Archbold* this is not a law now. In *R v Martin*,<sup>76.</sup> the defendant, charged with driving whilst disqualified, sought to raise necessity as a defence but on the trial judge ruling, in effect, that necessity was no defence to an 'absolute' offence, he changed his plea to guilty. The circumstances on which the defendant sought to rely were that his wife's son (the defendant's stepson) was late for work and accordingly in danger of losing his job, and that this had made his wife so distraught that she threatened to commit suicide unless he drove her son to work. There was medical evidence available indicating that it was likely that his wife would have attempted suicide had he not driven her son to work. The Court of Appeal, quashing the conviction, held that the trial judge should have left the defence to the

jury. The authorities were now clear, said the Court, and established the following principles. First, the law does recognise a defence of necessity whether arising from wrongful threats of violence to another or from 'objective dangers' (conveniently called duress of circumstances) threatening the defendant or others. Second, the defence is available only if the defendant can be objectively said to be acting reasonably and proportionately to avoid the threat of death or serious injury. Third, it is for the jury to determine whether because of what the defendant reasonably believed he had good cause to fear death or serious injury; and, if so, whether a person of reasonable firmness, sharing the characteristics of the defendant, would have responded as the defendant did.<sup>77</sup>.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The *Indian Evidence Act*, I of 1872, section 105.
3. *Musammam Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
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66. *Stephen's Digest of Criminal Law*, 9th Edn, Article 11.
67. *Southwark London Borough Council v Williams*, (1971) Ch 734 , (1971) 2 All ER 175 ; *Wood v Richards* (1971) RTR 201 .
68. *Ramchandra Gujar*, (1937) 39 Bom LR 1184 , (1938) Bom 114.
69. *Gurcharan Singh v State of Punjab*, AIR 1956 SC 460 : 1956 Cr LJ 827 . *Kusta Balsu Kandnekar v State of Goa*, 1987 Cr LJ 89 Bom.
70. *Mayer Hans George*, (1964) 67 Bom LR 583 , AIR 1965 SC 722 [LNIND 1964 SC 208] : (1965) 1 Cr LJ 641 . See also *Nathulal*, AIR 1966 SC 43 [LNIND 1965 SC 97] : 1966 Cr LJ 71 .
71. *Veeda Menezes v Yusuf Khan*, 1966 Cr LJ 1489 : AIR 1966 SC 1773 [LNIND 1966 SC 107] : 68 Bom LR 629.
72. *Bostan*, (1892) 17 Bom 626.
73. *Dhanial Daji*, (1868) 5 BHC (Cr C) 59.
74. *Gopal Naidu*, (1922) 46 Mad 605 (FB).
75. *Dudley and Stephens*, (1884) 14 QBD 273 .
76. *R v Martin*, (1989) 1 All ER 652 CA.
77. Reproduced from All ER Annual Review 1989.

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**[s 82] Act of a child under seven years of age.**

**Nothing is an offence which is done by a child under seven years of age.**

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## COMMENT.—

Under the age of seven years no infant can be guilty of a crime; for, under that age an infant is, by presumption of law, *doli incapax*, and cannot be endowed with any discretion. If the accused were a child under seven years of age, the proof of that fact would be *ipso facto* an answer to the prosecution.<sup>78</sup> It is, therefore, desirable to bring some evidence regarding the age of the accused on the record.<sup>79</sup>

The accused purchased for one *anna*, from a child aged six years, two pieces of cloth valued at 15 *annas*, which the child had taken from the house of a third person. It was held that, assuming that a charge of an offence of dishonest reception of property (section 411) could not be sustained owing to the incapacity of the child to commit an offence, the accused was guilty of criminal misappropriation, if he knew that the property belonged to the child's guardians and dishonestly appropriated it to his own use.<sup>80</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .

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78. *Lukhini Agradanini*, (1874) 22 WR (Cr) 27, 28.

79. *Hiralal*, 1977 Cr LJ 1921 : AIR 1977 SC 2236 [LNIND 1977 SC 254] .

80. *Makhulshah v State*, (1886) 1 Weir 470.



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**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

**[s 83] Act of a child above seven years of age and under twelve of immature understanding.**

**Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.**

## COMMENT.—

Where the accused is a child above seven years of age and under twelve, the incapacity to commit an offence only arises when the child has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct, and such non-attainment would have apparently to be specially pleaded and proved, like the incapacity of a person who, at the time of doing an act charged as an offence, was alleged to have been of unsound mind under this section it has got to be shown that the accused is not only under 12 but has not attained sufficient maturity of understanding. If no evidence or circumstance is brought to the notice of the Court, it will be presumed that the child accused intended to do what he really did. Thus, where a child of 12 or so used a sharp sword in killing a person along with his two brothers and no evidence either of age or immaturity of understanding was led on his behalf, it was held that he committed an offence at least under [section 326, IPC, 1860](#).<sup>81</sup> The Legislature is manifestly referring in this section to an exceptional immaturity of intellect.<sup>82</sup> What the section contemplates is that the child should not know the nature and physical consequences of his conduct.<sup>83</sup> The circumstances of a case may disclose such a degree of malice as to justify the maxim *malitia supplet octatam*.<sup>84</sup> Where the accused, a boy over 11 years but below 12 years of age, picked up his knife and advanced towards the deceased with a threatening gesture, saying that he would cut him to bits, and did actually cut him, his entire action can only lead to one inference, namely, that he did what he intended to do and that he knew all the time that a blow inflicted with a *kathi* (knife) would effectuate his intention.<sup>85</sup> In the prosecution of an 11-year-old child for throwing a brick at a police vehicle and then running away, the Court said that the justices were not entitled to conclude from his appearance that he was normal in respect of incurring criminal responsibility. The test is whether the child knew that what he was doing was seriously wrong and went beyond childish mischief. Running away was not by itself sufficient to rebut the presumption of *doli incapax*. A naughty child would run away from a parent or teacher even if what he had done was not criminal.<sup>86</sup>

### [s 83.1] CASE.—Theft by child.—

Where a child of nine years of age stole a necklace, worth Rs. 280, and immediately afterwards sold it to the accused for five *annas*, the accused could be convicted of receiving stolen property, because the act of the child in selling the necklace showed that he had attained a sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion within the meaning of this section.<sup>87</sup>

Section 83 provides that nothing is an offence which is done by a child above seven years of age and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. The [IPC, 1860](#) provides no protection from culpable liability on ground of tender age to one who is aged 12 years or more. In a child's life the period between seven and 12 years of age is rather the twilight period of transition to a minimal workable level of understanding of things in the firmament of worldly affairs. And that is why both the [IPC, 1860](#) and the [Oaths Act](#) have made special provisions for children below 12 years in respect of matters dependent on a minimal power of understanding.<sup>88</sup>

A claim of juvenility may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case.<sup>89</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The *Indian Evidence Act*, I of 1872, section 105.
3. *Musammat Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
81. *Hiralal*, *Supra*.
82. *Lukhini Agradanini*, (1874) 22 WR (Cr) 27, 28.
83. *Ulla Mahapatra*, (1950) Cut 293.
84. *Mussamut Aimana*, (1864) 1 WR (Cr) 43.
85. *Ulla Mahapatra*, *Supra*.
86. *A v DPP*, (1991) COD 442 (DC).
87. *Krishna*, (1883) 6 Mad 373.
88. *Santosh Roy v State of WB*, 1992 Cr LJ 2493 : 1992 (1) Crimes 904 (Cal).
89. **Section 7A Juvenile Justice (Care and Protection of Children) Act, 2000**. See also *Amit Singh v State of Maharashtra*, 2011 (8) Scale 439 [LNIND 2011 SC 731] : (2011) 9 SCR 890 [LNIND 2011 SC 731] : (2011) 13 SCC 744 [LNIND 2011 SC 731] .

# THE INDIAN PENAL CODE

## CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.<sup>1</sup>

The following acts are exempted under the Code from criminal liability:–

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

#### **[s 84] Act of a person of unsound mind.**

**Nothing is an offence which is done by a person who, at the time of doing it, <sup>1</sup> by reason of unsoundness of mind, <sup>2</sup> is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. <sup>3</sup>**

## COMMENT.—

To commit a criminal offence, *mens rea* is generally taken to be an essential element of crime. It is said *furiosus nulla voluntus est*. In other words, a person who is suffering from a mental disorder cannot be said to have committed a crime as he does not know what he is doing. For committing a crime, the intention and act both are taken to be the constituents of the crime; *actus non facit reum nisi mens sit rea*. Every normal and sane human being is expected to possess some degree of reason to be responsible for his/her conduct and acts unless contrary is proved. But a person of unsound mind or a person suffering from mental disorder cannot be said to possess this basic norm of human behaviour.<sup>90</sup>

### [s 84.1] McNaughten Rule and the origin of Section 84 of IPC, 1860.—

Section 84 clearly gives statutory recognition to the defence of insanity as developed by the Common Law of England in a decision of the House of Lords rendered in the case of *R v Daniel McNaughten*.<sup>91</sup> In that case, the House of Lords formulated the famous Mc Naughten Rules on the basis of the five questions, which had been referred to them with regard to the defence of insanity. The reference came to be made in a case where *Mc Naughten* was charged with the murder by shooting of Edward Drummond, who was the Pvt Secretary of the then Prime Minister of England Sir Robert Peel. The accused *Mc Naughten* produced medical evidence to prove that, he was not, at the time of committing the act, in a sound state of mind. He claimed that he was suffering from an insane delusion that the Prime Minister was the only reason for all his problems. He had also claimed that as a result of the insane delusion, he mistook Drummond for the Prime Minister and committed his murder by shooting him. The plea of insanity was accepted and *Mc Naughten* was found not guilty, on the ground of insanity. The aforesaid verdict became the subject of debate in the House of Lords. Therefore, it was determined to take the opinion of all the judges on the law governing such cases. Five questions were subsequently put to the Law Lords. A comparison of answers to question no. 2 and 3 and the provision contained in [section 84 of the IPC, 1860](#) would clearly indicate that the section is modelled on that answers.<sup>92</sup>

The essential elements of section 84 are as follows:

- (i) The accused must, at the time of commission of the act be of unsound mind;
- (ii) The unsoundness must be such as to make the accused at the time when he is doing the act charged as offence, incapable of knowing the nature of the act or that he is doing what is wrong or contrary to law.<sup>93</sup> Where it is proved that the accused has committed multiple murders while suffering from mental derangement of some sort and it is found that there is (i) absence of any motive, (ii) absence of secrecy, (iii) want of pre-arrangement, and (iv) want of accomplices, it would be reasonable to hold that the circumstances are sufficient to support the inference that the accused suffered from unsoundness of mind.<sup>94</sup>

Though the onus of proving unsoundness of mind is on the accused,<sup>95</sup> yet it has been held that where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused.<sup>96</sup> Prosecution is duty bound to subject the accused to a medical examination immediately.<sup>97</sup> This onus may, however, be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or

immediately afterwards, also by evidence of his mental condition, his family history and so forth.<sup>98</sup> Every person is presumed to know the natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts.<sup>99</sup>

There are four kinds of persons who may be said to be *non compos mentis* (not of sound mind): (1) an idiot; (2) one made *non compos* by illness; (3) a lunatic or a madman; and (4) one who is drunk.

An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals; and those are said to be idiots who cannot count twenty, or tell the days of the week, or who do not know their fathers or mothers, or the like. A person made *non compos* men-us by illness is excused in criminal cases from such acts as are committed while under the influence of his disorder. A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes, having intervals of reason. Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.<sup>100</sup>

### **[s 84.2] Legal insanity vis-a-vis Medical insanity.—**

A distinction is to be made between legal insanity and medical insanity. A Court is always concerned with legal insanity, and not with medical insanity. What [sections 84, IPC, 1860](#) provides is defence of legal insanity as distinguished from medical insanity. A person is legally insane when he is incapable of knowing the nature of the act or that what he was doing was wrong or contrary to law.<sup>101</sup> Incapacity of the person on account of insanity must be of the nature which attracts the operation of [section 84 IPC, 1860](#).<sup>102</sup> An accused who seeks exoneration from liability of an act under [section 84 of the IPC, 1860](#) is to prove legal insanity and not medical insanity. Expression "unsoundness of mind" has not been defined in the [IPC, 1860](#) and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract the application of [section 84 of the IPC, 1860](#).<sup>103</sup> The medical profession would undoubtedly treat the accused as a mentally sick person. However, for the purposes of claiming the benefit of the defence of insanity in law, the appellant would have to prove that his cognitive faculties were so impaired, at the time when the crime was committed, as not to know the nature of the act.<sup>104</sup> Only legal insanity is contemplated under [section 84 of IPC, 1860](#).<sup>105</sup>

### **[s 84.3] 42nd Report of Law Commission of India.—**

Law Commission of India re-visited [section 84 of the IPC, 1860](#) in view of the criticism to the M'Naughten Rules in various countries including Britain but came to the conclusion that law of insanity under [section 84 of the IPC, 1860](#) needs no changes in Indian circumstances.<sup>106</sup>



Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. There is no definition of "unsoundness of mind" in the [Penal Code](#). The Courts have, however, mainly treated this expression as equivalent to insanity. But the term "insanity" itself has no precise definition. It is a term used to describe varying degrees of mental disorder. So, every person, who is mentally diseased, is not *ipso facto* exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A Court is concerned with legal insanity, and not with medical insanity.<sup>107</sup> In this case, the accused was under medical treatment prior to the occurrence. Evidence indicating that he remained mentally fit for about four years after treatment. During the trial also he was sent for treatment and his conduct was normal thereafter. On such facts, it was held, that the accused was not entitled to protection under section 84. The Court also added that where previous history of insanity of the accused comes to light during investigation, the accused must be medically examined and report placed before the Court. Any lapse in this respect would create infirmity in the prosecution case and the accused may become entitled to benefit of doubt.

**1. 'At the time of doing it'.—**It must clearly be proved that at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.<sup>108</sup> If he did know it, he is responsible.<sup>109</sup>

In *Sheralli Wali Mohammed v State of Maharashtra*,<sup>110</sup> it was held that:

... it must be proved clearly that, at the time of the commission of the acts, the appellant, by reason of unsoundness of mind, was incapable of either knowing the nature of the act or that the acts were either morally wrong or contrary to law. The question to be asked is, is there evidence to show that, at the time of the commission of the offence, he was labouring under any such incapacity? On this question, the state of his mind before and after the commission of the offence is relevant.

The crucial point of time for deciding whether the benefit of this section should be given or not is the material time when the offence takes place. If at that moment a man is found to be labouring under such a defect of reason as not to know the nature of the act he was doing or that, even if he knew it, he did not know it was either wrong or contrary to law then this section must be applied. In coming to that conclusion, the relevant circumstances, like the behaviour of the accused before the commission of the offence and his behaviour after the commission of the offence, should be taken into consideration.<sup>111</sup> The accused pushed a child of four years into fire resulting in his death but there was nothing to show that there was any deliberateness or preparation to commit the crime. His act was accompanied by manifestations of unnatural brutality and was committed openly. He neither concealed nor ran away nor tried to avoid detection which showed that he was not conscious of his guilt. It was held that the accused was entitled to benefit of section 84 and his conviction under section 302 was set aside.<sup>112</sup> The accused, a young boy brought up by his grandfather, went abroad for further studies. When his parents visited abroad they did not care to see him. His grandfather's death was communicated to him much later. On return to India, he committed offences of brutal nature at random. During the pendency of the session's case, he again continued and completed his engineering course and started a printing press and later he managed a garage and allied industries employing nearly 30 persons. His behaviour before and after the offences was that of a normal man. It was held that he was insane at the time of the offence and was given benefit of section 84.<sup>113</sup> Where the accused was examined by two doctors who certified him to be schizophrenic and his abnormal behaviour was also apparent from the evidence on the record, the Supreme Court held that the acquittal of the accused by the High Court was proper.<sup>114</sup>

In other words, to get the benefit of [section 84 IPC, 1860](#), it must be shown that at the time of the commission of the act the accused by reason of unsoundness of mind was incapable of either knowing the nature of the act or that the act was either morally wrong or contrary to law and for determining this his state of mind before and after the commission of the offence is most relevant. It would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime.<sup>115</sup> Thus, the fact that the accused committed the murder over a trifling matter and made a clean breast of his crime would not go to show that he was insane.<sup>116</sup>

#### **[s 84.4] Lucid intervals.—**

A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act; merely a cessation of the violent symptoms of the disorder is not sufficient.<sup>117</sup>

**2. 'Unsoundness of mind.'**—Whether the want of capacity is temporary or permanent, natural or supervening, whether it arises from disease, or exists from the time of birth, it is included in this expression. It is only 'unsoundness of mind' which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility.<sup>118</sup> The nature and extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law.<sup>119</sup> Thus, as Stephen says that if a person cuts off the head of a sleeping man because 'it would be great fun to see him looking for it when he woke up', it would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act.<sup>120</sup> The accused had killed his wife and his minor children and assaulted his neighbour and the police officer. The evidence showed that he had a history of insanity with at random assault on strangers but his relations with his wife were cordial. It was held that the accused was a man of unsound mind and his conviction under sections 302, 332 and 323 was set aside.<sup>121</sup> The accused caught hold of the legs of a girl of two years of age on the road and struck her on the ground. She sustained head injury and died in the hospital. On the basis of the ocular evidence about the conduct of the accused at the time of the offence and the opinion of the doctor about his state of mind, the accused was acquitted on the ground of insanity.<sup>122</sup> The accused, a labourer, killed his brother's wife and attempted to kill his mother in a quarrel over money deposited with his mother. Accused assaulted with axe on the vital parts of the victim's body, absconded for three months and immediately after the incident worked as a labourer in another village for 15 days. It was held that the conduct of the accused immediately before, at the time of and after the incident, was wholly inconsistent with the plea of insanity raised by him. The history of earlier mental derangement was not by itself sufficient to bring the case within section 84.<sup>123</sup> Where on the day of the crime the accused was seen dancing with a dog on his head and with a broken bottle, but the medical evidence showed that he was a normal man, it was held that defence of insanity was an afterthought.<sup>124</sup> The mere fact that the accused attempted to escape from the scene of occurrence after killing his wife, belied his plea of insanity.<sup>125</sup> Where a father and his relatives sacrificed a four-year-old son to propitiate the deity, the Supreme Court held that this does not by itself constitute insanity. Such primitive and inhuman actions must be punished severely so as to deter others from resorting to such barbaric practices.<sup>126</sup>

### [s 84.5] Partial delusion.—

Mere abnormality of mind or partial delusion affords no protection under [section 84 IPC, 1860](#).<sup>127</sup> Whether a person who, under an insane delusion as to the existing facts, commits an offence in consequence thereof, is to be, therefore, excused depends upon the nature of the delusion. If he labours under a partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility as if the facts, with respect to which the delusion exists, were real.<sup>128</sup> If a person afflicted with insane delusion, in respect of one or more particular subjects or persons, commits a crime, knowing that he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed.<sup>129</sup> Where the accused after killing his daughter tried to commit suicide and there was no evidence of psychiatric treatment but only major depression, he was held liable to be convicted.<sup>130</sup>

**3. 'Nature of the act, or...what is either wrong or contrary to law!'**—If the accused were conscious that an act was done which he ought not to do and if the act was at the same time contrary to the law of the land, he is punishable. His liability will not be diminished if he did the act complained of with a view under the influence of insane delusion of redressing or revenging some supposed grievance or injury or of producing some public benefit, if he knew that he was acting contrary to law.<sup>131</sup> Where the accused, a young man, took a girl of four years on a bicycle to a lonely place near a canal, sexually assaulted her and threw her into the canal, it was held that it was a carefully thought out action and not an act of an insane person.<sup>132</sup>

Mere absence of motive for a crime, howsoever atrocious it may be, cannot, in the absence of plea and proof of legal insanity, bring the case within this section.<sup>133</sup> The mere fact that an act of murder is committed by the accused on a sudden impulse and there is no discoverable motive for the act will not generally afford the Court sufficient basis for accepting the plea of insanity.<sup>134</sup> Thus, in *SW Mohammed's* case the Supreme Court held that the mere fact that no motive has been proved why the accused murdered his wife and child or the fact that he made no attempt to run away when the door was broken open would not indicate that he was insane or that he did not have the necessary *mens rea* for the offence.<sup>135</sup> In a Madras case, however, the Madras High Court has held that where the accused was insane for some months prior to occurrence and on cordial terms with his wife but suddenly killed the wife in the open courtyard without any ostensible motive and did not even attempt to run away or secret his crime, he had to be given the benefit of [section 84, IPC, 1860](#).<sup>136</sup> This case can, of course, be distinguished from the above mentioned Supreme Court case on the ground that in the instant case the accused had previous history of insanity which was not fully cured. Prior or subsequent treatment for schizophrenia coupled with the evidence of the doctor that the accused was schizophrenic would entitle the accused to the benefit of section 84 in a charge of murder.<sup>137</sup> But where the doctor in his evidence merely said unsoundness of mind may have existed from before and that evidence was contradicted by evidence of close relations about sanity of the accused at the time of the occurrence, it was held that the accused could not get the benefit of [section 84, IPC, 1860](#).<sup>138</sup> There is a difference between medical insanity and legal insanity. By medical insanity is meant the prisoner's consciousness of the bearing of his act on those affected by it and by legal insanity is meant the prisoner's consciousness in relation to himself.<sup>139</sup> There can be no legal insanity unless the cognitive faculties of the accused are as a result of unsoundness of mind completely impaired. In order to constitute legal insanity unsoundness of mind must be such as to make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law.<sup>140</sup> Thus, mere abnormality of mind or partial delusion,

irresistible impulse or compulsive behaviour of a psychopath affords no protection under [section 84 of the IPC, 1860](#) as the law contained in that section is still squarely based on the outdated M'Naughten Rules of 19th Century England. Thus, in *Siddheswari's case*<sup>141</sup>. where the accused killed her ailing child of three and there was also some evidence elicited in cross-examination to show that the accused had suffered from some mental derangement two years prior to the incident, it was held that the mere fact the murder was committed on a sudden impulse or as a "mercy killing" was no ground to give her the benefit of [section 84 IPC, 1860](#), even though both euthanasia (mercy killing) and irresistible impulse would entitle the accused in England to get the benefit of diminished responsibility and her crime would be treated as manslaughter (i.e. culpable homicide not amounting to murder). In a latter case too the Gauhati High Court felt that where the accused has made out a *prima facie* case of irresistible impulse the plea has to be taken into consideration in deciding the question of giving benefit of [section 84, IPC, 1860](#), to the accused.<sup>142</sup>

The position, however, has undergone a sea change in England where the right or wrong test of the M'Naughten Rules no longer dominate this branch of criminal law to the exclusion of mental abnormality falling short of complete insanity as a limited defence establishing a claim to diminished responsibility. Thus, under section 2 of the Homicide Act, 1957 if two Psychiatrists certify that the homicidal act of the accused was influenced by abnormal condition of his mind though not amounting to legal insanity within the meaning of M'Naughten Rules, still he cannot be convicted of murder but his offence will be regarded only as a manslaughter which is equivalent to culpable homicide not amounting to murder under the [IPC, 1860](#). It is hoped that the Indian law too would be changed on this score with due regard to the modern developments in the field of psychology of criminal behaviour.

#### **[s 84.6] CASES. –**

Accused, who was a mentally challenged person before the incident, killed three persons and caused injuries to others with an axe. He did not know the implication of his act and indiscriminately went on wielding axe blows, be it a child or a woman and there after he did not even attempt to hide the weapon which he used for committing crime. He was found of unsound mind in his medical examination. Case of accused comes within the four corners of [section 84 IPC, 1860](#).<sup>143</sup>. Where an accused, who was suffering from fever which caused him while suffering from its paroxysms to be bewildered and unconscious, killed his children at being annoyed at their crying, but he was not delirious then, and there was no evidence to show that he was not conscious of the nature of his act, it was held that he was not entitled to protection under this section.<sup>144</sup>. But where the accused labouring under a delusion believed his two-month-old infant child to be a devil and danger to himself, his family and to the whole world and, therefore, killed the child with unusual ferocity almost reducing it to a pulp and thereafter without making any attempt to escape told the police party that he had removed a devil from the world, it was held that the accused did not know that what he had done was wrong and as such was entitled to get protection of [section 84, IPC, 1860](#), even when he did not plead insanity in his defence as the prosecution itself disclosed that he was insane.<sup>145</sup>. [IPC, 1860](#) Allegation that accused appellant had cut his son, aged about one and a half years, to death and he was intercepted while he was preparing to bury the dead body by digging a pit. Medical evidence shows that the accused was suffering from schizophrenia. Accused was reticent by nature and used to keep himself indoors and interact only when he was compelled to do so. He was not in a normal state of mind at the time of alleged crime. Appellant is entitled to the benefits under [section 84 of IPC, 1860](#).<sup>146</sup>. The accused killed three persons and caused injuries to others and there was no previous enmity or motive established. The

witnesses stated that he ran from one place to other and on his way he assaulted five persons indiscriminately without any rhyme or reason. The evidence shows that appellant had developed insanity since long and entitled to the benefit of this section.<sup>147</sup> Accused chopped off his wife's head, with a chopper. After the occurrence, in a very unusual and abnormal manner, holding the head and the chopper in each of his hands, he walked down the road and ultimately reached the police station. Though this, by itself, would not be sufficient to come to any conclusion but taken along with the other circumstances of the case would clearly point to the validity of the defence put forward on behalf of the accused.<sup>148</sup>

#### **[s 84.7] Epilepsy, Epileptic fits and Section 84.—**

Epilepsy usually occurs from early infancy, though it may occur at any period of life. Individuals, who have had epileptic fits for years, do not necessarily show any mental aberration, but quite a few of them suffer from mental deterioration. Religiosity is a marked feature in the commencement, but the feeling is only superficial. Such patients are peevish, impulsive and suspicious, and are easily provoked to anger on the slightest cause. Epileptic psychosis is that which is associated with epileptic fits. This may occur before or after the fits, or may replace them, and is known as pre-epileptic, post-epileptic and masked or psychic phases (psychomotor epilepsy).<sup>149</sup>

Where the accused committed the murder without any motive under the influence of an epileptic fits, he was entitled to get the benefit under [section 84, IPC, 1860](#).<sup>150</sup> But if at the time of the crime he was not acting under epileptic automatism, mere past history of epilepsy will not absolve the accused from liability.<sup>151</sup>

#### **[s 84.8] Irresistible impulse.—**

Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under section 84 as the law contained in that section is still squarely based on the outdated M'Naughten Rules of 19th Century. The provisions of section 84 are in substance the same as those laid down in the answers of the Judges to the questions put to them by the House of Lords, in M'Naughten's case. Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time.<sup>152</sup>

#### **[s 84.9] Nervousness.—**

The fact that the accused became nervous after raping a six-year-old girl and in that state of mind killed her, was held to be not sufficient to establish insanity. The Court reduced the death sentence to life imprisonment and added that nervous psychosis may become in circumstances a kind of insanity.<sup>153</sup>

#### **[s 84.10] Homicide by 'ganja' smoker.—**

In a case of *ganja* addict before the Supreme Court, the accused had killed his wife and children ranging one –16 years with knife. Death sentence was confirmed by the High

Court. The accused had not raised the defence of unsoundness in Courts below. The Supreme Court got the enquiry conducted by police after a plea was raised at the SLP stage. The enquiry report and evidence of family members and other witnesses revealed the addiction and on-going treatment. He was not allowed the benefit of section 84. The state of mind on the day of the incident is the crucial factor. The State of mind on other days is relevant only if such evidence would help determining the state of mind at the crucial moment.<sup>154.</sup>

#### **[s 84.11] Insane delusion.—**

The accused killed two women by cutting their necks with an axe without any reason. Evidence showed that he suffered from similar attacks of disorder earlier too. After the incident he was heard saying that he was haunted by a God to do what he did. The plea of insanity was accepted and the accused was directed to be kept in a mental hospital.<sup>155.</sup> The accused killed seven persons including his wife and two children with an axe. He also killed the cattle which came his way. There was no provocation. It was brutality *simpliciter*. The evidence on record showed that he was not of sound mind. The death sentence awarded to him was set aside. He was acquitted under the benefit of this section.<sup>156.</sup> Mere abnormality or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under [section 84 of the Penal Code](#).<sup>157.</sup>

#### **[s 84.12] Paranoid schizophrenia.—**

Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow which in the beginning, start as sounds or noises in the ears, but afterwards change into abuses or insults.<sup>158.</sup> In paranoid schizophrenia, the person affected lives in a state of constant fear being haunted by the belief that he is being poisoned, some noxious gases are blown into his room and that all are plotting against him to ruin him. The patient gets very irritated and excited owing to equally painful and disagreeable hallucinations and delusions.<sup>159.</sup> The accused was convicted for having murdered his wife in a brutal manner. He raised the plea of insanity. It came out from evidence that he was suffering from leprosy and insanity from sometime past. The medical opinion was that he was suffering from paranoid schizophrenia which is a form of paranoid psychosis. The plea was allowed. But he being not in a fit state of mind to judge his own welfare or take care of himself without medical aid, the Court directed him to be detained in safe custody under medical supervision and not to be released till medical evidence of social fitness.<sup>160.</sup> The evidence on record shows that on the day of the incident, when the appellant was examined by doctors, he was found to be suffering from paranoid schizophrenia. He had delusions and persecutory ideas with no insight in his illness. From this, an inference can reasonably be drawn that the accused was under paranoid delusions at the time that he committed the offence.<sup>161.</sup>

#### **[s 84.13] Burden of proof.—**

The Supreme Court defined the doctrine of burden of proof in the context of the plea of insanity in the following propositions:-

- "(1) The prosecution must prove beyond reasonable doubt that the appellant had committed the offence with the requisite *mens rea*; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.
- (2) There is a rebuttable presumption that the appellant was not insane, when he committed the crime, in the sense laid down by [section 84 of the IPC, 1860](#): the appellant may rebut it by placing before the court all the relevant evidence - oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings.
- (3) Even if the appellant was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the appellant or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including *mens rea* of the appellant and in that case the court would be entitled to acquit the appellant on the ground that the general burden of proof resting on the prosecution was not discharged".<sup>162</sup>.

It has been held that merely because an injured witness, who may legitimately be classified as an interested witness for obvious reasons, may have stated that the appellant was not of unsound mind, cannot absolve the primary duty of the prosecution to establish its case beyond all reasonable doubt explaining why the plea for unsoundness of mind taken by the accused was untenable.<sup>163</sup>.

The burden of proving the existence of circumstances bringing the case within the purview of section 84 lies upon the accused under [section 105 of the Indian Evidence Act](#). Under the said section, the Court shall presume the absence of such circumstances.<sup>164</sup>. But the burden on the accused cannot be equivalent with the burden of proof on the prosecution and cannot be rated higher than the burden on a party to a civil proceeding where a finding can be based upon preponderance of probabilities. There is no conflict between the general burden which is always on the prosecution and which never shifts and the special burden which rests on the accused to make out the defence of insanity.<sup>165</sup>. Sometimes the facts may in themselves be sufficient to discharge the burden which lies on the accused. This possibility was recognised by the Supreme Court in *Ratan Lal v State of MP*.<sup>166</sup>. The accused-appellant was kept in police custody for ten days and only then it was felt that he needed medical examination. There was no evidence on record to show what his condition was during those ten days and why he was not examined earlier. This conduct on the part of the police, neither to arrange his examination nor permit him to do so, brought about such a gap of time between the incident and examination that his condition at the time of the incident was no longer capable of being precisely determined. As against this police inaction, the defence pointed towards the conduct of the accused before the incident and some statements of witnesses which supported the instable condition of the accused. This was held to be sufficient to discharge the burden which lies on the accused and his acquittal was upheld by the Supreme Court. Going by this case in *Tukappa Tamanna Lingardi v State of Maharashtra*,<sup>167</sup>. the Bombay High Court found evidence of insanity from a narration of the facts themselves. Mere oral statements of witnesses cannot give rise to an inference that the appellant was of unsound mind at the time of commission of offence. Plea of the accused does not come within exception contemplated under [section 84 of IPC, 1860](#).<sup>168</sup>. [IPC, 1860](#)

Where there was no satisfactory evidence of the previous history of the accused or his subsequent conduct and the only fact on record was that ghastly murders were committed without motive, it was held that the burden of proof as to plea of insanity was not discharged. However, because of the absence of motive, premeditation and any weapon, killings being done with stone pieces, death sentence was converted into life imprisonment.<sup>169</sup>. Where, on the other hand, a father killed his son and then danced

around, moving towards his house threatening others, facts spoke for themselves so as to discharge the burden of proof as to insanity, the accused was acquitted and ordered to be detained in a mental home.<sup>170.</sup>

Mere eccentric behaviour, like drowning one's own two and a half-year-old child to death, does not discharge this burden which is essentially on the accused and requires him to show all the ingredients of the defence to the extent at least of making them probable at the time of the commission of the act. Previous history and subsequent conduct are only relevant facts in the determination of the condition at the material time.<sup>171.</sup>

The mere absence of  *motive*  is not sufficient to bring the case within the scope of section 84.<sup>172.</sup>

#### **[s 84.14] Sentencing.—**

The accused was charged with offences under sections 427, 302, 307, 451, etc. Medical evidence showed that he was a person of unsound mind at the time when the offences were committed. The accused, therefore, could not be detained in prison. He was directed to be put in a mental hospital. The authorities were further directed to follow the procedure prescribed by [section 335, Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#).<sup>173.</sup>

#### **[s 84.15] Sentencing.—Battered woman syndrome.—**

The accused woman pleaded guilty to manslaughter on an indictment for murder. She was a young woman aged 20. She began a sexual relationship with the deceased when she was 14 and began to live with him when she was 16. She had a miscarriage and on two occasions took overdoses. The deceased became violent towards her two or three times each week. She sought psychiatric help and on two occasions came to the attention of the police. In 1998 she decided to end the relationship and there was an argument which developed into a fight. She picked up a knife and waved it at the deceased, telling him to leave. There was a further struggle during the course of which the deceased received a fatal knife wound to his back. She immediately shouted for help and was found in an extremely distressed condition. When she was examined, she was found to be extensively bruised. A psychiatrist who examined her found that she exhibited a number of features of the "battered woman's syndrome", including chronic depressive illness, a feeling of hopelessness and despair, and inability to act effectively or to see an escape from her situation, and feelings of self-blame, shame and a poor sense of self-worth. A second psychiatrist found a degree of clinical depression which amounted to abnormality of mind. She was sentenced to four years' detention in a young offender institution. Her appeal against the sentence was allowed. In the light of the evidence, the Court reached the conclusion that there were in the present case those exceptional circumstances which would allow the Court to take the unusual course of passing a sentence other than custody. The accused woman had been subject from a young age to persistent and prolonged violence from a man older than herself who was domineering and demanding. Since her arrest she had made remarkable progress, and a custodial sentence would be likely to damage and possibly bring to an end that rehabilitation. She had served the equivalent of a sentence of 12 months and it was appropriate to give her the opportunity to continue her progress. The Court accordingly quashed the sentence of four years' detention in a young offender institution and substituted a probation order.<sup>174.</sup>



#### **[s 84.16] CASES.—Defence not made out.—**

Accused came to the house one day prior to the occurrence, demanded money and threatened the deceased of grave consequences and on the next day, when the demand was not fulfilled, he trespassed into the house, pushed away PWs 1 and 2, bolted the door from inside and inflicted repeated *aruval* blows on the deceased that resulted into her death. All these aspects also show that at the relevant time, he was not insane as claimed by him.<sup>175</sup> Accused committed murder of two persons and caused injuries to another. Testimony of witnesses was found cogent and reliable and there was no material on the basis of which it could be inferred that at the time of commission of offence the accused was of unsound mind to such an extent that by reason of such unsoundness, he was incapable of knowing the nature of the act or knowing that he was doing what was either wrong or contrary to law, plea of insanity rejected.<sup>176</sup> Mere taking treatment earlier in Mental Hospital itself is not sufficient proof of total insanity of person.<sup>177</sup>

The accused killed his wife and daughter with an axe. He attended *Kirtan* (rendering of religious hymns) a night before. He carried the corpses in a hand-cart and made his statement before the police. His confessional statement was recorded by a competent judicial magistrate. He found no noticeable abnormality of mind or mental disorderliness. Even on his examination under [section 313, Cr PC, 1973](#), he showed a soundness of mind. It was held that he was not entitled to the benefit of section 84.<sup>178</sup>

#### **[s 84.17] When to be pleaded.—**

The plea cannot be raised for the first time before the Supreme Court for which no foundation was established before.<sup>179</sup>

#### **[s 84.18] Investigation of offence vis-à-vis the general exceptions—**

The duty cast upon the investigating officer to investigate into the mental condition of the accused is very important. The Supreme Court held that, where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused.<sup>180</sup> The Division Bench of High Court of Kerala observed that even if all the acts constituting an offence as per definition in [IPC, 1860](#) are committed by a person, if an investigating officer finds on investigation that by reason of unsoundness of mind, accused was incapable of knowing the nature of the act, or that he was doing what is either wrong or contrary to law, as stated in [Section 84 IPC, 1860](#), he shall not file a charge sheet against such person.<sup>181</sup> The Court also held that the investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions", acts committed by accused shall constitute offence under [IPC, 1860](#).<sup>182</sup> But the Single Bench of the High Court of Kerala, later, held that the ingredients of section 84 can only be taken as a defence during trial and it is not possible to throw out the Final Report in a case on the ground that the concerned accused was suffering from legal insanity.<sup>183</sup>

#### **[s 84.19] Procedure.—**

Chapter XXV of Cr PC, 1973 deals with provisions as to accused persons of unsound mind.<sup>184</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The Indian Evidence Act, I of 1872, section 105.
3. *Musammatt Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
90. *State of Rajasthan v Shera Ram*, (2012) 1 SCC 602 [LNIND 2011 SC 1192] : AIR 2012 SC 1 [LNIND 2011 SC 1192] : (2012) 1 SCC (Cr) 406.
91. *R v Daniel McNaughten*, 1843 RR 59 : 8ER 718 (HL).
92. *Sudhakaran v State of Kerala*, (2010) 10 SCC 582 [LNIND 2010 SC 1046] : AIR 2011 SC 265 [LNIND 2010 SC 1046] : 2011 Cr LJ 292 .
93. *State of Maharashtra v Govind Mhatarba Shinde*, 2010 Cr LJ 3586 (Bom).
94. *State of Orissa v Duleswar Barik*, 2008 Cr LJ 1065 (Ori) relied on *Shama Tudu v State*, 1987 Cr LJ 618 (Ori).
95. *Dahyabhai*, 1964 (2) Cr LJ 472 (SC); *Lonimohon Das*, 1974 Cr LJ 1186 (Gau); *Gunadhar Mondal*, 1979 Cr LJ NOC 178 (Cal); *Kesheorao*, 1979 Cr LJ 403 (Bom); *Lala Sk.*, 1983 Cr LJ 1675 (Cal); *Balu Ganpat*, 1983 Cr LJ 1769 (Bom); *Paramal Raman v State of Kerala*, 1992 Cr LJ 176 Ker; *Bai Bamilaben v State of Gujarat*, 1991 Cr LJ 2219 Guj; *Shama Tudu v State*, 1987 Cr LJ 618 Orissa; *Sheralli Walli Md v State of Maharashtra*, AIR 1972 SC 2443 : 1972 Cr LJ 1523 ; *Qyami Ayatu v State of MP*, AIR 1974 SC 216 [LNIND 1973 SC 242] : 1974 Cr LJ 305 . In *Shama Tudu v State*, 1987 Cr LJ 618 , the Orissa High Court cited the following cases in which the plea of insanity was accepted : *Mitu Khadia v State of Orissa*, 1983 Cr LJ 385 : 1983 Cut LR (Cr) 108; *Khageshwar Pujari v State of Orissa*, 1984 Cr LJ 1108 : 1984 (1) Ori LR 142 ; *Sundar Bairagi v State*, 1984 Cr LJ 124 ; *Bata v State*, 1985 (2) Ori LR 398 . The plea was negated in the following cases; *Nakul Chandra v State of Orissa*, 1982 Cr LJ 2158 : (1982) 54 Cut LJ 195; *Kusa Majhi v State*, (1985) 59 Cut LT 203 : 1985 (1) Crimes 520 : 1985 Cr LJ 1460 : AIR 1985 SC 1409 [LNIND 1985 SC 227] . *State of MP v Digvijay Singh*, AIR 1981 SC 1740 [LNIND 1978 SC 324] : 1981 Cr LJ 1278 , prosecution case proved.
96. *Siddhapal Kamala Yadav*, AIR 2009 SC 97 [LNIND 2008 SC 1992] : (2009) 1 SCC 124 [LNIND 2008 SC 1992] ; *Sanna Eranna*, 1983 Cr LJ 619 (Kant); *M Parvaiah*, 1985 Cr LJ 1824 (AP); *Kuttappan*, 1986 Cr LJ 271 (Ker).
97. *State of Maharashtra v Govind Mhatarba Shinde*, 2010 Cr LJ 3586 (Bom).
98. *State of Maharashtra v Govind Mhatarba Shinde*, 2010 Cr LJ 3586 (Bom).
99. *Bhikari*, AIR 1966 SC 1 [LNIND 1965 SC 57] . Absence of motive is one of the factors to be taken into account. *Subbigadu v Emperor*, AIR 1925 Mad 1238 [LNIND 1925 MAD 157] : 1926 (27) Cr LJ 46 ; *Ujagar Singh v State*, AIR 1954 Pepsu 4 : 1953 Cr LJ 1859 . But this is only one factor among others. See *Amrit Bhushan Gupta v UOI*, AIR 1977 SC 608 [LNIND 1976 SC 458] : 1977 Cr LJ 376 ; *Ram Bharose v State of MP*, 1974 Jab LJ 348 ; *Peeru Singh v State of MP*, 1987 Cr LJ 1781 MP.

100. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] : JT 2007 (9) SC 110 : 2007 AIR (SCW) 3808 : 2007 (7) SCR 917 [LNIND 2007 SC 774] : (2007) 8 Scale 455 [LNIND 2007 SC 774] : (2007) 3 SCC (Cr) 509.
101. *Kuttappan v State of Kerala*, 1986 Cr LJ 271 (Ker).
102. *Siddhupal Kamala Yadav*, AIR 2009 SC 97 [LNIND 2008 SC 1992] : (2009) 1 SCC 124 [LNIND 2008 SC 1992].
103. *Surendra Mishra v State of Jharkhand*, AIR 2011 SC 67 : (2011) 11 SCC 495 [LNIND 2011 SC 27] : (2011) 3 SCC(Cr.) 232.
104. *Sudhakaran v State of Kerala*, (2010) 10 SCC 582 [LNIND 2010 SC 1046] : AIR 2011 SC 265 [LNIND 2010 SC 1046] : 2011 Cr LJ 292 .
105. *State of Maharashtra v Govind Mhatarba Shinde*, 2010 Cr LJ 3586 (Bom).
106. Available at : <http://lawcommissionofindia.nic.in/1-50/Report42.pdf> (last accessed in July 2019).
107. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] : (2007) 3 SCC (Cr) 509 : (2007) 4 KLT 63 [LNIND 1985 KER 300].
108. Third question and answer in *M'Naughton's case*, (1843) 4 St Tr (NS) 847, 10 Cl & F 200; *Tola Ram*, (1927) 8 Lah 684. *Jaganath Das v State*, 1991 Cr LJ (NOC) 32 Cal.
109. *Harka v State*, (1906) 26 AWN 193. *Hari Singh Gond v State of MP*, (2008) 16 SCC 109 [LNIND 2008 SC 1728] : AIR 2009 SC 31 [LNIND 2008 SC 1728] : 2009 Cr LJ 346 : (2008) 3 KLT 969 [LNIND 2008 SC 1728] , Mere abnormality of mind, partial delusion, irresistible impulse or compulsive psychopathic behaviour affords no protection under section 84. It is only unsoundness of mind which naturally impairs the cognitive faculties of mind which can justify exemption under section 84. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] , time factor, time of the offence is crucial.
110. *Sheralli Wali Mohammed v State of Maharashtra*, (1973) 4 SCC 79 : 1972 Cr LJ 1523 .
111. *Govindaswami Padayachi*, (1952) Mad 479; *Ahmadullah*, (1961) 3 SCR 583 [LNIND 1961 SC 29] : (1961) 2 Cr LJ 43 : AIR 1961 SC 998 [LNIND 1961 SC 29] ; *Dahyabhai*, AIR 1964 SC 1563 [LNIND 1964 SC 88] : 1964 (2) Cr LJ 472 ; **followed** in *Narain v State*, 1991 Cr LJ 1610 All, the accused murdering the Imam of a masjid, acquitted because of proven insanity. *AG Bhagwat v UT Chandigarh*, 1989 Cr LJ 214 P&H, no insanity at the time of attack.
112. *Ajaya Mahakud v State of Orissa*, 1993 Cr LJ 1201 (Ori).
113. *S Sunil Sandeep v State of Karnataka*, 1993 Cr LJ 2554 (Kant).
114. *State of Punjab v Mohinder Singh*, (1983) 2 SCC 274 : 1983 SCC (Cr) 402 : 1983 Cr LR (SC) 187 . In a similar acquittal, the HP High Court ordered that the accused be confined to mental hospital so that he would pose no danger to public. *Krishan Dutt v State of HP*, 1992 Cr LJ 1065 HP.
115. *SW Mohammed*, 1972 Cr LJ 1523 : AIR 1972 SC 2443 .
116. *Oyami Ayatu*, 1974 Cr LJ 305 : AIR 1974 SC 216 [LNIND 1973 SC 242] . See also *Gunadhar Mondal*, 1979 Cr LJ NOC 178 (Cal), *Kesheorao* 1979 Cr LJ 403 (Bom). *Basanti v State*, 1989 Cr LJ 415 (Ori), woman jumped into well with her children, rescued, voluntarily explaining her conduct, no insanity. *Parapuzha Thamban v State of Kerala*, 1989 Cr LJ 1372 (Ker); *Munilal Gupta v State*, 1988 Cr LJ 627 (Del); *Meh Ram v State*, 1994 Cr LJ 1897 (Raj).
117. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] : (2007) 3 SCC (Cr) 509 : (2007) 4 KLT 63 [LNIND 1985 KER 300].
118. *Kader Hasyer Shah*, (1896) 23 Cal 604 , 607; *Kalicharan*, (1947) Nag 226.
119. *Gedka Goala*, (1937) 16 Pat 333.
120. Stephen : *History of the Criminal Law*, vol II, p 166.

121. *Raghu Pradhan v State of Orissa*, 1993 Cr LJ 1159 (Ori).
122. *Brushabha Digal v State of Orissa*, 1993 Cr LJ 3149 (Ori).
123. *Ashok Dattatraya v State of Maharashtra*, 1993 Cr LJ 3450 (Bom).
124. *Amruta v State of Maharashtra*, 1996 Cr LJ 1416 (Bom).
125. *Tola Ram v State of Rajasthan*, 1996 Cr LJ 8 (Raj). For a case of pretended insanity, see *Nathu Babu Mhaskar v State of Maharashtra*, 1996 Cr LJ 2121 (Bom).
126. *Paras Ram v State of Punjab*, (1981) 2 SCC 508 : 1981 SCC (Cr) 516. *Gulab Manik Surwase v State of Maharashtra*, 2001 Cr LJ 4302 (Bom) the conduct of assaulting his wife in broad day light within the sight of his relatives and leaving behind the blood stained axe on the spot, the Court said, was a sign of abnormalcy. The accused was given the benefit of doubt. *Laxmandas Mangaldas Manikpuri v State of Maharashtra*, 1997 Cr LJ 950 (Bom), no trace of insanity in the conduct of the accused either before or after killing his wife. Defence under section 84 not available.
127. *Marimuthu v State*, 2009 Cr LJ 3633 (Mad).
128. Fourth question and answer in *M'Naughton's case* (1843) 4 St Tr (NS) 847; *Ghatu Pramanik*, (1901) 28 Cal 613 .
129. First question and answer in *M'Naughton's case*, sup. *Durga Domar v State of MP*, (2002) 10 SCC 193 , the accused killed in ferocious manner 5 children belonging to his close relatives, Courts below sentenced him to death, he could not engage a counsel. In this state of things, the judicial conscience of the Supreme Court compelled it to seek medical opinion regarding the mental condition of the accused.
130. *Madesh v State by The Inspector of Police*, 2014 Cr LJ 96 (Mad).
131. *M'Naughton's case*, (1843) 4 St Tr (NS) 847, 10 Cl & F 200.
132. *State of Maharashtra v Umesh Krishna Pawar*, 1994 Cr LJ 774 (Bom).
133. *Kalicharan*, (1947) Nag 226.
134. *Ganesh Shrawan*, (1969) 71 Bom LR 643 .
135. *SW Mohammed*, 1972 Cr LJ 1523 : AIR 1972 SC 2443 . See also *Mitu Khadia*, 1983 Cr LJ 1385 (Ori).
136. In the matter of *Lakshman*, 1973 Cr LJ 110 (Mad).
137. *Prakash*, 1985 Cr LJ 196 (Bom). *Krishan Dutt v State of HP*, 1992 Cr LJ 1065 (HP), medical evidence and manner of commission showed insanity, acquittal.
138. *Velusamy*, 1985 Cr LJ 981 (Mad).
139. *Baswant Rao*, (1948) Nag 711.
140. *Sukru Sa*, 1973 Cr LJ 1323 (Ori); *Kesheorao*, 1979 Cr LJ 403 (Bom); *Lala Sk*, 1983 Cr LJ 1675 (Cal); *Rajan v State*, 1984 Cr LJ 874 (Ker); *Kusa Majhi*, 1985 Cr LJ 1460 (Ori). *Sudhir Ch Biswas v State*, 1987 Cr LJ 863 Cal.
141. *Siddheswari Bora*, 1981 Cr LJ 1005 (Gau).
142. *State of Assam v Inush Ali*, 1982 Cr LJ 1044 (Gau).
143. *Sita Ram v State*, 2011 Cr LJ 1082 (All); *Leena Balkrishna Nair v State of Maharashtra*, 2010 Cr LJ 3292 (Bom).
144. *Lakshman Dagdu*, (1886) 10 Bom 512.
145. *Nivrutti*, 1985 Cr LJ 449 (Bom).
146. *Debeswar Bhuyan v State of Assam*, 2012 Cr LJ 274 (Gau). See also *Laxman Gagari v State of Orissa*, 2012 Cr LJ 44 (Ori).
147. *State of Orissa v Kalia Alias Debabrata Maharana*, 2008 Cr LJ 3107 (Ori).
148. *Kuttappan v State of Kerala*, 1986 Cr LJ 271 (Ker).

149. *State of Rajasthan v Shera Ram*, (2012) 1 SCC 602 [LNIND 2011 SC 1192] : AIR 2012 SC 1 [LNIND 2011 SC 1192] : (2012) 1 SCC (Cr) 406 **relied on** Modi, *Medical Jurisprudence and Toxicology*, 24th Edn, 2011.
150. *Satwant Singh*, 1975 Cr LJ 1605 (P & H). *R v Sullivan*, (1983) 2 All ER 673 , epilepsy is a disease of the mind, but it is not that of madness, though the effect produced on the mind is the same because it is difficult to convict a person who is himself a victim of psychomotor epilepsy.
151. *State of MP v Ahamadulla*, 1961 (2) Cr LJ 43 : AIR 1961 SC 998 [LNIND 1961 SC 29] .
152. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] : JT 2007 (9) SC 110 : 2007 AIR (SCW) 3808 : 2007 (7) SCR 917 [LNIND 2007 SC 774] : (2007) 8 Scale 455 [LNIND 2007 SC 774] : (2007) 3 SCC(Cr) 509; *Lok Bahadur Dahal v State of Sikkim*, 2012 Cr LJ 4996 (Sik); *Marimuthu v State*, 2009 Cr LJ 3633 (Mad); *Siddhupal Kamala Yadav*, AIR 2009 SC 97 [LNIND 2008 SC 1992] : (2009) 1 SCC 124 [LNIND 2008 SC 1992] ; *Ramadhin v State of MP*, 1995 Cr LJ 3708 (MP).
153. *Riyasat v State of UP*, 1993 Cr LJ 2834 (All).
154. *Jagdish v State of MP*, (2009) 9 SCC 495 [LNINDORD 2009 SC 210] : (2010) 1 SCC(Cr) 21 : AIR 2010 SC (Supp) 373.
155. *Niman Sha v MP*, 1996 Cr LJ 3395 (MP); *Venugopalan Venu v Kerala*, 1996 Cr LJ 3363 (Ker). *Raval Mohanbhatt v State*, 1998 Cr LJ 4325 (Guj).
156. *State of Jharkhand v Madras Nayak*, 2003 Cr LJ NOC 197 : 2003 AIR Jhar HCR 653.
157. *Siddhupal Kamala Yadav*, AIR 2009 SC 97 [LNIND 2008 SC 1992] : (2009) 1 SCC 124 [LNIND 2008 SC 1992] .
158. *Shrikant Anandrao Bhosale v State of Maharashtra*, AIR 2002 SC 3399 [LNIND 2002 SC 606] : (2002) 7 SCC 748 [LNIND 2002 SC 606] .
159. *Debeswar Bhuyan v State of Assam*, 2012 Cr LJ 274 (Gau).
160. *Jagannath Das v State*, 1991 Cr LJ (NOC) 32 (Cal). *SK Nair v State of Punjab*, AIR 1997 SC 1537 [LNIND 1996 SC 1829] : 1997 Cr LJ 772 : (1997) 1 SCC 141 [LNIND 1996 SC 1829] , the plea of paranoid, facts established that he understood the implications of the acts at the time of the incident plea not sustainable. *Ram Swarup Thakur v State of Bihar*, 2000 Cr LJ 426 (Pat), the accused killed his own son of 3 years old for no reason. He was in mental hospital for two years, not a normal man at the time. No evidence from prosecution as to his state of mind. Acquitted. *Shrikant Anandrao Bhosale v State of Maharashtra*, AIR 2002 SC 3399 [LNIND 2002 SC 606] : (2002) 7 SCC 748 [LNIND 2002 SC 606] , another case of paranoid schizophrenia, the accused killed his wife in day light, made no attempt to hide or run away, mental unsoundness before or after occurrence was proved. The benefit of section 84 was granted. Also see *Sudhakaran v State of Kerala*, (2010) 10 SCC 582 [LNIND 2010 SC 1046] : AIR 2011 SC 265 [LNIND 2010 SC 1046] : 2011 Cr LJ 292 .
161. *Tikaram Krishnalal Pandey v State of Maharashtra*, 2013 Cr LJ 2410 (Bom).
162. *Dahyabhai Chhaganbhai Thakkar v State of Gujarat*, AIR 1964 SC 1563 [LNIND 1964 SC 88] ; *Sudhakaran v State of Kerala*, (2010) 10 SCC 582 [LNIND 2010 SC 1046] : AIR 2011 SC 265 [LNIND 2010 SC 1046] : 2011 Cr LJ 292 ; In *State of H v Gian Chand*, AIR 2001 SC 2075 [LNIND 2001 SC 1124] : (2001) 6 SCC 71 [LNIND 2001 SC 1124] : 2001 Cr LJ 2548 : (2001) 1 SCC(Cr) 980, the Supreme Court set aside the High Court Judgment by holding that the High Court misapplied the *Dahyabhai Judgment (Supra)*.
163. *Devidas Loka Rathod v State of Maharashtra*, AIR 2018 SC 3093 [LNIND 2018 SC 311] .
164. *Gelsing Pida Pawar v State of Maharashtra*. 2010 Cr LJ 4097 (Bom); *Leena Balkrishna Nair v State of Maharashtra*, 2010 Cr LJ 3292 (Bom); *Sarat Chandra Sahoo v State of Orissa*, 2010 Cr LJ 3084 (Ori)].

165. *Shivraj Singh v State of MP*, 1975 Cr LJ 1458 , the accused failed to make out his defence. Similar observations occur in *State v E Lemon*, AIR 1970 Goa 1 : 1970 Cr LJ 36 ; *Balogopal Re*, 1976 Cr LJ 1978 ; *Dulal Nayak v State of WB*, 1987 Cr LJ 1561 Cal, striking twice on head with the leg of cot, intention clear. *Omkarlal v State of MP*, 1987 Cr LJ 1289 MP. *TN Lakshmaiah v State of Karnataka*, (2002) 1 SCC 219 [LNIND 2001 SC 2360] , the Court has to examine the accused's claim having regard to his entire conduct up to commencement of the proceedings before the trial Court. The accused murdered his wife and son and took the plea that he acted under a spell of insanity. He led no evidence to that effect. Also his conduct was that of a fully conscious man. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] , explanation of the type of burden of proof which lies on the accused; *Bihari Lal v State of HP*, 2006 Cr LJ 3832 HP, the accused has to prove his mental condition of insanity. He cannot draw any benefit from adverse medical opinion.
166. *Ratan Lal v State of MP*, AIR 1971 SC 778 [LNIND 1970 SC 487] : 1971 Cr LJ 654 .
167. *Tukappa Tamanna Lingardi v State of Maharashtra*, 1991 Cr LJ 2375 (Bom).
168. *Kirtanram Mansai Uranv v State of MP*, 2011 Cr LJ 4658 (Chh).
169. *Bhan Singh v State of MP*, 1990 Cr LJ 1861 (MP).
170. *Elkari Shankari v State of AP*, 1990 Cr LJ 97 AP. See also *Uchhab Sahoo v State of Orissa*, 1989 Cr LJ 168 (Ori), evidence created a doubt that the accused might have been under a spell of madness.
171. *Narayan Chandra Dey v State*, 1988 Cr LJ 387 (Cal). See also *Santosh Kumar Sarkar v State*, 1988 Cr LJ 1828 Cal.
172. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] : (2007) 4 KLT 63 [LNIND 1985 KER 300] . There has to be absence of *mens rea* and not mere absence of motive.
173. *Chandrashekar v State*, 1998 Cr LJ 2237 (Kant). See also *Raval Mohanbhai Laxmanbhai v State*, 1998 Cr LJ 4325 .
174. *R v Feel (Taramary)*, (2000) 2 Cr App R (S) 464, [CA (Crim Div)].
175. *Mariappan v State of TN*, 2013 Cr LJ 2334 (SC) : 2013 (6) Scale 18 .
176. *Turam Sundi v State of Jharkhand*, 2011 Cr LJ 1872 (Jha); *Madhusudan v State of Karnataka*, 2011 Cr LJ 215 (Kar); *C T Raveenran v State of Kerala*, 2011 Cr LJ 14089 (Ker).
177. *Nand Lal v State of Rajasthan*, 2011 Cr LJ 3686 (Raj); *Babasaheb Thombre v State of Maharashtra*, 2008 Cr LJ 2935 (Bom)].
178. *Dhaneswar Pradhan v State of Assam*, 2003 Cr LJ 733 (Gau).
179. *PSVLN Sastry v Advocate General HC of AP*, (2007) 15 SCC 271 .
180. *Apu @ Gajraj Singh v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] : 2007 (3) RCR (Criminal) 343.
181. *Shibu v State of Kerala*, 2013 (4) KLJ 300 : 2013 (4) KLT 323 [LNIND 2012 KER 968] (Ker DB).
182. *Ibid.*
183. *Ashok Kumar R v State of Kerala*, 2016 Cr LJ 4765 (Ker) : 2016 (4) KHC 232 .
184. Section 328-339.

# THE INDIAN PENAL CODE

## CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.<sup>1</sup>

The following acts are exempted under the Code from criminal liability:–

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

**[s 85] Act of a person incapable of judgment by reason of intoxication caused against his will.**

**Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing**



**what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.**

### **COMMENT.—**

Under this section a person will be exonerated from liability for doing an act while in a state of intoxication if he at the time of doing it, by reason of intoxication, was

- (1) incapable of knowing the nature of the act, or
- (2) that he was doing what was either wrong or contrary to law;

*Provided* that the thing which intoxicated him was administered to him without his knowledge or against his will.<sup>185.</sup>

Voluntary drunkenness is no excuse for the commission of a crime.<sup>186.</sup> A person cannot become himself drunk with liquor and commit an offence and then come and say that he had consumed the liquor and, therefore, the benefit of section 85 should be given to him.<sup>187.</sup> The law pronounces that the obscuration and divestment of that judgment and human feeling which in a sober state would have prevented the accused from offending, shall not, when produced by his voluntary act, screen him from punishment, although he be no longer capable of self-restraint.<sup>188.</sup> It is also no excuse to say that because of it he failed to resist the impulse to act in a certain way<sup>189.</sup> or that because of it he acted like an automaton.<sup>190.</sup>

### **[s 85.1] Voluntary drunkenness.—when an excuse.—**

Nevertheless voluntary drunkenness is a factor which has to be taken into consideration at least in two types of cases, *viz.*,

(i) where a specific intent is an essential element of an offence charged and the evidence shows that the state of intoxication of the accused is such that he is incapable of forming the specific intent essential to constitute the crime.<sup>191.</sup> In the Indian context, for example, it would be intent to kill as in clauses 1, 2, and 3 of [section 300, IPC, 1860](#). In such cases, however, even if the accused fails to actually form the specific intent, [section 86, IPC, 1860](#), would impute the necessary guilty knowledge to him and he would, therefore, be liable for culpable homicide not amounting to murder though not of murder.<sup>192.</sup> Thus, voluntary intoxication amounting to prove incapacity to form the required specific intent would be a limited excuse to reduce an offence of murder (section 302) to one of culpable homicide not amounting murder ([section 304, IPC, 1860](#)). This is, however, a question of fact in each case.

In a case of wife-burning, her dying declaration disclosed that her husband consumed liquor, scolded her and then set her afire after pouring kerosene on her. She fought the fire and tried to run away but the accused again caught hold of her and again poured oil and inflamed her. It was held that these circumstances showed that the mental faculties of the accused were not impaired to such an extent that he was prevented from forming the requisite intention to cause death. He was convicted under section 302 and not section 304, Part II.<sup>193.</sup>

(ii) where habitual drunkenness has resulted in such a diseased condition of the mind that the accused is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. In such a case M'Naughten Rules ([section 84, IPC,](#)

1860) would come into play and he would be absolved from liability.<sup>194</sup> The most common example of such an alcoholic disease is "Delirium Tremens" which is produced by prolonged and habitual excessive drinking and results in loss of the faculty of reasoning or serious defect of reasoning. In other words, "insanity, whether produced by drunkenness or otherwise, is a defence to the crime charged."<sup>195</sup>

Under this section if a man is made drunk through stratagem or the fraud of others, or through ignorance, or through any other means causing intoxication without the man's knowledge or against his will, he is excused.<sup>196</sup>

### [s 85.2] CASE.—

The accused ravished a girl of 13 years of age and, in furtherance of the act of rape, placed his hand upon her mouth and his thumb upon her throat, thereby causing death by suffocation. The sole defence was a plea of drunkenness. It was held that drunkenness was no defence unless it could be established that the accused at the time of committing rape was so drunk that he was incapable of forming the intent to commit it (which was not alleged), inasmuch as the death resulted from a succession of acts, the rape and the act of violence causing suffocation, which could not be regarded independently of each other; and that the accused was guilty of murder.<sup>197</sup>

Drink is an aggravating feature in the award of sentence. In reference to one of the accused persons there was no evidence to establish that the effect of intoxication was such as to cause him to lack the specific intent for murder, particularly in view of the fact that, on his own admission, he was following instructions given by the other accused and he was able to give the police a lucid account of his actions. The degree of intoxication fell far below that which would preclude the formation of specific intent required for murder.<sup>198</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
  2. The *Indian Evidence Act*, I of 1872, section 105.
  3. *Musammat Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
  4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
  5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
185. *Bablu v State of Rajasthan*, (2006) 13 SCC 116 [LNIND 2006 SC 1134] : AIR 2007 SC 697 [LNIND 2006 SC 1134] : 2007 Cr LJ 1160 , the Court stated three propositions as to the scope of the section:

- (i) the insanity whether produced by drunkenness or otherwise is a defence to the crime charged;
- (ii) evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into account with the other facts

proved in order to determine whether or not he had this intent; and

- (iii) the evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind is affected by drink so that he more readily gave to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.

186. *Chet Ram v State*, [1971 Cr LJ 1246](#) ; (HP) *Bodhee Khan*, (1866) 5 WR (Cr) 79; *Boodh Dass*, (1866) PR No. 41 of 1866.

187. *Venkappa Kannappa Chowdari v State of Karnataka*, [1996 Cr LJ 15](#) (Kar).

188. *Mobeni Minji*, [1982 Cr LJ NOC 39](#) (Gau).

189. *Director of Public Prosecutions v Beard*, [\(1920\) AC 479](#) ; *AG for Northern Ireland v Gallagher* [\(1963\) AC 349](#) .

190. *Brathy v AG for Northern Ireland*, [\(1963\) AC 386](#) .

191. *Director of Public Prosecutions v Beard*, [\(1920\) AC 479](#) ; *Ramsingh*, (1938) Nag 305; *Samman Singh*, (1941) 24 Lah 39; *DPP v Majewski* [\(1976\) 2 All ER 142](#) ; *Shankar Jaiswara v State of WB*, [\(2007\) 9 SCC 360 \[LNIND 2007 SC 651\]](#) : (2007) 3 SCC Cr 553, the appellant abused the victim in a filthy language, and when told to leave, stabbed him seven times to his death with a sharp weapon, so many wounds shows no loss of self control, witnesses did not testify to the degree of intoxication, in such circumstances it could not be said that there was no intention on the part of the appellant or that he was out of his senses on account of intoxication.

192. *Mathai Mathew*, [1952 Cr LJ 1304](#) (TC); *Basdev v State of PEPSU*, [1956 Cr LJ 919](#) (2) : [AIR 1956 SC 488 \[LNIND 1956 SC 34\]](#) ; see also R. Deb, *Principles of Criminology, Criminal Law and Investigation*, 2nd Edn, vol II, pp 604-605.

193. *Mavari Surya Satyanaraina v State of AP*, [\(1995\) 1 Cr LJ 689](#) .

194. *Davis* (1881) 14 Cox cc 563; *AG for Northern Ireland v Gallagher*; *DPP v Board*, *Supra*.

195. *Basdev*, [1956 Cr LJ 919](#) (at p 922-SC).

196. 1 Hale PC 32.

197. *Director of Public Prosecutions v Beard*, [\(1920\) AC 479](#) .

198. *Sooklal v Trinidad and Tobago*, [\(1999\) 1 WLR 2011](#) , [Lord Hope of Craighead, PC].

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Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

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**[s 86] Offence requiring a particular intent or knowledge committed by one who is intoxicated.**

**In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been**

**intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.**

#### **COMMENT.—**

**Offence requiring particular intent or knowledge.**—By reading the above section, it is clear that in the first part of the section the words 'intention or knowledge' are mentioned, but in the latter part of the section the word 'knowledge' is only mentioned and the word 'intention' is omitted. In case of voluntary drunkenness, knowledge is to be presumed in the same manner as if there was no drunkenness. If really the Parliament wanted the word 'intention' also to be presumed even in the case of an act done in a drunken state of mind, the said word could have been mentioned in the Second part also, but the same is omitted. Therefore, whether the accused was having intention or not while committing an act cannot be presumed as in case of knowledge.<sup>199</sup> As certain guilty knowledge or intention forms part of the definition of many offences, this section is provided to meet those cases. It says that a person voluntarily intoxicated will be deemed to have the same knowledge as he would have had if he had not been intoxicated. There may be cases in which a particular knowledge is an ingredient, and there may be other cases in which a particular intent is an ingredient, the two not being necessarily always identical. The section does not say that the accused shall be liable to be dealt with as if he had the same intention as might have been presumed if he had not been intoxicated. Therefore, although there is a presumption so far as knowledge is concerned, there is no such presumption with regard to intention.<sup>200</sup> Thus, this section attributes to a drunken man the knowledge of a sober man when judging of his action but does not give him the same intention. This knowledge is the result of a legal fiction and constructive intention cannot invariably be raised.<sup>201</sup> Drunkenness makes no difference to the knowledge with which a man is credited and if a man knew what the natural consequences of his acts were, he must be presumed to have intended to cause them.<sup>202</sup> But this presumption may be rebutted by his showing that at the time he did the act, his mind was so affected by the drink he had taken that he was incapable of forming the intention requisite for making his act the offence charged against him.<sup>203</sup>

So far as knowledge is concerned the Court must attribute to the intoxicated man the same knowledge as if he was quite sober but so far as intent or intention is concerned, the Court must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. If the man was beside his mind altogether for the time being, it would not be possible to fix him with the requisite intention. In other words, where a man goes so deep into drinking that he becomes really incapable of forming the requisite specific intent or knowledge for the offence, then in such a case too section 86 of the Code would impute the requisite knowledge to the accused though not the requisite intention. Thus, where the accused in a state of extreme intoxication caused a fatal injury in the abdomen of his friend but by virtue of his highly intoxicated state of mind was incapable of knowing then as to what he was doing far less forming the requisite intent to kill as envisaged in [section 300, IPC, 1860](#), he could not be convicted under section 302 as he did not have the requisite intent to kill but he could still be convicted under section 304 Part II, [IPC, 1860](#), by virtue of imputed knowledge under [section 86, IPC, 1860](#).<sup>204</sup> In this connection see also the discussion under sub-head "voluntary drunkenness: when an excuse" under section 85, *ante*. But if he had not gone so deep in drinking and from the facts it could be found that he knew what he was about the Court will apply the rule that a man is presumed to intend the natural consequences of his act or acts.<sup>205</sup>

### [s 86.1] CASES.—

Accused husband beating his wife and throwing burning lamp on her under influence of liquor. Since he himself consumed the liquor he is not entitled to claim benefit under [section 86 of IPC, 1860](#).<sup>206</sup>. Act of the accused of walking a distance to the house of a witness and concealing the weapon and his wearing apparels showed that he was conscious and capable of understanding of his act. No evidence as regards the degree of intoxication or any evidence of any attending general circumstances to arrive at a conclusion that accused was beside his mind altogether temporarily at time incident.<sup>207</sup>. On the basis of evidence in this case, it cannot be said that the accused was so much intoxicated at the time of the incident that he was beside his mind altogether for the time being. He did set his wife on fire, but as soon as her sari started burning he realised the folly of his act and started extinguishing the fire. It shows that he was not so much intoxicated that he was besides his mind altogether. Therefore, the rule that a man is presumed to intend the natural consequences of his act can be applied to him also. Conviction under [section 302 IPC, 1860](#) altered to one under [section 304\(1\) IPC, 1860](#).<sup>208</sup>.

### [s 86.2] Sections 85 and 86.—

The reading of sections 85 and 86 together makes it clear that section 86 is an exception to section 85. These provisions show that if the intoxication is induced voluntarily, the act done is an offence even if the person is incapable of knowing the nature of the act or that what he is doing is either wrong or contrary to law. This section obviously covers all offences. That is why; it appears that it became necessary to enact section 86 to take care of offences requiring a particular intent or knowledge on the part of the intoxicated offender. The section takes care of such offences and states that if intoxication is involuntary, neither knowledge nor intention in committing the offence will be presumed. If however, it is voluntary only knowledge of the offence on the part of the offender will be presumed but not intention in committing it. What section 86 means and no more as compared to section 85. The degree of intoxication demanded by both sections, however, remains the same. In fact, it is instructive to note that section 84 which exempts persons of unsoundness of mind also expects the degree of unsoundness to the same extent, viz., incapability of knowing the nature of the act or of the knowledge that what is being done either wrong or contrary to law. Hence, the conclusion is inescapable that to avail of the exception under section 86, the degree of intoxication of the offender must be such that he is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. Intoxication short of this degree will not entitle the offender to the benefit of the exception.<sup>209</sup>.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
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4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).

5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
199. *Mavari Surya Satyanaraina v State of AP*, 1995 Cr LJ 689 (AP).
200. *Dil Mohammad*, (1941) 21 Pat 250; *Basdev v State of PEPSU*, 1956 Cr LJ 919 (2) : AIR 1956 SC 488 [LNIND 1956 SC 34] .
201. *Pal Singh*, (1917) PR No. 28 of 1917.
202. *Judagi Malah*, (1929) 8 Pat 911.
203. *Samman Singh*, (1941) 24 Lah 39.
204. *Enrique F Rio v State*, 1975 Cr LJ 1337 (Goa).
205. *Basdev v State of Pepsu*, (1956) SCR 363 [LNIND 1956 SC 34] : AIR 1956 SC 488 [LNIND 1956 SC 34] .
206. *Gautam Bhila Ahire v State of Maharashtra*,. 2010 Cr LJ 4073 (Bom); *Pidika Janu v State of Orissa*, 1989 Cr LJ (NOC) 104 ,
207. *Shankar Jaiswara v State of WB*, (2007) 9 SCC 360 [LNIND 2007 SC 651] : (2007) 3 SCC (Cr) 553.
208. *Babu Sadashiv Jadhav v State of Maharashtra*, 1984 Cr LJ 739 (Bom).
209. *State of Maharashtra v Ashok Yashwant*, 1987 Cr LJ 1416 (Bom).



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The following acts are exempted under the Code from criminal liability:–

1. Act of a person bound by law to do a certain thing (section 76).
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4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
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5. Consent (sections 87, 90).
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7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

**[s 87] Act not intended and not known to be likely to cause death or grievous hurt, done by consent.**

**Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person,**

**above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.**

#### ILLUSTRATION

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

#### COMMENT.—

**Consent.**—This section protects a person who causes injury to another person above 18 years of age who has given his consent by doing an act not intended and not known to be likely to cause death or grievous hurt. It appears to proceed upon the maxim *volenti non fit injuria*. He who consents suffers no injury. This rule is founded upon two very simple propositions: (1) that every person is the best judge of his own interest and (2) that no man will consent to what he thinks hurtful to himself. Every man is free to inflict any suffering or damage he chooses on his own person and property; and if, instead of doing this himself, he consents to its being done by another, the doer commits no offence. A man may give away his property, and so another who takes it by his permission does not commit theft. He may inflict self-torture or he may consent to suffer torture at the hands of another.

The section does not permit a man to give his consent to anything intended, or known to be likely to cause his own death or grievous hurt.

#### [s 87.1] Sado-masochistic desires.—

In the absence of a good reason, the victim's consent is no defence and the satisfaction of sado-masochistic desires does not constitute such a good reason. A group of sado-masochistics participated in consensual acts of violence against each other for sexual gratification. They were charged with various offences. They were convicted for causing harm to one member. It is not in public interest that a person should wound or cause actual bodily harm to another for no good reason and without such a reason the victim's consent afforded no defence.<sup>210.</sup>

#### [s 87.2] Injection of heroin on request resulting in death.—

The accused appealed against a sentence of five years' imprisonment for manslaughter. The deceased, visited him, at his flat. He had previously drunk a significant quantity of alcohol. He took some heroin and demanded more. At his request the accused injected him with more heroin, resulting in his death. The accused contended that weight should have been given to his admission of responsibility and his guilty plea, the fact that the deceased had insisted upon more heroin, that there was no commercial motive involved in the supply and that he had co-operated in naming the supplier of the heroin.

It was held that it was necessary to take into consideration accused's co-operation in naming the supplier of the heroin and other mitigating factors. The sentence for manslaughter was reduced to three years' imprisonment and the sentence for supplying a Class A drug, from three years' imprisonment to two years.<sup>211.</sup>

Sections 87 and 88 of the IPC, 1860 do not come into play in the cases where interest of the Society is involved.<sup>212</sup>.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The *Indian Evidence Act*, I of 1872, section 105.
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4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
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210. *R v Laskey*, (1993) 2 WLR 556 (HL).
211. *R v Powell (Jason Wayne)*, (2002) EWCA Crim 661 : (2002) 2 Cr App R (S) 117, [CA (Crim Div)].
212. *Deepa v SI of Police*, 1985 Cr LJ 1120 (Ker).

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**[s 88] Act not intended to cause death, done by consent in good faith for person's benefit.**

**Nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has**

**given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.**

#### ILLUSTRATION

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

#### COMMENT.—

The preceding section allows any harm to be inflicted short of death or grievous hurt. This section sanctions the infliction of any harm if it is for the benefit of the person to whom it is caused. No consent can justify an intentional causing of death. But a person for whose benefit a thing is done may consent that another shall do that thing, even if death may probably ensue. If a person gives his free and intelligent consent to take the risk of an operation which, in a large proportion of cases, has proved fatal, the surgeon who operates cannot be punished even if death ensues.<sup>213</sup> Again; if a person attacked by a wild beast should call out to his friends to fire, though with imminent hazard to himself, and they were to obey the call, we do not conceive that it would be expedient to punish them, though they might by firing cause his death, and though when they fired they knew themselves to be likely to cause his death.<sup>214</sup>

This section differs from the last section in two particulars—(1) under it any harm except death may be inflicted; (2) the age of the person consenting is not mentioned (but see section 90 under which the age of the consenting party must at least be 12 years).

Persons not qualified as medical practitioners cannot claim the benefit of this section as they can hardly be deemed to act in 'good faith' as that expression is defined in section 52.<sup>215</sup>

#### [s 88.1] Criminal liability on doctor or surgeon.—

Prosecution has to come out with a case of high degree of negligence on part of doctor. Thus, when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as 'criminal.' It can be termed 'criminal' only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.<sup>216</sup> Even if the surgery was done without the consent of the patient or his/her guardian, if it is for the benefit of the patient he is not liable. Section 98 deals with harm caused with the consent of the person injured or someone competent under law to give such consent on his behalf excludes causing of such harm from the category of offence. Here the complainant has given her consent. [Section 88 IPC, 1860](#) provides that harm done for the benefit of the person injured and with his consent will not make the person causing harm liable for criminal offence.<sup>217</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
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5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
213. *RP Dhanda (Dr.) v Bhurelal*, 1987 Cr LJ 1316 MP, eye-operation for cataract by qualified doctor with patient's consent resulting in loss of sight.
214. The Works of Lord Macaulay-On the Chapter of General Exceptions Note B.
215. *Juggankhan*, (1963) 1 Cr LJ 296 (MP).
216. *Suresh Gupta v Govt. of NCT of Delhi*, AIR 2004 SC 4091 [LNIND 2004 SC 744] : (2004) 6 SCC 422 [LNIND 2004 SC 744] ; *Jacob Mathew v State of Punjab*, AIR 2005 SC 3180 [LNIND 2005 SC 587] : 2005 (6) SCC 1 [LNIND 2005 SC 587] .
217. *Dr. Gopinatha Pillai T M v State of Kerala*, 2000 Cr LJ 3682 (Ker); *Katcherla Venkata Sunil v Vanguri Seshumamba*, 2008 Cr LJ 853 (AP).



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**[s 89] Act done in good faith for benefit of child or insane person, by or by consent of guardian.**

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

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

**Provided—**

**Provisos.**

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

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

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

ILLUSTRATION

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

### **COMMENT.—**

This section empowers the guardian of an infant under 12 years or an insane person to consent to the infliction of harm to the infant or the insane person, provided it is done in good faith and is done for his benefit. Persons above 12 years are considered to be capable of giving consent under section 88. The consent of the guardian of a sufferer, who is an infant or who is of unsound mind, shall have the same effect which the consent of the sufferer himself would have, if the sufferer were of ripe age and sound mind.

### **[s 89.1] Corporal punishment to children.—**

Corporal punishment to child, in present days, is not recognized by law. It is an archaic notion that to maintain discipline, child can be punished physically by the teaching staff because of implied consent by the parents or guardian. Now it is recognized social principle that even parents of the child are made to understand the basic human rights of the child and instead of corporal punishment, correctional methods are recognized in law.<sup>218</sup> But the applicability of [sections 88 and 89, IPC, 1860](#) and administering of corporal punishments on students by the teachers for their benefit, came up for consideration in *M Natesan v State of Madras*.<sup>219</sup> It was a case where a boy of 15 years was sent with the progress report to get the signature of his parents in it. But he returned it with a thumb impression of another person, stating that the said thumb impression was that of his mother, which was proved to be wrong. The teacher got agitated and he beat the boy on his right palm with a stick. He did not cry. He, therefore, beat him again, asking him why he did not cry. This resulted in causing three injuries, two superficial and one contusion. The Madras High Court held that:

It cannot be denied that having regard to the peculiar position of a school teacher he must in the nature of things have authority to enforce discipline and correct a pupil put in his charge. To deny that authority would amount to a denial of all that is desirable and necessary for the welfare, discipline and education of the pupil concerned. It can therefore be assumed that when a parent entrusted a child to a teacher, he on his behalf impliedly consents for the teacher to exercise over the pupil such authority. Of course, the person of the pupil is certainly protected by the penal provisions of the [Indian Penal Code](#). But the same code has recognised exceptions in the form of ss. 88 and 89. Where a teacher exceeds the authority and inflicts such harm to the pupil as may be considered to be unreasonable and immoderate, he would naturally lose the benefit of the exceptions. Whether he is entitled to the benefit of the exceptions or not in a given case will depend upon the particular nature, extent and severity of the punishment inflicted.

<sup>220</sup>. In *K A Abdul Vahid v State of Kerala*,<sup>221</sup> the Kerala High Court considered the question when a school teacher, beats a student with a cane, who created commotion in the school or showed disobedience to the Rules, whether he could be proceeded against under the provisions of the [IPC, 1860](#) and found that the teacher has acted within the exception conferred on him, under [section 88 of IPC, 1860](#).

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, [AIR 2004 SC 1966 \[LNIND 2004 SC 1370\]](#) : [2004 Cr LJ 1778](#) : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The [Indian Evidence Act](#), 1 of 1872, section 105.
3. *Musammatt Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
218. *Hasmukhbhai Gokaldas Shah v State of Gujarat*, 2009 Cr LJ 2919 (Guj).
219. *M Natesan v State of Madras*, [AIR 1962 Madras 216 \[LNIND 1961 MAD 136\]](#) : 1962 (1) Cr LJ 727 .
220. Also see *Ganesh Chandra Saha v. Jiw Raj Somani*, [AIR 1965 Calcutta 32](#) : (1965 (1) Cr LJ 24) .
221. *K A Abdul Vahid v State of Kerala*, 2004 Cr LJ 2054 (Ker).

# THE INDIAN PENAL CODE

## CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.<sup>1</sup>

The following acts are exempted under the Code from criminal liability:–

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
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5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
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18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
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4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

**[s 90] Consent known to be given under fear or misconception.**

**A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, <sup>1</sup>**

**and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or**

**Consent of insane person.**

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

**Consent of child.**

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

## **COMMENT.—**

This section does not define 'consent' but describes what not consent is.

This section says that consent is not a true consent if it is given—

- |  |   |
|--|---|
| (1) by a person under fear of injury;          | and the person obtaining the consent knows or has reason to believe this. |
| (2) by a person under a misconception of fact; |   |
| (3) by a person of unsound mind;               | and who is unable to understand the nature                                |
| (4) by a person who is intoxicated;            | and consequence of that to which he gives his consent.                    |
| (5) by a person under 12 years of age          |   |

Consent is an act of reason, accompanied with deliberation, the mind weighing as in balance, the good and evil on each side.<sup>222</sup> Consent means an active will in the mind of a person to permit the doing of the act complained of, and knowledge of what is to be done, or of the nature of the act that is being done, is essential to consent to an act.<sup>223</sup> An act of helplessness on the face of inevitable compulsions is not consent in law.<sup>224</sup> It requires voluntary participation by victim not only after exercise of intelligence based on knowledge of significance and moral quality of act, but after having fully exercised the choice between resistance and assent.<sup>225</sup> A mere act of helpless resignation in the face of inevitable compulsion, non-resistance and passive giving in cannot be deemed to be consent.<sup>226</sup> The Supreme Court in a long line of cases has given wider meaning to the word 'consent' in the context of sexual offences as explained in various judicial dictionaries. In *Jowitt's Dictionary of English Law* (Second Edn), vol (1) 1977 at p 422 the word 'consent' has been explained as an act of reason accompanied with deliberation, the mind weighing, as in a balance, the good or evil on either side. It is further stated that consent supposes three things—a physical power, a mental power, and a free and serious use of them and if consent be obtained by intimidation, force, meditated imposition, circumvention, surprise, or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind.<sup>227</sup> Section 90 cannot be considered as an exhaustive definition of consent for the purposes of [IPC, 1860](#). The normal connotation and concept of consent is not intended to be excluded.<sup>228</sup> For determining whether consent given by the prosecutrix was voluntary or under a misconception of fact, no straitjacket formula can be laid down.<sup>229</sup>

The factors set out in the first part are from the point of view of the victim. The second part enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has the knowledge or reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. The requirements of both the parts have to be cumulatively satisfied.<sup>230</sup> Submission of the body under the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.<sup>231</sup> Consent can be obtained under various methods and always necessarily need not be a one which is given voluntarily. For example, if a victim is intoxicated without her knowledge or consent and if the rape is committed while the victim was intoxicated or drunken, it cannot be said that she had voluntarily given the consent. Therefore, such passive consent cannot be treated as a consent as contemplated by [section 90 of IPC, 1860](#).<sup>232</sup> Obtaining consent by exercising deceit cannot be legitimate defence to exculpate an accused.<sup>233</sup>

### **[s 90.1] Submission to Rape.—**

An act of submission does not involve consent- Consent cannot be equated to inability to resist or helplessness.<sup>234</sup> Every consent involves a submission, but every submission is not consent and the mere fact that a woman had submitted to the promise of the accused does not necessarily indicate that her consent existed unless the evidence on record establishes that the sexual act, which the prosecutrix had allowed, was accompanied with deliberation after the mind had weighed, as in a balance, the good and the evil on each side with the existing capacity and power to withdraw the assent according to one's will or pleasure.<sup>235</sup> Where, the accused had sexual intercourse with the prosecutrix by giving false assurance to her that he would marry her and when she became pregnant, he refused to do so, it was evident that he never intended to marry her and procured her consent only for the reason of having sexual relations with her, therefore, the act of the accused fell squarely under the definition of rape as her consent was obtained under a misconception of fact.<sup>236</sup>

**1. 'Misconception of fact'.—**The expression "under a misconception of fact" is broad enough to include all cases where the consent is obtained by misrepresentation; the misrepresentation should be regarded as leading to a misconception of the facts with reference to which the consent is given. In [section 3 of the Evidence Act](#) Illustration (d) states that a person has a certain intention is treated as a fact. So, here the fact about which the second and third prosecution witnesses were made to entertain a misconception was the fact that the second accused intended to get the girl married... "thus... if the consent of the person from whose possession the girl is taken is obtained by fraud, the taking is deemed to be against the will of such a person..." Although in cases of contracts a consent obtained by coercion or fraud is only voidable by the party affected by it, the effect of [section 90 IPC, 1860](#) is that such consent cannot, under the criminal law, be availed of to justify what would otherwise be an offence.<sup>237</sup> Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the Court must very carefully examine whether the accused had actually wanted to marry the victim, or had *mala fide* motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the Court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and



consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the Court reaches a conclusion that the intention of the accused was *mala fide*, and that he had clandestine motives.<sup>238</sup> In order to come within the meaning of misconception of fact, the fact must have an immediate relevance. If a fully grown-up girl consents to the act of sexual intercourse on a promise of marriage and continues to indulge in such activity until she becomes pregnant, it is an act of promiscuity on her part and not an act induced by misconception of fact and it was held that [section 90 IPC, 1860](#) cannot be invoked unless the Court can be assured that from the inception the accused never intended to marry her. Therefore, it depends on case to case that what is the evidence led in the matter. If it is a fully grown-up girl who gave the consent then it is a different case but a girl whose age is very tender and she is giving a consent after persuasion of three months on the promise that the accused will marry her which he never intended to fulfil right from the beginning which is apparent from the conduct of the accused, in our opinion, section 90 can be invoked.<sup>239</sup> A promise to marry without anything more will not give rise to "misconception of fact" within the meaning of section 90, it needs to be clarified that a representation deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent. If on the facts it is established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of section 375 clause second.<sup>240</sup>

### [s 90.2] CASES.—

The prosecutrix had sexual intercourse with the accused on the representation made by the accused that he would marry her. This was a false promise held out by the accused. Had this promise not been given perhaps, she would not have permitted the accused to have sexual intercourse. It appears that the intention of the accused was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him.<sup>241</sup> In *Uday v State of Karnataka*,<sup>242</sup> the Court considered the following facts: (i) where a girl was of 19 years of age and had sufficient intelligence to understand the significance and moral quality of the act she was consenting to; (ii) she was conscious of the fact that her marriage was difficult on account of caste considerations; (iii) it was difficult to impute to the appellant, knowledge that the prosecutrix had consented in consequence of a misconception of the fact arising from his promise; and (iv) there was no evidence to prove conclusively that the appellant never intended to marry the prosecutrix. On the basis of the above factors, Court held that it did not feel persuaded to hold that consent was obtained by misconception of facts on the part of the victim.

In a case, the prosecutrix had left her home voluntarily, of her own free will to get married to the accused. She was 19 years of age at the relevant time and was, hence, capable of understanding the complications and issues surrounding her marriage to the appellant. According to the version of events provided by her, the prosecutrix had called the accused on a number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time,

and when he finally arrived she went with him to the Karna Lake where they indulged in sexual intercourse. She did not raise any objection at this stage and made no complaints to anyone. Thereafter, she also went to Kurukshetra with the accused, where she lived with his relatives. Here to, the prosecutrix voluntarily became intimate with the accused. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the accused at the Birla Mandir. Thereafter, she even proceeded with the accused to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married. However, they were apprehended by the police. If the prosecutrix was in fact going to Ambala to marry the accused, as stands fully established from the evidence on record, the Supreme Court held it fails to understand on what basis the allegation of "false promise of marriage" has been raised by the prosecutrix.<sup>243.</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The *Indian Evidence Act*, I of 1872, section 105.
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222. Story, section 222.
223. *Lock*, (1872) LR 2 CCR 10, 11.
224. *Satpal Singh v State of Haryana*, 2010 AIR (SCW) 4951 : (2010) 8 SCC 714 [LNIND 2010 SC 666] : 2010 Cr LJ 4283 .
225. *Md. Jakir Ali v The State of Assam*, 2007 Cr LJ 1615 (Gau).
226. *Re*, ( AIR 1960 Madras 308 ), *Gopi Shanker v State of Rajasthan*, ( AIR 1967 Rajasthan 159 ), *Bhimrao v State of Maharashtra*, ( 1975 Mah. LJ 660 ) and *Vijayan Pillai v State of Kerala*, (1989 (2) KLJ 234) quoted from *R v Day*, (173 ER 1026) in 1841 approved in *Pradeep Kumar v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] : (2007) 7 SCC 413 [LNIND 2007 SC 965] : 2007 Cr LJ 4333 : (2007) 3 SCC(Cr) 407.
227. *State of UP v Chhoteylal*, AIR 2011 SC 697 [LNIND 2011 SC 73] : (2011) 2 SCC 550 [LNIND 2011 SC 73] in this case, SC elaborately discussed the meaning of consent and quoted from various Indian and foreign authorities.
228. *Pradeep Kumar v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] : (2007) 7 SCC 413 [LNIND 2007 SC 965] : 2007 Cr LJ 4333 : (2007) 3 SCC(Cr) 407.
229. *Uday v State of Karnataka* AIR 2003 SC 1639 [LNIND 2003 SC 228] : (2003) 4 SCC 46 [LNIND 2003 SC 228] : 2003 SCC (Cr) 775.
230. *Deelip Singh v State of Bihar*, (2005) 1 SCC 88 [LNIND 2004 SC 1123] : AIR 2005 SC 203 [LNIND 2004 SC 1123] .
231. *State of HP v Mango Ram*, (2000 (7) SCC 224 [LNIND 2000 SC 1144] : 2000 Cr LJ 4027 (SC).
232. *KCPeter v State of Kerala*, 2011 Cr LJ 3488 (Ker).
233. *Karthy @ Karthick v State*, 2013 Cr LJ 3765 (SC).
234. *Laddoo Singh Alias Harjit Singh v State of Punjab*, 2008 Cr LJ 2885 (PH).

235. *Bipul Medhi v State of Assam*, 2008 Cr LJ 1099 (Gau).
236. *State of UP v Naushad*, 2014 Cr LJ 540 .
237. *Pradeep Kumar v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] : (2007) 7 SCC 413 [LNIND 2007 SC 965] : 2007 Cr LJ 4333 : (2007) 3 SCC(Cr) 407 **relied** on *N Jaladu, Re* ( ILR (1913) 36 Madras 453 .
238. *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : 2013 (7) Scale 383 [LNIND 2013 SC 533] .
239. *Jayanti Rani Panda v State of WB*, 1984 Cr LJ 1535 (Cal).
240. *Pradeep Kumar v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] : (2007) 7 SCC 413 [LNIND 2007 SC 965] : 2007 Cr LJ 4333 : (2007) 3 SCC(Cr) 407 **relied** on *N Jaladu, Re* ( ILR (1913) 36 Madras 453 ).
241. *Yedla Srinivasa Rao v State of AP*, (2006) 11 SCC 615 [LNIND 2006 SC 785] : (2007) 1 SCC(Cr) 557; *Bipul Medhi v State of Assam*, 2008 Cr LJ 1099 (Gau); *Abhoy Pradhan v State of WB*, 1999 Cr LJ 3534 (Cal).
242. *Uday v State of Karnataka*, AIR 2003 SC 1639 [LNIND 2003 SC 228] : (2003) 4 SCC 46 [LNIND 2003 SC 228] : 2003 SCC (Cr) 775.
243. *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : 2013 (7) Scale 383 [LNIND 2013 SC 533] . See also *Swapan Chatterjee v State of WB*, 2009 Cr LJ 16 (Cal); *Karthi @ Karthick v State*, 2013 Cr LJ 3765 (SC); *Ravi v State*, 2010 Cr LJ 3493 (Mad); *Vinod Mangilal v State of MP*, 2009 Cr LJ 1204 (MP).

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### **[s 91] Exclusion of acts which are offences independently of harm caused.**

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

## ILLUSTRATION

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

## COMMENT.—

The section serves as a corollary to sections 87, 88 and 89. It says in explicit terms that consent will only condone the act causing harm to the person giving the consent which will otherwise be an offence. Acts which are offences independently of any harm which they may cause will not be covered by consent given under sections 87, 88 and 89, e.g., causing miscarriage, public nuisance, offences against public safety, morals, etc. It may be stated here that the illustration given under this section has become somewhat inappropriate as pregnancy can now be terminated under [section 3 of Medical Termination of Pregnancy Act, 1971](#), on a number of grounds and not only on the ground of saving the life of the woman.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The [Indian Evidence Act](#), I of 1872, section 105.
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Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

## **[s 92] Act done in good faith for benefit of a person without consent.**

**Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in**



lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided—

**Provisos.**

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

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

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

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

ILLUSTRATIONS

- (a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.
- (b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.
- (c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.
- (d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

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

## COMMENT.—

**Acts done in good faith.**—This section is designed to meet those cases which do not come either under section 88 or under section 89. The principal object of sections 88, 89 and 92 is protection of medical practitioners. Illustrations (a) and (b) exemplify cases in which it is impossible to give consent; illustrations (c) and (d), where legal capacity to consent is wanting.

The author of the Code observes:

There yet remains a kindred class of cases which are by no means of rare occurrence. For example, a person falls down in an apoplectic fit. Bleeding alone can save him, and he is unable to signify his consent to be bled. The surgeon who bleeds him commits an act falling under the definition of an offence. The surgeon is not the patient's guardian, and has no authority from any such guardian, yet it is evident that the surgeon ought not to be punished. Again, a house is on fire. A person snatches up a child too young to understand the danger, and flings it from the house-top, with a faint hope that it may be caught on a blanket below, but with the knowledge that it is highly probable that it will be dashed to pieces. Here, though the child may be killed by the fall though the person who threw it down knew that it would very probably be killed, and though he was not the child's parent or guardian, he ought not to be punished.

In these examples there is what may be called a temporary guardianship justified by the exigency of the case and by the humanity of the motive. This temporary guardianship bears a considerable analogy to that temporary magistracy with which the law invests every person who is present when a great crime is committed, or when the public peace is concerned. To acts done in the exercise of this temporary guardianship, we extend by clause 72 a protection very similar to that which we have given to the acts of regular guardians.<sup>244</sup>

This section speaks of 'hurt', whereas section 89 speaks of 'grievous hurt', otherwise the terminology of both the sections is almost identical.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
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  5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
244. The Works of Lord Macaulay- 'On the Chapter of General Exceptions', Note B.

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### **[s 93] Communication made in good faith.**

**No communication made in good faith is an offence by reason of any harm<sup>1</sup> to the person to whom it is made, if it is made for the benefit of that person.**

ILLUSTRATION

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

### COMMENT.—

This section protects the innocent without unduly cloaking the guilty.

The communication under this section must be

- (1) made in good faith; and
- (2) for the benefit of the person to whom it is made.

The illustration to this section does not say, however, whether the communication was made to the patient for his benefit.

1. **'Harm'**.—In this section 'harm' means an injurious mental reaction.<sup>245</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .

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5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).

245. *Veeda Menezes v Yusuf Khan*, 1966 Cr LJ 1489 : AIR 1966 SC 1773 [LNIND 1966 SC 107] : 68 Bom LR 629.

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#### **[s 94] Act to which a person is compelled by threats.**

**Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence : Provided the person doing the act did not of his**

own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

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

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

### **COMMENT.—**

By this section a person is excused from the consequences of any act, except (1) murder and (2) offences against the State punishable with death, done under fear of instant death; but fear of hurt or even of grievous hurt is not a sufficient justification. Mere menace of future death will not be sufficient.

Murder committed under a threat of instant death is not excused under this section. But 'murder' does not include abetment of murder and such abetment will be excused.<sup>246</sup> Abetment of murder and of the offence of causing disappearance of the evidence of murder was excused under this section when it was done under fear of instant death at the hands of the murderers.<sup>247</sup>

### **[s 94.1] Doctrine of compulsion and necessity.—**

No one can plead the excuse of necessity or compulsion as a defence of an act otherwise penal, except as provided in this section. No man from a fear of consequences to himself has a right to make himself a party to committing mischief on mankind.<sup>248</sup>

Except where unsoundness of mind is proved or real fear of instant death is proved, the burden of proof being on the prisoner, pressure of temptation is not an excuse for breaking the law.<sup>249</sup> Under the English law the defence of duress is available not only in case of fear of instant death but also in case of serious bodily harm.<sup>250</sup> Furthermore, such a threat need not be always against the person of the accused.<sup>251</sup>

This defence was not allowed to a person who voluntarily joined a criminal organisation or gang with knowledge that the gang used loaded firearms to carry out robberies on sub-post offices and also that the leader of the gang might bring pressure upon him to participate in such offences. He had accordingly to participate in a robbery under pressure in which the leader shot dead the sub-post master. His appeal against conviction for man slaughter was rejected.<sup>252</sup>



1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
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246. *Umadas Dasi*, (1924) 52 Cal 112 : Karu, (1937) Nag 524. But see *R v Howe*, (1987) 1 All ER 770 HL, where it was noted that the defence of duress is not available to a person charged with murder whether as a principal in the first degree (the actual killer) or as principal in the second degree (the aider and abettor).
247. *Bachchan Lal*, 1957 Cr LJ 344 .
248. *Maganlal and Motilal*, (1889) 14 Bom 115.
249. *Devji Govindji*, (1895) 20 Bom 215, 222, 223.
250. *Director of Public Prosecutions for Northern Ireland v Lynch*, (1975) 1 All ER 913 -Per House of Lords.
251. *Hurley* (1967) VR 526.
252. *R v Sharp*, (1987) 3 All ER 103 CA. **Following** *Lynch v DPP for Northern Ireland*, (1975) 1 All ER 913 : (1975) AC 653 .

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**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

### **[s 95] Act causing slight harm.**

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

## COMMENT.—

**slight harm or trifles.**—The maxim *de minimis non curat lex* (the law takes no account of trifles) is the foundation of this section. The authors of the Code observe:

Clause 73 [this section] is intended to provide for those cases which, though, from the imperfections of language, fall within the letter of the penal law, are yet not within its spirit, and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent. As our definitions are framed, it is theft to dip a pen in another man's ink, mischief to crumble one of his wafers, an assault to cover him with a cloud of dust by riding past him, hurt to incommode him by pressing against him in getting into a carriage. There are innumerable acts without performing which men cannot live together in society, acts which all men constantly do and suffer in turn, and which it is desirable that they should do and suffer in turn, yet which differ only in degree from crimes. That these acts ought not to be treated as crimes is evident, and we think it far better expressly to except them from the penal clauses of the Code than to leave it to the judges to except them in practice.<sup>253.</sup>

The expression 'harm' has been used in this section in a wide sense including physical injury and hence, this section applies in cases of actual physical injury also. This section applies not only to acts which are accidental but also to deliberate acts which cause harm or are intended to cause harm or known to be likely to cause harm.<sup>254.</sup> In a campaign by Sarvodaya workers to educate people about the evil of alcohol, liquor shops were picketed to prevent people from going there even if it was at the cost of slight harm; their prosecution under section 341 for causing wrongful restraint was quashed.<sup>255.</sup> Where the accused locked the complainant inside the factory by pulling down the shutter, it was held that ingredients of the offence under section 342 (wrongful confinement) were established but as the complainant regained his freedom within a very short time and only a minimal harm was caused, the case was clearly covered by section 95.<sup>256.</sup>

### [s 95.1] CASES.—Acts regarded as trivial.—

This section was applied where a person was convicted for taking pods, almost valueless, from a tree standing on Government waste land;<sup>257.</sup> where the accused committed theft of a cheque of no value<sup>258.</sup> and where the plaintiff complained of the harm caused to his reputation by the imputation that he was travelling with a wrong ticket.<sup>259.</sup> So also an offence of misbranding<sup>260.</sup> and the conduct of a lawyer in using filthy language in course of cross-examination<sup>261.</sup> were treated as trivial.

Where the record of the trial Court showed that the injury caused was very simple, being in the nature of a scratch, the Court said that the act was so trivial that no person of a sound common sense would regard it as an offence. The prayer of the complainant for conviction of the accused for causing simple hurt under section 323 was liable to be rejected.<sup>262.</sup>

### [s 95.2] Acts not regarded as trivial.—

The top most official of the State Police, indecently behaved with a senior lady IAS Officer, in the presence of gentry and in spite of her raising objections continued with such behaviour. The Supreme Court observed that if it is held, on the face of such allegations that, the ignominy and trauma to which, she was subjected to was so slight that the lady IAS Officer, as a person of ordinary sense and temper, would not complain about the same, sagacity will be the first casualty. In that view of the matter [section 95, IPC, 1860](#) cannot have any manner of application to an offence relating to modesty of woman as under no circumstances can it be trivial.<sup>263.</sup> Where the Accused caused the

deceased to fall down and co-accused threw down a heavy stone on head of deceased, act attributed to accused formed part of a joint yet a murderous assault on deceased. Hence, it is not covered by exception in section 95.<sup>264</sup> Where a blow was given across the chest with an umbrella by a dismissed policeman to a District Superintendent of Police because his application to reconsider his case was rejected;<sup>265</sup> where the accused tore up a paper which showed a money debt due from him to the prosecutor though it was unstamped, and therefore, not a legal security;<sup>266</sup> and where a respectable man was taken by the ear,<sup>267</sup> it was held that this section did not apply. An offence under [Prevention of Food Adulteration Act, 1954](#) cannot be regarded as trivial.<sup>268</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, [AIR 2004 SC 1966](#) [[LNIND 2004 SC 1370](#)] : [2004 Cr LJ 1778](#) : (2005) 9 SCC 71 [[LNIND 2004 SC 1370](#)] .
2. The [Indian Evidence Act](#), I of 1872, section 105.
3. *Musammatt Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
253. The Works of Lord Macaulay- 'On the Chapter of General Exceptions', Note B, pp. 109, 110.
254. *Veeda Menezes v Yusuf Khan*, 1966 Cr LJ 1489 : [AIR 1966 SC 1773](#) [[LNIND 1966 SC 107](#)] : 68 Bom LR 629.
255. *Narayanan v State of Kerala*, 1987 Cr LJ 741 Ker; **following** *Attappa Re*, [AIR 1951 Mad 759](#) [[LNIND 1950 MAD 178](#)] : 1951 (2) Cr LJ 716 , where it was observed that even if obstruction is caused, if the harm caused is slight, section 95 would apply.
256. *Anoop Krishan Sharma v State of Maharashtra*, 1992 Cr LJ 1861 (Bom).
257. *Kasyabin Ravji*, (1868) 5 BHC (Cr C) 35.
258. *Ethirajan*, 1955 Cr LJ 816 .
259. *South Indian Railway Co v Ramakrishna*, (1889) 13 Mad 34.
260. *Public Prosecutor v K Satyanarayana*, 1975 Cr LJ 1127 (AP).
261. *Bheema*, 1964 (2) Cr LJ 692 (AP).
262. *State of Karnataka v M Babu*, 2002 Cr LJ 2604 (Kant), the Court discussed the doctrine of triviality.
263. *Rupan Deol Bajaj v Kanwar Pal Singh Gill*, [AIR 1996 SC 309](#) [[LNIND 1995 SC 981](#)] : (1995) 6 SCC 194 [[LNIND 1995 SC 981](#)] : [JT 1995 \(7\) SC 299](#) [[LNIND 1995 SC 981](#)] : (1995) 5 Scale 670 : [1996 Cr LJ 381](#) .
264. *Athai v State of MP* 2010 Cr LJ 995 (MP).
265. *Sheo Gholam Lalla*, (1875) 24 WR (Cr) 67.
266. *Ramasami v State*, (1888) 12 Mad 148.
267. *Shoshi Bhusan Mukerjee v Walmsley*, (1897) 1 CWN.
268. *Dist Food Inspector v Kedarnath*, 1981 Cr LJ 904 (Gau.); *State of Kerala v Vasudevan Nair* (Ker) (FB) 1975 FAJ 36 : ( 1975 Cr LJ 97 ) ; *M/s. Razak Rice And Oil Mills v Bharat Narayan Patnaik, Food Inspector, Berhampur Municipality* 1989 Cr LJ 648 (Ori).



# THE INDIAN PENAL CODE

## CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.<sup>1</sup>

The following acts are exempted under the Code from criminal liability:–

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

## **Of the Right of Private Defence**

**[s 96] Things done in private defence.**

**Nothing is an offence which is done in the exercise of the right of private defence.**



## COMMENT.—

In a civilised society the defence of person and property of every member thereof is the responsibility of the State. Consequently, there is a duty cast on every person faced with apprehension of imminent danger of his person or property to seek the aid of the machinery provided by the State but if immediately such aid is not available, he has the right of private defence. Right to private defence is a very valuable right and it has been recognized in all civilized and democratic societies within certain reasonable limits. Sections 96–106 of [IPC, 1860](#) codify the entire law relating to right of private defence of person and property including the extent of and the limitation to exercise of such right. When enacting [sections 96 to 106](#) of the [IPC, 1860](#), excepting from its penal provisions, certain classes of acts, done in good faith for the purpose of repelling unlawful aggressions, the Legislature clearly intended to arouse and encourage the manly spirit of self-defence amongst the citizens, when faced with grave danger.<sup>269</sup>

### [s 96.1] Principle.—

The basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the State machinery is not readily available, that individual is entitled to protect himself and his property.<sup>270</sup> The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self-creation. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. The law does not require a law abiding citizen to behave like a coward when confronted with an imminent unlawful aggression. There is nothing more degrading to the human spirit than to run away in face of danger. The right of private defence is thus, designed to serve a social purpose and deserves to be fostered within the prescribed limits. The [IPC, 1860](#) defines homicide in self-defence as a form of substantive right, and therefore, save and except the restrictions imposed on the right of the Code itself, it seems that the special rule of English Law as to the duty of retreating will have no application to this country where there is a real need for defending oneself against deadly assaults. The right to protect one's own person and property against the unlawful aggressions of others is a right inherent in man. The duty of protecting the person and property of others is a duty which man owes to society of which he is a member and the preservation of which is both his interest and duty. It is, indeed, a duty which flows from human sympathy.

As Bentham said:

It is a noble movement of the heart, that indignation which kindles at the sight of the feeble injured by the strong. It is noble movement which makes us forget our danger at the first cry of distress..... It concerns the public safety that every honest man should consider himself as the natural protector of every other.

But such protection must not be extended beyond the necessities of the case; otherwise it will encourage a spirit of lawlessness and disorder. The right has, therefore, been restricted to offences against the human body and those relating to aggression on property. Right of private defence of person and property is recognized in all free, civilised, democratic societies within certain reasonable limits. Those limits are dictated by two considerations: (1) that the same right is claimed by all other members of the society and (2) that it is the State which generally undertakes the responsibility for the maintenance of law and order. The citizens, as a general rule, are neither expected to run away for safety when faced with grave and imminent danger to their person or property as a result of unlawful aggression, nor are they expected, by

use of force, to right the wrong done to them or to punish the wrong doer of commission of offences.<sup>271.</sup>

### **[s 96.2] Scope.—**

**Section 96 IPC, 1860** provides that nothing is an offence which is done in the exercise of the right of private defence. The section does not define the expression "right of private defence". It merely indicates that nothing is an offence which is done in the exercise of such right.<sup>272.</sup> While providing for exercise of the right, care has been taken in **IPC, 1860** not to provide and has not devised a mechanism whereby an attack may be a pretence for killing. A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived.<sup>273.</sup> Just because one circumstance exists amongst the various factors, which appears to favour the person claiming right of self-defence, does not mean that he gets the right to cause the death of the other person. Even the right of self-defence has to be exercised directly in proportion to the extent of aggression.<sup>274.</sup>

### **[s 96.3] Test.—**

Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea.<sup>275.</sup> The means and the force a threatened person adopts at the spur of the moment to ward off the danger and to save himself or his property cannot be weighed in golden scales. It is neither possible nor prudent to lay down abstract parameters which can be applied to determine as to whether the means and force adopted by the threatened person was proper or not. Answer to such a question depends upon host of factors like the prevailing circumstances at the spot; his feelings at the relevant time; the confusion and the excitement depending on the nature of assault on him etc. Nonetheless, the exercise of the right of private defence can never be vindictive or malicious. It would be repugnant to the very concept of private defence.<sup>276.</sup> A person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private defence can legitimately be negated. The Court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is

essentially, as noted above, a finding of fact.<sup>277</sup> Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this Court, to adopt tests by detached objectivity which would be so natural in a Court room, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step-by-step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances.<sup>278</sup>

Mere use of abusive language does not give rise to private defence. Thus, where the deceased about a month before the murder had tried to outrage the modesty of the wife of the accused and thereafter on the day of the incident cut a rustic joke enquiring whether the accused had not kept buffaloes for drinking milk which led the accused to beat the deceased mercilessly resulting in his death, it was held that giving the most charitable interpretation one could not find a single circumstance which will give the accused the benefit of the right of private defence and the interval between the attempt to outrage the modesty of the accused's wife and the murder being too long he was also not entitled to get the benefit of grave and sudden provocation within the meaning of exception 1 to [section 300, IPC, 1860](#).<sup>279</sup> Giving a general view of all the provisions on this right in *Munney Khan v State*,<sup>280</sup> the Supreme Court observed:

The right of private defence is codified in [sections 96 to 106, IPC](#), which have all to be read together in order to have a proper grasp of the scope and limitations of this right. By enacting the sections the authors of the Code wanted to except from the operation of its penal clauses acts done in good faith for the purpose of repelling unlawful aggression.<sup>281</sup>

### **Summary of Principles regarding Private defence**

- (i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.
- (ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.
- (iii) A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.
- (iv) The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.
- (v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.
- (vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.
- (vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.
- (viii) The accused need not prove the existence of the right of private defence

beyond reasonable doubt.

- (ix) The [IPC, 1860](#) confers the right of private defence only when that unlawful or wrongful act is an offence.
- (x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.

[*Darshan Singh v State of Punjab*.<sup>282.</sup>]

All the sections would have to be read together to ascertain whether in the facts and circumstances of the case the accused were entitled to the defence or they exceeded it. Only then one can get a comprehensive view of the scope and limitations of the right.<sup>283.</sup>

**1. Availability or Non-availability of private defence.—Factors to be kept in view.—** In order to find whether right of private defence is available or not, the entire incident must be examined with care and viewed in its proper setting. The injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered on a plea of private defence.<sup>284.</sup> The right of private defence is a defence right. It is neither a right of aggression nor a right of reprisal. There is no right of private defence where there is no apprehension of danger. Right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self-creation. The necessity must be a present necessity whether real or only apparent.<sup>285.</sup> It remains a question of fact whether the right has been legitimately exercised.<sup>286.</sup> Thus, running to house, fetching a sword and assaulting the deceased are by no means a matter of chance. These acts bear stamp of a design to kill and take the case out of the purview of private defence.<sup>287.</sup> But where the accused was dispossessed of his land by a party of men and he ran to his residence from where he fetched his gun and came back within 15 minutes to fire at and injure them, he was held to be within his rights, but when he went further still and chased and injured a person who was just standing by there and who died, in reference to him the accused had no right of private defence.<sup>288.</sup> Along with the above factors one has also to remember the following limitations on the right of private defence of person or property:

- (i) that if there is sufficient time for recourse to public authorities, the right are not available;
- (ii) that more harm than that is necessary should not be caused;
- (iii) that there must be a reasonable apprehension of death or grievous hurt or hurt to the person or damage to the property concerned.<sup>289.</sup> Where on account of some incident, the accused was confronted by three persons; it was held that the superiority in numbers in itself could in all probability have been construed by the accused as an imminent danger to himself thus, giving him the signal to act in exercise of the right of private defence.<sup>290.</sup>

The need to act must not have been created by the conduct of the accused in the immediate context of the incident which was likely or intended to give rise to that need.<sup>291.</sup> The Supreme Court reiterated the various principles governing the law of private defence and observed that it was essentially a defensive right and did not include the right to launch an offensive attack, particularly when the need for defence no longer existed.<sup>292.</sup> A right of private defence given by the [Penal Code](#) is essentially

one of defence or self-protection and not a right of reprisal or punishment. It is subject to the restrictions indicated in section 99 which are as important as the right itself.<sup>293.</sup>

#### **[s 96.4] CASES.—Plea of Private Defence rejected.—**

After inflicting injuries on person of first deceased, accused persons ran towards second deceased, who was standing ten steps away from place of incident. Further after seeing incident relating to death of first deceased, second deceased started running towards *Durga-ki-Dhani* and was chased by accused persons and they inflicted *lathi* blows on his person. Accused had no right to invoke right of self-defence by chasing second deceased and to cause fatal injuries upon him.<sup>294.</sup> Where the accused were in fact the aggressors and being members of the aggressors party none of the accused can claim right of self-defence.<sup>295.</sup> Merely because there was a quarrel and some of the accused person sustained injuries, that does not confer a right of private defence extending to the extent of causing death. It has to be established that the accused person were under such grave apprehension about the safety of their life and property that retaliation to the extent done was absolutely necessary. Right of private defence has been rightly discarded.<sup>296.</sup>

The defence claimed that the place of occurrence was the house of the accused and, therefore, they had acted in self-defence but that was not proved through any leading evidence despite the examination of the accused under [section 313 of the Cr PC, 1973](#), it was held that the right of self-defence was not available to them.<sup>297.</sup>

#### **[s 96.5] Social nature of defence.—**

The right of private defence is not restricted to the particular person who is under attack. It extends to the society as a whole. It is available to any member of the society who rises to the occasion. But it is wholly a social obligation without any legal overtones.<sup>298.</sup>

#### **[s 96.6] Material that accused may rely on.—**

An accused entitled to rely for constructing his private defence on the material on record brought by the prosecution.<sup>299.</sup> Without formally taking a plea of self-defence, the accused has a right to probalilise such defence on the basis of the prosecution evidence and if he succeeds in his effort, the Court can give him such a benefit.<sup>300.</sup>

**2. Duty to retreat, if any.—**It is now well settled that the rule of retreat which Common Law Courts espoused is not relevant under the [IPC, 1860](#). If a man's property is in imminent danger of being impaired or attacked he has the right to resort to such measures as would be reasonably necessary to thwart the attempt to protect his property.<sup>301.</sup> Under the common law the doctrine of necessity permitted one to defend one's person or property or the person or property of others against an unjustified attack by the use of reasonable force. In determining what was reasonable force, which in the Indian context means minimum force under [section 99, IPC, 1860](#), the common law Courts always insisted if the accused could prevent the commission of crime against him by retreating. On this rule of retreat one would like to ask: if a person is attacked by an armed burglar in his own room, he is expected to run away leaving the burglar to act as he liked.<sup>302.</sup> In *Jaidev's case*<sup>303.</sup> Gajendragadkar, J, as he then was,

specifically held that in India there is no rule which expects a man first to run away or at least try to do so before he can exercise his right of private defence. Rather he has every right to stand his own ground and defend himself if there is no time to have recourse to official help. Law does not expect a citizen to be a rank coward or leave his own house at the mercy of the burglar.<sup>304</sup> In spite of this clear exposition of the law in *Jaidev's* case Sarkaria, J, held in *Yogendra Morarji's* case<sup>305</sup>. that one must first try to avoid the attack by retreating otherwise one would not be entitled to get the benefit of private defence. It appears that *Jaidev's* case was not canvassed before the learned judges who decided the latter case. It is submitted with utmost respect that the former view as held in *Jaidev's* case, appears to be more reasonable and has to be preferred.

**3. No Private defence in a free fight.**—Where both sides can be convicted for their individual acts, normally no right of private defence is available to either party and they will be guilty of their respective acts.<sup>306</sup> Where two parties come armed with determination to measure their strength and to settle a dispute by force and in the ensuing fight both sides receive injuries, no question of right of private defence arises. In such a case of free fight both parties are aggressors and none of them can claim right of private defence.<sup>307</sup> In a free fight between two groups resulting in the death of one and injuries to several others both grievous and simple, all the accused participated in the fight. The plea of one of the accused that he joined the fight later and acted in defence of other co-accused was held to be not tenable. The Court observed that his case could not be separated by giving him right of private defence under the benefit of doubt.<sup>308</sup> In a sudden fight between two groups in heat of passion death of a man was caused and several others on both the sides were injured. The deceased opened the assault first. It was held that in such fights the question that which party opened attack first is immaterial. Plea of right of self-defence was not allowed to the accused.<sup>309</sup> Where two groups forming an unlawful assembly over the possession of land in dispute which was in peaceful possession of neither group, indulged in free fight resulting in the death of two persons of a group, it was held that right of private defence was not available to either group.<sup>310</sup>

The right to voluntary causing of death or any other harm is available against the assailant and not against any other person.<sup>311</sup>

**4. Injury to accused.—If makes out private defence.**—Number of injuries on the accused by itself may not be sufficient to establish the right of private defence.<sup>312</sup> The number of injuries is not always considered to be a safe criterion for determining who the aggressor was. It can also not be laid down as an unqualified proposition of law that whenever injuries are on the body of the accused person, the presumption must necessarily be raised that the accused person had caused injuries in exercise of the right of private defence. The defence has to further establish that the injury so caused on the accused probalilise the version of the right of private defence.<sup>313</sup> Non-explanation of injuries on the person of the accused is a factor of great importance and this fact may induce the Court in judging the veracity of prosecution witnesses with considerable care.<sup>314</sup> The right of private defence cannot justifiably be raised by showing that one of the accused had suffered some minor injuries and the prosecution had not explained the same.<sup>315</sup> In a given case it may strengthen the plea of private defence set up by the accused or may create genuine doubt regarding the prosecution case. At the same time it cannot be laid down as an invariable proposition of law that as soon as it is found that the accused had received injuries in the same transaction in which the complainant party was assaulted, the plea of private defence would stand *prima facie* established and burden would shift on to the prosecution to prove that those injuries were caused to the accused in self-defence by the complainant party.<sup>316</sup> When the accused turned back from the house of the deceased whom they had visited, the deceased followed them along with his brother and mother and tried to attack them

from behind. The accused turned back and shot at him causing death. It was held that the conduct of the accused was justifiable. His acquittal was not interfered with.<sup>317</sup> Where the deceased along with his father was putting up a fence which was protested by the accused resulting in an altercation, and the accused suddenly dealt a *lathi* blow on the head of the deceased which proved fatal, it was held that since the accused received injuries as a result of assault by the deceased and his father, the accused had justifiably exercised his right of private defence.<sup>318</sup> In a case of murder some of the serious injuries found on the person of the accused were not explained and some of the prosecution witnesses also were injured, it was held that it could be said that the accused party had acted in exercise of right of private defence and confirmation of the acquittal of all the accused but one by the High Court was not proper.<sup>319</sup> Where serious injuries inflicted on the person of the accused could not be explained by the prosecution, the accused could be said to be entitled to the right of private defence. Their conviction under section 300 was held to be not proper.<sup>320</sup>

In *State of UP v Mukunde*,<sup>321</sup> the Supreme Court observed that merely on the ground that the prosecution witnesses have not explained the injuries on the accused, their evidence ought not to be rejected if the Court finds it probable that the accused might have acted in exercise of the right of private defence. The Supreme Court also observed in a subsequent case<sup>322</sup> that:

it cannot be held as a matter of law or invariably a rule that whenever an accused sustained an injury in the same occurrence the prosecution is obliged to explain the injury and on the failure of the prosecution to do so, the prosecution case should be disbelieved. Before non-explanation of injuries on the person of the accused by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (1) that the injuries on the person of the accused were of a serious nature and (ii) such injuries must have been received at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which completes in probability with that of the prosecution.<sup>323</sup>

These rulings were followed in *Kashi Ram v State of MP*<sup>324</sup>. The accused persons were alleged to have assaulted the prosecution party, but the prosecution witnesses failed to explain serious injuries including injuries on the vital parts of the body sustained by one of the accused in the same incident. The Court said that this could not be a ground for discarding the prosecution story and for acquittal of all accused persons.

Where the accused had some trivial injuries on non-vital parts but the victim had suffered as many as 19 injuries including some on vital parts which resulted in his death, it could not be believed that the accused had acted in self-defence especially when he was arrested five or six days after the incident but in the intervening time did not care to get himself medically examined. A plea of private defence cannot be based on surmises and speculation.<sup>325</sup>

The Supreme Court has also observed that merely because there was a quarrel and the accused persons also sustained injuries, it did not confer a right of private defence to the extent of causing death. Though such right cannot be weighed in golden scales, it has at least to be shown that the accused persons were under such grave apprehension about the safety of their life and property and that the retaliation to the extent actually done was absolutely necessary.<sup>326</sup>

The number of injuries is not always a safe criterion for determining as to who was the aggressor. It cannot be stated as a universal rule that whenever injuries are on the body of the accused person, a presumption must necessarily be raised that the accused persons had caused injuries in the exercise of the right of private defence. The defence has further to show that injuries on the accused probalilise the version of the right of private defence.<sup>327</sup> In moments of excitement and disturbed mental equilibrium, parties cannot be expected to preserve composure and use exactly only so much in

retaliation as is commensurate with the apprehended danger. Due weightage has to be given to what happened at the spur of the moment at the spot. Things have to be judged pragmatically keeping in view, the normal human reactions and behaviour, self-preservation being the paramount consideration. Microscopic and pedantic scrutiny has to be avoided.<sup>328.</sup>

### **[s 96.7] Retaliation.—**

The Supreme Court observed:

From a plain reading of the sections (Ss. 96–106) it is manifest that such a right can be exercised only to repel unlawful aggression and not to retaliate. To put it differently, the right is one of defence and not of requital or reprisal. Such being the nature of the right, the High Court could not have exonerated the accused persons of the charges levelled against them by bestowing on them the right to retaliate and attack the complainant party.<sup>329.</sup>

### **[s 96.8] Where private defence not pleaded.—**

If circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea, even if accused had not taken it. A right of private defence need not specifically be taken and in the event the Court on the basis of the materials placed on record is in a position to come to such a conclusion, the Court may act thereupon.<sup>330.</sup> Where the right of private defence was not pleaded by the accused, but it appeared that the complainant was the aggressor, the Bombay High Court held that the benefit of such defence could still be given to the accused.<sup>331.</sup> Fact that accused pleaded alibi-itself will not preclude the Court from giving him also the right of private defence if on proper appraisal of evidence and other material on records, Court finds it to be available to him.<sup>332.</sup> The right of private defence cannot be denied merely because the accused adopted a different line of defence particularly when the evidence adduced by the prosecution would indicate that they were put under a situation where they could reasonably have apprehended grievous hurt even to one of them.<sup>333.</sup> The Supreme Court endorsed this principle by saying that it is not necessary that the plea of private defence must always be taken by the accused person. Even if the accused does not do so, the Court can consider it if the circumstances show that the right of private defence was legitimately exercised.<sup>334.</sup>

The accused has not to plead self-defence by examining some witnesses or by making any statement. But there has to be some material available on record to indicate that the accused had attacked the deceased in exercise of the right of self-defence.<sup>335.</sup>

### **[s 96.9] In appeal.—**

It is permissible for accused to raise that plea at the stage of appeal as the settled legal position is that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.<sup>336.</sup>



1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The *Indian Evidence Act*, I of 1872, section 105.
3. *Musammam Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
269. *Darshan Singh v. State of Punjab*, (2010) 2 SCC 333 [LNIND 2010 SC 70] : (2010) 1 SCR 642 [LNIND 2010 SC 70] : AIR 2010 SC 1212 [LNIND 2010 SC 70] : 2010 Cr LJ 1393 : (2010) 2 SCC(Cr) 1037.
270. *Dharam v State of Haryana*. JT 2007 (1) SC 299 [LNIND 2006 SC 1108] : AIR 2007 SC 397 [LNIND 2006 SC 1108] : 2006 AIR SCW 6298.
271. *Darshan Singh v State of Punjab*, (2010) 2 SCC 333 : (2010) 1 SCR 642 [LNIND 2010 SC 70] : AIR 2010 SC 1212 [LNIND 2010 SC 70] : 2010 Cr LJ 1393 : (2010) 2 SCC(Cr) 1037.
272. *V Subramani v State of TN*, (2005) 10 SCC 358 [LNIND 2005 SC 224] : AIR 2005 SC 1983 [LNIND 2005 SC 224] .
273. *Babulal Bhagwan Khandare v State of Maharashtra*, AIR 2005 SC 1460 [LNIND 2004 SC 1203] : (2005) 10 SCC 404 [LNIND 2004 SC 1203] .
274. *Mano Dutt v State of UP*, JT 2012 (2) SC 573 : 2012 (3) Scale 219 [LNIND 2012 SC 160] : (2012) 4 SCC 79 [LNIND 2012 SC 160] .
275. *V Subramani v State of TN*, (2005) 10 SCC 358 [LNIND 2005 SC 224] : AIR 2005 SC 1983 [LNIND 2005 SC 224] .
276. *Dharam v State of Haryana*. JT 2007 (1) SC 299 [LNIND 2006 SC 1108] : AIR 2007 SC 397 [LNIND 2006 SC 1108] : 2006 AIR SCW 6298.
277. *Buta Singh v The State of Punjab*, 1991 (2) SCC 612 [LNIND 1991 SC 177] : 1991 SCC (Cr) 494 : AIR 1991 SC 1316 [LNIND 1991 SC 177] : 1991 Cr LJ 1464 ; *Satya Narain Yadav v Gajanand*, (2008) 16 SCC 609 [LNIND 2008 SC 2782] : (2008) 10 Scale 728 [LNIND 2008 SC 2782] .
278. *Babulal Bhagwan Khandare v State of Maharashtra*, AIR 2005 SC 1460 [LNIND 2004 SC 1203] : (2005) 10 SCC 404 [LNIND 2004 SC 1203] .
279. *Dattu Genu*, 1974 Cr LJ 446 : AIR 1974 SC 387 [LNIND 1973 SC 357] .
280. *Munney Khan v State*, AIR 1971 SC 1491 [LNIND 1970 SC 338] : (1970) 2 SCC 480 [LNIND 1970 SC 338] . On the same point, *Narasimha Raju v State*, 1971 Cr LJ 1066 : (1970) 3 SCC 481 : AIR 1971 SC 1232 ; *Mohammad Hameed v State*, AIR 1980 SC 108 : 1980 Cr LJ 192 : (1979) 4 SCC 708 . An illustrative situation is *Jagdish Chandra v State of Rajasthan*, 1987 Cr LJ 649 Raj, in consequence of enimical terms and intemperate nature, one fired at the other, the other returning the fire resulting in death. In the prosecution of the other, this defence was allowed.
281. Plea of self-defence was rejected where the evidence showed that the deceased was unarmed and was not the aggressor. *Kuduvakuzinyil Sudhakaran v State*, (1995) 1 Cr LJ 721 (Ker). Defence that a stab wound causing death was inflicted on the chest of the deceased with a pen-knife was found to be apparently false because such instrument would not have caused that kind of wound, plea of self defence rejected, *Sellamuthu v State of TN*, (1995) 2 Cr LJ 2143 (Mad). *Hakim Singh v State of MP*, (1994) 2 Cr LJ 2463 (MP), the deceased was unarmed when fired at, he caused injury only after receiving the gun-shot wound, right of private defence in shooting at him not available. *Hukam Chand v State of Haryana*, AIR 2002 SC 3671 [LNIND 2002 SC 652] , theory of self-defence, not supported by facts. *Jham Singh v State of MP*, 2003 Cr LJ 2847 , no injury found on the person of the accused, nor any report made. The plea of private defence was rejected.
282. *Darshan Singh v State of Punjab*, (2010) 2 SCC 333 : (2010) 1 SCR 642 [LNIND 2010 SC 70] : AIR 2010 SC 1212 [LNIND 2010 SC 70] : 2010 Cr LJ 1393 : (2010) 2 SCC(Cr) 1037.

283. *Kashi Ram v State of Rajasthan*, (2008) 3 SCC 55 [LNIND 2008 SC 187] : (2008) 1 SCC (Cr) 608 : AIR 2008 SC 1172 [LNIND 2008 SC 187] . *Narain Singh v State of Haryana*, (2008) 11 SCC 540 [LNIND 2008 SC 864] : AIR 2008 SC 2006 [LNIND 2008 SC 864] : 2008 Cr LJ 2613 , principles imbibed in sections 96-106 restated. *Manubhai Atabhai v State of Gujarat*, (2007) 10 SCC 358 [LNIND 2007 SC 822] : AIR 2007 SC 2437 [LNIND 2007 SC 822] , once the right of private defence is established, conviction is not permissible.
284. *Sikandar Singh v State of Bihar*, (2010) 7 SCC 477 [LNIND 2010 SC 603] : (2010) 8 SCR 373 : AIR 2010 SC 44023 : 2010 Cr LJ 3854 : (2010) 3 SCC (Cr) 417.
285. *Bhanwar Singh v State of MP*, (2008) 16 SCC 657 [LNIND 2008 SC 1246] : AIR 2009 SC 768 [LNIND 2008 SC 1246] : (2008) 67 AIC 133 . *Dharam v State of Haryana*, (2007) 15 SCC 241 [LNIND 2006 SC 1108] , nature and scope of the right explained. *Haren Das v State of Assam*, 2012 Cr LJ 1467 (Gau).
286. *Thankachan v State of Kerala*, (2008) 17 SCC 760 .
287. *Biran Singh*, 1975 Cr LJ 44 : AIR 1975 SC 87 .
288. *Krishanlal v State*, 1988 Cr LJ 990 (J&K).
289. *Puran Singh*, 1975 Cr LJ 1479 : AIR 1975 SC 1674 [LNIND 1975 SC 174] .
290. *Shivappa Laxman Savadi v State*, 1992 Cr LJ 2845 (Kant). *Hari Singh v State of Rajasthan*, AIR 1997 SC 1505 [LNIND 1996 SC 1592] : 1997 Cr LJ 733 ; *State of Haryana v Mewa Singh*, AIR 1997 SC 1407 : 1997 Cr LJ 1906 ; *Ram Dhani v State*, 1997 Cr LJ 2286 (All); *Rizwan v State of Chhatisgarh*, AIR 2003 SC 976 [LNIND 2003 SC 72] : 2003 Cr LJ 1226 : (2003) 2 SCC 661 [LNIND 2003 SC 72] .
291. *Triloki Nath v State of UP*, AIR 2006 SC 321 [LNIND 2005 SC 867] : (2005) 13 SCC 323 [LNIND 2005 SC 867] .
292. *Shajahan v State of Kerala*, (2007) 12 SCC 96 [LNIND 2007 SC 243] : (2008) 2 SCC (Cr) 234 : 2007 Cr LJ 229 , extreme enmity between parties result in attacks.
293. *Bathu Singh v State of MP*, AIR 2004 SC 4279 [LNIND 2004 SC 835] : (2004) 7 SCC 206 .
294. *Gopal v State of Rajasthan*, 2013 Cr LJ 1297 , JT 2013 (1) SC 639 [LNIND 2013 SC 37] , 2013 (1) MLJ (Cr) 617 [LNIND 2013 SC 37] , 2013 (1) Scale 445 [LNIND 2013 SC 37] , (2013) 2 SCC 188 [LNIND 2013 SC 37] ; *Mukesh Rathore v State of Chhattisgarh*, 2010 Cr LJ 1289 (Chh); *State of Rajasthan v Brijlal*, 2010 Cr LJ 1000 (Raj).
295. *Sikandar Singh v State of Bihar* (2010) 7 SCC 477 [LNIND 2010 SC 603] : AIR 2010 SC 44023 : (2010) 3 SCC(Cr) 417.
296. *Raj Pal v State of Haryana*, (2006) 9 SCC 678 [LNIND 2006 SC 282] : (2006) 3 SCC(Cr) 361.
297. *Raj Singh v State of Haryana*, 2015 Cr LJ 2803 : (2015) 6 SCC 268 [LNIND 2015 SC 283] : 2015 (5) Scale 492 [LNIND 2015 SC 283] .
298. *Kashi Ram v State of Rajasthan*, (2008) 3 SCC 55 [LNIND 2008 SC 187] : (2008) 1 SCC (Cr) 608 : AIR 2008 SC 1172 [LNIND 2008 SC 187] .
299. *Ravishwar Manjhi v State of Jharkhand*, (2008) 16 SCC 261 : AIR 2009 SC 1262 [LNIND 2008 SC 2423] .
300. *Janardan Singh v State of Bihar*, (2009) 16 SCC 269 : (2010) 3 SCC (Cr) 253.
301. *Mahabir Choudhary v State of Bihar*, 1996 AIR(SC) 1998, 1996 Cr LJ 2860 : 1996 (5) SCC 107 [LNIND 1996 SC 891] .
302. *Glanville Williams : Text book on Criminal Law*, 1979 Edn, p 460.
303. *Jaidev*, 1963 (1) Cr LJ 495 : AIR 1963 SC 612 [LNIND 1962 SC 249] .
304. *Jaidev, Supra*; see also *Mohd Khan*, 1972 Cr LJ 661 : (1971) 3 SCC 683 [LNIND 1971 SC 540] ; *Puran Singh*, 1975 Cr LJ 1479 : AIR 1975 SC 1674 [LNIND 1975 SC 174] .

305. *Yogendra Morarji*, 1980 Cr LJ 459 : AIR 1980 SC 660 . This case is against all previous authorities and is wrongly decided (MH Editor).
306. *Dr. Mohammad Khalil Chisti v State of Rajasthan*, 2013 Cr LJ 637 (SC) : 2013 (1) MLJ (Cri) 198 [LNIND 2012 SC 801] : (2013) 2 SCC 541 [LNIND 2012 SC 801] ; *Gopal v State of Rajasthan*, (2013) 2 SCC 188 [LNIND 2013 SC 37] : 2013 Cr LJ 1297 .
307. *Onkarnath Singh v State of UP*, 1974 Cr LJ 1015 : AIR 1974 SC 1550 [LNIND 1974 SC 154] ; *Vishvas v State*, 1978 Cr LJ 484 : AIR 1978 SC 414 [LNIND 1978 SC 17] ; *Sikhar Behera*, 1982 Cr LJ 1167 (Orissa); *Munir Ahmad v State of Rajasthan*, AIR 1989 SC 705 : 1989 Cr LJ 845 : (1989) 26 ACC 115 : 1989 Supp SCC 377 ; reiterated by the Supreme Court in *Paras Nath Singh v State of Bihar*, and *Hari Krishna Singh v State of Bihar*, AIR 1988 SC 863 [LNIND 1988 SC 139] : (1988) 2 SCC 95 [LNIND 1988 SC 139] : 1988 Cr LJ 925 . *Gajanand v State*, 1954 Cr LJ 1746 , AIR 1954 SC 695 , followed, *Abdul Hamid v State of UP*, 1991 Cr LJ 431 . See also *State of Assam v Upendra Das*, 1991 Cr LJ 2930 Gau, relying upon *Lakshmasingh v State of Bihar*, AIR 1976 SC 2263 : 1976 Cr LJ 1736 . For other cases of free fight and, therefore, acquittal. See *Ram Nath v State*, 1991 Cr LJ 1825 All; *Sonpal v State of UP*, 1991 Cr LJ 1597 All, prosecution not explaining how the event sparked off and how the accused suffered injuries. *Nityanand Pasayat v State*, 1989 Cr LJ 1547 (Ori), quarrel between two groups. *Amir Ali v State of Assam*, 1989 Cr LJ 1512 , a case of mutual fight over possession of land in which both sides were injured. The Court added that if a group of 5 assembles in private defence, they are not an unlawful assembly; but if they persist in use of force even after their right is over, they become an unlawful assembly. *Chandrasekharan v State of Kerala*, 1987 Cr LJ 1715 (Ker); *State of Rajasthan v. Sughad Singh*, AIR 1994 SC 1593 : 1994 Cr LJ 2188 .
308. *Amrik Singh v State of Punjab*, 1993 Cr LJ 2857 : 1993 AIR SCW 2482 : 1994 Supp (1) SCC 320.
309. *Rohtash v State of Haryana*, 1993 Cr LJ 3303 (P&H).
310. *Sikhar Behera v State of Orissa*, 1993 Cr LJ 3664 : 1993 AIR SCW 3162 : 1994 Supp (1) SCC 493. *Amerika Rai v State of Bihar*, AIR 2011 SC 1379 [LNIND 2011 SC 220] : (2011) 3 SCR 176 [LNIND 2011 SC 220] : (2011) 2 SCC(Cr) 429 : (2011) 4 SCC 677 [LNIND 2011 SC 220] *Ram Kumar v State of Haryana*, AIR 1998 SC 1437 [LNIND 1998 SC 231] : 1998 Cr LJ 2049 ; *Pammi v Govt. of MP*, AIR 1998 SC 1185 [LNIND 1998 SC 200] : 1998 Cr LJ 1617 ; *Periasami v State of TN*, 1997 Cr LJ 219 : (1996) 6 SCC 457 [LNIND 1996 SC 1552] .
311. *Mohammad Iqbal v State of MP*, 2012 Cr LJ 337 (Chh).
312. *Ranbir Singh v State of Haryana*, 2009 Cr LJ 3051 (SC) : (2009) 16 SCC 193 [LNIND 2009 SC 1053] .
313. *Sikandar Singh v State of Bihar* (2010) 7 SCC 477 [LNIND 2010 SC 603] : (2010) 8 SCR 373 : AIR 2010 SC 44023 : 2010 Cr LJ 3854 : (2010) 3 SCC(Cr) 417; *Dashrath Singh v State of UP*, (2004) 7 SCC 408 [LNIND 2004 SC 798] ; *Bishna v State of WB*, AIR 2006 SC 302 [LNIND 2005 SC 873] : (2005) 12 SCC 657 [LNIND 2005 SC 873] , *Shriram v State of MP*, (2004) 9 SCC 292 [LNIND 2003 SC 1026] .
314. *Lacchiram v State of MP*, 1990 Cr LJ 2229 MP, unexplained injuries on the person of the accused. But such injuries do not by themselves afford a defence. *Govardhan v State*, 1987 Cr LJ 541 (Raj). *Ram Kumar v State of Haryana*, 1994 Cr LJ 1450 P&H, dispute over water course, accused entered field to divert water, caused innumerable injuries to those who objected and also himself received a few injuries, he was held to be an aggressor having no right of private defence; *Velummei v State*, 1994 Cr LJ 1738 (Ker), a person entering the house of another for crime is an aggressor, he has no right of private defence. *Man Bharan Singh v State of MP*, 1996 Cr LJ 2707 (MP), every minor injury on the person of the accused does not require explanation.

315. *State of Punjab v Gurlabh Singh*, (2009) 13 SCC 556 [LNIND 2009 SC 1262] : AIR 2009 SC 2469 [LNIND 2009 SC 1262]; *Radhe v State of Chhattisgarh*, (2008) 11 SCC 785 [LNIND 2008 SC 1333] : AIR 2008 SC 2878 [LNIND 2008 SC 1333] : 2008 Cr LJ 3520 , the mere fact of a quarrel and the accused sustaining injuries does not in itself create the right of self-defence to the extent of causing death, there has to be an attack creating apprehension of fatal injury. Such was not the case here.
316. *Onkarnath*, supra. Injuries to the accused not caused during the course of the same incident, no right of private defence, *Munna v State of UP*, AIR 1992 SC 278 : 1993 Cr LJ 45 : 1993 Supp (2) SCC 757 ; *State of Kerala v Mavila Thamban Nambiar*, 1993 Cr LJ 1817 (Ker), the accused fell off during the course of struggle and injured himself, those injuries could not give him the right of killing in private defence.
317. *State of Punjab v Sohan Singh*, AIR 1992 SC 1247 : 1992 Cr LJ 2514 : 1993 Supp (1) SCC 312 .
318. *Sridhar Das v State of Orissa*, 1992 Cr LJ 2907 (Ori).
319. *Makwana Takhat Singh Ratan Singh v State of Gujarat*, AIR 1992 SC 1989 : 1992 Cr LJ 3596 . No explanation of injuries on the person of the accused made, no difference to the acceptance of their plea of self-defence, *Hardeep Singh v State*, 1996 Cr LJ 3091 (Raj).
320. *Arjun v State of MP*, 1995 Cr LJ 3797 (MP).
321. *State of UP v Mukunde*, (1994) 2 SCC 191 [LNIND 1994 SC 71] : 1994 SCC (Cr) 473. Also to the same effect *Kasam Abdulla v State of Maharashtra*, 1998 Cr LJ 1422 : AIR 1998 SC 1013 [LNIND 1998 SC 157] , injuries on the person of a accused explained.
322. *Thakhaji Hiraji v Thakore Kuber Singh Chaman Singh*, (2001) 6 SCC 145 [LNIND 2001 SC 1150] : AIR 2001 SC 2326 : 2001 AIR SCW 2077.
323. The Court also noted the decision in *Chandu v State of Maharashtra*, (2001) 4 Scale 590 [LNIND 2009 NGP 319] : (2001) 5 Supreme 672; *Dev Raj v State of HP*, AIR 1994 SC 523 : 1993 AIR SCW 3966 : (1994) Supp 2 SCC 552, such injuries cannot be lightly ignored; *Tara Chand v State of Haryana*, AIR 1971 SC 1891 : 1971 Cr LJ 1411, the circumstance can also be taken into account in the mitigation of sentence.
324. *Kashi Ram v State of MP*, AIR 2001 SC 2902 [LNIND 2001 SC 2369] . See also *State of Rajasthan v Pura*, 2000 Cr LJ 2615 (Raj); *Dharminder v State of HP*, AIR 2002 SC 3097 [LNIND 2002 SC 537] ; *Jesu Asir Singh v State*, AIR (2007) SC 3015 [LNIND 2007 SC 977] : (2007) Cr LJ 4310 : (2007) 12 SCC 19 [LNIND 2007 SC 977] : (2008) 2 SCC (Cr) 192.
325. *Poosaram*, 1984 Cr LJ 1848 (Raj); See also *State of Gujarat v Bai Fatima*, 1975 Cr LJ 1079 : AIR SC 1478; *Rizwan v State of Chhatisgarh*, AIR 2003 SC 976 [LNIND 2003 SC 72] , non-explanation of injuries on the accused persons was not taken by itself to give them the benefit of the right of private defence. The Court considered the factors to be taken into account for examining whether the right of private defence must have existed.
326. *Radhe v State of Chhatisgarh*, (2008) 11 SCC 785 [LNIND 2008 SC 1333] : AIR 2008 SC 2878 [LNIND 2008 SC 1333] .
327. *Laxman Singh v Poonam Singh*, (2004) 10 SCC 94 [LNIND 2003 SC 767] : (2004) 1 MPLJ 93 : (2004) 1 Mah LJ 317 . *James Martin v State of Kerala*, (2004) 2 SCC 203 [LNIND 2003 SC 1097] : (2004) 1 KLT 513 [LNIND 2003 SC 1097] : (2004) 2 MPLJ 231 : 2004 Mah LJ 358 . *Shriram v State of MP*, (2004) 9 SCC 292 [LNIND 2003 SC 1026] : AIR 2004 SC 491 [LNIND 2003 SC 1026] : 2004 Cr LJ 610 .
328. *James Martin v State of Kerala*, (2004) 2 SCC 203 [LNIND 2003 SC 1097] .
329. *Rajesh Kumar v Dharmavir*, AIR 1997 SC 3769 [LNIND 1997 SC 445]: 1997 Cr LJ 2242.
330. *Ranveer Singh v State of MP* (2009) 3 SCC 384 [LNIND 2009 SC 123] : AIR 2009 SC 1658 [LNIND 2009 SC 123] ; *Bishna Alias Bhiswadeb Mahato v State of WB*, (2005) 12 SCC 657 [LNIND

2005 SC 873] Also see *Ravishwar Manjhi v State of Jharkhand*, AIR 2009 SC 1262 [LNIND 2008 SC 2423] : (2008) 16 SCC 561 [LNIND 2008 SC 2423] .

331. *State v Tanaji Dagadu Chawan*, 1998 Cr LJ 4515 (Bom).

332. *State of Rajasthan v Shiv Singh Haren Das v State of Assam*, 2011 Cr LJ 580 (Raj).

333. *Moti Singh v State of Maharashtra*, (2002) 9 SCC 494 .

334. *V Subramani v State of TN*, 2005 Cr LJ 1727 SC : AIR 2005 SC 1983 [LNIND 2005 SC 224] : (2005) 10 SCC 358 [LNIND 2005 SC 224] .

335. *Nagaraj v State*, 2006 Cr LJ 3724 (Mad—DB).

336. *Mehi Lal v State of UP*, 2011 Cr LJ 1440 (All).

# THE INDIAN PENAL CODE

## CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.<sup>1</sup>

The following acts are exempted under the Code from criminal liability:–

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

## **Of the Right of Private Defence**

**[s 97] Right of private defence of the body and of property.**

Every person has a right, subject to the restrictions contained in section 99, to defend

—

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

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

### COMMENT.—

This section broadly specifies the offences against which the right of private defence can be exercised. Section 99 provides the limitations. These two sections combined together lay down the principles of the right of private defence.

The first clause of this section provides for the defence of body against any offence affecting the human body. The second provides for the defence of property against an act which amounts to the commission of certain offences.

There is no obligation upon a person entitled to exercise the right of private defence and to defend his person or property, to retire merely because his assailant threatens him with violence.<sup>337.</sup>

Explaining the genesis of the rule, the Supreme Court has observed:<sup>338.</sup>

"It is important to bear in mind that self-preservation of one's life is the necessary concomitant of the right of life enshrined in [Art. 21 of the Constitution of India](#), fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law. Centuries ago thinkers of this great land conceived of such right and recognised it."

### [s 97.1] Aggressor has no right of private defence.—

The right to defend does not include a right to launch an offensive or aggression.<sup>339.</sup> The right of private defence does not arise where the accused were the aggressors and the question of exceeding such right also does not arise.<sup>340.</sup> The Supreme Court added, in this case, that the right of self-defence arises when there is unexpected apprehension and one is taken unawares, or the accused happens to kill accidentally while using reasonable force private defence can be used to ward off unlawful force, or to prevent it, to avoid unlawful detention and to escape from such detention.<sup>341.</sup>

When the father of the accused was trying to forcibly remove the gate of the thrashing ground of the deceased which was situated on the land of the deceased, his act amounted to an offence of 'mischief'. And, if the deceased while protecting his own property assaulted the father of the accused with a *lathi*, and the accused killed him in return, the accused could not claim the right of private defence of body of his father.<sup>342.</sup> In another case of the same kind the father of the accused was trying to pull out the gate of the deceased thrashing mill and on the deceased assaulting him in protection, the accused struck him dead. The right of private defence was not available in the circumstances.<sup>343.</sup> Where the parties went away from the property over which they were fighting, the death caused at that shifted place was not a justifiable exercise of the right of private defence.<sup>344.</sup> Where the accused succeeded in establishing their right to the property in dispute through the Court and then went to the field with a view



to ask the other party to vacate the premises, it was held that it by itself did not render them to be aggressors for the purpose of denying them the benefit of right of self-defence.<sup>345.</sup>

Number of injuries is not always the safe criterion for determining who the aggressor is. The fact of injuries on the body of the accused does not by itself create the presumption that the accused was entitled to the right of private defence.<sup>346.</sup>

### **[s 97.2] Unlawful assembly.—**

So long as an assembly of persons is acting in exercise of the right of private defence it cannot be an unlawful assembly. An assembly though lawful to begin with, may in the course of events become unlawful. So long as the accused persons were acting in exercise of right of private defence, their object was not unlawful and so there was no unlawful assembly but once they exceeded the right, the assembly ceased to be lawful and became an unlawful assembly. There too only such of the members of the assembly who shared the object of doing anything in excess of the exercise of right of private defence, alone would be liable to be punished for the acts committed in prosecution of the common object or for their individual unlawful acts.<sup>347.</sup>

### **[s 97.3] Right of private defence to be pleaded.—**

In a Supreme Court case it is stated,

It is well settled that even if an accused does not plead self-defence, it is open to the Court to consider such a plea if the same arises from materials on record.<sup>348.</sup>

But if no plea was entered on behalf of the accused and there were also no circumstances to show that the accused had probably the right of private defence, such a right could not be presumed on behalf of the accused on mere conjectures and surmises.<sup>349.</sup> A mere bald assertion without any evidence of facts and circumstances does not make out a case of private defence.<sup>350.</sup> The accused can, however, make out his plea by mere preponderance of probabilities from materials already on record and need not prove it to the hilt.<sup>351.</sup> Where by preponderance of probabilities the plea of private defence of the accused is plausible, benefit should be extended to the accused.<sup>352.</sup> Failure on the part of the prosecution to prove that the injuries on the person of the accused were not caused in self-defence, makes the defence of the accused probable and he is entitled to its benefit because he has not to prove his defence beyond reasonable doubt.<sup>353.</sup> Where the accused set up the plea of self-defence only during trial and not during investigation, it was held that this was not a ground for rejecting the plea.<sup>354.</sup> The accused on the observation of the High Court that the deceased was stabbed by the appellant, not in pursuance of any pre-planned attack, but being under the impression that the deceased was coming to attack him. The said observation cannot be read out of context to make out a case that the accused acted in self-defence. Such a plea is neither put forth in the statement under section 313 nor brought out in the cross examination of any of the prosecution witnesses.<sup>355.</sup> It is true that the right of private defence need not specifically be taken and in the event the Court on the basis of the materials on record is in a position to come to such a conclusion, despite some other plea having been raised, that such a case had been made out, it may act thereupon.<sup>356.</sup>

#### [s 97.4] CASES.—Defence of person.—

Under circumstances which might have induced the belief that a man was cutting the throat of his wife, their son shot and killed his father. It was held that if the son had reasonable ground for believing and honestly believed that his act was necessary for the defence of his mother, the homicide was excusable.<sup>357</sup> Where a girl was being sexually molested and her father hit the assailant resulting in consequential death, it was held that the father was entitled to the right of private defence irrespective of the fact whether the affair was with or without consent because of the girl being a minor.<sup>358</sup> Where a man found his wife in compromising position with a person who sprang at the husband and caused him multiple injuries, some of them grievous, the husband thereafter gave a chopper blow resulting in the death of that person, it was held that the husband had not exceeded his right of private defence and was entitled to acquittal.<sup>359</sup> Where the father of the accused was being given *lathi* blows by the complainant party, the accused fired from the licensed gun of his father to defend his father, it was held that he had acted in the exercise of the right of private defence whether the injuries caused to his father were simple or grievous.<sup>360</sup> Trespassers on the property of another cannot get any benefit of right of private defence if they are attacked by the person in possession of the property.<sup>361</sup> However no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in due course of law, he is entitled to defend his possession even against the rightful owner. Such possession of the trespasser must extend over a sufficiently long period and acquiesced in by the true owner.<sup>362</sup> Though law permits even a trespasser in settled possession to defend his possession but, it does not permit a person to take the law in his own hand to take forcible possession merely because he has obtained a favourable order under [section 145 Cr PC, 1973](#). Such a person cannot claim private defence.<sup>363</sup> Settled possession means such clear and effective physical possession that under the criminal law he, even if he is a trespasser, gets the right to defend his possession of the property against an attack even by the true owner.<sup>364</sup> If no party is proved to be in settled possession, the question of exercise of right of private defence does not arise.<sup>365</sup> Where the accused were in possession of the property and had grown the paddy, they were entitled to defend their possession by using reasonable force which in the instant case went up to causing of death as the party in possession was attacked and grievous blows were given to them.<sup>366</sup> Where the prosecution party attacked the accused, his brothers and others with sharp edged weapons and *lathis* and when they tried to enter the latter's house, the accused fired at the crowd resulting in the death of a man and injuries to others, it was held that the accused had acted only in the exercise of the right of private defence and he was entitled to complete acquittal.<sup>367</sup> Where the accused was fired at to dispel his party from attempting to rescue their friend from illegal police detention and an informer accompanying the police who tried to prevent them from snatching the police gun received fatal injuries, it was held that they were entitled to the right of private defence.<sup>368</sup> Where a fatal injury was caused in consequence of hot exchange of words, the right of private defence was held to be not available.<sup>369</sup> The Supreme Court has suggested that the number and nature of injuries sustained by the accused and the deceased in any case, may furnish good evidence to consider whether the accused was acting in private defence and, if so, whether he had exceeded his right. In the state of the evidence on record in that case and the number of injuries suffered by the accused, the Court did not accede to the contention that the right was not properly exercised.<sup>370</sup>

#### [s 97.5] Defence of another person.—

The right of private defence need not necessarily be exercised for the defence of one's own person; it can be exercised for the defence of the person of another one.<sup>371.</sup>

### **[s 97.6] Defence of property.—**

Every person in possession of land is entitled to defend his possession against anyone who tries to eject him by force,<sup>372.</sup> or to steal from it;<sup>373.</sup> or to do an act which will have the effect of causing injury to it, e.g., cutting of a bund.<sup>374.</sup> Even if a trespass has been committed, in certain situations, right of private defence can be used to eject the trespassers.<sup>375.</sup> Where the accused had no right, title, interest or possession of the land in issue, right of private defence of property did not vest in him.<sup>376.</sup>

Where the complainant party was about 300 feet away from the disputed land and it was further found that the accused had not shown that there was any injury on the person of the accused, it was held that no right of private defence arose in favour of the accused.<sup>377.</sup>

### **[s 97.7] Open space.—**

Though private defence is available in respect of criminal trespass or mischief as against the property owned by himself or of any other person, but criminal trespass is not enumerated as one of the offences under [section 103 IPC, 1860](#). Therefore, the right of private defence of property will not extend to the causing of death of the person who committed such acts, if the act of trespass is in respect of an open land. Only a house-trespass committed under such circumstances as may reasonably cause apprehension that death or grievous hurt would be the consequence is enumerated as one of the offences under section 103.<sup>378.</sup> But in another judgment Supreme Court held that there is no law that right of self-defence cannot be exercised in relation to a dispute over an open space.<sup>379.</sup> Where the trespasser was in settled possession of the field in question, and the party who claimed ownership started ploughing the field, it was held that the trespasser (accused) had the right of private defence of his possession over property and offer resistance, but that he exceeded that right in causing death. His act fell under exception 2 to section 300 and punishable under section 304, Part I.<sup>380.</sup> Where a goat of the accused entered the field of another and he was trying to take it way, the other struck him with *lathi* blows and also his companion who came to his rescue. Only then the accused retaliated with *lathi* blows resulting in death. Supreme Court upheld the acquittal.<sup>381.</sup> The right is subject to restrictions imposed by section 99, the accused party was in possession of the land, the deceased party wanted to enter into possession forcibly. One of the aggressors was killed and another grievously hurt. The accused that caused the death was held to be guilty of exceeding the right of private defence. The acquittal of the person who caused grievous hurt with a spear was held to be not proper. He was liable to be convicted under section 326.<sup>382.</sup> Accused having not been in settled possession had no right to self-defence to defend the possession of the property.<sup>383.</sup> Occurrence took place on the land which was in possession of deceased. Accused cannot take the plea of private defence.<sup>384.</sup> No right of private defence of property to a person who was not in possession of the property.<sup>385.</sup>

Where the accused to a certain stage acted in defence of their property but exceeded it in breaking into the room of their victim, striking him with a *lathi* blow and also his wife and daughter who were also there in the room, the victim subsequently dying, their

conviction was shifted from under section 302 to that under section 304 Part 1.<sup>386</sup> The right of private defence of property (share in land) was held to have been exceeded when the deceased's side being armed with *lathis* only, the accused party fired at them with a gun, killing one and injuring others. The right of private defence was not available to them.<sup>387</sup>

Where the finding of the Courts below was that the accused and his companions were aggressors because they assaulted the victim and his children when they came out to protest against cutting of their by the accused, it was held that the benefit of the right of private defence was not available to the accused.<sup>388</sup>

Defence of property may create circumstances ripening into the right of defence of person. This is so because even in defending property, the attack and counter-attack is likely to be on person. This was the situation in a case in which the accused while defending land over which they had possession; they became the victim of attack on person with sharp cutting weapons. It became their right to repel the danger of grievous hurt or even death and to use for that purpose reasonably appropriate force. Their right extended to cause death of the aggressors if that could be the only way of saving themselves.<sup>389</sup>

#### [s 97.8] CASES.—Exceeding private defence.—

The father of the accused was attacked by the deceased with a *lathi* and suffered a simple injury on his head, whereupon the accused in order to protect his father administered a fatal blow on the chest of the deceased with a *ballam*. It was held that though the accused had the right of private defence, he had obviously exceeded it and was, therefore, liable under section 304-Part I, [IPC, 1860](#).<sup>390</sup> A somewhat contrary view has, however, been taken by the Supreme Court in a later case where too the accused had exercised his right of private defence against a *lathi* blow on the head. Thus, in *Deo Narain's* case it has been held that the accused was justified in using his spear though the other party had aimed only a *lathi* blow on the head, which being a vulnerable part even a *lathi* blow could prove dangerous.<sup>391</sup> It thus, appears that the part of the body against which the attack is directed is more important than the weapon used. Where the deceased attacked the accused with a stick and the accused retaliated by stabbing the former to death his offence fell under section 304-Part I, [IPC, 1860](#), as he had exceeded the right of private defence.<sup>392</sup> Evidence on record showed that accused had received many injuries on his person, and exercised right of private defence of person in good faith. He had sustained four injuries on various parts of his body including on vital parts, thus, case would be covered by Exception 2 to [section 300 of IPC, 1860](#). The nature of weapon used, circumstances in which incident took place, injuries on body of accused as well as deceased, showed that there was no premeditation. He had exercised his right of self-defence but having regard to the injuries inflicted by him on deceased, he exceeded same.<sup>393</sup> Where the accused, a person with only one hand was attacked with a bamboo and sustained several injuries and then to ward off further attack gave only one blow with a pen-knife on the aggressor which unfortunately fell on a vital part resulting in his death, it could not be said that he had exceeded his right of private defence. For the accused it was a case of life or death struggle and his case, therefore, squarely fell within the ambit of clauses (1) and (2) of [section 100, IPC, 1860](#), and he could not be held guilty of any offence.<sup>394</sup> In a sudden group clash over a house both sides received injuries and one person was killed. There was no prior enmity between two groups and the whole incident developed suddenly. Accused persons received quite a number of injuries, some on vital parts, and the prosecution was not able to explain those injuries. It was held that the accused could not be said to have exceeded the right of private defence. Their conviction was set aside.<sup>395</sup> Two

armed bullies of a locality raided a flat in a drunken state and demanded money from the inmates with the use of force. This amounted to the crime of extortion giving the inmates the right to defend themselves against the raiders. Both the raiders met their death in the process of the ensuing scuffle, it being not known nor capable of being ascertained who played what roll in the combat. The Supreme Court held that it could not be said of any one of them that he exceeded the right of private defence. Hence, they could not be convicted under section 302 read with section 34.<sup>396</sup> The accused using his licenced gun fired only one shot after receiving a severe blow on his head fracturing his skull. It was held that he did not exceed his right of self-defence.<sup>397</sup> A person had a lurking suspicion about illicit relations between his elder brother's wife and the accused and he caught hold of the accused when the latter visited their house to meet her. The accused inflicted knife injuries on him to extricate himself but did not inflict any further injury after freeing himself. It was held that the accused had not exceeded the right of private defence and was not guilty under section 307 for attempted murder.<sup>398</sup> Where the accused fired a single gunshot at the deceased party to save his uncle who had received serious injuries in the attack made by the deceased party, the gun shot unfortunately proved fatal, the accused could not be said to have exceeded his right of self- defence.<sup>399</sup> Where in a murder case over obstruction of water course, the victim assaulted the accused twice and injured him whereupon the accused inflicted a blow on him which proved fatal, the accused could not be said to have exceeded his right of private defence.<sup>400</sup>

A police party was looking for the accused to affect their arrest. The complainant party was helping the police. On being located, the accused party opened fire. The police withdrew after receiving injuries. Two members of the complainant party were killed. Even a runaway complainant was shot down. This showed that the attack continued even when all danger to the accused party had ceased. Thus, they exceeded the right of private defence. Conviction for murder was upheld.<sup>401</sup>

Where the death occurred due to the firing resorted to as part of the self-defence, the same would amount to 'culpable homicide not amounting to murder', which was committed without any pre-meditation in a sudden fight, in the heat of passion and upon a sudden quarrel and that the offender could not be said to have taken undue advantage or acted in a cruel or unusual manner, which would normally fall under Exception 4 of [section 300 IPC, 1860](#).<sup>402</sup>

### **[s 97.9] Burden on accused to probablise his defence.—**

It is for the accused to establish the plea of private defence. He is not required to prove it beyond reasonable doubt. The Court has only to examine probabilities in appreciating the plea. In the present case, the accused had miserably failed to establish or even to probablise his defence. The deceased persons had merely asked them why they had cut the mature crop, when they became the victim of attack. They were unarmed.<sup>403</sup> The accused need not take the plea of private defence explicitly. He can succeed in his plea if he is able to bring out from the evidence of the prosecution witness or other evidence of the prosecution witness or other evidence that the apparent [criminal act](#) was committed by him in exercise of private defence. The burden on the accused is not as onerous as that which lies on the prosecution. While the prosecution is required to prove its case beyond a reasonable doubt, the accused can discharge his onus by establishing preponderance of probabilities.<sup>404</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The [Indian Evidence Act](#), I of 1872, section 105.
3. *Musammatt Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
337. *Nareshi Singh*, (1923) 2 Pat 595.
338. *Surjit Singh v State of Punjab*, 1996 (2) SCC 336 [LNIND 1996 SC 233] at 342 : AIR 1996 SC 1388 [LNIND 1996 SC 233] .
339. *Sikandar Singh v State of Bihar*, (2010) 7 SCC 477 [LNIND 2010 SC 603] : AIR 2010 SC 44023 : (2010) 3 SCC(Cr) 417.
340. *Kashi Ram v State of Rajasthan*, (2008) 3 SCC 55 [LNIND 2008 SC 187] : AIR 2008 SC 1172 [LNIND 2008 SC 187] .
341. *Ibid*, See also *Narain Singh v State of Haryana*, (2008) 11 SCC 540 [LNIND 2008 SC 864] : AIR 2008 SC 2006 [LNIND 2008 SC 864] : 2008 Cr LJ 2613 , for restatement of principles.
342. *State of MP v Mohandas*, 1992 Cr LJ 101 (MP).
343. *State of MP v Mohandas*, 1991 Cr LJ 101 (MP).
344. *Bhagat Singh v The State*, 1992 Cr LJ 221 (All).
345. *Jarnail Singh v State of Punjab*, AIR 1993 SC 72 : 1992 Cr LJ 3863 : 1993 Supp (1) SCC 588 . See also *Jaipal v State of Haryana*, AIR 2000 SC 1271 [LNIND 2000 SC 448] : 2000 Cr LJ 1778 ; *Murali v State of TN*, 2001 Cr LJ 470 (SC).
346. *V Subramani v State of TN*, 2005 Cr LJ 1727 SC : AIR 2005 SC 1983 [LNIND 2005 SC 224] : (2005) 10 SCC 358 [LNIND 2005 SC 224] .
347. *Kashi Ram v State of MP*, AIR 2001 SC 2902 [LNIND 2001 SC 2369] : (2002) 1 SCC 71 [LNIND 2001 SC 2369] .
348. *Munshi Ram v Delhi Administration*, AIR 1968 SC 702 [LNIND 1967 SC 347]: 1968 Cr LJ 806; *Rajanikant*, (1970) 2 SCC 866 [LNIND 1970 SC 401] : 1970 SCC (Cr) 575 ; *State of Rajasthan v Manoj Kumar*, 2014 Cr LJ 2420.
349. *State of Gujarat v Bai Fatima*, 1975 Cr LJ 1079 : AIR 1975 SC 1478 [LNIND 1975 SC 130] .
350. *Raza Pasha*, 1983 Cr LJ 977 : AIR 1983 SC 575 [LNIND 1983 SC 79] . *Sekar v State of TN*, 2003 Cr LJ 93 : AIR 2002 SC 3667 [LNIND 2002 SC 628] , the plea of self-defence cannot be based upon surmises and speculation. The Court noted the relevant factors in order to find out whether the right is available or not.
351. *Salim Zia*, 1979 Cr LJ 323 : AIR 1979 SC 319 ; *Yogendra Morarji*, 1980 Cr LJ 459 : AIR 1980 SC 660 . *Mohd. Ramzani v State of Delhi*, 1980 Cr LJ 1010 : 1980 SCC (Cr) 907 : AIR 1980 SC 1341 . The burden is on the accused. The Court does not presume the existence of the circumstances which entitle the accused to his defence. *Subodh Tewari v State of Assam*, 1988 Cr LJ 223 Gau. To the same effect, *Savita Kumari v UOI*, 1993 AIR SCW 1174 : 1993 Cr LJ 1590 : (1993) 2 SCC 357 [LNIND 1993 SC 87] .
352. *Jharmal v State of Haryana*, 1995 Cr LJ 3212 : 1994 (2) SCC 551 [LNIND 1994 SC 256] ; *Rizwan v State of Chhatisgarh*, AIR 2003 SC 976 [LNIND 2003 SC 72] , burden of proof is on the accused is to establish his plea. It is discharged by showing preponderance of probabilities in favour of his plea.

353. *Debraj v State of UP*, (1993) Supp 2 SCC 552 **followed** in *Maskandar Ali v Assam*, (1995) 2 Cr LJ 1900 Gau. Where the Court said that the burden is on the accused to prove his plea. But he has not to establish his right beyond all doubt. It is enough that he is able to show on a preponderance of probability that he acted in private defence. Also to the same effect, *Dwarka Pd. v State of UP*, (1993) AIR SCW 1122 : (1993) Supp. 3 SCC 141.

354. *Bahadur Singh v State of Punjab*, AIR 1992 SC 70 : 1992 Cr LJ 3709 : (1992) 4 SCC 503 .

355. *Pulicherla Nagaraju v State of Andhra Pradesh*, AIR 2006 SC 3010 [LNIND 2006 SC 621] : (2006) 11 SCC 444 [LNIND 2006 SC 621] .

356. *Hafiz v State of UP*, (2005) 12 SCC 599 [LNIND 2005 SC 773] .

357. *Rose*, (1884) 15 Cox 540. *Kashiram v State of MP*, (2002) 1 SCC 71 [LNIND 2001 SC 2369] , incident of gun shot injuries took place near the house of the accused persons. One of them sustained gun shot and other wounds. This created an apprehension of further grievous hurt being caused to the victims. This entitled them to exercise private defence even to the extent of causing death.

358. *Yeshwant Rao v State of MP*, AIR 1992 SC 1633 : 1992 Cr LJ 2779 .

359. *Raghavan Achari v State of Kerala*, AIR 1993 SC 203 : 1992 Cr LJ 3857 : 1993 Supp (1) SCC 719 .

360. *Bhagwan Swaroop v State of MP*, AIR 1992 SC 675 [LNIND 1992 SC 112] : 1992 Cr LJ 777 : (1992) 2 SCC 406 [LNIND 1992 SC 112] .

361. *Hukam Singh*, (1961) 2 Cr LJ 711 : AIR 1961 SC 1541 [LNIND 1961 SC 136] .

362. *Munshi Ram*, AIR 1968 SC 702 [LNIND 1967 SC 347] : 1968 Cr LJ 806 .

363. *Buduka Kalita*, 1972 Cr LJ 1627 (Gau).

364. *Puran Singh*, 1975 Cr LJ 1479 : AIR 1975 SC 1674 [LNIND 1975 SC 174] .

365. *State of Orissa v Bhagabat*, 1978 Cr LJ 1566 (Orissa).

366. *Abdul Kadir v State of Assam*, 1985 Cr LJ 1898 : AIR 1986 SC 305 : 1985 SCC (Cr) 501. See also *Mehrudin Sheikh v State of WB*, 1985 SCC (Cr) 241 : (1985) 2 SCC 448 where the Court said that a factual study of the respective position of the parties is necessary.

367. *Nagendra Pal Singh v State of UP*, AIR 1993 SC 950 : 1993 Cr LJ 190 : (1993) Supp (3) SCC 197 .

368. *State of UP v Niyamat*, (1987) 3 SCC 434 [LNIND 1987 SC 391] : AIR 1987 SC 1652 [LNIND 1987 SC 391] : 1987 Cr LJ 1881 .

369. *Ramesh Laxman Pardesi v State of Maharashtra*, 1987 SCC (Cr) 615 : 1987 Supp SCC 1 .

370. *Patori Devi v Amar Nath*, (1988) 1 SCC 610 : AIR 1988 SC 560 : 1988 Cr LJ 836 .

371. *Kashi Ram v State of MP*, AIR 2001 SC 2902 [LNIND 2001 SC 2369] : (2002) 1 SCC 71 [LNIND 2001 SC 2369] Also see *B Parichhat v State of MP*, AIR 1972 SC 535 : (1972) 4 SCC 694 : 1972 Cr LJ 322 .

372. *Sachee*, (1867) 7 WR (Cr) 76 (112). *Mohinder Singh v State of Punjab*, (1995) 1 Cr LJ 244 (P&H) an attempt to take forcible possession of land resisted, resistance held justified, the Court explained when the right of resistance can extend to causing death. *Tanaji Govind Misal v State of Maharashtra*, AIR 1998 SC 174 [LNIND 1997 SC 1211] : 1998 Cr LJ 340 , evidence showed that the property belonged to the complainant party and not to attackers, the owners suffered 51 wounds whereas the attackers received 15 wounds, which were also insignificant. The Court held that the conviction of the accused could not be altered from under section 300 to section 304. *Pohap Singh v State of Haryana*, 1998 Cr LJ 1564 : AIR 1998 SC 1554 [LNIND 1997 SC 1658] , the accused party received more injuries than those suffered by the deceased's party. The Court said that not the accused but the deceased was the aggressor and the accused acted in self defence.

373. *Mokey*, (1869) 12 WR (Cr) 15.
374. *Birjoo Singh v Khub Lall*, (1873) 19 WR (Cr) 66.
375. *Triloki Nath v State of UP* AIR 2006 SC 321 [LNIND 2005 SC 867] : (2005) 13 SCC 323 [LNIND 2005 SC 867] ; in this case, occurrence took place 300 paces away from the disputed plot - Plea of self defence against property held not available to the accused.
376. *AR Yelve v State of Maharashtra*, 1996 Cr LJ 1718 : AIR 1996 SC 2945 [LNIND 1996 SC 336] ; *Ram Pal v State of Haryana*, (2009) 7 SCC 614 [LNIND 2009 SC 1264] : AIR 2009 SC 2847 [LNIND 2009 SC 1264] , appellants were not in settled possession of property and as such had no right of private defence to defend possession of that property. They were aggressors coming to place of occurrence fully armed, reversal of acquittal of accused by the High Court was upheld.
377. *Panna Lal v State of MP*, 2015 Cr LJ 3286 .
378. *Jassa Singh v State of Haryana*, AIR 2002 SC 520 [LNIND 2002 SC 13] : (2002) 2 SCC 481 [LNIND 2002 SC 13] .
379. *Kishan Chand v State of UP*, (2007) 14 SCC 737 [LNIND 2007 SC 1190] : AIR 2008 SC 133 [LNIND 2007 SC 1190] .
380. *Adhimoolam v State*, 1995 Cr LJ 1051 (Mad) **following** *Puran Singh v State of Punjab*, AIR 1975 SC 1674 [LNIND 1975 SC 174] : (1975) Cr LJ 1479 (SC) where the court cited AIR 1968 SC 702 [LNIND 1967 SC 347] : 1968 Cr LJ 806 as defining the concept of settled possession.
381. *Satya Narain Yadav v Gajanand*, (2008) 16 SCC 609 [LNIND 2008 SC 2782] : AIR 2008 SC 3284 [LNIND 2008 SC 2782] .
382. *State of Haryana v Sher Singh*, AIR 2002 SC 3223 [LNIND 2002 SC 1215] .
383. *Ram Pat v State of Haryana*, (2009) 7 SCC 614 [LNIND 2009 SC 1264] : (2009) 8 SCR 1115 [LNIND 2009 SC 1264] : AIR 2009 SC 2847 [LNIND 2009 SC 1264] .
384. *Ashok Kumar v State of TN*, AIR 2006 SC 2419 [LNIND 2006 SC 360] : (2006) 10 SCC 157 [LNIND 2006 SC 360] .
385. *Daulat Trimbak Shewale v State of Maharashtra*, (2004) 10 SCC 715 [LNIND 2004 SC 586] : AIR 2004 SC 3140 [LNIND 2004 SC 586] : 2004 Cr LJ 2825 .
386. *Madam v State of MP*, (2008) 11 SCC 657 [LNIND 2008 SC 1390] : AIR 2008 SC 3083 [LNIND 2008 SC 1390] : 2008 Cr LJ 3950 .
387. *Narain Singh v State of Haryana*, (2008) 11 SCC 540 [LNIND 2008 SC 864] : AIR 2008 SC 2006 [LNIND 2008 SC 864] : 2008 Cr LJ 2613 . **Following** principles stated in *James Martin v State of Kerala*, (2004) 2 SCC 203 [LNIND 2003 SC 1097] : (2004) 1 KLT 513 [LNIND 2003 SC 1097] . *Salim v State of Haryana*, (2008) 12 SCC 705 [LNIND 2008 SC 1613] : (2008) Cr LJ 4327 , finding that one of the parties used force and fire causing death to take possession of land, private defence not available. The Court said that even if the right was there, it was exceeded.
388. *AC Gangadhar v State of Karnataka*, (2009) 14 SCC 710 [LNIND 1998 SC 506] : AIR 1998 SC 2381 [LNIND 1998 SC 506] .
389. *Vajrapu Sambayya Naidu v. State of A.P.*, (2004) 10 SCC 152 [LNIND 2003 SC 176] : AIR 2003 SC 3706 [LNIND 2003 SC 176] .
390. *Parichhat*, 1972 Cr LJ 322 : AIR 1972 SC 535 . *Dilip Singh v State of Rajasthan*, (1994) 2 Cr LJ 2439 (Raj) in a dispute over possession of property, one party tried to take forcible possession by committing criminal trespass, they possessed only an agricultural implement, not capable of causing apprehension of death but even so the other party fired at them killing one, held, they exceeded private defence, punishable under section 304-I. *Telantle v State of AP*, (1994) 2 Cr LJ 2302 (AP) number of injuries (18 in this case caused by son on his father) indicated excess of the right of private defence. *Thomas George v State of Kerala*, AIR 2000 SC 3497 : 2000 Cr LJ 3475 , right of private defence of person, punishment altered from under



section 302 to that under section 304, Part II. *Sekar v State of TN*, 2003 Cr LJ 53 (SC) quarrel over sheepling damaging crop of the victim, owner of the sheep struck him, he fell down and was struck in the neck even after that. Right of private defence exceeded; *Madan v State of MP*, (2008) 11 SCC 657 [LNIND 2008 SC 1390] : AIR 2008 SC 3083 [LNIND 2008 SC 1390] : 2008 Cr LJ 3950 , accused persons forced open the wooden door and entered the place where the wife and daughter of one of them were sleeping. They caught hands of the householder and assaulted him with *lathis*. He later died. The wife and daughter were also assaulted when they tried to intervene. The attackers were also injured to a certain extent and therefore, had the right of private but they exceeded it. Their punishment was altered from under section 302 to section 304 Pt. I.

391. *Deo Narain*, 1973 Cr LJ 677 (SC) : (1973) 3 SCR 57 [LNIND 1972 SC 572] : AIR 1973 SC 473 [LNIND 1972 SC 572] . See further *Laxman Sahu v State of Orissa*, 1988 Cr LJ 188 : AIR 1988 SC 83 : 1986 Supp SCC 555 : 1987 SCC (Cr) 173 where a lathi blow inflicted on the forehead caused death without any apparent need for it, the accused was convicted under section 304 part I and the above case was distinguished. See also *Sukumar Roy v State of WB*, AIR 2006 SC 3406 [LNIND 2006 SC 882] : (2006) 10 SCC 635 [LNIND 2006 SC 882] .

392. *Rafiq*, 1979 Cr LJ 706 : AIR 1979 SC 1179 ; *Yogendra Morarji*, 1980 Cr LJ 459 : AIR 1980 SC 660 ; see also *VC Cheriyan v State*, 1982 Cr LJ 2071 (Ker). The accused receiving gun shot injuries, opened fire at the other party killing two persons, entitled to right of private defence but exceeded, convicted under section 304 Part I and not for murder *Jagtar Singh v State of Punjab*, AIR 1993 SC 2448 [LNIND 1993 SC 11] : 1993 Cr LJ 306 . See also *Jasbir Singh v State of Punjab*, AIR 1993 SC 968 : 1993 Cr LJ 301 : (1993) Supp (2) SCC 760 , diversion of flow of tubewell water by the deceased, accused fired killing him on the spot.

393. *Beersingh Jagatsingh v State of Maharashtra*, 2013Cr LJ2248 (Bom).

394. *Bayadas Bawri*, 1982 Cr LJ 213 (Gau).

395. *Ram Phal v State of Haryana*, AIR 1993 SC 1979 : 1993 Cr LJ 2603 : 1993 Supp (3) SCC 740 . **Contra** : see *Kulwant Singh v State of Punjab*, AIR 1994 SC 1271 : 1994 Cr LJ 1109 , group clash, injuries on both sides, one died, circumstances did not entitle the exercise of right of self-defence to the accused.

396. *Kishore Shambudatta Mishra v State of Maharashtra*, AIR 1989 SC 1173 : 1989 Cr LJ 1149 : 1989 Supp (1) SCC 399 .

397. *Kamal Singh v State of MP*, (1995) 2 Cr LJ 1834 MP.

398. *Krushna Chandra Bisoi v State of Orissa*, 1992 Cr LJ 1766 (Ori).

399. *Sukhdev Singh v State of Punjab*, 1995 Cr LJ 3227 (SC).

400. *Gurdev Singh v State of Rajasthan*, 1996 Cr LJ 1270 (Raj). *State v Bhuri*, 1997 Cr LJ 708 (Raj), mother of accused attacked and an injury caused with a sharp weapon, the accused hit back with grand force a lathi blow which fell on the head of the aggressor causing his death, right of private defence exceeded.

401. *Ram Avtar v State of UP*, 2003 Cr LJ 480 (SC).

402. *Rajinder Singh v State of Haryana*, 2015 Cr LJ 1330 .

403. *Abid v State of UP*, (2009) 14 SCC 701 [LNIND 2009 SC 1395] .

404. *Krishnan v State of TN*, AIR 2006 SC 3037 [LNIND 2006 SC 612] : (2006) 11 SCC 304 [LNIND 2006 SC 612] .

# THE INDIAN PENAL CODE

## CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.<sup>1</sup>

The following acts are exempted under the Code from criminal liability:–

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

## **Of the Right of Private Defence**

**[s 98] Right of private defence against the act of a person of unsound mind, etc.**

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

#### ILLUSTRATIONS

(a) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

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

#### COMMENT.—

The right of private defence would have lost most of its value if it was not allowed to be exercised against persons suffering from the incapacities mentioned in this section.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The *Indian Evidence Act*, I of 1872, section 105.
3. *Musammatt Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
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## **Of the Right of Private Defence**

**[s 99] Acts against which there is no right of private defence.**

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

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

**There is no right of private defence in cases in which there is time to have recourse to 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 than it is necessary to inflict for the purpose of defence.**

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

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

## **COMMENT.—**

This section indicates the limits within which the right of private defence should be exercised.

### **[s 99.1] First clause.—**

This clause applies to those cases in which the public servant is acting in good faith under colour of his office, though the particular act being done by him may not be justifiable by law.<sup>405</sup> Where officers of Delhi Municipal Corporation acting in good faith by virtue of powers delegated to them by the Commissioner attempted to seize the buffalo of the accused with a view to recover arrears of milk tax, the mere fact that no prior notice was issued to the accused as required by the Municipal Act would not make their act entirely outside the law and as such accused had no private defence under section 99 of the Code. The officers had merely erred in exercise of their powers.<sup>406</sup> The clause applies to a case where an official has done wrongly, what he might have done rightly, but not to cases where the act could not have been done rightly at all by the official concerned.<sup>407</sup> The clause applies where a public servant acts irregularly in the exercise of his powers, and not where he acts outside the scope of his powers.<sup>408</sup> Where a police officer acting *bona fide* under colour of his office arrests a person but without authority, the person so arrested has no right of self-defence against the officer.<sup>409</sup> If the act of a public servant is *ultra vires* the right of private defence may be exercised against him.<sup>410</sup> A police-officer, holding a search, without a written authority, cannot be said to be acting 'under colour of his office'.<sup>411</sup>

### **[s 99.2] CASES.—Resistance to officer acting without warrant.—**

A police-officer attempted without a search-warrant to enter a house in search of property alleged to have been stolen and was obstructed and resisted. It was held that, even though the officer was not strictly justified in searching the house without a warrant, the person obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of his obstruction, as it was not shown that the officer was acting otherwise than in good faith and without malice.<sup>412</sup> Where a raiding party organized by the official of the Municipal Corporation to round up stray cattle within the limits of the Corporation, was attacked when it had rounded up some cattle and was leading the cattle to the cattle pound, it was held that the act of the raiding party was fully justifiable by law and that the accused had no right of private defence.<sup>413</sup> Where a party was fired at to dispel them from their attempt to rescue their friend from an illegal police detention, it was held that this was sufficient to cause reasonable apprehension in their mind of death or grievous injury.<sup>414</sup>

### **[s 99.3] Illegal attachment does not justify resistance.—**

Where articles protected from attachment were attached, it was held that this act did not justify resistance.<sup>415</sup> Where the property of a person was wrongfully attached as the property of certain absconders, it was held that the rightful owner had no right of private defence of his property, as the police-officer was acting in good faith under colour of his office, and that even supposing the order of attachment might not have been properly made, that would in itself not be sufficient ground for such a defence.<sup>416</sup>

### **[s 99.4] Second clause.—**

The first clause speaks of acts done by a public servant, this clause, of acts done under the direction of a public servant. It is not necessary that the doer should be a public servant. Explanation 2 must be read conjointly with this clause.

### **[s 99.5] CASE.—Resistance to execution of warrant.—**

Where a police-officer attempted to execute a warrant the issue of which was illegal, it was held that the accused were justified in their resistance.<sup>417</sup>

### **[s 99.6] Third clause.—**

The third clause of this section must be read with the first clause of section 105.<sup>418</sup> It places an important restriction on the exercise of the right of defence. The right of private defence being granted for defence only, it must not and cannot legally be exercised when there is time to have recourse to the protection of public authorities. The right of private defence does not take the place of the functions of those public servants who are especially charged with the protection of life and property and the apprehension of offenders, and where the assistance of the public authorities can be procured, the right cannot be lawfully exercised. But the law does not intend that a person must run away to have recourse to the protection of public authorities when he is attacked instead of defending himself.<sup>419</sup> A person in possession cannot be



expected to leave his property at the mercy of armed trespassers. Where there is imminent danger to the property and the person in possession apprehends substantial damage thereto, he is entitled to raise his own arms in defence and retaliate to keep away the attack without applying for State aid.<sup>420</sup> Where the accused was in rightful possession of the property by virtue of a Court order; under [section 145 Cr PC, 1973](#), he had every right to throw out the complainant party from the land and demolish the construction stealthily put up thereon.<sup>421</sup> The important considerations which always arise in order to determine whether the action of the accused is covered by the right of private defence are, first, what is the nature of the apprehended danger, and, second, whether there was time to have recourse to the police authorities, always remembering that when both the parties are determined to fight and go up to the land fully armed in full expectation of an armed conflict in order to have a trial of strength the right of private defence disappears.<sup>422</sup>

### **[s 99.7] CASES.—Time to obtain protection of public authorities.—**

The accused received information one evening that the complainants intended to go on his land on the following day, and uproot the corn sown in it. At about three o'clock next morning he was informed that the complainants had entered on his land and were ploughing up the corn. Thereupon he at once proceeded to the spot, followed by the remaining accused, and remonstrated with the complainants, who commenced an attack on the accused. In the fight which ensued, both sides received serious injuries, and the leader of the complainants' party was killed. It was held that the complainants being the aggressors, the accused had the right of private defence and that they were not bound to act on the information received on the previous evening and seek the protection of the public authorities, as they had no reason to apprehend a night attack on their property.<sup>423</sup> In a case involving an old land dispute, one party (accused) offered resistance to prevent the other from ploughing the land and on refusal went up to the place where the other was sitting without arms and inflicted stick blows causing death, it was held that the accused was rightly convicted. The Court said that a rightful owner can defend his possession against any attempt to dislodge him, but that once a trespasser has established his foothold; resort should be had to public authorities.<sup>424</sup>

The right of private defence does not extend to inflicting of more harm than necessary for the purpose of defence. The prosecution party, in this case, had gone to plough the land which was in the possession of the accused (appellant). The latter had time to go and report the matter to appropriate authorities constituted under the law. But instead of so doing, they brutally attacked the other party resulting in the death of three persons. Thus, there was no right of private defence. It was held that there was no warrant for converting the conviction from u/section 302 to section 304 Part II.<sup>425</sup>

### **[s 99.8] Fourth clause.—**

The right of private defence is restricted to not inflicting more harm than it is necessary to inflict for the purpose of defence. The amount of force necessarily depends on the circumstances of the case, and there is no protection if the harm is caused by excessive violence quite unnecessary to the case.<sup>426</sup> For example, a person set by his master to watch a garden or yard is not at all justified in shooting at, or injuring in any way, persons who may come into those premises, even in the night. He ought first to see whether he could not take measures for their apprehension.<sup>427</sup> The measure of self-defence must always be proportionate to the *quantum* of force used by the attacker and which it is necessary to repel.<sup>428</sup> In dealing with the question as to

whether more force is used than is necessary or than was justified by the prevailing circumstances, it would be inappropriate to adopt tests of detached objectivity of a Court room. The means which a threatened person adopts or the force which he uses should not be weighed in golden scales.<sup>429</sup> Though a person exercising his right of private defence is not expected to modulate his defence step by step or tier by tier, yet it is necessary to see that it is not totally disproportionate to the injury sought to be averted, e.g., to ward off a slap one cannot fire a gun. Thus, where the father of the accused was allegedly assaulted with *lathis* which resulted in simple injuries, the accused was not justified in firing his gun and thereby killing the attacker. In such a case it could not be said that there was a reasonable apprehension of death or grievous hurt within the meaning of clause (1) of [section 100, IPC, 1860](#).<sup>430</sup> But at the same time it should also be remembered that if a man has real justification to exercise his right of private defence, he cannot be held liable if he slightly exceeds his right of private defence, e.g., where face to face with a murderous attack he fires two shots in quick succession, for these things cannot be weighed in golden scales.<sup>431</sup> The right of private defence should not be allowed to be pleaded or availed of as pretext for a vindictive, aggressive or retributive purpose.<sup>432</sup>

### **[s 99.9] CASES.—Justifiable harm.—**

A party attempted to rescue a friend from unlawful police detention. Three rounds were fired to dispel them. This caused in their mind a reasonable apprehension of death or injury. They tried to snatch the police gun. A police informer intervened and died of injuries received in the process. The right of private defence was held to be not exceeded.<sup>433</sup> In another case the Supreme Court accepted the defence version that there were four assailants who had come well prepared to assault at the door of their house. In such a situation accused persons could have a reasonable apprehension of death or at least of grievous hurt. It was a case of single gunshot which was not repeated. Therefore, it cannot be said that the accused persons had exceeded their right of private defence in any manner.<sup>434</sup>

In view of the fact that the accused was pursued, that he only picked up the weapon when he was chased and that he used it only once, his sentence was reduced to three years and nine months.<sup>435</sup>

### **[s 99.10] Attack on unarmed persons.—**

No right of private defence can exist against an unarmed and unoffending individual,<sup>436</sup> where the injury was caused to the victim on the vital parts of the body even though he and the witnesses present at the spot were all unarmed, it was held that the question of acting in self-defence did not arise.<sup>437</sup>

### **[s 99.11] Sudden quarrel.—**

The right of private defence was held to be not available where the incident of *lathi* blows causing death took place in the course of a sudden fight.<sup>438</sup>

### **[s 99.12] More harm caused than necessary.—**

Where a person killed a weak old woman found stealing at night,<sup>439</sup>. where a person caught a thief in his house at night and deliberately killed him with a pick-axe to prevent his escape,<sup>440</sup>. where a number of persons apprehending a thief committing house-breaking strangled him and subjected him to gross maltreatment when he was fully in their power,<sup>441</sup>. and where a heavy and mechanically propelled vehicle like a jeep was used as a means or weapon for the exercise of the right of private defence,<sup>442</sup>. the right of private defence was negated.<sup>443</sup>. Where the injuries suffered by the accused were of simple nature than those caused by him to the deceased persons and he went even to the extent of preventing a witness from carrying the victim to a hospital, it was held that the accused was an aggressor and was, therefore, not entitled to the right of private defence.<sup>444</sup>. Where, on the other hand, two drunk and armed raiders demanded money from the residents of a flat and in face to face with the inmates who resisted them, lost their lives, it being not known which inmate played what role, the Supreme Court held that it could not be said that more harm was caused than was necessary.<sup>445</sup>. Where the accused caused death in order to repel an attack by a party armed with lethal weapons and which had already caused injuries to the accused, it was held that the accused did not exceed his rights as it was not possible for him to have weighed in golden scales in the heat of the moment the number of injuries required to overcome the attack.<sup>446</sup>. Where the accused continued to assault the deceased even after he fell to the ground, the possibility of causing injuries in exercise of his right of private defence was ruled out.<sup>447</sup>.

Where the accused received an injury on his neck first, the right of private defence was held to have arisen. But it was shown that three injuries were caused in return one of them entering deep into the chest and causing death. The right of private defence was held to have been exceeded. The conviction was modified to one under section 304(1).<sup>448</sup>.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The *Indian Evidence Act*, I of 1872, section 105.
3. *Musammat Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
405. *Dalip*, (1896) 18 All 246 , 252.
406. *Kesho Ram*, 1974 Cr LJ 814 : AIR 1974 SC 1158 [LNIND 1974 SC 130] .
407. *Bhairo v State*, 1941 Kar 324 ; *Pagla Baba*, (1957) Cr LJ 769 ; *Ouseph Varkey*, (1964) 1 Cr LJ 592 .
408. *Deoman Shamji*, (1958) 61 Bom LR 30 .
409. *Mohamed Ismail v State*, (1935) 13 Ran 754.
410. *Jogendra Nath Mukerjee*, (1897) 24 Cal 320 ; *Tulsiram v State*, (1888) 13 Bom 168; Haq Dad, (1925) 6 Lah 392; *Achhru Ram*, (1925) 7 Lah 104.
411. *Ram Parves*, (1944) 23 Pat 328.
412. *Pukot Kotu*, (1896) 19 Mad 349.

413. *Kanwar Singh*, (1965) 2 Cr LJ 1 : AIR 1965 SC 871 [LNIND 1964 SC 194] .
414. *State of UP v Niyamat*, 1987 3 SCC 434 [LNIND 1987 SC 391] : AIR 1987 SC 1652 [LNIND 1987 SC 391] : 1989 Cr LJ 1881 . See also *Ramji Lal v State of Rajasthan*, 1990 Cr LJ 392 Raj, police party arriving at a village at night to recover a woman and to hand her over to her father, the act being illegal and without jurisdiction, this section did not give protection to the police against resistance by villagers.
415. *Poomalai Udayan*, (1898) 21 Mad 296.
416. *Bhai Lal Chowdhry*, (1902) 29 Cal 417 .
417. *Jogendra Nath Mukerjee*, (1897) 24 Cal 320 .
418. *Narsang Pathabhai*, (1890) 14 Bom 441.
419. *Alingal Kunhinayan*, (1905) 28 Mad 454.
420. *State of Orissa v Rabindranath*, 1973 Cr LJ 1686 (FB-Ori).
421. *Akonti Bora*, 1980 Cr LJ 138 (Gau).
422. *Satnarain Das*, (1938) 17 Pat 607.
423. *Narsang Pathabhai*, (1890) 14 Bom 441; *Pachkauri*, (1897) 24 Cal 686 .
424. *Maguni Charan Pradhan v State of Orissa*, (1991) 71 Cut LT 710 : (1991) 3 SCC 352 [LNIND 1991 SC 191] : 1991 SCC (Cr) 580 : 1991 Cr LR (SC) 463 .
425. *Ritaram Besra v State of Bihar*, (2007) 15 SCC 383 .
426. *Gokool Bowree*, (1866) 5 WR (Cr) 33.
427. *John Scutty v State*, (1824) 1 C & P 319.
428. *Ram Prasad Mahton*, (1919) 4 PLJ 289 , 20 Cr LJ 375.
429. *Jai Dev*, (1963) 1 Cr LJ 495 : AIR 1963 SC 612 [LNIND 1962 SC 249] ; *Amjad Khan*, 1952 Cr LJ 648 : AIR 1952 SC 165 [LNIND 1952 SC 20] ; *Puran Singh*; 1975 Cr LJ 1479 : AIR 1975 SC 1674 [LNIND 1975 SC 174] ; **followed** in *Pattu v State of MP*, (1995) 2 Cr LJ 1970 MP, father and son were entitled to ward off an attack on them while they were digging a water channel on their ground. *Hira*, 1972 Cr LJ 225 : AIR 1972 SC 244 .
430. *State of UP. v Ram Swarup*, 1974 Cr LJ 1035 : AIR 1974 SC 1570 [LNIND 1974 SC 472] . Where both parties raised guns in a quarrel but one of them lowered his gun, even so the other fired at him. No occasion for private defence. Conviction for murder upheld, *Mohd. Yusuf v State of UP*, AIR 1994 SC 1542 [LNIND 1994 SC 126] : (1994) 1 Cr LJ 1631 : 1994 Supp (2) SCC 32 .
431. *Amjad Khan*, *supra*; See also *Jaidev*, *supra* and *Yogendra Morarji*, 1980 Cr LJ 459 : AIR 1980 SC 660 .
432. *Munney Khan*, (1970) 2 SCC 480 [LNIND 1970 SC 338] : AIR 1971 SC 1491 [LNIND 1970 SC 338] .
433. *State of UP v Nyama*, (1987) 3 SCC 434 [LNIND 1987 SC 391] . *State of MP v Mishrilal*, 2003 Cr LJ 2312 (SC) : (2003) 9 SCC 426 [LNIND 2003 SC 390] , the prosecution party and the accused party cause to be engaged in firing against each other. The father, who was one of the accused, received five injuries dangerous to life. The firing accused apprehended danger to the life of his father and fired in self-defence. The accused did not exceed the right of private defence.
434. *State of UP v Gajey Singh*, 2009 Cr LJ 2274 : (2009) 11 SCC 414 [LNIND 2009 SC 437] : (2009) 3 SCC(Cr) 1412.
435. *R v Thompson*, (2001) 1 Cr App R (S) 72 [CA (Crim Div)].
436. *Gurbachan Singh*, 1974 Cr LJ 463 : AIR 1974 SC 496 .
437. *Baitullah v State of UP*, AIR 1997 SC 3946 [LNIND 1997 SC 1322] : 1997 Cr LJ 4644 , *Rukma v Jala*, AIR 1997 SC 3207 : 1997 Cr LJ 4641 , a case which hanged on appreciation of evidence. *Mavila Thamban Nambiar v State of Kerala*, AIR 1997 SC 687 [LNIND 1997 SC 24] : (1997) 1 JT

367 private defence not available because the deceased was unarmed, accused persons armed with a pair of scissors. *Vishal Singh v State of MP*, 1998 Cr LJ 505 : AIR 1998 SC 308 [LNIND 1997 SC 1362] , land dispute, revenue record not clear, accused in possession were fully armed, others came in wholly unarmed and became the victim of attack, private defence not allowed to accused.

438. *Bihari Rai v State of Bihar*, (2008) 15 SCC 778 [LNIND 2008 SC 1927] : AIR 2009 SC 18 [LNIND 2008 SC 1927] : 2009 Cr LJ 340 .

439. *Gokool Bowree*, (1866) 5 WR (Cr) 33.

440. *Durwan Geer*, (1866) 5 WR (Cr) 73. See Bag, (1902) PR No. 29 of 1902; *Mammun*, (1916) PR No. 35 of 1916.

441. *Dhununjai Poly*, (1870) 14 WR (Cr) 68.

442. *Marudevi Avva*, 1958 Cr LJ 33 .

443. See also *Madan Mohan Pandey v State of UP*, AIR 1991 SC 769 ; 1991 Cr LJ 467 : 1991 Supp (2) SCC 603 , where the Supreme Court emphasised that the nature of the weapon and the number of shots fired are helpful circumstances in determining excessive use of the right of private defence. Indiscriminate firing here, held right exceeded. For a general study of the subject see, *Stanley Meng Heong Yeo*, Rethinking Goodfaith in Excessive Private Defence, (1988) JILI 443.

444. *Kanhiyalal v State of Rajasthan*, AIR 1989 SC 1515 : 1989 Supp. 2 SCC 263 : 1989 Cr LJ 1482 : 1989 BBCJ 117 : 1990 SCC (Cr) 168.

445. *Kishore Shambudatta Mishra v State of Maharashtra*, AIR 1989 SC 1173 : 1989 Cr LJ 1149 : 1989 SCC (Cr) 464.

446. *Buta Singh v State of Punjab*, AIR 1991 SC 1316 [LNIND 1991 SC 177] : 1991 Cr LJ 1464 : (1991) 2 SCC 612 [LNIND 1991 SC 177] . *Vidya Saran Sharma v Sudarshan Lal*, AIR 1993 SC 2476 : 1993 Cr LJ 3135 (SC), accused injured by the deceased, apprehending further danger he hit back with a single blow which proved fatal, acquittal on the ground of private defence; *Thakarda Hamirji Gajuji v State of Gujarat*, 1992 Cr LJ 3966 (Guj).

447. *Harabailu Kariappa v State of Karnataka*, 1996 Cr LJ 321 (Kant). *Man Bharan Singh v State of MP*, 1996 Cr LJ 2707 (MP) injuries disproportionately severe as against minor injuries, right exceeded, conviction under section 304 Pt. I. *Naranjan Singh v Kuldip Singh*, 1998 Cr LJ 845 : AIR 1998 SC 1490 [LNIND 1997 SC 1574] , the accused was not shown to be present on the spot and, therefore, the question of his exceeding the right of private defence did not arise. *Achhaibar Prasad v State*, 1997 Cr LJ 2666 : 1997 All LJ 705, the accused attacked and fired at a police constable in his bid to arrest him. Right of private defence not available to him.

448. *Udaikumar Pandharinath Jadhav v State of Maharashtra*, (2008) 5 SCC 214 [LNIND 2008 SC 1007] : AIR 2008 SC 2064 [LNIND 2008 SC 1007] : 2008 Cr LJ 2627 .

# THE INDIAN PENAL CODE

## CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.<sup>1</sup>

The following acts are exempted under the Code from criminal liability:–

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

## **Of the Right of Private Defence**

**[s 100] When the right of private defence of the body extends to causing death.**

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

**First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;**

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

**Thirdly.—An assault with the intention of committing rape;**

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

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

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

**449. [Seventhly.—An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.]**

#### **COMMENT.—**

The law authorizes a man who is under a reasonable apprehension that his life is in danger or his body in risk of grievous hurt to inflict death upon his assailant either when the assault is attempted or directly threatened, but the apprehension must be reasonable and the violence inflicted must not be greater than is reasonably necessary for the purpose of self-defence. It must be proportionate to and commensurate with the quality and character of the act it is intended to meet and what is done in excess is not protected. Where the accused was attacked by three persons and sustained an injury on the forehead, a vital part, he had reasonable apprehension of some hurt to be caused to him and had the right of self-defence but had exceeded by causing more harm to his assailants than needed. He was liable under section 304, Part I, and not under section 302.<sup>450</sup> Where after receiving nine injuries, two on vital parts, the accused fired one shot from his gun which hit fatally an innocent person, the right of private defence extending to cause death was still available to the accused. His conviction under section 304, Part I was set aside.<sup>451</sup> Where the complainant's party had deliberately gathered near the house of the accused and scolded them and caused injuries to his father, the accused was held justified in exercising the right of private defence to defend his father and his conviction under section 300 was set aside.<sup>452</sup> It is the reasonable apprehension of death or grievous hurt that gives rise to the right of private defence under clauses (1) and (2) of [section 100, IPC, 1860.](#), and it has got nothing to do with the actual injury that the person exercising the right of private defence has suffered, which may or may not be grievous.<sup>453</sup> Where the accused fails to make out a case of reasonable apprehension, he cannot claim the right of private defence.<sup>454</sup> Where the life of the accused was not endangered by the ladies armed with broom sticks and '*chappals*', the accused was not entitled to stab one of the ladies to death in exercise of right of private defence.<sup>455</sup>



The extended right of private defence to the extent of causing death of the assailant arises only if the offence which occasions the exercise of the right is of one of the kinds mentioned in this section.<sup>456</sup> Following some earlier rulings, the Supreme Court has re-emphasised that the mere fact of the accused sustaining some injuries in the course of the same transaction does not make it out conclusively that the accused had the occasion to cause death in private defence.<sup>457</sup> Where the attacking party chanced to get at the wife of the accused and the latter pounced upon them with a weapon attacking one of them which was warded off, another came forward and the accused successfully struck him and he died, the accused was held to be within his rights.<sup>458</sup> As against this where two were fighting with *lathis* and the brother of one of them, who was outside the danger, struck a *lathi* blow to the other killing him, he was held to be guilty under section 304-I.<sup>459</sup> In a communal tension, both sides pelted stones. The accused fired a gun shot causing death of a person of the other group though no one had sustained any injury as a result of pelting of stones by the other group. It was held that the accused had no occasion to act under the right of private defence.<sup>460</sup>

In order to justify the act of causing death of assailant, the accused has simply to satisfy the Court that there was reasonable apprehension of death or grievous hurt. Question whether the apprehension was reasonable or not is a question of fact depending upon the facts and circumstances of each case and no straitjacket formula can be prescribed in this regard. Weapon used, the manner and nature of assault and other surrounding circumstances should be taken into account while evaluating whether the apprehension was justified or not. In the instant case, accused G was assaulted on head by a sharp-edged weapon which caused a bone-deep injury. As per the defence version there were four assailants who had come well prepared at the door of accused's house to commit assault. Reasonable apprehension of death or at least of grievous hurt, therefore, could not be ruled out. In such a situation, if single gunshot was fired it could not be said that the accused persons had exceeded their right of private defence in any manner.<sup>461</sup>

### **[s 100.1] 'Abducting'.—**

On a plain reading of clause fifth of this section, there does not seem to be any reason for holding that the word 'abducting' used in the clause means anything more than what is defined as "abduction" in section 362. All that the clause requires is that there should be an assault which is an offence against the human body and that assault should be with the intention of abducting, and whenever these elements are present the clause will be applicable.<sup>462</sup> Thus, a woman could not be taken away by force even by her own husband from a paramour's house and if in these circumstances the paramour and his brother killed the husband to prevent her abduction by the husband, they would be protected by sub-clause (5) of [section 100 of the Penal Code](#).<sup>463</sup> Here law seems to be contrary to our social conscience, but this interpretation is perfectly in accord with the language of [section 100, IPC, 1860](#), and the decision of the Supreme Court in *Viswanath's case*<sup>464</sup> where too the husband was put to death by a clean stab by his brother-in-law as he was trying to take away his wife by force from his father-in-law's house and in the process had merely dragged his unwilling wife to some distance.

### **[s 100.2] Rescuing woman-folk from attack on modesty.—**

The accused heard the cries for help of his widowed sister-in-law. He ran to her house with *gandasa*. He found the attacker grappling with her and trying to outrage her modesty. The accused saved her from his clutches and inflicted a *gandasa* blow while he was going to run away. The act of the accused was held to have been done in the exercise of the right of private defence. The accused was acquitted.<sup>465</sup>

### **[s 100.3] CASES.—Exceeding the right.—**

The accused was being chased. He assaulted the chaser. The latter died. The injuries found on the person of the deceased were more grievous than those on the body of the accused. It was held that the accused exceeded his right of private defence his conviction was altered from under section 300 to one under section 304, Part I.<sup>466</sup> Whenever accused-party sustains injuries in the same occurrence and when the injuries are grievous in nature it is incumbent upon the prosecution to explain the injuries on the person of the accused.<sup>467</sup> Where the accused might have acted on self-defence in the beginning, but once the deceased was. The prosecution party consisted of four members. They carried blunt weapons. They assembled in front of the house of the accused. They came as aggressors. The accused suffered a bone deep injury on his head. The accused fired a single gunshot which caused death of one of the members on the prosecution side. The Court held that the right of private defence was not exceeded. The accused was given the benefit of doubt.<sup>468</sup>

Where the victim was throwing broken bricks at the accused who received simple injuries and the accused fired at him with his gun, it was held that he exceeded the right of private defence. There was no justification for using the gun in such as to cause death. Conviction under section 304 Part I was restored.<sup>469</sup> The right of private defence was not allowed to be claimed merely on the ground that there was a quarrel and the accused sustained injuries in the course of it.<sup>470</sup>

### **[s 100.4] No danger.—**

Two friends were sitting together and consuming liquor. They quarrelled and exchanged blows. One of them inflicted two knife wounds on vital parts of the body of the other. The victim had posed no danger to the attacker, nor did he have any weapons with him. The plea of self-defence was held to be not available. The accused was convicted for murder.<sup>471</sup> The deceased came to his land and asked the accused party to get the land measured and also tried to dislodge a pole fixed by them. There was no imminent danger to person or property from any act of the deceased. No injuries caused to anybody. It was held that there was no right of self-defence in the exercise of which the deceased could have been killed.<sup>472</sup>

### **[s 100.5] Private defence.—**

The accused was without any arms when the quarrel started. His action of picking up a stick lying on the ground and hitting the deceased on his head with it showed that he was trying to save himself from the attack by the deceased and his son. The accused was acquitted because the circumstances made it obvious that he was acting in self-defence.<sup>473</sup>

### **[s 100.6] Burden of proof.—**

The right of private defence is a plea which is available to the accused by the burden of proving the same is on him.<sup>474</sup> Proof by preponderance of probabilities is sufficient.<sup>475</sup> The burden of proving the right of private defence is not as onerous as that of the prosecution to prove its case. Preponderance of probabilities in favour of the defence is enough to discharge the burden.<sup>476</sup> While the prosecution is required to

prove its case beyond reasonable doubt, the accused need not establish his plea of self-defence to the hilt and may discharge onus by showing preponderance of probabilities in favour of that plea on basis of material on record, injuries received by an accused, imminence of threat to his safety, injuries caused by accused and circumstances whether accused had time to have recourse to public authorities were held to relevant factors. But number of injuries is not always considered to be a safe criterion for determining who the aggressor was. Whenever injuries are on the body of the accused person, presumption need not necessarily be raised that accused person had caused injuries in his defence. Defence has to further to show that injuries so caused on accused probabilise version of private defence. Non-explanation of injuries sustained by the accused at about the time of occurrence or in course of the altercation is a very important circumstance but mere non-explanation may not affect prosecution case in all cases.<sup>477</sup>.

The burden stands discharged by showing preponderance of probabilities in favour of the plea of the accused either by himself adducing positive evidence or by referring to circumstances transpiring from prosecution evidence itself. Proof beyond reasonable doubt is not required. The Court can consider the plea even if not taken by the accused if the material on record makes it available for consideration.<sup>478</sup>.

### **[s 100.7] Acid Attack (Clause 7).—**

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 against an act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act. This new category of offence (acid attacks) to which a right to private defence is inserted by the [Criminal Law \(Amendment\) Act, 2013](#)<sup>479</sup>. on the recommendation of Justice Verma Committee.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The [Indian Evidence Act](#), I of 1872, section 105.
3. *Musammatt Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
449. Ins. by Act 13 of 2013, section 2 (w.r.e.f. 3-2-2013).
450. *Scaria v State of Kerala*, AIR 1995 SC 2342 : 1995 Cr LJ 3990 .
451. *Wassan Singh v State of Punjab*, 1996 Cr LJ 878 : (1996) 1 SCC 458 [LNIND 1995 SC 1195] ; *Ghurey Lal v State of UP*, (2008) 10 SCC 450 [LNIND 2008 SC 1535] ; *Dattu Shamrao Valake v State of Maharashtra*, 2005 Cr LJ 2555 : AIR 2005 SC 2331 [LNIND 2005 SC 383] : (2005) 11 SCC 261 [LNIND 2005 SC 383] .
452. *Shive Chand v State of UP*, 1995 Cr LJ 3869 (All).

453. *Raja Ram*, 1977 Cr LJ NOC 85 (All); See also *Abdul Kadir v State of Assam*, 1985 Cr LJ 1898 : AIR 1986 SC 305 : 1985 Supp SCC 603 .
454. *Vishvas v State*, 1978 Cr LJ 484 : AIR 1978 SC 414 [LNIND 1978 SC 17] . Where there is no right of private defence, e.g. causing death of a person in order to prevent him from exercising lawful rights on lawfully held land, it would be punishable as murder, *Asha Ram v State of Rajasthan*, (1994) 2 Cr LJ 2431 (Raj).
455. *Vishnu Narayan Moger v State of Karnataka*, 1996 Cr LJ 1121 (Kant). Right of self-defence not available where the accused came prepared for fight and attack on unarmed victim, *Baj Singh v State of Punjab*, AIR 1995 SC 1953 : 1995 Cr LJ 3605 .
456. *Ram Saiya*, (1948) All 165 . See also *Kishore Shambudatta Mishra v State of Maharashtra*, AIR 1989 SC 1173 : 1989 Cr LJ 1149 : 1989 Supp (1) SCC 399 , discussed under the preceding section. Also *Raza Pasha v State of Maharashtra*, AIR 1984 SC 1793 [LNIND 1984 SC 255] : (1984) 4 SCC 441 [LNIND 1984 SC 255] : 1984 SCC (Cr) 605, the person shot at from house top and killed was outside the house at that time, held that there was no occasion for private defence, conviction under section 302. *Wassan Singh v State of Punjab*, (1996) 1 SCC 458 [LNIND 1995 SC 1195] : 1996 Cr LJ 878 , the accused surrounded by a number of assailants who were all inflicting injuries on him, he shot at them hitting an innocent person who died, right of private defence not lost thereby.
457. *Paras Nath Singh v State of Bihar and Hare Krishna Singh v State of Bihar*, 1988 Cr LJ 925 : AIR 1988 SC 863 [LNIND 1988 SC 139] : (1988) 2 SCC 95 [LNIND 1988 SC 139] , relying on *Onkar Nath Singh v State of UP*, AIR 1974 SC 1550 [LNIND 1974 SC 154] : 1974 Cr LJ 1015 : (1975) 3 SCC 276 [LNIND 1974 SC 154] : 1975 SCC (Cr) 884. But injuries suffered by the accused must be explained to be not caused in the same episode and if the information as to injuries on the accused is suppressed by the prosecution, the case becomes doubtful. *Prem Singh v State of HP*, 1989 Cr LJ 1903 HP. Dispute over turn for irrigation, both sides injured, the fact of injuries on the accused suppressed and FIR also filed after delay, acquittal, *Desa Singh v Punjab*, 1996 Cr LJ 3381 (P&H). Another similar dispute and death in mutual fight, *State of Haryana v Karan Singh*, 1996 Cr LJ 3698 (P&H).
458. *Purna Chandra Barik v State of Orissa*, 1988 Cr LJ 731 Orissa. Where the finding of the High Court was that the accused, a police sub-inspector, was assaulted by the deceased and his companions and he used firearms causing death under the apprehension that otherwise he would be killed, this finding was held by the Supreme Court to be neither perverse nor palpably erroneous, *State of Punjab v Ajaib Singh*, AIR 1995 SC 975 [LNIND 1995 SC 136] : (1995) 2 Cr LJ 1456 : (1995) 2 SCC 486 [LNIND 1995 SC 136] . Warding off two successive attacks by the complainant party, clause 'firstly' and 'secondly' were held to be attracted, *Raj Singh v State of Punjab*, (1995) 1 Cr LJ 680 P&H.
459. *Sudhir Mahanta v State of Orissa*, 1980 Cr LJ 1918 Orissa. *Kesha v State of Rajasthan*, AIR 1993 SC 2651 : 1993 Cr LJ 3674 : 1995 Supp (3) SCC 743 , accused causing death without any reasonable apprehension of death or grievous hurt to himself, punishment for exceeding the right of private defence. *Bajinath Mahton v State of Bihar*, 1993 Cr LJ 2833 : AIR 1993 SC 2323 : 1993 Supp (3) SCC 1 , right of private defence exceeded in a group clash. *Dular Mahto v State of Bihar*, AIR 1993 SC 927 : 1993 Cr LJ 165 : 1993 Supp (3) SCC 467 , excesses in a group clash. *Babu Ram v State of Haryana*, 1993 Cr LJ 3788 (P&H), the case is of doubtful validity because aggressors were given the benefit of the right of private defence.
460. *Parshottam Lal Ji Waghela v State of Gujarat*, 1992 Cr LJ 2521 : 1992 Supp (3) SCC 194 . In a direct confrontation, there was the possibility of the accused becoming apprehensive of danger to himself and his family, he fired only one round, plea of private defence sustained, *Harish Kumar v MP*, 1996 Cr LJ 3511 : AIR 1996 SC 3433 [LNIND 1996 SC 1027] .

461. *State of UP v Gajey Singh*, (2009) 11 SCC 414 [LNIND 2009 SC 437] : 2009 Cr LJ 2274 : (2009) 3 All LJ 647.
462. *Vishwanath v State of UP*, 1960 Cr LJ 154 , (1960) 1 SCR 646 [LNIND 1959 SC 150] : AIR 1960 SC 67 [LNIND 1959 SC 150] .
463. *Nankau v State*, 1977 Cr LJ NOC 116 (All).
464. *Vishwanath*, *supra*.
465. *Bhadar Ram v State of Rajasthan*, 2000 Cr LJ 1174 (Raj). *Badan Nath v State of Rajasthan*, 1999 Cr LJ 2268 (Raj), causing injury to save daughter from being raped.
466. *Suresh Singh v State of Haryana*, AIR 1999 SC 1773 [LNIND 1999 SC 324] : 1999 Cr LJ 2585 ; *Shankar Balu Patil v State of Maharashtra*, (2007) 12 SCC 450 : (2008) 2 SCC (Cr) 591, the nature of injuries upon the accused and those upon the deceased clearly showed that the accused exceeded the right of private defence. Conviction under section 304 Pt. I and seven years imprisonment justified.
467. *Manphool Singh v State of Haryana*, AIR 2018 SC 3995 .
468. *Gajey Singh v State of UP*, 2001 Cr LJ 2838 (All); *State of UP v Laeeq*, 1999 Cr LJ 2877 at p 2879 : AIR 1999 SC 1742 [LNIND 1999 SC 476] , no allegation of any fear, no right of private defence. *Ram Dhani v State*, 1997 Cr LJ 2286 (All), the accused exceeded the right of private defence in causing death in circumstances in which justification for causing death was not available to him.
469. *Shingara Singh v State of Haryana*, (2003) 12 SCC 758 [LNIND 2003 SC 945] : AIR 2004 SC 124 [LNIND 2003 SC 945] : 2004 Cr LJ 828 . *Anil Kumar v State of UP*, 2004 All LJ 3779 : 2005 SCC (Cr) 178, the accused receiving minor injuries fired at the deceased to cause death, private defence exceeded.
470. *Chacko v State of Kerala*, (2004) 12 SCC 269 [LNIND 2004 SC 86] : AIR 2004 SC 2688 [LNIND 2004 SC 86] : (2004) 1 KLT 884 [LNIND 2004 SC 86] .
471. *Inacio Manual Miranda v State of Goa*, 1999 Cr LJ 422 (Bom); *State of MP v Ramesh*, 2005 Cr LJ 652 SC : AIR 2006 SC 204 [LNIND 2005 SC 881] : (2005) 13 SCC 247 [LNIND 2005 SC 881] , the plea of private defence cannot be based on surmises and conjectures, and guess work. Father asked his son to get his gun and shoot because they were irresponsible, death and injuries caused, conviction for murder because there was no danger which could create the right of private offence.
472. *Dhaneswar Mahakud v State of Orissa*, 2006 Cr LJ 2113 SC : AIR 2006 SC 1727 [LNIND 2006 SC 252] : (2006) 9 SCC 307 [LNIND 2006 SC 252] .
473. *Krishanan v State of TN*, 2006 Cr LJ 3907 : AIR 2006 SC 3037 [LNIND 2006 SC 612] : (2006) 11 SCC 304 [LNIND 2006 SC 612] .
474. *Kishan Chand v State of UP*, (2007) 14 SCC 737 [LNIND 2007 SC 1190] : AIR 2008 SC 133 [LNIND 2007 SC 1190] : (2007) 6 All LJ 658.
475. *V Subramani v State of TN*, 2005 Cr LJ 1727 : AIR 2005 SC 1983 [LNIND 2005 SC 224] : (2005) 10 SCC 358 [LNIND 2005 SC 224] .
476. *Dharminder v State of HP*, AIR 2002 SC 3097 [LNIND 2002 SC 537] .
477. *Dharam v State of Haryana*, (2007) 15 SCC 241 [LNIND 2006 SC 1108] . *Raghibir Singh v State of Haryana*, (2008) 16 SCC 33 [LNIND 2008 SC 2228] : AIR 2009 SC 1223 [LNIND 2008 SC 2228] : (2009) 73 AIC 93 , right of private defence not made out on facts.
478. *James Martin v State of Kerala*, (2004) 2 SCC 203 [LNIND 2003 SC 1097] , *Laxman Singh v Poonam Singh*, (2004) 10 SCC 94 [LNIND 2003 SC 767] : AIR 2003 SC 3204 [LNIND 2003 SC 767] , *Kulwant Singh v State of Punjab*, (2004) 9 SCC 257 [LNIND 2004 SC 105] : AIR 2004 SC 2875 [LNIND 2004 SC 105] , right of private defence could not be proved. *Bagdi Ram v State of MP*, (2004) 12 SCC 302 [LNIND 2003 SC 1047] : AIR 2004 SC 387 [LNIND 2003 SC 1047] : 2004 Cr LJ

632 , no right of private defence to use dangerous arms when the other side was absolutely unarmed.

479. Act 13 of 2013, section 2 (w.e.f. 3-2-2013).

# THE INDIAN PENAL CODE

## CHAPTER IV GENERAL EXCEPTIONS

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The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.<sup>1</sup>

The following acts are exempted under the Code from criminal liability:–

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

## **Of the Right of Private Defence**

**[s 101] When such right extends to causing any harm other than death.**



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

### COMMENT.—

Any harm short of death can be inflicted in exercising the right of private defence in any case which does not fall within the provisions of section 100. Thus, where only some mischief was caused to the factory and some brickbats were thrown by agitating workers, the owner of the factory was not justified in killing a worker by firing a shot from his revolver. As there was no apprehension of death or grievous hurt to his person, the accused could not get the benefit of clauses (1) and (2) of [section 100](#) or [section 103, IPC, 1860](#). He had only a limited right of private defence to cause any other harm than death within the meaning of [section 101, IPC, 1860](#), and as such having exercised his right of private defence he was liable to be convicted under section 304-Part I, [IPC, 1860](#).<sup>480</sup> The accused was hit by a single brickbat or a stone piece and suffered a simple head-injury. After sometime he fired at the unarmed assailant causing grievous injury to his abdomen. The Supreme Court held that keeping in mind his simple hurt and the time gap between that and the gunshot wound caused by him, his action was a retaliation rather than act of private defence. His conviction under section 326 was accordingly upheld.<sup>481</sup> The right of private defence was held to have been exceeded where a member of the opposite side was killed after snatching his pistol.<sup>482</sup> The person who died came along with his brothers to stage a fight with the accused because of an earlier act of insult on the part of the accused. A single stab wound was administered to him, which fell upon his lower abdomen, of which he died. The accused and his wife were also injured in the process. It was held that the accused had not exceeded his right of private defence.<sup>483</sup>

When dealing with questions relating to right of private defence of the body this section and section 100 should be read together.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .

2. The [Indian Evidence Act](#), I of 1872, section 105.

3. *Musammat Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).

4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).

5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).

480. *Mahinder Paul v State*, 1979 Cr LJ 584 : AIR 1979 SC 577 [LNIND 1978 SC 389] ; See also *Yogendra Morarij*, 1980 Cr LJ 459 : AIR 1980 SC 660 .

481. *State of J&K v Hazara Singh*, 1980 Cr LJ 1501 : 1981 SCC (Cr) 537 : AIR 1981 SC 451 .

482. *Ghunnu v State of UP*, 1980 Cr LJ (NOC) 15 : AIR 1980 SC 864 : 1980 All LJ 397 : 1979 SCC (Cr) 438. See also *Chuhar Singh v State of Punjab*, AIR 1991 SC 1052 : 1991 Supp (2) SCC 455 : 1991 SCC (Cr) 1066, where the circumstances did not justify causing death by gun shot injuries. *Bandlamuddi Atchuta Ramaiah v State of AP*, AIR 1997 SC 496 : 1996 Cr LJ 4463 death of

neighbour caused at a time when there was no apprehension of loss of life or property. Right exceeded. Conviction under section 304 Part I.

483. *Ramchandran v State*, [1994 Cr LJ 2741](#) (Mad); *Sri Kumar Sharma v State of Bihar*, [2003 Cr LJ 2258](#) (Pat), right of private defence found justified, hence, acquittal.

# THE INDIAN PENAL CODE

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The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.<sup>1</sup>

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The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
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5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

## **Of the Right of Private Defence**

**[s 102] Commencement and continuance of the right of private defence of the body.**

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

#### **COMMENT.—**

This section indicates when the right of private defence of the body commences and till what time it continues. The right commences as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, or commit the offence, although the offence may not have been committed, but not until that there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues.<sup>484</sup> It commences and continues as long as danger to body lasts. The extent to which the exercise of the right will be justified will depend not on the actual danger but on whether there was reasonable apprehension of such danger. There must be an attempt or threat and consequent thereon an apprehension of danger; but it is not a mere idle threat, or every apprehension of a rash or timid mind, that will justify the exercise of the right. Reasonable ground for the apprehension is requisite. Suppose the threat to proceed from a woman or child and to be addressed to a strong man, in such a case there could hardly be a reasonable apprehension. Present and imminent danger seems to be meant.<sup>485</sup> The person exercising a right of private defence must consider whether the threat to his person or his property is real and immediate. If he reaches the conclusion reasonably that the threat is immediate and real, he is entitled to exercise his right. In the exercise of his right, he must use force necessary for the purpose and he must stop using the force as soon as the threat has disappeared. So long as the threat lasts and the right of private defence can be legitimately exercised; if the danger is continuing, the right is there; if the danger or the apprehension about it has ceased to exist there is no longer the right of private defence.<sup>486</sup> Right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, or commit the offence, although the offence may not have been committed but not until that there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues.<sup>487</sup> There is no right to inflict punishment on the wrong-doer for his past act after the apprehension has ceased to exist. The right of defence ends with the necessity for it. So where the deceased was fleeing for his life, there was no justification to shoot him down. This would be a sheer case of murder and nothing else.<sup>488</sup> Where the testimony of the independent witness showed that the accused chased one of the deceased who fled away from the scene of occurrence and killed him, they could not be said to have right of private defence as regards the killing of such deceased.<sup>489</sup> Though the nature of apprehension depends upon the nature of weapon intended to be used or used, it cannot be said that as the complainant's party had only used *lathi*, the accused was not justified in using his spear especially when a blow with a *lathi* was aimed at a vulnerable part like the head.<sup>490</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
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484. *Sekar v State*, AIR 2002 SC 3667 [LNIND 2002 SC 628] : (2002) 8 SCC 354 [LNIND 2002 SC 628] .
485. M&M 78; *James Martin v State of Kerala*, (2004) 2 SCC 203 [LNIND 2003 SC 1097] : (2004) 1 KLT 513 [LNIND 2003 SC 1097] , explanation of the starting point of the right and its end point.
486. *Jai Dev v State of Punjab*, 1963 (1) Cr LJ 495 : AIR 1963 SC 612 [LNIND 1962 SC 249] .
487. *Laxman Singh v Poonam Singh*, AIR 2003 SC 3204 [LNIND 2003 SC 767] : (2004) 10 SCC 94 [LNIND 2003 SC 767] ; *Bishna v State of WB*, AIR 2006 SC 302 [LNIND 2005 SC 873] : (2005) 12 SCC 657 [LNIND 2005 SC 873] ; *Babulal Bhagwan Khandare v State of Maharashtra*, AIR 2005 SC 1460 [LNIND 2004 SC 1203] : (2005) 10 SCC 404 [LNIND 2004 SC 1203] .
488. *State of UP v Ramswarup*, 1974 Cr LJ 1035 : AIR 1974 SC 1570 [LNIND 1974 SC 472] ; *Onkarnath*, 1974 Cr LJ 1015 : AIR 1974 SC 1550 [LNIND 1974 SC 154] .
489. *State of UP v Roop Singh*, AIR 1996 SC 215 : 1996 Cr LJ 410 .
490. *Deo Narain*, 1973 Cr LJ 677 : AIR 1973 SC 473 [LNIND 1972 SC 572] . See also *Sarejerac Sahadeo Gaikwad v State*, 1997 Cr LJ 3839 (Bom).

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**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

## **Of the Right of Private Defence**

**[s 103] When the right of private defence of property extends to causing death.**



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

**First.—Robbery;**

**Secondly.—House-breaking by night;**

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

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

#### **State Amendments**

**Karnataka.**—*The following amendments were made by Karnataka Act No. 8 of 1972, s. 2 (w.e.f. 7-10-1972).*

In its application to the State of Karnataka in s. 103(1) in clause Thirdly—

(i) after the words "mischief by fire", insert the words "or any explosive substance";

(ii) after the words "as a human dwelling, or", insert the words "as a place of worship or".

(2) after clause Fourthly, insert the following clause, namely:—

**Fifthly.**—Mischief by fire or any explosive substance committed on any property used or intended to be used for the purpose of Government or any local authority, statutory body or company owned or controlled by Government or railway or any vehicle used or adapted to be used for the carriage of passengers for hire or reward.

**Maharashtra.**—*The following amendments were made by Maharashtra Act No. 19 of 1971, s. 26 (w.e.f. 31-12-1971).*

In its application to the State of Maharashtra, In section 103, add the following at the end, namely:—

**"Fifthly.**—Mischief by fire or any explosive substance committed on any property used or intended to be used for the purposes of Government or any local authority, statutory body, company owned or controlled by Government, railway or tramway, or on any vehicle used or adapted to be used, for the carriage of passengers for hire or reward."

**Uttar Pradesh.**—*The following amendments were made by U.P. Act No. 29 of 1970, s. 2, w.e.f. 17-7-1970.*

In its application to the State of Uttar Pradesh, In section 103, after clause Fourthly, add the following clause, namely:—

**Fifthly.**—Mischief by fire or any explosive substance committed on—

(a) Any property used or intended to be used for the purpose of Government, or any local authority or other corporation owned or controlled by the Government, or

(b) any railway as defined in clause (4) of section 3 of the Indian Railways Act, 1890 or railways stores as defined in the Railways Stores (Unlawful Possession) Act, 1955, or

(c) any transport vehicle as defined in clause (33) of [section 2 of the Motor Vehicles Act, 1939](#).

## COMMENT.—

**Death caused in defence of property.**—Section 100 enumerates the cases in which the right of private defence of the body extends to the causing of death; this section enumerates the cases in which it extends to the causing of death in defence of property.

A person employed to guard the property of his employer is protected by sections 97, 99, 103 and 105 if he causes death in safeguarding his employer's property when there is reason to apprehend that the person whose death has been caused was about to commit one of the offences mentioned in this section or to attempt to commit one of those offences. A person whose duty it is to guard a public building is in the same position, that is to say, it is his duty to protect the property of his employer and he may take such steps for this purpose as the law permits. The fact that the property to be guarded is public property does not extend the protection given to a guard. Therefore, a police constable on guard duty at a magazine or other public building is not entitled to fire at a person merely because the latter does not answer his challenge.<sup>491</sup> The deceased, none of whom was in possession of any dangerous weapons, were harvesting crop on a plot of land with peaceful intention under the protection of police. The accused who claimed the crops did not approach the authorities for redress, although they had time to do so, sent away the police constables by a ruse and then attacked the deceased with guns and other dangerous weapons and shot them down at close range. It was held by the Supreme Court that the acts of the deceased did not amount to robbery and that the accused had no right of private defence of property.<sup>492</sup> The accused was in possession of the plots which were under litigation. Finding his opponent, a blind man, getting the plots ploughed, the accused asked him to stop ploughing. On this, 8–10 persons armed with spears and '*lathis*' proceeded towards him. The accused fired a shot from his gun causing death of his opponent, the blind man. The Court observed that a blind villager could not be thought of going to take possession of the plots without mobilising enough man power to deal with resistance likely to be put up by his adversary. It was held that in the circumstances the right of private defence of the person became available to the accused.<sup>493</sup>

In the words of the Supreme Court, the High Court committed an error in relation to the plea of self-defence raised on behalf of the accused to the effect that the incident took place at an open space. There is no law that the right of self-defence cannot be exercised in relation to an open space.<sup>494</sup> Reasonable force may be used in defence of property. It would not in general be reasonable to kill in defence of property alone.<sup>495</sup>

### [s 103.1] Trespasser.—

The right of private defence of property extending to causing of death is not available in cases of trespass on open land.<sup>496</sup>

### [s 103.2] Causing death while on patrol duty.—

The accused constable killed his head constable. The accused was doing his patrolling duty at the time on a bridge. He claimed to have fired at somebody whom he saw with firearm near the value tower, which was neither used for human dwelling nor for

custody of property. He did not plead that he entertained apprehension of death or grievous hurt. The Court said that the plea of private defence extending to the causing of death was not tenable.<sup>497</sup>

### [s 103.3] CASES.—

The accused did not close his flour mill on the day of "Bharat Bandh", organized by some political parties. The activists entered the mill and demanded closure. They were armed with sharp-edged weapons. They threatened and assaulted the person who was operating the mill. He fired at them resulting in death of two persons and also injuring some innocent people. His property was set on fire. It was held that the acts of the accused were within the reasonable limits of the right of private defence. His conviction was set aside.<sup>498</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The *Indian Evidence Act*, I of 1872, section 105.
3. *Musammatt Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
491. *Jamuna Singh*, (1944) 23 Pat 908.
492. *Gurdatta Mal*, AIR 1965 SC 257 [LNIND 1964 SC 30] : (1965) 1 Cr LJ 242 . *Champer v State of Orissa*, 1988 Cr LJ 1882 Orissa, wherein a land dispute, death was caused in excess of the right of private defence. *Mahabir Choudhary v State of Bihar*, AIR 1996 SC 1998 [LNIND 1996 SC 891] : 1996 Cr LJ 2860 , causing death in response to mischief to property, there being no fear of death or grievous hurt, held right exceeded. *Ram Bilas Yadav v State of Bihar*, AIR 2002 SC 530 [LNIND 2001 SC 2789] , irrigation dispute, appellants came with pre-determination and also more armed and did more harm than necessary. They were not entitled to any benefit under the section or to the benefit of section 300, exception 2.
493. *Chandra Shekhar Tiwari v State*, 1993 Cr LJ 2159 (All).
494. *Kishan Chand v State of UP*, (2007) 14 SCC 737 [LNIND 2007 SC 1190] : AIR 2008 SC 133 [LNIND 2007 SC 1190] : (2007) 6 All LJ 658.
495. *Kashi Ram v State of Rajasthan*, (2008) 3 SCC 55 [LNIND 2008 SC 187] : AIR 2008 SC 1172 [LNIND 2008 SC 187] .
496. *Jassa Singh v State of Haryana*, AIR 2002 SC 520 [LNIND 2002 SC 13] : 2002 Cr LJ 563 ; *Puttan v State of TN*, AIR 2000 SC 3405 (2) : 2000 SCC (Cr) 1504, the circumstances showed that the accused were entitled to private defence of property. But procurement of a lethal weapon, and the number of injuries inflicted by him showed that the accused crossed all frontiers of private defence. Conviction was altered to one under section 304 Part I. *Gokula v State of Rajasthan*, 1998 Cr LJ 4053 : AIR 1998 SC 3016 [LNIND 1998 SC 743] , two persons seen on the land were not shown to be trespassers, there was no question of any justification for causing their death in defence of property. The accused convicted for murder. Another

similar case, *Jotram v State of Rajasthan*, [1998 Cr LJ 1492](#) (Raj); *Arjunan v State of TN*, [1997 Cr LJ 2327](#) (Mad), in a sudden quarrel over the right to cut a tree, the accused gave a blow of the wooden reaper on the head of the deceased causing death, the tree stood on the land of the deceased and was in his actual physical possession, the right of private defence not available to the accused. See also *Govind Singh v State of Rajasthan*, [1997 Cr LJ 1562](#) (Raj), no proof of trespassing cattle, yet attack and killing, conviction under section 304, Part II.

497. *Bhupendra Singh A Chudasama v State of Gujarat*, [AIR 1997 SC 3790](#) [[LNIND 1997 SC 1378](#)] : [1998 Cr LJ 57](#) .

498. *James Martin v State of Kerala*, [\(2004\) 2 SCC 203](#) [[LNIND 2003 SC 1097](#)] .

# THE INDIAN PENAL CODE

## CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lied on the accused.<sup>1</sup>

The following acts are exempted under the Code from criminal liability:–

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

## **Of the Right of Private Defence**

**[s 104] When such right extends to causing any harm other than death.**

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

### COMMENT.—

This section applies in cases where an injury (but not death) is inflicted on the offender in the course of his committing the offences of theft, mischief, or criminal trespass by the person exercising the right of private defence. But the section does not apply to a case where death has been caused in exercise of the supposed right of private defence.<sup>499</sup> Even so where the accused had killed a person by exceeding his right of private defence of property under this section, his case would fall within the ambit of Exception-II to [section 300 IPC, 1860](#), and his offence would amount to culpable homicide not amounting to murder. He could not, therefore, be punished with a sentence of death. In the instant case the sentence was altered to one of life imprisonment.<sup>500</sup>

Sections 101 and 104 restrict the right of private defence in certain cases to voluntarily causing hurt or grievous hurt. Section 101 is a corollary to section 100, and this section to section 103.

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, [AIR 2004 SC 1966](#) [[LNIND 2004 SC 1370](#)] : [2004 Cr LJ 1778](#) : (2005) 9 SCC 71 [[LNIND 2004 SC 1370](#)] .

2. The [Indian Evidence Act](#), I of 1872, section 105.

3. *Musammatt Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).

4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).

5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).

499. *Ramram Mahton*, (1947) 26 Pat 550.

500. *Jai Bhagwan v State of Haryana*, [AIR 1999 SC 1083](#) [[LNIND 1999 SC 116](#)] : [1999 Cr LJ 1634](#) accused party was in possession of the land into which the other party entered for tilling it. The mother of the accused exhorted them and they murderously assaulted the deceased. The act amounted to criminal trespass within the meaning of section 411. The right of self-defence to the extent of causing death did not exist. The offence of murder was made out. *State of UP v Laeeq*, [AIR 1999 SC 1942](#) [[LNIND 1999 SC 447](#)] : [1999 Cr LJ 2879](#) exceeding the right of private defence, punishment under section 304.

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7. Act of a child under seven years (section 82).
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## **Of the Right of Private Defence**

**[s 105] Commencement and continuance of the right of private defence of property.**

**The right of private defence of property commences when a reasonable apprehension of danger to the property commences.**

**The right of private defence of property against theft continues till the offender has effected his retreat with the property or either**

**the assistance of the public authorities is obtained, or the property has been recovered.**

**The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.**

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

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

#### **COMMENT.—**

This section indicates when the right of defence of property commences and till what period it continues. It is similar to section 102.

#### **[s 105.1] First clause.—**

The right of private defence of property commences when a reasonable apprehension of danger to property commences. Before such apprehension commences the owner of the property is not called upon to apply for protection to the public authorities. The right commences not when the actual danger to the property commences but when there is reasonable apprehension of danger.<sup>501.</sup>

#### **[s 105.2] Second clause.—**

The right of private defence of property against theft continues till (1) the offender has affected his retreat with the property, or (2) the assistance of public authorities is obtained, or (3) the property has been recovered.<sup>502.</sup> An offender is to be considered as having affected his retreat when he has once got off having escaped immediate pursuit not having been made. A recapture of the plundered property, while it is in course of being carried away, is authorized, for the taking and retaking is one transaction. But when the offence has been committed and the property removed, a recapture after an interval of time by the owner or by other persons on his behalf, however justifiable, cannot be deemed an exercise of the right of defence of property. The recovery which the section contemplates seems to be a recovery either immediate or made before the offender has reached his final retreat.<sup>503.</sup> Where the appellants followed up tracks purporting to be those of their stolen cattle, and prior to the arrival of the police (for whose assistance one of their party had ridden away) proceeded to the complainants' village and fired at them, it was held that the appellants' right of private defence of their property had been put an end to by the successful retreat of the thieves, and that their

alleged rediscovery of the cattle in the complainants' possession could not revive that right.<sup>504.</sup>

### **[s 105.3] Third clause.—**

A rightful owner in peaceful possession of his land is entitled to defend his property against any person or persons who threaten to dispossess him. The law does not expect any cowardice on his part when there is real and imminent danger to his property from outside sources. Thus, a rightful owner is entitled to throw out, by using such force as would in the circumstances of the case appear to be reasonable necessary, any person who tries to invade his right to peaceful possession of his property. But if the trespasser has settled in the possession of the property, the recourse which the rightful person must adopt, is to recover possession in accordance with law and not by force. In such a case the trespasser would be entitled to defend his possession even against a rightful owner if the latter tries to evict him by use of force. But no hard and fast rule can be laid down in this behalf because much would depend on the facts of each case.<sup>505.</sup>

### **[s 105.4] Fourth clause.—**

In the case of criminal trespass and mischief the right of private defence ceases to exist as soon as the commission of these offences ceases.<sup>506.</sup>

### **[s 105.5] Fifth clause.—**

The right of private defence against house-breaking continues only so long as the house-trespass continues; hence, where a person followed a thief and killed him in the open, after the house-trespass had ceased, it was held that he could not plead the right of private defence.<sup>507.</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .

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501. *Chakradhar*, (1964) 2 Cr LJ 696 .

502. *Punjabrao*, (1945) Nag 881.

503. M & M 81; *Amar Singh*, AIR 1968 Raj 11 [LNIND 1966 RAJ 160] .

504. *Mir Dad*, (1925) 7 Lah 21.

505. *Maguni Charan Pradhan v State of Orissa*, (1991) 3 SCC 352 [LNIND 1991 SC 191] : 1991 (2) Crimes 261 (SC).

506. *Rajesh Kumar v Dharamvi*, 1997 Cr LJ 2242 : AIR 1997 SC 3769 [LNIND 1997 SC 445] , the accused came to the place of occurrence and attacked the complainant after the latter had already damaged the outer door of the house. It was held that the accused had no right of private defence.

507. *Balakee Jolahed*, (1868) 10 WR (Cr) 9; *Gulbadan v State*, (1885) PR No. 25 of 1885.

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6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:–

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the [Penal Code](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.<sup>2</sup>

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.<sup>3</sup>

**Applicability of General exceptions during investigation.**—In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under [IPC, 1860](#) as per Chapter IV of [IPC, 1860](#). If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.<sup>4</sup> Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under [IPC, 1860](#). This shall be done, by virtue of [section 6 of IPC, 1860](#). In the light of [section 6 of IPC, 1860](#), definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in [IPC, 1860](#) subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.<sup>5</sup>

## **Of the Right of Private Defence**

**[s 106] Right of private defence against deadly assault when there is risk of harm to innocent person.**

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

#### ILLUSTRATION

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

#### COMMENT.—

This section should be read in the light of section 100. Injury to innocent persons in the exercise of the right of defence is excusable under it.<sup>508.</sup>

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
  2. The *Indian Evidence Act*, I of 1872, section 105.
  3. *Musammatt Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
  4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
  5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
- <sup>508.</sup> *State of Karnataka v Madesha*, (2007) 7 SCC 35 [LNIND 2007 SC 918] : AIR 2007 SC 2917 [LNIND 2007 SC 921] , risk of harm to an innocent person in the exercise of the right of private defence. The court examined whether the right could be available to a person who caused the death of a man who had no role to play in the dispute.

## THE INDIAN PENAL CODE

### CHAPTER V OF ABETMENT

#### [s 107] Abetment of a thing.

A person abets the doing of a thing, who—

**First.**—Instigates any person to do that thing; or

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

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

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

#### ILLUSTRATION

A, a public officer is authorised 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.

#### COMMENTS.—

In common parlance, the word 'abet' means assistance, co-operation and encouragement and includes wrongful purpose. In *Corpus Juris Secundum*, vol I at p 306, the meaning of the word 'abet' is given as follows:

'To abet' has been defined as meaning to aid; to assist or to give aid; to command, to procure, or to counsel; to countenance; to encourage, counsel, induce, or assist; to encourage or to set another on to commit.

Used with 'aid'. The word 'abet' is generally used with the word 'aid' and similar words.

In order to bring a person abetting the doing of a thing, under any one of the clauses enumerated under section 107, it is not only necessary to prove that the person who has abetted has taken part in the steps of the transactions but also in some way or other he has been connected with those steps of the transactions which are criminal. The offence of abetment depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets.<sup>1</sup>

For the purposes of the first two clauses of this section it is immaterial whether the person instigated commits the offence or not or the persons conspiring together



actually carry out the object of the conspiracy.<sup>2</sup> It is only in the case of a person abetting an offence by intentionally aiding another to commit that offence that the charge of abetment against him would be expected to fail when the person alleged to have committed the offence is acquitted of that offence.<sup>3</sup> The Court noted that in *Faguna Kanta Nath v State of Assam*<sup>4</sup> the appellant was tried for an offence under section 165A for having abetted the commission of an offence by an officer, who was acquitted, and it was held that the appellant's conviction for abetment was also not maintainable. But subsequently in *Jamuna Singh v State of Bihar*,<sup>5</sup> it was considered not desirable to hold that an abettor cannot be punished if the person actually committing the offence is acquitted. The Court said that the abettor's guilt depends upon the nature of the offence abetted and the manner of abetment. It is only in cases of intentional aiding that the abettor would have to be acquitted with the principal offender.<sup>6</sup> Following this state of the rulings the Supreme Court ordered the acquittal of the single abettor when the main offender as also all other abettors already stood acquitted.

The Supreme Court has reiterated that before anybody can be punished for abetment of suicide, it must be proved that the death in question was a suicidal death.<sup>7</sup>

The Supreme Court held that the offence of abetment is a separate and independent offence. Where the offence is committed in consequence of the abetment but there is no provision for punishment of such abetment, the abettor is to be punished along with the offender for the original offence.<sup>8</sup>

Abetment is constituted by:

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

The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under [section 107, Indian Penal Code \(IPC\)](#), 1860. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation.<sup>9</sup>

### **[s 107.1] *Mens rea*.—**

In order to proceed against a person for criminal offence under section 107, prosecution must prove the element of *mens rea*. Negligence or carelessness or the facilitation cannot be termed to be abetment so as to punish the guilty as per the provision of penal laws.<sup>10</sup> In order to constitute abetment, the abettor must be shown to have "intentionally" aided to commission of the crime. Mere proof, that the crime charged could not have been committed without involvement and/or interposition of the alleged abettor is not enough compliance with the requirements of section 107. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of section 107.<sup>11</sup>

### **[s 107.2] Sting operation, *mens rea* and abetment.—**

In typical sting operations, though the operation is carried in the public interest, the same is generally done by instigating the accused. Hence the victim, who is otherwise innocent, is lured into committing a crime on the assurance of absolute secrecy and confidentiality of the transaction raising the potential question as to how such a victim can be held responsible for the crime which he would not have committed but for the enticement. In such circumstances, should the individual, i.e., the sting operator be held criminally liable for commission of the offence that is inherent and inseparable from the process by which commission of another offence is sought to be established? What about the operator who has *mens rea* or guilty intention to commit the offence? These are puzzling questions when there is an allegation that the sting operator is alleged to have committed the abetment of the offence. The Supreme Court in *Rajat Prasad v CBI*,<sup>12</sup> observed that a crime does not stand obliterated or extinguished merely because its commission is claimed to be in public interest. At the same time, the criminal intent (*mens rea*) behind the commission of the act will have to be established before the liability of the person charged with the commission of crime can be adjudged. The Court held that the questions whether the sting operation is a journalistic exercise and any criminal intent can be imputed are to be answered by the evidence of the parties.

**(1) Abetment by instigation.—First clause.**—A person is said to 'instigate' another to an act, when he actively suggests or stimulates him to the act by any means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement.<sup>13</sup>

### **[s 107.3] "Instigate" Meaning.—**

Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation. Thus, to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or 'urging forward'. The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction ... to keep irritating or annoying somebody until he reacts".<sup>14</sup> The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything. The abetment may be by instigation, conspiracy or intentional aid as provided in the three clauses of the section.<sup>15</sup> Instigate means the active role played by a person with a view to stimulate another person to do the thing. In order to hold a person guilty of abetting it must be established that he had intentionally done something which amounted to instigating another to do a thing.<sup>16</sup> Instigation may be of an unknown person.<sup>17</sup> A mere acquiescence or permission does not amount to instigation.<sup>18</sup>

### **[s 107.4] Wilful misrepresentation or wilful concealment.—**

Explanation 1 to this section says that a person who (1) by wilful misrepresentation, or (2) 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. The illustration is an example of instigation by 'wilful misrepresentation'. Instigation by 'wilful concealment' is where some duty exists which obliges a person to disclose a fact. The explanation to section 107 says that any wilful misrepresentation or wilful concealment of a material fact which he is bound to disclose, may also come within the contours of "abetment".<sup>19.</sup>

### **[s 107.5] CASES.—Direct instigation.—**

Where, of several persons constituting an unlawful assembly, some only were armed with sticks, and A, one of them, was not so armed, but picked up a stick and used it, B (the master of A), who gave a general order to beat, was held guilty of abetting the assault made by them.<sup>20.</sup>

### **[s 107.6] Suicide.—**

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.<sup>21.</sup> Deceased committed suicide by hanging himself because of alleged illicit relationship between his wife and the accused. Accused took the wife of deceased away from the house of her brother and kept her with him for four days. There is definitely a proximity and nexus between the conduct and behaviour of the accused and wife of deceased with that of suicide committed by the deceased.<sup>22.</sup> Where a married girl committed suicide by burning herself in her in-law's house, her in-laws were held guilty of abetment because they were persistently torturing her for inadequate dowry and had gone to the extent of accusing her of illegitimate pregnancy.<sup>23.</sup> "All these tortures and taunts", *Ray J* said,<sup>24.</sup> "Caused depression in her mind and drove her to take the extreme step of putting an end to her life by sprinkling kerosene oil on her person and setting it afire." In another case of the same kind a husband persistently demanded more money from his wife, quarrelling with her everyday. On the fateful day when she happened to say that death would have been better than this, she heard only this in reply that her husband would feel relieved if she ended her life. Immediately thereafter she set herself on fire. The husband was held guilty of instigating her to commit suicide.<sup>25.</sup> Mere harassment of wife by husband due to differences per se does not attract [section 306](#) read with [section 107, IPC, 1860](#).<sup>26.</sup>

Demand of loan amount by accused from deceased itself does not come within the scope of abetment as defined under section 107.<sup>27.</sup> Goading and intimidating a debtor with a view to pressurising him for repayment of the loan which brought about a suicide by the debtor immediately thereafter, was held as not amounting to abetment of suicide and, therefore, no case under section 306 read with section 34 was made out.<sup>28.</sup>

The accused told the other person "to go and die". It was held that this would not in itself satisfy the ingredients of instigation. Instigation has to be with *mens rea*. The suicide was committed two days after the quarrel between the accused and the deceased. This also showed that the suicide was not the direct result of the quarrel. The suicide note indicated that her husband was a frustrated man and given to drinking and suffered from great stress and depression.<sup>29.</sup>

The accused, a Motor Vehicle Inspector, beat up and abused a driver for not being able to produce necessary papers. The driver committed suicide. The Court said that it was not shown that he was guilty of any act of abetment within the meaning of section 107. The charge against him under section 107 was quashed.<sup>30</sup>

### **[s 107.7] Proof.—**

In *Chitresh Kumar Chopra v State (Govt. of NCT of Delhi)*,<sup>31</sup> the Supreme Court reiterated the legal position laid down in its earlier three judge bench judgment in the case of *Ramesh Kumar v State of Chhattisgarh*,<sup>32</sup> and held that where the accused by his acts or continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an instigation may be inferred. In order to prove that the accused abetted commission of suicide by a person, it has to be established that:

- (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and
- (ii) that the accused had the intention to provoke urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of *mens rea* is the necessary concomitant of instigation.<sup>33</sup>

### **[s 107.8] Threats.—**

Mere threats of involving the family in a false and frivolous case cannot be held to tantamount to instigation. By such threats it cannot be held that the accused instigated the deceased to commit suicide.<sup>34</sup>

### **[s 107.9] Test.—**

No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide.<sup>35</sup>

**(2) Abetment by conspiracy.—Second clause.**—'Conspiracy' consists in the agreement of two or more [persons] 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, is punishable if for a criminal object or for the use of criminal means.<sup>36</sup> It is not necessary 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.<sup>37</sup> Where parties concert together, and have a common object, the act of

one of the parties, done in furtherance of the common object and in pursuance of the concerted plan, is the act of all.<sup>38</sup>

Before the introduction of Chapter V-A, conspiracy, except in cases provided for by sections 121A, 311, 400, 401 and 402 of the Code, was a mere species of abetment when an act or an illegal omission took place in pursuance of that conspiracy, and amounted to a distinct offence for each distinct offence abetted by conspiracy.<sup>39</sup> For an offence under the second clause of this section a mere combination of persons or agreement is not enough; an act or illegal omission must take place in pursuance of the conspiracy. But for an offence under section 120A a mere agreement is enough if the agreement is to commit an offence.<sup>40</sup>

### [s 107.10] Abetment and Conspiracy-Difference between.—

Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done, an illegal act or an act which is not illegal, by illegal, means. It differs from other offences because mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated under [section 107, IPC, 1860](#).<sup>41</sup> There is no analogy between [section 120B](#) and [section 109, IPC, 1860](#). There may be an element of abetment in a conspiracy, but conspiracy is something more than an abetment. Offences created by [sections 109 and 120B, IPC, 1860](#) are quite distinct and there is no warrant for limiting the prosecution to only one element of conspiracy, that is, abetment when the allegation is that what a person did was something over and above that.<sup>42</sup>

**(3) Abetment by aid.—Third clause.—By act.**—A person, it is trite, abets by aiding, when by any act done either prior to, or at the time of the commission of an act, he intends to facilitate and does in fact facilitate the commission thereof, would attract the third clause of [section 107 of the IPC, 1860](#). Doing something for the offender is not abetment. Doing something with knowledge so as to facilitate him to commit the crime or otherwise would constitute abetment.<sup>43</sup> In order to constitute abetment by aiding within the meaning of the third paragraph of [section 107, IPC, 1860](#) the abettor must be shown to have intentionally aided the commission of the crime. A person may invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless it is shown that the invitation was extended with a view to facilitate the commission of the murder, it cannot be said that the person extending the invitation had abetted the murder. The language used in the section is "intentionally aids" and therefore, active complicity is the gist of the offence of abetment under the third paragraph of [section 107, IPC, 1860](#).<sup>44</sup> Abetment includes instigating any person to do a thing or engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omission to the doing of that thing. On facts held, in the instant case, there was no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide.<sup>45</sup> Where the principal offender killed the victim with a knife provided by the defendant who later claimed that he thought the knife would be used only to threaten, the defendant's conviction for murder was upheld, the Court of Appeal saying that the trial judge was correct to direct the jury that the defendant could be so convicted if he contemplated that the principal offender might kill or cause serious bodily harm to the victim as part of their joint enterprise.<sup>46</sup> It is not necessary that the abettor should be present at the place of the occurrence. It is also not necessary to show that the secondary party to a conspiracy to

murder intended the victim to be killed provided it is proved that he contemplated or foresaw the event as a real or substantial risk. Mere absence from the scene of the crime cannot amount to unequivocal communication of withdrawal from the enterprise. The accused was recruited with certain others by a person to kill his wife. At a predetermined time she was taken to the agreed place and killed. The accused was not present when the killing took place. It was held that he was rightly convicted in that he had lent encouragement and assistance before the commission of the crime.<sup>47</sup>.

#### **[s 107.11] By illegal omission.—**

The definition of abetment as given in [section 107, IPC, 1860](#) not only includes instigation but also intentional aiding by an illegal omission.<sup>48</sup> A lady advocate was attending the chamber of her senior advocate, the accused. On the day of the incident she was talking with the accused at her residence. At that moment in his presence, she poured kerosene on her and set herself on fire. The accused did nothing to save her. It was held that this did not amount to "illegal omission". He was held not guilty of abetment of suicide.<sup>49</sup>.

#### **[s 107.12] Abetment of offences under other laws.—**

The offence of aiding and abetting is applicable to all statutory offences unless specifically excluded by statute and accordingly it was held to apply to offences created by the [English] Public Order Act, 1986.<sup>50</sup> An abetment of an offence under the [Prevention of Corruption Act, 1988](#) can be made by a non-public servant. Abettors are to be prosecuted through trial under the [Prevention of Corruption Act](#).<sup>51</sup>.

#### **[s 107.13] CASES.—By act.—Presence at bigamous marriage.—**

Mere presence at the scene of a bigamous marriage without any evidence of instigation aiding or conspiring would not amount to abetment.<sup>52</sup> Where the accused held the *antarpāt* (screen) during the performance of a marriage which he knew was a void marriage under section 494, it was held that his act amounted to an act of intentional aid and fell within the purview of the explanation.<sup>53</sup>.

#### **[s 107.14] Presence at exhibition of blue film.—**

While entering into the parlour the accused was not aware of the type of film under exhibition. Immediately after his entry, the police raided the parlour and charge-sheeted him as an abettor of offences under sections 292, 293 and 294 because blue films were under exhibition. Following the Supreme Court decision in *Shri Ram v State of UP*,<sup>54</sup> the Court held that something more must be shown than mere presence.

#### **[s 107.15] Rape-Abetment.—**

In a case of custodial rape, husband and wife, taken into police custody, were kept in separate rooms. The wife was raped by the head constable while the accused

constable kept watch over the husband and did nothing hearing the shrieks of the victim wife. Conviction of the accused constable for abetting commission of rape was upheld.<sup>55</sup>

### **[s 107.16] Humiliation.—**

The accused persons caused constant humiliation to the deceased by accusing him of theft of things belonging to relatives at a marriage occasion. He committed suicide after returning from marriage. The humiliation caused by the accused was held to be not such as to amount to instigation which could have induced the deceased to commit suicide.<sup>56</sup>

### **[s 107.17] Attempt.—**

Merely because the section opens with the words "if any person commits suicide" it cannot be held that in a case of unsuccessful suicide there is no attempt to abet the commission of suicide. Suicide and its attempt on the one hand and abetment of commission of suicide and its attempt on the other are treated differently by law and therefore, the one who abets the commission of an unsuccessful attempt to commit suicide cannot be held to be punishable merely under [section 309](#) read with [section 116, IPC, 1860](#). To implement the scheme of law he has got to be held to be punishable under [section 306](#) read with [section 511, IPC, 1860](#). The Supreme Court has never laid down in *Satvir Singh*<sup>57</sup> that under no circumstance an offence under [section 306](#) read with [section 511, IPC, 1860](#) can be committed. The Supreme Court did not have occasion to consider whether a conviction for an offence of attempt to abet the commission of suicide is punishable under [section 306](#) read with [section 511, IPC, 1860](#).<sup>58</sup>

1. *Kartar Singh v State of Punjab*, (1994) 3 SCC 569 : 1994 Cr LJ 3139 : (1994) 1 SCC (Cr) 899.
2. *Faguna Kanto*, 1959 Cr LJ 917 : AIR 1959 SC 673 [LNIND 1959 SC 2].
3. *Jamuna Singh v State of Bihar*, AIR 1967 SC 553 [LNIND 1966 SC 202] : 1967 Cr LJ 541 .
4. *Faguna Kanta Nath v State of Assam*, AIR 1959 SC 673 [LNIND 1959 SC 2] : 1959 Supp 2 SCR 1 : 1959 Cr LJ 917 .
5. *Jamuna Singh v State of Bihar*, AIR 1967 SC 553 [LNIND 1966 SC 202] : 1967 Cr LJ 541 .
6. Citing *Madan Raj Bhandari v State of Rajasthan*, AIR 1970 SC 436 [LNIND 1969 SC 230] : 1970 Cr LJ 519 where the abettor of inducing miscarriage was acquitted when the person causing miscarriage was acquitted. In *Ex-Sepoy Haradhan Chakrabarty v UOI*, AIR 1990 SC 1210 [LNIND 1990 SC 57] : (1990) 2 SCC 143 [LNIND 1990 SC 57] , it was held that abetment fails when substantive offence is not established against the principal offender.
7. *Wazir Chand v State of Haryana*, AIR 1989 SC 378 [LNIND 1988 SC 569] : 1989 Cr LJ 809 : (1989) 1 SCC 244 [LNIND 1988 SC 569] .

8. *Kishori Lal v State of MP*, (2007) 10 SCC 797 [LNIND 2007 SC 800] : AIR 2007 SC 2457 [LNIND 2007 SC 800] : (2007) 3 Ker LT 259 .
9. *State of Punjab v Iqbal Singh*, AIR 1991 SC 1532 [LNIND 1991 SC 279] ; *Surender v State of Hayana*, (2006) 12 SCC 375 [LNIND 2006 SC 1015] ; *Kishori Lal v State of MP*, AIR 2007 SC 2457 [LNIND 2007 SC 800] ; and *Sonti Rama Krishna v Sonti Shanti Sree*, AIR 2009 SC 923 [LNIND 2008 SC 2319] .
10. *B Ammu v State of TN*, 2009 Cr LJ 866 (Mad); *Chitresh Kumar Chopra v State (Government of NCT of Delhi)*, AIR 2010 SC 1446 [LNIND 2009 SC 1663] .
11. *Shri Ram v State of UP*, AIR 1975 SC 175 [LNIND 1974 SC 349] : 1975 Cr LJ 240 (SC) quoted in *Jasobant Narayan Mohapatra v State of Orissa*, 2009 Cr LJ 1043 (Ori); *Benupani Behera v State*, 1992 (1) Ori LR 571 .
12. *Rajat Prasad v CBI*, 2014 Cr LJ 2941 : 2014 (5) Scale 574 [LNIND 2014 SC 467] .
13. *Amiruddin*, (1922) 24 Bom LR 534 [LNIND 1922 BOM 98] , 542.
14. *Chitresh Kumar Chopra v State (Government of NCT of Delhi)*, AIR 2010 SC 1446 [LNIND 2009 SC 1663] ; *Kishangiri Mangalgiri Goswami v State of Gujarat*, (2009) 4 SCC 52 [LNIND 2009 SC 193] : (2009) 1 SCR 672 [LNIND 2009 SC 193] : AIR 2009 SC 1808 2009 Cr LJ 1720.
15. *Goura Venkata Reddy v State of AP*, (2003) 12 SCC 469 [LNIND 2003 SC 1004] .
16. *Rajib Neog v State of Assam*, 2011 Cr LJ 399 (Gau).
17. *Ganesh D Savarkar*, (1909) 12 Bom LR 105 .
18. *Ram Singh v State*, 1997 Cr LJ 1406 (P&H), the complainant (wife) alleged that her in-laws incited her husband to marry over again. There was no evidence to show that they negotiated or arranged the second marriage, nor of their presence at the time of performance of second marriage. Complaint quashed. See also *Darbar Singh v State of Chhattisgarh*, 2013 Cr LJ 1612 (Chh).
19. *Netai Dutta v State of WB*, AIR 2005 SC 1775 [LNIND 2005 SC 208] : (2005) 2 SCC 659 [LNIND 2005 SC 208] ; *Amit Kapoor v Ramesh Chander*, JT 2012 (9) SC 312 [LNIND 2012 SC 564] : 2012 (9) Scale 58 [LNIND 2012 SC 564] : (2012) 9 SCC 460 [LNIND 2012 SC 564] .
20. *Rasookoollah*, (1869) 12 WR (Cr) 51. Where the accused had instigated three persons to commit murder, his conviction under sections 307/109 was upheld. *Hemant Kumar Mondal v State of WB*, 1993 Cr LJ 82 (Cal).
21. *M Mohan v State*, Represented by the Deputy Superintendent of Police, (2011) 3 SCC 626 [LNIND 2011 SC 246] : 2011 (3) Scale 78 [LNIND 2011 SC 246] : AIR 2011 SC 1238 [LNIND 2011 SC 246] : 2011 Cr LJ 1900 ; *Amalendu Pal v State of WB*, (2010) 1 SCC 707 [LNIND 2009 SC 1978] ; *Rakesh Kumar v State of Chhattisgarh*, (2001) 9 SCC 618 [LNIND 2001 SC 2368] , *Gangula Mohan Reddy v State of AP*, (2010) 1 SCC 750 [LNIND 2010 SC 3] ; *Thanu Ram v State of MP*, 2010 (10) Scale 557 [LNIND 2010 SC 962] : (2010) 10 SCC 353 [LNIND 2010 SC 962] : (2010) 3 SCC (Cr) 1502; *SS Chheena v Vijay Kumar Mahajan*, (2010) 12 SCC 190 [LNIND 2010 SC 746] : (2010 AIR SCW 4938); *Sohan Raj Sharma v State of Haryana*, AIR 2008 SC 2108 [LNIND 2008 SC 845] : (2008) 11 SCC 215 [LNIND 2008 SC 845] .
22. *Dammu Sreenu v State of AP*, AIR 2009 SC 3728 : (2009) 14 SCC 249 [LNIND 2009 SC 1356] .
23. *Gurbachan Singh v Satpal Singh*, (1990) 1 SCC 445 [LNIND 1989 SC 475] : AIR 1990 SC 209 [LNIND 1989 SC 475] : 1990 Cr LJ 562 .
24. *Ibid*, (1990) 1 SCC 445 [LNIND 1989 SC 475] at p 458 : AIR 1990 SC 209 [LNIND 1989 SC 475] : 1990 Cr LJ 562 .
25. *Brijlal v Prem Chand*, AIR 1989 SC 1661 [LNIND 1989 SC 243] : (1989) Supp 2 SCC 680. But where there was no evidence of dowry demands, self immolation by the married woman within



two years of marriage was held to be her personal act. *Padmabai v State of MP*, 1987 Cr LJ 1573 (MP).

26. *Bhagwan Das v Kartar Singh*, AIR 2007 SC 2045 [LNIND 2007 SC 650] ; *Dayalan Babu v State*, 2011 Cr LJ 359 (Mad).

27. *Paramjeetsingh Chawala v State of MP*, 2007 Cr Lj 3343 (MP).

28. *Vedprakash Bhajji v State of MP*, 1995 Cr LJ 893 (MP). *Netai Dutta v State of WB*, 2005 Cr LJ 1737 , no averment that the employer had withheld salary, or of aiding or instigating suicide, proceedings against employer to be quashed.

29. *Sanju v State of MP*, 2002 Cr LJ 2796 : AIR 2002 SC 1998 [LNIND 2002 SC 357] (Supp).

30. *Bura Manohar v State of AP*, 2002 Cr LJ 3322 (AP); *Central Bureau of Investigation v VC Shukla*, 1998 Cr LJ 1905 : AIR 1998 SC 1406 [LNIND 1998 SC 272] ; *Bapurao v State of Maharashtra*, 2003 Cr LJ 2181 (Bom).

31. *Chitresh Kumar Chopra v State (Govt. of NCT of Delhi)*, 2009 (16) SCC 605 [LNIND 2009 SC 1663] : AIR 2010 SC 1446 [LNIND 2009 SC 1663] .

32. *Ramesh Kumar v State of Chhattisgarh*, AIR 2001 SC 3837 [LNIND 2001 SC 2368] : (2001) Cr LJ 4724 .

33. *State of MP v Shrideen Chhatri Prasad Suryawanshi*, 2012 Cr LJ 2106 (MP); *Jetha Ram v State of Rajasthan*, 2012 Cr LJ 2459 (Raj); *Kailash Baburao Pandit v State of Maharashtra*, 2011 Cr LJ 4044 (Bom).

34. *Vijay Kumar Rastogi v State of Rajasthan*, 2012 Cr LJ 2342 (Raj).

35. *Praveen Pradhan v State of Uttaranchal*, (2012) 9 SCC 734 [LNIND 2012 SC 612] : 2012 (9) Scale 745 : 2012 Cr LJ 4925 .

36. Per Willes J, in *Mulcahy*, (1868) LR 3 HL 306, 317. See *Quinn v Leathem*, (1901) AC 495 , 529.

37. Explanation 5 to section 108; *Kalil Munda*, (1901) 28 Cal 797 .

38. *Ameer Khan*, (1871) 17 WR (Cr) 15.

39. *Tirumal Reddi*, (1901) 24 Mad 523, 546.

40. *Pramatha Nath v Saroj Ranjan*, AIR 1962 SC 876 [LNIND 1961 SC 400] : 1962 (1) Cr LJ 770 . See *CBI v VC Shukla*, AIR 1998 SC 1406 [LNIND 1998 SC 272] : (1998) 3 SCC 410 [LNIND 1998 SC 272] ; Abetment by conspiracy not made out.

41. *Noor Mohammad Mohd. Yusuf Momin v State of Maharashtra*, AIR 1971 SC 885 [LNIND 1970 SC 155] : (1970) 1 SCC 696 [LNIND 1970 SC 155] .

42. *State of AP v Kandimalla Subbaiah*, AIR 1961 SC 1241 [LNIND 1961 SC 95] : 1962 (1) SCR 194 [LNIND 1961 SC 95] .

43. *State of MP v Mukesh*, (2006) 13 SCC 197 [LNIND 2006 SC 844] : (2007) 2 SCC (Cr) 680.

44. *Shri Ram*, 1975 Cr LJ 240 : AIR 1975 SC 175 [LNIND 1974 SC 349] ; See also *Trilokchand*, 1977 Cr LJ 254 : AIR 1977 SC 666 [LNIND 1975 SC 278] .

45. *Rajbabu v State of MP*, (2008) 17 SCC 526 [LNIND 2008 SC 1499] : AIR 2008 SC 3212 [LNIND 2008 SC 1499] : 2008 Cr LJ 4301 : (2008) 69 AIC 65 .

46. *R v State*, (1989) 3 All ER 90 CA. The Court considered the decisions in *Chan Wing Sui v R*, (1984) 3 All ER 877 and *Hyam v DPP*, (1974) 2 All ER 41 . *Krishan Lal v UOI*, 1994 Cr LJ 3472 , intentional aiding.

47. *R v Rook*, (1993) 1 WLR 1005 (CA).

48. *Jamnalal Pande v State of MP*, 2010 Cr LJ 538 (MP).

49. *Surendra Agnihotri v State of MP*, 1998 Cr LJ 4443 (MP).

50. *R v Jefferson*, The Times, 22 June 1993 (CA).

51. *P Nallammal v State*, AIR 1999 SC 2556 [LNIND 1999 SC 660] : 1999 Cr LJ 3967 .

52. *Muthammal*, 1981 Cr LJ 833 (Mad) : 1981 Mad LW (Cr) 80 ; *Karuppiah v Nagawalli*, 1982 Mad LJ (Cr) 19 : 1982 Cr LJ 1362 : 2004 Cr LJ 4272 (Kar).
53. *Malan*, (1957) 60 Bom LR 428 .
54. *Shri Ram v State of UP*, AIR 1975 SC 175 [LNIND 1974 SC 349] : 1975 Cr LJ 240 .
55. *Ram Kumar v State of HP*, AIR 1995 SC 1965 : 1995 Cr LJ 3621 : 1995 Supp (4) SCC 67 .
56. *Neelam v State of AP*, 2003 Cr LJ (NOC) 160 (AP) : (2002) 2 Andh LT (Cr) 186 .
57. *Satvir Singh v State of Punjab*, AIR 2001 SC 2828 [LNIND 2001 SC 2168] : (2001) 8 SCC 633 [LNIND 2001 SC 2168] .
58. *Berin P Varghese v State*, 2008 Cr LJ 1759 .

# THE INDIAN PENAL CODE

## CHAPTER V OF ABETMENT

### [s 108] Abettor.

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

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

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

### ILLUSTRATIONS

- (a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.
- (b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

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

### ILLUSTRATIONS

- (a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.
- (b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.
- (c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.
- (d) A, intending to cause a theft to be committed, instigates B to take property

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

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

ILLUSTRATION

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

**Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.**

ILLUSTRATION

A 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.

**COMMENTS.—**

Abetment under the [IPC, 1860](#) involves active complicity on the part of the abettor at a point of time prior to the actual commission of the offence,<sup>59</sup> and it is of the essence of the crime of abetment that the abettor should substantially assist the principal culprit towards the commission of the offence. Nowhere, concurrence in the criminal acts of another without such participation therein as helps to give effect to the [criminal act](#) or purpose, is punishable under the Code.

'**Abettor**', under this section, means the person who abets (1) the commission of an offence, or (2) the commission of an act, which would be an offence if committed by a person not suffering from any physical or mental incapacity. In the light of the preceding section he must be an instigator or a conspirator or an intentional helper.

Merely because the accused's brother was carrying on criminal activities in her house, the appellant cannot be held guilty unless there is some material to show her complicity.<sup>60</sup>

**Explanation 1.—**If a public servant is guilty of an illegal omission of duty made punishable by the Code, and a private person instigates him, then he abets the offence of which such public servant is guilty, though the abettor, being a private person, could not himself have been guilty of that offence.

**Explanation 2.**—The question regarding abettor's guilt depends on the nature of the act abetted and the manner in which abetment was made. Commission of the act abetted is not necessary for the offence of abetment.<sup>61</sup> The offence of abetment is complete notwithstanding that the person abetted refuses to do the thing, or fails involuntarily in doing it, or does it and the expected result does not follow. The offence of abetment by instigation depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets.

**Explanation 3.**—This explanation makes it clear that the person abetted need not have any guilty intention in committing the act abetted. It applies to abetment generally and there is nothing to indicate that it applies only to abetment by instigation and not to other kinds of abetment.<sup>62</sup> The offence of abetment depends upon the intention of the person who abets and not upon the knowledge or intention of the person he employs to act for him.

**Explanation 4.**—This Explanation is to be read as follows: "When the abetment of an offence is an offence the abetment of such an abetment is also an offence". In view of Explanation 4 appended under [section 108 of the IPC, 1860](#) the contention of accused that there cannot be any abetment of an abetment and it is unknown to criminal jurisprudence, holds no water and merits no consideration.<sup>63</sup>

#### **[s 108.1] Abetment of attempt to commit suicide.—**

Section 306 prescribes punishment for abetment of suicide while section 309 punishes attempt to commit suicide. Abetment of attempt to commit suicide is outside the purview of section 306 and it is punishable only under section 309 and read with [section 107, IPC, 1860](#).<sup>64</sup>

#### **[s 108.2] Euthanasia.—**

Assisted suicide and assisted attempt to commit suicide are made punishable for cogent reasons in the interest of society. Such a provision is considered desirable to also prevent the danger inherent in the absence of such a penal provision.<sup>65</sup> But in *Aruna Ramchandra Shanbaug v UOI*,<sup>66</sup> the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court. In March 2018, a five-judge [Constitution](#) Bench of the Supreme Court gave legal sanction to passive euthanasia, permitting 'living will' by patients.<sup>67</sup>

#### **[s 108.3] Political murder.—**

The accused were poor villagers who were brainwashed and became tools for committing crimes. The leaders who called for revenge were not charge sheeted and they got off scot-free. Even their names were not revealed as they were political head-weight. Such leaders who prompt the followers to commit crimes should be charge sheeted for abetment of offence for murder.

#### **[s 108.4] Abetment is substantive offence.—**

The offence of abetment is a substantive one and the conviction of an abettor is, therefore, in no way dependent on the conviction of the principal.<sup>68</sup> It cannot be held in

law that a person cannot ever be convicted of abetting a certain offence when the person alleged to have committed that offence in consequence of the abetment has been acquitted. The question of the abettor's guilt depends on the nature of the act abetted and the manner in which the abetment was made. Under [section 107, IPC, 1860](#) a person abets the doing of an act in either of three ways which can be: instigating any person to do an act; or engaging with one or more person in any conspiracy for the doing of that act; or intentionally aiding the doing of that act. If a person instigates another or engages with another in a conspiracy for the doing of an act which is an offence, he abets such an offence and would be guilty of abetment under [section 115](#) or [section 116, IPC, 1860](#) even if the offence abetted is not committed in consequence of the abetment. The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to commit the offence. It is not necessary for the offence of abetment that the act abetted must be committed. This is clear from Explanation 2 and illustration (a) thereto, to [section 108, IPC, 1860](#). It is only in the case of a person abetting an offence by intentionally aiding another to commit that offence that the charge of abetment against him would be expected to fail when the person alleged to have committed the offence is acquitted of that offence.<sup>69</sup>

59. *Molazim Tewari*, (1961) 2 Cr LJ 266 .

60. *Marry Perara Lilly v State*, (1987) Supp1 SCC 182 : (1988) 1 SCC (Cr) 56.

61. *Sundar v State of UP*, 1995 Cr LJ 3481 (All), relying on *Sukh Ram v State of MP*, 1989 SCC (Cr) 357 : [AIR 1989 SC 772 \[LNIND 2016 MP 593\]](#) .

62. *Chaube Dinkar Rao*, (1933) 55 All 654 .

63. *Gundala Reddeppa Naidu v State of AP*, 2005 Cr LJ 4702 (AP).

64. *Gian Kaur v State of Punjab*, [AIR 1996 SC 946 \[LNIND 1996 SC 653\]](#) : (1996) 2 SCC 648 [[LNIND 1996 SC 653](#)] .

65. The Constitution Bench *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [[LNIND 1996 SC 653](#)] held that both euthanasia and assisted suicide are not lawful in India which overruled the two Judge Bench decision of the Supreme Court in *P Rathinam v UOI*, [AIR 1994 SC 1844 \[LNIND 1994 SC 1533\]](#) : 1994 (3) SCC 394 [[LNIND 1994 SC 1533](#)] . The Court held that the right to life under [Article 21 of the Constitution](#) does not include the right to die.

66. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [[LNIND 2011 SC 265](#)] : [AIR 2011 SC 1290 \[LNIND 2011 SC 265\]](#) .

67. *Common Cause (A Registered Society) v UOI*, (2018) 5 SCC 1 [[LNIND 2018 SC 87](#)] .

68. *Gallu Saheb v State of Bihar*, [AIR 1958 SC 813 \[LNIND 1958 SC 76\]](#) ; *Maruti Dada*, (1875) 1 Bom 15; *Sahib Ditta*, (1885) PR No. 20 of 1885.

69. *Jamuna Singh v State of Bihar*, [AIR 1967 SC 553 \[LNIND 1966 SC 202\]](#) : 1967 Cr LJ 541 .

# THE INDIAN PENAL CODE

## CHAPTER V OF ABETMENT

**70.**[s 108A] Abetment in India of offences outside India.

A person abets an offence within the meaning of this Code who, in **71.**[India], abets the commission of any act without and beyond **72.**[India] which would constitute an offence if committed in **73.**[India].

ILLUSTRATION<sup>74.</sup>

A, in **75.**[India], instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.]

### COMMENTS.—

This section makes an abetment in India by a citizen of India of an act committed in a foreign territory an offence punishable under the [IPC, 1860](#) if it would constitute an offence if committed in India. This illustration has become somewhat obsolete as Goa is now a part of Indian territory and not a foreign country as it was when this illustration was formulated.

**70.** Added by Act 4 of 1898, section 3.

**71.** The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1-4-1951), to read as above.

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**74.** This Illustration is inappropriate as Goa, which was a Portuguese colony at the time of the British imperial enactment now forms part of the Union Territory.—Ed.

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## THE INDIAN PENAL CODE

### CHAPTER V OF ABETMENT

**[s 109] Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.**

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

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

#### ILLUSTRATIONS

- (a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.
- (b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.
- (c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

#### COMMENTS.—

Under this section the abettor is liable to the same punishment as that which may be inflicted on the principal offender, (1) if the act of the latter is committed in consequence of the abetment, and (2) no express provision is made in the Code for the punishment of such an abetment. [Section 109, IPC, 1860](#) becomes applicable even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission.<sup>76</sup>

#### [s 109.1] Scope.—

This section lays down nothing more than that if the [IPC, 1860](#) has not separately provided for the punishment of abetment as such then it is punishable with the punishment provided for the original offence. Law does not require instigation to be in a particular form or that it should only be in words. The instigation may be by conduct. Whether there was instigation or not, is a question to be decided on the facts of each

case. It is not necessary in law for the prosecution to prove that the actual operative cause in the mind of the person abetting was instigation and nothing else, so long as there was instigation and the offence has been committed or the offence would have been committed if the person committing the act had the same knowledge and intention as the abettor. The instigation must be with reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Further, the act abetted should be committed in consequence of the abetment or in pursuance of the conspiracy as provided in the Explanation to section 109. Under the Explanation an act or offence is said to be committed in pursuance of abetment if it is done in consequence of (a) instigation (b) conspiracy or (c) with the aid constituting abetment. Instigation may be in any form and the extent of the influence which the instigation produced in the mind of the accused would vary and depend upon facts of each case. The offence of conspiracy created under section 120A is bare agreement to commit an offence. It has been made punishable under section 120B. The offence of abetment created under the second clause of section 107 requires that there must be something more than mere conspiracy. There must be some act or illegal omission in pursuance of that conspiracy. That would be evident by section 107 (second), "engages in any conspiracy ... for the doing of that thing, if an act or omission took place in pursuance of that conspiracy". The punishment for these two categories of crimes is also quite different. [Section 109, IPC, 1860](#) is concerned only with the punishment of abetment for which no express provision has been made in the [IPC, 1860](#). The charge under section 109 should, therefore, be along with charge for murder which is the offence committed in consequence of abetment. An offence of criminal conspiracy is, on the other hand, an independent offence. It is made punishable under section 120B for which a charge under section 109 is unnecessary and inappropriate.<sup>77</sup> Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment then the offender is to be punished with the punishment provided for the original offence. "Act abetted" in section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.<sup>78</sup> The commission of the offence of rape in a hut then in possession of the accused was held to be not sufficient in itself to show that the accused abetted the offence.<sup>79</sup>

### **[s 109.2] Distinct offence.—**

Section 109 is by itself creative of an offence though it is punishable in the context of other offences. The accused was charged under sections 300 and 149. The Court said that he could not be convicted under section 300 with the aid of section 109. That would cause great prejudice to the accused in his defence.<sup>80</sup> The offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.<sup>81</sup> A plain reading of sections 107–109 of the [IPC, 1860](#) would show that act complained of in order to amount to abetment has to be committed either prior to or at the time of commission of the offences.<sup>82</sup>

Where the appellant, the wife of a co-accused asked the prosecutrix, aged 15 years to go to the house of the accused and to bring *lassi*, and when the prosecutrix reached there, the co-accused, who were two in number, bolted the house from inside and committed rape on her, it was held that the appellant was guilty of the offence of abetment.<sup>83</sup>

### **[s 109.3] Failure to prevent is not abetment.—**

It has been held by the Supreme Court that a failure to prevent the commission of an offence is not an abetment of that offence. The Court said:

Where a person aids and abets the perpetrator of a crime at the very time when the crime is committed, he is a principal of the second degree and section 109 applies. But mere failure to prevent the commission of an offence is not by itself an abetment of that offence. Considering the definition in section 109 strictly, the instigation must have reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Section 109 is attracted even if the abettor is not present when the offence abetted is committed provided that he had instigated the commission of the offence or had engaged with one or more other persons in a conspiracy to commit an offence and pursuant to the conspiracy some act or illegal omission takes place or intentionally induced the commission of an offence by an act or illegal omission. In the absence of direct involvement, conviction for abetment is not sustainable. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment then the offender is to be punished with the punishment provided for the original offence. Section 109 applies even where the abettor is not present. Active abetment at the time of committing the offence is covered by section 109.

The words 'act abetted' as used in section 109 means the specific offence abetted. Mere help in the preparation for the commission of an offence which is not ultimately committed is not abetment within the meaning of section 109. 'Any offence' in section 109 means offence punishable under IPC or any special or local law. The abetment of an offence under the special or local law, therefore, is punishable under section 109. For constituting offence of abetment, intentional and active participation by the abettor is necessary.<sup>84.</sup>

When a person is charged with the abetment of an offence, it is normally linked with an offence which has been proved.<sup>85.</sup>

### **[s 109.4] Procedure.—Failure to frame Charge.—**

Section 109, IPC, 1860 is a distinct offence. Accused having faced trial for being a member of an unlawful assembly which achieved the common object of killing the deceased, could in no event be substitutedly convicted for offence under section 302, IPC, 1860 with the aid of section 109, IPC, 1860. There was obviously thus, not only a legal flaw but also a great prejudice to the appellant in projecting his defence.<sup>86.</sup> Section 109, IPC, 1860 is by itself an offence though punishable in the context of other offences.<sup>87.</sup>

### **[s 109.5] Sentence.—**

When the act abetted is committed as a consequence of abetment, the abettor should be punished with the punishment provided for the main offence with the help of section 109, IPC, 1860 and even if a charge under section 120B, IPC, 1860 had been framed, no separate sentence under that section is called for.<sup>88.</sup> No distinction should be made in the quantum of sentence to be awarded to the principal offender and that awarded to the abettor.<sup>89.</sup>

### **[s 109.6] Compoundable.—**

When an offence is compoundable under section 320 of the Cr PC, 1973, the abetment of such may be compounded in like manner.<sup>90.</sup>

## [s 109.7] CASES.—

Where the accused instigated others to assault with deadly weapons and not to kill, he should be convicted under [section 324](#) read with [section 109, IPC, 1860](#) and not under [section 307](#) read with [section 109, IPC, 1860](#).<sup>91</sup> Where the accused did not participate in the act of rape but kept watch while others were committing the offence, and thereby aided and abetted the commission of the crime instead of preventing it, he was held liable to be convicted under section 376 read with this section and not under section 376 read with section 34.<sup>92</sup>

## [s 109.8] Distinction between sections 109 and 114.—

There is a distinction between section 109 and section 114. Section 114 applies where a criminal first abets an offence to be committed by another person, and is subsequently present at its commission. Active abetment at the time of committing the offence is covered by section 109 and section 114 is clearly intended for an abetment previous to the actual commission of the crime, that is, before the first steps have been taken to commit it.<sup>93</sup>

76. *NMMY Momin*, 1971 Cr LJ 793 : AIR 1971 SC 885 [LNIND 1970 SC 155] . Where the accused suffered trial for the substantive offences of causing hurt under sections 328 and 272 by mixing ethyl and methyl alcohol but his direct involvement was not established, section 109 was not permitted to be pushed into service for convicting him for abetment; *Joseph v State of Kerala*, AIR 1994 SC 34 : 1994 Cr LJ 21 : 1995 SCC (Cr) 165.

77. *Arjun Singh v State of HP*, AIR 2009 SC 1568 [LNIND 2009 SC 252] : (2009) 4 SCC 18 [LNIND 2009 SC 252] : (2009) 1 SCR 983 [LNIND 2009 SC 252] : 2009 (2) Scale 302 [LNIND 2009 SC 252] : 2009 Cr LJ 1332 . See *Kehar Singh v The State (Delhi Admn.)*, AIR 1988 SC 1883 [LNIND 1988 SC 887] ; *Kulwant Singh v State of Bihar*, (2007) 15 SCC 670 [LNIND 2007 SC 820] .

78. *Amit Kapoor v Ramesh Chander*, JT 2012 (9) SC 312 [LNIND 2012 SC 564] : 2012 (9) Scale 58 [LNIND 2012 SC 564] : (2012) 9 SCC 460 [LNIND 2012 SC 564] .

79. *Ashok Nivruti Desai v State of Maharashtra*, 1995 Cr LJ 826 (Bom). *Jag Narain Prasad v State of Bihar*, 1998 Cr LJ 2553 : AIR 1998 SC 2879 [LNIND 1998 SC 387] , the accused charged with exhorting his son to kill the victim. The court said that it was not believable that an aged person would involve his son into crime for a trivial reason. Mere presence at the spot is not sufficient to involve all the family members who were there. See also *Manjula v Muni*, 1998 Cr LJ 1476 (Mad).

80. *Wakil Yadav v State of Bihar*, 1999 Cr LJ 5000 (SC). *Arjun Singh v State of HP*, (2009) 4 SCC 18 [LNIND 2009 SC 252] : AIR 2009 SC 1568 [LNIND 2009 SC 252] : 2009 Cr LJ 1332 , ingredients restated, the offence was not made out in this case.

81. *Amit Kapoor v Ramesh Chander*, JT 2012 (9) SC 312 [LNIND 2012 SC 564] : 2012 (9) Scale 58 [LNIND 2012 SC 564] : (2012) 9 SCC 460 [LNIND 2012 SC 564] ; *Kishangiri Mangalgiri Swami v State of Gujarat*, 2009 (4) SCC 52 [LNIND 2009 SC 193] .

82. *Jasobant Narayan Mohapatra v State of Orissa*, 2009 Cr LJ 1043 (Ori).

83. *Om Prakash v State of Haryana*, 2015 Cr LJ 586 : (2015) 2 SCC 84 [LNIND 2014 SC 887] .
84. *Kulwant Singh v State of Punjab*, (2007) 15 SCC 670 [LNIND 2007 SC 820] .
85. *Goura Venkata Reddy v State of AP*, (2003) 12 SCC 469 [LNIND 2003 SC 1004] , the appellant (accused) who instigated the other accused was convicted under section 304/109 and not under section 302/109.
86. *Wakil Yadav v State of Bihar*, (2000) 10 SCC 500 : 1999 AIR SCW 4694.
87. *Joseph Kurian Philip Jose v State*, (1994) 6 SCC 535 [LNIND 1994 SC 927] : AIR 1995 SC 4 [LNIND 1994 SC 927] : 1995 Cr LJ 502 .
88. *State of TN v Savithri*, 1976 Cr LJ 37 (Mad).
89. *Ashok Nivruti Desai v State of Maharashtra*, (1995) 1 Cr LJ 826 (Bom). *Vinit v State of Maharashtra*, (1994) 2 Cr LJ 1791 (Bom).
90. Section 320(3) Code of Criminal Procedure, 1973.
91. *Jai Narain*, 1972 Cr LJ 469 : AIR 1972 SC 1764 .
92. *Nawabkhan v State of MP*, 1990 Cr LJ 1179 MP; *Jai Chand v State of HP*, 2002 Cr LJ 2301 (HP); *Munuswamy v State of TN*, 2002 Cr LJ 3916 (SC) : AIR 2002 SC 2994 [LNIND 2002 SC 500] .
93. *Kulwant Singh v State of Bihar*, (2007) 15 SCC 670 [LNIND 2007 SC 820] ; *Mathurala Adi Reddy v State of Hyderabad*, AIR 1956 SC 177 : 1956 Cr LJ 341 .

## THE INDIAN PENAL CODE

### CHAPTER V OF ABETMENT

**[s 110] Punishment of abetment if person abetted does act with different intention from that of abettor.**

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

#### **COMMENTS.—**

This section provides that though the person abetted commits the offence with a different intention or knowledge yet the abettor will be punished with the punishment provided for the offence abetted. The liability of the person abetted is not affected by this section.

Explanation 3 to section 108 should be read in conjunction with this section. See illustration (d) to that section.

# THE INDIAN PENAL CODE

## CHAPTER V OF ABETMENT

### [s 111] Liability of abettor when one act abetted and different act done.

**When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:**

#### **Proviso.**

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

#### ILLUSTRATIONS

- (a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.
- (b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.
- (c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

#### COMMENTS.—

**Liability of abettor when different act done.**—This section proceeds on the maxim "every man is presumed to intend the natural consequences of his act". If one man instigates another to perpetrate a particular crime, and that other, in pursuance of such instigation, not only perpetrates that crime, but, in the course of doing so, commits another crime in furtherance of it, the former is criminally responsible as an abettor in respect of such last-mentioned crime, if it is one which, as a reasonable man, he must, at the time of the instigation, have known would, in the ordinary course of things, probably have to be committed in order to carry out the original crime. B and C instigated A to rob the deceased on his return to home after receiving a sum of money; whereupon A killed the deceased. A was convicted of murder and B and C of offences under sections 109, 302.<sup>94</sup> Where the act contemplated and instigated was no more than a thrashing with a *lathi*, but one of the assailants suddenly took out a spearhead

from his pocket and fatally stabbed the person who was to be thrashed, the others were not held liable for murder or abetment of murder.<sup>95</sup>

94. *Mathura Das*, (1884) 6 All 491 , 494.

95. *Girja Prasad*, (1934) 57 All 717 .



## THE INDIAN PENAL CODE

### CHAPTER V OF ABETMENT

**[s 112] Abettor when liable to cumulative punishment for act abetted and for act done.**

**If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.**

#### ILLUSTRATION

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

#### COMMENTS.—

This section extends the principle enunciated in the preceding section. Under it the abettor is punished for the offence abetted as well as the offence committed. A joint reading of sections 111, 112 and 133 make it abundantly clear that if a person abets another in the commission of an offence and the principal goes further thereafter and does something more which has a different result from that intended by the abettor and makes the offence an aggravated one, the abettor is liable for the consequences of the acts of his principal. The crux of the problem in an enquiry of this sort is whether the abettor as reasonable man at the time of his instigation or intentionally aiding the principal would have foreseen the probable consequences of his abetment.<sup>96.</sup>

<sup>96.</sup> *Re Irala Palle Ramiah*, 1957 Cr LJ 815 (AP).

## **THE INDIAN PENAL CODE**

### **CHAPTER V OF ABETMENT**

**[s 113] Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.**

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

#### **ILLUSTRATION**

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

#### **COMMENTS.—**

This section should be read in conjunction with section 111. Section 111 provides for the doing of an act different from the one abetted, whereas this section deals with the case when the act done is the same as the act abetted but its effect is different.

# THE INDIAN PENAL CODE

## CHAPTER V OF ABETMENT

### [s 114] Abettor present when offence is committed.

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

### COMMENTS.—

This section:

is only brought into operation when circumstances amounting to abetment of a particular crime have first been proved, and then the presence of the accused at the commission of that crime is proved in addition ... Section 114 deals with the case, where there has been the crime of abetment, but where also there has been actual commission of the crime abetted and the abettor has been present thereat, and the way in which it deals with such a case is this. Instead of the crime being still abetment with circumstances of aggravation, the crime becomes the very crime abetted. The section is evidently not punitory. Because participation *de facto*. ... may sometimes be obscure in detail, it is established by the presumption *Juris et de jure* that actual presence plus prior abetment can mean nothing else but participation. The presumption raised by s. 114 brings the case within the ambit of s. 34.<sup>97.</sup>

The meaning of this section is that if the nature of the act done constitutes abetment, then, if present, the abettor is to be deemed to have committed the offence, though in point of fact another actually committed it. The abetment must be complete apart from the mere presence of the abettor.<sup>98.</sup> The words "who if absent would be liable to be punished as an abettor" clearly show that abetment must be one prior to the commission of the offence and complete by itself.<sup>99.</sup> Where, for instance, a blow is struck by A, in the presence of, and by the order of, B, both are principals in the transaction. If A instigates B to murder, he commits abetment; if absent, he is punishable as an abettor, and if the offence is committed, then under section 109; if present, he is by this section deemed to have committed the offence and is punishable as a principal. This section applies to cases where a person abets the commission of the offence sometime before at a different place and also remains present at the time the offence is committed.<sup>100.</sup> But where a person is charged with abetment under this section for aiding in the Commission of an offence, e.g., [section 300 IPC, 1860](#) and the person charged as the principal offender is acquitted on the ground that he had not committed the offence in question, no further question arises regarding abettor's liability.<sup>101.</sup>

Section 114 is not applicable in every case in which the abettor is present at the commission of the offence abetted. While section 109 is a section dealing generally with abetment, section 114 applies to those cases only in which not only is the abettor present at the time of the commission of the offence but abetment has been committed prior to and independently of his presence.<sup>102.</sup>

### [s 114.1] Sections 34 and 114.—

The distinction between sections 34 and 114 is a very fine one. According to section 34, where a [criminal act](#) is done by several persons, in furtherance of the common intention of all, each of them is liable as if it were done by himself alone; so that if two or more persons are present, aiding and abetting in the commission of a murder each will be tried and convicted as a principal, though it might not be proved which of them actually committed the act. Section 114 refers to the case where a person by abetment, previous to the commission of the act, renders himself liable as an abettor, is present when the act is committed, but takes no active part in the doing of it.<sup>103</sup> A mere direction from one person to another and the carrying out of that direction by the other may be only instigation of the latter's act and may not be a case of a joint act falling under section 34.<sup>104</sup> Accused provided an axe to his son who assaulted the victim leading to his death. It was not a pre-meditated action on the part of main accused and appellant supplied axe instantaneously without considering its pros and cons. Conviction of appellant on charge of abetment (section 114) is not maintainable.<sup>105</sup>

**1. 'Present'.—**It is not necessary that the party should be actually present, an ear or eye witness of the transaction; he is, in construction of law, present, aiding and abetting, if, with the intention of giving assistance, he be near enough to afford it, should occasion arise. A conspirator, who, while his friends enter into a house and loot it, stands and watches outside in pursuance of the common design, does not escape liability under the section.<sup>106</sup> Where, therefore, a person watched at the door of a house while a murder was being committed inside he would be guilty of murder.<sup>107</sup>

#### **[s 114.2] Section 376 read with Section 114.—**

In order to bring home such conviction under [section 376, IPC, 1860](#) read with [section 114, IPC, 1860](#) there must be evidence on record to show: (a) that there was abetment of rape to be committed; (b) that the abettors have factually abetted the commission of rape; and (c) that they were present at the time when the commission of rape took place.<sup>108</sup>

97. *Barendra Kumar Ghosh*, (1924) 52 IA 40, 53 : 27 Bom LR 148, 159 : 52 Cal 197.

98. *Krishnaswami Naidu*, (1927) 51 Mad 263. See *Malanrama v State of Maharashtra*, ILR 1958 Bom 700 [LNIND 1957 BOM 189] : 1960 Cr LJ 1189 where it was held in the circumstances of the case that the mere presence of the accused at the ceremony knowing that the offence of bigamy was being committed and the throwing the holy rice over the couple did not amount to abetment of bigamy notwithstanding that one of the accused persons distributed pan after the ceremony. Followed in *CS Vardachari v CS Shanti*, 1987 Cr LJ 1048 over similar facts.

99. *Sital*, (1935) 11 Luck 384.

100. *Nanboo v Kedar*, AIR 1962 MP 91 [LNIND 1961 MP 109].

101. *Mahommed Jasimuddin*, 1982 Cr LJ 1510 (Gau). See also *State v Naroshbhai Haribhai Tandel*, 1997 Cr LJ 2783 (Guj).

102. *Kulwant Singh v State of Bihar*, (2007) 15 SCC 670 [LNIND 2007 SC 820].

103. *Jan Mahomed*, (1864) 1 WR (Cr) 49; *Nga Po Kyone*, (1933) 11 Ran 354.

104. *MA Reddy v State*, AIR 1956 SC 177 : 1956 Cr LJ 341 .
105. *Muklesur Rahaman v State*, 2010 Cr LJ 4488 . Also see, *Kalubhai Maganbhai Vaghela v State of Gujarat*, 2009 Cr LJ 2317 (Guj).
106. *Khandu v State*, (1899) 1 Bom LR 351 , 355.
107. *Sidharth v State of Bihar*, AIR 2005 SC 4352 [LNIND 2005 SC 752] : (2005) 12 SCC 545 [LNIND 2005 SC 752] : 2005 Cr LJ 4499 : (2006) 1 SCC (Cr) 175. Also see *Mukati Prasad Rai alias Mukti Rai v State IR*, 2005 SC 1271 : (2004) 13 SCC 144 : (2005) 1 SCC (Cr) 69; *Awadh Mahto v State of Bihar*, 2007 Cr LJ 342 (Pat).
108. *Mangiya v State of Rajasthan*, 2000 Cr LJ 4814 (Raj).

# THE INDIAN PENAL CODE

## CHAPTER V OF ABETMENT

**[s 115] Abetment of offence punishable with death or imprisonment for life—if offence not committed.**

Whoever abets the commission of an offence punishable with death or <sup>109.</sup> [imprisonment for life] shall, if that offence be not committed in consequence of the abetment, and no express provision<sup>1</sup> is made by this Code for the punishment of such abetment,<sup>2</sup> be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

**If act causing harm be done in consequence.**

**and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.**

### ILLUSTRATION

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or <sup>110.</sup> [imprisonment for life]. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

### COMMENT.—

This section punishes the abetment of certain offences which are either not committed at all, or not committed in consequence of abetment or only in part committed.

When more than ten persons are instigated to commit an offence punishable with death, the offence comes under this section as well as under section 117. Abetment under this section need not necessarily be abetment of the commission of an offence by a particular person against a particular person. <sup>111.</sup>

**1. 'Express provision'.—**This refers to sections in which specific cases of abetment of offences punishable with death or imprisonment for life are dealt with. <sup>112.</sup>

**2. 'Such abetment'.—**These words refer to the abetment of the offence specified in the section itself, namely an offence punishable with death or imprisonment for life, and only sections 121 and 131 provide for the punishment of the abetment of such offence. <sup>113.</sup>

109. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).
110. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).
111. *Dwarkanath Goswami*, (1932) 60 Cal 427 ; *Lavji Mandan v State*, (1939) 41 Bom LR 980 .
112. *Ibid.*
113. *Lavji Mandan*, (1939) 41 Bom LR 980 .

# THE INDIAN PENAL CODE

## CHAPTER V OF ABETMENT

**[s 116] Abetment of offence punishable with imprisonment— if offence be not committed.**

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

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

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

### ILLUSTRATIONS

- (a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.
- (b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.
- (c) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.
- (d) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

### COMMENT—

**Where abetted offence not committed.**—This section provides for the abetment of an offence punishable with imprisonment. There is no corresponding provision in the Code relating to abetment of an offence punishable with fine only.

Three different states of fact may arise after an abetment—



(1) No offence may be committed. In this case the offender is punishable under sections 115 and 116 for the mere abetment to commit a crime.

(2) The very act at which the abetment aims may be committed, and will be punishable under sections 109 and 110.

(3) Some act different but naturally flowing from the act abetted may be perpetrated, in which case the abettor will fall under the penalties of sections 111, 112 and 113.

### **[s 116.1] Section 116 and Section 306.—**

[Section 116, IPC, 1860](#) is "abetment of offence punishable with imprisonment if offence be not committed". But the crux of the offence under section 306 itself is abetment. In other words, if there is no abetment there is no question of the offence under section 306 coming into play. It is inconceivable to have abetment of an abetment. Hence, there cannot be an offence under [section 116](#) read with [section 306, IPC, 1860](#).<sup>114</sup> The Supreme Court has never laid down in *Satvir Singh*<sup>115</sup> that under no circumstance an offence under [section 306](#) read with [section 511 IPC, 1860](#) can be committed. The Supreme Court did not have occasion to consider whether a conviction for an offence of attempt to abet the commission of suicide is punishable under [section 306](#) read with [section 511, IPC, 1860](#). Merely because the section opens with the words "if any person commits suicide" it cannot be held that in a case of unsuccessful suicide there is no attempt to abet the commission of suicide. Suicide and its attempt on the one hand and abetment of commission of suicide and its attempt on the other are treated differently by law and, therefore, the one who abets the commission of an unsuccessful attempt to commit suicide cannot be held to be punishable merely under [section 309](#) read with [section 116, IPC, 1860](#). To implement the scheme of law he has got to be held to be punishable under [section 306](#) read with [section 511, IPC, 1860](#).<sup>116</sup>

<sup>114</sup>. *Satvir Singh v State of Punjab*, AIR 2001 SC 2828 [LNIND 2001 SC 2168] : (2001) 8 SCC 633 [LNIND 2001 SC 2168] : 2001 Cr LJ 4625 : (2002) 1 SCC (Cr) 48.

<sup>115</sup>. *Supra*.

<sup>116</sup>. *Berin P Varghese v State*, 2008 Cr LJ 1759 (Ker).

# THE INDIAN PENAL CODE

## CHAPTER V OF ABETMENT

**[s 117] Abetting commission of offence by the public or by more than ten persons.**

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

### ILLUSTRATION

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

### COMMENT—

**Abetting by public or more than ten persons.**—Abetment has a reference both to the person or persons abetted, and to the offence or offences the commission of which is abetted. This section deals with former, whatever may be the nature of the offence abetted, while section 115 deals with the latter without having regard to the person or persons abetted.<sup>117.</sup>

Under this section it will be sufficient to show any instigation or other mode of abetment, though neither the effect intended, nor any other effect follows from it. The gravamen of a charge under this section is the abetment itself, the instigation to general lawlessness, not the particular offence of which the commission is instigated.<sup>118.</sup> The section covers all offences and is a general provision for abetment of any number of persons exceeding ten. When more than ten persons are instigated to commit an offence punishable with death, the offence comes under section 115 as well as this section.<sup>119.</sup> Abetment of the commission of murder, whether by a single individual or by a class of persons exceeding ten, falls under section 115. In the latter case, it may fall under this section also, but as this section prescribes a lesser punishment, section 115 is the more appropriate provision for such an offence. Although both the sections are applicable, there cannot be separate sentences under the two sections for the same [criminal act](#), and the conviction should properly be under that section which inflicts the higher punishment.<sup>120.</sup>

**[s 117.1] Instigation is essential.—**

A mere intention or preparation to instigate is neither instigation nor abetment. In order to constitute an offence under this section by pasting leaflets it is necessary that either the public should have read the leaflets or they should have been exposed to public gaze.<sup>121.</sup>

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117. *Lavji Mandan v State*, (1939) 41 Bom LR 980 .
118. *Konda Satyavamma v State*, (1931) 55 Mad 90.
119. *Dwarkanath Goswami*, (1932) 60 Cal 427 .
120. *Lavji Mandan*, (1939) 41 Bom LR 980 .
121. *Parimal Chatterji*, (1932) 60 Cal 327 .

# THE INDIAN PENAL CODE

## CHAPTER V OF ABETMENT

**[s 118] Concealing design to commit offence punishable with death or imprisonment for life.**

**Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or <sup>122.</sup>[imprisonment for life],**

**<sup>123.</sup>[voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence or makes any representation which he knows to be false respecting such design,**

**If offence be committed – if offence be not committed.**

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

### ILLUSTRATION

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

### COMMENT—

**Concealing design to commit offence.**—Sections 118, 119 and 120 all contemplate the concealment of a design by persons other than the accused to commit the offence charged. These sections apply to the concealment of all offences except those which are merely punishable with fine. Under section 107 concealment of a design to commit an offence constitutes an abetment. There must be an obligation on the person concealing the offence to disclose.<sup>124.</sup> The Cr PC, 1973 creates such obligation in respect of several offences of a serious nature (sections 39 and 40 Cr PC, 1973). The concealment to be criminal must be intentional or at least with knowledge that it will facilitate the commission of an offence.

<sup>122.</sup> Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

<sup>123.</sup> Subs. by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51 (w.e.f. 27 October 2009).

124. *Bahadur*, (1882) PR No. 34 of 1882.

# THE INDIAN PENAL CODE

## CHAPTER V OF ABETMENT

**[s 119] Public servant concealing design to commit offence which it is his duty to prevent.**

**Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent;**

**125.** [voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence, or makes any representation which he knows to be false respecting such design;

**If offence be committed.**

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

**If offence be punishable with death, etc.**

**or, if the offence be punishable with death or 126.** [imprisonment for life], with imprisonment of either description for a term which may extend to ten years;

**If offence be not committed.**

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

### ILLUSTRATION

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

### COMMENT—

**Public servant concealing design to commit offence.**—Section 118 deals with persons who are not public servants. In this section the same principle is extended to public servants but with severe penalty.

125. Subs. by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51 (w.e.f. 27 October 2009).

126. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

## **THE INDIAN PENAL CODE**

### **CHAPTER V OF ABETMENT**

#### **[s 120] Concealing design to commit offence punishable with imprisonment.**

**Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,**

**If offence be committed—if offence be not committed.**

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

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

#### **COMMENT—**

**Punishment for concealing design.**—The basic principle of this section and section 118 is one and the same. Section 118 deals with offences punishable with death or imprisonment for life; this section deals with offences punishable with imprisonment. All offences except those punishable only with fine are included in these two sections.



## THE INDIAN PENAL CODE

### 1. CHAPTER V-A CRIMINAL CONSPIRACY

#### [s 120A] Definition of criminal conspiracy.

When two or more persons agree to do, or cause to be done,—

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

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

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

#### COMMENT—

Criminal conspiracy.—This chapter has introduced into the criminal law of India a new offence, viz., the offence of criminal conspiracy. It came into existence by the Criminal Law (Amendment) Act, 1913. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention.<sup>2.</sup> Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. 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 by unlawful means.<sup>3.</sup> A criminal conspiracy must be put to action inasmuch as so long a crime is generated in the mind of an accused, it does not become punishable. What is necessary is not thoughts, which may even be criminal in character, often involuntary, but offence would be said to have been committed thereunder only when that take concrete shape of an agreement to do or cause to be done an illegal act or an act which although not illegal by illegal means and then if nothing further is done the agreement would give rise to a criminal conspiracy.<sup>4.</sup>

#### [s 120A.1] Ingredients.—

The ingredients of this offence are—

- (1) that there must be an agreement between the persons who are alleged to conspire; and
- (2) that the agreement should be
  - (i) for doing of an illegal act, or
  - (ii) for doing by illegal means an act which may not itself be illegal.<sup>5</sup> Meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is *sine qua non* of criminal conspiracy.<sup>6</sup>

The most important ingredient of the offence being, the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them as conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under [section 120-B of the Indian Penal Code, 1860 \(IPC, 1860\)](#).<sup>7</sup>

#### **[s 120A.2] Elements of Criminal Conspiracy.—**

- (a) an object to be accomplished,
- (b) a plan or scheme embodying means to accomplish that object,
- (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and
- (d) in the jurisdiction where the statute required an overt act.<sup>8</sup>

**1. Two or more persons needed.**—To constitute the offence of conspiracy there must be an agreement of two or more persons to do an act which is illegal or which is to be done by illegal means for one cannot conspire with oneself. In *Topandas v State of Bombay*,<sup>9</sup> which has been cited by the Supreme Court with approval in *Haradhan Chakrabarty v UOI*,<sup>10</sup> it was laid down that "two or more persons must be parties to such an agreement and one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself." The question of a single person being convicted for an offence of conspiracy was considered in *Bimbadhar Pradhan v The State of Orissa*,<sup>11, 12</sup> and held that It is not essential that more than one person should be convicted of the offence of criminal conspiracy. It is enough if the court is in a position to find that two or more persons were actually concerned in the criminal conspiracy. In the Red fort Attack Case<sup>13</sup> the Supreme Court found that it was nothing but a well-planned conspiracy, in which apart from sole appellant, some others were also involved and convicted the sole appellant for criminal conspiracy.<sup>14</sup> Under the common law since husband and wife constitute one person there cannot be any conspiracy to commit an offence if husband and wife are the only parties to an agreement.<sup>15</sup> "It seems rather odd that though husband and wife by

themselves alone cannot be convicted of an offence of conspiracy for agreeing to commit an offence but if two of them commit the self-same substantive offence they can be convicted of that offence".<sup>16</sup> Fortunately this state of law does not exist in India, where husband and wife by themselves alone can be parties to a criminal conspiracy. Where the husband is a party with some others in a conspiracy and his wife joined him in that with knowledge that he was involved with others to commit an unlawful act, she would be guilty of the conspiracy.<sup>17</sup> Since conspiracy requires at least two persons, where two or more named persons only were charged and all but one of them were acquitted, the remaining accused could not be convicted under [section 120B, IPC, 1860](#), as he could not have conspired with himself.<sup>18</sup> In a similar case before the Supreme Court, a military major was tried for theft of military goods along with nine others who were supposed to have abetted him. He was found guilty along with one more accused and the rest were acquitted. On his appeal, the High Court quashed the judgment of the Court martial because there was no proof that he had removed the wheel drums. He was reinstated. In view of the acquittal and reinstatement of the main accused, the matter of his co-accused came before the Supreme Court. He too was ordered to be acquitted and reinstated.<sup>19</sup> The same rule obtained under the English common law provided two named persons were tried together.<sup>20</sup> This rule has now been abolished by section 5(8) of the Criminal Law Act, 1977 which provides that unless conviction of one becomes inconsistent with the acquittal of the other even one of the two conspirators can be convicted, e.g., where one was acquitted for want of sanction or on ground of being an exempted person. The Bombay High Court has taken the same view in a case. Thus, where of the two accused one was a public servant and he had to be acquitted as he was prosecuted without obtaining sanction under [section 197, Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#), the other could still be convicted on a charge of conspiracy as the acquittal of the other accused was not on facts but on technical ground and in spite of evidence establishing the factum of conspiracy.<sup>21</sup>

The circumstances in which a single person can be tried and convicted have been thus, stated in *Kenny*:<sup>22</sup> "But though there must be plurality of conspirators, it is not necessary that all should be brought to trial together. One person may be indicted, alone, for conspiring with other persons who are not in custody, or who are even unknown to the indictors. Indeed, some of the conspirators may be unknown to the rest, provided all are acting under the directions of one leader. There need not be communication between each conspirator and every other, provided there be a design common to all."<sup>23</sup> Thus, a wife knowing that her husband was involved with others in a conspiracy, agreed with him that she would join the conspiracy and play her part, it was held that she thereby became guilty of conspiracy notwithstanding that the only person with whom she actually concluded the agreement was her husband.<sup>24</sup>

**2. Agreement is gist of the offence.**—The gist of the offence is the bare engagement and association to break the law, whether any act be done in pursuance thereof by the conspirators or not.<sup>25</sup> Meeting of minds is essential. Mere knowledge or discussion is not sufficient.<sup>26</sup> It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but the presence of an agreement to carry out the object of the intention, is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.<sup>27</sup> In the absence of an agreement, a mere thought to commit a crime does not constitute the offence.<sup>28</sup> The offence of conspiracy is a substantive offence. It renders the mere agreement to commit an offence punishable even if no offence takes place pursuant to the illegal agreement.<sup>29</sup> The object in view or the methods employed should be illegal, as defined in section 43, (*supra*). A distinction is drawn between an agreement to

commit an offence and an agreement of which either the object or the methods employed are illegal but do not constitute an offence. In the case of the former, the criminal conspiracy is completed by the act of agreement; in the case of the latter, there must be some act done by one or more of the parties to the agreement to give effect to the object thereof, that is, there must be an overt act. An express agreement need not be proved. Evidence relating to transmission of thoughts leading to sharing of thought relating to the unlawful act is sufficient.<sup>30</sup> A wrong judgment or an inaccurate or incorrect approach or poor management by itself, even after due deliberations between Ministers or even with Prime Minister, by itself cannot be said to be a product of criminal conspiracy.<sup>31</sup> A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.<sup>32</sup>

The meeting of the minds to form a criminal conspiracy has to be proved by adducing substantive evidence, in cases where the circumstantial evidence is incomplete or vague.<sup>33</sup>

### **[s 120A.3] Actus reus.—**

The *actus reus* in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to give effect to an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other.<sup>34</sup>

### **[s 120A.4] Participation.—**

It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences.<sup>35</sup> To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial act.<sup>36</sup> Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy.<sup>37</sup> The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a causal agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts.<sup>38</sup>

### [s 120A.5] Overt act.—

No overt act is necessary.<sup>39</sup> Where the allegation against the third accused was that he was merely standing nearby when the other accused committed the murder, he cannot be charged for an offence under [sections 302/120B, IPC, 1860](#), in the absence of any other reliable evidence.<sup>40</sup> In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event, unless the Statute so requires, no overt act is necessary to be proved by the prosecution because in such a fact-situation criminal conspiracy is established by proving such an agreement.<sup>41</sup> When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.<sup>42</sup> Where the conspiracy alleged is with regard to the commission of a serious crime as contemplated by section 120-B read with the proviso to sub-section (2) of section 120A, then the mere proof of an agreement is enough to bring about conviction under section 120B and the proof of any overt act by the accused or by any of them would not be necessary.<sup>43</sup> The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable.<sup>44</sup>

It is not an ingredient of the offence under this section that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Where the accused are charged with having conspired to do three categories of illegal acts, the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They can all be held guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.<sup>45</sup> Where the agreement between the accused is a conspiracy to do or continue to do something which is illegal, it is immaterial whether the agreement to do any of the acts in furtherance of the commission of the offence do not strictly amount to an offence. The entire agreement must be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve.<sup>46</sup> It is not necessary that each member of a conspiracy must know each other or all the details of the conspiracy.<sup>47</sup> It is also not necessary that every conspirator must have taken part in each and every act done in pursuance of a conspiracy.<sup>48</sup> It is, however, necessary that a charge of conspiracy should contain particulars of the names of the place or places where it was hatched, persons hatching it, how was it hatched and what the purpose of the conspiracy was.<sup>49</sup>

In the matter<sup>50</sup> of the assassination of the then Prime Minister of India, Smt. Indira Gandhi, one of the two actual killers and two conspirators were brought to trial. Both the conspirators were away from the scene of the crime. One of them was acquitted by the Supreme Court. His movements after the incident were not properly proved. The documents recovered from his custody did not indicate any agreement between him and the other accused. They only showed his agitated mind which was in the grip of an avenging mood. This is not enough to establish an agreement with anybody. On the other hand, about *Kehar Singh*, it was shown that he was having secret talks with one of the actual killers, that they were trying all the time to keep themselves away from their wives and children, they avoided the company of the other members of the family and on being asked what they were talking about, they remained mysterious. These facts were sufficient to show that they were planning something secret. This was enough to constitute a *prima facie* evidence of conspiracy within the meaning of [section 10 of the Evidence Act, 1872](#) and to bring them within the jacket of punishment of all for the act of one.

Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available; offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.<sup>51</sup> Thus, a conspiracy is an inference from circumstances. There cannot always be much direct evidence about it. Conspiracy can be inferred even from the circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.<sup>52</sup> It is manifest that the meeting of minds of two or more persons is a *sine qua non* but it may not be possible to establish by direct evidence. Its existence and objective can be inferred from the surrounding circumstances and parties conduct. It is necessary that the incriminating circumstances must form a chain of events, from which a conclusion about the accused's guilt could be drawn. The help of circumstantial evidence is necessary because a conspiracy is always hatched in secrecy. It becomes difficult to locate any direct evidence.<sup>53</sup> A businessman was in great need of money for completing the construction of a theatre complex. He was approached by a person who told him that his financier friend would help him with money. This was followed by a number of meetings between him and the team of financiers during which documents were executed and money released in cash which cash was found to be counterfeit currency. Every member of the team was held to be guilty of conspiracy and of cheating under section 420.<sup>54</sup> Seizure of unexplained currency notes from the possession of a person who claimed to be the owner of the money was held to be not sufficient to connect him with the person who was the main accused of smuggling currency, though he was a relative of the main accused.<sup>55</sup>

Where a bank accountant dishonestly agreed with others to conceal dishonour of cheques purchased by the bank and thus, causing risk to the economic interests of the bank, he was held guilty of conspiring to defraud whatever his motive or underlying purpose might have been (he contended that he acted in the interest of the bank) and even though he had no desire to harm the victim and no loss was actually caused.<sup>56</sup> Officials of a nationalised bank, in violation of departmental instructions, allowing advance credits on banker's cheques to the account of a customer dealing in securities. Advance credits were allowed before the cheques were sent for clearance and in some cases even before the cheques were received. This allowed the customer to take pecuniary advantage by overdrawing money from his account which he was not entitled to. Public funds were thus, misused. It was held that a criminal conspiracy between bank officials and the customer stood proved. One of them was acquitted because no conclusive evidence could be found against him.<sup>57</sup>

A criminal conspiracy can be proved by circumstantial evidence or by necessary implication. A smaller conspiracy may be the part of a larger conspiracy. It was held on facts that a criminal conspiracy was established when officials of two public sector banks acted in such a way that the transaction appeared to be an inter-banking transaction relating to call money which the borrowing bank was supposed to retain with itself but the transaction was in fact meant to help a private party to use public funds for private purpose.<sup>58</sup> Where the accused, an LIC agent, was charged with cheating the LIC by entering into conspiracy with the co-accused, a Development Officer, on the allegation that insurance policies were got issued on the basis of fake and forged documents and he received premium commission and bonus in respect of those policies, the accused was entitled to be acquitted because the forging was done by the co-accused without the knowledge and consent of the accused. Bonus, Commission, etc., in respect of those policies were credited to his account only in the normal course.<sup>59</sup> A 'vaid' and an 'up-vaid' who, in conspiracy with others made bogus

medical bills for government servants and got them duly passed through their Ayurvedic *Aushadhalaya* for payment of 30 per cent of the amount of the bills, were caught in a trap and the tainted money was recovered from the accused. One of the accused died during the pendency of appeal. Conviction of the other under sections 120B/468 was held to be proper.<sup>60</sup>

A group of friends went to a club for fun and frolic. One of them (the main accused) suddenly fired at the bar mate for her refusal to serve drinks. The others were unaware of the accused carrying a loaded pistol. They had stayed at the club for about two and a half hours. The Court said that this could not constitute an evidence of conspiracy. The Court also said that the fact that the group members dispersed separately and also helped to retrieve the murder weapon would not suggest conspiracy for murder.<sup>61</sup>

#### **[s 120A.6] Same verdict in respect of each not necessary.—**

It has been held that the rule that both parties to a conspiracy had to be convicted or acquitted has been abrogated by the Criminal Law Act, 1977 (English). The important question is whether there is a material difference in the evidence against the two.<sup>62</sup>

#### **[s 120A.7] Sections 34 and 120A.—**

There is not much substantial difference between conspiracy as defined in section 120A and acting on a common intention, as contemplated in section 34. While in the former, the gist of the offence is bare engagement and association to break the law even though the illegal act does not follow, the gist of the offence under section 34 is the commission of a [criminal act](#) in furtherance of a common intention of all the offenders, which means that there should be unity of criminal behaviour resulting in something, for which an individual would be punishable, if it were all done by himself alone.<sup>63</sup> Another point of difference is that a single person cannot be convicted under section 120A and, therefore, where all the accused except one were acquitted, the Supreme Court ordered his acquittal also,<sup>64</sup> whereas under section 34, read with some other specific offence, a single person can be convicted because each is responsible for the acts of all others.

#### **[s 120A.8] Sections 107 and 120A.—**

For an offence under this section a mere agreement is enough if the agreement is to commit an offence. But, for an offence under the second clause of section 107 an act or illegal omission must take place in pursuance of the conspiracy and a mere agreement is not enough.<sup>65</sup>

**3. How proved (section 120A IPC, 1860 and section 10 Evidence Act, 1872-Doctrine of agency).—**There is no difference between the mode of proof of the offence of conspiracy and that of any other offence, it can be established by direct evidence or by circumstantial evidence. But [section 10 of the Evidence Act](#) introduces the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the coconspirators. When men enter into an agreement for an unlawful end, they become ad-hoc agents for one another and have made a partnership in crime. The said section reads: "Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common

intention, after the time when such intention was first entertained by any one of them is a relevant fact against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was party to it."

The section can be analysed as follows: "(1) There shall be a *prima facie* evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a coconspirator and not in his favour."<sup>66</sup>.

Since conspiracy is often hatched up in utmost secrecy it is mostly impossible to prove conspiracy by direct evidence. It has, oftener than not, to be inferred from the acts, statements and conduct of the parties to the conspiracy.<sup>67</sup> The circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.<sup>68</sup> If it is proved that the accused pursued, by their acts, the same object often by the same means, one performing one part of the act and the other another part of the same act so as to complete it with a view to attainment of the object which they were pursuing, the Court is at liberty to draw the inference that they conspired together to effect that object.<sup>69</sup> It should, however, be remembered that where there is no direct evidence, for example through the evidence of an approver, and the case for the prosecution is dependent on circumstantial evidence alone, it is necessary for the prosecution to prove and establish such circumstances as would lead to the only conclusion of existence of a criminal conspiracy and rule out the theory of innocence.<sup>70</sup> Thus, chairman of a large cooperative society cannot be punished vicariously for the acts of others as *mens rea* cannot be excluded in a criminal case. As a chairman he had to deal with various matters and it would have been impossible for him to look into every detail to find out if someone was committing any criminal breach of trust.<sup>71</sup> Similarly, a case of conspiracy to misappropriate cash entrusted to the accused is not made out merely from the audit report without any evidence of shortage on actual verification of cash as mistakes and even double entries may be made *bona fide* while preparing the account.<sup>72</sup> The onus is on the prosecution to prove the charge of conspiracy by cogent evidence, direct or circumstantial.<sup>73</sup> One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution.<sup>74</sup>

### **[s 120A.9] Inference of conspiracy.—**

It is a matter of common experience that direct evidence to prove conspiracy is rarely available.<sup>75</sup> Thus, it is extremely difficult to adduce direct evidence to prove conspiracy. Existence of conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases, indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself.<sup>76</sup> It can be a matter of inference drawn by the Court after considering whether the basic facts and circumstances on the basis of which inference is drawn have been



proved beyond all reasonable doubts and that no other conclusion except that of the complicity of Accused to have agreed to commit an offence is evident.<sup>77</sup> Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself.<sup>78</sup> This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do.<sup>79</sup>

One of the accused persons, a foreign national, was found staying in the country without valid passport and visa. His movement to various places with the main accused was established. A large quantity of arms and ammunition was recovered from the place occupied by the main accused. The Court said that an inference of criminal conspiracy could be drawn.<sup>80</sup> The Court also said that the appeal against conviction of the main accused was dismissed would not be sufficient to say that the charge of conspiracy against other accused would be deemed to be proved.<sup>81</sup> Circumstances proved before, during and after the occurrence of the crime have to be considered together to decide about the complicity of the accused.<sup>82</sup> Circumstantial evidence was based on the recovery of the scooter used by the executant and alleged to have been owned by a co-conspirator, but the recovery was not based on any information given by the accused, but by one witness. The Supreme Court held that no circumstantial evidence was proved against any of the conspirators.<sup>83</sup>

### **[s 120A.10] Circumstantial evidence, inference must be backed by evidence.—**

Most of the circumstances stated as against the accused were not proved. Merely based on the circumstance that the accused had filed a civil suit against the deceased for restraining him from doing a business he cannot be convicted. Moreover, there was no specific evidence as to who the conspirators were, where and when the conspiracy was hatched, what the specific purpose of such a conspiracy was and whether it was relating to the elimination of the deceased.<sup>84</sup> The law is well established that conspiracy cannot be proved merely on the basis of inferences. The inferences have to be backed by evidence.<sup>85</sup>

The Court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. However, while doing so, it must bear in mind that the meeting of minds is essential and mere knowledge or discussion would not be sufficient.<sup>86</sup> In *Mukesh v State for NCT of Delhi*, Criminal Appeal Nos. 607–608 of 2017, (popular as Nirbhaya Case) the criminal conspiracy was proved by the sequence of events and the conduct of the accused.

In the conspiracy for assassination of the former PM (Rajiv Gandhi) one of the accused persons at one point of time in his confessional statement said that he had a strong suspicion that Rajiv Gandhi was the target of the accused persons. The Court said that this suspicion did not make him a member of the conspiracy. His association, however strong with the main conspirators would not make him a member of the conspiracy by itself. But those who were in the thick of the conspiracy, for example, one who purchased the battery for explosion of human body, their conviction for the main offence was proper. But mere association with LTTE was not sufficient nor the fact that messages about arrests were sent by certain persons.<sup>87.</sup>

#### **[s 120A.11] Contacts through telephone.—**

Where the case against the appellants A2 to A4 is that they had hatched a conspiracy with appellant A1 to kill the deceased and the case against A1 was proved as per the 'last seen theory', and to prove the conspiracy the prosecution relied on the circumstance that there were frequent phone calls among the accused some days around the date of murder, and the recovery of some vehicles; the Supreme Court held that the telephonic calls and the recovery may raise suspicion against the accused but mere suspicion by itself cannot take the place of proof.<sup>88.</sup>

#### **[s 120A.12] Between bank officials.—**

Criminal conspiracy was taken to be established when officials of two public sector banks acted in such a way that the transaction in question appeared to be an inter-banking transaction relating to call money which the borrowing bank was supposed to retain with itself. The transaction was in fact formalised for the purpose of helping a private party to use public funds for a private purpose.<sup>89.</sup>

#### **[s 120A.13] Approval of television serial.—**

The accused was the director of *Doordarshan*. The allegation against him was that he continued a serial which was approved at lower rates by an earlier director. Each director worked at different point of time. They did not work together. Their postings were official postings. It was difficult to infer any conspiracy between them for continuing the telecast. The investigation launched against the director was liable to be quashed.<sup>90.</sup>

1. Chapter VA (containing sections 120A and 120B) inserted by Act 8 of 1913, section 3.
2. *State through Superintendent of Police, CBI/SIT v Nalini*, reported in (1999) 5 SCC 253 [LNIND 1999 SC 526].
3. *Pratapbhai Hamirbhai Solanki v State of Gujarat*, (2013) 1 SCC 613 [LNIND 2012 SC 1033] : 2012 (10) Scale 237 [LNIND 2012 SC 1033] relying on *Ram Narayan Popli v Central Bureau of*

*Investigation*, (2003) 3 SCC 641 [LNIND 2003 SC 26] .

4. *State of MP v Sheetla Sahai*, 2009 Cr LJ 4436 : (2009) 8 SCC 617 : (2009) 3 SCC(Cr) 901.
5. *Yogesh v State of Maharashtra*, AIR 2008 SC 2991 [LNIND 2008 SC 979] : 2008 Cr LJ 3872 : (2008) 10 SCC 394 [LNIND 2008 SC 979] ; *S Arul Raja v State of TN*, reported in, 2010 (8) SCC 233 [LNIND 2010 SC 689] ; *Mohan Singh v State of Bihar*, AIR 2011 SC 3534 [LNIND 2011 SC 820] : 2011 Cr LJ 4837 : (2011) 9 SCC 272 [LNIND 2011 SC 820] ; *Central Bureau of Investigation Hyderabad v K Narayana Rao*, 2012 AIR SCW 5139 : 2012 Cr LJ 4610 : JT 2012 (9) SC 359 [LNIND 2012 SC 569] : (2012) 9 SCC 512 [LNIND 2012 SC 569] : 2012 (9) Scale 228 [LNIND 2012 SC 569] ; *Ajay Aggarwal v UOI*, (AIR 1993 SC 1637 [LNIND 1993 SC 431] : 1993 AIR SCW 1866 : 1993 Cr LJ 2516 ) : (1993) 3 SCC 609 [LNIND 1993 SC 431] .
6. *Rajiv Kumar v State of UP*, AIR 2017 SC 3772 [LNIND 2017 SC 367] .
7. *Pratapbhai Hamirbhai Solanki v State of Gujarat*, (2013) 1 SCC 613 [LNIND 2012 SC 1033] : 2012 Mad LJ (Cr) 532 : 2012 (10) Scale 237 [LNIND 2012 SC 1033] ; *Damodar v State of Rajasthan*, (2004) 12 SCC 336 [LNIND 2003 SC 803] ; *Kehar Singh v State (Delhi Admn)*, (1988) 3 SCC 609 [LNIND 1988 SC 887] ; *State of Maharashtra v Somnath Thapa*, (1996) 4 SCC 659 [LNIND 1996 SC 776] .
8. *Ram Narayan Popli v Central Bureau of Investigation*, (2003) 3 SCC 641 [LNIND 2003 SC 26] .
9. *Topandas v State of Bombay*, AIR 1956 SC 33 [LNIND 1955 SC 78] : 1956 Cr LJ 138 : (1955) 2 SCR 881 [LNIND 1955 SC 78] . The ruling in *Topandas* case, AIR 1956 SC 33 [LNIND 1955 SC 78] and *Fakhruddin* case, AIR 1967 SC 1326 [LNIND 1966 SC 307] were not followed in *Sanichar Sahni v State of Bihar*, (2009) 7 SCC 198 [LNIND 2009 SC 1350] : (2009) 3 SCC (Cr) 347, because here only one person was charged under section 120-B and for no other offence, and his co-accused was charged with another offence but not under section 120-B, the court said that the charge was not properly framed. In the earlier cases, more than one were charged with conspiracy, all but one were acquitted, the single one could not be convicted. He was convicted for murder which was proved against him.
10. *Haradhan Chakrabarty v UOI*, AIR 1990 SC 1210 [LNIND 1990 SC 57] : 1990 Cr LJ 1246 : (1990) 2 SCC 143 [LNIND 1990 SC 57] .
11. See also *Thakur H v State of HP*, 2013 Cr LJ 1704 (HP).
12. *Bimbadhar Pradhan v The State of Orissa*, AIR 1956 SC 469 [LNIND 1956 SC 25] .
13. *Mohd Arif v State of NCT of Delhi*, JT 2011 (9) SC 563 [LNIND 2011 SC 753] : (2011) 13 SCC 621 [LNIND 2011 SC 753] : (2011) 10 SCR 56 [LNIND 2011 SC 753] : 2011 (8) Scale 328 [LNIND 2011 SC 753] .
14. *McDowell*, (1966) 1 All ER 193 : (1965) 3 WLR 1138 ; *Rex v IRC Haulage*, (1944) KB 551 : (1944) 1 All ER 691 . *Central Bureau of Investigation v VC Shukla*, AIR 1998 SC 1406 [LNIND 1998 SC 272] : 1998 Cr LJ 1905 ; *Ajay Kumar Rana v State of Bihar*, 2001 Cr LJ 3837 (Pat).
15. *Mowji*, (1957) All ER 385 : (1957) 2 WLR 277 . See Glanville Williams, *Legal Unity of Husband and Wife*, 10 Modern LR 16 (1947). "But either spouse may be convicted of inciting the other to commit a crime if such be proved." See *Kenny*, 450, p 428, *Outlines Of Criminal Law*, 19th Edn 1966.
16. *Cross & Jones : Introduction To Criminal Law*, 9th Edn, p 343.
17. *R v Charstny*, (1991) 1 WLR 1381 (CA).
18. *Bhagat Ram*, AIR 1972 SC 1502 [LNIND 1972 SC 72] : 1972 Cr LJ 909 ; *Tapandas*, AIR 1956 SC 33 [LNIND 1955 SC 78] : (1955) 2 SCR 881 [LNIND 1955 SC 78] ; *Fakhruddin*, AIR 1967 SC 1326 [LNIND 1966 SC 307] : 1967 Cr LJ 1197 ; See also *State v Dilbagh Rai*, 1986 Cr LJ 138 (Delhi).
19. Relying upon *Faguna Kanta Nath v State of Assam*, AIR 1959 SC 673 [LNIND 1959 SC 2] : 1959 Cr LJ 90 : 1959 Supp 2 SCR 1, where also the acquittal of the co-accused automatically

followed the acquittal of the main accused; *Madan Lal Bhandari v State of Rajasthan*, AIR 1970 SC 436 [LNIND 1969 SC 230] : 1970 Cr LJ 519 : (1969) 2 SCC 385 [LNIND 1969 SC 230] : (1970) 1 SCR 688 [LNIND 1969 SC 230] , the nurse causing miscarriage acquitted, the conspirator also acquitted.

20. *Plummer v State*, (1902) 2 KB 339 ; *Coughlan* (1976) 64 Cr App Rep 11 .
21. *Pradumna*, 1981 Cr LJ 1873 (Bom).
22. JE Cecil Turner, *Kenny's Outlines of Criminal Law*, 428, 19th Edn, 1966.
23. Citing *R v Myrick and Ribuffi*, (1929) 21 Cr App R 94 TAC.
24. *Regina v Chrastry*, (1991) 1 WLR 1381 (CA). *Kuldeep Singh v State of Rajasthan*, 2001 Cr LJ 479 (SC), the only evidence against one of the accused conspirators was that he was seen moving with others to the house of the deceased. This was held to be not sufficient to make him a part of the conspiracy or participant in murder.
25. *Mohammad Ismail*, (1936) Nag 152; *Bimbadhar Pradhan*, (1956) Cut 409 SC; *EG Barsay*, AIR 1961 SC 1762 [LNIND 1961 SC 196] : 1962 (2) SCR 195 [LNIND 1961 SC 196] ; *Chaman Lal v State of Punjab*, (2009) 11 SCC 721 [LNIND 2009 SC 721] AIR 2009 SC 2972 [LNIND 2009 SC 721] , requisites of the offence restated.
26. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646 : *Baldev Singh v State of Punjab*, (2009) 6 SCC 564 [LNIND 2009 SC 1151] : (2009) 3 SCC (Cr) 66.
27. *State through Superintendent of Police, CBI/SIT v Nalini*, reported in (1999) 5 SCC 253 [LNIND 1999 SC 526] Mere knowledge, or even discussion, of the plan is not, *per se* enough; *Russell on Crimes*, 12th Edn, vol I, quoted in *Kehar Singh v State (Delhi Administration)*, 1988 (3) SCC 609 [LNIND 1988 SC 887] at 731.
28. *R Venkatakrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .
29. *Yogesh v State of Maharashtra*, AIR 2008 SC 2991 [LNIND 2008 SC 979] : 2008 Cr LJ 3872 : (2008) 10 SCC 394 [LNIND 2008 SC 979] .
30. *Esher Singh v State of AP*, AIR 2004 SC 3030 [LNIND 2004 SC 329] : (2004) 11 SCC 585 [LNIND 2004 SC 329] . *K Hashim v State of TN*, AIR 2005 SC 128 [LNIND 2004 SC 1142] : (2005) 1 SCC 237 [LNIND 2004 SC 1142] , the court enumerated four elements of criminal conspiracy, the essence is an unlawful agreement and it is complete when the agreement is framed. A design resting in mind only does not make out the offence.
31. *Subramanian Swamy v A Raja*, AIR 2012 SC 3336 [LNIND 2012 SC 498] : 2012 Cr LJ 4443 : (2012) 9 SCC 257 [LNIND 2012 SC 498] (Involvement of finance minister in 2G Spectrum Case) - Criminal conspiracy cannot be inferred on the mere fact that there were official discussions between the officers of the MoF and that of DoT and between two Ministers, which are all recorded. Suspicion, however, strong, cannot take the place of legal proof and the meeting between Shri P Chidambaram and Shri A Raja would not by itself be sufficient to infer the existence of a criminal conspiracy so as to indict Shri P. Chidambaram.
32. *Esher Singh v State of AP*, 2004 (11) SCC 585 [LNIND 2004 SC 329] .
33. *Gulam Sarbar v State of Bihar*, 2014 Cr LJ 34 : (2014) 3 SCC 401.
34. *Chaman Lal v State of Punjab*, AIR 2009 SC 2972 [LNIND 2009 SC 721] : (2009) 11 SCC 721 [LNIND 2009 SC 721] : (2010) 1 SCC(Cr) 159.
35. *State through Superintendent of Police, CBI/SIT v Nalini*, reported in (1999) 5 SCC 253 [LNIND 1999 SC 526] ; *State of HP v Krishan Lal Pardhan*, ( AIR 1987 SC 773 [LNIND 1987 SC 131] : 1987 Cr LJ 709 ) : (1987) 2 SCC 17 [LNIND 1987 SC 131] .
36. *K R Purushothaman v State*, AIR 2006 SC 35 [LNIND 2005 SC 842] : (2005) 12 SCC 631 [LNIND 2005 SC 842] ; approved in *John Pandian v State Rep by Inspector of Police, TN*, AIR 2011 SC (Supp) 531 : (2011) 3 SCC(Cr) 550 : 2010 (13) Scale 13.

37. *Yash Pal Mittal v State of Punjab*, AIR 1977 SC 2433 [LNIND 1977 SC 304] : 1978 Cr LJ 189 : (1977) 4 SCC 540 [LNIND 1977 SC 304] .
38. *Firozuddin Basheeruddin v State*, 2001 (7) SCC 596 [LNIND 2001 SC 1755] .
39. *K Hasim v State of TN*, AIR 2005 SC 128 [LNIND 2004 SC 1142] : 2005 Cr LJ 143 .
40. *Raju v State of Chhatisgarh*, 2014 Cr LJ 4425 : 2014 (9) SCJ 453 [LNINDORD 2014 SC 19031] .
41. *Sushil Suri v CBI*, AIR 2011 SC 1713 [LNIND 2011 SC 494] : (2011) 5 SCC 708 [LNIND 2011 SC 494] : (2011) 2 SCC(Cr) 764 : (2011) 8 SCR 1 [LNIND 2011 SC 494] .
42. *Chaman Lal v State of Punjab*, AIR 2009 SC 2972 [LNIND 2009 SC 721] : (2009) 11 SCC 721 [LNIND 2009 SC 721] : (2010) 1 SCC(Cr) 159.
43. *SC Bahri v State of Bihar*, AIR 1994 SC 2020 : 1994 Cr LJ 3271 .
44. *Kehar Singh v State (Delhi Administration)*, AIR 1988 SC 1883 [LNIND 1988 SC 887] : 1989 Cr LJ 1 : (1988) 3 SCC 609 [LNIND 1988 SC 887] .
45. *EG Barsay*, AIR 1961 SC 1762 [LNIND 1961 SC 196] : 1962 (2) SCR 195 [LNIND 1961 SC 196] .
46. *Lennart v State*, AIR 1970 SC 549 [LNIND 1969 SC 396] : 1970 Cr LJ 707 .
47. *RK Dalmia*, AIR 1962 SC 1821 [LNIND 1962 SC 146] : (1962) 2 Cr LJ 805 ; *Yashpal v State*, AIR 1977 SC 2433 [LNIND 1977 SC 304] SC : 1978 Cr LJ 189 .
48. *State of HP v Krishanlal Pradhan*, AIR 1987 SC 773 [LNIND 1987 SC 131] : 1987 Cr LJ 709 : (1987) 2 SCC 17 [LNIND 1987 SC 131] .
49. *KS Narayanan*, 1982 Cr LJ 1611 (Mad); *Krishnalal Naskar*, 1982 Cr LJ 1305 (Cal). *Mahabir Prasad Akela v State of Bihar*, 1987 Cr LJ 1545 Pat, no meeting of minds.
50. (1988) 3 SCC 609 [LNIND 1988 SC 887] : AIR 1988 SC 1883 [LNIND 1988 SC 887] : 1989 CR LJ 1 . AS AGAINST THIS SEE, *Param Hans Yadav v State of Bihar*, AIR 1987 SC 955 [LNIND 1987 SC 253] : 1987 Cr LJ 789 : (1987) 2 SCC 197 [LNIND 1987 SC 253] , murder of Collector by a person whose connection with the jailed co-accused not proved, though the latter had a grudge against the collector for demolishing his temple and detaining him. *Reversing* the High Court decision, 1986 Pat LJR 688 .
51. *Mohd Arif v State of NCT of Delhi*, JT 2011 (9) SC 563 [LNIND 2011 SC 753] : (2011) 13 SCC 621 [LNIND 2011 SC 753] : 2011 (8) Scale 328 [LNIND 2011 SC 753] : (2011) 10 SCR 56 [LNIND 2011 SC 753] ; *NV Subba Rao v State*, (2013) 2 SCC 162 [LNIND 2012 SC 1350] : 2013 Cr LJ 953 .
52. *MS Reddy v State Inspector of Police ACB Nellore*, 1993 Cr LJ 558 (AP). *Ammuni v State of Kerala*, AIR 1998 SC 280 : 1998 Cr LJ 481 , the accused administered poison and caused death of the woman and her two children, there was evidence to show that all the four entered into a conspiracy to murder the woman. They were seen hanging around her house. One of the glass tumblers recovered from her place carried the finger prints of one of them. One of them also confessed. Conspiracy proved conviction under sections 300/34, confirmed. *Kuldeep Singh v State of Rajasthan*, AIR 2000 SC 3649 [LNIND 2000 SC 724] , accused persons entered into conspiracy to cause death, circumstantial evidence coupled with recoveries. Guilt established. Conviction for murder and conspiracy.
53. *Yogesh v State of Maharashtra*, AIR 2008 SC 2991 [LNIND 2008 SC 979] : 2008 Cr LJ 3872 : (2008) 10 SCC 394 [LNIND 2008 SC 979] .
54. *Nellai Ganesan v State*, 1991 Cr LJ 2157 . See also *Khalid v. State*, 1990 Cr LJ (NOC) Raj, where the court inferred the fact of agreement from transmission of thoughts sharing the unlawful design, the court observing that neither proof of actual words of communication nor actual physical meeting of persons involved is necessary.
55. *KTMS Mohd v UOI*, AIR 1992 SC 1831 [LNIND 1992 SC 362] : 1992 Cr LJ 2781 .

56. *Wai Yu-Tsang v The Queen*, (1991) 3 WLR 1006 PC, applying *Welham v DPP*, (1961) AC 103 HL(E) and *Reg v Allsop*, (1976) 64 Cr App R; CA. *Shambhu Singh v State of UP*, AIR 1994 SC 1559 : 1994 Cr LJ 1584 , the Supreme Court did not interfere in the concurrent finding of the lower courts as to the involvement of the accused in the conspiracy.
57. *Mir Naqvi Askari v CBI*, AIR 2010 SC 528 [LNIND 2009 SC 1651] : (2009) 15 SCC 643 [LNIND 2009 SC 1651] . The court also explained the nature of the crime.
58. *R Venkatakrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] , under the [National Housing Bank Act, 1987](#). *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646; criminal conspiracy by bank officials in relation to Harshad Mehta Securities Scam, illegally extending discounting/ rediscounting facility for bills of exchange by bank officials, conspiracy in relation to persons liable to be convicted, role/conduct necessary to fasten liability.
59. *Nand Kumar Singh v State of Bihar*, AIR 1992 SC 1939 : 992 Cr LJ 3587 : (1992) Supp (2) SCC 111 .
60. *Narain Lal Nirala v State of Rajasthan*, AIR 1993 SC 118 : 1993 Cr LJ 3911 .
61. *State v Siddarth Vashisth (alias Manu Sharma)*, 2001 Cr LJ 2404 (Del).
62. *R v Ashton*, (1992) Cr LR 667 (CA).
63. *Dinanath*, 1939 Nag 644.
64. *Vinayak v State of Maharashtra*, AIR 1984 SC 1793 [LNIND 1984 SC 255] : (1984) 4 SCC 441 [LNIND 1984 SC 255] : 1984 SCC (Cr) 605.
65. *Pramatha Nath v Saroj Ranjan*, AIR 1962 SC 876 [LNIND 1961 SC 400] : (1962) 1 Cr LJ 770 . Further explained by the Supreme Court in *Kehar Singh v State (Delhi Admn)*, AIR 1988 SC 1883 [LNIND 1988 SC 887] : 1989 Cr LJ 1 : (1988) 3 SCC 609 [LNIND 1988 SC 887] .
66. *State of TN through Superintendent of Police CBI/SIT v Nalini*, AIR 1999 SC 2640 [LNIND 1999 SC 1584] : 1999 Cr LJ 3124 : JT 1999 (4) SC 106 [LNIND 1999 SC 526] : (1999) 5 SCC 253 [LNIND 1999 SC 526] ; *Sardar Sardul Singh Caveeshar v State of Maharashtra*, ( AIR 1965 SC 682 [LNIND 1963 SC 67] : 1965 (1) Cr LJ 608 ) : (1964) 2 SCR 378 [LNIND 1963 SC 67] See also.
67. *Bhagwandas*, AIR 1974 SC 898 : 1974 Cr LJ 751 ; *Ashok Datta Naik*, 1979 Cr LJ NOC 95 (Goa); *V Shivanarayan*, AIR 1980 SC 439 : 1980 Cr LJ 388 ; *Mohd Usman Mohd Hussain*, AIR 1981 SC 1062 [LNIND 1981 SC 127] : 1981 Cr LJ 588 : (1988) 3 SCC 609 [LNIND 1988 SC 887] ; *State of UP v Girijashankar Misra*, 1985 Cr LJ NOC 79 (Delhi); *Subhas*, 1985 Cr LJ 1807 (Cal).
68. *Pratapbhai Hamirbhai Solanki v State of Gujarat*, (2013) 1 SCC 613 [LNIND 2012 SC 1033] : 2012 Mad LJ (Cr) 532 : 2012 (10) Scale 237 [LNIND 2012 SC 1033] ; An offence of criminal conspiracy can also be proved by circumstantial evidence. *State of MP v Sheetla Sahai*, 2009 Cr LJ 4436 : (2009) 8 SCC 617 : (2009) 3 SCC(Cr) 901]. In *S Arul Raja v State of TN*, 2010 (8) SCC 233 [LNIND 2010 SC 689] in which it is held that mere circumstantial evidence to prove the involvement of the appellant is not sufficient to meet the requirements of criminal conspiracy under Section 120A of the (IPC, 1860) A meeting of minds to form a criminal conspiracy has to be proved by placing substantive evidence.
69. *Re MD Mendekar*, 1972 Cr LJ 978 (Mysore); See also *Bhagwandas*, *supra*.
70. *DB Naik*, 1982 Cr LJ 856 (Bom); *Hari Ram*, 1982 Cr LJ 294 (HP).
71. *Jethsur Surangbhai*, AIR 1984 SC 151 [LNIND 1983 SC 329] : 1984 Cr LJ 162 (SC) : (1984) SCC (Cr) 474.
72. *Ajoyadha Prashad* 1985 Cr LJ 1401 (Ori).
73. *State v VC Shukla*, 1980 Cr LJ 965 : 1980 Cr LR (SC) 301 . Also *VC Shukla v State (Delhi Admn)*, AIR 1980 SC 1382 [LNIND 1980 SC 179] : 1980 SCC (Cr) 561 and 849 (1980) 2 SCC 665 [LNIND 1980 SC 179] . *State of HP v Gian Chand*, 2000 Cr LJ 949 (HP); *Sardari Lal v State of Punjab*, 2003 Cr LJ 383 (P&H), *State of MP v Sheetla Sahai*, (2009) 8 SCC 617 : (2009) 3 SCC (Cr)

901; *Baldev Singh v State of Punjab*, (2009) 6 SCC 564 [LNIND 2009 SC 1151] : (2009) 3 SCC (Cr) 66; *Y Venkaiah v State of AP*, AIR 2009 SC 2311 [LNIND 2009 SC 513] : (2009) Cr LJ 2834 : (2009) 12 SCC 126 [LNIND 2009 SC 513] . *State of MP v Paltan Mallah*, 2005 AIR 2005 SC 733 [LNIND 2005 SC 64] : Cr LJ 918 SC : (2005) 3 SCC 169 [LNIND 2005 SC 64] .

74. *State (NCT) of Delhi v Navjot Sandhu @ Afsan Guru*, (2005) 11 SCC 600 [LNIND 2005 SC 580]

75. *Charandas Swami v State of Gujarat*, 2017 (4) Scale 403 .

76. *Rajiv Kumar v State of UP*, AIR 2017 SC 3772 [LNIND 2017 SC 367] .

77. *Charandas Swami v State of Gujarat*, 2017 (4) Scale 403 .

78. *State of Maharashtra v Som Nath Thapa*, AIR 1996 SC 1744 [LNIND 1996 SC 776] : 1996 AIR SCW 1977 : 1996 Cr LJ 2448 : (1996) 4 SCC 649 .

79. *State through Central Bureau of Investigation v Dr Anup Kumar Srivastava*, AIR 2017 SC 3698 [LNIND 2017 SC 371] .

80. *Lal Singh v State of Gujarat*, AIR 2001 SC 746 [LNIND 2001 SC 98] : 2001 Cr LJ 978 . The case under the Terrorists and Disruptive Activities (Prevention) Act, 1987. *Saju v State of Kerala*, AIR 2001 SC 175 [LNIND 2000 SC 1552] , no inference of conspiracy to murder from circumstances proved in the case, *Suman Sood v State of Rajasthan*, AIR 2007 SC 2774 [LNIND 2007 SC 647] : (2007) Cr LJ 4080 : (2007) 5 SCC 634 [LNIND 2007 SC 647] , inference regarding conspiracy can be drawn from surrounding circumstances because normally no direct evidence is available.

81. *Ibid*. The court followed the ruling in *Babu Singh v State of Punjab*, AIR 1996 SC 3250 [LNIND 1996 SC 860] : 1996 Cr LJ 2503 ; *Vijayan v State of Kerala*, AIR 1999 SC 1086 [LNIND 1999 SC 159] : 1999 Cr LJ 1638 , it is difficult to establish conspiracy by direct evidence. But there should be material evidence showing the connection between the alleged conspiracy and the act done pursuant to that conspiracy. *Firozuddin Basheerudin v State of Kerala*, AIR 2001 SC 3488 [LNIND 2001 SC 1755] : 2001 Cr LJ 4215 , conspiracy to eliminate a police informer on whose information contraband gold was seized from the accused persons, chain of circumstances to the point of murder, complete, conviction. *State of Kerala v P Suganthan*, AIR 2000 SC 3323 [LNIND 2000 SC 1298] : 2000 Cr LJ 4584 , conspiracy to murder the earlier paramour of the concubine, not proved. *Hira Lal Hari Lal v CBI*, AIR 2003 SC 2545 [LNIND 2003 SC 499] : 2003 Cr LJ 3041 : (2003) 5 SCC 257 [LNIND 2003 SC 499] , difficult to prove conspiracy by direct evidence. An agreement between the parties to do something unlawful has to be proved. The allegation here was that of evasion of customs duty.

82. *Chandra Prakash v State of Rajasthan*, 2014 Cr LJ 2884 : (2014) 8 SCC 340 [LNIND 2014 SC 346] .

83. *Indra Dalal v State of Haryana*, 2015 Cr LJ 3174 : 2015 (6) SCJ 501 [LNIND 2015 SC 358] .

84. *Balkar Singh v State of Haryana*, 2015 Cr LJ 901 : (2015) 2 SCC 746 [LNIND 2014 SC 950] .

85. *Satyavir Singh v State of UP*, 2016 Cr LJ 4863 (All), 2015 (91) ALLCC 892.

86. *State v Nitin Gunwant Shah*, 2015 Cr LJ 4759 : 2016 (1) SCJ 30 [LNIND 2015 SC 529] .

87. *State of TN v Nalini*, AIR 1999 SC 2640 [LNIND 1999 SC 1584] : 1999 Cr LJ 3124 .

88. *Kiriti Pal v State of WB*, 2015 Cr LJ 3152 : 2015 (3) Crimes 11 (SC).

89. *R Venkatkrishanan v CBI*, 2010 1 SCC (Cr) 164 : (2009) 11 SCC 737 [LNIND 2009 SC 1653] .

90. *Mahesh Joshi v State, (CBI)*, 2002 Cr LJ 97 (Kant).

## THE INDIAN PENAL CODE

### 1. CHAPTER V-A CRIMINAL CONSPIRACY

#### [s 120B] Punishment of criminal conspiracy.

- (1) **Whoever is a party to a criminal conspiracy to commit an offence punishable with death, <sup>91</sup>[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.**
- (2) **Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]**

#### COMMENT—

Earlier to the introduction of sections 120A and B, conspiracy per se was not an offence under [IPC, 1860](#), except in respect of the offence mentioned in section 121A. However, abetment by conspiracy was and still remains to be an ingredient of abetment under the second clause of [section 107 of IPC, 1860](#). The punishment therefore, is provided under various sections, viz., sections 108–117. Whereas under section 120A, the essence of the offence of criminal conspiracy is a bare agreement to commit the offence, the abetment under section 107 requires the commission of some act or illegal omission pursuant to the conspiracy.<sup>92</sup> Criminal conspiracy is an independent offence. It is punishable separately.<sup>93</sup> The punishment for conspiracy is the same as if the conspirator had abetted the offence.<sup>94</sup> The punishment for a criminal conspiracy is more severe if the agreement is one to commit a serious offence; it is less severe if the agreement is one to commit an act which although illegal is not an offence punishable with death, imprisonment for life or rigorous imprisonment for more than two years.

Conspiracy to commit an offence is itself an offence and a person can be separately charged with respect to such a conspiracy. There may be an element of abetment in a conspiracy; but conspiracy is something more than abetment. The offences created by section 109 and section 120A are quite distinct and where offences are committed by several persons in pursuance of a conspiracy it is usual to charge them with those offences as well as conspiracy to commit those offences.<sup>95</sup>

This section applies to those who are the members of the conspiracy during its continuance. Conspiracy has to be treated as a continuing offence and whoever is a party to the conspiracy during the period for which he is charged is liable under this section.<sup>96</sup> A conspiracy is held to be continued and renewed as to encompass all its members wherever and whenever any member of it acts in furtherance of the common design.<sup>97</sup> The most important ingredient of a criminal conspiracy is an agreement for an illegal act, conspiracy continues to subsist till it is executed or rescinded or frustrated by choice or necessity.<sup>98</sup> The conspirators' connection with the conspiracy



would get snapped after he is nabbed by the police and kept in custody. He would then cease to be the agent of others. In this case (*Rajiv assassination*) the prosecution could not establish that the accused persons who were under detention continued their conspiratorial contact with those who remained outside. A statement which constitutes *prima facie* evidence of a conspiracy may amount to an act for which all the members can be held liable.<sup>99.</sup>

Where the accused conspired with others in awarding a contract when he was in job, he could be held liable for subsequent acts of other conspirators even after his retirement as he contributed his part for furtherance of the conspiracy.<sup>100.</sup>

For the purpose of establishing or proving the charge of conspiracy, it is not necessary that there should be knowledge of who are other conspirators and of the detailed stages of the conspiracy. The necessary requisite is knowledge of the main object and purpose of the conspiracy.<sup>101.</sup> A fraud was alleged to have been committed by Government officers in processing and verifying fake bills. It was held that all the officers who dealt with the relevant files at one point of time or the other could not be considered to have taken part in the conspiracy or that they would be guilty of aiding and abetting the offence. Individual acts of criminal misconduct would have to be considered for fastening liability.<sup>102.</sup>

An accused can be convicted for substantive offence even where he has been acquitted of the charge of conspiracy.<sup>103.</sup>

### **[s 120B.1] Sanction for prosecution (section 120B IPC, 1860 and section 196 (Cr PC, 1973)).—**

This section has to be read along with section 196(1-A) (2) (Cr PC, 1973), which requires previous sanction of the State Government or the District Magistrate to launch prosecution in respect of a criminal conspiracy to commit an offence punishable with less than two years imprisonment. Thus, where the object of the conspiracy was cheating by false personation under section 419, IPC, 1860, which is an offence punishable with a three-year imprisonment, the mere fact that there were other non-cognizable offences for which too the accused had been charged would not vitiate the trial in absence of sanction under section 196(1A)(2), (Cr PC, 1973), as that section is meant to be applicable to a case where the object of the conspiracy is to commit an offence punishable with less than two years' imprisonment.<sup>104.</sup> Where the act in question was not done by the army officer in the discharge of his official duties, it was held that a sanction for his prosecution was not necessary.<sup>105.</sup>

### **[s 120B.2] Can a company be prosecuted for Criminal conspiracy.—**

A corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring *mens rea*. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through that person or the body of persons.<sup>106.</sup>

### **[s 120B.3] Signing differently in vakalatnama.—**

The fact was that the accused put their signatures in *vakalatnama* differently from their original ones. It has been alleged by the complainant that the accused petitioners have deliberately and wilfully put their signatures on the *vakalatnama* in collusion with each other like irresponsible persons in order to gain wrongfully and with a view to cheat and mislead the complainant. It was held that the alleged action of the petitioners in signing their own name on the *vakalatnama* and filing the same in the Court through their counsel is neither an offence nor prohibited by any law. When the alleged act itself was not illegal, it cannot be said that there was any 'criminal conspiracy' and in absence of the basis for a charge for criminal conspiracy, the petitioners cannot be prosecuted or punished for the offence under [section 120-B of the IPC, 1860](#).<sup>107</sup>.

#### **[s 120B.4] Seeking opinion.—**

Merely taking someone's opinion, who is an outsider to litigation, before filing the reply in the Court would not undermine the administration of justice in any way and it is not indicative of criminal conspiracy.<sup>108</sup>.

#### **[s 120B.5] Hooch Tragedy case.—**

In a case, the allegation was that all the accused persons hatched a criminal conspiracy and they created a well-oiled machinery for importing methyl alcohol to make spurious liquor. Accused diluted the spirit by adding water and sold it through their outlets. Many persons died due to the consumption of spurious liquor. Some persons lost their eyesight and number of others sustained grievous injuries. Supreme Court said that the whole business itself was a conspiracy. It may not be the conspiracy to mix the noxious substance but the fact of the matter is that in order to succeed in the business, which itself was a conspiracy, they mixed or allowed to be mixed methanol and used it so freely that ultimately resulted in the tragedy. Conviction is upheld.<sup>109</sup>.

#### **[s 120B.6] Corruption cases.—**

The prosecution asserted that the appellants A1 to A4 had entered into a conspiracy and in furtherance thereof, A1 who was a public servant, had come to possess assets to the tune of Rs. 66.65 crores, disproportionate to her known sources of income, during the period from 1991 to 1996, when she held the office of the Chief Minister of the State. The Supreme Court in respect to the charge of criminal conspiracy observed that the free flow of money from one account to the other of the respondent's, firms/companies also proved beyond reasonable doubt that all the accused persons had actively participated in the criminal conspiracy to launder the ill-gotten wealth of A1 for purchasing properties in their names.<sup>110</sup>.

#### **[s 120B.7] Previous sanction.—**

No Court shall take cognizance of the offence of any criminal conspiracy punishable under [section 120B of the IPC, 1860](#), (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding: Provided

that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.<sup>111.</sup>

**2. Sentence.**—Where the accused is charged both under section 109 as well as [section 120B, IPC, 1860](#), and the offence abetted is shown to have been committed as a result of the abetment, the abettor should be punished with the imprisonment provided for the principal offence under [section 109, IPC, 1860](#), and no separate sentence need be recorded under [section 120B IPC, 1860](#).<sup>112.</sup> Where the charge of conspiracy fails, the individual accused could still be convicted for the offences committed by them and sentenced accordingly.<sup>113.</sup> Where no jail term was awarded to the principal accused in a conspiracy and he was let off with fine alone, it was held that substantive sentence of imprisonment awarded to the other accused was wrongful and, therefore, they also were ordered to pay fine only.<sup>114.</sup> Where six of the seven persons accused of criminal conspiracy were acquitted, remaining one accused could not be convicted merely for being the head of the section of the branch where fraud was alleged to have been committed.<sup>115.</sup> Where the appellant-accused was one of the active members of the criminal conspiracy along with other accused and hatched the plan to kill/eliminate the deceased and in furtherance thereof other accused persons successfully killed/eliminated the deceased and it was not the case of the appellant-accused and nor was urged also that his case fell under Section 120(2) so as to be awarded less sentence as prescribed therein, the conviction and award of life sentence as prescribed under [Section 302](#) read with [Section 120B, IPC, 1860](#) was held proper.<sup>116.</sup> The accused pleaded guilty to conspiring to cause a public nuisance. He conspired with others to interfere with a premier division football match by means of extinguishing the floodlights while the match was in progress. The object of doing so was to affect bets placed on the match abroad, which depended on the score at the time when the lights were switched off and the match was abandoned. The plan was not put into effect and the accused and others were arrested before the match was due to take place. The accused would have received substantial reward for his role. He was sentenced to four years' imprisonment. His appeal was dismissed. The Court said that the practice of interfering with such an important sporting fixture was something which should be actively discouraged by severe sentences. The sentence could not be described as manifestly excessive.<sup>117.</sup>

**Law relating to Conspiracy as summarised by the Supreme Court in *State of TN through Superintendent of Police, CBI/SIT v Nalini*, (AIR 1999 SC 2640 [LNIND 1999 SC 1584] : (1999) 5 SCC 253 [LNIND 1999 SC 526] : JT 1999 (4) SC 106 [LNIND 1999 SC 526] : 1999 Cr LJ 3124 ).**

1. Under [Section 120A, IPC, 1860](#), offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention, but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.
2. Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may, for example, be enrolled in chain A enrolling B, B enrolling C, and so on and all will be members of the single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrolment, where a single person at the centre doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.
5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus, to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.
6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.
7. A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the Court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy Court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficult in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed to Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".
8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at

the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.
10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the other but the conspiracy into effect, is guilty though he intends to take no active part in the crime.

1. Chapter VA (containing sections 120A and 120B) inserted by Act 8 of 1913, section 3.

91. Subs. by Act 26 of 1955, section 117 and Sch., for transportation for life (w.e.f. 1-1-1956).

92. *State (NCT) of Delhi v Navjot Sandhu @ Afsan Guru*, 2005 Cr LJ 3950 : (2005) 11 SCC 600 [LNIND 2005 SC 580] .

93. *State of MP v Sheetla Sahai*, 2009 Cr LJ 4436 : (2009) 8 SCC 617 : (2009) 3 SCC(Cr) 901.

94. *Alim Jan Bibi*, (1937) 1 Cal 484 . It is not necessary that each and every conspirator must have taken part in the commission of the act. *State of HP v Krishanlal Pradhan*, AIR 1987 SC 773 [LNIND 1987 SC 131] : 1987 Cr LJ 709 : (1987) 2 SCC 17 [LNIND 1987 SC 131] . *Govt of NCT of Delhi v Jaspal Singh*, (2003) 10 SCC 586 [LNIND 2003 SC 649] , essential requirements of charge under the section. *Ram Narayan Popli v CBI*, AIR 2003 SC 2748 [LNIND 2003 SC 26] : (2003) 3 SCC 641 [LNIND 2003 SC 26] , statement of ingredients. *Nazir Khan v State of Delhi*, AIR 2003 SC 4427 [LNIND 2003 SC 696] : (2003) 8 SCC 461 [LNIND 2003 SC 696] , statement of ingredients and matters of proof.

95. *Subbaiah*, AIR 1961 SC 1241 [LNIND 1961 SC 95] . See also *Mohd Hussain v KS Dalipsinghji*, AIR 1970 SC 45 [LNIND 1969 SC 147] : (1970) 1 SCR 130 [LNIND 1969 SC 147] . See also *Jagdish Prasad v State of Bihar*, 1990 Cr LJ 366 Pat, conspiracy with railway employees to procure allotment of wagons under cover of fake letters. *State of Rajasthan v Govind Ram Bagdiya*, 2003 Cr LJ 1169 (Raj), the prosecution has to prove the elements of conspiracy. No

proof was forthcoming in this case in the matter of allotment of house of any conspiracy among officials to manipulate the system.

96. *Abdul Kadar v State*, (1963) 65 Bom LR 864 . For an example of a failed prosecution under this section see *State of UP v Pheru Singh*, AIR 1989 SC 1205 : 1989 Cr LJ 1135 . In *Darshan Singh v State of Punjab*, AIR 1983 SC 554 [LNIND 1983 SC 95] : 1983 Cr LJ 985 : (1983) 2 SCC 411 [LNIND 1983 SC 95] , the Supreme Court considered it to be unbelievable that the accused hatched their plot while taking drinks in the presence of a stranger. For proof of conspiracy it often becomes necessary to convert one of the conspirators into an approver witness and this may require corroboration. See *Balwant Kaur v UT Chandigarh*, AIR 1988 SC 139 [LNIND 1987 SC 738] : 1988 Cr LJ 398 . The absence of one of the conspirators at one of their meetings does not by itself rule out his complicity. Conspiracies are hatched under cover of secrecy. They are generally proved by circumstantial evidence, *EK Chandrasenan v State of Kerala*, AIR 1995 SC 1066 [LNIND 1995 SC 88] : 1995 Cr LJ 1445 ; *Aniceto Lobo v State (Goa, Daman and Diu)*, AIR 1994 SC 1613 : 1994 Cr LJ 1582 : 1993 Supp (3) SCC 311 , conspiracy of three persons, one of whom, being bank employee, took out blank drafts, the other forged signatures and third opened accounts in fictitious names to encash the drafts, all of them were held to be equally guilty of the offence.

97. *Esher Singh v State of AP*, AIR 2004 SC 3030 [LNIND 2004 SC 329] : (2004) 11 SCC 585 [LNIND 2004 SC 329] .

98. *Damodar v State of Rajasthan*, AIR 2003 SC 4414 [LNIND 2003 SC 803] : 2003 Cr LJ 5014 : (2004) 12 SCC 336 [LNIND 2003 SC 803] . *R Sai Bharathi v J Jayalalitha*, AIR 2004 SC 692 [LNIND 2003 SC 1023] : 2004 Cr LJ 286 : (2004) 2 SCC 9 [LNIND 2003 SC 1023] , alleged conspiracy was to dispose of by auction the property of a Govt Co at a low price, but the bids made by the alleged conspirators reflected a fair price. Ingredients of the section not made out. *Hardeep Singh Sohal v State of Punjab*, AIR 2004 SC 4716 [LNIND 2004 SC 902] : (2004) 11 SCC 612 [LNIND 2004 SC 1006] conspiracy for murder not proved. Another charge of conspiracy for murder was rejected in *Hem Raj v State of Punjab*, AIR 2003 SC 4259 [LNIND 2003 SC 759] : 2003 Cr LJ 4987 : (2003) 12 SCC 241 [LNIND 2003 SC 759] . *State of HP v Satya Dev Sharma*, (2002) 10 SCC 601 , criminal conspiracy between timber merchants and private landowners and Government officials for falling and misappropriating trees standing on Government land.

99. *State of TN v Nalini*, AIR 1999 SC 2640 [LNIND 1999 SC 1584] : 1999 Cr LJ 3124 . Under TADA (repealed) such confession had the status of evidence. *Ram Singh v State of HP*, AIR 1997 SC 3483 [LNIND 1997 SC 1060] : 1997 AIR SCW 1331 : 1997 Cr LJ 4091 , in a murder by some persons, the accused persons assisted them in causing disappearance of the dead body secretly in furtherance of their conspiracy, their conviction under sections 201-120B was held to be proper. *Subhash Harnarayanji Laddha v State of Maharashtra*, (2006) 12 SCC 545 [LNIND 2006 SC 1088] , conspiracy not proved. *Mallanna v State of Karnataka*, (2007) 8 SCC 523 [LNIND 2007 SC 1526] , conspiracy not proved.

100. *R Balkrishna Pillai v State of Kerala*, 1996 Cr LJ 757 (Ker); *Devender Pal Singh v State (NCT) of Delhi*, 2002 Cr LJ 2034 (SC), acquittal of a co-accused on the ground of non-corroboration of the confessional statement did not have the effect of demolishing the prosecution regarding conspiracy *Saju v State of Kerala*, 2001 Cr LJ 102 (SC), no evidence to show that the accused was responsible for pregnancy or insisted upon its termination. The accused and co-accused were fellow workers and seemed to be hired killers. They were seen together at the place of the incident both before and after it. That was held to be not sufficient to prove charge of conspiracy against them. *State of HP v Jai Lal*, AIR 1999 SC 3318 [LNIND 1999 SC 798] : 1999 Cr LJ 4294 State Government scheme of purchasing infected apples from growers and destroying them. Allegations that some of them over charged by inflating weight. But no evidence of

experts about overweight, etc., charge not proved. *Premlata v State of Rajasthan*, 1998 Cr LJ 1430 (Raj), a charge-sheet was not quashed where there was evidence to believe that the two accused persons had conspired to produce a document for fulfilling the eligibility criteria for an appointment. *Central Bureau of Investigation v VC Shukla*, AIR 1998 SC 1406 [LNIND 1998 SC 272] : 1998 Cr LJ 1905 , the prosecution could not prove that one of the two accused was a party to the conspiracy. *Arun Gulab Gawli v State of Maharashtra*, 1998 Cr LJ 4481 (Bom) mere inference cannot invite punishment.

101. *Mohd Amin v CBI*, (2008) 15 SCC 49 [LNIND 2008 SC 2255] : (2009) 3 SCC (Cr) 693.
102. *Soma Chakravarty v State*, AIR 2007 SC 2149 [LNIND 2007 SC 632] : (2007) 5 SCC 403 [LNIND 2007 SC 632] .
103. *T Shankar Prasad v State of AP*, AIR 2004 SC 1242 [LNIND 2004 SC 41] : 2004 Cr LJ 884 : (2004) 3 SCC 753 [LNIND 2004 SC 41] .
104. *Yashpal v State*, AIR 1977 SC 2433 [LNIND 1977 SC 304] : 1978 Cr LJ 189 . See also *Vinod Kumar Jain v State through CBI*, 1991 Cr LJ 669 (Del); *State of Bihar v Simranjit Singh Mann*, 1987 Cr LJ 999 (Pat).
105. *Nirmal Puri (Lt Gen Retd) v UOI*, 2002 Cr LJ 158 (Del).
106. *Iridium India Telecom Ltd v Motorola Incorporated*, AIR 2011 SC 20 [LNIND 2010 SC 1012] : 2010 AIR (SCW) 6738 : JT 2010 (11) SC 492 [LNIND 2010 SC 1012] : (2011) 1 SCC 74 [LNIND 2010 SC 1012] : (2010) 3 SCC(Cr) 1201 : 2010 (11) Scale 417 ; relied on *Standard Chartered Bank v Directorate of Enforcement*, AIR 2005 SC 2622 [LNIND 2005 SC 476] : (2005) 4 SCC 530 [LNIND 2005 SC 476] : 2005 SCC (Cr) 961.
107. *Padam Chand v The State of Bihar*, 2016 Cr LJ 4998 (Pat) : 2016 (3) PLJR 258 .
108. *Sanjiv Rajendra Bhatt v UOI*, 2016 Cr LJ 185 : (2016) 1 SCC 1 [LNIND 2015 SC 596] .
109. *Chandran v State*, AIR 2011 SC 1594 [LNIND 2011 SC 358] : (2011) 5 SCC 161 [LNIND 2011 SC 358] : (2011) 2 SCC(Cr) 551 : (2011) 8 SCR 273 [LNIND 2011 SC 358] ; Also see *Ravinder Singh @ Ravi Pavar v State of Gujarat*, AIR 2013 SC 1915 2013 Cr Lj 1832.
110. *State of Karnataka v Selvi J Jayalalitha*, 2017 (2) Scale 375 [LNIND 2017 SC 72] : 2017 (1) RCR (Criminal) 802.
111. Section 196(2) of Code of Criminal Procedure, 1973.
112. *State of TN v Savithri*, 1976 Cr LJ 37 (Mad).
113. *State of Orissa v Bishnu Charan Muduli*, 1985 Cr LJ 1573 (Ori).
114. *CR Mehta v State of Maharashtra*, 1993 Cr LJ 2863 (Bom). The Court referred to *Rameshwar Dayal v State of UP*, 1971 (3) SCC 924 : 1972 SCC (Cr) 172.
115. *BN Narasimha Rao v Govt of AP*, 1995 Cr LJ 4181 (SC), reversing AP High Court. See also *Sayed Mohd Owais v State of Maharashtra*, 2003 Cr LJ 303 (Bom).
116. *Bilal Hajar v State*, AIR 2018 SC 4780 [LNIND 2018 SC 520] .
117. *R v Chee Kew Ong*, (2001) 1 Cr App R (S) 117 [CA (Crim Div)].

## THE INDIAN PENAL CODE

### 1. CHAPTER V-A CRIMINAL CONSPIRACY

#### [s 120A] Definition of criminal conspiracy.

When two or more persons agree to do, or cause to be done,—

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

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

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

#### COMMENT—

Criminal conspiracy.—This chapter has introduced into the criminal law of India a new offence, viz., the offence of criminal conspiracy. It came into existence by the Criminal Law (Amendment) Act, 1913. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention.<sup>2</sup> Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. 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 by unlawful means.<sup>3</sup> A criminal conspiracy must be put to action inasmuch as so long a crime is generated in the mind of an accused, it does not become punishable. What is necessary is not thoughts, which may even be criminal in character, often involuntary, but offence would be said to have been committed thereunder only when that take concrete shape of an agreement to do or cause to be done an illegal act or an act which although not illegal by illegal means and then if nothing further is done the agreement would give rise to a criminal conspiracy.<sup>4</sup>

#### [s 120A.1] Ingredients.—

The ingredients of this offence are—

- (1) that there must be an agreement between the persons who are alleged to



conspire; and

- (2) that the agreement should be
  - (i) for doing of an illegal act, or
  - (ii) for doing by illegal means an act which may not itself be illegal.<sup>5</sup>  
Meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is *sine qua non* of criminal conspiracy.<sup>6</sup>

The most important ingredient of the offence being, the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them as conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under [section 120-B of the Indian Penal Code, 1860 \(IPC, 1860\)](#).<sup>7</sup>

[s 120A.2] **Elements of Criminal Conspiracy.**—

- (a) an object to be accomplished,
- (b) a plan or scheme embodying means to accomplish that object,
- (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and
- (d) in the jurisdiction where the statute required an overt act.<sup>8</sup>

**1. Two or more persons needed.**—To constitute the offence of conspiracy there must be an agreement of two or more persons to do an act which is illegal or which is to be done by illegal means for one cannot conspire with oneself. In *Topandas v State of Bombay*,<sup>9</sup> which has been cited by the Supreme Court with approval in *Haradhan Chakrabarty v UOI*,<sup>10</sup> it was laid down that "two or more persons must be parties to such an agreement and one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself." The question of a single person being convicted for an offence of conspiracy was considered in *Bimbadhar Pradhan v The State of Orissa*,<sup>11, 12</sup> and held that It is not essential that more than one person should be convicted of the offence of criminal conspiracy. It is enough if the court is in a position to find that two or more persons were actually concerned in the criminal conspiracy. In the Red fort Attack Case<sup>13</sup> the Supreme Court found that it was nothing but a well-planned conspiracy, in which apart from sole appellant, some others were also involved and convicted the sole appellant for criminal conspiracy.<sup>14</sup> Under the common law since husband and wife constitute one person there cannot be any conspiracy to commit an offence if husband and wife are the only parties to an agreement.<sup>15</sup> "It seems rather odd that though husband and wife by themselves alone cannot be convicted of an offence of conspiracy for agreeing to commit an offence but if two of them commit the self-same substantive offence they can be convicted of that offence".<sup>16</sup> Fortunately this state of law does not exist in

India, where husband and wife by themselves alone can be parties to a criminal conspiracy. Where the husband is a party with some others in a conspiracy and his wife joined him in that with knowledge that he was involved with others to commit an unlawful act, she would be guilty of the conspiracy.<sup>17</sup> Since conspiracy requires at least two persons, where two or more named persons only were charged and all but one of them were acquitted, the remaining accused could not be convicted under [section 120B, IPC, 1860](#), as he could not have conspired with himself.<sup>18</sup> In a similar case before the Supreme Court, a military major was tried for theft of military goods along with nine others who were supposed to have abetted him. He was found guilty along with one more accused and the rest were acquitted. On his appeal, the High Court quashed the judgment of the Court martial because there was no proof that he had removed the wheel drums. He was reinstated. In view of the acquittal and reinstatement of the main accused, the matter of his co-accused came before the Supreme Court. He too was ordered to be acquitted and reinstated.<sup>19</sup> The same rule obtained under the English common law provided two named persons were tried together.<sup>20</sup> This rule has now been abolished by section 5(8) of the Criminal Law Act, 1977 which provides that unless conviction of one becomes inconsistent with the acquittal of the other even one of the two conspirators can be convicted, e.g., where one was acquitted for want of sanction or on ground of being an exempted person. The Bombay High Court has taken the same view in a case. Thus, where of the two accused one was a public servant and he had to be acquitted as he was prosecuted without obtaining sanction under [section 197, Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#), the other could still be convicted on a charge of conspiracy as the acquittal of the other accused was not on facts but on technical ground and in spite of evidence establishing the factum of conspiracy.<sup>21</sup>

The circumstances in which a single person can be tried and convicted have been thus, stated in *Kenny*.<sup>22</sup> "But though there must be plurality of conspirators, it is not necessary that all should be brought to trial together. One person may be indicted, alone, for conspiring with other persons who are not in custody, or who are even unknown to the indictors. Indeed, some of the conspirators may be unknown to the rest, provided all are acting under the directions of one leader. There need not be communication between each conspirator and every other, provided there be a design common to all."<sup>23</sup> Thus, a wife knowing that her husband was involved with others in a conspiracy, agreed with him that she would join the conspiracy and play her part, it was held that she thereby became guilty of conspiracy notwithstanding that the only person with whom she actually concluded the agreement was her husband.<sup>24</sup>

**2. Agreement is gist of the offence.**—The gist of the offence is the bare engagement and association to break the law, whether any act be done in pursuance thereof by the conspirators or not.<sup>25</sup> Meeting of minds is essential. Mere knowledge or discussion is not sufficient.<sup>26</sup> It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but the presence of an agreement to carry out the object of the intention, is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.<sup>27</sup> In the absence of an agreement, a mere thought to commit a crime does not constitute the offence.<sup>28</sup> The offence of conspiracy is a substantive offence. It renders the mere agreement to commit an offence punishable even if no offence takes place pursuant to the illegal agreement.<sup>29</sup> The object in view or the methods employed should be illegal, as defined in section 43, (*supra*). A distinction is drawn between an agreement to commit an offence and an agreement of which either the object or the methods employed are illegal but do not constitute an offence. In the case of the former, the criminal conspiracy is completed by the act of agreement; in the case of the latter,

there must be some act done by one or more of the parties to the agreement to give effect to the object thereof, that is, there must be an overt act. An express agreement need not be proved. Evidence relating to transmission of thoughts leading to sharing of thought relating to the unlawful act is sufficient.<sup>30</sup> A wrong judgment or an inaccurate or incorrect approach or poor management by itself, even after due deliberations between Ministers or even with Prime Minister, by itself cannot be said to be a product of criminal conspiracy.<sup>31</sup> A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.<sup>32</sup>

The meeting of the minds to form a criminal conspiracy has to be proved by adducing substantive evidence, in cases where the circumstantial evidence is incomplete or vague.<sup>33</sup>

#### [s 120A.3] **Actus reus.**—

The *actus reus* in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to give effect to an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other.<sup>34</sup>

#### [s 120A.4] **Participation.**—

It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences.<sup>35</sup> To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial act.<sup>36</sup> Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy.<sup>37</sup> The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a causal agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts.<sup>38</sup>

#### [s 120A.5] **Overt act.**—

No overt act is necessary.<sup>39</sup> Where the allegation against the third accused was that he was merely standing nearby when the other accused committed the murder, he cannot be charged for an offence under [sections 302/120B, IPC, 1860](#), in the absence of any other reliable evidence.<sup>40</sup> In a case where the agreement is for accomplishment

of an act which by itself constitutes an offence, then in that event, unless the Statute so requires, no overt act is necessary to be proved by the prosecution because in such a fact-situation criminal conspiracy is established by proving such an agreement.<sup>41</sup> When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.<sup>42</sup> Where the conspiracy alleged is with regard to the commission of a serious crime as contemplated by section 120-B read with the proviso to sub-section (2) of section 120A, then the mere proof of an agreement is enough to bring about conviction under section 120B and the proof of any overt act by the accused or by any of them would not be necessary.<sup>43</sup> The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable.<sup>44</sup>

It is not an ingredient of the offence under this section that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Where the accused are charged with having conspired to do three categories of illegal acts, the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They can all be held guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.<sup>45</sup> Where the agreement between the accused is a conspiracy to do or continue to do something which is illegal, it is immaterial whether the agreement to do any of the acts in furtherance of the commission of the offence do not strictly amount to an offence. The entire agreement must be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve.<sup>46</sup> It is not necessary that each member of a conspiracy must know each other or all the details of the conspiracy.<sup>47</sup> It is also not necessary that every conspirator must have taken part in each and every act done in pursuance of a conspiracy.<sup>48</sup> It is, however, necessary that a charge of conspiracy should contain particulars of the names of the place or places where it was hatched, persons hatching it, how was it hatched and what the purpose of the conspiracy was.<sup>49</sup>

In the matter<sup>50</sup> of the assassination of the then Prime Minister of India, Smt. Indira Gandhi, one of the two actual killers and two conspirators were brought to trial. Both the conspirators were away from the scene of the crime. One of them was acquitted by the Supreme Court. His movements after the incident were not properly proved. The documents recovered from his custody did not indicate any agreement between him and the other accused. They only showed his agitated mind which was in the grip of an avenging mood. This is not enough to establish an agreement with anybody. On the other hand, about *Kehar Singh*, it was shown that he was having secret talks with one of the actual killers, that they were trying all the time to keep themselves away from their wives and children, they avoided the company of the other members of the family and on being asked what they were talking about, they remained mysterious. These facts were sufficient to show that they were planning something secret. This was enough to constitute a *prima facie* evidence of conspiracy within the meaning of [section 10 of the Evidence Act, 1872](#) and to bring them within the jacket of punishment of all for the act of one.

Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available; offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.<sup>51</sup> Thus, a conspiracy is an

inference from circumstances. There cannot always be much direct evidence about it. Conspiracy can be inferred even from the circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.<sup>52</sup> It is manifest that the meeting of minds of two or more persons is a *sine qua non* but it may not be possible to establish by direct evidence. Its existence and objective can be inferred from the surrounding circumstances and parties conduct. It is necessary that the incriminating circumstances must form a chain of events, from which a conclusion about the accused's guilt could be drawn. The help of circumstantial evidence is necessary because a conspiracy is always hatched in secrecy. It becomes difficult to locate any direct evidence.<sup>53</sup> A businessman was in great need of money for completing the construction of a theatre complex. He was approached by a person who told him that his financier friend would help him with money. This was followed by a number of meetings between him and the team of financiers during which documents were executed and money released in cash which cash was found to be counterfeit currency. Every member of the team was held to be guilty of conspiracy and of cheating under section 420.<sup>54</sup> Seizure of unexplained currency notes from the possession of a person who claimed to be the owner of the money was held to be not sufficient to connect him with the person who was the main accused of smuggling currency, though he was a relative of the main accused.<sup>55</sup>

Where a bank accountant dishonestly agreed with others to conceal dishonour of cheques purchased by the bank and thus, causing risk to the economic interests of the bank, he was held guilty of conspiring to defraud whatever his motive or underlying purpose might have been (he contended that he acted in the interest of the bank) and even though he had no desire to harm the victim and no loss was actually caused.<sup>56</sup> Officials of a nationalised bank, in violation of departmental instructions, allowing advance credits on banker's cheques to the account of a customer dealing in securities. Advance credits were allowed before the cheques were sent for clearance and in some cases even before the cheques were received. This allowed the customer to take pecuniary advantage by overdrawing money from his account which he was not entitled to. Public funds were thus, misused. It was held that a criminal conspiracy between bank officials and the customer stood proved. One of them was acquitted because no conclusive evidence could be found against him.<sup>57</sup>

A criminal conspiracy can be proved by circumstantial evidence or by necessary implication. A smaller conspiracy may be the part of a larger conspiracy. It was held on facts that a criminal conspiracy was established when officials of two public sector banks acted in such a way that the transaction appeared to be an inter-banking transaction relating to call money which the borrowing bank was supposed to retain with itself but the transaction was in fact meant to help a private party to use public funds for private purpose.<sup>58</sup> Where the accused, an LIC agent, was charged with cheating the LIC by entering into conspiracy with the co-accused, a Development Officer, on the allegation that insurance policies were got issued on the basis of fake and forged documents and he received premium commission and bonus in respect of those policies, the accused was entitled to be acquitted because the forging was done by the co-accused without the knowledge and consent of the accused. Bonus, Commission, etc., in respect of those policies were credited to his account only in the normal course.<sup>59</sup> A 'vaid' and an 'up-vaid' who, in conspiracy with others made bogus medical bills for government servants and got them duly passed through their Ayurvedic *Aushadhalaya* for payment of 30 per cent of the amount of the bills, were caught in a trap and the tainted money was recovered from the accused. One of the accused died during the pendency of appeal. Conviction of the other under sections 120B/468 was held to be proper.<sup>60</sup>

A group of friends went to a club for fun and frolic. One of them (the main accused) suddenly fired at the bar mate for her refusal to serve drinks. The others were unaware

of the accused carrying a loaded pistol. They had stayed at the club for about two and a half hours. The Court said that this could not constitute an evidence of conspiracy. The Court also said that the fact that the group members dispersed separately and also helped to retrieve the murder weapon would not suggest conspiracy for murder.<sup>61.</sup>

[s 120A.6] **Same verdict in respect of each not necessary.**—

It has been held that the rule that both parties to a conspiracy had to be convicted or acquitted has been abrogated by the Criminal Law Act, 1977 (English). The important question is whether there is a material difference in the evidence against the two.<sup>62.</sup>

[s 120A.7] **Sections 34 and 120A.**—

There is not much substantial difference between conspiracy as defined in section 120A and acting on a common intention, as contemplated in section 34. While in the former, the gist of the offence is bare engagement and association to break the law even though the illegal act does not follow, the gist of the offence under section 34 is the commission of a **criminal act** in furtherance of a common intention of all the offenders, which means that there should be unity of criminal behaviour resulting in something, for which an individual would be punishable, if it were all done by himself alone.<sup>63.</sup> Another point of difference is that a single person cannot be convicted under section 120A and, therefore, where all the accused except one were acquitted, the Supreme Court ordered his acquittal also,<sup>64.</sup> whereas under section 34, read with some other specific offence, a single person can be convicted because each is responsible for the acts of all others.

[s 120A.8] **Sections 107 and 120A.**—

For an offence under this section a mere agreement is enough if the agreement is to commit an offence. But, for an offence under the second clause of section 107 an act or illegal omission must take place in pursuance of the conspiracy and a mere agreement is not enough.<sup>65.</sup>

**3. How proved (section 120A IPC, 1860 and section 10 Evidence Act, 1872-Doctrine of agency).**—There is no difference between the mode of proof of the offence of conspiracy and that of any other offence, it can be established by direct evidence or by circumstantial evidence. But **section 10 of the Evidence Act** introduces the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the coconspirators. When men enter into an agreement for an unlawful end, they become ad-hoc agents for one another and have made a partnership in crime. The said section reads: "Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them is a relevant fact against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was party to it."

The section can be analysed as follows: "(1) There shall be a *prima facie* evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a coconspirator and not in his favour."<sup>66.</sup>

Since conspiracy is often hatched up in utmost secrecy it is mostly impossible to prove conspiracy by direct evidence. It has, oftener than not, to be inferred from the acts, statements and conduct of the parties to the conspiracy.<sup>67</sup> The circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.<sup>68</sup> If it is proved that the accused pursued, by their acts, the same object often by the same means, one performing one part of the act and the other another part of the same act so as to complete it with a view to attainment of the object which they were pursuing, the Court is at liberty to draw the inference that they conspired together to effect that object.<sup>69</sup> It should, however, be remembered that where there is no direct evidence, for example through the evidence of an approver, and the case for the prosecution is dependent on circumstantial evidence alone, it is necessary for the prosecution to prove and establish such circumstances as would lead to the only conclusion of existence of a criminal conspiracy and rule out the theory of innocence.<sup>70</sup> Thus, chairman of a large cooperative society cannot be punished vicariously for the acts of others as *mens rea* cannot be excluded in a criminal case. As a chairman he had to deal with various matters and it would have been impossible for him to look into every detail to find out if someone was committing any criminal breach of trust.<sup>71</sup> Similarly, a case of conspiracy to misappropriate cash entrusted to the accused is not made out merely from the audit report without any evidence of shortage on actual verification of cash as mistakes and even double entries may be made *bona fide* while preparing the account.<sup>72</sup> The onus is on the prosecution to prove the charge of conspiracy by cogent evidence, direct or circumstantial.<sup>73</sup> One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution.<sup>74</sup>

#### [s 120A.9] **Inference of conspiracy.—**

It is a matter of common experience that direct evidence to prove conspiracy is rarely available.<sup>75</sup> Thus, it is extremely difficult to adduce direct evidence to prove conspiracy. Existence of conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases, indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself.<sup>76</sup> It can be a matter of inference drawn by the Court after considering whether the basic facts and circumstances on the basis of which inference is drawn have been proved beyond all reasonable doubts and that no other conclusion except that of the complicity of Accused to have agreed to commit an offence is evident.<sup>77</sup> Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself.<sup>78</sup> This apart, the prosecution has not to establish that a particular unlawful use

was intended, so long as the goods or service in question could not be put to any lawful use. Finally when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do.<sup>79</sup>

One of the accused persons, a foreign national, was found staying in the country without valid passport and visa. His movement to various places with the main accused was established. A large quantity of arms and ammunition was recovered from the place occupied by the main accused. The Court said that an inference of criminal conspiracy could be drawn.<sup>80</sup> The Court also said that the appeal against conviction of the main accused was dismissed would not be sufficient to say that the charge of conspiracy against other accused would be deemed to be proved.<sup>81</sup> Circumstances proved before, during and after the occurrence of the crime have to be considered together to decide about the complicity of the accused.<sup>82</sup> Circumstantial evidence was based on the recovery of the scooter used by the executant and alleged to have been owned by a co-conspirator, but the recovery was not based on any information given by the accused, but by one witness. The Supreme Court held that no circumstantial evidence was proved against any of the conspirators.<sup>83</sup>

**[s 120A.10] Circumstantial evidence, inference must be backed by evidence.—**

Most of the circumstances stated as against the accused were not proved. Merely based on the circumstance that the accused had filed a civil suit against the deceased for restraining him from doing a business he cannot be convicted. Moreover, there was no specific evidence as to who the conspirators were, where and when the conspiracy was hatched, what the specific purpose of such a conspiracy was and whether it was relating to the elimination of the deceased.<sup>84</sup> The law is well established that conspiracy cannot be proved merely on the basis of inferences. The inferences have to be backed by evidence.<sup>85</sup>

The Court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. However, while doing so, it must bear in mind that the meeting of minds is essential and mere knowledge or discussion would not be sufficient.<sup>86</sup> In *Mukesh v State for NCT of Delhi*, Criminal Appeal Nos. 607–608 of 2017, (popular as Nirbhaya Case) the criminal conspiracy was proved by the sequence of events and the conduct of the accused.

In the conspiracy for assassination of the former PM (Rajiv Gandhi) one of the accused persons at one point of time in his confessional statement said that he had a strong suspicion that Rajiv Gandhi was the target of the accused persons. The Court said that this suspicion did not make him a member of the conspiracy. His association, however strong with the main conspirators would not make him a member of the conspiracy by itself. But those who were in the thick of the conspiracy, for example, one who purchased the battery for explosion of human body, their conviction for the main offence was proper. But mere association with LTTE was not sufficient nor the fact that messages about arrests were sent by certain persons.<sup>87</sup>

**[s 120A.11] Contacts through telephone.—**

Where the case against the appellants A2 to A4 is that they had hatched a conspiracy with appellant A1 to kill the deceased and the case against A1 was proved as per the 'last seen theory', and to prove the conspiracy the prosecution relied on the circumstance that there were frequent phone calls among the accused some days around the date of murder, and the recovery of some vehicles; the Supreme Court held



that the telephonic calls and the recovery may raise suspicion against the accused but mere suspicion by itself cannot take the place of proof.<sup>88</sup>

[s 120A.12] **Between bank officials.—**

Criminal conspiracy was taken to be established when officials of two public sector banks acted in such a way that the transaction in question appeared to be an inter-banking transaction relating to call money which the borrowing bank was supposed to retain with itself. The transaction was in fact formalised for the purpose of helping a private party to use public funds for a private purpose.<sup>89</sup>

[s 120A.13] **Approval of television serial.—**

The accused was the director of *Doordarshan*. The allegation against him was that he continued a serial which was approved at lower rates by an earlier director. Each director worked at different point of time. They did not work together. Their postings were official postings. It was difficult to infer any conspiracy between them for continuing the telecast. The investigation launched against the director was liable to be quashed.<sup>90</sup>

1. Chapter VA (containing sections 120A and 120B) inserted by Act 8 of 1913, section 3.
2. *State through Superintendent of Police, CBI/SIT v Nalini*, reported in (1999) 5 SCC 253 [LNIND 1999 SC 526].
3. *Pratapbhai Hamirbhai Solanki v State of Gujarat*, (2013) 1 SCC 613 [LNIND 2012 SC 1033] : 2012 (10) Scale 237 [LNIND 2012 SC 1033] relying on *Ram Narayan Popli v Central Bureau of Investigation*, (2003) 3 SCC 641 [LNIND 2003 SC 26].
4. *State of MP v Sheetla Sahai*, 2009 Cr LJ 4436 : (2009) 8 SCC 617 : (2009) 3 SCC(Cr) 901.
5. *Yogesh v State of Maharashtra*, AIR 2008 SC 2991 [LNIND 2008 SC 979] : 2008 Cr LJ 3872 : (2008) 10 SCC 394 [LNIND 2008 SC 979] ; *S Arul Raja v State of TN*, reported in, 2010 (8) SCC 233 [LNIND 2010 SC 689] ; *Mohan Singh v State of Bihar*, AIR 2011 SC 3534 [LNIND 2011 SC 820] : 2011 Cr LJ 4837 : (2011) 9 SCC 272 [LNIND 2011 SC 820] ; *Central Bureau of Investigation Hyderabad v K Narayana Rao*, 2012 AIR SCW 5139 : 2012 Cr LJ 4610 : JT 2012 (9) SC 359 [LNIND 2012 SC 569] : (2012) 9 SCC 512 [LNIND 2012 SC 569] : 2012 (9) Scale 228 [LNIND 2012 SC 569] ; *Ajay Aggarwal v UOI*, (AIR 1993 SC 1637 [LNIND 1993 SC 431] : 1993 AIR SCW 1866 : 1993 Cr LJ 2516 ) : (1993) 3 SCC 609 [LNIND 1993 SC 431].
6. *Rajiv Kumar v State of UP*, AIR 2017 SC 3772 [LNIND 2017 SC 367].
7. *Pratapbhai Hamirbhai Solanki v State of Gujarat*, (2013) 1 SCC 613 [LNIND 2012 SC 1033] : 2012 Mad LJ (Cr) 532 : 2012 (10) Scale 237 [LNIND 2012 SC 1033] ; *Damodar v State of Rajasthan*, (2004) 12 SCC 336 [LNIND 2003 SC 803] ; *Kehar Singh v State (Delhi Admn)*, (1988) 3 SCC 609 [LNIND 1988 SC 887] ; *State of Maharashtra v Somnath Thapa*, (1996) 4 SCC 659 [LNIND 1996 SC 776].
8. *Ram Narayan Popli v Central Bureau of Investigation*, (2003) 3 SCC 641 [LNIND 2003 SC 26].
9. *Topandas v State of Bombay*, AIR 1956 SC 33 [LNIND 1955 SC 78] : 1956 Cr LJ 138 : (1955) 2 SCR 881 [LNIND 1955 SC 78]. The ruling in *Topandas* case, AIR 1956 SC 33 [LNIND 1955 SC 78] and *Fakhruddin* case, AIR 1967 SC 1326 [LNIND 1966 SC 307] were not followed in *Sanichar Sahni v State of Bihar*, (2009) 7 SCC 198 [LNIND 2009 SC 1350] : (2009) 3 SCC (Cr) 347, because

here only one person was charged under section 120-B and for no other offence, and his co-accused was charged with another offence but not under section 120-B, the court said that the charge was not properly framed. In the earlier cases, more than one were charged with conspiracy, all but one were acquitted, the single one could not be convicted. He was convicted for murder which was proved against him.

10. *Haradhan Chakrabarty v UOI*, AIR 1990 SC 1210 [LNIND 1990 SC 57] : 1990 Cr LJ 1246 : (1990) 2 SCC 143 [LNIND 1990 SC 57] .

11. See also *Thakur H v State of HP*, 2013 Cr LJ 1704 (HP).

12. *Bimbardhar Pradhan v The State of Orissa*, AIR 1956 SC 469 [LNIND 1956 SC 25] .

13. *Mohd Arif v State of NCT of Delhi*, JT 2011 (9) SC 563 [LNIND 2011 SC 753] : (2011) 13 SCC 621 [LNIND 2011 SC 753] : (2011) 10 SCR 56 [LNIND 2011 SC 753] : 2011 (8) Scale 328 [LNIND 2011 SC 753] .

14. *McDowell*, (1966) 1 All ER 193 : (1965) 3 WLR 1138 ; *Rex v IRC Haulage*, (1944) KB 551 : (1944) 1 All ER 691 . *Central Bureau of Investigation v VC Shukla*, AIR 1998 SC 1406 [LNIND 1998 SC 272] : 1998 Cr LJ 1905 ; *Ajay Kumar Rana v State of Bihar*, 2001 Cr LJ 3837 (Pat).

15. *Mowji*, (1957) All ER 385 : (1957) 2 WLR 277 . See Glanville Williams, *Legal Unity of Husband and Wife*, 10 Modern LR 16 (1947). "But either spouse may be convicted of inciting the other to commit a crime if such be proved." See *Kenny*, 450, p 428, *Outlines Of Criminal Law*, 19th Edn 1966.

16. *Cross & Jones : Introduction To Criminal Law*, 9th Edn, p 343.

17. *R v Charstny*, (1991) 1 WLR 1381 (CA).

18. *Bhagat Ram*, AIR 1972 SC 1502 [LNIND 1972 SC 72] : 1972 Cr LJ 909 ; *Tapandas*, AIR 1956 SC 33 [LNIND 1955 SC 78] : (1955) 2 SCR 881 [LNIND 1955 SC 78] ; *Fakhruddin*, AIR 1967 SC 1326 [LNIND 1966 SC 307] : 1967 Cr LJ 1197 ; See also *State v Dilbagh Rai*, 1986 Cr LJ 138 (Delhi).

19. Relying upon *Faguna Kanta Nath v State of Assam*, AIR 1959 SC 673 [LNIND 1959 SC 2] : 1959 Cr LJ 90 : 1959 Supp 2 SCR 1, where also the acquittal of the co-accused automatically followed the acquittal of the main accused; *Madan Lal Bhandari v State of Rajasthan*, AIR 1970 SC 436 [LNIND 1969 SC 230] : 1970 Cr LJ 519 : (1969) 2 SCC 385 [LNIND 1969 SC 230] : (1970) 1 SCR 688 [LNIND 1969 SC 230] , the nurse causing miscarriage acquitted, the conspirator also acquitted.

20. *Plummer v State*, (1902) 2 KB 339 ; *Coughlan* (1976) 64 Cr App Rep 11 .

21. *Pradumna*, 1981 Cr LJ 1873 (Bom).

22. JE Cecil Turner, *Kenny's Outlines of Criminal Law*, 428, 19th Edn, 1966.

23. Citing *R v Myrick and Ribuffi*, (1929) 21 Cr App R 94 TAC.

24. *Regina v Chrastry*, (1991) 1 WLR 1381 (CA). *Kuldeep Singh v State of Rajasthan*, 2001 Cr LJ 479 (SC), the only evidence against one of the accused conspirators was that he was seen moving with others to the house of the deceased. This was held to be not sufficient to make him a part of the conspiracy or participant in murder.

25. *Mohammad Ismail*, (1936) Nag 152; *Bimbardhar Pradhan*, (1956) Cut 409 SC; *EG Barsay*, AIR 1961 SC 1762 [LNIND 1961 SC 196] : 1962 (2) SCR 195 [LNIND 1961 SC 196] ; *Chaman Lal v State of Punjab*, (2009) 11 SCC 721 [LNIND 2009 SC 721] AIR 2009 SC 2972 [LNIND 2009 SC 721] , requisites of the offence restated.

26. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646 : *Baldev Singh v State of Punjab*, (2009) 6 SCC 564 [LNIND 2009 SC 1151] : (2009) 3 SCC (Cr) 66.

27. *State through Superintendent of Police, CBI/SIT v Nalini*, reported in (1999) 5 SCC 253 [LNIND 1999 SC 526] Mere knowledge, or even discussion, of the plan is not, *per se* enough; *Russell on*

Crimes, 12th Edn, vol I, quoted in *Kehar Singh v State (Delhi Administration)*, 1988 (3) SCC 609 [LNIND 1988 SC 887] at 731.

28. *R Venkatakrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .
29. *Yogesh v State of Maharashtra*, AIR 2008 SC 2991 [LNIND 2008 SC 979] : 2008 Cr LJ 3872 : (2008) 10 SCC 394 [LNIND 2008 SC 979] .
30. *Esher Singh v State of AP*, AIR 2004 SC 3030 [LNIND 2004 SC 329] : (2004) 11 SCC 585 [LNIND 2004 SC 329] . *K Hashim v State of TN*, AIR 2005 SC 128 [LNIND 2004 SC 1142] : (2005) 1 SCC 237 [LNIND 2004 SC 1142] , the court enumerated four elements of criminal conspiracy, the essence is an unlawful agreement and it is complete when the agreement is framed. A design resting in mind only does not make out the offence.
31. *Subramanian Swamy v A Raja*, AIR 2012 SC 3336 [LNIND 2012 SC 498] : 2012 Cr LJ 4443 : (2012) 9 SCC 257 [LNIND 2012 SC 498] (Involvement of finance minister in 2G Spectrum Case) - Criminal conspiracy cannot be inferred on the mere fact that there were official discussions between the officers of the MoF and that of DoT and between two Ministers, which are all recorded. Suspicion, however, strong, cannot take the place of legal proof and the meeting between Shri P Chidambaram and Shri A Raja would not by itself be sufficient to infer the existence of a criminal conspiracy so as to indict Shri P. Chidambaram.
32. *Esher Singh v State of AP*, 2004 (11) SCC 585 [LNIND 2004 SC 329] .
33. *Gulam Sarbar v State of Bihar*, 2014 Cr LJ 34 : (2014) 3 SCC 401.
34. *Chaman Lal v State of Punjab*, AIR 2009 SC 2972 [LNIND 2009 SC 721] : (2009) 11 SCC 721 [LNIND 2009 SC 721] : (2010) 1 SCC(Cr) 159.
35. State through Superintendent of Police, *CBI/SIT v Nalini*, reported in (1999) 5 SCC 253 [LNIND 1999 SC 526] ; *State of HP v Krishan Lal Pardhan*, ( AIR 1987 SC 773 [LNIND 1987 SC 131] : 1987 Cr LJ 709 ) : (1987) 2 SCC 17 [LNIND 1987 SC 131] .
36. *K R Purushothaman v State*, AIR 2006 SC 35 [LNIND 2005 SC 842] : (2005) 12 SCC 631 [LNIND 2005 SC 842] ; approved in *John Pandian v State Rep by Inspector of Police, TN*, AIR 2011 SC (Supp) 531 : (2011) 3 SCC(Cr) 550 : 2010 (13) Scale 13.
37. *Yash Pal Mittal v State of Punjab*, AIR 1977 SC 2433 [LNIND 1977 SC 304] : 1978 Cr LJ 189 : (1977) 4 SCC 540 [LNIND 1977 SC 304] .
38. *Firozuddin Basheeruddin v State*, 2001 (7) SCC 596 [LNIND 2001 SC 1755] .
39. *K Hasim v State of TN*, AIR 2005 SC 128 [LNIND 2004 SC 1142] : 2005 Cr LJ 143 .
40. *Raju v State of Chhatisgarh*, 2014 Cr LJ 4425 : 2014 (9) SCJ 453 [LNINDORD 2014 SC 19031] .
41. *Sushil Suri v CBI*, AIR 2011 SC 1713 [LNIND 2011 SC 494] : (2011) 5 SCC 708 [LNIND 2011 SC 494] : (2011) 2 SCC(Cr) 764 : (2011) 8 SCR 1 [LNIND 2011 SC 494] .
42. *Chaman Lal v State of Punjab*, AIR 2009 SC 2972 [LNIND 2009 SC 721] : (2009) 11 SCC 721 [LNIND 2009 SC 721] : (2010) 1 SCC(Cr) 159.
43. *SC Bahri v State of Bihar*, AIR 1994 SC 2020 : 1994 Cr LJ 3271 .
44. *Kehar Singh v State (Delhi Administration)*, AIR 1988 SC 1883 [LNIND 1988 SC 887] : 1989 Cr LJ 1 : (1988) 3 SCC 609 [LNIND 1988 SC 887] .
45. *EG Barsay*, AIR 1961 SC 1762 [LNIND 1961 SC 196] : 1962 (2) SCR 195 [LNIND 1961 SC 196] .
46. *Lennart v State*, AIR 1970 SC 549 [LNIND 1969 SC 396] : 1970 Cr LJ 707 .
47. *RK Dalmia*, AIR 1962 SC 1821 [LNIND 1962 SC 146] : (1962) 2 Cr LJ 805 ; *Yashpal v State*, AIR 1977 SC 2433 [LNIND 1977 SC 304] SC : 1978 Cr LJ 189 .
48. *State of HP v Krishanlal Pradhan*, AIR 1987 SC 773 [LNIND 1987 SC 131] : 1987 Cr LJ 709 : (1987) 2 SCC 17 [LNIND 1987 SC 131] .

49. *KS Narayanan*, 1982 Cr LJ 1611 (Mad); *Krishnalal Naskar*, 1982 Cr LJ 1305 (Cal). *Mahabir Prasad Akela v State of Bihar*, 1987 Cr LJ 1545 Pat, no meeting of minds.
50. (1988) 3 SCC 609 [LNIND 1988 SC 887] : AIR 1988 SC 1883 [LNIND 1988 SC 887] : 1989 Cr LJ 1 . AS AGAINST THIS SEE, *Param Hans Yadav v State of Bihar*, AIR 1987 SC 955 [LNIND 1987 SC 253] : 1987 Cr LJ 789 : (1987) 2 SCC 197 [LNIND 1987 SC 253] , murder of Collector by a person whose connection with the jailed co-accused not proved, though the latter had a grudge against the collector for demolishing his temple and detaining him. Reversing the High Court decision, 1986 Pat LJR 688 .
51. *Mohd Arif v State of NCT of Delhi*, JT 2011 (9) SC 563 [LNIND 2011 SC 753] : (2011) 13 SCC 621 [LNIND 2011 SC 753] : 2011 (8) Scale 328 [LNIND 2011 SC 753] : (2011) 10 SCR 56 [LNIND 2011 SC 753] ; *NV Subba Rao v State*, (2013) 2 SCC 162 [LNIND 2012 SC 1350] : 2013 Cr LJ 953 .
52. *MS Reddy v State Inspector of Police ACB Nellore*, 1993 Cr LJ 558 (AP). *Ammuni v State of Kerala*, AIR 1998 SC 280 : 1998 Cr LJ 481 , the accused administered poison and caused death of the woman and her two children, there was evidence to show that all the four entered into a conspiracy to murder the woman. They were seen hanging around her house. One of the glass tumblers recovered from her place carried the finger prints of one of them. One of them also confessed. Conspiracy proved conviction under sections 300/34, confirmed. *Kuldeep Singh v State of Rajasthan*, AIR 2000 SC 3649 [LNIND 2000 SC 724] , accused persons entered into conspiracy to cause death, circumstantial evidence coupled with recoveries. Guilt established. Conviction for murder and conspiracy.
53. *Yogesh v State of Maharashtra*, AIR 2008 SC 2991 [LNIND 2008 SC 979] : 2008 Cr LJ 3872 : (2008) 10 SCC 394 [LNIND 2008 SC 979] .
54. *Nellai Ganesan v State*, 1991 Cr LJ 2157 . See also *Khalid v. State*, 1990 Cr LJ (NOC) Raj, where the court inferred the fact of agreement from transmission of thoughts sharing the unlawful design, the court observing that neither proof of actual words of communication nor actual physical meeting of persons involved is necessary.
55. *KTMS Mohd v UOI*, AIR 1992 SC 1831 [LNIND 1992 SC 362] : 1992 Cr LJ 2781 .
56. *Wai Yu-Tsang v The Queen*, (1991) 3 WLR 1006 PC, applying *Welham v DPP*, (1961) AC 103 HL(E) and *Reg v Allsop*, (1976) 64 Cr App R; CA. *Shambhu Singh v State of UP*, AIR 1994 SC 1559 : 1994 Cr LJ 1584 , the Supreme Court did not interfere in the concurrent finding of the lower courts as to the involvement of the accused in the conspiracy.
57. *Mir Naqvi Askari v CBI*, AIR 2010 SC 528 [LNIND 2009 SC 1651] : (2009) 15 SCC 643 [LNIND 2009 SC 1651] . The court also explained the nature of the crime.
58. *R Venkatakrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] , under the [National Housing Bank Act, 1987](#). *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646; criminal conspiracy by bank officials in relation to Harshad Mehta Securities Scam, illegally extending discounting/ rediscounting facility for bills of exchange by bank officials, conspiracy in relation to persons liable to be convicted, role/conduct necessary to fasten liability.
59. *Nand Kumar Singh v State of Bihar*, AIR 1992 SC 1939 : 992 Cr LJ 3587 : (1992) Supp (2) SCC 111 .
60. *Narain Lal Nirala v State of Rajasthan*, AIR 1993 SC 118 : 1993 Cr LJ 3911 .
61. *State v Siddarth Vashisth (alias Manu Sharma)*, 2001 Cr LJ 2404 (Del).
62. *R v Ashton*, (1992) Cr LR 667 (CA).
63. *Dinanath*, 1939 Nag 644.
64. *Vinayak v State of Maharashtra*, AIR 1984 SC 1793 [LNIND 1984 SC 255] : (1984) 4 SCC 441 [LNIND 1984 SC 255] : 1984 SCC (Cr) 605.

65. *Pramatha Nath v Saroj Ranjan*, AIR 1962 SC 876 [LNIND 1961 SC 400] : (1962) 1 Cr LJ 770 . Further explained by the Supreme Court in *Kehar Singh v State (Delhi Admn)*, AIR 1988 SC 1883 [LNIND 1988 SC 887] : 1989 Cr Lj 1 : (1988) 3 SCC 609 [LNIND 1988 SC 887] .
66. *State of TN through Superintendent of Police CBI/SIT v Nalini*, AIR 1999 SC 2640 [LNIND 1999 SC 1584] : 1999 Cr LJ 3124 : JT 1999 (4) SC 106 [LNIND 1999 SC 526] : (1999) 5 SCC 253 [LNIND 1999 SC 526] ; *Sardar Sardul Singh Caveeshar v State of Maharashtra*, ( AIR 1965 SC 682 [LNIND 1963 SC 67] : 1965 (1) Cr LJ 608 ) : (1964) 2 SCR 378 [LNIND 1963 SC 67] See also.
67. *Bhagwandas*, AIR 1974 SC 898 : 1974 Cr LJ 751 ; *Ashok Datta Naik*, 1979 Cr LJ NOC 95 (Goa); *V Shivanarayan*, AIR 1980 SC 439 : 1980 Cr LJ 388 ; *Mohd Usman Mohd Hussain*, AIR 1981 SC 1062 [LNIND 1981 SC 127] : 1981 Cr LJ 588 : (1988) 3 SCC 609 [LNIND 1988 SC 887] ; *State of UP v Girijashankar Misra*, 1985 Cr LJ NOC 79 (Delhi); *Subhas*, 1985 Cr LJ 1807 (Cal).
68. *Pratapbhai Hamirbhai Solanki v State of Gujarat*, (2013) 1 SCC 613 [LNIND 2012 SC 1033] : 2012 Mad LJ (Cr) 532 : 2012 (10) Scale 237 [LNIND 2012 SC 1033] ; An offence of criminal conspiracy can also be proved by circumstantial evidence. *State of MP v Sheetla Sahai*, 2009 Cr LJ 4436 : (2009) 8 SCC 617 : (2009) 3 SCC(Cr) 901]. In *S Arul Raja v State of TN*, 2010 (8) SCC 233 [LNIND 2010 SC 689] in which it is held that mere circumstantial evidence to prove the involvement of the appellant is not sufficient to meet the requirements of criminal conspiracy under Section 120A of the (IPC, 1860) A meeting of minds to form a criminal conspiracy has to be proved by placing substantive evidence.
69. *Re MD Mendekar*, 1972 Cr LJ 978 (Mysore); See also *Bhagwandas*, *supra*.
70. *DB Naik*, 1982 Cr LJ 856 (Bom); *Hari Ram*, 1982 Cr LJ 294 (HP).
71. *Jethsur Surangbhai*, AIR 1984 SC 151 [LNIND 1983 SC 329] : 1984 Cr LJ 162 (SC) : (1984) SCC (Cr) 474.
72. *Ajoyadha Prashadl* 1985 Cr LJ 1401 (Ori).
73. *State v VC Shukla*, 1980 Cr LJ 965 : 1980 Cr LR (SC) 301 . Also *VC Shukla v State (Delhi Admn)*, AIR 1980 SC 1382 [LNIND 1980 SC 179] : 1980 SCC (Cr) 561 and 849 (1980) 2 SCC 665 [LNIND 1980 SC 179] . *State of HP v Gian Chand*, 2000 Cr LJ 949 (HP); *Sardari Lal v State of Punjab*, 2003 Cr LJ 383 (P&H), *State of MP v Sheetla Sahai*, (2009) 8 SCC 617 : (2009) 3 SCC (Cr) 901; *Baldev Singh v State of Punjab*, (2009) 6 SCC 564 [LNIND 2009 SC 1151] : (2009) 3 SCC (Cr) 66; *Y Venkaiah v State of AP*, AIR 2009 SC 2311 [LNIND 2009 SC 513] : (2009) Cr LJ 2834 : (2009) 12 SCC 126 [LNIND 2009 SC 513] . *State of MP v Paltan Mallah*, 2005 AIR 2005 SC 733 [LNIND 2005 SC 64] : Cr LJ 918 SC : (2005) 3 SCC 169 [LNIND 2005 SC 64] .
74. *State (NCT) of Delhi v Navjot Sandhu @ Afsan Guru*, (2005) 11 SCC 600 [LNIND 2005 SC 580] .
75. *Charandas Swami v State of Gujarat*, 2017 (4) Scale 403 .
76. *Rajiv Kumar v State of UP*, AIR 2017 SC 3772 [LNIND 2017 SC 367] .
77. *Charandas Swami v State of Gujarat*, 2017 (4) Scale 403 .
78. *State of Maharashtra v Som Nath Thapa*, AIR 1996 SC 1744 [LNIND 1996 SC 776] : 1996 AIR SCW 1977 : 1996 Cr LJ 2448 : (1996) 4 SCC 649 .
79. *State through Central Bureau of Investigation v Dr Anup Kumar Srivastava*, AIR 2017 SC 3698 [LNIND 2017 SC 371] .
80. *Lal Singh v State of Gujarat*, AIR 2001 SC 746 [LNIND 2001 SC 98] : 2001 Cr LJ 978 . The case under the Terrorists and Disruptive Activities (Prevention) Act, 1987. *Saju v State of Kerala*, AIR 2001 SC 175 [LNIND 2000 SC 1552] , no inference of conspiracy to murder from circumstances proved in the case, *Suman Sood v State of Rajasthan*, AIR 2007 SC 2774 [LNIND 2007 SC 647] : (2007) Cr LJ 4080 : (2007) 5 SCC 634 [LNIND 2007 SC 647] , inference regarding conspiracy can be drawn from surrounding circumstances because normally no direct evidence is available.

81. *Ibid.* The court followed the ruling in *Babu Singh v State of Punjab*, AIR 1996 SC 3250 [LNIND 1996 SC 860] : 1996 Cr LJ 2503 ; *Vijayan v State of Kerala*, AIR 1999 SC 1086 [LNIND 1999 SC 159] : 1999 Cr LJ 1638 , it is difficult to establish conspiracy by direct evidence. But there should be material evidence showing the connection between the alleged conspiracy and the act done pursuant to that conspiracy. *Firozuddin Basheerudin v State of Kerala*, AIR 2001 SC 3488 [LNIND 2001 SC 1755] : 2001 Cr LJ 4215 , conspiracy to eliminate a police informer on whose information contraband gold was seized from the accused persons, chain of circumstances to the point of murder, complete, conviction. *State of Kerala v P Suganthan*, AIR 2000 SC 3323 [LNIND 2000 SC 1298] : 2000 Cr LJ 4584 , conspiracy to murder the earlier paramour of the concubine, not proved. *Hira Lal Hari Lal v CBI*, AIR 2003 SC 2545 [LNIND 2003 SC 499] : 2003 Cr LJ 3041 : (2003) 5 SCC 257 [LNIND 2003 SC 499] , difficult to prove conspiracy by direct evidence. An agreement between the parties to do something unlawful has to be proved. The allegation here was that of evasion of customs duty.

82. *Chandra Prakash v State of Rajasthan*, 2014 Cr LJ 2884 : (2014) 8 SCC 340 [LNIND 2014 SC 346] .

83. *Indra Dalal v State of Haryana*, 2015 Cr LJ 3174 : 2015 (6) SCJ 501 [LNIND 2015 SC 358] .

84. *Balkar Singh v State of Haryana*, 2015 Cr LJ 901 : (2015) 2 SCC 746 [LNIND 2014 SC 950] .

85. *Satyavir Singh v State of UP*, 2016 Cr LJ 4863 (All), 2015 (91) ALLCC 892.

86. *State v Nitin Gunwant Shah*, 2015 Cr LJ 4759 : 2016 (1) SCJ 30 [LNIND 2015 SC 529] .

87. *State of TN v Nalini*, AIR 1999 SC 2640 [LNIND 1999 SC 1584] : 1999 Cr LJ 3124 .

88. *Kiriti Pal v State of WB*, 2015 Cr LJ 3152 : 2015 (3) Crimes 11 (SC).

89. *R Venkatkrishanan v CBI*, 2010 1 SCC (Cr) 164 : (2009) 11 SCC 737 [LNIND 2009 SC 1653] .

90. *Mahesh Joshi v State, (CBI)*, 2002 Cr LJ 97 (Kant).

## THE INDIAN PENAL CODE

### 1. CHAPTER V-A CRIMINAL CONSPIRACY

#### [s 120B] Punishment of criminal conspiracy.

- (1) **Whoever is a party to a criminal conspiracy to commit an offence punishable with death, <sup>91</sup>[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.**
- (2) **Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]**

#### COMMENT—

Earlier to the introduction of sections 120A and B, conspiracy per se was not an offence under [IPC, 1860](#), except in respect of the offence mentioned in section 121A. However, abetment by conspiracy was and still remains to be an ingredient of abetment under the second clause of [section 107 of IPC, 1860](#). The punishment therefore, is provided under various sections, viz., sections 108–117. Whereas under section 120A, the essence of the offence of criminal conspiracy is a bare agreement to commit the offence, the abetment under section 107 requires the commission of some act or illegal omission pursuant to the conspiracy.<sup>92</sup> Criminal conspiracy is an independent offence. It is punishable separately.<sup>93</sup> The punishment for conspiracy is the same as if the conspirator had abetted the offence.<sup>94</sup> The punishment for a criminal conspiracy is more severe if the agreement is one to commit a serious offence; it is less severe if the agreement is one to commit an act which although illegal is not an offence punishable with death, imprisonment for life or rigorous imprisonment for more than two years.

Conspiracy to commit an offence is itself an offence and a person can be separately charged with respect to such a conspiracy. There may be an element of abetment in a conspiracy; but conspiracy is something more than abetment. The offences created by section 109 and section 120A are quite distinct and where offences are committed by several persons in pursuance of a conspiracy it is usual to charge them with those offences as well as conspiracy to commit those offences.<sup>95</sup>

This section applies to those who are the members of the conspiracy during its continuance. Conspiracy has to be treated as a continuing offence and whoever is a party to the conspiracy during the period for which he is charged is liable under this section.<sup>96</sup> A conspiracy is held to be continued and renewed as to encompass all its members wherever and whenever any member of it acts in furtherance of the common design.<sup>97</sup> The most important ingredient of a criminal conspiracy is an agreement for an illegal act, conspiracy continues to subsist till it is executed or rescinded or frustrated by choice or necessity.<sup>98</sup> The conspirators' connection with the conspiracy

would get snapped after he is nabbed by the police and kept in custody. He would then cease to be the agent of others. In this case (*Rajiv assassination*) the prosecution could not establish that the accused persons who were under detention continued their conspiratorial contact with those who remained outside. A statement which constitutes *prima facie* evidence of a conspiracy may amount to an act for which all the members can be held liable.<sup>99.</sup>

Where the accused conspired with others in awarding a contract when he was in job, he could be held liable for subsequent acts of other conspirators even after his retirement as he contributed his part for furtherance of the conspiracy.<sup>100.</sup>

For the purpose of establishing or proving the charge of conspiracy, it is not necessary that there should be knowledge of who are other conspirators and of the detailed stages of the conspiracy. The necessary requisite is knowledge of the main object and purpose of the conspiracy.<sup>101.</sup> A fraud was alleged to have been committed by Government officers in processing and verifying fake bills. It was held that all the officers who dealt with the relevant files at one point of time or the other could not be considered to have taken part in the conspiracy or that they would be guilty of aiding and abetting the offence. Individual acts of criminal misconduct would have to be considered for fastening liability.<sup>102.</sup>

An accused can be convicted for substantive offence even where he has been acquitted of the charge of conspiracy.<sup>103.</sup>

[s 120B.1] **Sanction for prosecution (section 120B IPC, 1860 and section 196 (Cr PC, 1973)).—**

This section has to be read along with section 196(1-A) (2) (Cr PC, 1973), which requires previous sanction of the State Government or the District Magistrate to launch prosecution in respect of a criminal conspiracy to commit an offence punishable with less than two years imprisonment. Thus, where the object of the conspiracy was cheating by false personation under section 419, IPC, 1860, which is an offence punishable with a three-year imprisonment, the mere fact that there were other non-cognizable offences for which too the accused had been charged would not vitiate the trial in absence of sanction under section 196(1A)(2), (Cr PC, 1973), as that section is meant to be applicable to a case where the object of the conspiracy is to commit an offence punishable with less than two years' imprisonment.<sup>104.</sup> Where the act in question was not done by the army officer in the discharge of his official duties, it was held that a sanction for his prosecution was not necessary.<sup>105.</sup>

[s 120B.2] **Can a company be prosecuted for Criminal conspiracy.—**

A corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring *mens rea*. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through that person or the body of persons.<sup>106.</sup>

[s 120B.3] **Signing differently in vakalatnama.—**

The fact was that the accused put their signatures in *vakalatnama* differently from their original ones. It has been alleged by the complainant that the accused petitioners have deliberately and wilfully put their signatures on the *vakalatnama* in collusion with each other like irresponsible persons in order to gain wrongfully and with a view to cheat and mislead the complainant. It was held that the alleged action of the petitioners in



signing their own name on the *vakalatnama* and filing the same in the Court through their counsel is neither an offence nor prohibited by any law. When the alleged act itself was not illegal, it cannot be said that there was any 'criminal conspiracy' and in absence of the basis for a charge for criminal conspiracy, the petitioners cannot be prosecuted or punished for the offence under [section 120-B of the IPC, 1860](#).<sup>107.</sup>

[s 120B.4] **Seeking opinion.**—

Merely taking someone's opinion, who is an outsider to litigation, before filing the reply in the Court would not undermine the administration of justice in any way and it is not indicative of criminal conspiracy.<sup>108.</sup>

[s 120B.5] **Hooch Tragedy case.**—

In a case, the allegation was that all the accused persons hatched a criminal conspiracy and they created a well-oiled machinery for importing methyl alcohol to make spurious liquor. Accused diluted the spirit by adding water and sold it through their outlets. Many persons died due to the consumption of spurious liquor. Some persons lost their eyesight and number of others sustained grievous injuries. Supreme Court said that the whole business itself was a conspiracy. It may not be the conspiracy to mix the noxious substance but the fact of the matter is that in order to succeed in the business, which itself was a conspiracy, they mixed or allowed to be mixed methanol and used it so freely that ultimately resulted in the tragedy. Conviction is upheld.<sup>109.</sup>

[s 120B.6] **Corruption cases.**—

The prosecution asserted that the appellants A1 to A4 had entered into a conspiracy and in furtherance thereof, A1 who was a public servant, had come to possess assets to the tune of Rs. 66.65 crores, disproportionate to her known sources of income, during the period from 1991 to 1996, when she held the office of the Chief Minister of the State. The Supreme Court in respect to the charge of criminal conspiracy observed that the free flow of money from one account to the other of the respondent's, firms/companies also proved beyond reasonable doubt that all the accused persons had actively participated in the criminal conspiracy to launder the ill-gotten wealth of A1 for purchasing properties in their names.<sup>110.</sup>

[s 120B.7] **Previous sanction.**—

No Court shall take cognizance of the offence of any criminal conspiracy punishable under [section 120B of the IPC, 1860](#), (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding: Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.<sup>111.</sup>

**2. Sentence.**—Where the accused is charged both under section 109 as well as [section 120B, IPC, 1860](#), and the offence abetted is shown to have been committed as a result of the abetment, the abettor should be punished with the imprisonment provided for the principal offence under [section 109, IPC, 1860](#), and no separate sentence need be recorded under [section 120B IPC, 1860](#).<sup>112.</sup> Where the charge of conspiracy fails, the individual accused could still be convicted for the offences committed by them and sentenced accordingly.<sup>113.</sup> Where no jail term was awarded to the principal accused in a conspiracy and he was let off with fine alone, it was held that substantive sentence of imprisonment awarded to the other accused was wrongful and, therefore, they also were ordered to pay fine only.<sup>114.</sup> Where six of the seven persons accused of criminal

conspiracy were acquitted, remaining one accused could not be convicted merely for being the head of the section of the branch where fraud was alleged to have been committed.<sup>115</sup> Where the appellant-accused was one of the active members of the criminal conspiracy along with other accused and hatched the plan to kill/eliminate the deceased and in furtherance thereof other accused persons successfully killed/eliminated the deceased and it was not the case of the appellant-accused and nor was urged also that his case fell under Section 120(2) so as to be awarded less sentence as prescribed therein, the conviction and award of life sentence as prescribed under [Section 302](#) read with [Section 120B, IPC, 1860](#) was held proper.<sup>116</sup> The accused pleaded guilty to conspiring to cause a public nuisance. He conspired with others to interfere with a premier division football match by means of extinguishing the floodlights while the match was in progress. The object of doing so was to affect bets placed on the match abroad, which depended on the score at the time when the lights were switched off and the match was abandoned. The plan was not put into effect and the accused and others were arrested before the match was due to take place. The accused would have received substantial reward for his role. He was sentenced to four years' imprisonment. His appeal was dismissed. The Court said that the practice of interfering with such an important sporting fixture was something which should be actively discouraged by severe sentences. The sentence could not be described as manifestly excessive.<sup>117</sup>

**Law relating to Conspiracy as summarised by the Supreme Court in *State of TN through Superintendent of Police, CBI/SIT v Nalini*, (AIR 1999 SC 2640 [LNIND 1999 SC 1584] : (1999) 5 SCC 253 [LNIND 1999 SC 526] : JT 1999 (4) SC 106 [LNIND 1999 SC 526] : 1999 Cr LJ 3124 ).**

1. Under [Section 120A, IPC, 1860](#), offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention, but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.
2. Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.
3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.
4. Conspirators may, for example, be enrolled in chain A enrolling B, B enrolling C, and so on and all will be members of the single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrolment, where a single person at the centre doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be

members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus, to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.
6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.
7. A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the Court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy Court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficult in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed to Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".
8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.
9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of

the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the other but the conspiracy into effect, is guilty though he intends to take no active part in the crime.

1. Chapter VA (containing sections 120A and 120B) inserted by Act 8 of 1913, section 3.
91. Subs. by Act 26 of 1955, section 117 and Sch., for transportation for life (w.e.f. 1-1-1956).
92. *State (NCT) of Delhi v Navjot Sandhu @ Afsan Guru*, 2005 Cr LJ 3950 : (2005) 11 SCC 600 [LNIND 2005 SC 580] .
93. *State of MP v Sheetla Sahai*, 2009 Cr LJ 4436 : (2009) 8 SCC 617 : (2009) 3 SCC(Cr) 901.
94. *Alim Jan Bibi*, (1937) 1 Cal 484 . It is not necessary that each and every conspirator must have taken part in the commission of the act. *State of HP v Krishanlal Pradhan*, AIR 1987 SC 773 [LNIND 1987 SC 131] : 1987 Cr LJ 709 : (1987) 2 SCC 17 [LNIND 1987 SC 131] . *Govt of NCT of Delhi v Jaspal Singh*, (2003) 10 SCC 586 [LNIND 2003 SC 649] , essential requirements of charge under the section. *Ram Narayan Popli v CBI*, AIR 2003 SC 2748 [LNIND 2003 SC 26] : (2003) 3 SCC 641 [LNIND 2003 SC 26] , statement of ingredients. *Nazir Khan v State of Delhi*, AIR 2003 SC 4427 [LNIND 2003 SC 696] : (2003) 8 SCC 461 [LNIND 2003 SC 696] , statement of ingredients and matters of proof.
95. *Subbaiah*, AIR 1961 SC 1241 [LNIND 1961 SC 95] . See also *Mohd Hussain v KS Dalipsinghji*, AIR 1970 SC 45 [LNIND 1969 SC 147] : (1970) 1 SCR 130 [LNIND 1969 SC 147] . See also *Jagdish Prasad v State of Bihar*, 1990 Cr LJ 366 Pat, conspiracy with railway employees to procure allotment of wagons under cover of fake letters. *State of Rajasthan v Govind Ram Bagdiya*, 2003 Cr LJ 1169 (Raj), the prosecution has to prove the elements of conspiracy. No proof was forthcoming in this case in the matter of allotment of house of any conspiracy among officials to manipulate the system.
96. *Abdul Kadar v State*, (1963) 65 Bom LR 864 . For an example of a failed prosecution under this section see *State of UP v Pheru Singh*, AIR 1989 SC 1205 : 1989 Cr LJ 1135 . In *Darshan Singh v State of Punjab*, AIR 1983 SC 554 [LNIND 1983 SC 95] : 1983 Cr LJ 985 : (1983) 2 SCC 411 [LNIND 1983 SC 95] , the Supreme Court considered it to be unbelievable that the accused hatched their plot while taking drinks in the presence of a stranger. For proof of conspiracy it often becomes necessary to convert one of the conspirators into an approver witness and this may require corroboration. See *Balwant Kaur v UT Chandigarh*, AIR 1988 SC 139 [LNIND 1987 SC 738] : 1988 Cr LJ 398 . The absence of one of the conspirators at one of their meetings does not by itself rule out his complicity. Conspiracies are hatched under cover of secrecy. They are generally proved by circumstantial evidence, *EK Chandrasenan v State of Kerala*, AIR 1995 SC 1066 [LNIND 1995 SC 88] : 1995 Cr LJ 1445 ; *Aniceto Lobo v State (Goa, Daman and Diu)*, AIR 1994 SC 1613 : 1994 Cr LJ 1582 : 1993 Supp (3) SCC 311 , conspiracy of three persons, one of whom, being bank employee, took out blank drafts, the other forged signatures and third opened

accounts in fictitious names to encash the drafts, all of them were held to be equally guilty of the offence.

97. *Esher Singh v State of AP*, AIR 2004 SC 3030 [LNIND 2004 SC 329] : (2004) 11 SCC 585 [LNIND 2004 SC 329] .

98. *Damodar v State of Rajasthan*, AIR 2003 SC 4414 [LNIND 2003 SC 803] : 2003 Cr LJ 5014 : (2004) 12 SCC 336 [LNIND 2003 SC 803] . *R Sai Bharathi v J Jayalalitha*, AIR 2004 SC 692 [LNIND 2003 SC 1023] : 2004 Cr LJ 286 : (2004) 2 SCC 9 [LNIND 2003 SC 1023] , alleged conspiracy was to dispose of by auction the property of a Govt Co at a low price, but the bids made by the alleged conspirators reflected a fair price. Ingredients of the section not made out. *Hardeep Singh Sohal v State of Punjab*, AIR 2004 SC 4716 [LNIND 2004 SC 902] : (2004) 11 SCC 612 [LNIND 2004 SC 1006] conspiracy for murder not proved. Another charge of conspiracy for murder was rejected in *Hem Raj v State of Punjab*, AIR 2003 SC 4259 [LNIND 2003 SC 759] : 2003 Cr LJ 4987 : (2003) 12 SCC 241 [LNIND 2003 SC 759] . *State of HP v Satya Dev Sharma*, (2002) 10 SCC 601 , criminal conspiracy between timber merchants and private landowners and Government officials for falling and misappropriating trees standing on Government land.

99. *State of TN v Nalini*, AIR 1999 SC 2640 [LNIND 1999 SC 1584] : 1999 Cr LJ 3124 . Under TADA (repealed) such confession had the status of evidence. *Ram Singh v State of HP*, AIR 1997 SC 3483 [LNIND 1997 SC 1060] : 1997 AIR SCW 1331 : 1997 Cr LJ 4091 , in a murder by some persons, the accused persons assisted them in causing disappearance of the dead body secretly in furtherance of their conspiracy, their conviction under sections 201-120B was held to be proper. *Subhash Harnarayanji Laddha v State of Maharashtra*, (2006) 12 SCC 545 [LNIND 2006 SC 1088] , conspiracy not proved. *Mallanna v State of Karnataka*, (2007) 8 SCC 523 [LNIND 2007 SC 1526] , conspiracy not proved.

100. *R Balkrishna Pillai v State of Kerala*, 1996 Cr LJ 757 (Ker); *Devender Pal Singh v State (NCT) of Delhi*, 2002 Cr LJ 2034 (SC), acquittal of a co-accused on the ground of non-corroboration of the confessional statement did not have the effect of demolishing the prosecution regarding conspiracy *Saju v State of Kerala*, 2001 Cr LJ 102 (SC), no evidence to show that the accused was responsible for pregnancy or insisted upon its termination. The accused and co-accused were fellow workers and seemed to be hired killers. They were seen together at the place of the incident both before and after it. That was held to be not sufficient to prove charge of conspiracy against them. *State of HP v Jai Lal*, AIR 1999 SC 3318 [LNIND 1999 SC 798] : 1999 Cr LJ 4294 State Government scheme of purchasing infected apples from growers and destroying them. Allegations that some of them over charged by inflating weight. But no evidence of experts about overweight, etc., charge not proved. *Premlata v State of Rajasthan*, 1998 Cr LJ 1430 (Raj), a charge-sheet was not quashed where there was evidence to believe that the two accused persons had conspired to produce a document for fulfilling the eligibility criteria for an appointment. *Central Bureau of Investigation v VC Shukla*, AIR 1998 SC 1406 [LNIND 1998 SC 272] : 1998 Cr LJ 1905 , the prosecution could not prove that one of the two accused was a party to the conspiracy. *Arun Gulab Gawli v State of Maharashtra*, 1998 Cr LJ 4481 (Bom) mere inference cannot invite punishment.

101. *Mohd Amin v CBI*, (2008) 15 SCC 49 [LNIND 2008 SC 2255] : (2009) 3 SCC (Cr) 693.

102. *Soma Chakravarty v State*, AIR 2007 SC 2149 [LNIND 2007 SC 632] : (2007) 5 SCC 403 [LNIND 2007 SC 632] .

103. *T Shankar Prasad v State of AP*, AIR 2004 SC 1242 [LNIND 2004 SC 41] : 2004 Cr LJ 884 : (2004) 3 SCC 753 [LNIND 2004 SC 41] .

104. *Yashpal v State*, AIR 1977 SC 2433 [LNIND 1977 SC 304] : 1978 Cr LJ 189 . See also *Vinod Kumar Jain v State through CBI*, 1991 Cr LJ 669 (Del); *State of Bihar v Simranjit Singh Mann*, 1987 Cr LJ 999 (Pat).

105. *Nirmal Puri (Lt Gen Retd) v UOI*, 2002 Cr LJ 158 (Del).
106. *Iridium India Telecom Ltd v Motorola Incorporated*, AIR 2011 SC 20 [LNIND 2010 SC 1012] : 2010 AIR (SCW) 6738 : JT 2010 (11) SC 492 [LNIND 2010 SC 1012] : (2011) 1 SCC 74 [LNIND 2010 SC 1012] : (2010) 3 SCC(Cr) 1201 : 2010 (11) Scale 417 ; relied on *Standard Chartered Bank v Directorate of Enforcement*, AIR 2005 SC 2622 [LNIND 2005 SC 476] : (2005) 4 SCC 530 [LNIND 2005 SC 476] : 2005 SCC (Cr) 961.
107. *Padam Chand v The State of Bihar*, 2016 Cr LJ 4998 (Pat) : 2016 (3) PLJR 258 .
108. *Sanjiv Rajendra Bhatt v UOI*, 2016 Cr LJ 185 : (2016) 1 SCC 1 [LNIND 2015 SC 596] .
109. *Chandran v State*, AIR 2011 SC 1594 [LNIND 2011 SC 358] : (2011) 5 SCC 161 [LNIND 2011 SC 358] : (2011) 2 SCC(Cr) 551 : (2011) 8 SCR 273 [LNIND 2011 SC 358] ; Also see *Ravinder Singh @ Ravi Pavar v State of Gujarat*, AIR 2013 SC 1915 2013 Cr Lj 1832.
110. *State of Karnataka v Selvi J Jayalalitha*, 2017 (2) Scale 375 [LNIND 2017 SC 72] : 2017 (1) RCR (Criminal) 802.
111. Section 196(2) of Code of Criminal Procedure, 1973.
112. *State of TN v Savithri*, 1976 Cr LJ 37 (Mad).
113. *State of Orissa v Bishnu Charan Muduli*, 1985 Cr LJ 1573 (Ori).
114. *CR Mehta v State of Maharashtra*, 1993 Cr LJ 2863 (Bom). The Court referred to *Rameshwar Dayal v State of UP*, 1971 (3) SCC 924 : 1972 SCC (Cr) 172.
115. *BN Narasimha Rao v Govt of AP*, 1995 Cr LJ 4181 (SC), reversing AP High Court. See also *Sayed Mohd Owais v State of Maharashtra*, 2003 Cr LJ 303 (Bom).
116. *Bilal Hajar v State*, AIR 2018 SC 4780 [LNIND 2018 SC 520] .
117. *R v Chee Kew Ong*, (2001) 1 Cr App R (S) 117 [CA (Crim Div)].

## THE INDIAN PENAL CODE

### CHAPTER VI OF OFFENCES AGAINST THE STATE

The offences against the State fall into the following groups:—

- I. Waging, or attempting or conspiring to wage, or collecting men and ammunition to wage war against the Government of India (sections 121, 121A, 122, 123).
- II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).
- III. Sedition (section 124A).
- IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).
- V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

#### **[s 121] Waging, or attempting to wage war or abetting waging of war, against the Government of India.**

Whoever, wages war<sup>1</sup> against the <sup>1</sup>[Government of India]<sup>2</sup>, or attempts, to wage such war, or abets the waging of such war<sup>3</sup>, shall be punished with death, or <sup>2</sup>[imprisonment for life] <sup>3</sup>[and shall also be liable to fine].

#### <sup>4</sup>[ILLUSTRATIONS]

- <sup>5</sup>[\*\*\*] (a) A joins an insurrection against the <sup>6</sup>[Government of India]. A has committed the offence defined in this section.

#### <sup>7</sup>[\*\*\*]COMMENT—

Earlier the word used in section 121 was "Queen". After the formation of the republic under the [Constitution](#) it was substituted by the expression "Government of India" by the Adaption of Laws Order of 1950. In a republic, sovereignty vests in the people of the country and the lawfully elected government is simply the representative and a manifestation of the sovereign, that is, the people. Thus, the expression "Government of India", as appearing in section 121, must be held to mean the State or interchangeably the people of the country as the repository of the sovereignty of India which is manifested and expressed through the elected Government.<sup>8</sup>

#### **[s 121.1] Waging war against Government.—**

The concept of war embedded in section 121 is not to be understood in the international law sense of inter-country war involving military operations by and between two or more hostile countries. Section 121 is not meant to punish prisoners of war of a belligerent nation. Apart from the legislative history of the provision and the understanding of the expression by various High Courts during the pre-independence

days, the Illustration to section 121 itself makes it clear that "war" contemplated by section 121 is not conventional warfare between two nations. Organising or joining an insurrection against the Government of India is also a form of war.<sup>9</sup>

Neither the number of persons nor the manner in which they are assembled or armed is material to constitute an offence under this section. The true criterion is the purpose or intention with which the gathering is assembled. The object of the gathering must be to attain by force and violence an object of a general public nature thereby striking directly against the Government's authority.<sup>10</sup>

In *Md Jamiluddin Nasir v State of WB*,<sup>11</sup> while enumerating what principles are to be kept in mind in cases, involving application of [sections 121, 122, 121A](#) read with [section 120B IPC, 1860](#) as well as [section 302 IPC, 1860](#), the Supreme Court, observed *inter alia* that not all violent behaviour would fall within the prescription of waging war as contemplated under sections 121, 121A, 122 read with section 120B. It was also found that the object sought to be achieved to make a case for the application of section 121, should be directed against the sovereignty of the State and not merely commission of a crime, even if that happens to be of higher magnitude. The concept of 'waging war' should not be stretched too far. A balanced and realistic approach should be maintained while construing the offence committed, to find out whether it amounts to waging of war against the State.

**1. 'Wages war'.—**The expression "waging war" means and can only mean waging war in the manner usual in war. In other words, in order to support a conviction on such a charge it is not enough to show that the persons charged have contrived to obtain possession of an armoury and have, when called upon to surrender it, used the rifles and ammunition so obtained against the Government troops. It must also be shown that the seizure of the armoury was part and parcel of a planned operation and that their intention in resisting the troops of the Government was to overwhelm and defeat these troops and then to go on and crush any further opposition with which they might meet until either the leaders of the movement succeeded in obtaining the possession of the machinery of Government or those in possession of it yielded to the demands of their leaders.<sup>12</sup> An illuminating discussion on the issue of "Waging war against the Government of India" is to be found in this Court's decision in *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*.<sup>13</sup> In para 272 of the judgment *P Venkatarama Reddi, J*, speaking for the Court, referred to the report of the Indian Law Commission that examined the draft [Penal Code](#) in 1847 and quoted the following passage from the report:

We conceive the term 'wages war against the Government' naturally to import a person arraying himself in defiance of the Government in like manner and by like means as a foreign enemy would do, and it seems to us, we presume it did to the authors of the Code that any definition of the term so unambiguous would be superfluous.

The expression, "in like manner and by like means as a foreign enemy", is very significant to understand the nature of the violent acts that would amount to waging war. In "waging war", the intent of the foreign enemy is not only to disturb public peace or law and order or to kill many people. A foreign enemy strikes at the sovereignty of the State, and his conspiracy and actions are motivated by that animus.<sup>14</sup>

### **[s 121.2] New concept of "Waging war" and Caution against using old authorities.—**

The concept of war in section 121 which includes insurrection or a civilian uprising should not be understood in the sense of conventional war between two nations or sovereign entities. The normative phenomenon of war as understood in the



international sense does not fit into the ambit and reach of section 121. In the Parliament attack case,<sup>15</sup> the Supreme Court held as follows:

while these are the acceptable criteria of waging war, we must dissociate ourselves from the old English and Indian authorities to the extent that they lay down a too general test of attainment of an object of general public nature or a political object. The Supreme Court expressed reservations in adopting this test in its literal sense and construing it in a manner out of tune with the present day. The court must be cautious in adopting an approach which has the effect of bringing within the fold of S.121 all acts of lawless and violent acts resulting in destruction of public properties, etc., and all acts of violent resistance to the armed personnel to achieve certain political objectives. The moment it is found that the object sought to be attained is of a general public nature or has a political hue, the offensive violent acts targeted against the armed forces and public officials should not be branded as acts of waging war. The expression "waging war" should not be stretched too far to hold that all the acts of disrupting public order and peace irrespective of their magnitude and repercussions could be reckoned as acts of waging war against the Government. A balanced and realistic approach is called for in construing the expression "waging war" irrespective of how it was viewed in the long past. An organised movement attended with violence and attacks against the public officials and armed forces while agitating for the repeal of an unpopular law or for preventing burdensome taxes were viewed as acts of treason in the form of levying war. We doubt whether such construction is in tune with the modern day perspectives and standards.

### **[s 121.3] Terrorist Acts.—**

Though every terrorist act does not amount to waging war, certain terrorist acts can also constitute the offence of waging war and there is no dichotomy between the two. Terrorist acts can manifest themselves into acts of war. According to the learned Senior Counsel for the State, terrorist acts prompted by an intention to strike at the sovereign authority of the State/Government, tantamount to waging war irrespective of the number involved or the force employed. However, the degree of animus or intent and the magnitude of the acts done or attempted to be done would assume some relevance in order to consider whether the terrorist acts give rise to a state of war. Yet, the demarcating line is by no means clear, much less transparent. It is often a difference in degree. The distinction gets thinner if a comparison is made of terrorist acts with the acts aimed at overawing the Government by means of criminal force. Conspiracy to commit the latter offence is covered by section 121A.<sup>16</sup> The incorporation of Chapter IV of the [Unlawful Activities \(Prevention\) Act, 1967](#), shall not be viewed as deemed repeal of [section 121 of the IPC, 1860](#). As explained in *Navjot Sandhu (supra)*, a "terrorist act" and an act of "waging war against the Government of India" may have some overlapping features, but a terrorist act may not always be an act of waging war against the Government of India, and vice-versa. The provisions of Chapter IV of the [Unlawful Activities \(Prevention\) Act](#) and those of Chapter VI of the [Indian Penal Code \(IPC\), 1860](#) including section 121, basically cover different areas.<sup>17</sup>

### **[s 121.4] Foreign nationals not excluded.—**

The word "whoever" is a word of broad import. Advisedly such language was used departing from the observations made in the context of the Treason Statute. Supreme Court finds no good reason why foreign nationals stealthily entering into Indian territory with a view to subverting the functioning of the Government and destabilising the society should not be held guilty of waging war within the meaning of section 121. The section on its plain term need not be confined only to those who owe allegiance to the established Government.<sup>18</sup>

The explanation to the section makes it clear that the offence is complete even without any act or illegal omission occurring in pursuance of the conspiracy.<sup>19</sup> It is not

necessary that any act or illegal omission should have taken place in pursuance of a conspiracy. An action of waging war, attempt to wage war or abetment to wage war are also covered by section 121-A.<sup>20</sup>

**2. Government of India.**—The expression "Government of India" is surely not used in the narrow and restricted sense in section 121. In our considered view, the expression "Government of India" is used in section 121 to imply the Indian State, the juristic embodiment of the sovereignty of the country that derives its legitimacy from the collective will and consent of its people. The use of the phrase "Government of India" to signify the notion of sovereignty is consistent with the principles of Public International Law, wherein sovereignty of a territorial unit is deemed to vest in the people of the territory and exercised by a representative government.<sup>21</sup>

**3. 'Abets the waging of such war'.**—Such abetment is made a special offence. It is not essential that as a result of the abetment the war should in fact be waged. The main purpose of the instigation should be 'the waging of war'. It should not be merely a remote and incidental purpose but the thing principally aimed at by the instigation. There must be active suggestion or stimulation to the use of violence.<sup>22</sup> As criminal acts took place pursuant to the conspiracy, the appellant, as a party to the conspiracy, shall be deemed to have abetted the offence. In fact, he took an active part in a series of steps taken to pursue the objective of conspiracy. The offence of abetting the waging of war, having regard to the extraordinary facts and circumstances of this case, justifies the imposition of capital punishment and, therefore, the judgment of the High Court in regard to the conviction and sentence of Afzal under [section 121 IPC, 1860](#) shall stand.<sup>23</sup>

#### [s 121.5] Principles relating to Section 121.—

- (i) No specific number of persons is necessary to constitute an offence under [S.121, Penal Code](#).
- (ii) The number concerned and the manner in which they are equipped or armed is not material.
- (iii) The true criterion is *quo animo* did the gathering assemble?
- (iv) The object of the gathering must be to attain by force and violence an object of a general public nature, thereby striking directly against the King's authority.
- (v) There is no distinction between principal and accessory and all who take part in the unlawful act incur the same guilt.<sup>24</sup>

#### [s 121.6] CASES.—Mumbai Terror Attack Case.—

The primary and the first offence that the appellant and his co-conspirators committed was the offence of waging war against the Government of India. What matters is that the attack was aimed at India and Indians. It was by foreign nationals. People were killed for no other reason than they were Indians; in case of foreigners, they were killed because their killing on Indian soil would embarrass India. The conspiracy, in furtherance of which the attack was made, was, *inter alia*, to hit at India; to hit at its financial centre; to try to give rise to communal tensions and create internal strife and insurgency; to demand that India should withdraw from Kashmir; and to dictate its relations with other countries. Nothing could have been more "in like manner and by

like means as a foreign enemy would do". The appellant was rightly held guilty of waging war against the Government of India and rightly convicted under [sections 121, 121A and 122 of the IPC, 1860](#).<sup>25</sup>

#### **[s 121.7] Red Fort Attack Case.—**

The evidence as to the transmission of thoughts sharing the unlawful design would be sufficient for establishing the conspiracy. Again there must have been some act in pursuance of the agreement. The offence under section 121 of conspiring to wage a war is proved to the hilt against the appellant, for which he has been rightly held guilty for the offence punishable under [sections 121 and 121-A, IPC, 1860](#).<sup>26</sup>

#### **[s 121.8] Parliament Attack Case.—**

The single most important factor which impels to think that this is a case of waging or attempting to wage war against the Government of India is the target of attack chosen by the slain terrorists and conspirators and the immediate objective sought to be achieved thereby. The battlefield selected was the Parliament House complex. The target chosen was Parliament – a symbol of the sovereignty of the Indian republic. Huge and powerful explosives, sophisticated arms and ammunition carried by the slain terrorists who were to indulge in *fidayeen* operations with a definite purpose in view, is a clear indicator of the grave danger in store for the inmates of the House. The planned operations if executed, would have spelt disaster for the whole nation. The undoubted objective and determination of the deceased terrorists was to impinge on the sovereign authority of the nation and its Government. Even if the conspired purpose and objective falls short of installing some other authority or entity in the place of an established Government, it does not detract from the offence of waging war.<sup>27</sup>

#### **[s 121.9] Charge under Section 121, conviction under Section 123.—**

In the case the Court has specifically dealt with the question whether the offence under [section 123, IPC, 1860](#) of which the accused was not charged, is a minor offence falling under the charges framed, and held that the fact that there was no charge against the accused under this particular section, does not, in any way, result in prejudice to him because the charge of waging war and other allied offences are the subject matter of charges. It was held that the accused is not in any way handicapped by the absence of charge under [section 123, IPC, 1860](#). The case which he had to meet under section 123 is no different from the case relating to the major charges which he was confronted with. In the face of the stand he had taken and his conduct even after the attack, he could not have pleaded reasonable excuse for not passing on the information. It was held that viewed from any angle, the evidence on record justifies his conviction under [section 123, IPC, 1860](#).<sup>28</sup>

#### **[s 121.10] Previous Sanction.—**

No Court shall take cognizance of any offence punishable under Chapter VI of [IPC, 1860](#) except with the previous sanction of Central Government or of the State Government.<sup>29</sup> Where sanction was obtained only after cognizance, yet no prejudice

was caused because the matter was not proceeded any further and charge was also not yet framed. The Court remitted the matter for disposal after the date of sanction.<sup>30</sup>.

1. Subs. by the A.O. 1950, for "Queen".
2. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).
3. Subs. by Act 16 of 1921, section 2, for "and shall forfeit all his property".
4. Subs. by Act 36 of 1957, section 3 and Sch. II, for "Illustrations" (w.e.f. 17 September 1957).
5. The brackets and letter "(a)" omitted by Act 36 of 1957, section 3 and Sch. II (w.e.f. 17 September 1957).
6. Subs. by the A.O. 1950, for "Queen".
7. Illustration (b) omitted by the A.O. 1950.
8. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .
9. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
10. *Maganlal v State*, (1946) Nag 126.
11. *Md Jamiluddin Nasir v State of WB*, 2014 Cr LJ 3589 : AIR 2014 SC 2587 [LNIND 2014 SC 138] .
12. *Nazir Khan v State of Delhi*, (2003) 8 SCC 461 [LNIND 2003 SC 696] : 2003 AIR SCW 5068 : AIR 2003 SC 4427 [LNIND 2003 SC 696] : 2003 Cr LJ 5021 .
13. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
14. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .
15. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
16. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
17. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .
18. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
19. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .
20. *Adnan Bilal Mulla v State of Bombay*, 2006 Cr LJ (NOC) 406 Bom : (2006) 5 AIR Bom R 11 DB.

21. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .
22. *Hasrat Mohani*, (1922) 24 Bom LR 885 [LNIND 1922 BOM 136] .
23. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
24. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715 **relied** on *Maganlal Radhakrishan*, AIR 1946 Ngp 173 .
25. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .
26. *Mohd. Arif v State of NCT of Delhi*, JT 2011 (9) SC 563 [LNIND 2011 SC 753] : 2011 (8) Scale 328 [LNIND 2011 SC 753] : (2011) 10 SCR 56 [LNIND 2011 SC 753] : (2011) 13 SCC 621 [LNIND 2011 SC 753] **relied** on *Kehar Singh v State (Delhi Admn.)*, AIR 1988 SC 1883 [LNIND 1988 SC 887] . See also *State of Gujarat v Jaman Haji Mamad Jat*, 2007 Cr LJ 1584 (Guj).
27. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
28. *Shaukat Hussain Guru v State (NCT) Delhi*, AIR 2008 SC 2419 : (2008) 6 SCC 776 : 2008 Cr LJ 3016 : 2008 (8) SCR 391 : (2008) 3 SCC (Cr) 137.
29. Section 196(1)(a) of [Code of Criminal Procedure, 1973](#).
30. *Jamil Akhtar v State of WB*, 2001 Cr LJ 4529 (Cal).

## THE INDIAN PENAL CODE

### CHAPTER VI OF OFFENCES AGAINST THE STATE

The offences against the State fall into the following groups:—

- I. Waging, or attempting or conspiring to wage, or collecting men and ammunition to wage war against the Government of India (sections 121, 121A, 122, 123).
- II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).
- III. Sedition (section 124A).
- IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).
- V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

#### **31. [[s 121A] Conspiracy to commit offences punishable by section 121.**

Whoever within or without <sup>32.</sup>[India] conspires to commit any of the offences punishable by section 121, <sup>33.</sup>[\*\*\*]or conspires to overawe,<sup>1</sup> by means of criminal force or the show of criminal force, <sup>34.</sup>[the Central Government or any <sup>35.</sup>[State] Government <sup>36.</sup>[\*\*\*]], shall be punished with <sup>37.</sup>[imprisonment for life], or with imprisonment of either description which may extend to ten years, <sup>38.</sup>[and shall also be liable to fine].

**Explanation.**—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.]

#### COMMENT—

**Conspiracy to wage war.**—This section provides for the offence of conspiring to wage war against the Government of India. It was thought right to make the offence of conspiring by criminal force, or by show of criminal force, more severely penal than the offence of actually taking part in an unlawful assembly, having for its object the overawing of the Government. The reason was this that persons who by conspiring to bring about such a result, set the whole matter in motion, seemed more criminal and far more deserving of punishment than those who were their mere tools, and only took part in such an assembly.

The Explanation to section 121A clarifies that it is not necessary that any act or illegal omission should take place pursuant to the conspiracy, in order to constitute the said offence. Thus, the [criminal act](#) done by the deceased terrorists in order to capture the Parliament House is an act that amounts to waging or attempting to wage war. The conspiracy to commit either the offence of waging war or attempting to wage war or abetting the waging of war is punishable under [section 121A IPC, 1860](#) with the maximum sentence of imprisonment for life. In the circumstances of the case, the imposition of maximum sentence is called for and the High Court is justified in holding

the appellant Afzal guilty under [section 121A IPC, 1860](#) and sentencing him to life imprisonment.<sup>39.</sup>

The words 'conspires to overawe by means of criminal force or the show of criminal force, the Central Government, or any State Government' in this section clearly embrace not merely a conspiracy to raise a general insurrection, but also a conspiracy to overawe the Central Government or any State Government by the organisation of a serious riot or a large and tumultuous unlawful assembly.<sup>40.</sup>

### **[s 121A.1] Ingredients.—**

The section deals with two kinds of conspiracies:—

1. Conspiring within or without India to commit any of the offences punishable by section 121.
2. Conspiring to overawe by means of criminal force or the show of criminal force, the Government.

**1. 'Overawe'.—**The word 'overawe' clearly imports more than the creation of apprehension or alarm or even perhaps fear. It appears to connote the creation of a situation in which the members of the Central or State Government feel themselves compelled to choose between yielding to force or exposing themselves or members of the public to a very serious danger. It is not necessary that the danger should be a danger of assassination or of bodily injury to themselves. The danger might well be a danger to public property or to the safety of members of the general public.<sup>25</sup> The word 'overawe' clearly imports more than the creation of apprehension or alarm or fear. A slogan that Government can be changed by an armed revolution does not mean that there is a conspiracy to change the Government by criminal force. At best it means that the petitioners want to educate the people that by force only the Government could be changed.<sup>41.</sup>

*Explanation.*—The Explanation to this section says that to constitute a conspiracy under this section, it is not necessary that any act or illegal omission should take place in pursuance thereof.

<sup>31.</sup> Ins. by Act 27 of 1870, section 4.

<sup>32.</sup> The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

<sup>33.</sup> The words "or to deprive the Queen of the sovereignty of the Provinces or of any part thereof" omitted by the A.O. 1950.

<sup>34.</sup> Subs. by the A.O. 1937, for "the Government of India or any Local Government".

<sup>35.</sup> Subs. by the A.O. 1950, for "Provincial".

<sup>36.</sup> The words "or the Government of Burma" omitted by the A.O. 1948.

<sup>37.</sup> Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life or any shorter term" (w.e.f. 1 January 1956).

<sup>38.</sup> Ins. by Act 16 of 1921, section 3.

39. *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820 [LNIND 2005 SC 580] : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.
40. *Ramanand v State*, (1950) 30 Pat 152.
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## THE INDIAN PENAL CODE

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Whoever within or without <sup>32.</sup>[India] conspires to commit any of the offences punishable by section 121, <sup>33.</sup>[\*\*\*] or conspires to overawe, <sup>1</sup> by means of criminal force or the show of criminal force, <sup>34.</sup>[the Central Government or any <sup>35.</sup>[State] Government <sup>36.</sup>[\*\*\*]], shall be punished with <sup>37.</sup>[imprisonment for life], or with imprisonment of either description which may extend to ten years, <sup>38.</sup>[and shall also be liable to fine].

**Explanation.**—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.]

#### COMMENT—

**Conspiracy to wage war.**—This section provides for the offence of conspiring to wage war against the Government of India. It was thought right to make the offence of conspiring by criminal force, or by show of criminal force, more severely penal than the offence of actually taking part in an unlawful assembly, having for its object the overawing of the Government. The reason was this that persons who by conspiring to bring about such a result, set the whole matter in motion, seemed more criminal and far more deserving of punishment than those who were their mere tools, and only took part in such an assembly.

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<sup>31.</sup> Ins. by Act 27 of 1870, section 4.

<sup>32.</sup> The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

<sup>33.</sup> The words "or to deprive the Queen of the sovereignty of the Provinces or of any part thereof" omitted by the A.O. 1950.

<sup>34.</sup> Subs. by the A.O. 1937, for "the Government of India or any Local Government".

<sup>35.</sup> Subs. by the A.O. 1950, for "Provincial".

<sup>36.</sup> The words "or the Government of Burma" omitted by the A.O. 1948.

<sup>37.</sup> Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life or any shorter term" (w.e.f. 1 January 1956).

<sup>38.</sup> Ins. by Act 16 of 1921, section 3.

<sup>39.</sup> *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*, [AIR 2005 SC 3820 \[LNIND 2005 SC 580\]](#) : (2005) 11 SCC 600 [LNIND 2005 SC 580] : (2005) 2 SCC (Cr) 1715.

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- IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).
- V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

### **[s 122] Collecting arms, etc., with intention of waging war against the Government of India.**

**Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the <sup>42.</sup> [Government of India], shall be punished with <sup>43.</sup> [imprisonment for life] or imprisonment of either description for a term not exceeding ten years, <sup>44.</sup> [and shall also be liable to fine].**

### **COMMENT—**

This section is intended to put down with a heavy hand any preparation to wage war against the Government of India. The act made punishable by this section cannot be considered attempts; they are in truth preparations made for committing the offence of waging war. Preparation consists of devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under section 122 (waging war against the Government of India) and section 399 (preparation and an attempt is sometimes thin and has to be decided on the facts of each case). There is a greater degree of determination in attempt as compared with preparation.<sup>45.</sup>

<sup>42.</sup> Subs. by the A.O. 1950, for "Queen".

43. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).
44. Ins. by Act 16 of 1921, section 3.
45. *Koppula Venkat Rao v State of AP*, AIR 2004 SC 1874 [LNIND 2004 SC 301] : (2004) 3 SCC 602 [LNIND 2004 SC 301] .

## THE INDIAN PENAL CODE

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- V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

#### **[s 123] Concealing with intent to facilitate design to wage war.**

**Whoever, by any act, or by any illegal omission, conceals the existence of a design to wage war against the <sup>46.</sup>[Government of India], intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

#### **COMMENT—**

This section reiterates the principle enunciated in section 118, the only difference being that the penalty under it is more severe. [Section 39 of Code of Criminal Procedure \(Cr PC\), 1973](#) read with [section 176 of the IPC, 1860](#) makes it an offence for any person who is aware of the commission of, or of the intention of any person to commit, an offence under sections 121–126, both inclusive (that is, offences against the State specified in Chapter VI of the Code), to omit giving any notice or furnishing any information to any public servant. Moreover, [section 123 of IPC, 1860](#) makes it an offence to conceal, whether by act or omission, the existence of a design to "wage war" against the Government of India, when intending by such concealment to facilitate, or knowing it to be likely that such concealing will facilitate, the waging of such war.<sup>47.</sup>

#### **[s 123.1] Section 121 and Section 123.—**

To prove an offence under [section 121, IPC, 1860](#), the prosecution is required to prove that the accused is guilty of waging war against the Government of India or attempts to wage such war, or abets the waging of such war, whereas for proving the offence under [section 123, IPC, 1860](#) against the accused, the prosecution is required to prove that there was a concealment by an act or by illegal omission of existence of a design to wage war against the Government of India and he intended by such concealment to facilitate, or he knew that such concealment will facilitate, the waging of war. In the present case, the accused was charged under [section 121, IPC, 1860](#), for waging war against the Government of India or attempting to wage such war or abetting the

waging of such war. The concealment of such fact by an act or illegal omission with an intention to facilitate, or knowing that such concealment will facilitate, waging of war, even in the absence of proof of his involvement in waging of war against the Government of India, will constitute an offence and an accused can always be convicted for the concealment of such fact under [section 123, IPC, 1860](#). The prosecution having been successful in proving the necessary ingredients of [section 123, IPC, 1860](#), it would constitute a minor offence of a major offence and, therefore, the petitioner was convicted under [section 123, IPC, 1860](#) which is a minor offence of the offences he faced trial.<sup>48.</sup>

46. Subs. by the A.O. 1950, for "Queen".

47. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [LNIND 2012 SC 1215] : 2012 AIR (SCW) 4942 : AIR 2012 SC 3565 [LNIND 2012 SC 1215] : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [LNIND 2012 SC 1215] : 2012 (7) Scale 553 .

48. *Shaukat Hussain Guru v State (NCT) Delhi*, AIR 2008 SC 2419 : (2008) 6 SCC 776 : 2008 Cr LJ 3016 : 2008 (8) SCR 391 : (2008) 3 SCC (Cr) 137.

# THE INDIAN PENAL CODE

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II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).

III. Sedition (section 124A).

IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).

V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

### **[s 124] Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power.**

Whoever, with the intention of inducing or compelling the <sup>49.</sup>[President] of India, or the <sup>50.</sup>[Governor <sup>51.</sup>[\*\*\*]] of any <sup>52.</sup>[State], <sup>53.</sup>[\*\*\*] <sup>54.</sup>[\*\*\*] <sup>55.</sup>[\*\*\*] to exercise or refrain from exercising in any manner any of the lawful powers of such <sup>56.</sup>[President] or <sup>57.</sup>[Governor <sup>58.</sup>[\*\*\*]],

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such <sup>59.</sup>[President or <sup>60.</sup>[Governor <sup>61.</sup>[\*\*\*]]],

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

### COMMENT—

This section is an amplification of the third clause of section 121A. It punishes severely assaults, etc., made on high officers of Government.

<sup>49.</sup> Subs. by the A.O. 1950, for "Governor General".

<sup>50.</sup> Subs. by Act 3 of 1951, section 3 and Sch., for "Governor" (w.e.f. 1 April 1951).

<sup>51.</sup> The words "or Rajpramukh" omitted by the A.O. (No. 2) 1956.

<sup>52.</sup> Subs. by the A.O. 1950, for "Province". Earlier the word "Province" was subs. by the A.O. 1937, for the word "Presidency".



53. The words "or a Lieutenant-Governor" omitted by the A.O. 1937.
54. The words "or a Member of the Council of the Governor General of India" omitted by the A.O. 1948.
55. The words "or of the Council of any Presidency" omitted by the A.O. 1937.
56. The words "Governor General, Governor, Lieutenant-Governor or Member of Council" have successfully been amended by the A.O. 1937, the A.O. 1948 and the A.O. 1950 to read as above.
57. Subs. by Act 3 of 1951, section 3 and Sch., for "Governor" (w.e.f. 1 April 1951).
58. The words "or Rajpramukh" omitted by the A.O. (No. 2) 1956.
59. The words "Governor General, Governor, Lieutenant-Governor or Member of Council" have successfully been amended by the A.O. 1937, the A.O. 1948 and the A.O. 1950 to read as above.
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- V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

#### **62. [[s 124A] Sedition.**

**Whoever, by words, either spoken or written, or by**

**signs, or by visible representation, or otherwise, brings or attempts**

**to bring into hatred or contempt, or excites or attempts to excite disaffection towards, 63.[\*\*\*] the Government established by law in 64.[India], 65.[\*\*\*] shall be punished with 66.[imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.**

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

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

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

#### **COMMENT—**

The offence under section 124A captioned as 'Sedition' is closely allied to treason – an offence against the State. Many personalities including the Father of the Nation and several freedom fighters have been tried and punished during the imperial rule under the above section. How far in a democratic set-up publishing or preaching of protest even questioning the foundation of the form of Government could be imputed as causing disaffection towards the Government and thus, committing of any offence

under Chapter VI of the [IPC, 1860](#) has to be examined within the letter and spirit of the [Constitution](#) and not as previously done under the imperial rule.<sup>67</sup>

Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the country. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion.

Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder.<sup>68</sup>

### **[s 124A.1] Constitutional Validity.—**

The Supreme Court, in *Kedar Nath Singh v State of Bihar*,<sup>69</sup> held that this section is not unconstitutional and opined that only when it is construed that the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order the law steps in to prevent such activities in the interest of public order, then only the section strikes the correct balance between individual fundamental rights and the interest of public order. The Court also held that a citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.

The Supreme Court in a later Order in *Common Cause v UOI*<sup>70</sup> ordered that the authorities while dealing with the offences under [section 124A of the IPC, 1860](#) shall be guided by the principles laid down by the [Constitution](#) Bench in *Kedar Nath Singh*.

Section 124A]

### **[s 124A.2] Ingredients.—**

This section requires two essentials:—

1. Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards the Government of India.
2. Such act or attempt may be done (i) by words, either spoken or written; or (ii) by signs; or (iii) by visible representation.

**1. Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards the Government of India.—**A plain reading of the section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations, etc.<sup>71</sup> Necessary ingredient to attract punishment under [section 124A, IPC, 1860](#), appears to be the effort of bringing or attempting to bring into hatred or contempt to excite or attempt to excite disaffection towards the Government established by law in India by words, either spoken or written or by signs or by visible representation or otherwise.<sup>72</sup> The offence does not consist in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or

small. Whether any disturbance or outbreak was caused by the publication of seditious articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within this section, and would probably fall within other sections of the [IPC, 1860](#). If he tried to excite feelings of hatred or contempt towards the Government, that is sufficient to make him guilty under this section.<sup>73</sup> The Federal Court of India had, however, held that the gist of the offence of sedition is incitement to violence; mere abusive words are not enough.<sup>74</sup> The view of the Federal Court was subsequently overruled by the Privy Council,<sup>75</sup> as being opposed to the view expressed in several cases.<sup>76</sup>

In appreciating whether the act done by the accused by words "either spoken or written or by signs or by misrepresentation or otherwise" one cannot shut one's eyes to changes in political consumptions which have taken place over the course of time after the aforesaid penal provision section 124A was included in the [IPC, 1860](#) and the declared objective of the Government of the day. Very often, the demarcating line between political criticism of the Government and those causing disaffection against the Government is thin and waving.<sup>77</sup>

It is not an essential ingredient of sedition that the act done should be an act which is intended or likely to incite to public disorder.<sup>78</sup> But this view of the law does no longer seem to be correct, in view of the decision of the Supreme Court in *Kedar Nath's* case,<sup>79</sup> wherein *Sinha*, CJ observed:

comments, however strongly worded expressing, disapprobation of actions of Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity or disloyalty which imply excitement to public disorder or the use of violence.

In this very case it was further held that viewed in the context of antecedent history of the legislation, its purpose and the mischief it seeks to suppress the provisions of [section 124A](#) and [section 505](#) of the [IPC, 1860](#) should be limited in their application to acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence. Where the propaganda secretary of a Gurdwara addressed a gathering of Sikhs, some of whom were wearing black clothes and turbans, and in course of his speech though he did not give direct incitement to violence but he nevertheless gave exaggerated figures of casualties following Army action in Punjab, it was held that it would be quite proper to infer from the text and tenor of the speech made by the accused that the same was intended to bring the Government into contempt with the likelihood of eruption of violence and public disorder contemplated in *Kedarnath's* case. In the circumstances, his petition for quashing the criminal proceedings against him under [section 482, Cr PC, 1973](#) was rejected.<sup>80</sup> The decisive ingredient for establishing the offence of Sedition under [section 124A, IPC, 1860](#) is the doing of certain acts which would bring the Government established by law in India into hatred or contempt, etc. In this case, there is not even a suggestion that appellant did anything as against the Government of India or any other Government of the State. The charge framed against the accused contains no averment that accused did anything as against the Government.<sup>81</sup> The prosecution evidence shows that the slogans were raised a couple of times only by the accused and that neither the slogans evoked a response from any other person of the Sikh community nor reaction from people of other communities. Supreme Court found it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever, the charge of sedition can be founded.

The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India. [Section 124A IPC, 1860](#) would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case.<sup>82</sup> The prosecution case is that the accused has delivered a speech creating ill will and promoting enmity among different racial and linguistic groups of Indian people and thereby committed the offences punishable under [sections 124\(A\)](#) and [153\(A\)](#) of the [IPC, 1860](#). A perusal of the First Information Report and the charge sheet laid by the respondent police would make it abundantly clear that the allegations mentioned therein, if proved, would naturally attract the provisions of [sections 124\(A\)](#) and [153\(A\)](#) of [IPC, 1860](#).<sup>83</sup> State of Punjab and Union Territory, Chandigarh, had been declared Disturbed Area and the extremists activities were going on a large scale in September 1984. The law and order situation had so deteriorated that the Army had to spread out. In this background, it will be proper to infer from the text and tenor of the speech made by the accused that the same was intended and it did tend to bring the Government into contempt with the likelihood of eruption of violence and public disorder.<sup>84</sup>

**2. Such act, attempt, etc., may be done by words, either spoken or written or by signs or by visible representation.**—Not only the writer of seditious articles but whoever uses in any way words or printed matter for the purpose of exciting feelings of disaffection to the Government is liable under the section, whether he is the actual author or not.<sup>85</sup>

#### **[s 124A.3] 'Written'.—**

In *Raghubir Singh*,<sup>86</sup> it has been held that for establishing the charge of sedition, it is not necessary that the accused must be the author of the seditious material and that distribution or circulation of seditious material may also be sufficient on the facts and circumstances of the case and even the act of courier is sometimes enough in a case of conspiracy and further that it is also not necessary that a person should be the participant in the conspiracy from start to finish. Disaffection may be excited in a thousand different ways. A poem, an allegory, a drama, a philosophical or historical discussion, may be used for the purpose of exciting disaffection. Seditious writing, while it remains in the hands of the author unpublished, will not make him liable. Publication of some kind is necessary.<sup>87</sup> Sending of seditious matter by post addressed to a private individual not by name but by designation as the representative of a large body of students amounts to publication if it is opened by anybody.<sup>88</sup>

#### **[s 124A.4] Advise to kill members of police force.—**

The Government established by law acts through human agency and admittedly, the police service or force is itself a principal agency for the administration and maintenance of the law and order in the State. When a person makes a statement or gives an advice to resort to violence by killing four to five police officers, he could be said to have criticised the police force or the service *en bloc*. In such circumstances a *prima facie* case of waging war against the Government could be said to have been made out.<sup>89</sup>

#### **[s 124A.5] 'Visible representation'.—**

Sedition does not necessarily consist of written matter: it may be evidenced by a wood-cut or engraving of any kind.<sup>90.</sup>

#### **[s 124A.6] Explanations 2 and 3.—**

Both these Explanations have a strictly defined and limited scope. They have no application unless the article in question criticises "the measures of Government" or "administrative or other action of the Government" without exciting or attempting to excite hatred, contempt or disaffection.

#### **[s 124A.7] Membership in a banned organization.—**

Mere membership of a banned organization will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence.<sup>91.</sup>

#### **[s 124A.8] 'Disapprobation'.—**

This means simply disapproval. It is quite possible to disapprove of a man's sentiments or actions and yet to like him.<sup>92.</sup>

#### **[s 124A.9] Liability for extracts from other papers.—**

The law does not excuse the publication in newspapers of writings which are in themselves seditious libels, merely because they are copied from foreign newspapers as items of news.<sup>93.</sup>

#### **[s 124A.10] Liability for letters of correspondents.—**

The editor of a newspaper is liable for unsigned seditious letters appearing in his paper.<sup>94.</sup>

#### **[s 124A.11] Publication of seditious exhibits.—**

Republication of a seditious article used as an exhibit in a case of sedition is not justifiable.<sup>95.</sup>

#### **[s 124A.12] Listening to cassettes.—**

Certain accused persons were convicted for listening to some cassettes containing speeches of seditious nature. There was no other evidence to show that they either committed or conspired or attempted to commit or advocated or advised or knowingly

facilitated commission of disruptive activities under Terrorist and Disruptive Activities (Prevention) Act (TADA), 1987. Their conviction was set aside.<sup>96.</sup>

### **[s 124A.13] Previous Sanction.—**

No sanction has been obtained to prosecute the petitioner/ accused for the offence under [section 124A of the IPC, 1860](#) which is a mandatory requirement for the Court to take cognizance of such offence. When that be so, whether the contents of the poster and its publication by the accused, even if it is at his instance, to determine whether any offence of sedition is made out thereof is not called for. [Section 196 of the Cr PC, 1973](#) mandates that a complaint for such offence should be expressly authorised by the Government, and if not, the Court cannot take cognizance of such offence against the accused person. Committal proceedings taken over the final report laid before the Court without production of order of sanction satisfying the statutory mandate is clearly unsustainable.<sup>97.</sup>

62. Subs. by Act 4 of 1898, section 4, for section 124A. Earlier section 124A was inserted by Act 27 of 1870, section 5.

63. The words "Her Majesty or" omitted by the A.O. 1950. The words "or the Crown Representative" ins. after the word "Majesty" by the A.O. 1937 were omitted by the A.O. 1948.

64. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

65. The words "or British Burma" omitted by the A.O. 1948. Earlier the words "or British Burma" were inserted by the A.O. 1937.

66. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life or any shorter term" (w.e.f. 1 January 1956).

67. *Advocate Manuel PJ v State*, 2012 (4) Ker LT 708 .

68. *Nazir Khan v State of Delhi*, AIR 2003 SC 4427 [LNIND 2003 SC 696] : (2003) 8 SCC 461 [LNIND 2003 SC 696] : JT 2003 (1) SC 200 : 2003 Cr LJ 5021 .

69. *Kedar Nath Singh v State of Bihar*, AIR 1962 SC 955 [LNIND 1962 SC 21] : [1962] Supp 2 SCR 76.

70. *Common Cause v UOI*, Writ Petitions Civil No. 683/2016.

71. *Balwant Singh v State of Punjab*, AIR 1995 SC 1785 [LNIND 1995 SC 1420] : (1995) 3 SCC 214 [LNIND 1995 SC 1420] .

72. *Asit Kumar Sen Gupta v State of Chhattisgarh*, 2012 (NOC) Cr LJ 384 (Chh).

73. *Bal Gangadhar Tilak*, (1897) 22 Bom 112, 528, (PC); *BG Tilak*, (1908) 10 Bom LR 848 [LNIND 1908 BOM 85] ; *Amba Prasad*, (1897) 20 All 55 , 69, FB; *Luxman*, (1899) 2 Bom LR 286 ; *Shankar*, (1910) 12 Bom LR 675 [LNIND 1910 BOM 66] .

74. *Niharendu Dutt Majumdar*, (1942) FCR 38 .

75. *Sadashi v Narayan v State*, (1947) 49 Bom LR 526 , (1947) Bom 110, 74 IA 89.

76. *Bal Gangadhar Tilak*, (1897) 22 Bom 528, PC; *Besant v Advocate-General of Madras*, (1919) 43 Mad 146 : 21 Bom LR 867 PC; *Wallace-Johnson*, (1940) AC 231 .

77. *Advocate Manuel PJ v State*, 2012 (4) Ker LT 708 .
78. *Pratap "Urdu Daily of New Delhi"*, (1949) 2 Punj 348.
79. *Kedar Nath*, AIR 1962 SC 955 [LNIND 1962 SC 21] : 1962 (2) Cr LJ 103 .
80. *Naurang Singh*, 1986 Cr LJ 846 (P&H).
81. *Bilal Ahmed Kaloo v State of AP*, AIR 1997 SC 3483 [LNIND 1997 SC 1060] : (1997) 7 SCC 431 [LNIND 1997 SC 1060] : 1997 Cr LJ 4091 : (1997) 1 SCC (Cr) 1094.
82. *Balwant Singh v State of Punjab*, AIR 1995 SC 1785 [LNIND 1995 SC 1420] : (1995) 3 SCC 214 [LNIND 1995 SC 1420] .
83. *P Nedumaran v State*, 2003 Cr LJ 4388 (Mad).
84. *Naurang Singh v Union Territory, Chandigarh*, 1986 Cr LJ 846 (PH).
85. *Bal Gangadhar Tilak*, (1897) 22 Bom 112, 129; *Jogendra Chunder Bose*, (1891) 19 Cal 35 , 41.
86. *Raghubir Singh*, 1987 Cr LJ 157 : AIR 1987 SC 149 [LNIND 1986 SC 336] : (1986) 4 SCC 481 [LNIND 1986 SC 336] .
87. *Foster*, 198.
88. *Suresh Chandra Sanyal*, (1912) 39 Cal 606 . Recovery of seditious material in the shape of letters is enough though they were not written by the person carrying them. *Raghubir Singh v State of Bihar*, 1987 Cr LJ 157 : AIR 1987 SC 149 [LNIND 1986 SC 336] : (1986) 4 SCC 481 [LNIND 1986 SC 336] .
89. *Hardik Bharatbhai Patel v State of Gujarat*, 2016 Cr LJ 225 (Guj) : 2016 (1) RCR (Criminal) 542.
90. *Alexander M Sullivan*, (1868) 11 Cox 44, 51.
91. *Indra Das v State of Assam*, (2011) 3 SCC 380 [LNIND 2011 SC 164] : 2011 Cr LJ 1646 : (2011) 1 SCC (Cr) 1150 : (2011) 4 SCR 289 [LNIND 2011 SC 164] ; *State v Raneef*, (2011) 1 SCC 784 [LNIND 2011 SC 3] : AIR 2011 SC 340 [LNIND 2011 SC 3] : 2011 Cr LJ 982 .
92. *Jogendra Chunder Bose*, (1891) 19 Cal 35 , 44; *Bal Gangadhar Tilak*, (1897) 22 Bom 112, 137.
93. *Alexander M Sullivan*, (1886) 11 Cox 44.
94. *Apurba Krishna Bose*, (1907) 35 Cal 141 .
95. *Ibid*.
96. *Balbir Singh v State of UP*, AIR 2000 SC 464 : 2000 Cr LJ 590 .
97. *Advocate Manuel PJ v State*, 2012 (4) Ker LT 708 .



# THE INDIAN PENAL CODE

## CHAPTER VI OF OFFENCES AGAINST THE STATE

The offences against the State fall into the following groups:—

- I. Waging, or attempting or conspiring to wage, or collecting men and ammunition to wage war against the Government of India (sections 121, 121A, 122, 123).
- II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).
- III. Sedition (section 124A).
- IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).
- V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

### **62. [[s 124A] Sedition.**

**Whoever, by words, either spoken or written, or by**

**signs, or by visible representation, or otherwise, brings or attempts**

**to bring into hatred or contempt, or excites or attempts to excite disaffection towards, 63.[\*\*\*] the Government established by law in 64.[India], 65.[\*\*\*] shall be punished with 66.[imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.**

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

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

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

### **COMMENT—**

The offence under section 124A captioned as 'Sedition' is closely allied to treason – an offence against the State. Many personalities including the Father of the Nation and several freedom fighters have been tried and punished during the imperial rule under the above section. How far in a democratic set-up publishing or preaching of protest even questioning the foundation of the form of Government could be imputed as causing disaffection towards the Government and thus, committing of any offence

under Chapter VI of the [IPC, 1860](#) has to be examined within the letter and spirit of the [Constitution](#) and not as previously done under the imperial rule.<sup>67</sup>

Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the country. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion.

Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder.<sup>68</sup>

#### [s 124A.1] **Constitutional Validity.—**

The Supreme Court, in *Kedar Nath Singh v State of Bihar*,<sup>69</sup> held that this section is not unconstitutional and opined that only when it is construed that the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order the law steps in to prevent such activities in the interest of public order, then only the section strikes the correct balance between individual fundamental rights and the interest of public order. The Court also held that a citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.

The Supreme Court in a later Order in *Common Cause v UOI*<sup>70</sup> ordered that the authorities while dealing with the offences under [section 124A of the IPC, 1860](#) shall be guided by the principles laid down by the [Constitution](#) Bench in *Kedar Nath Singh*.

Section 124A]

#### [s 124A.2] **Ingredients.—**

This section requires two essentials:—

1. Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards the Government of India.
2. Such act or attempt may be done (i) by words, either spoken or written; or (ii) by signs; or (iii) by visible representation.

**1. Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards the Government of India.—**A plain reading of the section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations, etc.<sup>71</sup>. Necessary ingredient to attract punishment under [section 124A, IPC, 1860](#), appears to be the effort of bringing or attempting to bring into hatred or contempt to excite or attempt to excite disaffection towards the Government established by law in India by words, either spoken or written or by signs or by visible representation or otherwise.<sup>72</sup> The offence does not consist in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by the publication of seditious articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within this section, and would

probably fall within other sections of the [IPC, 1860](#). If he tried to excite feelings of hatred or contempt towards the Government, that is sufficient to make him guilty under this section.<sup>73</sup> The Federal Court of India had, however, held that the gist of the offence of sedition is incitement to violence; mere abusive words are not enough.<sup>74</sup> The view of the Federal Court was subsequently overruled by the Privy Council,<sup>75</sup> as being opposed to the view expressed in several cases.<sup>76</sup>

In appreciating whether the act done by the accused by words "either spoken or written or by signs or by misrepresentation or otherwise" one cannot shut one's eyes to changes in political consumptions which have taken place over the course of time after the aforesaid penal provision section 124A was included in the [IPC, 1860](#) and the declared objective of the Government of the day. Very often, the demarcating line between political criticism of the Government and those causing disaffection against the Government is thin and waving.<sup>77</sup>

It is not an essential ingredient of sedition that the act done should be an act which is intended or likely to incite to public disorder.<sup>78</sup> But this view of the law does no longer seem to be correct, in view of the decision of the Supreme Court in *Kedar Nath's* case,<sup>79</sup> wherein *Sinha*, CJ observed:

comments, however strongly worded expressing, disapprobation of actions of Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity or disloyalty which imply excitement to public disorder or the use of violence.

In this very case it was further held that viewed in the context of antecedent history of the legislation, its purpose and the mischief it seeks to suppress the provisions of [section 124A](#) and [section 505](#) of the [IPC, 1860](#) should be limited in their application to acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence. Where the propaganda secretary of a Gurdwara addressed a gathering of Sikhs, some of whom were wearing black clothes and turbans, and in course of his speech though he did not give direct incitement to violence but he nevertheless gave exaggerated figures of casualties following Army action in Punjab, it was held that it would be quite proper to infer from the text and tenor of the speech made by the accused that the same was intended to bring the Government into contempt with the likelihood of eruption of violence and public disorder contemplated in *Kedarnath's* case. In the circumstances, his petition for quashing the criminal proceedings against him under [section 482, Cr PC, 1973](#) was rejected.<sup>80</sup> The decisive ingredient for establishing the offence of Sedition under [section 124A, IPC, 1860](#) is the doing of certain acts which would bring the Government established by law in India into hatred or contempt, etc. In this case, there is not even a suggestion that appellant did anything as against the Government of India or any other Government of the State. The charge framed against the accused contains no averment that accused did anything as against the Government.<sup>81</sup> The prosecution evidence shows that the slogans were raised a couple of times only by the accused and that neither the slogans evoked a response from any other person of the Sikh community nor reaction from people of other communities. Supreme Court found it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever, the charge of sedition can be founded.

The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India. [Section 124A IPC, 1860](#) would in the facts and circumstances of the case have no application whatsoever and would not be

attracted to the facts and circumstances of the case.<sup>82</sup> The prosecution case is that the accused has delivered a speech creating ill will and promoting enmity among different racial and linguistic groups of Indian people and thereby committed the offences punishable under sections 124(A) and 153(A) of the IPC, 1860. A perusal of the First Information Report and the charge sheet laid by the respondent police would make it abundantly clear that the allegations mentioned therein, if proved, would naturally attract the provisions of sections 124(A) and 153(A) of IPC, 1860.<sup>83</sup> State of Punjab and Union Territory, Chandigarh, had been declared Disturbed Area and the extremists activities were going on a large scale in September 1984. The law and order situation had so deteriorated that the Army had to spread out. In this background, it will be proper to infer from the text and tenor of the speech made by the accused that the same was intended and it did tend to bring the Government into contempt with the likelihood of eruption of violence and public disorder.<sup>84</sup>

**2. Such act, attempt, etc., may be done by words, either spoken or written or by signs or by visible representation.**—Not only the writer of seditious articles but whoever uses in any way words or printed matter for the purpose of exciting feelings of disaffection to the Government is liable under the section, whether he is the actual author or not.<sup>85</sup>

[s 124A.3] **'Written'.—**

In *Raghubir Singh*,<sup>86</sup> it has been held that for establishing the charge of sedition, it is not necessary that the accused must be the author of the seditious material and that distribution or circulation of seditious material may also be sufficient on the facts and circumstances of the case and even the act of courier is sometimes enough in a case of conspiracy and further that it is also not necessary that a person should be the participant in the conspiracy from start to finish. Disaffection may be excited in a thousand different ways. A poem, an allegory, a drama, a philosophical or historical discussion, may be used for the purpose of exciting disaffection. Seditious writing, while it remains in the hands of the author unpublished, will not make him liable. Publication of some kind is necessary.<sup>87</sup> Sending of seditious matter by post addressed to a private individual not by name but by designation as the representative of a large body of students amounts to publication if it is opened by anybody.<sup>88</sup>

[s 124A.4] **Advise to kill members of police force.—**

The Government established by law acts through human agency and admittedly, the police service or force is itself a principal agency for the administration and maintenance of the law and order in the State. When a person makes a statement or gives an advice to resort to violence by killing four to five police officers, he could be said to have criticised the police force or the service *en bloc*. In such circumstances a *prima facie* case of waging war against the Government could be said to have been made out.<sup>89</sup>

[s 124A.5] **'Visible representation'.—**

Sedition does not necessarily consist of written matter: it may be evidenced by a wood-cut or engraving of any kind.<sup>90</sup>

[s 124A.6] **Explanations 2 and 3.—**

Both these Explanations have a strictly defined and limited scope. They have no application unless the article in question criticises "the measures of Government" or "administrative or other action of the Government" without exciting or attempting to excite hatred, contempt or disaffection.

[s 124A.7] **Membership in a banned organization.—**

Mere membership of a banned organization will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence.<sup>91.</sup>

[s 124A.8] **'Disapprobation'.—**

This means simply disapproval. It is quite possible to disapprove of a man's sentiments or actions and yet to like him.<sup>92.</sup>

[s 124A.9] **Liability for extracts from other papers.—**

The law does not excuse the publication in newspapers of writings which are in themselves seditious libels, merely because they are copied from foreign newspapers as items of news.<sup>93.</sup>

[s 124A.10] **Liability for letters of correspondents.—**

The editor of a newspaper is liable for unsigned seditious letters appearing in his paper.<sup>94.</sup>

[s 124A.11] **Publication of seditious exhibits.—**

Republication of a seditious article used as an exhibit in a case of sedition is not justifiable.<sup>95.</sup>

[s 124A.12] **Listening to cassettes.—**

Certain accused persons were convicted for listening to some cassettes containing speeches of seditious nature. There was no other evidence to show that they either committed or conspired or attempted to commit or advocated or advised or knowingly facilitated commission of disruptive activities under Terrorist and Disruptive Activities (Prevention) Act (TADA), 1987. Their conviction was set aside.<sup>96.</sup>

[s 124A.13] **Previous Sanction.—**

No sanction has been obtained to prosecute the petitioner/ accused for the offence under [section 124A of the IPC, 1860](#) which is a mandatory requirement for the Court to take cognizance of such offence. When that be so, whether the contents of the poster and its publication by the accused, even if it is at his instance, to determine whether any offence of sedition is made out thereof is not called for. [Section 196 of the Cr PC, 1973](#) mandates that a complaint for such offence should be expressly authorised by the Government, and if not, the Court cannot take cognizance of such offence against the accused person. Committal proceedings taken over the final report laid before the Court without production of order of sanction satisfying the statutory mandate is clearly unsustainable.<sup>97.</sup>

<sup>62.</sup> Subs. by Act 4 of 1898, section 4, for section 124A. Earlier section 124A was inserted by Act 27 of 1870, section 5.

<sup>63.</sup> The words "Her Majesty or" omitted by the A.O. 1950. The words "or the Crown Representative" ins. after the word "Majesty" by the A.O. 1937 were omitted by the A.O. 1948.

64. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.
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74. *Niharendu Dutt Majumdar*, (1942) FCR 38 .
75. *Sadashi v Narayan v State*, (1947) 49 Bom LR 526 , (1947) Bom 110, 74 IA 89.
76. *Bal Gangadhar Tilak*, (1897) 22 Bom 528, PC; *Besant v Advocate-General of Madras*, (1919) 43 Mad 146 : 21 Bom LR 867 PC; *Wallace-Johnson*, (1940) AC 231 .
77. *Advocate Manuel PJ v State*, 2012 (4) Ker LT 708 .
78. *Pratap "Urdu Daily of New Delhi"*, (1949) 2 Punj 348.
79. *Kedar Nath*, AIR 1962 SC 955 [LNIND 1962 SC 21] : 1962 (2) Cr LJ 103 .
80. *Naurang Singh*, 1986 Cr LJ 846 (P&H).
81. *Bilal Ahmed Kaloo v State of AP*, AIR 1997 SC 3483 [LNIND 1997 SC 1060] : (1997) 7 SCC 431 [LNIND 1997 SC 1060] : 1997 Cr LJ 4091 : (1997) 1 SCC (Cr) 1094.
82. *Balwant Singh v State of Punjab*, AIR 1995 SC 1785 [LNIND 1995 SC 1420] : (1995) 3 SCC 214 [LNIND 1995 SC 1420] .
83. *P Nedumaran v State*, 2003 Cr LJ 4388 (Mad).
84. *Naurang Singh v Union Territory, Chandigarh*, 1986 Cr LJ 846 (PH).
85. *Bal Gangadhar Tilak*, (1897) 22 Bom 112, 129; *Jogendra Chunder Bose*, (1891) 19 Cal 35 , 41.
86. *Raghubir Singh*, 1987 Cr LJ 157 : AIR 1987 SC 149 [LNIND 1986 SC 336] : (1986) 4 SCC 481 [LNIND 1986 SC 336] .
87. *Foster*, 198.
88. *Suresh Chandra Sanyal*, (1912) 39 Cal 606 . Recovery of seditious material in the shape of letters is enough though they were not written by the person carrying them. *Raghubir Singh v State of Bihar*, 1987 Cr LJ 157 : AIR 1987 SC 149 [LNIND 1986 SC 336] : (1986) 4 SCC 481 [LNIND 1986 SC 336] .
89. *Hardik Bharatbhai Patel v State of Gujarat*, 2016 Cr LJ 225 (Guj) : 2016 (1) RCR (Criminal) 542.
90. *Alexander M Sullivan*, (1868) 11 Cox 44, 51.
91. *Indra Das v State of Assam*, (2011) 3 SCC 380 [LNIND 2011 SC 164] : 2011 Cr LJ 1646 : (2011) 1 SCC (Cr) 1150 : (2011) 4 SCR 289 [LNIND 2011 SC 164] ; *State v Raneef*, (2011) 1 SCC 784 [LNIND 2011 SC 3] : AIR 2011 SC 340 [LNIND 2011 SC 3] : 2011 Cr LJ 982 .
92. *Jogendra Chunder Bose*, (1891) 19 Cal 35 , 44; *Bal Gangadhar Tilak*, (1897) 22 Bom 112, 137.

93. *Alexander M Sullivan*, (1886) 11 Cox 44.
94. *Apurba Krishna Bose*, (1907) 35 Cal 141 .
95. *Ibid.*
96. *Balbir Singh v State of UP*, AIR 2000 SC 464 : 2000 Cr LJ 590 .
97. *Advocate Manuel PJ v State*, 2012 (4) Ker LT 708 .

## THE INDIAN PENAL CODE

### CHAPTER VI OF OFFENCES AGAINST THE STATE

The offences against the State fall into the following groups:—

- I. Waging, or attempting or conspiring to wage, or collecting men and ammunition to wage war against the Government of India (sections 121, 121A, 122, 123).
- II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).
- III. Sedition (section 124A).
- IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).
- V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

#### **[s 125] Waging war against any Asiatic Power in alliance with the Government of India.**

**Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the <sup>98</sup>[Government of India] or attempts to wage such war, or abets the waging of such war, shall be punished with <sup>99</sup>[imprisonment for life], to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.**

#### **COMMENT—**

**Waging war against Asiatic power.**—This section restrains a person from making India the base of intrigues and enterprise for the restoration of deposed rulers or other like purposes. The fulfilment of the obligations of the State to allies and friendly Powers requires that the abetment of such schemes by its subjects whether by furnishing supplies or otherwise should be forbidden.<sup>100</sup> "One Sovereign power is bound to respect the subjects and the rights of all other sovereign powers outside its own territory".<sup>101</sup> This section, however, does not affect India's right as sovereign nation to offer political asylum to a deposed ruler.

<sup>98</sup>. Subs. by the A.O. 1950, for "Queen".

<sup>99</sup>. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

<sup>100</sup>. M & M 105.

<sup>101</sup>. *Jameson*, (1896) 2 QB 425, 430.





# THE INDIAN PENAL CODE

## CHAPTER VI OF OFFENCES AGAINST THE STATE

The offences against the State fall into the following groups:—

- I. Waging, or attempting or conspiring to wage, or collecting men and ammunition to wage war against the Government of India (sections 121, 121A, 122, 123).
- II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).
- III. Sedition (section 124A).
- IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).
- V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

### **[s 126] Committing depredation on territories of power at peace with the Government of India.**

**Whoever commits depredation, or makes preparations to commit depredation, on the territories of any power in alliance or at peace with the <sup>102</sup>[Government of India], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.**

### **COMMENT—**

**Depredation.**—The preceding section provides for waging war against any Asiatic Power in alliance with the Government of India, this section prevents the commission of depredation or plunder on territories of States at peace with the Government of India. The scope of this section is much wider than the preceding section, for it applies to a Power which may or may not be Asiatic.

<sup>102</sup>. Subs. by the A.O. 1950, for "Queen".

# THE INDIAN PENAL CODE

## CHAPTER VI OF OFFENCES AGAINST THE STATE

The offences against the State fall into the following groups:—

I. Waging, or attempting or conspiring to wage, or collecting men and ammunition to wage war against the Government of India (sections 121, 121A, 122, 123).

II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).

III. Sedition (section 124A).

IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).

V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

**<sup>31</sup>[s 127] Receiving property taken by war or depredation mentioned in sections 125 and 126.**

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

### COMMENT—

This section applies to those persons who knowingly receive any property obtained by waging war with a Power at peace with the Government of India or by committing depredation on its territories.

# THE INDIAN PENAL CODE

## CHAPTER VI OF OFFENCES AGAINST THE STATE

The offences against the State fall into the following groups:—

I. Waging, or attempting or conspiring to wage, or collecting men and ammunition to wage war against the Government of India (sections 121, 121A, 122, 123).

II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).

III. Sedition (section 124A).

IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).

V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

### **[s 128] Public servant voluntarily allowing prisoner of State or war to escape.**

**Whoever, being a public servant and having the custody of any State prisoner<sup>1</sup> or prisoner of war<sup>2</sup>, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with <sup>103</sup>[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

### **COMMENT—**

**Allowing escape to prisoners.**—This section and section 225A provide for one kind of offence. In both sections the public servant who has the custody of the prisoner is punished if he voluntarily allows such prisoner to escape. In this section the prisoner must be a State prisoner or a prisoner of war; under section 225A the prisoner may be an ordinary criminal. The offence under this section is thus, an aggravated form of the offence than under section 225A.

**1. 'State prisoner'** is one whose confinement is necessary in order to preserve the security of India from foreign hostility or from internal commotion, and who has been confined by the order of the Government of India.<sup>104</sup>

**2. 'Prisoner of war'** is one who in war is taken in arms. Those who are not in arms, or who being in arms submit and surrender themselves, are not to be slain but to be made prisoners. But it seems those only are prisoners of war who are taken in arms.<sup>105</sup>

103. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

104. Beng Reg III of 1818; Bom Reg VIII of 1818; Mad Reg II of 1819.

105. M & M 107.

# THE INDIAN PENAL CODE

## CHAPTER VI OF OFFENCES AGAINST THE STATE

The offences against the State fall into the following groups:—

I. Waging, or attempting or conspiring to wage, or collecting men and ammunition to wage war against the Government of India (sections 121, 121A, 122, 123).

II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).

III. Sedition (section 124A).

IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).

V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

### **[s 129] Public servant negligently suffering such prisoner to escape.**

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

### **COMMENT—**

**Negligently suffering prisoners to escape.**—The offence under this section is like the one provided in section 128. Under it the escape of the prisoner should be owing to the *negligence* of the public servant. Section 128 punishes a public servant who *voluntarily* allows a State prisoner to escape. Section 223 punishes the escape of an ordinary prisoner under similar circumstances.

# THE INDIAN PENAL CODE

## CHAPTER VI OF OFFENCES AGAINST THE STATE

The offences against the State fall into the following groups:—

- I. Waging, or attempting or conspiring to wage, or collecting men and ammunition to wage war against the Government of India (sections 121, 121A, 122, 123).
- II. Assaulting President, or Governor of a State with intent to compel or restrain the exercise of any lawful power (section 124).
- III. Sedition (section 124A).
- IV. War against a power at peace with the Government of India (section 125) or committing depredations on the territories of such power (sections 125–126).
- V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (sections 128, 129, 130).

### **[s 130] Aiding escape of, rescuing or harbouring such prisoner.**

**Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with <sup>106</sup>[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

***Explanation.*—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in <sup>107</sup>[India], is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.**

### **COMMENT—**

**Aiding escape, harbouring escapees.**—This section uses words more extensive than those in the two preceding ones which contemplate an escape only from some prison or actual place of custody. Again in the last two sections the offender is a public servant; under this section he may be any person. The scope of this section is much narrower than section 129. This section requires that the rescue or assistance be given "knowingly".

<sup>106</sup>. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

<sup>107</sup>. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.





## THE INDIAN PENAL CODE

### CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 131] Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty.

Whoever abets the committing of mutiny by an officer, soldier,<sup>1</sup> [sailor or airman], in the Army, <sup>2</sup> [Navy or Air Force] of the <sup>3</sup> [Government of India] or attempts to seduce any such officer, soldier, <sup>4</sup> [sailor or airman] from his allegiance or his duty, shall be punished with <sup>5</sup> [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.

<sup>6</sup> [Explanation.—In this section the words "officer", <sup>7</sup> ["soldier", <sup>8</sup> ["sailor"] and "airman"] include any person subject to <sup>9</sup> [the Army Act, <sup>10</sup> [the Army Act, 1950<sup>11</sup>], <sup>12</sup> [the Naval Discipline Act, <sup>13</sup> [\*\*\*] the Indian Navy (Discipline) Act, 1934 (34 of 1934)<sup>14</sup>], <sup>15</sup> [the Air Force Act or <sup>16</sup> [the Air Force Act, 1950]], as the case may be.]

#### COMMENT—

**Aiding mutiny, seduction from duty.**—The first part of this section relates to the offence of abetting mutiny. The offence contemplated is an abetment which is not followed by actual mutiny, or which, supposing actual mutiny follows, is not the cause of that mutiny.

The offence of 'mutiny' consists in extreme insubordination, as if a soldier resists by force, or if a number of soldiers rise against or oppose their military superiors, such acts proceeding from alleged or pretended grievances of a military nature. Acts of a riotous nature directed against the government or civil authorities rather than against military superiors seem also to constitute mutiny.<sup>17</sup>

1. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor"

2. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

3. Subs. by the A.O. 1950, for "Queen".

4. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

5. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1-1-1956).

6. Ins. by Act 27 of 1870, section 6.

7. Subs. by Act 10 of 1927, section 2 and Sch. I, for "and soldier".

8. Ins. by Act 35 of 1934, section 2 and Sch.

9. Subs. by Act 10 of 1927, section 2 and Sch. I, for "Articles of War for the better government of Her Majesty's Army, or to the Articles of War contained in Act No. 5 of 1869".

10. Subs. by Act 3 of 1951, section 3 and Sch., for "the Indian [Army Act, 1911](#)" (w.e.f. 1-4-1951).
11. Now see the [Navy Act, 1957](#) (62 of 1957).
12. Ins. by Act 35 of 1934, section 2 and Sch.
13. The words "or that Act as modified by" omitted by the A.O. 1950.
14. Now see the [Navy Act, 1957](#) (62 of 1957).
15. Subs. by Act 14 of 1932, section 130 and Sch., for "or the [Air Force Act](#)".
16. Subs. by Act 3 of 1951, section 3 and Sch., for "the Indian [Air Force Act, 1932](#)" (w.e.f. 1-4-1951).
17. M&M 112.

## THE INDIAN PENAL CODE

### CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

**[s 132] Abetment of mutiny if mutiny is committed in consequence thereof.**

**Whoever abets the committing of mutiny by an officer, soldier, <sup>18.</sup>[sailor or airman] in the Army, <sup>19.</sup>[Navy or Air Force] of the <sup>20.</sup>[Government of India], shall, if mutiny be committed in consequence of that abetment, be punished with death or with <sup>21.</sup>[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

<sup>18.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

<sup>19.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

<sup>20.</sup> Subs. by the A.O. 1950, for "Queen".

<sup>21.</sup> Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1-1-1956).

## THE INDIAN PENAL CODE

### CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

**[s 133] Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office.**

Whoever abets an assault by an officer, soldier, <sup>22.</sup>[sailor or airman], in the Army, <sup>23.</sup>[Navy or Air Force] of the <sup>24.</sup>[Government of India], on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

#### COMMENT—

**Abetment of assault, etc.**—This section punishes the abetment of an assault which is not committed. The next section punishes similar abetment where the offence is committed.

<sup>22.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

<sup>23.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

<sup>24.</sup> Subs. by the A.O. 1950, for "Queen".

## THE INDIAN PENAL CODE

### CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 134] Abetment of such assault, if the assault is committed.

Whoever abets an assault by an officer, soldier, <sup>25</sup>[sailor or airman], in the Army, <sup>26</sup>[Navy or Air Force] of the <sup>27</sup>[Government of India], on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### COMMENT—

**Where abetted assault committed.**—This section punishes the abetment of an assault when such assault is committed in consequence of that abetment. It stands in the same relation to section 133 as section 132 does to section 131.

<sup>25</sup>. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

<sup>26</sup>. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

<sup>27</sup>. Subs. by the A.O. 1950, for "Queen".

## THE INDIAN PENAL CODE

### CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 135] Abetment of desertion of soldier, sailor or airman.

Whoever abets the desertion of any officer, soldier, <sup>28.</sup>[sailor or airman], in the Army, <sup>29.</sup>[Navy or Air Force] of the <sup>30.</sup>[Government of India], shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### COMMENT—

**Abetment of desertion.**—The desertion abetted under this section need not take place. Mere abetment is made punishable.

<sup>28.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

<sup>29.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

<sup>30.</sup> Subs. by the A.O. 1950, for "Queen".

## THE INDIAN PENAL CODE

### CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

#### [s 136] Harboursing deserter.

Whoever, except as hereinafter expected, knowing or having reason to believe that an officer, soldier, <sup>31.</sup>[sailor or airman], in the Army, <sup>32.</sup>[Navy or Air Force] of the <sup>33.</sup>[Government of India], has deserted, harbours such officer, soldier, <sup>34.</sup>[sailor or airman], shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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

#### COMMENT—

**Harboursing deserter.**—A person harboursing a deserter is an 'accessory after the fact'. The gist of the offence is concealment of a deserter to prevent his apprehension. Exception is made only in the case of a wife.

The word 'harbour' is defined in section 52A.

<sup>31.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

<sup>32.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

<sup>33.</sup> Subs. by the A.O. 1950, for "Queen".

<sup>34.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

## THE INDIAN PENAL CODE

### CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 137] Deserter concealed on board, merchant vessel through negligence of master.

The master or person in charge of a merchant vessel, on board of which any deserter from the Army, <sup>35.</sup>[Navy or Air Force] of the <sup>36.</sup>[Government of India] is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

#### COMMENT—

**Concealment on board.**—This section punishes the master or person in charge of a merchant ship on board of which a deserter has concealed himself. The master is liable even though he is ignorant of such concealment. But some negligence or laxity in the maintenance of discipline on the part of the master has to be made out.

<sup>35.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

<sup>36.</sup> Subs. by the A.O. 1950, for "Queen".



## THE INDIAN PENAL CODE

### CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

#### [s 138] Abetment of act of insubordination by soldier, sailor or airman.

Whoever abets what he knows to be an act of insubordination by an officer, soldier, <sup>37</sup> [sailor or airman], in the Army, <sup>38</sup> [Navy or Air Force] of the <sup>39</sup> [Government of India], shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

#### COMMENT—

**Abetment of insubordination.**—In this section it is expressed as part of the definition of the offence that the abettor knows the quality of the act abetted, that is, he knows it to be an act of insubordination.

<sup>37</sup>. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

<sup>38</sup>. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

<sup>39</sup>. Subs. by the A.O. 1950, for "Queen".

**THE INDIAN PENAL CODE**

**CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR  
FORCE**

**[s 138A] *[Repealed]***

**[Application of foregoing sections to the Indian Marine Service.] Repealed by s. 2 and  
Sch. of Act XXXV of 1934.**

## THE INDIAN PENAL CODE

### CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

#### [s 139] Persons subject to certain Acts.

No person subject to <sup>40.</sup>[the [Army Act](#), <sup>41.</sup>[the [Army Act, 1950](#), the [Naval Discipline Act](#), <sup>42.</sup>[<sup>43.</sup>[\*\*\*] the [Indian Navy \(Discipline\) Act, 1934](#)<sup>44.</sup>], <sup>45.</sup>[the [Air Force Act](#) or <sup>46.</sup>[the [Air Force Act, 1950](#)]], is subject to punishment under this Code for any of the offences defined in this Chapter.

#### COMMENT—

Persons subject to these special Acts are punishable under those Acts and not under the [Penal Code](#).

<sup>40.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "any Article of War for the Army or Navy of the Queen, or for any part of such Army or Navy".

<sup>41.</sup> Subs. by Act 3 of 1951, section 3 and Sch., for "the Indian [Army Act, 1911](#)" (w.e.f. 1-4-1951).

<sup>42.</sup> Ins. by Act 35 of 1934, section 2 and Sch.

<sup>43.</sup> The words "or that Act as modified" omitted by the A.O. 1950.

<sup>44.</sup> Now see the [Navy Act, 1957](#) (62 of 1957).

<sup>45.</sup> Subs. by Act 14 of 1932, section 130 and Sch., for "or the [Air Force Act](#)".

<sup>46.</sup> Subs. by Act 3 of 1951, section 3 and Sch., for "the Indian [Air Force Act, 1932](#)" (w.e.f. 1-4-1951).

## THE INDIAN PENAL CODE

### CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

[s 140] Wearing garb or carrying token used by soldier, sailor or airman.

Whoever, not being a soldier, <sup>47.</sup>[sailor or airman], in the Military, <sup>48.</sup>[Naval or Air] service of the <sup>49.</sup>[Government of India], wears any garb or carries any token resembling any garb or token used by such a soldier, <sup>50.</sup>[sailor or airman] with the intention that it may be believed that he is such a soldier, <sup>51.</sup>[sailor or airman], shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

#### COMMENT—

**Wearing garb or carrying token.**—The gist of the offence herein made penal is the intention of the accused wearing the dress of a soldier for the purpose of inducing others to believe that he is in service at the present time. Merely wearing a soldier's garb without any specific intention is no offence. Cast-off uniforms of soldiers are worn by many men. Actors put on different military uniforms.

<sup>47.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

<sup>48.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Navy".

<sup>49.</sup> Subs. by the A.O. 1950, for "Queen".

<sup>50.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

<sup>51.</sup> Subs. by Act 10 of 1927, section 2 and Sch. I, for "or sailor".

# THE INDIAN PENAL CODE

## CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

The offences in this chapter may be classified in the following four groups:—

### I. Unlawful assembly.

- (1) Being a member of an unlawful assembly (sections 141, 142, 143).
- (2) Joining an unlawful assembly armed with deadly weapons (section 144).
- (3) Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (section 145).
- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

#### **[s 141] Unlawful assembly.**

**An assembly of five or more<sup>1</sup> persons is designated an "unlawful assembly", if the common object<sup>2</sup> of the persons composing that assembly is—**

***First.*—To overawe by criminal force, or show of criminal force, <sup>1</sup>[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or**

***Second.*—To resist the execution of any law, or of any legal process; or *Third.*—To commit any mischief or criminal trespass, or other offence; or**

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

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

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

1. Subs. by the A.O. 1950, for The Central or any Provincial Government or Legislature.

# THE INDIAN PENAL CODE

## CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

The offences in this chapter may be classified in the following four groups:—

### I. Unlawful assembly.

- (1) Being a member of an unlawful assembly (sections 141, 142, 143).
- (2) Joining an unlawful assembly armed with deadly weapons (section 144).
- (3) Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (section 145).
- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

#### **[s 142] Being member of unlawful assembly.**

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

## THE INDIAN PENAL CODE

### CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

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#### I. Unlawful assembly.

- (1) Being a member of an unlawful assembly (sections 141, 142, 143).
- (2) Joining an unlawful assembly armed with deadly weapons (section 144).
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- (5) Harboursing persons hired for an unlawful assembly (section 157).
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#### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

#### III. Promoting enmity between different classes (section 153A).

#### IV. Affray (sections 159, 160).

#### **[s 143] Punishment.**

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

#### **COMMENT—**

**Unlawful assembly.**—An 'assembly' is a company of persons assembled together in a place, usually for a common purpose. Court is concerned with an 'unlawful assembly'. Wherever five or more persons commit a crime with a common object and intent, then each of them would be liable for commission of such offence, in terms of [sections 141 and 149, Indian Penal Code, 1860 \(IPC, 1860\)](#). It is not possible to define the



constituents or dimensions of an offence under section 149 *simpliciter* with regard to dictionary meaning of the words 'unlawful assembly' or 'assembly'.<sup>2</sup> An assembly of five or more persons having as its common object any of the five objects enumerated under section 141 of IPC is deemed to be an unlawful assembly. Membership of an unlawful assembly is itself an offence punishable under section 143, whereas other species of the said offence are dealt with under section 143–145 of IPC. Similarly, sections 146–148 of IPC deals with the offence of rioting which is defined to be use of force or violence by any member thereof. Section 149 makes every member of an unlawful assembly liable for offence that may be committed by any member of the unlawful assembly in prosecution of the common object of that assembly or for commission of any offence that the members of the assembly knew to be likely to be committed in prosecution of the common object of the assembly.<sup>3</sup> To bring a case within section 149 of IPC some essential features must be present. First, there must be an existence of an unlawful assembly within the meaning of section 141 of IPC. This is a mixed question of fact and law.<sup>4</sup>

The underlying principle of section 141 is that law discourages tumultuous assemblage of men to preserve the public peace. Section 141 defines what an 'unlawful assembly' is. Section 142 gives the connotations of 'a member of an unlawful assembly'. Section 143 punishes tumultuous assemblies as they endanger public peace. It does not require that the purpose of the unlawful assembly should have been fulfilled.

The essence of an offence under this section is the combination of five or more persons, united in the purpose of committing a criminal offence, and the consensus of purpose is itself an offence distinct from the criminal offence which these persons agree and intend to commit.<sup>5</sup> Unlike the Indian law contained in section 141, IPC, 1860, an unlawful assembly at common law need to have only three or more persons who must assemble together for the common purpose of committing an offence involving use of violence, or for achieving a lawful or unlawful object in such a manner so as to lead to a reasonable apprehension of a breach of peace as a direct result of their conduct.<sup>6</sup> Thus, under section 141, IPC, especially under sub-section (3) thereof, use of violence or likelihood of breach of the peace is not at all a *sine qua non* for an offence of unlawful assembly but this is so under the common law. So under the common law, even if the purpose of the assembly is unlawful, the offence of being an unlawful assembly would not be committed if there is no likelihood of breach of the peace and this would be so even if the unlawful common purpose is carried out.

### **[s 143.1] Ingredients.—**

An 'unlawful assembly' is an assembly of five or more persons if their common object is—

1. to overawe by criminal force
  - (a) the Central Government, or
  - (b) the State Government, or
  - (c) the Legislature, or
  - (d) any public servant in the exercise of lawful power;
2. to resist the execution of law or legal process;
3. to commit mischief, criminal trespass, or any other offence;
4. by criminal force—
  - (a) to take or obtain possession of any property, or

- (b) to deprive any person of any incorporeal right, or
  - (c) to enforce any right or supposed right;
5. by criminal force to compel any person—
- (a) to do what he is not legally bound to do, or
  - (b) to omit what he is legally entitled to do.

1. **'Five or more'.—** The [Constitution Bench](#) in *Mohan Singh's case*<sup>7</sup> held that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course, the other requirements of the said section as to the common object of the persons composing that assembly are satisfied. In other words, it is an essential condition of an unlawful assembly that its membership must be five or more. The Supreme Court has endorsed the view that the number of injuries caused and the number of persons who were inflicted with those injuries, (in this case, three persons were attacked and they sustained 13, 12 and 7 injuries respectively) can give a clue to the fact that more than three persons must necessarily have participated in the attack.<sup>8</sup>

### **[s 143.2] Effect of acquittal of some accused:**

In *Mohan Singh v State of Punjab*,<sup>9</sup> the Supreme Court considered the question of acquittal of two of the accused charged for the offence under section 302 read with section 149, on the conviction of the remaining three accused. If five or more persons are named in the charge as forming an unlawful assembly and the evidence adduced by the prosecution proves that charge against all of them that is a very clear case where section 149 could be invoked. "It is however not necessary that five or more persons must be convicted before a charge under section 149 could be successfully brought home to any members of the unlawful assembly. It may be that less than five persons may be charged and convicted under section 302 read with section 149, if the charge is that persons before the court along with others named, constituted an unlawful assembly. Other persons so named may not be available for trial along with their companions for the reason that they have absconded. In such a case, the fact that less than five persons are before the court does not make section 149 inapplicable. Therefore, in order to bring home a charge under section 149, it is not necessary that five or more persons must necessarily be brought before the court and convicted ..." In view of the decision of the [Constitution Bench](#) in *Mohan Singh's case*,<sup>10</sup> even after acquittal of the two accused from all the charges levelled against them, if there is any material that they were members of the unlawful assembly, the conviction under section 302 can be based with the aid of section 149.<sup>11</sup>

Where two of the six accused persons were acquitted without any finding that some other known or unknown persons also were involved in the assault, the remaining four accused persons could not be said to be members of an unlawful assembly.<sup>12</sup> Where a group of persons, differently armed, assaulted a man with the common object of killing him and all the assailants accused except one were acquitted, it was held that the remaining sole accused could not be convicted and sentenced under section 302 with the aid of section 149. The court cannot carve out a new case.<sup>13</sup> If out of an unlawful assembly consisting of seven named persons four are acquitted, the other three cannot be convicted of rioting as members of an unlawful assembly.<sup>14</sup> They may, however, be convicted of the principal offence with the aid of [section 34, IPC, 1860](#).<sup>15</sup> Where presence of eight persons in the course of assault was established, four of them were given benefit of doubt but there was no finding anywhere to the effect that only

four persons had taken part in the assault, conviction of the remaining four on the charge of forming unlawful assembly was not illegal.<sup>16.</sup>

**2. 'Common object'.—** The common object of an unlawful assembly depends firstly on whether such object can be classified as one of those described in section 141; secondly, such common object need not be the product of prior concert but may form on spur of the moment, finally, nature of such common object is a question of fact to be determined by considering the nature of arms, nature of assembly, behaviour of members, etc.<sup>17.</sup> Mere presence in an assembly does not make a person a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of the unlawful assembly or unless the case falls under section 142.<sup>18.</sup> Thus, merely because some persons assembled, all of them cannot be condemned '*ipso facto*' as being members of that unlawful assembly.<sup>19.</sup> At the same time it cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of section 141.<sup>20.</sup> Further the prosecution has to prove that the commission of the offence was by any member of an unlawful assembly and such offence must have been committed in prosecution of the common object of the unlawful assembly or such that the members of the assembly knew that it was likely to be committed.<sup>21.</sup> The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage.<sup>22.</sup>

Section 142 postulates that whoever, being aware of facts which render any assembly an unlawful one, intentionally joins the same would be a member thereof. Whether an assembly is unlawful one or not, would depend on various factors, the principal amongst them being a common object formed by the members thereof to commit an offence specified in one or the other clauses contained in section 141.<sup>23.</sup> In a free fight between two groups resulting in death of one person and injuries to several others on both the sides, it was held that the formation of an unlawful assembly was not impossible but the common object of such an assembly cannot be determined on the basis of serious injury by one of them.<sup>24.</sup> The accused along with about six–eight others forcibly entered into the office of a union leader and assaulted him but the victim did not receive any serious injury inside the union office and managed to escape. Later on in the open space some members of the crowd surrounded and attacked him and dealt fatal blows. It was held that the accused who entered the union office did not share the common object of committing murder of the deceased. They were convicted under sections 326/149.<sup>25.</sup> Where the accused forming an unlawful assembly assaulted the deceased but the injury caused by only one accused proved to be fatal and the injuries caused by the others were found to be simple, it was held that the common object of the unlawful assembly was only to cause grievous hurt and only the accused who caused fatal injury was liable to be convicted for murder and others under section 326/149.<sup>26.</sup>

The Supreme Court observed on the facts of a case that given the circumstances in which the assembly came together and given that all parties were aware that among them, certain members carried weapons like guns and spear, even if it was held that common object of assembly was not to cause death, it would not be an unreasonable inference that all accused knew that the offence of culpable homicide was likely to be

committed in prosecution of such an armed assault on another group which was not prepared to withstand such an attack, bringing about application of second portion of section 149. Therefore, it was held, that any of the accused found to have participated in the assault should be held guilty under section 141 and 149.<sup>27.</sup>

### **[s 143.3] Determination of Common object:**

Determination of the common object of an unlawful assembly or the determination of the question whether a member of the unlawful assembly knew that the offence that was committed was likely to be committed is essentially a question of fact that has to be made 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 and a host of similar or connected facts and circumstances that cannot be entrapped by any attempt at an exhaustive enumeration.<sup>28.</sup> It is difficult indeed, though not impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime.<sup>29.</sup>

### **[s 143.4] Second clause—Resisting Law or Legal Process.—**

Resistance to some law, or legal process, connotes some overt act, and mere words, when there is no intention of carrying them into effect, are not sufficient to prove an intention to resist.<sup>30.</sup> When an order is lawfully made under the provisions of a statute, that order is law, and resistance to the execution of that law is an offence.<sup>31.</sup>

Under this clause the act resisted must be a legal act. Where a number of persons resisted an attempt to search a house which was being made by officers, who had not the written order investing them with the power to do so, it was held that the persons resisting the attempted search were not guilty of this offence.<sup>32.</sup> Assembling together for the common object of rescuing a friend from unlawful police detention has been held by the Supreme Court as not constituting an unlawful assembly.<sup>33.</sup>

### **[s 143.5] Third clause.—Committing Criminal Trespass, Mischief, other offence.—**

This clause specifies only two offences, viz., mischief and criminal trespass, but the words 'or other offence' seem to denote that all offences are included though only two are enumerated in a haphazard way. In *Manga @ Man Singh v State of Uttarakhand*, the Supreme Court while considering the application of principle of 'ejusdem generis' to section 141 'third' clause, observed that:

We fail to appreciate as to how simply because the offences mischief or criminal trespass are used preceding the expression "other offence" in Section 141 'third', it should be taken that such offence would only relate to a minor offence of mischief or trespass and that the expression "other offence" should be restricted only to that extent. As pointed out by us above, the offence of mischief and trespass could also be as grave as that of an offence of murder, for which the punishment of life imprisonment can be imposed as provided for under Sections 438, 449, 450 etc. Therefore, we straight away hold that the argument of learned senior counsel for the Appellants to import the principle of 'ejusdem generis' to Section 141 'third', cannot be accepted.<sup>34.</sup>

### **[s 143.6] Suleman Bakery Case:**

It is a case related to the communal riots of Mumbai in early 1993. Government imposed curfew and the Special Operation Squad (SOS) was called to control the communal riots on information of stone pelting, throwing of glass bottles, acid bulbs and firing from the terrace of Suleman Bakery. It was argued that at any rate SOS was an unlawful assembly on account of the **third clause of section 141 of IPC, 1860**, and hence, all the discharged accused persons were members of the unlawful assembly and had to be at least charged and inquired into by the courts below. It was argued that the assembly of the police at least till the time they broke open the door was a lawful move, as it was their duty but they should not have broken open the door and trespassed the Suleman bakery; and all those who entered Suleman bakery formulated an unlawful assembly as they illegally trespassed into the Suleman bakery. Since A-1, *Shri Tyagi*, had ordered them to break open the doors and he was a part of that unlawful assembly who had the common object. The Supreme Court held that they were all the members of the SOS and had the duty to quell the riots. They were not doing anything illegal in coming out and trying to control the riots. Court rejected the argument by holding that a trespass becomes a criminal trespass if it is with an intention to annoy or to do something illegal which is not the case here. There was no question of the so-called entry amounting to criminal trespass.<sup>35</sup>

### **[s 143.7] Fourth clause—Application of Criminal Force.—**

The act falling within the purview of this clause is made punishable owing to the injurious consequences which it is likely to cause to the public peace. This clause does not take away the right of private defence of property. It does not affect clause 2 of section 105, which allows a person to recover the property carried away by theft. It is meant to prevent the resort to force in vindication of supposed rights. It makes a distinction between an admitted claim or an ascertained right and a disputed claim.<sup>36</sup>

Where five or more persons assemble for maintaining by force or show of force a right which they *bona fide* believe they possess, and not for enforcing by such force or show of force a right or supposed right of theirs, they do not constitute an unlawful assembly.<sup>37</sup> An assembly of five or more persons cannot be designated as an unlawful assembly under this section if its object is to defend property by the use of force within the limits prescribed by law.<sup>38</sup> But when a body of men are determined to vindicate their rights, or supposed rights, by unlawful force, and when they engage in a fight with men who, on the other hand, are equally determined to vindicate, by unlawful force, their rights or supposed rights, no question of self-defence arises. Neither side is trying to protect itself, but each side is trying to get the better of the other.<sup>39</sup>

### **[s 143.8] Fifth clause—Compelling persons to act or omission.—**

This clause is very comprehensive and applies to all the rights a man can possess, whether they concern the enjoyment of property or not. There is no reference to 'any right or supposed right' as in the preceding clause.

### **[s 143.9] Explanation.—**

An assembly which is lawful in its inception may become unlawful by the subsequent act of its members.<sup>40</sup> It may turn unlawful all of a sudden and without previous concert among its members.<sup>41</sup> But illegal acts of one or two members, not acquiesced in by the others, do not change the character of the assembly.<sup>42</sup> The law on the point as stated above is approved by the Supreme Court in *Moti Das*.<sup>43</sup>

### **[s 143.10] Being member of unlawful assembly.—**

Section 142 shows that it is sufficient for the offence of riot to be proved against an individual that the individual should remain in an unlawful assembly as soon as he is aware that the assembly is unlawful. The word "continues" in the section means physical presence as a member of the unlawful assembly, that is, to be physically present in the crowd.<sup>44</sup> This, however, should not be interpreted to mean that mere presence as a curious onlooker or bystander at the scene of the unlawful assembly without sharing its common object would make a person liable under [section 142, IPC, 1860](#), for being a member of an unlawful assembly.<sup>45</sup> Thus common object cannot be attributed to a person from his mere presence at the scene of the occurrence. There must be some other direct or circumstantial evidence to justify that inference.<sup>46</sup>

For being a member of unlawful assembly it is not necessary that a person must commit some overt act towards the commission of the crime. The test is whether he knows of its common object and continues to keep its company due to his own free will.<sup>47</sup> Thus, where a large procession of *Kannadigas*, taken out to voice protest against Maharashtrians, turned violent, started pelting stones and attacking police officers; the procession turned into an unlawful assembly the moment it developed the common object of causing damage to property and injuries to police officers. Thereafter, every person who continued as a member of the assembly became liable for the offence committed by the processionists by virtue of [section 149 of IPC, 1860](#).<sup>48</sup> If some unidentified members of an unlawful assembly behaved in an unruly manner, the other members in the procession cannot be held guilty of the offence by foisting vicarious liability, merely because they were in the procession.<sup>49</sup>

### **[s 143.11] CASES.—Enforcement of right by use of criminal force.—Dispute regarding possession of land.—**

Where there was a dispute of long standing between the accused and certain other parties regarding possession of certain land, and the accused went to sow the land with indigo, accompanied by a body of men armed with sticks who kept off the opposite party by brandishing their weapons while the land was sowed, it was held that they were guilty of this offence.<sup>50</sup> Where the accused, who were in possession of the disputed land, went upon it in a large body armed with sticks, prepared in anticipation of a fight, and were reaping the paddy grown by them, when the complainant's party came up and attempted to cut the same, whereupon a fight ensued and one man was seriously wounded and died subsequently, it was held that the common object was not to enforce a right but to maintain undisturbed the actual enjoyment of a right and that the assembly was not therefore unlawful.<sup>51</sup>

2. *State of Haryana v Shakuntla*, (2012) 5 SCC 171 [LNIND 2012 SC 1259] : JT 2012 (4) SC 287 : AIR 2012 (SCW) 2952 : 2012 Cr LJ 2850 .
3. *Bharat Soni v State of Chhattisgarh*, 2013 Cr LJ 486 (SC) : 2013 (1) Mad LJ (Cr) 94 : 2013 (1) Crimes 66 .
4. *Gurmail Singh v State of Punjab*, 2013 (4) SCC 228 [LNIND 2012 SC 864] : 2013 (2) SCC (Cr) 369.
5. *Matti Venkanna*, (1922) 46 Mad 257.
6. Stephen, *Digest of Criminal Law*, Article 90.
7. *Mohan Singh's case*, AIR 1963 SC 174 [LNIND 1962 SC 118] : (1963) 1 Cr LJ 100 .
8. *Suresh Pal v State of UP*, AIR 1981 SC 1161 : 1981 Cr LJ 624 : 1981 All LJ 562 : 1981 Supp SCC 6 .
9. *Mohan Singh v State of Punjab*, AIR 1963 SC 174 [LNIND 1962 SC 118] : 1963 (1) Cr LJ 100
10. *Supra*.
11. *Shaji v State*, (2011) 5 SCC 423 [LNIND 2011 SC 481] : AIR 2011 SC 1825 [LNIND 2011 SC 481] : 2011 Cr LJ 2935 (SC). See also *Roy Fernandes v State of Goa*, (2012) 3 SCC 221 [LNIND 2012 SC 86] : 2012 Cr LJ 1542 (SC).
12. *Subran v State of Kerala*, 1993 Cr LJ 1387 (SC) : AIR 1993 SCW 1014 : (1993) 3 SCC 32 [LNIND 1993 SC 162] , 39.
13. *Ram Chandra Chaudhary v State of UP*, 1992 Cr LJ 1488 (All). Over a dozen persons prosecuted, others acquitted, only two convicted of whom one died, the remaining one convict entitled to acquittal on the same grounds, see *Malkiat Singh v State of Punjab*, 1994 Cr LJ 623 : AIR 1993 SCW 4071 .
14. *Motiram*, (1960) 62 Bom LR 514 ; *Kartar Singh*, AIR 1961 SC 1787 [LNIND 1961 SC 210] : 1961 (2) Cr LJ 853 .
15. *Ram Tahal*, 1972 Cr LJ 227 (SC); *Amir Hussain*, 1975 Cr LJ 1874 : AIR 1975 SC 2211 ; *Methala Potturaju v State of AP*, (1992) 1 SCC 49 [LNIND 1991 SC 448] : AIR 1991 SC 2214 [LNIND 1991 SC 448] : 1991 Cr LJ 3133 : AIR 1991 SC 2214 [LNIND 1991 SC 448] .
16. *Sahebrao Kisan Jadhav v State of Maharashtra*, 1992 Cr LJ 339 (Bom) : 1992 (1) Bom CR 423 [LNIND 1991 BOM 410] .
17. *Bhanwar Singh v State of MP*, (2008) 16 SCC 657 [LNIND 2008 SC 1246] : AIR 2009 SC 768 [LNIND 2008 SC 1246] : (2008) 67 AIC 133 .
18. *KM Ravi v State of Karnataka*, (2009) 16 SC 337 ; *Baladin*, AIR 1956 SC 181 : 1956 Cr LJ 345 . See also *Masalti v State of UP*, AIR 1965 SC 202 [LNIND 1964 SC 173] : (1965) 1 Cr LJ 226 ; and *Bishambar*, AIR 1971 SC 2381 : 1971 Cr LJ 1700 ; **followed** in *Babu Hamidkhan Mestry v State of Maharashtra*, (1995) 2 Cr LJ 2355 (Bom) **cited** in *Binay Kumar Singh v State of Bihar*, AIR 1997 SC 322 [LNIND 1996 SC 2707] : 1997 AIR SCW 78 : (1997) 1 SCC 283 [LNIND 1996 SC 2707] : 1997 Cr LJ 362 , to the effect that where a larger number of persons are accused of committing a crime and are charged with the aid of section 149, the court should be extremely careful in scrutinising the evidence and there should be two, three or more witness who should be consistent. This ruling was **applied** in *Kamaksha Rai v State of UP*, AIR 2000 SC 53 [LNIND 1999 SC 885] : 2000 Cr LJ 178 . See also *Thankappan Mohanan v State of Kerala*, 1990 Cr LJ 1477 ; *Chinu Patel v State of Orissa*, 1990 Cr LJ 248 (Ori).
19. *Uday Singh v State of MP*, AIR 2017 SC 393 .
20. *Raj Nath v State of UP*, AIR 2009 SC 1422 [LNIND 2009 SC 59] : (2009) 4 SCC 334 [LNIND 2009 SC 59] : (2009) 1 SCR 336 : JT 2009 (1) SC 373 [LNIND 2009 SC 85] ; (2009) 2 SCC (Cr) 289.
21. *Uday Singh v State of MP*, AIR 2017 SC 393 .

22. *Raj Nath v State of UP*, AIR 2009 SC 1422 [LNIND 2009 SC 59] : (2009) 4 SCC 334 [LNIND 2009 SC 59] : (2009) 1 SCR 336 : JT 2009 (1) SC 373 [LNIND 2009 SC 85] : (2009) 2 SCC (Cr) 289.
23. *Akbar Sheikh v State of WB*, (2009) 7 SCC 415 [LNIND 2009 SC 1106] : (2009) 3 SCC (Cr) 431.
24. *Amrik Singh v State of Punjab*, 1993 AIR SCW 2482 : 1993 Cr LJ 2857 : 1994 Supp (1) SCC 320 .
25. *SP Sinha v State of Maharashtra*, AIR 1992 SC 1791 : 1992 Cr LJ 2754 : 1993 Supp (1) SCC 658 .
26. *Thakore Dolji Vanvirji v State of Gujarat*, AIR 1992 SC 209 : 1992 Cr LJ 3953 .
27. *Bhanwar Singh v State of MP*, (2008) 16 SCC 657 [LNIND 2008 SC 1246] : AIR 2009 SC 768 [LNIND 2008 SC 1246] : (2008) 67 AIC 133 . There was no right of private defence in the circumstances, the accused persons were aggressors and such persons cannot claim benefit of private defence.
28. *Bharat Soni v State of Chhattisgarh*, 2013 Cr LJ 486 (SC) 2013 (1) Mad LJ (Cr) 94 : 2013 (1) Crimes 66 .
29. *Rajendra Shantaram Todankar v State of Maharashtra*, AIR 2003 SC 1110 [LNIND 2003 SC 4] : 2003 (2) SCC 257 [LNIND 2003 SC 4] .
30. *Abdul Hamid*, (1922) 2 Pat 134 (SB).
31. *Ramendrachandra Ray*, (1931) 58 Cal 1303 .
32. *Narain*, (1875) 7 NWP 209.
33. *State of UP v Niyamat*, (1987) 1 SCC 434 : AIR 1987 SC 1652 [LNIND 1987 SC 391] : 1987 Cr LJ 1881 .
34. *Manga @ Man Singh v State of Uttarakhand*, (2013) 7 SCC 629 [LNIND 2013 SC 529] : 2013 Cr LJ 3332 .
35. *Noorul Huda Maqbool Ahmed v Ram Deo Tyagi*, (2011) 7 SCC 95 [LNIND 2011 SC 570] : 2011 Cr LJ 4264 : (2011) 3 SCC (Cr) 31.
36. *Gulam Hoosein*, (1909) 11 Bom LR 849 .
37. *Veerabadra Pillai v State*, (1927) 51 Mad 91.
38. *Mathu Pandey*, (1970) 1 SCR 358 [LNIND 1969 SC 516] : AIR 1970 SC 27 [LNIND 1969 SC 516] .
39. *Prag Dat*, (1898) 20 All 459 ; *Kabiruddin*, (1908) 35 Cal 368 ; *Maniruddin*, (1908) 35 Cal 384 . See also *Onkarnath*, 1974 Cr LJ 1015 : AIR 1974 SC 1550 [LNIND 1974 SC 154] ; *Vishvas v State*, 1978 Cr LJ 484 : AIR 1978 SC 414 [LNIND 1978 SC 17] .
40. *Khemee Singh*, (1864) 1 WR (Cr) 18; *Lokenath Kar*, (1872) 18 WR (Cr) 2.
41. *Ragho Singh*, (1902) 6 Cal WN 507.
42. *Dinobundo Rai*, (1868) 9 WR (Cr) 19.
43. *Moti Das*, AIR 1954 SC 657 at p 659.
44. *Sheo Dayal v State*, (1933) 55 All 689 .
45. *Baladin*, 1956 Cr LJ 345 : AIR 1956 SC 181 ; *Hanuman Singh*, 1969 Cr LJ 359 (All); *Md Shariff*, 1969 Cr LJ 1351 (Bom); *Musakhan*, 1976 Cr LJ 1987 : AIR 1976 SC 2566 ; *Muthu Naicker v State of WB*, 1978 Cr LJ 1713 (SC). To the same effect, *State of Karnataka v Mallu Kallappa Patil*, 1994 Cr LJ 952 : AIR 1994 SC 784 : 1994 Supp (3) SCC 352 .
46. R Deb, *Principles of Criminology, Criminal Law and Investigation*, 2nd Edn, vol II, p 862. See also *Akbar Sheikh v State of WB*, (2009) 7 SCC 415 [LNIND 2009 SC 1106] : (2009) 3 SCC (Cr) 431; *Rattiram v State of MP, through Inspector of Police*, 2013 Cr LJ 2353 (SC) : 2013 AIR (SCW) 2456.



47. *Apren Joseph*, 1972 Cr LJ 1162 (Ker); See also *Balwant Singh*, 1972 Cr LJ 645 : AIR 1972 SC 860 [LNIND 1972 SC 94] .
48. *Kutubuddin Hasansab Mahat*, 1977 Cr LJ NOC 155 (Kant); See also *Moti Das*, 1954 Cr LJ 1708 : AIR 1954 SC 657 ; *Sukha*, 1956 Cr LJ 923 : AIR 1956 SC 513 [LNIND 1956 SC 30] ; *Chandrika Prasad*, 1972 Cr LJ 22 : AIR 1972 SC 109 [LNIND 1971 SC 453] .
49. *Jayendra Shantaram Dighe v State of Maharashtra*, 1992 Cr LJ 2796 (Bom).
50. *Peary Mohun Sircar*, (1883) 9 Cal 639 .
51. *Silajit Mahto*, (1909) 36 Cal 865 .

# THE INDIAN PENAL CODE

## CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

The offences in this chapter may be classified in the following four groups:—

### I. Unlawful assembly.

- (1) Being a member of an unlawful assembly (sections 141, 142, 143).
- (2) Joining an unlawful assembly armed with deadly weapons (section 144).
- (3) Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (section 145).
- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

### **[s 144] Joining unlawful assembly armed with deadly weapon.**

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

### **COMMENT—**

**Armed with deadly weapons.**—This is an aggravated form of the offence mentioned in the last section. The risk to public tranquillity is aggravated by the intention of using force evinced by carrying arms. The enhanced punishment under this section can only

be inflicted on that member of an unlawful assembly who is armed with a weapon of offence.

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- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

**[s 145] Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.**

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

### COMMENT—

**Joining or continuing with unlawful assembly.—**

This section is connected with section 151, *infra*. [Section 188 of IPC, 1860](#) provides for the disobedience of any lawful order promulgated by a public servant. Sections 145 and 151 deal with special cases as the disobedience may cause serious breach of the peace. As to the powers of the police to disperse an unlawful assembly, see [section 129, Criminal Procedure Code](#).

**[s 145.1] CASES.—**

Where an assembly did not by its own conduct become an unlawful assembly by developing common object within the meaning of [section 141, IPC, 1860](#), its members could not be convicted under [section 145, IPC](#), by merely joining or continuing as its members.<sup>52</sup> It may, however, be added here that members of such an assembly, even though not unlawful, could be prosecuted under [section 151, IPC](#), if the order of dispersal had been lawfully given in the *bona fide* exercise of police powers under [section 129, Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#), with a view to preventing a breach of the peace.<sup>53</sup>

<sup>52</sup>. *Jagmohan*, [1977 Cr LJ 1394](#) (Ori).

<sup>53</sup>. R Deb, *Op Cit*, vol II, pp 834–835; See also *Duncan, supra*.

# THE INDIAN PENAL CODE

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- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

#### **[s 146] Rioting.**

**Whenever force or violence is used by an unlawful assembly,<sup>1</sup> or by any member thereof, in prosecution of the common object<sup>2</sup> of such assembly, every member of such assembly is guilty of the offence of rioting.**

# THE INDIAN PENAL CODE

## CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

The offences in this chapter may be classified in the following four groups:—

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### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
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- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

### **[s 147] Punishment for rioting.**

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

### **COMMENT—**

**Rioting.**—A riot is an unlawful assembly in a particular state of activity, which activity is accompanied by the use of force or violence. It is only the use of force that distinguishes rioting from an unlawful assembly.<sup>54</sup> Under the Common law when members of an unlawful assembly actually carry out their unlawful common purpose

with violence, so as to cause alarm, they are guilty of riot. For a successful prosecution of a riot case the prosecution must prove:—

- (i) that there were five or more persons;
- (ii) that they had a common purpose;
- (iii) that they had begun to execute such purpose;
- (iv) that they intended to help one another by force, if necessary;
- (v) that they had shown such degree of violence which would alarm at least one person of reasonable courage.

This last mentioned fact need not be proved by calling a person, who has been so alarmed but it may be made out from facts and circumstances of the case in hand.<sup>55</sup> The ingredients mentioned in item numbers (iv) and (v) above are not to be found at all in [section 146 of IPC, 1860](#). Where some youths exceeding three were found demolishing a wall but disappeared the moment the caretaker of the building appeared at the scene, it was held that they could not be convicted of the offence of riot under the common law as there was no evidence of show of violence sufficient to alarm one person of reasonable firmness and courage.<sup>56</sup> In the Indian context in this very case the offence of rioting was complete the moment the youths used force to demolish the wall for it was not necessary in the Indian law to use force or violence against a person, far less to cause alarm to a person of reasonable courage and firmness. Force or violence against an inanimate object too comes within the purview of [section 146, IPC, 1860](#).<sup>57</sup>

### **[s 147.1] Ingredients.—**

The following are the essentials of the offence of rioting:—

- (1) That the accused persons, being *five* or more in number, formed an unlawful assembly.
- (2) That they were animated by a common object.
- (3) That force or violence was used by the unlawful assembly or any member of it in prosecution of the common object.

**1. 'Force or violence is used by an unlawful assembly'.—**The word 'violence' is not restricted to force used against persons only, but extends also to force against inanimate objects.<sup>58</sup> The words 'force' and 'violence' in this section connote different and distinct concepts. 'Force' is narrowed down by the definition under section 350 to persons while the word 'violence' includes violence to property and other inanimate objects.<sup>59</sup>

The use of any force, even though it be of the slightest possible character, by any one of an assembly once established as unlawful, constitutes rioting.<sup>60</sup> Where a member of an unlawful assembly in prosecution of the common object of the assembly throws down a man and then causes him bodily hurt, the offence of rioting under this section is complete as soon as the man is thrown down by using force and the hurt subsequently caused would come under section 323 or section 325.<sup>61</sup> The essential question in a case under section 147 is whether there was an unlawful assembly of five or more persons. The identity of the persons comprising the assembly is a matter relating to the determination of the guilt of the individual accused and even when it is possible to convict less than five persons only, section 147 still applies, if upon the



evidence in the case the Court is able to hold that the person or persons who have been found guilty were members of an assembly of five or more persons, known or unknown, identified or unidentified.<sup>62</sup> It has been held by the Supreme Court that this section is not attracted where the act in question was done in pursuit of a lawful object. In this case the investigating police party was being led by the witness to a spot for recovering the dead-body. The witness tried to run away and was beaten up with a *lathi*. He died shortly thereafter. The Supreme Court did not sustain the conviction of the police personnel under this section.<sup>63</sup>

**2. 'In prosecution of the common object'.—**Acts done by some members of an unlawful assembly outside the common object of the assembly or of such a nature as the members of the assembly could not have known to be likely to be committed in prosecution of that object are only chargeable against the actual perpetrators of those acts.<sup>64</sup> 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, 1860](#), 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.<sup>65</sup>

#### **[s 147.2] 'Resistance to illegal warrant'.—**

Resistance to the execution of an illegal warrant within reasonable bounds does not amount to rioting; but when the right of resistance is exceeded and a severe injury, not called for, is inflicted, the person who inflicts the injury may be convicted of such injury.<sup>66</sup>

#### **[s 147.3] 'Sudden quarrel'.—**

If a number of persons assembled for any lawful purpose suddenly quarrel without any previous intention or design, they do not commit 'riot' in the legal sense of the word.<sup>67</sup>

#### **[s 147.4] 'Fundamental principles in cases of mammoth rioting'.—**

(1) Notwithstanding the large number of rioters or of the persons put up in Court for rioting, and the consequent difficulty for the prosecution to name the specific acts attributed to each of the accused, the Court must see to it that all the ingredients required for unlawful assembly and rioting are strictly proved by the prosecution before convicting the particular accused persons.<sup>68</sup> (2) Spectators, wayfarers, etc., attracted to the scene of the rioting by curiosity, should not be, by reason of their mere presence at the scene of rioting and with the rioters, held to be members of the unlawful assembly or rioters. But of course, if they are proved to have marched with the rioters for a long distance, when the rioters were shouting tell-tale slogans and pelting stones, it will be for them to prove their innocence under [section 106 of the Indian Evidence Act, 1872](#). (3) It will be very unsafe, in the case of such a large mob of rioters, to rely on the evidence of a *single witness* speaking to the presence of an accused in that mob for convicting him, especially when no overt act of violence, or shouting of slogan, or organising the mob, or giving orders to it or marching in procession with it, or other similar thing is proved against him. In a big riot by hundreds of persons, it is very easy even to mistake one person for another, and to implicate honestly really innocent

persons, and even, to mistake persons seen elsewhere as having been seen there. An ordinary rule of caution and prudence will require that an accused person identified only by one witness, and not proved to have done any overt act, etc., as described above, should be acquitted, by giving him the benefit of the doubt. (4) Where there are acute factions based on either agrarian disputes and troubles or on political wrangling and rivalry or on caste divisions or on divisions of the "haves" and the "have-nots," the greatest care must be exercised before believing the evidence of a particular witness belonging to one of these factions against an accused of the opposite view. This principle becomes of special importance when there are no overt acts, etc., proved, and when there are only one or two witnesses speaking to the presence of the accused among the rioters, and they belong to the classes or factions opposed to the accused. (5) Mere *followers* in rioting deserve a much more lenient sentence than leaders, who mislead them into such violent acts, by emotional appeals, slogans and cries.<sup>69.</sup>

#### **[s 147.5] Offence Compoundable:**

When an offence is compoundable under [section 320 of Cr PC, 1973](#), and where the accused is liable under [section 34](#) or [149 of IPC \(45 of 1860\)](#) it may be compounded in like manner.<sup>70.</sup>

#### **[s 147.6] CASES.—**

Where several Hindus, acting in concert, forcibly removed an ox and two cows from the possession of a Mohammedan, not for the purpose of causing 'wrongful gain' to themselves or 'wrongful loss' to the owner of the cattle, but for the purpose of preventing the killing of the cows, it was held that they were guilty of rioting.<sup>71.</sup> There was a dispute about the possession of a certain land between the complainant and the accused. The complainant dug a well with a view to cultivate the said land. The accused forcibly entered on the land and damaged the well. It was held that the accused were guilty under this section as an accused person is not entitled to go upon his own land and by violence destroy the property of the complainant, even though a trespasser.<sup>72.</sup>

#### **[s 147.7] No unlawful assembly.—**

The accused on receiving information that the complainant's party were about to take forcible possession of a plot of their land, collected a number of men, some of whom were armed, and went to the land. While they were engaged in ploughing, the complainant's party came up and interfered with the ploughing. A fight ensued, in the course of which one of the complainant's party was grievously wounded and subsequently died, and two of the accused's party were hurt. It was held that the accused were justified in taking such precautions as they thought were required to prevent the aggression, and that they were not members of an unlawful assembly.<sup>73.</sup>

#### **[s 147.8] Free fight.—**

In a free fight there cannot be said to be any formation of an unlawful assembly and common intention. Each accused will be responsible for his individual act.<sup>74.</sup>

### [s 147.9] Separate trials.—

Where two opposite factions commit a riot, it is illegal to treat both parties as constituting one unlawful assembly and to try them together, as they cannot have one common object within the meaning of section 141; each party should be tried separately.<sup>75</sup>

54. *Rasul*, (1888) PR No. 4 of 1889.
55. *Sharp, Johnson*, (1957) 1 QB 522, per Lord Goddard, CJ.
56. *Field v Metropolitan Police Receiver*, (1907) 2 KB 853.
57. *Kalidas*, 48 Cr LJ 351 (Cal).
58. *Samaruddi*, (1912) 40 Cal 367.
59. *Lakshmiammal v Samiappa*, AIR 1968 Mad 310 [LNIND 1967 MAD 171]; *Kalidas*, 48 Cr LJ 351 (Cal).
60. *Koura Khan v State*, (1868) PR No. 34 of 1868; *Ramadeen Doobay*, (1876) 26 WR (Cr) 6.
61. *Parmeshwar*, (1940) 16 Luck 51.
62. *Kapildeo Singh*, (1949–1950) FCR 834 : 52 Bom LR 512.
63. *Maiku v State of UP*, AIR 1989 SC 67 : 1989 Cr LJ 360 : 1989 Supp (1) SCC 25.
64. *Agra*, (1914) PR No. 37 of 1914. *Vishal Singh v State of MP*, AIR 1998 SC 308 [LNIND 1997 SC 1362] : 1998 Cr LJ 505. See also *Kania v State of Rajasthan*, 1998 Cr LJ 50 (Raj). *Bhanwarlal v State of Rajasthan*, 1998 Cr LJ 3489 (Raj), fight between main accused and deceased over possession of land, other persons who were present at the spot and played no role could not be roped in.
65. *Ramachandran v State*, (2011) 9 SCC 257 [LNIND 2011 SC 854] : AIR 2011 SC 3581 [LNIND 2011 SC 854] : (2011) 3 SCC (Cr) 677.
66. *Uma Charan Singh*, (1901) 29 Cal 244.
67. *Khajah Noorul Hoossein v C Fabre-Tonnerre*, (1875) 24 WR (Cr) 26; *State of UP v Jodha Singh*, AIR 1989 SC 1822 : 1989 Cr LJ 2113 : (1989) 3 SCC 465, a verbal quarrel converting itself into armed group conflict, held not punishable under this section or section 108.
68. See *Sherey v State of UP*, 1991 Cr LJ 3289 : AIR 1991 SC 2246, where the Supreme Court observed that it would be safe to convict only those whose presence was consistently established by the evidence appearing from the stage of the First Information Report and to whom covert acts of violence were attributed. *Kutumbaka Krishna Mohan Rao v Public Prosecutor*, AIR 1991 SC 314 : 1991 Cr LJ 1711 : 1991 Supp (2) SCC 509, how presence is to be established. *Budhwa v State of MP*, AIR 1991 SC 4 [LNIND 1990 SC 580] : 1990 Cr LJ 2597, where the conviction of only four out of fifteen accused was upheld because evidence established only their participation in the attack.
69. *Arulanandu*, (1952) Mad 728. See also *Toseswar Chutia v State of Assam*, 2002 Cr LJ 1465 (Gau); *Bhima v State of Maharashtra*, AIR 2002 SC 3086 [LNIND 2002 SC 528] (Bom).
70. Section 320 (3), Cr PC, 1973.
71. *Raghunath Rai v State*, (1892) 15 All 22.

72. *Abdul Hussain*, (1943) Kar 7 . See *Ajab v State of Maharashtra*, AIR 1989 SC 827 : 1989 Cr LJ 954 : (1989) Supp (1) SCC 601 .

73. *Pachkauri*, (1897) 24 Cal 686 ; *Fateh Singh*, (1913) 41 Cal 43 . *K Ashokan v State of Kerala*, AIR 1998 SC 1974 [LNIND 1998 SC 223] : 1998 Cr LJ 2834 , names of miscreants not mentioned by eye-witnesses in the FIR, miscreants mentioned in the investigation report which included certain names in different ink. False implication could not be ruled out. Benefit of doubt to accused persons. *State of UP v Dan Singh*, 1997 Cr LJ 1159 : AIR 1997 SC 1654 [LNIND 1997 SC 162] , the members of marriage party of a scheduled caste, were assaulted by villagers by sticks and stones. Some of them were burnt alive inside the house of the victims. The accused persons were held liable to be convicted under sections 147, 302/149, 436/149, 323/149 and sections 307/149. *Lakhu Singh v State of Rajasthan*, 1997 Cr LJ 3638 (Raj), *lathi* is not a deadly weapon, *lathi* bearing accused could not be convicted under section 148. Conviction altered to one under section 147.

74. *Mangal Singh v State of MP*, 1996 Cr LJ 1908 (MP).

75. *Hossein Buksh*, (1880) 6 Cal 96 ; *Bachu Mullah v Sia Ram Singh*, (1886) 14 Cal 358 ; *Chandra Bhuiya*, (1892) 20 Cal 537 .

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- (5) Harboursing persons hired for an unlawful assembly (section 157).
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### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

### **[s 148] Rioting armed with deadly weapon.**

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

### **COMMENT—**

**Rioting with deadly weapons.**—Similar to section 144, this section is an aggravated form of the offence mentioned in the previous section. Enhanced punishment is

provided for the person who is armed with a deadly weapon while committing the offence of rioting. This section cannot be read with section 149.<sup>76.</sup>

Where out of the 45 accused persons convicted by the High Court 36 had been identified as members of the assembly by a solitary witness, the Supreme Court said that it was not safe to place reliance in reference to the accused about whom no other witness said that they were a part of the assembly. Their conviction was held to be unsustainable. So far as the remaining accused were concerned, the prosecution had proved the charge against them under section 148 and therefore their acquittal by the High Court was not justified.<sup>77.</sup>

Where several persons assaulted the victim, the court said that it was not necessary that the death of the victim must be attributed to a particular injury or to a particular assailant. All of them are liable for conviction for causing death of the victim with the common object of the unlawful assembly.<sup>78.</sup>

### **[s 148.1] Charge under section 147/148; Conviction under section 149.—**

The **Constitution** Bench in *Mahadev Sharma v State of Bihar*,<sup>79.</sup> held that if a charge had been framed under section 147 or section 148 and that charge had failed against any of the accused then section 149 could not have been used against him. The area which is common to sections 147 and 149 is the substratum on which different degrees of liability are built and there cannot be a conviction with the aid of section 149 when there is no evidence of such substratum. The accused have been expressly charged for the offence punishable under **section 148, IPC, 1860**, and have been acquitted thereunder, they cannot be legally convicted for the offence punishable under **section 302** read with **section 149, IPC**. It is so because the offence of rioting must occur when members are charged with murder as the common object of the unlawful assembly. The offences under sections 147 and 148 are distinct offences.<sup>80.</sup> **Section 148, IPC** creates liability on persons armed with deadly weapons and is a distinct offence and there is no requirement in law that members of unlawful assembly have also to be charged under **section 148, IPC** for legally recording their conviction under **section 302** read with **section 149, IPC**. However, where an accused is charged under **section 148, IPC** and acquitted, conviction of such accused under **section 302** read with **section 149, IPC** could not be legally recorded.<sup>81.</sup>

<sup>76.</sup> *Vasu Pillai v State*, 1956 Cr LJ 1358 ; *Nand Kishore v State*, AIR 1961 Ori. 29 [LNIND 1959 ORI 52] ; *Re VS Reddy*, (1963) 2 Cr LJ 70 .

<sup>77.</sup> *State of AP v Rayaneedi Sitharamaiah*, (2008) 16 SCC 179 [LNIND 2008 SC 2492] . *Mohd Ishaq v S Kazam Pasha*, (2009) 12 SCC 748 [LNIND 2009 SC 1173] : 2009 Cr LJ 3063 , a mob 60–70 persons armed with deadly weapons entered a house and forcibly removed household articles and took them away on a lorry, person at whose instance they acted, held liable.

<sup>78.</sup> *Nand Kishore v State of Bihar*, 2000 Cr LJ 5079 (Pat). See also *Raju v State of Rajasthan*, (2007) 10 SCC 289 [LNIND 2007 SC 591] .

<sup>79.</sup> *Mahadev Sharma v State of Bihar*, AIR 1966 SC 302 [LNIND 1965 SC 143] : 1965 (1) SCR 18 : 1966 Cr LJ 1971 .

80. *Vinubhai Ranchhodbhai Patel v Rajivbhai Dudabhai Patel*, AIR 2018 SC 2472 [LNIND 2018 SC 300].

81. *Ankoos v Public Prosecutor High Court of AP*, (2010) 1 SCC 94 [LNIND 2010 SC 713] : JT 2009 (14) SC 6 [LNIND 2009 SC 1959] : AIR 2010 SC 566 [LNIND 2009 SC 1959] : 2010 Cr LJ 861 : (2010) 1 SCC (Cr) 460.

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- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

#### III. Promoting enmity between different classes (section 153A).

#### IV. Affray (sections 159, 160).

**[s 149] Every member of unlawful assembly guilty of offence committed in prosecution of common object.**

**If an offence is committed by any member of an unlawful assembly in prosecution of the common object<sup>1</sup> 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.**

#### COMMENT—

**Liability of every member.**—The Supreme Court has held that this section does not create a separate offence but only declares the vicarious liability of all the members of



an unlawful assembly for acts done in prosecution of the common object of that assembly or for such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object.<sup>82</sup> However, Benches of a smaller strength in some cases<sup>83</sup> have observed that section 149 creates a specific and distinct offence. Thus the law declared therein by the Benches of a smaller strength cannot be taken as correct legal position.<sup>84</sup> This section creates a specific and distinct offence.<sup>85</sup> It is not the intention of the legislature in enacting section 149 to render every member of unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to attract section 149, it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly and it must be within the knowledge of other members as one likely to be committed in prosecution of the common object.<sup>86</sup> A plain reading of the section shows that the provision is in two parts. The first part deals with cases in which an offence is committed by any member of the assembly "in prosecution of the common object" of that assembly. The second part deals with cases where the commission of a given offence is not by itself the common object of the unlawful assembly but members of such assembly 'knew that the same is likely to be committed in prosecution of the common object of the assembly'.<sup>87</sup> This section makes both the categories of persons, those who have committed the offence as also those who were members of the same assembly liable for the offences under [section 149, IPC, 1860](#), provided the other requirements of the section are satisfied. That is to say, if an offence is committed by any person of an unlawful assembly, which the members of that assembly knew to be likely to be committed, every member of such an assembly is guilty of the offence. The law is clear that membership of unlawful assembly is sufficient to hold such participating members vicariously liable. For mulcting liability on the members of an unlawful assembly under section 149, it is not necessary that every member of the unlawful assembly should commit the offence in prosecution of the common object of the assembly. Mere knowledge of the likelihood of commission of such an offence by the members of the assembly is sufficient.<sup>88</sup> Whenever the court convicts any person or persons of any offence with the aid of section 149, a clear finding regarding the common object of the assembly must be given and the evidence disclosed must show not only the nature of the common object but also that the object was unlawful. If members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of a common object, they would be liable for the same under section 149.<sup>89</sup> In the absence of such finding as also any overt act on the part of the accused persons, mere fact that they were armed would not be sufficient to prove common object.<sup>90</sup> Where the moot question as to common objective is proved all the members of unlawful assembly would be vicariously liable for the acts done by the said assembly and thus the separate roles played by all the accused persons need not be examined.<sup>91</sup> Section 149 makes it abundantly clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly 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 such an assembly, is guilty of that offence, however if a person is a mere bystander, and no specific role is attributed to him, he may not come under the wide sweep contemplated under section 149.<sup>92</sup> Further where the member had no knowledge of the unlawful object of the assembly or after having gained knowledge, he attempted to prevent the assembly from accomplishing the unlawful object, and after having failed to do so, he disassociated himself from the assembly, the mere participation of him in such an assembly would not be made him liable.<sup>93</sup>

The section constitutes a substantive offence.<sup>94</sup>

The Supreme Court reiterated the ambit and scope of this principle of liability as follows:

[Section 149 IPC](#) provides for vicarious liability. If an offence is committed by any member of an unlawful assembly in prosecution of a common object thereof or such as the members of that assembly knew that the offence was likely to be committed in prosecution of that object, every person who at the time of committing that offence was member would be guilty of the offence committed. The common object may be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regards likelihood of commission of another offence or not would depend upon the facts and circumstances of each case. Background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime would be relevant factors for drawing an inference in that behalf.<sup>95</sup> "Common object" means the purpose or design shared by all the members which may be formed at any stage. It has to be ascertained from the acts and conduct of the individuals concerned and surrounding circumstances.<sup>96</sup> Common object to commit a murder cannot be inferred only on the basis that the weapons carried by the accused were dangerous.<sup>97</sup>

### **[s 149.1] Ingredients. –**

The section has the following essentials –

1. There must be an unlawful assembly.
2. Commission of an offence by any member of an unlawful assembly.
3. Such offence must have been committed in prosecution of the common object of the assembly; or must be such as the members of the assembly knew to be likely to be committed. If these three elements are satisfied, then only a conviction under [section 149, IPC, 1860](#), may be substantiated, and not otherwise.<sup>98</sup> Section 149 shall not apply to a person who is merely present in any unlawful assembly, unless he actively participates in offence or does some overt act with the necessary criminal intention or shares the common object of the unlawful assembly.<sup>99</sup>

### **[s 149.2] Sudden action of one of the member in the assembly; all are not liable:**

To the question whether the sudden action of one of the members of the unlawful assembly constitutes an act in prosecution of the common object of the unlawful assembly namely preventing of erection of the fence in question and whether the members of the unlawful assembly knew that such an offence was likely to be committed by any member of the assembly Supreme Court answered in the negative.<sup>100</sup> As a consequence, the effect of [section 149 of IPC, 1860](#), may be different on different members of the same unlawful assembly. Decisions of the Supreme Court in *Gangadhar Behera v State of Orissa* and *Bishnaalias BhiswadebMahato v State of WB*,<sup>101</sup> similarly explained and reiterated the legal position on the subject.

### **[s 149.3] Sections 34 and 149. –**

There is a difference between object and intention, for though their object is common, the intention of the several members may differ and indeed may be similar only in respect that they are all unlawful, while the element of participation in action, which is the leading feature of section 34, is replaced in section 149 by membership of the

assembly at the time of the committing of the offence. Both sections deal with combinations of persons, who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap, but section 149 cannot at any rate relegate section 34 to the position of dealing only with joint action by the commission of identically similar criminal acts, a kind of case which is not in itself deserving of separate treatment at all".<sup>102</sup> Section 34 of IPC, 1860 refers to cases in which several persons both do an act and intend to do that act: it does not refer to cases where several persons intend to do an act and some one or more of them do an entirely different act. In the latter class of cases section 149 of the Code may be applicable but section 34 is not.<sup>103</sup> On the other hand, if five or more persons both do an act and intend to do it, both section 34 and section 149, may apply, since the term "member" in the singular includes the plural also (section 9). In this connection see detailed discussion and cases under sub-head "Distinction between section 34 and section 149, IPC, 1860," under section 34 *ante*.

#### **[s 149.4] Scope.—**

This section is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. It is divided into two parts: (1) an offence committed by a member of an unlawful assembly in prosecution of the common object of that assembly; and (2) an offence such as the members of that assembly knew to be likely to be committed in prosecution of the common object of the unlawful assembly, is one which the accused knew would be likely to be committed in prosecution of the common object.<sup>104</sup> The section applies equally in cases where offences are committed by single member of the assembly and in cases where offences are committed by two or more members of the assembly acting in furtherance of a common intention.<sup>105</sup>

Once the Court can find that an offence has been committed by some member or members of an unlawful assembly in prosecution of the common object, then whether the principal offender has been convicted for that offence or not, upon the plain wording of this section, the other members may be constructively convicted of that offence, provided they are found to have had the necessary intention or knowledge. It is not correct to say that when a member of an unlawful assembly is to be found constructively guilty of an offence under this section, it must be the same offence of which the principal is convicted and not some other offence.<sup>106</sup>

Members of an unlawful assembly may have a community of object only up to a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object will vary, not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of this section may be different on different members of the same unlawful assembly.<sup>107</sup>

Before this section can be called in aid, the Court must find with 'certainty' that there were at least five persons sharing the common object. A finding that three of them 'may or may not have been there' betrays uncertainty on this vital point and it consequently becomes impossible to allow the conviction to rest on this uncertain foundation. This is not to say that five persons must always be convicted before this section can be applied. It is possible in some cases for Judges to conclude that though five were unquestionably there the identity of one or more is in doubt. In that case, the conviction of the rest with the aid of this section would be good.<sup>108</sup> Non-applicability

of [section 149, IPC, 1860](#), is no bar in convicting the accused persons under [section 302, IPC](#) read with [section 34 of IPC](#), if the evidence discloses commission of offence in furtherance of common intention of them all. It would depend on the facts of each case as to whether [section 34](#) or [section 149](#) of [IPC](#) or both the provisions are attracted.<sup>109</sup> Where the accused, forming an unlawful assembly, chased and killed a man by inflicting multiple injuries on his body with sharp edged weapons, it was held that circumstances and transaction taken as a whole were sufficient to invoke section 34 or section 149.<sup>110</sup>

No judgment can be cited as a precedent however similar the facts may be. Each case must rest on its own facts.<sup>111</sup>

The persons acting in self-defence of property cannot be members of an unlawful assembly.<sup>112</sup>

**1. 'In prosecution of the common object'.—**The expression "in prosecution of common object" has to be strictly construed as equivalent to "in order to attain the common object". There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of [section 149, IPC, 1860](#), may be different on different members of the same assembly.<sup>113</sup> The word "knew" as used in the second branch of section 149 implied something more than "possibility" and it cannot bear the sense of "might have known". An offence committed in prosecution of common object would generally be the offence which the members of the assembly knew was likely to be committed.<sup>114</sup> This phrase means that the offence committed was *immediately* connected with the common object of the unlawful assembly, of which the accused were members. The act must be one which must have been done with a view to accomplish the common object attributed to the members of the unlawful assembly. Where the common object is established, the unlawful assembly does not cease to be so by merely splitting itself into two groups for launching the attack. [Section 149, IPC, 1860](#), would be clearly applicable to such a case.<sup>115</sup>

The words "in prosecution of the common object" do not mean "during the prosecution of the common object of the assembly". It means that the offence committed was immediately connected with the common object of the assembly or the act is one which upon the evidence appears to have been done with a view to accomplish the common object attributed to the members of the assembly. The words "in prosecution of the common object" have to be strictly construed as equivalent to "in order to attain common object".<sup>116</sup> In the present case,<sup>117</sup> the common object of unlawful assembly was to kill a particular person. Two members of the assembly went after him. Sensing danger, he ran into the adjoining room to fetch a spear to defend himself. His wife blocked his way and he could not come out. Frustrated, as they were, the two members of the assembly gunned down two young girls of their intended victim who were then playing in the courtyard outside the house. The conviction of the rest of the members for this murder was set aside as this was neither their common object, nor incidental to that, nor necessary for its attainment.

Vicarious responsibility can be fastened only on proof that the ultimate act was done in pursuance of common object.<sup>118</sup>

Even where the common object is not developed at the initial stage, it may develop on the spot, *eoinstanti*. Thus, where it appeared that members of a party divided

themselves into small groups and waited for the victim and simultaneously pounced upon him and jointly removed his body, the fact that they did not assemble at one place under any plan, but came there separately, was considered by the Supreme Court to be not of much importance because at the sensitive moment they seemed to be acting in an organised way.<sup>119</sup> Where, however, the agreement specifically was only to give a thrashing to the victim, but one of them pulled out a knife and stabbed the victim, it was held that neither at the initial stage nor at the execution stage, could it be said that there was the object to cause a fatal injury so as to make all others liable for the death.<sup>120</sup>

### **[s 149.5] Change of object.—**

Members who shared the original common intention may not be liable when some members adopted a subsequently developed and aggravated common object and acted on it.<sup>121</sup>

### **[s 149.6] CASES.—Prosecution of common object.—**

While membership of an unlawful assembly itself is an offence under [section 143, IPC, 1860](#), use of force by members of the unlawful assembly gives rise to the offence of rioting which is punishable either under [section 147](#) or [section 148, IPC](#). Membership of the 4 accused in the unlawful assembly and use of force with dangerous weapons is borne out by the evidence on record. The said facts would make the acquitted accused liable for the offence under [section 148 of IPC, 1860](#).<sup>122</sup> Where a small compact body of men armed with clubs, and headed by a man carrying a gun, endeavoured to take forcible possession of certain lands, and one of the opponents was shot by their leader, it was held that they were guilty of murder.<sup>123</sup>

Where in a faction-ridden village the members of one party seeing someone of the other party alighting from a bus emerged together to attack him, it could be easily said that they shared the common object to assault one of their enemies and at that stage the assembly turned into an unlawful assembly.<sup>124</sup> Where several persons assaulted and caused injuries to the deceased, however except one incised injury on the head, all were lacerated injuries on legs, common object of the unlawful assembly was held to cause grievous hurt and not murder and conviction of the accused was altered from sections 302/149 to sections 326/149.<sup>125</sup> Where the accused, being members of an unlawful assembly and being armed with sharp edged weapons, used only the blunt sides of their weapons, they were held to share the common object of causing grievous hurt and not murder.<sup>57</sup> Accused persons variously armed entered a police wireless station after breaking open doors and windows and assaulted inmates. Their individual acts were not known. It was held that all the accused persons must be deemed to have shared the common object of lurking house trespass and could be convicted under sections 149/455.<sup>126</sup> Where two innocent young girls were killed in a very gruesome manner just only to teach a lesson to their mother over a property dispute, every member of the killing team was held to be equally guilty deserving the maximum penalty of death, it being a case of the "rarest of rare" category.<sup>127</sup> Where the death of a police officer was caused while he was arresting the accused and those who caught hold of him intended only to prevent him from performing his duty, but the main accused suddenly killed him, it was held that the common object of the unlawful assembly was to deter police from performing their duty and not to commit murder. Their conviction was altered from one under sections 302/149 to one under section

353/149.<sup>128</sup> Several persons entered into a conspiracy to commit dacoity during the course of which one of the accused fired a shot which missed the target and hit one of his accomplices who died. The other accused fired a shot and killed one of the inmates of the house. The accused killing the inmate was convicted under sections 302 and 398. The three others were punished under section 398/149, their common object being dacoity and not murder.<sup>129</sup>

The accused persons were armed with *lathis* and guns. They declared on entry into the threshing floor mill that they had come to take away the paddy and, if the owner resisted, they would take life out of him. In these circumstances they caused death. A conviction under section 300 read with section 149 was held to be not illegal.<sup>130</sup>

There is no requirement for conviction under the section of assigning definite roles to the accused persons.<sup>131</sup>

### **[s 149.7] Identification of all the five not necessary.—**

The section does not require that all the five persons must be identified. Presence of five persons is required to be established with the common object of doing an act. The fact that all of them could not be identified would not affect the application of the section. The eye-witnesses identified only four of them but testified that others were present with weapons at the time and place of occurrence.

### **[s 149.8] Unlawful assembly and the right of private defence.—**

As long as the accused persons exercised their right of private defence, their assembly could not be described as unlawful. But only those accused persons who shared the object of doing something in excess of the right of private defence were liable to conviction with the help of section 149.<sup>132</sup> Where the accused persons were acting in the exercise of the right of private defence, the Supreme Court said that they could not be said to have constituted an unlawful assembly. Only one of them caused an injury after the right of private defence had ceased to be available to them. They could not be convicted under section 148 with the aid of section 149.<sup>133</sup>

### **[s 149.9] Overt act on the part of each and every member not necessary.—**

The presence of the accused as a part of the unlawful assembly is sufficient for his conviction. The fact that the accused was present at the place of occurrence as a part of the unlawful assembly was not disputed. That was held to be sufficient to hold him guilty even if no *overt act* was attributed to him.<sup>134</sup> This principle may not apply where the presence is such that merely by its reason the person concerned does not become a member of the assembly. This happened in a case in which the names of only 4 persons were mentioned in the complaint. Five other persons were not mentioned because they kept standing at the back without any participation in the incident. But they were also roped in under section 149. The Supreme Court held that they could not be regarded as members of the assembly. Their conviction was impermissible.<sup>135</sup> 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 is vicariously liable for the acts done by others either in the prosecution of the common

object of the unlawful assembly or such as the members of the unlawful assembly knew were likely to be committed.<sup>136.</sup>

#### **[s 149.10] Inference of common object.—**

The common object of the unlawful assembly has to be inferred from the membership, the weapons used and the nature of the injuries as well as other surrounding circumstances. Intention of members of unlawful assembly can be gathered by nature, number and location of injuries inflicted. In the instant case, repeated gun shots fired by one of accused person on the person of deceased and the injuries caused by lathis by other accused persons on the complainant and his second brother on their heads, clearly demonstrate the objective to cause murder of these persons.<sup>137.</sup> Common object to commit a murder cannot be inferred only on the basis that the weapons carried by the accused were dangerous.<sup>138.</sup> The common object of assembly is normally to be gathered from the circumstances of each case such as the time and place of the gathering of the assembly, the conduct of the gathering as distinguished from the conduct of the individual members are indicative of the common object of the gathering. Assessing the common object of an assembly only on the basis of the overt acts committed by such individual members of the assembly is impermissible.<sup>139.</sup>

#### **[s 149.11] Identification of common object.—**

The identification of the common object essentially requires an assessment of the state of mind of the members of the unlawful assembly. Proof of such mental condition is normally established by inferential logic. If a large number of people gather at a public place at the dead of night armed with deadly weapons like axes and fire arms and attack another person or group of persons, any member of the attacking group would have to be a moron in intelligence if he did not know murder would be a likely consequence.<sup>140.</sup>

#### **[s 149.12] No common object.—**

A large body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first mentioned faction was wounded and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed. It was held that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under this section, be made liable for the subsequent murder.<sup>141.</sup> Where the accused persons rushed to the house of K with a view to injure K or inmates of his house but one of the accused attacked M, a woman working in the house causing grievous injuries to her, the other accused persons could not be held vicariously liable with the help of [section 149, IPC, 1860](#), as it was not their common object nor had they any animus against M.<sup>142.</sup> An unlawful assembly of 50 persons was alleged to have caused two deaths. There were no specific allegations against some of them, or that any [criminal act](#) was done by them in furtherance of common intention. It was held that they could not be convicted with the aid of either section 34 or section 149.<sup>143.</sup> When an accused leaves the place of occurrence and thus ceases to be a member of the unlawful assembly, he cannot be convicted vicariously with the aid of [section 149, IPC](#), for the murder which is committed subsequent to his leaving the scene of crime.<sup>144.</sup> Where one member fired

on being supplied with a bullet by another only the member supplying the bullet was held liable under section 302/149 and others were convicted only under [section 325/194, IPC](#).<sup>145</sup> After a heated exchange of words, the accused went home and came back with a gun accompanied by others who also armed and immediately opened fire at the victim causing his death. Others did not fire at the victim. They fired indiscriminately at others injuring some people. Things happened in a very short span of time. It was held that the others could not have formed an unlawful assembly with the main accused with a common object. The main culprit alone was convicted of murder.<sup>146</sup> Where people collected outside a police-station to voice their protest over police- inaction in connection with the murder of a child, such an assembly could not possibly have any common object to commit criminal trespass, arson, looting, etc., and as such none could be convicted with the aid of [section 149, IPC, 1860](#).<sup>147</sup> All the accused, armed only with *lathis*, caused multiple injuries to a man who died. All the injuries caused were simple in nature and were on non-vital parts of the body of the deceased, it could not be said that their common object was to kill the deceased. They were held liable to be convicted under section 304, Part II/149 and not under section 302/149.<sup>148</sup>

Where the common object of an unlawful assembly was to cause hurt to prosecution witnesses, and the daughter of a witness who came out from inside the house only to save her father sustained an injury at the hands of one of the accused and died, it was held that there could be no common object in the circumstances to commit murder. They were held to be guilty under section 323 read with section 149.<sup>149</sup>

### **[s 149.13] Unlawful assembly and single witness.—**

In a case involving an unlawful assembly with a large number of persons, there is no rule of law that states that there cannot be any conviction on the testimony of sole eyewitness unless that the court is of the view that testimony of such eye witness is not reliable. The rule of requirement of more than one witness applies only in a case where a witness deposes in a general and vague manner or in the case of a riot.<sup>150</sup>

Direct evidence is generally not available. The existence of common object has to be gathered from the act committed and results flowing from them.<sup>151</sup>

### **[s 149.14] Conviction for section 302 *simpliciter*, when the charge was for [section 302](#) read with [section 149](#) of [IPC, 1860](#):**

The Supreme Court in *Nanak Chand v State of Punjab*,<sup>152</sup> considered the question whether there could be a conviction for the offence under section 302 *simpliciter*, when the charge was for the offence under [section 302](#) read with [section 149](#) of [IPC](#). It was held that when there is no separate charge for the offence under section 302 *simpliciter* and charge is only for the offence under section 302 read with 149, the conviction for the offence under section 302 *simpliciter* is not sustainable. In *Suraj Pal v State of UP*,<sup>153</sup> 19 accused were tried for the offences under sections 148, 307 and 302 read with [section 149](#) of [IPC](#). Sessions Court convicted all the accused. In appeal to the High Court, ten accused were acquitted. Conviction and sentence of one accused was affirmed for the offence under sections 148, 307 and 302. Holding that absence of specific charges against the appellant under [sections 307](#) and [section 302, IPC](#) in respect of which he was sentenced is a very serious lacuna as framing of a specific and distinct charge in respect of every distinct head of criminal liability constituting an offence is the foundation for a conviction and sentence. The question was referred to



the Five Judge [Constitution Bench](#), to determine whether there was a conflict of view between *Nanak Chand's case (supra)* and *Suraj Pal's case (supra)* and if so to determine it in *Willie Slaney v State of Madhya Pradesh*.<sup>154</sup> The [Constitution Bench](#) held that there was no conflict of views in the two decisions. It was held that the observations in *Nanak Chand (supra)*, have to be appreciated on close examination of facts. Their Lordships considered the effect of a charge for constructive liability and its difference with a charge for the offence *simpliciter* and held that there was no prejudice and that the conviction is not invalid because of the nature of the charge. A three Judge Bench in *Subran v State*,<sup>155</sup> held that when the charge is under [section 302](#) read with [section 149](#) of [IPC](#), without a specific charge having been framed for the offence under [section 302 of IPC](#), as envisaged in law, an accused cannot be convicted for the substantive offence under [section 302 of IPC](#), their Lordships did not consider the [Constitution Bench](#) decision in *Willie Slaney's case (supra)*. Later in the review judgment, *Subran v State*, [1993 \(3\) SCC 722](#), their lordships reviewed the same as follows:

On a review of the judgment, we find that the opinion expressed is capable of being misinterpreted. The opinion expressed therein was required to be confined to the peculiar facts of the case, but it tends to give an impression as if it is a general exposition of law, which it was not meant to be.

The legal position in the light of the [Constitution Bench](#) decision in *Willie Slaney*<sup>156</sup> is clear. If the charge framed discloses the overt act committed by a particular accused, though the charge is for the offence under [section 302](#) read with [section 149](#) of [IPC](#), [1860](#), and the accused faced trial with the knowledge that the prosecution case is that he committed the particular overt act which caused the death, non-framing of a distinct charge for the offence under [section 302](#) will not cause prejudice to the accused, even though the charge framed was under [section 302](#) read with [section 149, IPC](#). In such a case, even though the charge is for the offence under [section 302](#) read with [section 149](#) of [IPC](#) and there is not even an alternate charge for the offence under [section 302 simpliciter](#), when the charge discloses the overt act by a particular accused which caused the death of the victim, if the evidence establishes that, that particular accused inflicted that particular injury which caused the death, he could definitely be convicted for the offence under [section 302 simpliciter](#). Even though there is no specific charge for [section 302 simpliciter](#) and the charge is for the offence under [section 302](#) read with [149](#) of [IPC](#), there could be a conviction under [section 302 simpliciter](#).

#### **[s 149.15] Where no charge framed as substantive offence with aid of either section 34 and section 149.—**

Where participation of all the ten accused in the alleged assault on the deceased has been proved by the evidence of witnesses, but no charge insofar as the substantive offence under [section 302, IPC, 1860](#), or under [section 307, IPC](#) with the aid of either [section 34, IPC](#) and [section 149, IPC](#) had been framed and also the evidence on record is not sufficient to attribute any specific injury suffered by the deceased to any particular accused, acquittal of the accused of the offences under [section 302, IPC](#) or under [section 307, IPC](#) is perfectly justified.<sup>157</sup>

#### **[s 149.16] Free fight and overt act.—**

It has been held by the Supreme Court that in a case involving free fight, a conviction by resorting to [section 149](#) is not permissible. No particular accused person can be convicted under [section 149](#) unless it can be shown that he caused injuries.<sup>158</sup>

### **[s 149.17] Sentencing.—**

The presence of the appellant accused and their participation in the incidence was established. Their conviction under section 326 read with sections 149, 148 was confirmed. But considering their age and the fact that their participation in the incident was minimal, the sentence of six years R1 was reduced to two years R1, confirming the sentence of one year under section 148.<sup>159.</sup>

### **[s 149.18] Group rivalries.—**

In the case of group rivalries and enmities, there is a general tendency to rope in as many persons as possible as having participated in the assault. In such situations, the courts are called upon to be very cautious and sift the evidence with care. Where after a close scrutiny of the evidence, a reasonable doubt arises in the mind of the court with regard to the participation of any of those who have been roped in, the court would be obliged to give the benefit of doubt to them.<sup>160.</sup> However, when there are eyewitnesses including injured witness who fully support the prosecution case and proved the roles of different accused, prosecution case cannot be negated only on the ground that it was a case of group rivalry. Group rivalry is double edged sword.<sup>161.</sup>

### **[s 149.19] Inference from dangerous weapon.—**

Common object to commit a murder cannot be inferred only on the basis that the weapons carried by the accused were dangerous.<sup>162.</sup>

82. *Vinubhai Ranchhodbhai Patel v Rajivbhai Dudabhai Patel*, AIR 2018 SC 2472 [LNIND 2018 SC 300] .

83. *Sheo Mahadeo Singh v State of Bihar*, (1970) 3 SCC 46 ; *Lalji v State of UP*, 1989 (1) SCC 437 [LNIND 1989 SC 26] ; *Lakhan Mahto*, AIR 1966 SC 1742 [LNIND 1966 SC 61] .

84. *Vinubhai Ranchhodbhai Patel v Rajivbhai Dudabhai Patel*, AIR 2018 SC 2472 [LNIND 2018 SC 300] .

85. *Lakhan Mahto*, AIR 1966 SC 1742 [LNIND 1966 SC 61] : 1966 Cr LJ 1349 .

86. *Kuldip Yadav v State of Bihar*, 2011 (5) SCC 324 [LNIND 2011 SC 403] : AIR 2011 SC 1736 [LNIND 2011 SC 403] : 2011 Cr LJ 2640 : (2011) 2 SCC (Cr) 632.

87. *Roy Fernandes v State of Goa*, (2012) 3 SCC 221 [LNIND 2012 SC 86] : 2012 Cr LJ 1542 .

88. *Vinubhai Ranchhodbhai Patel v Rajivbhai Dudabhai Patel*, AIR 2018 SC 2472 [LNIND 2018 SC 300] .

89. *Waman v State of Maharashtra*, (2011) 7 SCC 295 [LNIND 2011 SC 564] : AIR 2011 (SCW) 4973 : 2011 Cr LJ 4827 : AIR 2011 SC 3327 [LNIND 2011 SC 564] : (2011) 3 SCC (Cr) 83; *Bhudeo Mandal v State of Bihar*, (1981) 2 SCC 755 [LNIND 1981 SC 177] : 1981 SCC (Cr) 595, *Ranbir Yadav v State of Bihar*, (1995) 4 SCC 392 [LNIND 1995 SC 389] : 1995 SCC (Cr) 728, *Allauddin Mian v State of Bihar*, (1989) 3 SCC 5 [LNIND 1989 SC 236] : 1989 SCC (Cr) 490, *Rajendra*

*Shantaram Todankar v State of Maharashtra*, (2003) 2 SCC 257 [LNIND 2003 SC 4] : 2003 SCC (Cr) 506 and *State of Punjab v Sanjiv Kumar*, (2007) 9 SCC 791 [LNIND 2007 SC 797] : (2007) 3 SCC (Cr) 578.

90. *Kuldip Yadav v State of Bihar*, 2011 (5) SCC 324 [LNIND 2011 SC 403] : AIR 2011 SC 1736 [LNIND 2011 SC 403] : 2011 Cr LJ 2640 : (2011) 2 SCC (Cr) 632.

91. *Iqbal v State of UP*, AIR 2017 SC 1127 [LNIND 2017 SC 73] .

92. *Vyas Ram @ Vyas Kahar v State of Bihar*, 2014 Cr LJ 50 : (2013) 12 SCC 349 [LNIND 2013 SC 861] .

93. *Kattukulangara Madhavan v Majeed*, AIR 2017 SC 2004 [LNIND 2017 SC 158] .

94. *Sunil Balkrishna Bheir v State of Maharashtra*, (2007) 14 SCC 598 [LNIND 2007 SC 669] : 2007 Cr LJ 3277 .

95. *Munivel v State of TN*, 2006 Cr LJ 2133 .

96. *Hori Lal v State of UP*, (2006) 13 SCC 79 [LNIND 2006 SC 1086] : 2007 Cr LJ 1181 . See also *State of Punjab v Sanjeev Kumar*, (2007) 9 SCC 791 [LNIND 2007 SC 797] : AIR 2007 SC 2430 [LNIND 2007 SC 797] ; *Purusuram Pandey v State of Bihar*, AIR 2004 SC 5068 [LNIND 2004 SC 1075] : 2005 SCC (Cr) 113, restatement of ingredients and principle on which the provision is based.

97. *Najabhai Desurbhai Wagh v Valerabhai Deganbhai Vagh*, 2017 (1) Crimes 270 (SC), (2017) 3 SCC 261 [LNIND 2017 SC 46] .

98. *Vijay Pandurang Thakre v State of Maharashtra*, AIR 2017 SC 897 . *Gurmail Singh v State of Punjab*, 2013 (4) SCC 228 [LNIND 2012 SC 864] : 2013 (2) SCC (Cr) 36; *State of Maharashtra v Kashiram*, (2003) 10 SCC 434 [LNIND 2003 SC 716] : AIR 2003 SC 3901 [LNIND 2003 SC 716] , two parts of sections 149 explained and distinguished, the expression "in prosecution of common object" and the word "knew" in section 149, their meaning also explained. *Rajendra Shantaram Todankar v State of Maharashtra*, (2003) 2 SCC 257 [LNIND 2003 SC 4] : AIR 2003 SC 1110 [LNIND 2003 SC 4] : 2003 Cr LJ 1277 , two clauses of the section explained, inference about knowledge of likelihood of crime, when can be drawn, explained.

99. *Vijay Pandurang Thakre v State of Maharashtra*, AIR 2017 SC 897 .

100. *Roy Fernandes v State of Goa*, 2012 (2) Scale 68 [LNIND 2012 SC 86] : JT 2012 (2) SC 457 : AIR 2012 (SCW) 1238 : (2012) 3 SCC 221 [LNIND 2012 SC 86] : 2012 Cr LJ 1542 .

101. *Gangadhar Behera v State of Orissa*, 2002 (8) SCC 381 [LNIND 2002 SC 645] and *Bishnaalias BhiswadebMahato v State of WB*, 2005 (12) SCC 657 [LNIND 2005 SC 873]

102. *Barendra Kumar Ghosh*, (1924) 52 IA 40 , 52 : 27 Bom LR 148 : 52 Cal 197.

103. *Aniruddha Mana*, (1924) 26 Cr LJ 827 , 829. Where the purpose was to show force and not to cause death, common intention was ruled out and the conviction was converted from under sections 302/34 to one under 302/149, *Jai Narain v State of UP*, 1995 Cr LJ 2335 (All).

104. *Sabid Ali*, (1873) 20 WR (Cr) 5 : 11 Beng LR 347, **approved** by the Supreme Court in *Mazaji*, AIR 1959 SC 572 [LNIND 1958 SC 169] ; *Krishnarao*, (1903) 5 Bom LR 1023 ; *Fatnaya*, (1941) 23 Lah 470.

105. *Legal Remembrancer, Bengal v Golok Tikadar*, (1943) 1 Cal 181 .

106. *UN Singh v State*, (1946) 25 Pat 215.

107. *Jahiruddin*, (1894) 22 Cal 306 , **approved** by the Supreme Court in *Shambhu Nath*, AIR 1960 SC 725 : 1960 Cr LJ 1114 .

108. *Dalip Singh*, AIR 1953 SC 364 [LNIND 1953 SC 61] : 1953 Cr LJ 1465 ; See also *Dharam Pal*, 1975 Cr LJ 1666 : AIR 1975 SC 1917 [LNIND 1975 SC 314] ; *State of UP v Ranjha Ram*, AIR 1986 SC 1959 [LNIND 1986 SC 271] : 1986 Cr LJ 1906 : (1986) 4 SCC 99 [LNIND 1986 SC 271] ; *Amar Singh v State of Punjab*, AIR 1987 SC 826 : 1987 Cr LJ 706 : (1987) 1 SCC 679 , see further *Gopeteshwar Nath Ojha v State of Bihar*, AIR 1986 SC 1649 : 1986 Cr LJ 1242 . *Hoshiar Singh v*

*State of Punjab*, AIR 1992 SC 191 [LNIND 1991 SC 568] : 1992 Cr LJ 510 , the acquittal of some would not warrant the acquittal of the rest; *Sahebrao Kisan Jadhav v State of Maharashtra*, 1992 Cr LJ 339 , presence of eight in the course of an assault was established but four were acquitted due to weak evidence, conviction of the rest for unlawful assembly not illegal. The cases of *Amar Singh v State of Punjab*, AIR 1987 SC 826 ; and *Maina Singh v State of Punjab*, AIR 1976 SC 1084 [LNIND 1976 SC 97] : (1976) 3 SCR 651 [LNIND 1976 SC 97] , were followed by the Supreme Court in *K Nagamalleswara Rao v State of AP*, 1991 Cr LJ 1365 : AIR 1991 SC 1075 [LNIND 1991 SC 150] : (1991) 2 SCC 532 [LNIND 1991 SC 150] , so as to come to the conclusion that where all others were acquitted and the evidence against the remaining four was also not reliable as to any overt acts done by them, their conviction was not sustainable. *Darshan Singh v State of Punjab*, 1990 Cr LJ 2684 : AIR 1991 SC 66 , prosecution theory that an 80-year-old man went in advance to hold the deceased, not acceptable. *State of Assam v Bhelu Sheikh*, 1989 Cr LJ 879 : AIR 1989 SC 1097 , no evidence to show that the accused caused injury, even dying declaration not recorded when the injured lived for seven days. *Saudagar Singh v State of Haryana*, AIR 1998 SC 28 [LNIND 1997 SC 890] : 1998 Cr LJ 62 , persons not named in the FIR as members of unlawful assembly were let off, the gun wielding accused persons fired gun shots, convicted for murder. *Komal v State of HP*, AIR 2002 SC 3057 [LNIND 2002 SC 518] , prosecution case of murder with common object proved, conviction. See also *Sajjan Sharma v State of Bihar*, (2011) 2 SCC 206 [LNIND 2011 SC 33] : AIR 2011 SC 632 [LNIND 2011 SC 33] : 2011 Cr LJ 1169 : (2011) 1 SCC (Cr) 660.

109. *Birbal Choudhary v State of Bihar*, AIR 2017 SC 4866 [LNIND 2017 SC 2898].

110. *Bolineedi Venkataramaiah v State of AP*, AIR 1994 SC 76 : 1994 Cr LJ 61 : 1994 Supp (3) SCC 732 . *Chanda v State of UP*, (2004) 5 SCC 141 [LNIND 2004 SC 582] : AIR 2004 SC 2451 [LNIND 2004 SC 582] : 2004 All LJ 1871 : 2004 Cr LJ 2536 , common object as specified in section 141 must be proved for inflicting constructive liability, but proof of any overt act is not necessary. The court stated consideration for ascertaining common object, when and how it comes into existence and when it becomes modified or abandoned. *Madan Singh v State of Bihar*, (2004) 4 SCC 622 [LNIND 2004 SC 427] : AIR 2004 SC 3317 [LNIND 2004 SC 427] . *Dani Singh v State of Bihar*, 2004 Cr LJ 3328 , there must be common object as stated in section 141 and person actuated by it. *Charan Singh v State of UP*, (2004) 4 SCC 205 [LNIND 2004 SC 308] : AIR 2004 SC 2828 [LNIND 2004 SC 308] .

111. *Rudrappa Ramappa Jainpur v State of Karnataka*, (2004) 7 SCC 422 [LNIND 2004 SC 738] : AIR 2004 SC 4148 [LNIND 2004 SC 738] . *Amzad Ali v State of Assam*, 2003 Cr LJ 3545 : (2003) 6 SCC 270 [LNIND 2003 SC 570] , applicability in the context of section 302.

112. *Shyam Singh v State of UP*, 1992 Cr LJ 1632 (All). *Ram Dhani v State*, 1997 Cr LJ 2286 (All) dispute over land, complainant party resorted to cutting crop grown by the accused party. The latter were more than five in number and assembled to prevent the cutting. The court held that they could not be said to form an unlawful assembly.

113. *Raj Nath v State of UP*, AIR 2009 SC 1422 [LNIND 2009 SC 59] : (2009) 4 SCC 334 [LNIND 2009 SC 59] : (2009) 1 SCR 336 : JT 2009 (1) SC 373 [LNIND 2009 SC 85] : (2009) 2 SCC (Cr) 289.

114. *Gangadhar Behera v State of Orissa*, 2003 Cr LJ 41 : AIR 2002 SC 3633 [LNIND 2002 SC 645] . *Chanda v State of UP*, (2004) 3 SCC 141 : AIR 2004 SC 2836 [LNIND 2004 SC 1556] , the expression "in prosecution of common object" and the word "knew" as used in section 149 were explained and distinguished.

115. *Jagdeo Singh*, 1981 Cr LJ 166 : AIR 1981 SC 648 .

116. *Jit Singh v State*, (1957) Pun 950; *Mizaji*, (1959) Supp (1) SCR 940 : AIR 1959 SC 572 [LNIND 1958 SC 169] : 1959 Cr LJ 777 . *Satbir Singh v State of UP*, (2009) 13 SCC 790 [LNIND

2009 SC 450] : AIR 2009 SC 2163 [LNIND 2009 SC 450] : (2009) 3 All LJ 786; *Ashok Kumar v State of TN*, 2006 Cr LJ 2931 : AIR 2006 SC 2419 [LNIND 2006 SC 360] : (2006) 10 SCC 157 [LNIND 2006 SC 360] .

117. *Ibid*, and see *Lalji v State of UP*, AIR 1989 SC 754 [LNIND 1989 SC 26] : (1989) 1 SCR 130 [LNIND 1989 SC 26] : 1989 Cr LJ 850 , the members cannot be acquitted only because of lack of evidence of precise participation. Earlier to this, in *Ram Bilas Singh v State of Bihar*, 1964 (1) Cr LJ 573 : (1963) 1 SCWR 743 : (1964) 1 SCR 775 [LNIND 1963 SC 22] , the Supreme Court observed: "It is true that in order to convict persons vicariously under section 34 or section 149 it is not necessary to prove that each and every one of them had indulged in overt acts. Even so, there must be material to show that the overt act or acts of one or more was or were done in furtherance of the common intention of all the accused or in prosecution of the common object of the members of the unlawful assembly. **Following** this and the above **cited** Supreme Court cases in *Nagina Sharma v State of Bihar*, 1991 Cr LJ 1195 , the Patna High Court held that the gang of persons who came fully armed to capture a booth and to prevent voters from voting and causing eight deaths in the process were all responsible for the deaths in question. See at pp 1231–1233.

118. *Allauddin Mian v State of Bihar*, AIR 1989 SC 1456 [LNIND 1989 SC 236] : 1989 Cr LJ 1466 . *Ramappa Halappa Pujar v State of Karnataka*, (2007) 13 SCC 31 [LNIND 2007 SC 561] , the fact of benefit of doubt to some accused person could not give advantage to others on whose part some other act was evident.

119. *Vithal Bhimshah Koli v State of Maharashtra*, AIR 1983 SC 179 [LNIND 1982 BOM 340] : 1983 Cr LJ 340 : (1983) 1 SCC 431 . See also *Jawahar v State of UP*, AIR 1991 SC 273 : 1991 Cr LJ 376 , equal conviction of the accused who was only holding the deceased by the neck while others struck.

120. *Suratlal v State of MP*, AIR 1982 SC 1224 [LNIND 1980 SC 121] : 1982 Cr LJ 1577 : (1982) 1 SCC 488 [LNIND 1980 SC 121] . *Mohamed Arif v State of Gujarat*, AIR 1997 SC 105 [LNIND 1996 SC 1604] : 1997 Cr LJ 65 ; conviction of all the accused except one who was not identified by the eye-witness and given benefit of doubt. *Ganga Singh v State of UP*, 2000 Cr LJ 1695 (All), unlawful assembly, fodder belonging to informant burnt, death ensued from lathi blows, incident 21 years old. Accused persons grew into men of 55–60 years. They were sentenced to three years RI and fine of Rs. 5,000 each. *Vikram v State of Maharashtra*, (2007) 12 SCC 332 [LNIND 2007 SC 617] : (2008) 1 SCC (Cr) 362 : AIR 2007 SC 1893 [LNIND 2007 SC 617] : 2007 Cr LJ 3193 , whether in a given case common object has been made out depends upon facts and circumstances, conduct of the parties and the manner in which the occurrence had taken place has some bearing on the question.

121. *Bhimrao v State of Maharashtra*, (2003) 3 SCC 37 [LNIND 2003 SC 167] : AIR 2003 SC 1493 [LNIND 2003 SC 167] : 2003 Cr LJ 1204 .

122. *Raju v State of Rajasthan*, 2013 (2) SCC 233 [LNIND 2013 SC 25] : 2013 Cr LJ 1248 (SC). See also *Shyam Babu v State of UP*, JT 2012 (8) SC 377 [LNIND 2012 SC 536] : AIR 2012 (SCW) 4846 : (2012) 8 SCC 651 [LNIND 2012 SC 536] : AIR 2012 SC 3311 [LNIND 2012 SC 536] : 2012 Cr LJ 4550 : 2012 (8) Scale 535 [LNIND 2012 SC 536] .

123. *Hari Singh*, (1878) 3 CLR 49 . *Haricharan v State of Rajasthan*, AIR 1998 SC 244 [LNIND 1997 SC 1350] : 1998 Cr LJ 398 , accused appeared armed with weapons. They stopped the bus, put the gun on the chest of the driver threatening him if he tried to move. They caught hold of the deceased. One of them fired two shots and the other attacked with his weapon. Their conviction under section 300 read with section 149 was held to be proper. *Mahantappa v State of Karnataka*, AIR 1999 SC 314 [LNIND 1998 SC 1018] : 1999 Cr LJ 450 , the accused persons assaulted their victim with a sword, threw his body into a hut and set it on fire. Their conviction

under section 300 read with section 149 was held to be proper. Some others who were also tried with them did not seem to have been members, they could have been bystanders. They were given the benefit of doubt. *Bhagwan Singh v State of UP*, (1992) 4 SCC 85 , the accused persons were on inimical terms with the complainant party, came to the spot armed with deadly weapons and attacked claiming three lives, it was held that they shared common object. *Rachapalliabulu v State of AP*, (2002) 4 SCC 208 [LNIND 2002 SC 267] : 2000 Cr LJ 2527 : AIR 2002 SC 1805 [LNIND 2002 SC 267] , assailants came together as fully armed, caused two deaths, held to have shared common object. *Pratapneni Ravi Kumar v State of AP*, AIR 1997 SC 2810 [LNIND 1997 SC 892] : 1997 Cr LJ 3505 , all those who assaulted the victim were members of unlawful assembly and death was caused in prosecution of common object, all of them guilty irrespective of the fact whether they had participated in beating the deceased. *State of Rajasthan v Ani*, AIR 1997 SC 1023 [LNIND 1997 SC 35] , armed accused person killed two and attempted to cause one more death, they were earlier involved in other riots. Conviction, but two accused were acquitted because evidence showed no connection with the incident. *Satbir v Surat Singh*, AIR 1997 SC 1160 : (1997) 4 SCC 192 , two accused persons, though present, could not be said with certainty to have shared the common intention to commit murder, benefit of doubt. *Siddique v State of UP*, 1998 Cr LJ 3829 (All), unlawful assembly causing death in business rivalry, conviction. *State of Rajasthan v Nathu*, (2003) 5 SCC 537 [LNIND 2003 SC 479] , murder, vicarious liability.

124. *Muthu Naicker v State of WB*, 1978 Cr LJ 1713 : AIR 1978 SC 1647 [LNIND 1978 SC 188] . From numbers, situs and nature of wounds it could be hold that all five accused persons had definite intention to commit murder of victim. *State of Assam v Golbar Hussain*, 2012 Cr LJ 4649 (Gau).

125. *Kartar Singh v State of Punjab*, AIR 1996 SC 1406 [LNIND 1996 SC 307] : 1996 Cr LJ 1722 . In *Ramesh v State of Haryana*, AIR 2011 SC 169 [LNIND 2010 SC 1016] : 2011 Cr LJ 80 : (2010) 12 SCR 799 : (2010) 13 SCC 409 [LNIND 2010 SC 1016] : (2011) 1 SCC (Cr) 1176, the evidence show that the appellants variously armed, including the firearms assembled at one place and, thereafter, came to the place of occurrence and started assault together and when protested by the deceased, one of the members of the unlawful assembly shot the deceased dead and some of them caused injury by firearm, gandasa, *lathi*, etc., to others. All of them have come and left the place of occurrence together. Appellant held to be members of the unlawful assembly and offence have been committed in pursuance of the common object. Each of them shall be liable for the offence committed by any other member of the assembly. Also see *Ranjit Singh v State of MP*, AIR 2011 SC 255 [LNIND 2010 SC 1057] : 2011 Cr LJ 283 : (2011) 4 SCC 336 [LNIND 2010 SC 1057] : (2011) 2 SCC (Cr) 227.

126. *C Chellappan*, 1979 Cr LJ 1335 : AIR 1979 SC 1761 .

127. *Asharfi Lal v State of UP*, AIR 1987 SC 1721 [LNIND 1987 SC 346] : 1987 Cr LJ 1885 : (1987) 3 SCC 224 [LNIND 1987 SC 346] . See also *Lalji Singh v State of UP*, AIR 1985 SC 1266 : 1985 Cr LJ 1488 , charges under sections 302, 147, 148 and 149; and *Dalip Singh v State of UP*, 1985 SCC (Cr) 486 : 1985 Supp SCC 471 : AIR 1986 SC 316 , charges under the same sections, established. *Kishan Singh v State of Rajasthan*, 1995 Cr LJ 2027 (Raj), circumstances of the case established unlawful assembly as well as common object. *Poonma Ram v State of Rajasthan*, 1995 Cr LJ 359 (Raj), unlawful assembly, death caused, but requisite intention for murder not proved, conviction for culpable homicide and for forming unlawful assembly. *Luku Pulke v State of Orissa*, 1995 Cr LJ 1207 (Ori), acquittal because of contradictory statements of witnesses as to participation. *Gajanan v State of Maharashtra*, 1996 Cr LJ 2887 : AIR 1996 SC 3332 , the accused persons caused death by assault and beating, also beating others who came to rescue, showed common object of causing death.

128. *Sheikh Ajyub v State of Maharashtra*, 1995 Cr LJ 420 : 1994 Supp (2) SCC 269 .
129. *Joseph v State of Karnataka*, 1993 Cr LJ 3538 : 1993 AIR SCW 2900. *State of UP v Man Singh*, AIR 2003 SC 62 [LNIND 2002 SC 657] , seven persons were variously armed, they attacked and killed their victim whose severed body was thrown by them into river. The witnesses recovered the body immediately after the attackers left. This established their presence at the spot. The reversal of conviction by the High Court because of poor visibility caused by fog was held to be improper. *Shrawan Bhadaji Bhirad v State of Maharashtra*, AIR 2003 SC 199 [LNIND 2002 SC 701] : 2003 Cr LJ 398 , seven persons armed with swords, attacked their victim causing multiple injuries which were found to be sufficient to cause death, but saved by a team of doctors. Conviction of the accused under the section was held to be proper. *Alla Chinna Apparao v State of AP*, 2003 Cr LJ 17 : AIR 2002 SC 3648 [LNIND 2002 SC 647] , the victim was attacked by accused persons who hacked his neck on two sides with coconut cutting knives. Eye-witnesses. Conviction under section 300
130. *Umesh Singh v State of Bihar*, AIR 2000 SC 2111 [LNIND 2000 SC 871] : 2000 Cr LJ 3167 .
131. *Ram Dular Rai v State of Bihar*, (2003) 12 SCC 352 [LNIND 2003 SC 1032] : AIR 2004 SC 1043 [LNIND 2003 SC 1032] : 2004 Cr LJ 635 ; *Chand v State of UP*, (2004) 5 SCC 141 [LNIND 2004 SC 582] : AIR 2004 SC 2451 [LNIND 2004 SC 582] : 2004 All LJ 1871 : 2004 Cr LJ 2536 , number of convicted persons less than five. Eight persons were named. Two of them held pistols. Shot fired but did not hit the victim. The other's shot proved fatal. Unlawful assembly was there. Acquittal of some of them on a technical ground did not wipe out application of section 149.
132. *Kashirma v State of MP*, (2002) 1 SCC 71 [LNIND 2001 SC 2369] .
133. *Kashi Ram v State of MP*, AIR 2001 SC 2902 [LNIND 2001 SC 2369] ; *Siyaram v State of MP*, (2009) 4 SCC 792 [LNIND 2009 SC 577] : (2009) 2 SCC (Cr) 602 : 2009 Cr LJ 2071 , statement of principles to be **followed** by the appellate court in considering an appeal against acquittal. See also *State of Maharashtra v Tulshiram Bhanudas Kamble*, (2007) 14 SCC 627 [LNIND 2007 SC 3167] : AIR 2007 SC 3042 [LNIND 2007 SC 3167] : (2007) Cr LJ 4319 .
134. *Yunis v State of MP*, AIR 2003 SC 539 [LNIND 2002 SC 784] : 2003 Cr LJ 817 ; *Re Ram Pravesh Sharma*, 2003 Cr LJ NOC 180 (Jhar) : 2003 AIR Jhar HCR 220.
135. *State of MP v Mishrilal*, 2002 Cr LJ 2312 (SC).
136. *State of UP v Kishanpal*, (2008) 16 SCC 73 [LNIND 2008 SC 1608] . *Akbar Sheikh v State of WB*, (2009) 7 SCC 415 [LNIND 2009 SC 1106] : (2009) 3 SCC (Cr) 431, rule of prudence should be applied. Something more than the persons concerned being cited as accused in a witness box would be necessary. The court must have before it some materials to form an opinion that they had shared the common object. *Sheo Prasad Bhor v State of Assam*, (2007) 3 SCC 120 [LNIND 2007 SC 19] : AIR 2007 SC 918 [LNIND 2007 SC 19] : 2007 Cr LJ 1423 , assignment of independent parts to each member not necessary; if one is a member of the assembly, assault and death caused by any one of them would make others liable.
137. *Ganga Ram Sah v State of Bihar*, AIR 2017 SC 655 [LNINDU 2017 SC 31] .
138. *Najabhai Desurbhai Wagh v Valerabhai Deganbhai Vagh*, (2017) 3 SCC 261 [LNIND 2017 SC 46] : 2017 (1) Crimes 270 (SC).
139. *Vinubhai Ranchhodbhai Patel v Rajivbhai Dudabhai Patel*, AIR 2018 SC 2472 [LNIND 2018 SC 300] .
140. *Vinubhai Ranchhodbhai Patel v Rajivbhai Dudabhai Patel*, AIR 2018 SC 2472 [LNIND 2018 SC 300] .
141. *Kabil Singh*, (1869) 3 Beng LR (A Cr J) 1. See also *State of Gujarat v Bharwad*, 1990 Cr LJ 2531 (Guj), common object to belabour the members of a particular community, all liable under sections 324 and 326 and not for murder. *Teja v State of MP*, 1990 Cr LJ 262 , common object to

insult, guilty under section 326 and not under section 302 though death was caused. *Ramesh Baburao Devaskar v State of Maharashtra*, (2008) Cr LJ 372 : (2007) 13 SCC 501 [LNIND 2007 SC 1213], name of only one accused mentioned in the FIR, PWs did not attribute any overt act to the remaining accused persons, thus, there was some substance in the contention that others did not share the common object.

142. *Kshudiram*, 1972 Cr LJ 756 : AIR 1972 SC 1221 . See also *Bharwad Bhikha Natha*, 1977 Cr LJ 1160 : AIR 1977 SC 1768 ; *K Neelakanthee*, 1978 Cr LJ 780 : AIR 1978 SC 1021 [LNIND 1978 SC 55] ; *Bhudeo Mondla v State of Bihar*, 1981 Cr LJ 725 : AIR 1981 SC 219 : (1981) 2 SCC 755 [LNIND 1981 SC 177] .

143. *Jhapsa Kabari v State of Bihar*, AIR 2002 SC 312 [LNIND 2001 SC 2762] . *Jadu Sahani v State*, 1999 Cr LJ 593 : 1999 AIR SCW 3985, no enmity between the conflicting groups, death caused by one of them as an individual act, only he was convicted for murder. *State of Punjab v Harjit Singh*, AIR 2002 SC 3040 [LNIND 2002 SC 501] , mere participation in the crime with others is not sufficient to attribute common object or common intention to one of them of the others involved in the incident. One accused person can be made liable criminally for the acts and deeds of others only on proof of the subjective elements in common intention by the objective test.

144. *Nawab Ali*, 1974 Cr LJ 921 : AIR 1974 SC 1228 [LNIND 1974 SC 117] . See also *Ram Anjore*, 1975 Cr LJ 249 : AIR 1975 SC 185 [LNIND 1975 SC 87] ; *Badruddin v State*, 1981 Cr LJ 729 : AIR 1981 SC 1223 .

145. *Fatte*, 1980 Cr LJ 829 : AIR 1979 SC 1504 . In a similar case, the assailant giving the fatal blow was convicted under section 302 but co-accused under sections 326/149, *Ram Swarup v State of Haryana*, AIR 1993 SC 2436 [LNIND 1993 SC 487] : 1993 Cr LJ 3540 : 1993 Supp (4) SCC 344 . *Sukhbir Singh v State of Haryana*, AIR 2002 SC 1168 [LNIND 2002 SC 134] , a sweeper while working in a street happened to throw splashes of mud on the face of the accused. He abused the sweeper. The latter's father slapped the accused. He went away threatening and came back with others, but fatal injuries to the sweeper's father were inflicted by him alone, others kept only standing. Held individual act and not a common object: *Kajal Sen v State of Assam*, AIR 2002 SC 617 [LNIND 2002 SC 31] , fatal blows given by main accused. Others could not be convicted for offences punishable under section 302 read with sections 148 and 149. *Tamaji Govind Misal v State of Maharashtra*, AIR 1998 SC 174 [LNIND 1997 SC 1211] : 1998 Cr LJ 340 , the motive of the accused party was to remove *babul* trees from the land of the complainant party whatever be the cost and cause injuries which might become necessary. But some of them started assaulting immediately on reaching the spot. Others might not have known that the matter would go to the extent of murder, they were punished under sections 326/149 and not 300/149. *Atmaram Zongarazi v State of Maharashtra*, AIR 1997 SC 3573 [LNIND 1997 SC 1079] : 1997 Cr LJ 4406 , proof showed only one man striking and not others, others acquitted. *Chandubhai Malubhai Parmar v State of Gujarat*, AIR 1997 SC 1422 [LNIND 1997 SC 627] : 1997 Cr LJ 1909 , inter-community riot, accused armed with guns causing deaths, convicted under sections 300/149, but those who were busy only in burning property could not be convicted with others under section 300/149. *Naurangi Mahto v State*, 2001 Cr LJ 1525 (Jhar), no common object attributed to those who were just only present at the moment and had done no *overt act*. Incident took place at the spur of the moment. *Naththoo Ram v State of UP*, 2000 Cr LJ 3870 (All), injuries caused with blunt side of the weapon. It could not be said that the common object of the unlawful assembly was to cause death. Conviction was altered from under sections 302/149 to section 326/149.

*State of UP v Rasid*, AIR 2003 SC 1243 [LNIND 2003 SC 295] , accused persons who entered the house and caused death, convicted for murder, but those remained posted outside given benefit



of doubt. *Basisth Roy v State of Bihar*, AIR 2003 SC 1439 [LNIND 2003 SC 162] , witnesses attributed overt act only to two out of 13 accused persons, convicted, others given benefit of doubt and acquitted. *Jayantibhai Bhankarbhai v State of Gujarat*, AIR 2002 SC 3569 [LNIND 2002 SC 565] , five convicted, only one appealed, he was acquitted, the Supreme Court allowed the conviction of the non-appealing convicts to stand.

146. *Parusuram Pandey v State of Bihar*, AIR 2004 SC 5068 [LNIND 2004 SC 1075] : (2004) 13 SCC 189 [LNIND 2004 SC 1075] .

147. *Mohan Lal*, 1982 Cr LJ 1898 (All).

148. *Sarman v State of MP*, AIR 1993 SC 400 : 1993 Cr LJ 63 : 1993 Supp (2) SCC 356 . Where the only common object discovered on evidence was to beat the victim and not to cause death, others were held not liable to be convicted for murder but only under section 149/324; *Gopa Ram v State of Rajasthan*, 1996 Cr LJ 2987 (Raj).

149. *State of Karnataka v Bhojappa*, 1994 Cr LJ 1543 (Kant). See also *Anant Kumar v State of MP*, AIR 1994 SC 1639 : (1994) 2 Cr LJ 1585 , no specific acts were attributed to two of the accused persons who also had no knowledge whether the others carried knives or that they were likely to cause injuries, such two accused acquitted. *Bhimrao v State of Maharashtra*, 2003 Cr LJ 1204 : AIR 2003 SC 1493 [LNIND 2003 SC 167] , the accused came to the house of the victim with a common object, those who entered the house executed a different, held, their act could not be attributed to those who were standing outside. *State of Rajasthan v Sheo Singh*, 2003 Cr LJ 1569 : AIR 2003 SC 1783 [LNIND 2003 SC 231] , a joint project of murder could not be proved. *Basisth Roy v State of Bihar*, 2003 Cr LJ 1301 : AIR 2003 SC 1439 [LNIND 2003 SC 162] : (2003) 9 SCC 52 [LNIND 2003 SC 162] , murder on account of land dispute between the complainant and deceased party, specific overt acts of lathi blows and gun shots were attributed only to two of the accused persons, others could not be convicted for the same because there was no proof of a shared common object to that effect. *Bharosi v State of MP*, AIR 2002 SC 3299 [LNIND 2002 SC 567] , six accused persons armed with lathis attacked the victim, death was due to one head injury attributed to the main accused, others did not intend nor had any knowledge. They were held to be not guilty of murder. They were guilty under section 147 for their individual acts. *Kishan Pal v State of UP*, 2001 Cr LJ 2875 (All), unlawful assembly, eight members of a family slaughtered in a day light attack. Witnesses untrustworthy. Acquittal.

**Cases of no proof.**—*Baikunth Mahto v State of Bihar*, 2003 Cr LJ 2135 (Jhar), the accused persons attacked the deceased at midnight while he was asleep along with three other persons. Two of them became hostile. The medical report was that death must have been instantaneous with injury and so the deceased could not have named anybody. The persons sleeping there could not have identified the assailants because of dark night. Evidence doubtful, acquittal. *Sunil Balkrishna Bhoil v State of Maharashtra*, (2007) 14 SCC 398 : 2007 Cr LJ 3277 , unlawful assembly originally formed to assault the victim, all of sudden accused two stabbed him causing death, common object held to be not applicable, rest of them guilty of only house trespass under section 452. They had been in custody for a long period. They were set at liberty. *Munna Chanda v State of Assam*, 2006 Cr LJ 1632 : AIR 2006 SC 3555 [LNIND 2006 SC 128] : (2006) 3 SCC 752 [LNIND 2006 SC 128] , prior concert is not required, common object can develop at the spur of the moment, the deceased in this case, on being assaulted, fled, he was chased by some members of the party but who gave the fatal blow was not clear. Membership of two of the accused could not be proved nor any overt act could be attributed to them. They could not have been convicted under sections 302/149.

150. *Ranjit Singh v State of MP*, AIR 2011 SC 255 [LNIND 2010 SC 1057] : 2011 Cr LJ 283 : (2011) 4 SCC 336 [LNIND 2010 SC 1057] : (2011) 2 SCC (Cr) 227. See also *Jhapsa Kabari v State of Bihar*, AIR 2002 SC 312 [LNIND 2001 SC 2762] at p 314, where YK Sabharwal, J explained the position of a solitary witness.
151. *Charan Singh v State of UP*, (2004) 4 SCC 205 [LNIND 2004 SC 308] : AIR 2004 SC 2828 [LNIND 2004 SC 308] .
152. *Nanak Chand v State of Punjab*, AIR 1955 SC 274 [LNIND 1955 SC 3] : 1955 (1) SCR 1201 [LNIND 1955 SC 3] : 1955 Cr LJ 721 .
153. *Suraj Pal v State of UP*, AIR 1955 SC 419 [LNIND 1955 SC 17] : 1955 (1) SCR 1332 [LNIND 1955 SC 17] : 1955 Cr LJ 1004 .
154. *Willie Slaney v State of MP*, AIR 1956 SC 116 [LNIND 1955 SC 90] : 1955 (2) SCR 1140 [LNIND 1955 SC 90] : 1956 Cr LJ 291 .
155. *Subran v State*, 1993 (3) SCC 32 [LNIND 1993 SC 162] : 1993 SCC (Cr) 583 : 1993 Cr LJ 1387 : 1993 (2) Crimes 15 [LNIND 1993 SC 162] .
156. (*supra*).
157. *State of Rajasthan v Hazi Khan*, AIR 2017 SC 4001 .
158. *Kanwarlal v State of MP*, 2003 Cr LJ 62 : AIR 2002 SC 3690 [LNIND 2002 SC 558] .
159. *Shri Krishan v State of UP*, (2007) 15 SCC 557 .
160. *Eknath Ganpat Aher v State of Maharashtra*, (2010) 6 SCC 519 [LNIND 2010 SC 466] .
161. *Sudha Renukaiah v State of AP*, AIR 2017 SC 2124 [LNIND 2017 SC 197] .
162. *Najabhai Desurbhai Wagh v Valerabhai Degambhai Vagh*, (2017) 3 SCC 261 [LNIND 2017 SC 46] : 2017 (1) Crimes 270 (SC).

## THE INDIAN PENAL CODE

### CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

The offences in this chapter may be classified in the following four groups:—

#### I. Unlawful assembly.

- (1) Being a member of an unlawful assembly (sections 141, 142, 143).
- (2) Joining an unlawful assembly armed with deadly weapons (section 144).
- (3) Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (section 145).
- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

#### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

#### III. Promoting enmity between different classes (section 153A).

#### IV. Affray (sections 159, 160).

#### **[s 150] Hiring, or conniving at hiring, of persons to join unlawful assembly.**

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

**COMMENT—**

This section brings within the reach of the law those who are really the originators and instigators of the offences committed by hired persons. It deals with the case of those who are neither abettors of nor participators in the offence committed by an unlawful assembly.

The section creates a specific offence. It intends to embrace all those who hire, promote or connive at the employment of persons and render them punishable as principal participators. Under the section, a person, though not actually a member of an unlawful assembly himself, may be held guilty of being a member of the assembly and may be held liable for the offence which may be committed by the assembly to the same extent as if he had himself committed that offence. But this is possible only when it is found that he hired or engaged or employed or promoted or connived at the hiring, engagement or employment by any other person to join or become a member of the assembly. There must have been an unlawful assembly which was composed of persons so hired, etc., and an offence committed in the course of that assembly for which he becomes equally liable. The word "promotes" denotes acceleration or inducement. Though the word "employ" or "employment" is used, it does not mean recruitment. It would mean calling of the service of the hired person without any recruitment as a servant or agent to commit the offence.<sup>163</sup>

<sup>163</sup>. *Vinit v State of Maharashtra*, 1994 Cr LJ 1791 at pp 1804–1805, certain persons, who constituted an unlawful assembly, were hired to eliminate a particular person. The eliminators and their procurer were both held equally liable.

# THE INDIAN PENAL CODE

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- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

#### **[s 151] Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.**

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

***Explanation.*—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.**

**COMMENT—**

**Effect of command to disperse.**—Section 145 punishes the continuance in an unlawful assembly after it has been commanded to disperse. In this section the assembly need not be an 'unlawful assembly' but if it is likely to cause a disturbance of the public peace, then joining or continuing in such assembly after it has been commanded to disperse is punishable. [Section 129 of the Criminal Procedure Code](#) confers on a Magistrate and an officer in charge of a police-station the power to disperse an unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace. A bare reading of [section 129, Cr PC, 1973](#), would make it abundantly clear that a lawful procession or assembly cannot be regarded as likely to cause a breach of the peace when it is admitted that not they but some other body of persons is bent on attacking them. Whether an assembly is likely to cause a disturbance of public peace has to be judged from its own acts and behaviour and not from the behaviour of another hostile group whose physical opposition may cause a breach of the peace.<sup>164</sup> "Thus, if an assembly other than an unlawful assembly behaves in such a manner as to provoke a breach of the peace by its own conduct or action, there would be a justification to order it to disperse under the powers given by [section 129 of the Criminal Procedure Code](#). But if a religious assembly or procession remains peaceful in the enjoyment of its legitimate rights and privileges under the law, it should not be ordered to disperse merely because a body of antagonistic persons take it into their heads to attack it with a view to provoke a riot. In such a case, it is rather that body of aggressive persons that constitutes an unlawful assembly and requires to be sternly dealt with under the law".<sup>165</sup> So where a peaceful group of persons who were cutting crop on their own land refused to disperse on being commanded to do so by an Inspector of Police merely because another hostile group objected to the harvesting of the crop, it was held that as these persons were not commanded lawfully to disperse under [section 129, Cr PC, 1973](#), they could not be convicted under [section 151, IPC, 1860](#).<sup>166</sup> In order to bring a case within the mischief of this section there must be clear evidence to show that the assembly had been "lawfully commanded" to disperse. Thus where the police officers in their evidence said that they had merely warned the two warring factions, it could not be said that the assembly had been commanded to disperse and as such there was no question of invoking [section 151, IPC](#), to prosecute the members of the assembly.<sup>167</sup>

<sup>164</sup>. *Yeshwant v State*, 34 Cr LJ 705; See also *Bealty v Gillbanks*, (1882) 9 QBD 308 ; *Kempe Gowda*, 1954 Cr LJ 490 (Mysore).

<sup>165</sup>. R Deb, *Principles of Criminology, Criminal Law and Investigation*, 2nd Edn, vol II, p 834. See also *Re P Abdul Sattar*, 1961 (1) Cr LJ 291 (Mysore).

<sup>166</sup>. *Kempe Gowda*, 1954 Cr LJ 490 (Mysore), *supra*.

<sup>167</sup>. *Komma Neelakantha Reddy v State of AP*, AIR 1978 SC 1021 [LNIND 1978 SC 55] : (1978) 2 SCC 473 [LNIND 1978 SC 55] : 1978 (3) SCR 75 [LNIND 1978 SC 55] : 1978 Cr LJ 780 : (1978) 1 SCC (Cr) 285.

# THE INDIAN PENAL CODE

## CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

The offences in this chapter may be classified in the following four groups:—

### I. Unlawful assembly.

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- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

### **[s 152] Assaulting or obstructing public servant when suppressing riot, etc.**

**Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.**

### **COMMENT—**

**Assault or obstruction of public servant.**—The last section punished disobedience to the order of a public servant commanding an assembly to disperse. This section

punishes more severely persons who assault a public servant endeavouring to disperse an unlawful assembly. It is intended to prevent the use of force on a public servant in order to prevent him from discharging his duty.



# THE INDIAN PENAL CODE

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- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

### **[s 153] Wantonly giving provocation with intent to cause riot—.**

**Whoever malignantly,<sup>1</sup> or wantonly,<sup>2</sup> by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both;**

**if rioting be committed; if not committed.**

**and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.**

## COMMENT—

**Provocation for rioting.**—A person, who maliciously or recklessly gives provocation to another by doing an illegal act knowing that such provocation will incite the other to rioting, is punishable under this section. The offence under this section involves some act of origination of a riot by doing an illegal act infuriating to the feelings of those who ultimately come to riot. The expression "gives provocation" connotes such idea. This section is intended to apply to such provocative words or acts as do not amount directly to instigation or abetment.<sup>168</sup> A mere chance provocation is not sufficient to justify conviction under this section.<sup>169</sup> The section is divided into two parts. If rioting is committed the punishment is more severe.

### [s 153.1] Essential Ingredients:

- (a) The 'act' imputed against the accused is illegal,
- (b) He has done such act malignantly or wantonly, and,
- (c) He has given provocation to any person intending or knowing that such provocation will cause the offence of rioting.<sup>170</sup>

**1. 'Malignantly'.—** implies a sort of general malice.<sup>171</sup> The adverbs 'maliciously' and 'malignantly' are synonymous. Malice is not, as in ordinary speech, only an expression of hatred or ill-will to an individual, but means an unlawful act done intentionally without just cause or excuse.<sup>172</sup> Malignant means extreme malevolence or enmity; violently hostile or harmful.

**2. 'Wantonly'.—** means recklessly, thoughtlessly, without regard for right or consequences. This word gives to the offence contained in this section a far larger, vaguer and more comprehensive scope, than would be implied by the word 'malignantly' standing alone. It occurs only in this section of the Code, while the word 'malignantly' occurs once again in section 270.

### [s 153.2] CASES.—

The affixing of the poster exhorting for boycotting the election, even if it is objectionable, is not sufficient to show that by such affixture provocation is given to any person for causing the offence of rioting. Howsoever deplorable be the act of affixing the poster, to constitute the offence under [section 153 of IPC, 1860](#), over and above the provocation that is likely to give cause for rioting, it has to be shown that the act — affixing of the poster — is illegal.<sup>173</sup>

Where the accused wrote a pamphlet in praise of a person who was opposed to the High Priest of the Borah community in certain matters, but his real intention appeared to be to show a grave insult to the High Priest, an insult which was likely to inflame the feelings of the followers of the High Priest and to lead to a riot, it was held that he was guilty under this section.<sup>174</sup> Where a bride and bridegroom belonging to depressed classes rode in palanquins through a village in spite of the protests of high caste Hindus, it was held that this was not an illegal act for which they could be convicted under this section.<sup>175</sup> Where the accused unfastened the string of the National flag after flag-hoisting ceremony and tried to trample on it, it was held that the accused was guilty under this section as the act of the accused was deliberately insulting to the flag

and thereby the accused intended to wound the feelings and sentiments of the other persons present.<sup>176.</sup>

168. *Ahmed Hasham*, (1932) 35 Bom LR 240 , 57 Bom 329.

169. *Dr RC Chowala*, AIR 1966 Ori 192 [LNIND 1965 ORI 73] . *Aroon Purie v HL Varma*, 1999 Cr LJ 983 (Bom), in a debate on secularism, remarks were passed by some speakers touching sentiments of others. It was held that a true publication of such remarks would not come within the ambit of section 153, though they might constitute defamation. See also *Baragur Ram Chandrappa v State of Karnataka*, 1998 Cr LJ 3639 (Kant—DB).

170. *Raju Thomas @ John Thomas v State*, 2012 Cr LJ (NOC) 240 (Ker) : 2012 (4) Ker LT 499 ; See also *Manzar Sayeed Khan v State of Maharashtra*, (2007) 5 SCC 1 [LNIND 2007 SC 437] : AIR 2007 SC 2074 [LNIND 2007 SC 437] : 2007 Cr LJ 2959 .

171. *Kahanji*, (1893) 18 Bom 758, 775.[2012 Cr LJ (NOC) 240 (Ker) : 2012 (4) Ker LT 499 ].

172. *Bromage v Prosser*, (1825) 4 B&C 247. [ 2012 Cr LJ (NOC) 240 (Ker) : 2012 (4) Ker LT 499 ].

173. *Advocate Manuel PJ v State*, 2012 (4) Ker LT 708 . See also *Raju Thomas @ John Thomas v State*, 2012 Cr LJ (NOC) 240 (Ker) : 2012 (4) Ker LT 499 .

174. *Rahimatalli Mahomedalli*, (1919) 22 Bom LR 166 .

175. *Jasnami*, (1936) 58 All 934 .

176. *Indra Singh v State*, AIR 1962 MP 292 [LNIND 1957 MP 82] . *Rajendra v State of Rajasthan*, 2006 Cr LJ 173 (Raj).

# THE INDIAN PENAL CODE

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- (1) Rioting with deadly weapon (section 148).
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- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

**177. [[s 153A] Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.**

#### (1) Whoever—

- (a) **by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or**
- (b) **commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or**

castes or communities, and which disturbs or is likely to disturb the public tranquillity, <sup>178</sup>. [or]

<sup>179</sup>[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,]

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

(2) Offence committed in place of worship, etc.

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

## COMMENT—

**Promoting enmity.**—This section replaces the old section. Sub-section (1)(c) has been newly inserted by Act 31 of 1972. This section provides for enhanced punishment for offences committed in a place of worship and making offences under this section cognisable. Under this section promoting enmity between different groups on grounds such as, place of birth, or residence are included and it also makes promotion of disharmony or feelings of ill-will an offence punishable under it. The provision in clause (b) of sub-section (1) to the section includes acts prejudicial to the maintenance of harmony between different regional groups and sub-section (2) provides for enhanced punishment for any offence specified in sub-section (1) when it is committed in a place of worship, etc. With communal and fissiparous tendencies on the increase this section has now gained an added importance. The object of section 153-A is to prevent breaches of the public tranquillity which might result from excited feelings of enmity between classes of people. Absence of malicious intention is a relevant factor to judge whether the offence is committed. <sup>180</sup>.

[Section 153A of IPC, 1860](#), covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquillity. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the *sine qua non* of the offence under [section 153A of IPC](#) and the prosecution has to prove *prima facie* the existence of *mens rea* on the part of the accused. <sup>181</sup>. The intention to cause disorder or incite people to violence is the *sine qua non* of the offence under [section 153A IPC](#) and the prosecution has to prove the existence of *mens rea* in order

to succeed. In this case, the prosecution has not been able to establish any *mens rea* on the part of the appellants as envisaged by the provisions of [section 153A IPC](#), by their raising casually the slogans a couple of times. The offence under [section 153A IPC](#) is, therefore, not made out.<sup>182.</sup>

There must either be the intention to promote such feelings, or such feelings should be promoted as the result of words spoken or written. The words promotes or tends to promote feelings of enmity are to be read as connoting a successful or unsuccessful attempt to promote feelings of enmity. It must be the purpose or parts of the purpose of the accused to promote such feelings, and, if it is no part of his purpose, the mere circumstance that there may be a tendency is not sufficient.<sup>183.</sup> The word classes includes any definite and ascertainable class of people. Capitalists do not constitute a class within the meaning of this section.<sup>184.</sup> To bring any body of persons within the description of a class of people, the body of persons must possess a certain degree of importance numerically, and must be ascertained with certainty and distinguished from any other class. Every group of persons cannot be designated as a class.<sup>185.</sup> The classes contemplated must be not merely clearly defined and separable but also numerous. A small and limited group of *Zamindars* cannot be regarded as constituting a class.<sup>186.</sup> Petitioner published a sentence "Oriya is a younger sister of Bengal" in his book. Subsequently petitioner published an apology in newspaper and deleted the controversial statement. In view of this it cannot be said that alleged sentence published to defame Oriya language or promote hatred between different linguistic groups. Criminal proceeding are quashed.<sup>187.</sup>

The police force of the State cannot be brought within the purview of the term "community".<sup>188.</sup>

### **[s 153A.1] Political Thesis.—**

This section cannot be used even if an article causes or tends to cause hatred or enmity between different political classes like the capitalists and the labour class or between persons believing in different forms of Government, e.g., a democratic or totalitarian rule. A bare reading of clause (a) of section 153A will show that a person will be guilty under this section only where by words, either spoken or written, he promotes or attempts to promote feelings of enmity or hatred between different religious, racial, linguistic groups or castes or communities on grounds of religion, race, language, caste or community, etc., and not otherwise.<sup>189.</sup> But where the author in the guise of presenting a political thesis or historical truth wrote two articles describing the Muslims as a basically violent race and further described today's Muslims as the descendants of foul Moghuls rulers who were lustful perverts, rapists and murderers, it was held that both the articles promoted feelings of enmity between Hindus and Muslims and came within the mischief of [section 153A IPC, 1860](#), whether or not the Moghuls were really so.<sup>190.</sup> In fine, this section does not contemplate the penalising of political doctrines, even though of the extreme kind like communism, but only such writings as directly promote feelings of hatred or enmity between classes. But if a publication advocates forcible overthrow of all existing social conditions, and aims at promoting class hatred and enmity, it comes under the purview of this section.<sup>191.</sup>

**1. Historical Account.—**If the writing is calculated to promote feelings of enmity or hatred, it is no defence to a charge under [section 153-A of IPC, 1860](#), that the writing contains a truthful account of past events or is otherwise supported by good authority. Adherence to the strict path of history is not by itself a complete defence to a charge under section 153-A. It is no defence to a charge under [section 153-A of IPC](#) that the writing contains a truthful account of past events or is otherwise supported by good authority.<sup>192.</sup>

But it would be no offence if the author adheres to the historical part of his narrative, however unpalatable it may be to the members of the other community, but if he uses language which shows malice and is bound to annoy the members of the other community so as to degrade them in the eyes of the other classes, he is promoting feelings of enmity and hatred and is liable to be dealt with under this section and section 295- A.<sup>193</sup> It is, therefore, important to remember that criminality under section 153A does not attach to the thing said or done but to the manner in which it is said or done. If the words spoken or written are couched in temperate language and do not have the tendency to insult the feelings or the deepest religious convictions of any section of the people, penal consequences do not follow.<sup>194</sup> This appears also to be the law in England in regard to blasphemous libel. Thus, in *Lemon's case* Lord Diplock observed:

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So what is said or written is not so important as how it is said or written or with what intent it is said or written. Where, therefore, the article did not intend or exhibit any insult to any religion but read as a whole projected a scholarly historical thesis showing as to how in pre-Islamic times the ancient Hindu culture and Hindu religion were in vogue in Arabia and how Islamic culture, religion and art were greatly influenced by Indian culture and religion, it could not be said that the article came within the mischief of section 153A, IPC, 1860, or section 95, Cr PC, 1973. The scope of section 153A, IPC, cannot be enlarged to such an extent with a view to thwart history or historical events.<sup>196</sup>

Where an article in a newspaper bears a meaning that is calculated to produce hatred and enmity between two classes, the natural inference from the publication of such an article is that the person who published it had the malicious intention that it should produce such hatred and enmity.<sup>197</sup> A Hindu, who ridicules the Prophet of the Mohammedans not out of any eccentricity but in the prosecution of a propaganda started by a class of persons who are not Mohammedans, promotes feelings of enmity and hatred between Hindus and Mohammedans, and is liable to punishment under the section.<sup>198</sup> In order to ascertain the intention of the accused, the offending article must be read as a whole and the circumstances attending that publication must also be taken into account.<sup>199</sup>

An FIR was filed against the author, publisher and printer of the book "Shivaji: Hindu King in Islamic India" on the ground that certain passages were objectionable. This led to blackening of the face of a local scholar, ransacking of a research institute and destruction of manuscripts, etc. The members of the institute had helped the author made contributions to enable the author to complete the work. The author was an American professor based in the USA. He tendered apology, by fax and the publishers immediately withdrew all the copies from the market. In proceedings against the author, etc., it was held that the book was purely a scholarly pursuit. There was no intention or motive to create trouble for the author and others. The State was directed not to proceed against them. The Supreme Court explained the gist of the offence under the section as follows:

The gist of the offence under section 153-A is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the *sine qua non* of the offence under section 153-A IPC, 1860, and the prosecution has to prove *prima facie* the existence of *mens rea* on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of to fall within the ambit of section 153-A must be read as a whole. One

cannot rely on strongly worded and isolated passage for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.

The effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It is the standard of the ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus".

The common feature in both the sections, viz., sections 153-A and 505(2), being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.<sup>200</sup> In *State of Maharashtra v Sangharaj Damodar Rupawate*,<sup>201</sup> the Supreme Court again considered the question whether a notification issued by the Maharashtra Government to forfeit the book "Shivaji: Hindu King in Islamic India". It was held that the notification does not identify the communities between which the book had caused or is likely to cause enmity. It cannot be found out from the notification as to which communities got outraged by the publication of the book or it had had caused hatred and animosity between the particular communities or groups—statement in the notification to the effect that the book is 'likely to result in breach of peace and public tranquillity and in particular between those who revere *Shri Chhatrapati Shivaji Maharaj* and those who may not' is too vague a ground to satisfy the aforesaid tests. The order quashing the notification was upheld by the Supreme Court.

In *Ramesh Chotalal Dalal v UOI*,<sup>202</sup> the Court held that TV serial "Tamas" did not depict communal tension and violence and the provisions of [section 153A of IPC, 1860](#), would not apply to it. It was also not prejudicial to the national integration falling under [section 153B of IPC](#). Approving the observations of Vivian Bose, J in *Bhagvati Charan Shukla v Provincial Government*,<sup>203</sup> the Court observed that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It is the standard of ordinary reasonable man or as they say in English Law, "the man on the clapham omnibus". Again in *Bilal Ahmed Kaloo v State of AP*,<sup>204</sup> it was held that the common feature in both the sections, viz., sections 153A and 505 (2), being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Further, it was observed that merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.

**2. Scurrilous attack on basic religious books.**—Section 153A certainly affords protection to the basic religious books of all the religions against scurrilous attacks. In *Chandanmal Chopra v State of WB*,<sup>205</sup> it was alleged that the Koran, the basic religious book of Muslim religion promotes religious disharmony by advocating destructions of idols, etc., and thereby outrages not only the religious feelings of non-Muslims but also encourages hatred, disharmony, feeling of enmity between different religious communities in India, and the petitioner sought for directing the State of West Bengal to forfeit every copy of Koran. It was also alleged that the publication of Koran amounts to commission of offences punishable under [sections 153A and 295A of IPC, 1860](#). In support of their contention the petitioners quoted some isolated passages from the Koran. In rejecting this contention the High Court of Calcutta held that sections 153A and 295A of the Code have no application in the present case. The book is the basic text book of the Mohammedans and is held sacred by them like Bible to Christians and Gita, Ramayana and Mahabharata to Hindus. Because of Koran no public tranquillity



has been disturbed up to now and there is no reason to apprehend such disturbance in future. On the other hand the action of the petitioners may be said to have attempted to promote, on grounds of religion, disharmony or feelings of enmity, hatred or ill-will amongst different religions, i.e., Muslims on the one hand and non-Muslims on the other within the meaning of [section 153A, IPC, 1860](#). Forfeiture of Koran would go against the Preamble of the [Constitution](#) and violate [Article 25 of the Constitution](#) which guarantees freedom of conscience and religion to one and all.

**3. Evidence of hatred, etc., not needed.**—A Special Bench of the Bombay High Court has held that under this section it is not necessary to prove that as a result of the objectionable matter, enmity or hatred was in fact caused between the different classes. Intention to promote enmity or hatred, apart from the writing itself, is not a necessary ingredient of the offence. It is enough to show that the language of the writing is of a nature calculated to promote feelings of enmity or hatred for a person must be presumed to intend the natural consequences of his act. If a writing is calculated to promote feelings of enmity or hatred, it is no defence to a charge under this section that the writing contains a truthful account of past events or is otherwise supported by good authority. Adherence to the strict path of history is not by itself a complete defence to a charge under this section.<sup>206.</sup>

Immediately after the demolition of Babri masjid and violent riots in Bombay, editorials appeared in the Marathi newspaper 'Samna' which were in high flown and caustic language but were not directed against the Muslim Community as a whole but only against anti-national elements amongst them and also against the attitude of police, army and Government. The articles were held to be not coming within the mischief of section 153-A and section 153-B.<sup>207.</sup>

### [s 153A.2] Previous Sanction:

Previous sanction under [section 196 Cr PC, 1973](#), is a must before taking cognizance of the offences under [section 153](#) and [153B IPC, 1860](#).<sup>208.</sup>

<sup>177.</sup> Subs. by Act 35 of 1969, sec. 2, for section 153A (w.e.f. 4-9-1969). Earlier section 153A was substituted by Act 41 of 1961, sec. 2 (w.e.f. 12-9-1961).

<sup>178.</sup> Ins. by Act 31 of 1972, section 2 (w.e.f. 14-6-1972).

<sup>179.</sup> Ins. by Act 31 of 1972, section 2 (w.e.f. 14-6-1972).

<sup>180.</sup> *The Trustees of Safdar Hashmi Memorial Trust v Govt of Nct of Delhi*, [2001 Cr LJ 3689](#) (Del).

<sup>181.</sup> *Manzar Sayeed Khan v State of Maharashtra*, [\(2007\) 5 SCC 1 \[LNIND 2007 SC 437\]](#) : [AIR 2007 SC 2074 \[LNIND 2007 SC 437\]](#) : [2007 Cr LJ 2959](#) .

<sup>182.</sup> *Balwant Singh v State of Punjab*, [AIR 1995 SC 1785 \[LNIND 1995 SC 1420\]](#) : [\(1995\) 3 SCC 214 \[LNIND 1995 SC 1420\]](#) : [\(1995\) 1 SCC \(Cr\) 432](#).

<sup>183.</sup> *Ram*, (1924) Kant 31. *Mens rea* is a necessary requirement of this offence. *State (Delhi Admn) v Shrikanth Shastri*, [1987 Cr LJ 1583](#) .

<sup>184.</sup> *Maniben Kara*, [\(1932\) 34 Bom LR 1642](#) ; *Nepal Chandra Bhattacharjya*, [\(1939\) 1 Cal 299](#) .

<sup>185.</sup> *Narayan Vasudev Phadke*, [\(1940\) 42 Bom LR 861](#) .

186. *Banomali Maharana*, (1942) 22 Pat 48.
187. *Express Publications (Madurai) Ltd v State of Orissa*, 2006 Cr LJ 2548 (Ori).
188. *Hardik Bharatbhai Patel v State of Gujarat*, 2016 Cr LJ 225 (Guj) : 2015 (4) Crimes 462 (Guj).
189. *Shiv Kumar*, 1978 Cr LJ 701 (All).
190. *Baburao Patel*, 1980 Cr LJ 529 : AIR 1980 SC 763 [LNIND 1980 SC 84] .
191. *Gautam*, (1937) All 69 (SB).
192. *R V Bhasin v State of Maharashtra*, 2012 Cr LJ 1375 (FB) (Bom); *Gopal Godse v UOI*, AIR 1971 Bom 56 [LNIND 1969 BOM 50] .
193. *Harnam Das*, (1957) 1 All 528 (FB).
194. *Azizul Haque*, 1980 Cr LJ 448 (SC).
195. *Rex v Lemon*, (1971) 1 All ER 898 .
196. *Varsha Publications Pvt Ltd v State of Maharashtra*, 1983 Cr LJ 1446 (Bom—SB); *Nand Kishore Singh v State of Bihar*, 1985 Cr LJ 797 (Pat-SB).
197. *Kanchanlal Chunilal*, (1930) 32 Bom LR 585 .
198. *Shib Sharma*, (1941) 16 Luck 674 .
199. *Ghulam Sarwar*, AIR 1965 Pat 393 .
200. *Manzar Sayeed Khan v State of Maharashtra*, (2007) 5 SCC 1 [LNIND 2007 SC 437] : AIR 2007 SC 2074 [LNIND 2007 SC 437] : 2007 Cr LJ 2959 ; *Sajjan Kumar v CBI*, (2010) 9 SCC 368 [LNIND 2010 SC 892] : (2010) 3 SCC (Cr) 1371 : (2010) 11 SCR 669 : 2011 AIR (SCW) 3730, Anti-Sikh Riots charges framed against Sajjan Kumar upheld by the SC. In *S Khushboo v Kanniammal*, JT 2010 (4) SC 478 [LNIND 2010 SC 411] : 2010 (4) Scale 462 [LNIND 2010 SC 411] : (2010) 5 SCR 322 : 2010 Cr LJ 2828 : AIR 2010 SC 3196 [LNIND 2010 SC 411] : (2010) 2 SCC (Cr) 1299, it is found that [section 153A IPC, 1860](#), have no application to the present case since the appellant was not speaking on behalf of one group and the content of her statement was not directed against any particular group either.
201. *State of Maharashtra v Sangharaj Damodar Rupawate*, (2010) 7 SCC 398 [LNIND 2010 SC 1557] : 2010 AIR (SCW) 4960 : (2010) 8 SCR 328 [LNIND 2010 SC 1557] : 2010 Cr LJ 4290 : (2010) 3 SCC (Cr) 401. In *Anand Chintamani Dighe v State of Maharashtra*, 2002 Cr LJ 8 (Bom), the Government of Maharashtra issued notification under section 95(1) of the Code declaring that every copy of the Marathi play entitled "Mee Nathuram Godse Bolto" be forfeited to the Government. The notification, *inter alia*, stated that the play in question contained derogatory references towards Mahatma Gandhi and certain communities and was likely to disturb public tranquillity and that it was written with a deliberate and malicious intention to outrage the feelings of the followers of Mahatma Gandhi, The publication would be punishable under [sections 153-A and 295-A of IPC, 1860](#). The challenge to the notification was repelled by the Bombay High Court.
202. *Ramesh Chotalal Dalal v UOI*, AIR 1988 SC 775 [LNIND 1988 SC 74]
203. *Bhagvati Charan Shukla v Provincial Government*, AIR 1947 Nag 1 .
204. *Bilal Ahmed Kaloo v State of AP*, (1997) 7 SCC 431 [LNIND 1997 SC 1060] .
205. *Chandanmal Chopra v State of WB*, AIR 1986 Cal 104 [LNIND 1985 CAL 180] , 1986 Cr LJ 182 (Cal).
206. *Gopal*, (1969) 72 Bom LR 871 (SB).
207. *Joseph Bain D'Souza v State of Maharashtra*, 1995 Cr LJ 1316 Bom. The court **relied** on *Varsha Publications Pvt Ltd v State of Maharashtra*, 1983 Cr LJ 1446 but **distinguished**; *Babu Rao Patel v State (Delhi Admn)*, AIR 1980 SC 763 [LNIND 1980 SC 84] : 1980 Cr LJ 529 . *Trustees of Safdar Hashmi Memorial Trust v Govt of NCT of Delhi*, 2001 Cr LJ 3689 (Del), the object of the provision is to prevent breaches of public tranquillity which might result from excited feelings of

enmity between classes of people. Malicious intention or *mens rea* has to be proved. *Mohd Khalid Hussain v State of AP*, [2000 Cr LJ 2949](#) (AP), offence of promoting enmity between people on the ground of religion. There was nothing to show the actual words uttered or acts committed. There were only vague allegations. FIR quashed. *Bilal Ahmed Kaloo v State of AP*, [1997 Cr LJ 4091](#) : [AIR 1997 SC 3483](#) [[LNIND 1997 SC 1060](#)] , inciting the feelings of one group without any reference to another, attracts neither section 153A nor section 505.

**208.** *Swaraj Thackeray v State of Jharkhand*, [2008 Cr LJ 3780](#) (Jhar); *Shailbhadra Shah v Swami Krishna Bharti*, [1981 Cr LJ 113](#) (Guj).

# THE INDIAN PENAL CODE

## CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

The offences in this chapter may be classified in the following four groups:—

### I. Unlawful assembly.

- (1) Being a member of an unlawful assembly (sections 141, 142, 143).
- (2) Joining an unlawful assembly armed with deadly weapons (section 144).
- (3) Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (section 145).
- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

**177. [[s 153A] Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.**

#### (1) **Whoever—**

- (a) **by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or**
- (b) **commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or**

castes or communities, and which disturbs or is likely to disturb the public tranquillity, <sup>178</sup>. [or]

<sup>179</sup>[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,]

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

(2) Offence committed in place of worship, etc.

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

## COMMENT—

**Promoting enmity.**—This section replaces the old section. Sub-section (1)(c) has been newly inserted by Act 31 of 1972. This section provides for enhanced punishment for offences committed in a place of worship and making offences under this section cognisable. Under this section promoting enmity between different groups on grounds such as, place of birth, or residence are included and it also makes promotion of disharmony or feelings of ill-will an offence punishable under it. The provision in clause (b) of sub-section (1) to the section includes acts prejudicial to the maintenance of harmony between different regional groups and sub-section (2) provides for enhanced punishment for any offence specified in sub-section (1) when it is committed in a place of worship, etc. With communal and fissiparous tendencies on the increase this section has now gained an added importance. The object of section 153-A is to prevent breaches of the public tranquillity which might result from excited feelings of enmity between classes of people. Absence of malicious intention is a relevant factor to judge whether the offence is committed. <sup>180</sup>.

[Section 153A of IPC, 1860](#), covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquillity. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the *sine qua non* of the offence under [section 153A of IPC](#) and the prosecution has to prove *prima facie* the existence of *mens rea* on the part of the accused. <sup>181</sup>. The intention to cause disorder or incite people to violence is the *sine qua non* of the offence under [section 153A IPC](#) and the prosecution has to prove the existence of *mens rea* in order

to succeed. In this case, the prosecution has not been able to establish any *mens rea* on the part of the appellants as envisaged by the provisions of [section 153A IPC](#), by their raising casually the slogans a couple of times. The offence under [section 153A IPC](#) is, therefore, not made out.<sup>182.</sup>

There must either be the intention to promote such feelings, or such feelings should be promoted as the result of words spoken or written. The words promotes or tends to promote feelings of enmity are to be read as connoting a successful or unsuccessful attempt to promote feelings of enmity. It must be the purpose or parts of the purpose of the accused to promote such feelings, and, if it is no part of his purpose, the mere circumstance that there may be a tendency is not sufficient.<sup>183.</sup> The word classes includes any definite and ascertainable class of people. Capitalists do not constitute a class within the meaning of this section.<sup>184.</sup> To bring any body of persons within the description of a class of people, the body of persons must possess a certain degree of importance numerically, and must be ascertained with certainty and distinguished from any other class. Every group of persons cannot be designated as a class.<sup>185.</sup> The classes contemplated must be not merely clearly defined and separable but also numerous. A small and limited group of *Zamindars* cannot be regarded as constituting a class.<sup>186.</sup> Petitioner published a sentence "Oriya is a younger sister of Bengal" in his book. Subsequently petitioner published an apology in newspaper and deleted the controversial statement. In view of this it cannot be said that alleged sentence published to defame Oriya language or promote hatred between different linguistic groups. Criminal proceeding are quashed.<sup>187.</sup>

The police force of the State cannot be brought within the purview of the term "community".<sup>188.</sup>

#### [s 153A.1] **Political Thesis.—**

This section cannot be used even if an article causes or tends to cause hatred or enmity between different political classes like the capitalists and the labour class or between persons believing in different forms of Government, e.g., a democratic or totalitarian rule. A bare reading of clause (a) of section 153A will show that a person will be guilty under this section only where by words, either spoken or written, he promotes or attempts to promote feelings of enmity or hatred between different religious, racial, linguistic groups or castes or communities on grounds of religion, race, language, caste or community, etc., and not otherwise.<sup>189.</sup> But where the author in the guise of presenting a political thesis or historical truth wrote two articles describing the Muslims as a basically violent race and further described today's Muslims as the descendants of foul Moghuls rulers who were lustful perverts, rapists and murderers, it was held that both the articles promoted feelings of enmity between Hindus and Muslims and came within the mischief of [section 153A IPC, 1860](#), whether or not the Moghuls were really so.<sup>190.</sup> In fine, this section does not contemplate the penalising of political doctrines, even though of the extreme kind like communism, but only such writings as directly promote feelings of hatred or enmity between classes. But if a publication advocates forcible overthrow of all existing social conditions, and aims at promoting class hatred and enmity, it comes under the purview of this section.<sup>191.</sup>

**1. Historical Account.—**If the writing is calculated to promote feelings of enmity or hatred, it is no defence to a charge under [section 153-A of IPC, 1860](#), that the writing contains a truthful account of past events or is otherwise supported by good authority. Adherence to the strict path of history is not by itself a complete defence to a charge under section 153-A. It is no defence to a charge under [section 153-A of IPC](#) that the writing contains a truthful account of past events or is otherwise supported by good authority.<sup>192.</sup>

But it would be no offence if the author adheres to the historical part of his narrative, however unpalatable it may be to the members of the other community, but if he uses language which shows malice and is bound to annoy the members of the other community so as to degrade them in the eyes of the other classes, he is promoting feelings of enmity and hatred and is liable to be dealt with under this section and section 295- A.<sup>193</sup> It is, therefore, important to remember that criminality under section 153A does not attach to the thing said or done but to the manner in which it is said or done. If the words spoken or written are couched in temperate language and do not have the tendency to insult the feelings or the deepest religious convictions of any section of the people, penal consequences do not follow.<sup>194</sup> This appears also to be the law in England in regard to blasphemous libel. Thus, in *Lemon's case* Lord Diplock observed:

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So what is said or written is not so important as how it is said or written or with what intent it is said or written. Where, therefore, the article did not intend or exhibit any insult to any religion but read as a whole projected a scholarly historical thesis showing as to how in pre-Islamic times the ancient Hindu culture and Hindu religion were in vogue in Arabia and how Islamic culture, religion and art were greatly influenced by Indian culture and religion, it could not be said that the article came within the mischief of [section 153A, IPC, 1860](#), or [section 95, Cr PC, 1973](#). The scope of [section 153A, IPC](#), cannot be enlarged to such an extent with a view to thwart history or historical events.<sup>196</sup>

Where an article in a newspaper bears a meaning that is calculated to produce hatred and enmity between two classes, the natural inference from the publication of such an article is that the person who published it had the malicious intention that it should produce such hatred and enmity.<sup>197</sup> A Hindu, who ridicules the Prophet of the Mohammedans not out of any eccentricity but in the prosecution of a propaganda started by a class of persons who are not Mohammedans, promotes feelings of enmity and hatred between Hindus and Mohammedans, and is liable to punishment under the section.<sup>198</sup> In order to ascertain the intention of the accused, the offending article must be read as a whole and the circumstances attending that publication must also be taken into account.<sup>199</sup>

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cannot rely on strongly worded and isolated passage for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.

The effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It is the standard of the ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus".

The common feature in both the sections, viz., sections 153-A and 505(2), being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.<sup>200</sup> In *State of Maharashtra v Sangharaj Damodar Rupawate*,<sup>201</sup> the Supreme Court again considered the question whether a notification issued by the Maharashtra Government to forfeit the book "Shivaji: Hindu King in Islamic India". It was held that the notification does not identify the communities between which the book had caused or is likely to cause enmity. It cannot be found out from the notification as to which communities got outraged by the publication of the book or it had had caused hatred and animosity between the particular communities or groups—statement in the notification to the effect that the book is 'likely to result in breach of peace and public tranquillity and in particular between those who revere *Shri Chhatrapati Shivaji Maharaj* and those who may not' is too vague a ground to satisfy the aforesaid tests. The order quashing the notification was upheld by the Supreme Court.

In *Ramesh Chotalal Dalal v UOI*,<sup>202</sup> the Court held that TV serial "Tamas" did not depict communal tension and violence and the provisions of [section 153A of IPC, 1860](#), would not apply to it. It was also not prejudicial to the national integration falling under [section 153B of IPC](#). Approving the observations of Vivian Bose, J in *Bhagvati Charan Shukla v Provincial Government*,<sup>203</sup> the Court observed that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It is the standard of ordinary reasonable man or as they say in English Law, "the man on the clapham omnibus". Again in *Bilal Ahmed Kaloo v State of AP*,<sup>204</sup> it was held that the common feature in both the sections, viz., sections 153A and 505 (2), being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Further, it was observed that merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.

**2. Scurrilous attack on basic religious books.**—Section 153A certainly affords protection to the basic religious books of all the religions against scurrilous attacks. In *Chandanmal Chopra v State of WB*,<sup>205</sup> it was alleged that the Koran, the basic religious book of Muslim religion promotes religious disharmony by advocating destructions of idols, etc., and thereby outrages not only the religious feelings of non-Muslims but also encourages hatred, disharmony, feeling of enmity between different religious communities in India, and the petitioner sought for directing the State of West Bengal to forfeit every copy of Koran. It was also alleged that the publication of Koran amounts to commission of offences punishable under [sections 153A and 295A of IPC, 1860](#). In support of their contention the petitioners quoted some isolated passages from the Koran. In rejecting this contention the High Court of Calcutta held that sections 153A and 295A of the Code have no application in the present case. The book is the basic text book of the Mohammedans and is held sacred by them like Bible to Christians and Gita, Ramayana and Mahabharata to Hindus. Because of Koran no public tranquillity



has been disturbed up to now and there is no reason to apprehend such disturbance in future. On the other hand the action of the petitioners may be said to have attempted to promote, on grounds of religion, disharmony or feelings of enmity, hatred or ill-will amongst different religions, i.e., Muslims on the one hand and non-Muslims on the other within the meaning of [section 153A, IPC, 1860](#). Forfeiture of Koran would go against the Preamble of the [Constitution](#) and violate [Article 25 of the Constitution](#) which guarantees freedom of conscience and religion to one and all.

**3. Evidence of hatred, etc., not needed.**—A Special Bench of the Bombay High Court has held that under this section it is not necessary to prove that as a result of the objectionable matter, enmity or hatred was in fact caused between the different classes. Intention to promote enmity or hatred, apart from the writing itself, is not a necessary ingredient of the offence. It is enough to show that the language of the writing is of a nature calculated to promote feelings of enmity or hatred for a person must be presumed to intend the natural consequences of his act. If a writing is calculated to promote feelings of enmity or hatred, it is no defence to a charge under this section that the writing contains a truthful account of past events or is otherwise supported by good authority. Adherence to the strict path of history is not by itself a complete defence to a charge under this section.<sup>206</sup>.

Immediately after the demolition of Babri masjid and violent riots in Bombay, editorials appeared in the Marathi newspaper 'Samna' which were in high flown and caustic language but were not directed against the Muslim Community as a whole but only against anti-national elements amongst them and also against the attitude of police, army and Government. The articles were held to be not coming within the mischief of section 153-A and section 153-B.<sup>207</sup>.

[s 153A.2] **Previous Sanction:**

Previous sanction under [section 196 Cr PC, 1973](#), is a must before taking cognizance of the offences under [section 153](#) and [153B IPC, 1860](#).<sup>208</sup>.

<sup>177</sup>. Subs. by Act 35 of 1969, sec. 2, for section 153A (w.e.f. 4-9-1969). Earlier section 153A was substituted by Act 41 of 1961, sec. 2 (w.e.f. 12-9-1961).

<sup>178</sup>. Ins. by Act 31 of 1972, section 2 (w.e.f. 14-6-1972).

<sup>179</sup>. Ins. by Act 31 of 1972, section 2 (w.e.f. 14-6-1972).

<sup>180</sup>. *The Trustees of Safdar Hashmi Memorial Trust v Govt of Nct of Delhi*, [2001 Cr LJ 3689](#) (Del).

<sup>181</sup>. *Manzar Sayeed Khan v State of Maharashtra*, [\(2007\) 5 SCC 1 \[LNIND 2007 SC 437\]](#) : [AIR 2007 SC 2074 \[LNIND 2007 SC 437\]](#) : [2007 Cr LJ 2959](#) .

<sup>182</sup>. *Balwant Singh v State of Punjab*, [AIR 1995 SC 1785 \[LNIND 1995 SC 1420\]](#) : [\(1995\) 3 SCC 214 \[LNIND 1995 SC 1420\]](#) : [\(1995\) 1 SCC \(Cr\) 432](#).

<sup>183</sup>. *Ram*, (1924) Kant 31. *Mens rea* is a necessary requirement of this offence. *State (Delhi Admn) v Shrikanth Shastri*, [1987 Cr LJ 1583](#) .

<sup>184</sup>. *Maniben Kara*, [\(1932\) 34 Bom LR 1642](#) ; *Nepal Chandra Bhattacharjya*, [\(1939\) 1 Cal 299](#) .

<sup>185</sup>. *Narayan Vasudev Phadke*, [\(1940\) 42 Bom LR 861](#) .

<sup>186</sup>. *Banomali Maharana*, (1942) 22 Pat 48.

<sup>187</sup>. *Express Publications (Madurai) Ltd v State of Orissa*, [2006 Cr LJ 2548](#) (Ori).

<sup>188</sup>. *Hardik Bharatbhai Patel v State of Gujarat*, [2016 Cr LJ 225](#) (Guj) : [2015 \(4\) Crimes 462](#) (Guj).

189. *Shiv Kumar*, 1978 Cr LJ 701 (All).
190. *Baburao Patel*, 1980 Cr LJ 529 : AIR 1980 SC 763 [LNIND 1980 SC 84] .
191. *Gautam*, (1937) All 69 (SB).
192. *R V Bhasin v State of Maharashtra*, 2012 Cr LJ 1375 (FB) (Bom); *Gopal Godse v UOI*, AIR 1971 Bom 56 [LNIND 1969 BOM 50] .
193. *Harnam Das*, (1957) 1 All 528 (FB).
194. *Azizul Haque*, 1980 Cr LJ 448 (SC).
195. *Rex v Lemon*, (1971) 1 All ER 898 .
196. *Varsha Publications Pvt Ltd v State of Maharashtra*, 1983 Cr LJ 1446 (Bom–SB); *Nand Kishore Singh v State of Bihar*, 1985 Cr LJ 797 (Pat-SB).
197. *Kanchanlal Chunilal*, (1930) 32 Bom LR 585 .
198. *Shib Sharma*, (1941) 16 Luck 674 .
199. *Ghulam Sarwar*, AIR 1965 Pat 393 .
200. *Manzar Sayeed Khan v State of Maharashtra*, (2007) 5 SCC 1 [LNIND 2007 SC 437] : AIR 2007 SC 2074 [LNIND 2007 SC 437] : 2007 Cr LJ 2959 ; *Sajjan Kumar v CBI*, (2010) 9 SCC 368 [LNIND 2010 SC 892] : (2010) 3 SCC (Cr) 1371 : (2010) 11 SCR 669 : 2011 AIR (SCW) 3730, Anti-Sikh Riots charges framed against Sajjan Kumar upheld by the SC. In *S Khushboo v Kanniammal*, JT 2010 (4) SC 478 [LNIND 2010 SC 411] : 2010 (4) Scale 462 [LNIND 2010 SC 411] : (2010) 5 SCR 322 : 2010 Cr LJ 2828 : AIR 2010 SC 3196 [LNIND 2010 SC 411] : (2010) 2 SCC (Cr) 1299, it is found that [section 153A IPC, 1860](#), have no application to the present case since the appellant was not speaking on behalf of one group and the content of her statement was not directed against any particular group either.
201. *State of Maharashtra v Sangharaj Damodar Rupawate*, (2010) 7 SCC 398 [LNIND 2010 SC 1557] : 2010 AIR (SCW) 4960 : (2010) 8 SCR 328 [LNIND 2010 SC 1557] : 2010 Cr LJ 4290 : (2010) 3 SCC (Cr) 401. In *Anand Chintamani Dighe v State of Maharashtra*, 2002 Cr LJ 8 (Bom), the Government of Maharashtra issued notification under section 95(1) of the Code declaring that every copy of the Marathi play entitled "Mee Nathuram Godse Bolto" be forfeited to the Government. The notification, *inter alia*, stated that the play in question contained derogatory references towards Mahatma Gandhi and certain communities and was likely to disturb public tranquillity and that it was written with a deliberate and malicious intention to outrage the feelings of the followers of Mahatma Gandhi, The publication would be punishable under [sections 153-A and 295-A of IPC, 1860](#). The challenge to the notification was repelled by the Bombay High Court.
202. *Ramesh Chotalal Dalal v UOI*, AIR 1988 SC 775 [LNIND 1988 SC 74]
203. *Bhagvati Charan Shukla v Provincial Government*, AIR 1947 Nag 1 .
204. *Bilal Ahmed Kaloo v State of AP*, (1997) 7 SCC 431 [LNIND 1997 SC 1060] .
205. *Chandanmal Chopra v State of WB*, AIR 1986 Cal 104 [LNIND 1985 CAL 180] , 1986 Cr LJ 182 (Cal).
206. *Gopal*, (1969) 72 Bom LR 871 (SB).
207. *Joseph Bain D'Souza v State of Maharashtra*, 1995 Cr LJ 1316 Bom. The court **relied** on *Varsha Publications Pvt Ltd v State of Maharashtra*, 1983 Cr LJ 1446 but **distinguished**; *Babu Rao Patel v State (Delhi Admn)*, AIR 1980 SC 763 [LNIND 1980 SC 84] : 1980 Cr LJ 529 . *Trustees of Safdar Hashmi Memorial Trust v Govt of NCT of Delhi*, 2001 Cr LJ 3689 (Del), the object of the provision is to prevent breaches of public tranquillity which might result from excited feelings of enmity between classes of people. Malicious intention or *mens rea* has to be proved. *Mohd Khalid Hussain v State of AP*, 2000 Cr LJ 2949 (AP), offence of promoting enmity between people on the ground of religion. There was nothing to show the actual words uttered or acts committed. There were only vague allegations. FIR quashed. *Bilal Ahmed Kaloo v State of AP*,

[1997 Cr LJ 4091](#) : [AIR 1997 SC 3483](#) [[LNIND 1997 SC 1060](#)] , inciting the feelings of one group without any reference to another, attracts neither section 153A nor section 505.

**208.** *Swaraj Thackeray v State of Jharkhand*, [2008 Cr LJ 3780](#) (Jhar); *Shailbhadra Shah v Swami Krishna Bharti*, [1981 Cr LJ 113](#) (Guj).

# THE INDIAN PENAL CODE

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- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

**209.[s 153-AA] Punishment for knowingly carrying arms in any procession or organising, or holding or taking part in any mass drill or mass training with arms.**

**Whoever knowingly carries arms in any procession or organizes or holds or takes part in any mass drill or mass training with arms in any public place in contravention of any public notice or order issued or made under [section 144-A of the Code of Criminal Procedure, 1973](#) (2 of 1974) shall be punished with imprisonment for a term which may extend to six months and with fine which may extend to two thousand rupees.**

***Explanation.*—"Arms" means articles of any description designed or adapted as weapons for offence or defence and includes fire - arms, sharp edged weapons, *lathis, dandas and sticks.*]**

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**COMMENT.—**

**Cr PC (Amendment) Act 2005—clause 44.—This clause amends IPC as follows, namely:—**

Clause 16 is intended to enable the District Magistrate to prohibit mass drill (or training) with arms in public places. A new section 153-AA is, therefore, being added to the [Indian Penal Code](#) to prescribe punishment with imprisonment upto six months and fine upto two thousand rupees for the contravention of the prohibitory order. [*Notes on Clauses*].

209. Ins. by [Cr PC \(Amendment\) Act, 2005](#) (25 of 2005), section 44(a).

# THE INDIAN PENAL CODE

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- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
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- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

### **210. [s 153B] Imputations, assertions prejudicial to national integration.**

- (1) **Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—**
  - (a) **makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or**
  - (b) **asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or**



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

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

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

### **COMMENT—**

**Prejudicing national integration.**—This section has been newly added by Act 31 of 1972. This is a cognizable and non-bailable offence.

### **[s 153B.1] Sanction for prosecution.—**

The allegation was that of instigating Hindus to convert to Christianity. The Court said that the previous sanction of the Central Government was necessary. But it was necessary for the court to take cognizance of the offence. The bar of sanction does not apply against registration of a criminal case or investigation by a police agency. The police asserted the accused and produced him before the Magistrate. The Magistrate remanded him to judicial custody. The passing of order of remand did not amount to taking of cognizance.<sup>211</sup>.

<sup>210</sup>. Ins. by Act 31 of 1972, section 2 (w.e.f. 14-6-1972).

\* Effective date yet to be notified.

<sup>211</sup>. *State of Karnataka v Pastor P Raju*, 2000 Cr LJ 4045 SC.

# THE INDIAN PENAL CODE

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- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
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  - (b) **asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or**

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

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

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

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- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

### **[s 154] Owner or occupier of land on which an unlawful assembly is held.**

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

## COMMENT—

**Liability of owner or occupier of land used for unlawful assembly.**— Many duties of the police are by law imposed on land-holders. The present section proceeds apparently upon a presumption that, in addition to any such duty, the owner or occupier of land is cognizant in a peculiar way of the designs of those who assemble on his land, and is able not only to give the police notice, but also to prevent and to disperse and suppress the assembly.<sup>212.</sup>

[Section 45 of the Cr PC, 1973](#), casts upon the owners and occupiers of land the duty of preventing a riot on their lands.

Knowledge, on the part of the owner or occupier of the land, of the acts or intentions of the agent, is not an essential element of an offence under this section, and he may be convicted under it though he may be in entire ignorance of the acts of his agent or manager.<sup>213.</sup> According to some Police Regulations the Police are required to serve a warning notice on the landlord, owner, occupier or his agent or other person claiming interest in landed property contemplated in this and the two subsequent sections so that they may adopt every means in their power to prevent the unlawful assembly or rioting taking place on such property.<sup>214.</sup> This being a laudable objective there can possibly be no objection to the issuance of such a notice. It should, however, be remembered that a police-officer cannot and should not in the name of serving such a notice injunct the owner or occupier, even temporarily, from enjoying his property.<sup>215.</sup> The police have no such power under the law. To make a person cognizant about his duties under the law is one thing and to restrain the owner from enjoying his property is entirely a different thing.

<sup>212.</sup> M&M 128.

<sup>213.</sup> *Kazi Zeamuddin Ahmed*, (1901) 28 Cal 504 ; *Payag Singh*, (1890) 12 All 550 .

<sup>214.</sup> Rule 252, Bengal Police Regulations, vol I 1943, p 108.

<sup>215.</sup> *MK Ibrahim*, 1979 Cr LJ 175 (Kant); *Indu Bhushan v State*, 1995 Cr LJ 1180 (Cal).

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### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

### **[s 155] Liability of person for whose benefit riot is committed.**

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

## COMMENT—

**Liability of beneficiary of riot.**—Under the preceding section the owner of land is punishable for the taking place of an unlawful assembly or riot on his land. This section requires that the unlawful assembly or riot should take place in the interest of the owner or any person claiming interest in the land. The section, therefore, imposes unlimited fine. The preceding section refers to an unlawful assembly, as well as a riot; this section refers to riot only.

The principle on which this and the following sections proceed is to subject to fine all persons in whose interest a riot is committed and the agents of such persons, unless it can be shown that they did what they lawfully could to prevent the offence.

# THE INDIAN PENAL CODE

## CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

The offences in this chapter may be classified in the following four groups:—

### I. Unlawful assembly.

- (1) Being a member of an unlawful assembly (sections 141, 142, 143).
- (2) Joining an unlawful assembly armed with deadly weapons (section 144).
- (3) Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (section 145).
- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

#### **[s 156] Liability of agent of owner or occupier for whose benefit riot is committed.**

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

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

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**COMMENT—**

The provisions of the last two sections are made applicable by this section to the agent or manager of the owner or occupier of land.

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- (3) Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (section 145).
- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

### **[s 157] Harboursing persons hired for an unlawful assembly.**

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

### **COMMENT—**

**Harboursing hired persons.**—Section 150 makes the hiring of persons to join an unlawful assembly punishable, whereas this section makes punishable the harbouring

of such hired persons. It has a wider application.

The section clearly refers to some unlawful assembly in the future and provides for an occurrence which may happen, not which has happened. An act of harbouring a person, with the knowledge that, in some time past, he had joined or was likely to have been a member of an unlawful assembly, is not an offence under this section.<sup>216.</sup>

<sup>216.</sup> *Radharaman Shaha*, (1931) 58 Cal 1401 .

# THE INDIAN PENAL CODE

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- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

### **[s 158] Being hired to take part in an unlawful assembly or riot;.**

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

**or to go armed.**

**and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

**COMMENT—**

This section is intended to punish those persons who hire themselves out as members of an unlawful assembly or assist any such members. It is divided into two parts. Higher penalty is awarded where the accused is armed with a deadly weapon.

# THE INDIAN PENAL CODE

## CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

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- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

#### **[s 159] Affray.**

**When two or more persons<sup>1</sup>, by fighting in a public place,<sup>2</sup> disturb the public peace,<sup>3</sup> they are said to "commit an affray".**

#### **COMMENT—**

The offence of affray in essence consists of the following ingredients—

- (a) fighting by two or more persons,
- (b) the fighting must take place in a public place

(c) such fighting must also result in disturbance of the public peace. Only if such ingredients are satisfied, an offence of affray can be said to have occasioned for which the persons causing the same would be responsible. In a prosecution under [section 159, IPC, 1860](#), there must be positive evidence of public peace having been disturbed which would mean that, by the action of the accused the even tempo of life of the public was disturbed resulting in affecting the peace and tranquillity of the locality.<sup>217</sup>

<sup>217</sup>. *Gadadhar Guru v State of Orissa*, [1989 Cr LJ 2080](#).

# THE INDIAN PENAL CODE

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- (4) Hiring of persons to join an unlawful assembly (section 150).
- (5) Harboursing persons hired for an unlawful assembly (section 157).
- (6) Being hired to take part in an unlawful assembly (section 158).

### II. Rioting (sections 146, 147).

- (1) Rioting with deadly weapon (section 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (section 152).
- (3) Wantonly giving provocation with intent to cause riot (section 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (section 154).
- (5) Liability of the person for whose benefit a riot is committed (section 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (section 156).

### III. Promoting enmity between different classes (section 153A).

### IV. Affray (sections 159, 160).

#### **[s 160] Punishment for committing affray.**

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

#### **COMMENT—**

**Affray.**—The word 'affray' is derived from the French word *affraier*, to terrify, and in a legal sense it is taken for a public offence to the terror of the people. The essence of the offence consists in the terror it is likely to cause to the public. The [Criminal Procedure Code, 1973](#) has now made it a cognizable offence.



### [s 160.1] Ingredients.—

This section requires three things—

1. Two or more persons must fight.
2. They must fight in a public place.
3. They must disturb the public peace.

The first basic ingredient of [section 159, IPC, 1860](#), is fighting between two or more persons. The next ingredient is that the fighting should have been in public place and the last ingredient is that the fighting should have disturbed public peace.<sup>218.</sup>

**1. 'Two or more persons'.—**An affray requires two persons at the least. An unlawful assembly requires five. The offence of Affray is a fight, i.e., a bilateral act, in which two parties participate and it will not amount to an affray when the party who is assaulted submits to the assault without resistance. Again, there must be a definite disturbance of the public peace due to the fight in the public place to make the offence affray.<sup>219.</sup>

**2. 'Fighting in a public place'.—**'Public place' is a place where the public go, no matter whether they have a right to go or not. Many shows are exhibited to the public on private property, yet they are frequented by the public—the public go there.<sup>220.</sup>

The expression 'Fighting' in [section 159, IPC, 1860](#), is used in its ordinary sense and it means a combat or quarrel involving exchange of some force or violence, if not blows. Mere verbal quarrel or vulgarly abusing sans violence cannot be construed as fighting which contemplates bilateral use of violence by two competing parties. Even if there is no exchange of blows, there should be exchange of some violence between the two contending parties before it can be said that the parties are fighting. If one person uses violence against another and the other person merely remains passive, it cannot be said that there is a fighting, so also, if neither person uses violence against the other but both the persons indulge in verbal abuses, it does not amount to fighting.<sup>221.</sup> Mere causing inconvenience to the public is not sufficient.<sup>222.</sup>

**3. 'Disturb the public peace'.—**An affray is an offence against the public peace because it is committed in a public place and is likely to cause general alarm and disturbance. Mere causing public inconvenience is not enough.<sup>223.</sup> Before a conviction can be entered under [section 160, IPC, 1860](#), there must be a clear finding by the court that the place of occurrence was a public place. If there is no such finding the accused persons must be acquitted.<sup>224.</sup>

### [s 160.2] Affray and riot.—An affray differs from a riot.

- (1) An affray cannot be committed in a private place, a riot can be.
- (2) An affray can be committed by *two* or more persons, a riot, by *five* or more.

### [s 160.3] Affray and assault.—An affray differs from an assault.—

- (1) The former must be committed in a public place; the latter may take place anywhere.

(2) The former is regarded as an offence against the public peace; the latter, against the person of an individual. An affray is nothing more than an assault committed in a public place and in a conspicuous manner, and is so called because it *affrighteth* and *maketh* men afraid.

218. *K Ranganna s/o K Narasappa v State*, [2010 Cr LJ 1275](#) (AP).

219. *C Subbarayudu v State of AP*, [1996 Cr LJ 1472](#) (AP).

220. *Wellard v State*, [\(1884\) 14 QBD 63](#), 66, 67.

221. *Mangam Chinna Subbarayudu v State, SHO, Nandyal Town PS*, 1975 All LT, vol 34, p 332.

222. *C Subbarayudu v State of AP*, [1996 Cr LJ 1472](#) (AP).

223. *Podan*, [\(1962\) 1 Cr LJ 339](#). See also *C Subbarayudu v State of AP*, [1996 Cr LJ 1472](#) (AP); and *Mahant Kaushalya Das v State of Madras*, [AIR 1966 SC 22 \[LNIND 1965 SC 169\]](#): [1966 Cr LJ 66](#).

224. *Re Thommeni Nadar*, [1974 Cr LJ 1116](#) (Mad). *Gadadhar Guru v State of Orissa*, [1989 Cr LJ 2080](#) (Ori), no positive evidence of disturbance of public peace or annoyance to public though there was a fight between two groups.

## THE INDIAN PENAL CODE

### CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

This chapter deals with two classes of offences, of which one can be committed by public servants alone, and the other comprises offences which relate to public servants, though they are not committed by them.

**Deletion of provisions.**—Sections 161–165A stand omitted by the [Prevention of Corruption Act, 1988, section 31](#) (w.e.f. 9 September 1988).

The relevant portion from the Statement of Objects and Reasons appended to the [Prevention of Corruption Act, 1988](#) relating to the omission of [sections 161 to 165A of Indian Penal Code, 1860 \(IPC, 1860\)](#) is given below:

3. The Bill *inter alia*, envisages widening the scope of the definition of the expression

"public servant", incorporation of offences under sections 161–165A of the [Indian Penal Code](#), enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included.

4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

**Sections 161 to 165-A.— Repealed by the Prevention of Corruption Act (Act 49 of 1988), section 31 (w.e.f. 9 September 1988).**

# THE INDIAN PENAL CODE

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4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

**[s 166] Public servant, disobeying law, with intent to cause injury to any person.**

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

### ILLUSTRATION

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

### COMMENT—

**Disobedience of law by public servant.**—The offence under this section consists in a wilful departure from the direction of the law, intending to cause injury to any person. Mere breach of departmental rules will not bring a public servant within the purview of this section.

### [s 166.1] Ingredients.—

- (i) The accused was a public servant at the relevant time;
- (ii) There was a direction of law as to how such public servant should conduct himself;
- (iii) The accused had disobeyed such direction;
- (iv) By such disobedience he had intended to cause or knew it would likely cause injury to any person.

The indispensable ingredient of the offence is that the offender should have done the act "being a public servant". The next ingredient close to its heels is that such public servant has acted in disobedience of any legal direction concerning the way in which he should have conducted as such public servant. For the offences under [sections 167 and 219 of IPC, 1860](#) the pivotal ingredient is the same as for the offence under [section 166 of IPC, 1860](#).<sup>1</sup> If in carrying out the direction of law the accused gave information which according to the complainant was untrue, that by itself cannot attract the offence punishable under [section 166 IPC, 1860](#) unless it is shown that the replies given by the accused were untrue.<sup>2</sup> Where an investigating officer recorded his satisfaction in writing that the search of a particular premises was necessary because disputed documents might be found there, his entry into such premises was held to be not in disobedience of law and therefore, he could not be prosecuted without sanction under [section 197 Code of Criminal Procedure, 1973 \(CrPC, 1973\)](#).<sup>3</sup> To make out an offence under this provision, it has to be stated that the public servant knowingly disobeyed any particular direction of the law which he was bound to obey and further that such disobedience would cause injury to any person to the knowledge of the public servant.

1. *K K Patel v State of Gujarat*, [AIR 2000 SC 3346 \[LNIND 2000 SC 889\]](#) : [2000 Cr LJ 4592](#) : [JT 2000 \(7\) SC 246 \[LNIND 2000 SC 889\]](#) : [\(2000\) 6 SCC 195 \[LNIND 2000 SC 889\]](#) : [\(2000\) 4 Supreme 160](#) .

2. *Prabhakara Panicker M B v State of Kerala*, [2010 Cr LJ 4117 \(Ker\)](#) : [2010 \(3\) KHC 152](#) .

3. *BS Thind v State of HP*, [1992 Cr LJ 2935](#) ; *People's Union for Civil Liberties v State of Maharashtra*, [1998 Cr LJ 2138 \(Bom\)](#).

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4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

### **4. [[s 166A] Public servant disobeying direction under law.**

**Whoever, being a public servant,—**

- (a) **knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or**
- (b) **knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or**
- (c) **fails to record any information given to him under sub-section (1) of [section 154 of the Code of Criminal Procedure, 1973](#) (2 of 1974), in relation to cognizable offence punishable under [section 326A](#), [section 326B](#), [section 354](#), [section 354B](#), [section 370](#), [section 370A](#), [section 376](#), [section 376A](#), <sup>5</sup>[\[section 376AB](#), [section 376B](#), [section 376C](#), [section 376D](#), [section 376DA](#), [section 376DB](#)], [section 376E](#) or [section 509](#),**

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

4. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 3 (w.r.e.f. 3-2-2013).
5. Subs. by Act 22 of 2018, section 2, for "section 376B, section 376C, section 376D" (w.r.e.f. 21-4-2018).

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- (c) **fails to record any information given to him under sub-section (1) of [section 154 of the Code of Criminal Procedure, 1973](#) (2 of 1974), in relation to cognizable offence punishable under [section 326A](#), [section 326B](#), [section 354](#), [section 354B](#), [section 370](#), [section 370A](#), [section 376](#), [section 376A](#), <sup>5</sup>[\[section 376AB](#), [section 376B](#), [section 376C](#), [section 376D](#), [section 376DA](#), [section 376DB](#)], [section 376E](#) or [section 509](#),**

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- (c) **fails to record any information given to him under sub-section (1) of [section 154 of the Code of Criminal Procedure, 1973](#) (2 of 1974), in relation to cognizable offence punishable under [section 326A](#), [section 326B](#), [section 354](#), [section 354B](#), [section 370](#), [section 370A](#), [section 376](#), [section 376A](#), <sup>5</sup>[\[section 376AB](#), [section 376B](#), [section 376C](#), [section 376D](#), [section 376DA](#), [section 376DB](#)], [section 376E](#) or [section 509](#),**

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## THE INDIAN PENAL CODE

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This chapter deals with two classes of offences, of which one can be committed by public servants alone, and the other comprises offences which relate to public servants, though they are not committed by them.

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The relevant portion from the Statement of Objects and Reasons appended to the [Prevention of Corruption Act, 1988](#) relating to the omission of [sections 161 to 165A of Indian Penal Code, 1860 \(IPC, 1860\)](#) is given below:

3. The Bill *inter alia*, envisages widening the scope of the definition of the expression

"public servant", incorporation of offences under sections 161–165A of the [Indian Penal Code](#), enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included.

4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

#### **6. [\[s 166B\]](#) Punishment for non-treatment of victim.**

**Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of [section 357C of the Code of Criminal Procedure, 1973 \(2 of 1974\)](#), shall be punished with imprisonment for a term which may extend to one year or with fine or with both.]**

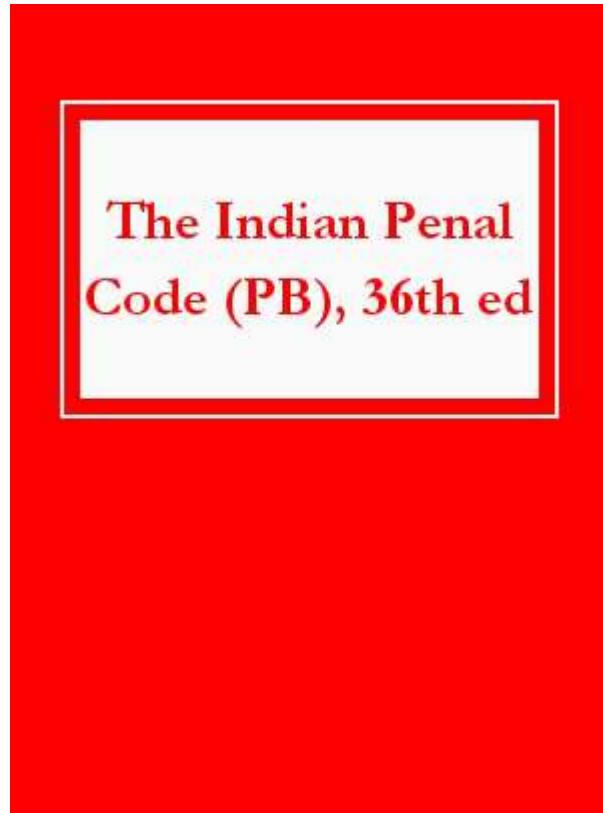
#### **COMMENT—**

Sections 166A and 166B are enacted based on the recommendations given by the Justice J.S. Verma Committee, constituted in the aftermath of the December 2012 Delhi Rape Case by the [Criminal Law \(Amendment\) Act, 2013](#) (Nirbhaya Act, 2013).

6. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 3 (w.r.e.f. 3-2-2013).



**The Indian Penal Code (PB), 36th ed**



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 6. Ins. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 3 (w.r.e.f. 3-2-2013). [[s 166B] Punishment for non-treatment of victim.

Currency Date: 28 April 2020

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4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

#### **[s 167] Public servant framing an incorrect document with intent to cause injury.**

**Whoever, being a public servant, and being, as <sup>7</sup>:[such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.**

#### **COMMENT—**

The preceding section deals generally with the disobedience of any direction of law; this section deals with a specific instance, viz., that of framing an incorrect document with intent to cause injury. It is similar to section 218, which deals also with cases of framing incorrect record or writing with intent to save person from punishment or property from forfeiture, whereas section 167 deals with cases of framing incorrect document only with intent to cause injury. In a case, the allegation that the accused, who is a Deputy Superintendent of Police, suppressed the statement recorded under [section 161 of the CrPC, 1973](#) in a criminal case registered by the police and produced a fabricated statement along with the charge sheet before the Magistrate. The Court held that section 167 is attracted only when a public servant prepares a document in a

manner which he thinks or believes to be incorrect. Essentially, the petitioner's allegation is that the accused suppressed the real statement prepared under [section 161 of the Criminal Procedure Code](#) and produced along with the charge sheet a fabricated statement. That comes only within the purview of section 193. Therefore, section 167 is not attracted to the allegations raised by the petitioner in his complaint.<sup>8</sup>

7. Subs. by the [Information Technology Act](#) (Act 21 of 2000), section 91 and First Schedule for the words "such public servant, charged with the preparation or translation of any document, frames or translates that document", w.e.f. 17-10-2000. The words "electronic record" have been defined in section 29A.

8. *Joseph v State of Kerala*, [2013 Cr LJ 749](#) : [2012 \(4\) KHC 157](#) .

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4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

#### **[s 168] Public servant unlawfully engaging in trade.**

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

#### **COMMENT—**

**Public servant engaging in trade.**—This section punishes those public servants who are legally bound not to engage in trade. If public servants were allowed to trade they would fail to perform their duties with undivided attention. Being in official position they could easily obtain unfair advantages over other traders.

The word 'trade' covers every kind of trade, business, profession, or occupation.<sup>9</sup> This proposition of law no longer seems to be correct in view of the Supreme Court's decision in *Mahesh Kumar Dhirajlal's case*<sup>10</sup>, wherein their Lordships held that trade in its narrow sense means "exchange of goods for goods or for money with the object of making profit" and in its widest sense means "any business with a view to earn profit". Thus, where a tracer in the office of Sub-divisional Soil Conservation Officer took earned leave and during that period of leave obtained training as an Electrical Signal Maintainer from the Railway Administration, it was held that he could not be convicted under this section as he had not engaged himself in any trade even though he was

receiving stipend from the Railways during the period of his training.<sup>11</sup> Following this ruling, it has been held that engaging oneself as an agent of an insurance company on commission basis does not amount to engaging in trade.<sup>12</sup>

### **[s 168.1] Private Practice of Government Doctors.—**

In *Kanwarjit Singh Kakkar v State of Punjab*,<sup>13</sup> the Supreme Court examined the question whether the indulgence in private practice of Government Doctors would amount to indulgence in 'trade' while holding the post of a government doctor, so as to constitute an offence under [section 168 of the IPC, 1860](#). The Supreme Court held that "in our view, offence under [Section 168 of the IPC, 1860](#) cannot be held to have been made out against the appellants even under this Section as the treatment of patients by a doctor cannot by itself be held to be engagement in a trade as the doctors' duty to treat patients is in the discharge of his professional duty which cannot be held to be a 'trade' so as to make out or constitute an offence under [Section 168 of the IPC, 1860](#)".

9. *Mulshankar Maganlal*, (1950) Bom 706 : (1950) 52 Bom LR 648 .

10. *State of Gujarat v Mahesh Kumar Dhirajlal*, AIR 1980 SC 1167 [LNIND 1980 SC 69] : 1980 Cr LJ 919 .

11. *State of Gujarat v Mahesh Kumar Dhirajlal*, AIR 1980 SC 1167 [LNIND 1980 SC 69] : 1980 Cr LJ 919 . See also *Rasik Behari Mathur v State of Rajasthan*, 2007 Cr LJ 3108 (Raj).

12. *State of Maharashtra v Chandrakant Solanki*, (1995) 1 Cr LJ 832 (Bom).

13. *Kanwarjit Singh Kakkar v State of Punjab*, 2011 CrLJ 3360 : SCC 158 : (2012) 1 SCC (Cr) 805.

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4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

#### **[s 169] Public servant unlawfully buying or bidding for property.**

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

#### **COMMENT—**

**Buying or holding property.**—This section is merely an extension of the principle enunciated in the last section. It prohibits a public servant from purchasing or bidding for property which he is legally bound not to purchase.

It is necessary that there should be some statutory law or rules or regulations framed under the law and not merely some administrative instructions or guidelines prohibiting public servants from purchasing certain property. In this case, a Code of Conduct was issued by the State Government in the exercise of its executive power under [Article 162 of the Constitution](#) under which Ministers were prohibited from buying Government properties. There were no mandatory terms providing for any action in case of non-compliance. It was held that the Code of Conduct did not have the effect of law. Its violation could not generate legal proceedings there being nothing unlawful illegal

within the meaning of section 43. The purchase of property of a Government company by a firm in which the then Chief Minister was a partner did not constitute an offence under section 169 in the absence of any law debarring the Chief Minister from making such a purchase.<sup>14</sup>

#### **[s 169.1] TANSI land deal case.—**

The allegation was that the Tamil Nadu Chief Minister, Ms. Jayalalitha, while holding the chief minister's post, had violated the code of conduct and purchased 3.0786 acres of land and buildings to the state-owned Tamil Nadu State Industries Corporation for Jaya Publications. While reversing the conviction passed by the High Court, the Supreme Court held that the offence under [section 169 IPC, 1860](#) is incomplete without the assistance of some other enactment which imposes the legal prohibition required. Therefore, in order to come within the clutches of [section 169 IPC, 1860](#), there should be a law which prohibits a public servant from purchasing certain property and if he does it, it becomes an offence under [section 169 IPC, 1860](#). [Section 481 of the Criminal Procedure Code](#), [section 189 of the Railways Act, 1989](#) and [section 19 of the Cattle Trespass Act, 1871](#) and instances of that nature in several enactments are available in which persons mentioned therein shall not directly or indirectly purchase any property at a sale under those Acts. Similarly [section 136 of the Transfer of Property Act, 1882](#) provides that no Judge, legal practitioner, or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claims so dealt with by him as stated above. Thus, in these circumstances where a law has prohibited purchase of property or to bid at an auction, the prohibition contained therein will be attracted and will become an offence under [section 169 IPC, 1860](#). The Code of Conduct not having a statutory force and not enforceable in a Court of law, nor having any sanction or procedure for dealing with a contravention thereof by the Chief Minister, cannot be construed to impose a legal prohibition against the purchase of property of the Government so as to give rise to a criminal offence under [section 169 IPC, 1860](#).<sup>15</sup>

<sup>14</sup>. *R Sai Bharathi v J Jayalalitha*, AIR 2004 SC 692 [LNIND 2003 SC 1023] : 2004 Cr LJ 286 : (2004) 2 SCC 9 [LNIND 2003 SC 1023] .

<sup>15</sup>. *R Sai Bharathi v J Jayalalitha*, AIR 2004 SC 692 [LNIND 2003 SC 1023] : (2004) 2 SCC 9 [LNIND 2003 SC 1023] .

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4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

#### **[s 170] Personating a public servant.**

**Whoever pretends to hold any particular office as a public servant,<sup>1</sup> knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act<sup>2</sup> under colour of such office,<sup>3</sup> shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### **[s 170.1] Ingredients.—**

The section requires two things—

1. A person (a) pretending to hold a particular office as a public servant, knowing that he does not hold such office, or (b) falsely personating any other person holding such office.
2. Such person in such assumed character must do or attempt to do an act under colour of such office.

#### **COMMENT—**

**Personating public servant.**—Mere personation is not an offence under this section. The person personating must do or attempt to do some act under colour of the office of the public servant whom he personates. Section 140 punishes the person who wears the garb or carries the token used by a soldier. This section punishes a person who does any act in the assumed character of a public servant.

**1. 'Pretends to hold any particular office as a public servant'.—**It must be an existing office. If it is uncertain who legally fills the office, a person doing an official act, in pursuance of what he honestly believes to be his lawful title to the office, does not come within this section.

**2. 'Any act'.—**It is not necessary that the act done or attempted to be done should be such an act as might legally be done by the public servant personated. The accused was arrested when he was demanding one *anna's* worth of fruit from a fruit-seller for one pie on the representation that he was a head constable, which in fact he was not. It was held that if he pretended to be a police-officer and tried as such police-officer to extort money or things from a fruit-seller, he was guilty of an offence under this section.<sup>16</sup> A person who poses as a Government servant and by so doing obtains of another's services, which he would not otherwise have obtained and which the other person was bound to give on demand by a Government officer, commits an offence under this section.<sup>17</sup>

**3. 'Under colour of such office'.—**An act is done 'under colour of an office,' if it is an act having some relation to the office, which the actor pretends to hold. If it has no relation to the office, as if A pretending to be a servant of Government, travelling through a district, obtains money, provisions, etc., the offence may amount to cheating under section 415, but is not punishable under this section.<sup>18</sup> The act done under colour of office must be an act which could not have been done without assuming official authority.

Where the accused posed as a police officer and in that garb looted certain articles from the complainant and the stolen articles, one police ballot and monogram were recovered from him, his conviction under the section was held to be proper.<sup>19</sup>

### **[s 170.2] Retired IAS officer using IAS with his name.—**

To constitute an offence under section 170, a person must either pretend to hold a particular office as a public servant knowing that he does not hold such office or falsely personate any other person holding such office. Over and above that, that person in such assumed character must do or attempt to do an act under the colour of such office. There must be pretension or false personation to be a particular person, that too a public servant, which he is not, and then doing of or attempt to do some act under colour of such office of that public servant, to proceed against a person under [section 170 of the Indian Penal Code](#). Thus, where a retired IAS officer, had used IAS in his letterhead when he continued as Director of CAPE and also corresponded in that manner, is no ground to impute that he has committed an offence under [section 170 of the Penal Code](#).<sup>20</sup>

<sup>16</sup>. *Aziz-ud-din v State*, (1904) All 294 .



17. *Bashirullakhan*, (1942) Nag 484. *Ajitender Singh v State of Punjab*, 2000 Cr LJ 1827 (P&H) : 2000 (2) RCR (Criminal) 34, mere assumption of the character of a public servant is not enough, there must also be an attempt to commit an official act. *Jata Shanker Jha v State of Rajasthan*, 2000 Cr LJ 2108 (Raj) : 2000 (4) WLC 75 , accused personated as secret ASI in the Education Department used forged papers to divert the salary of others to himself. Conviction. *Pratap Singh v State*, 1998 Cr LJ 633 (P&H), acting under colour of office as *Lambardar*, offence under the section made out because the accused identified parties in sale deeds as an officer and also had certain sureties arrested.

18. M&M 142.

19. *Karuna Krishna Biswas v State of WB*, 1996 Cr LJ 2823 (Cal).

20. *Premachandra Kurup v State*, 2013 Cr LJ 1465 .

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4. Since the provisions of section 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the [Indian Penal Code](#). Consequently, it is proposed to delete those sections with the necessary saving provision.

#### **[s 171] Wearing garb or carrying token used by public servant with fraudulent intent.**

**Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.**

#### **COMMENT—**

**Wearing garb or token of public servant.**—Under this section the offence is complete, although no act is done or attempted in the assumed official character. The mere circumstance of wearing a garb, or carrying a token, with the intention or knowledge supposed, is sufficient. It is not necessary that something should pass in words. If any act is done then the preceding section will apply.

Under [section 140 IPC, 1860](#), wearing the garb or carrying the token of a soldier is made punishable.



## THE INDIAN PENAL CODE

### <sup>1</sup>[CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

[s 171A] "Candidate", "Electoral right", defined.

For the purposes of this Chapter—

<sup>2</sup>[(a) "candidate" means a person who has been nominated as a candidate at an election;<sup>1</sup>

(b) "electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at any election.

#### COMMENT—

**Candidate, electoral right.**—This chapter was introduced in the Code by the Indian Elections Offences and Inquiries Act (XXXIX of 1920). It seeks to make punishable under the ordinary penal law, bribery, undue influence, and personation, and certain other malpractices at elections not only to the Legislative bodies, but also to membership of public authorities where the law prescribes a method of election; and, further, to debar persons guilty of malpractices from holding positions of public responsibility for a specific period. <sup>3</sup>This chapter has to be read along with the [Representation of the People Act, 1951](#) as it contains additional penalties for certain offences under this chapter, e.g., sections 171E and 171F of this Code. Thus, a conviction under [section 171E](#) or [section 171F, IPC, 1860](#), amounts to a disqualification under [section 8 of the Representation of the People Act, 1951](#).<sup>4</sup>

**1. 'Election'.**—'Election' is defined as including election to all classes of public bodies where such a system is prescribed by law (*vide* Explanation 3 to section 21 *supra*).

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

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

3. Statement of Objects and Reasons. Gazette of India, 1920, Part V, p 135, section 4. *Bhupinder Singh v State*, [1997 Cr LJ 1416](#) (P&H), accused snatched ballot papers from the custody of a polling officer and tore them. This amounted to use of criminal force.

4. For a comparison between the sections 171A to 171E with the provisions of [Representation of People Act, 1950](#). See *Indira Nehru Gandhi v Raj Narain*, [AIR 1975 SC 2299](#) [[LNIND 1975 SC 432](#)] : (1975) Supp SCC 1 : [1976 \(2\) SCR 347](#) [[LNIND 1975 SC 432](#)].

## THE INDIAN PENAL CODE

### **1.**[CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

#### **[s 171B] "Bribery".**

**(1) Whoever—**

- (i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or**
- (ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery:**

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

- (2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.**
- (3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.**

#### **COMMENT—**

**Bribery.**—This section defines the offence of bribery at an election.

'Bribery' is defined primarily as the giving or acceptance of a gratification either as a motive or as a reward to any person, either to induce him to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election. It also includes offers or agreements to give or offer and attempts to procure a gratification for any person. 'Gratification' is already explained in [section 161 of the Penal Code](#) and is not restricted to pecuniary gratifications or to gratifications estimated in money.<sup>5</sup> Section 171-B(1)(i) of [Indian Penal Code](#) provides that if gratification is given to any person inducing him or any other person to exercise any electoral right, then it will amount to bribery. The term "Electoral right" defined under clause (b) of [section 171-A of Indian Penal Code](#) clearly indicates that the electoral right is of definite nature and it is to be exercised by individual. So, the gratification has to be given to an individual. Here, the offer is made to the party (RPI) and not to any individual. Furthermore, there is nothing in the offer which indicates that any influence is being brought on any individual with respect to exercising his electoral right, that means, to stand, or not to stand as, or to withdraw from being, a candidate or to vote or to refrain from voting at the election. Seeking support of a political party, during the course of election and making an offer to political party of some share in political

power for giving such support cannot be called as giving gratification as contemplated under [section 171-B of Indian Penal Code](#).<sup>6</sup> The word 'gratification' should be deemed to refer only to cases where a gift is made of something which gives a material advantage to the recipient. There is hardly any need to say that giving of anything whose value is estimable in money is bribery. A gun licence gives no material advantage to its recipient. It might gratify his sense of importance if he has a gun licence in a village where nobody else has a gun licence. So might be the conferment of an honour like Padma Bhushan. A praise from a high quarter might gratify the sense of vanity of a person. But the word 'gratification' as used in section 123 (1) does not refer to such gratification any more than in [section 171-B of the Indian Penal Code](#).<sup>7</sup>

### **[s 171B.1] Sub-clause (2).—'Offers'.—**

By this clause the attempt to corrupt is made equivalent to the complete act.

### **[s 171B.2] Treating.—**

Treating will be bribery if refreshment is given or accepted with the intent required by law.<sup>8</sup> The gist of the offence of treating is the corrupt inducement to the voter or to refrain from voting, which may be given at any time, although for obvious reasons it is usually given at or shortly before the election. 'Treating' is defined in section 171E.

### **[s 171B.3] Supreme Court on 'freebies'.—**

In *S Subramaniam Balaji v Government of Tamil Nadu*,<sup>9</sup> the Supreme Court held that freebies promised by political parties in their election manifestos shake the roots of free and fair polls, and directed the Election Commission to frame guidelines for regulating contents of election manifestos and undue influence at elections.

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

5. *Statement of Objects and Reasons*, Gazette of India, 1920, Part V, p 135, section 8.

6. *Deepak Ganpatrao v Government of Maharashtra*, 1999 Cr LJ 1224 (Bom).

7. *Iqbal Singh v Gurdas Singh*, AIR 1976 SC 27 [LNIND 1975 SC 354] : (1976) 3 SCC 284 [LNIND 1975 SC 354] : 1976 (1) SCR 884 [LNIND 1975 SC 354] .

8. *Ibid*.

9. *S Subramaniam Balaji v Government of Tamil Nadu*, 6 Mad LJ 307 : 2013 (8) Scale 249 [LNIND 2013 SC 627] .

## THE INDIAN PENAL CODE

### **1.**[CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

#### **[s 171C] Undue influence at elections.**

- (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.**
- (2) Without prejudice to the generality of the provisions of sub-section (1), whoever—**
  - (a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or**
  - (b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,**

**shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).**
- (3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.**

#### **COMMENT.—**

**Exercise of undue influence.**—This section defines 'undue influence at elections'.

Undue influence at an election is defined as the voluntary interference or attempted interference with the right of any person to stand, or not to stand as, or withdraw from being, a candidate, or to vote or refrain from voting. This covers all threats of injury to person or property and all illegal methods of persuasion and any interference with the liberty of the candidates or the electors. The inducing or attempting to induce a person to believe that he will become the object of divine displeasure is also interference.<sup>10</sup>

Where an attempt or threat is proved, it is unnecessary to prove that any person was in fact prevented from voting because the offence is complete.

The expression 'free exercise of his electoral right' does not mean that a voter is not to be influenced. This expression has to be read in the context of an election in a democratic society and the candidates and their supporters must naturally be allowed to canvass support by all legal and legitimate means. This exercise of the right by the candidate or his supporters to canvass support does not interfere or attempt to interfere with the free exercise of an electoral right.<sup>11</sup> The Supreme Court has accepted the proposition that something more than a mere act of canvassing would be necessary and that something more is specified in clauses (a) and (b) of the section. Applying this to the facts, the court laid down that the appeal, even if true, of the Chairman of the Minorities Commission who happened to be the retired judge of the

Supreme Court, to the voters to cast their votes in favour of a particular candidate [who was returned], does not make out the offence enumerated in this section.<sup>12</sup> A message sent to the secretary of a party to boycott the election does not amount to interference within the meaning of this section as members of the party are still free to vote as they like.<sup>13</sup>

### [s 171C.1] CASES.—

A candidate informed the voters that he was *Chalanti Vishnu* and representative of Lord Jagannath himself and that any person who did not vote for him would be a sinner against the Lord and the Hindu religion; it was held that such propaganda would amount to an offence under section 171F read with this section.<sup>14</sup>

The statement was made by a member of the ruling party to the Republican party of India (RPI) that if it supported the alliance in parliamentary elections, the latter would make one member of the RPI as Deputy Chief Minister of State. It was held that this did not amount to giving offer to any individual for inducing him to exercise his electoral right in a particular manner.<sup>15</sup>

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

10. *Ram Dial v Sant Lal*, AIR 1959 SC 855 [LNIND 1959 SC 73] : 1959 Supp (2) SCR 748 .

11. *Shiv Kirpal Singh v VV Giri*, AIR 1970 SC 2097 [LNIND 1970 SC 367] : (1970) 2 SCC 567 [LNIND 1970 SC 367] . See also *M Anbalagan v State*, 1981 Cr LJ 1179 (Mad), *Babu Rao Patel*, AIR 1968 SC 904 [LNIND 1967 SC 314] : 1968 (2) SCR 133 [LNIND 1967 SC 314] .

12. *Charan Lal Sahu v Giani Zail Singh*, AIR 1984 SC 309 [LNIND 1983 SC 371] : (1984) 1 SCC 390 [LNIND 1983 SC 371] .

13. *M Anbalagan*, *Supra*.

14. *Raj Raj Deb v Gangadhar*, AIR 1964 Ori 1 [LNIND 1962 ORI 29] : 1964 Cr LJ 57 .

15. *Deepak Ganpatrao v Government of Maharashtra*, 1999 Cr LJ 1224 (Bom).



## THE INDIAN PENAL CODE

### <sup>1</sup>[CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

#### [s 171D] Personation at elections.

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

<sup>16</sup>[*Provided* that nothing in this section shall apply to a person who has been authorised to vote as proxy for an elector under any law for the time being in force in so far as he votes as proxy for such elector.]

#### COMMENT.—

**Personation.**—This section defines 'personation at elections'. It covers a person who attempts to vote in another person's name or in a fictitious name, as well as a voter who attempts to vote twice and any person who abets, procures, or attempts to procure, such voting.

The accused must have been actuated by a corrupt motive.<sup>17</sup>

What is to be proved in a prosecution for the offence under section 171-D is that the indictee "applied for voting (ballot) paper" in the name of any person. It is not the law that it must be proved invariably that he had voted or had attempted to vote in the election. All that need be proved is that the indictee had applied for a voting paper. The legislature appears to have carefully worded the statutory provision.<sup>18</sup> The applicant was accused of having abetted the personation of a voter at a Municipal election in that, not being himself acquainted with the person who came forward to vote, he had, on the advice of others, put his name to a "signature sheet" in token that the thumb mark made by the voter was that of the person entitled to vote under a certain name on the electoral roll. It was held that, inasmuch as the acts done by the applicant apparently constituted the specific offence provided for by section 171F, he could only be tried for that offence, and could not be tried for abetment of the general offence provided for by section 465.<sup>19</sup>

<sup>1</sup> Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

<sup>16</sup> Ins. by the [Election Laws \(Amendment\) Act](#), 2003 (Act 24 of 2003), section 5 (w.e.f. 22-9-2003).

<sup>17</sup> *Venkayya*, (1929) 53 Mad 444.

<sup>18</sup> *E Anoop v State*, 2007 Cr LJ 2968 : 2006 (3) Ker LJ 50 .

19. *Ram Nath*, (1924) 47 All 268 . See *Achcha Bhoomanna v Court of Distt. Munsif (Election Court)*, AIR 1992 AP 157 [LNIND 1991 AP 162] .

## THE INDIAN PENAL CODE

### <sup>1</sup>[CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

#### [s 171E] Punishment for bribery.

**Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:**

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

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

<sup>1</sup>. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

## THE INDIAN PENAL CODE

### <sup>1</sup>[CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

#### [s 171F] Punishment for undue influence or personation at an election.

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

#### COMMENT.—

**Punishment for bribery, personation.**— The Chief Minister of a State was campaigning for himself on a date before elections. He was directed by the Election Commissioner under threat of taking drastic action to return to his State headquarters. He was prevented by the order from exercising his voting right at the place where he was registered as a voter. There was no allegation that he used any violence in the election process. Directions were also oral and no reasons were given. It was held that the directions constituted a violation of section 171F.<sup>20</sup> The words "all forms of entertainment" in the Explanation to [section 123 \(1\) of the Representation of the People Act](#) apparently refer to offence of treating found in [section 171-E of the Indian Penal Code](#).<sup>21</sup> Accused entered into a polling booth and handed over a slip showing the name of a voter other than himself. He could not give any explanation as to why he entered into the polling booth. His conduct of appearing before polling officials and handing over the slip which does not relate to him, is sufficient declaration of his intention to apply vote for him. It was held that offence committed by him required a deterrent substantive sentence of imprisonment.<sup>22</sup>

1. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

20. *Court on its Own Motion v UOI*, 2001 Cr LJ 225 (P&H) : (2000) ILR 2 P&H 288. The Court could not direct the Magistrate to take cognizance under section 190 because of the bar under section 197. Aggrieved party would have to launch prosecution.

21. *Iqbal Singh v Gurdas Singh*, AIR 1976 SC 27 [LNIND 1975 SC 354] : (1976) 3 SCC 284 [LNIND 1975 SC 354] : 1976 (1) SCR 884 [LNIND 1975 SC 354] .

22. *E Anoop v State*, 2007 Cr LJ 2968 : 2006 (3) Ker LJ 50 .

## THE INDIAN PENAL CODE

### <sup>1</sup>[CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

#### [s 171G] False statement in connection with an election.

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

#### COMMENT.—

**False statements in elections.**—False statements of fact in relation to the personal character or conduct of a candidate are penalised by this section. General imputations of misconduct unaccompanied by any charges of particular acts of misconduct cannot properly be described as statements of fact within the meaning of this section.<sup>23</sup>

An offence under this section is not a species of the more general offence of defamation. There may be cases under this section which do not fall under section 499 and *vice versa*.<sup>24</sup>

<sup>1</sup> Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

<sup>23</sup> *AS Radhakrishna Ayyar v Emperor*, AIR 1932 Mad 511 : 1932 Mad WN 1086.

<sup>24</sup> *Bhagolelal Kwalchand Darji v Emperor*, AIR 1940 Nag 249 : [1942] ILR Nag 208.

## THE INDIAN PENAL CODE

### <sup>1</sup>[CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

**[s 171H] Illegal payments in connection with an election.**

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

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

#### **COMMENT.—**

**Illegal payments in elections.**—This section makes it illegal for any one, unless authorized by a candidate, to incur any expenses in connection with the promotion of the candidate's election.

<sup>1</sup>. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

## THE INDIAN PENAL CODE

### <sup>1</sup>[CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS

#### [s 171-I] Failure to keep election accounts.

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

#### COMMENT.—

**Failure to keep accounts.**—This section punishes failure to keep accounts of expenses incurred in connection with an election, if such accounts are required to be kept by any law or rule having the force of law.

<sup>1</sup>. Chapter IXA (containing of sections 171A to 171-I) ins. by Act 39 of 1920, section 2.

## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

This Chapter contains penal provisions intended to enforce obedience to the lawful authority of public servants. Contempt of the lawful authority of Courts of Justice, of Officers of Revenue, Officers of Police, and other public servants are punishable under this head.

#### [s 172] Absconding to avoid service of summons or other proceeding.

**Whoever absconds<sup>1</sup> in order to avoid being served with a summons, notice or order,<sup>2</sup> proceeding from any public servant, legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;**

**or, if the summons or notice or order is to attend in person or by agent, or to <sup>1.</sup> [produce a document or an electronic record in a Court of Justice], with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

#### COMMENT.—

**Absconding to avoid summons.**—Absconding to avoid service of summons or other proceeding is similar to non-attendance in obedience to an order from a public servant. The object of this section is to punish an offender for the contempt his conduct indicates of the authority whose process he disregards.

The second clause applies where the summons or notice or order is (1) for attendance in Court; or (2) for production of a document.

**1. 'Absconds'.**—This term is not to be understood as implying necessarily that a person leaves the place in which he is. Its etymological and ordinary sense is to hide oneself; and it matters not whether a person departs from a place or remains in it, if he conceals himself. If a person, having concealed himself before process issues, continues to do so after it is issued, he absconds.<sup>2.</sup>

**2. 'Summons, notice or order'.**—The summons, notice or order referred to, should be addressed to the same person whose attendance is required and who absconds to avoid being served with such a 'summons, notice or order'. A warrant is not an order served on an accused; it is simply an order to the police to arrest him.<sup>3.</sup> It is not an offence under this section to abscond to avoid arrest under a warrant.<sup>4.</sup>

#### [s 172.1] Bar to take Cognizance:

As per section 195(1)(a)(i) of the [Code of Criminal Procedure 1973](#), ([Cr PC, 1973](#)) No court shall take cognizance of any offence punishable under S. 172 to 188 (both inclusive) of the [Indian Penal Code](#) (45 of 1860, except on the complaint in writing of 'the public servant concerned' or of some other public servant to whom he is



administratively subordinate. When the Court in its discretion is disinclined to prosecute the wrongdoers, no private complainant can be allowed to initiate any criminal proceeding in his individual capacity as it would be clear from the reading of the section itself which is to the effect that no Court can take cognizance of any offence punishable under sections 172–188 of the [Indian Penal Code \(IPC, 1860\)](#) except on the written complaint of 'the public servant concerned' or of some other public servant to whom he is administratively subordinate.<sup>5</sup>

1. Subs. by Act 21 of 2000, section 91 and Sch. I, for "to produce a document in a Court of Justice" (w.e.f. 17-10-2000).
2. *Srinivasa Ayyangar*, (1881) 4 Mad 393, 397.
3. *Lakshmi*, (1881) Unrep. Cr C 152.
4. *Annawadin*, (1923) 1 Ran 218.
5. *State of UP v Mata Bhikh*, (1994) 4 SCC 95 [LNIND 1994 SC 311] : JT 1994 (2) SC 565 [LNIND 1994 SC 311] : (1994) 2 Scale 235 : (1994) 1 SCC (Cr) 831 : 1994 (2) SCR 368 [LNIND 1994 SC 311] .

## THE INDIAN PENAL CODE

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#### **[s 173] Preventing service of summons or other proceeding, or preventing publication thereof.**

**Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,**

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

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

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

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

**or, if the summons, notice, order or proclamation is to attend in person or by agent, or <sup>6</sup>[to produce a document or electronic record in a Court of Justice], with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

#### **COMMENT.—**

**Preventing service of summons.**—This section punishes intentional prevention of the service of summons, notice or order.

A refusal to sign a summons,<sup>7</sup> a refusal to receive a summons<sup>8</sup> and the throwing down of a summons after service,<sup>9</sup> do not constitute the offence of intentionally preventing the service of a summons under this section. Under the [Cr PC, 1973](#) the mere tender of a summons is sufficient and a refusal by a person to receive it does not expose him to the penalty of this section. Actual delivery is not necessary to complete the service.<sup>10</sup> Chapter X, sections 172–190 of the [IPC, 1860](#) deal with the offences constituting "Contempts of the Lawful authority of Public Servants". A Magistrate could be covered by the definition of a 'Public Servant' given by [section 21 of the IPC, 1860](#). But the sections given in Chapter X of the [IPC, 1860](#) relate to particular kinds of contempt of the lawful authority of Public Servants and none of these cover the kind of

acts which were committed by the accused with the object of the stifling a prosecution.<sup>11</sup>.

6. Subs. by Act 21 of 2000, section 91 and Sch. I, for "to produce a document in a Court of Justice" (w.e.f. 17-10-2000).
7. *Kalya Fakir*, (1868) 5 BHC (Cr C) 34; *Krishna Gobinda Das*, (1892) 20 Cal 358 .
8. *Punamatai*, (1882) 5 Mad 199.
9. *Arumuga Nadan*, (1882) 5 Mad 200 (n), 1 Weir 79.
10. *Sahedeo Rai*, (1918) 40 All 577 .
11. *Waryam Singh v Sadhu Singh*, AIR 1972 SC 905 : (1972) 1 SCC 796 : 1972 Cr LJ 635 : (1972) 1 SCC (Cr) 477; *TN Godavarman Thirumulpad (89) v UOI*. (2006) 10 SCC 486 : (2007) 9 Scale 272

# THE INDIAN PENAL CODE

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### [s 174] Non-attendance in obedience to an order from public servant.

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

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

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

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

### ILLUSTRATIONS

- (a) A, being legally bound to appear before the <sup>12</sup>[High Court] at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.
- (b) A, being legally bound to appear before a <sup>13</sup>[District Judge] as a witness, in obedience to a summons issued by that <sup>14</sup>[District Judge], intentionally omits to appear. A has committed the offence defined in this section.

### COMMENT.—

**Non-attendance.**—The offence contemplated by this section is an intentional omission to appear—

- (1) at a particular specified <sup>15</sup> place in India, <sup>16</sup>
- (2) at a particular time,
- (3) before a specified public functionary,
- (4) in obedience to a summons, notice or order (written or verbal), <sup>17</sup> not defective in form, <sup>18</sup> and

(5) issued by an officer having jurisdiction<sup>19</sup>. in the matter.

A conviction cannot be had unless the person summoned

(1) was legally bound to attend, and

(2) refused or intentionally omitted to attend.<sup>20</sup>.

**[s 174.1] CASES.—Wilful departure before, lawful time.—**

Where a man in obedience to a summons attended a Magistrate's Court at 10 a.m., but finding the Magistrate not present at the time mentioned in the summons, departed without waiting for a reasonable time, it was held that he was guilty of an offence under this section.<sup>21</sup>.

**[s 174.2] Public servant absent.—**

Where a public servant was absent on a date fixed in the summons, the person summoned could not be convicted, though he purposely failed to attend.<sup>22</sup>.

**[s 174.3] Police Notice.—**

If the accused were not within the jurisdiction of the police station or adjoining police station while being served with an order under [section 160, Cr PC, 1973](#), they were not legally bound to attend before the requisitioning police-officer and as such on their failure to attend, their conviction under [section 174, IPC, 1860](#), could not be maintained.<sup>23</sup>.

**[s 174.4] Notice by Railway Protection Force.—**

Enquiry conducted by an officer of the Railway Protection Force being in the nature of a judicial proceeding under [section 9 of the Railway Property \(Unlawful Possession\) Act, 1966](#), any person summoned by such officer to produce any document or give evidence, shall be bound to produce such document and to state the truth in course of his examination. Failure to do so or furnishing of false documents, etc., will entail prosecution under [sections 174, 175, 179, 180 and 193, IPC, 1860](#), as the case may be.<sup>24</sup>.

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

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

14. Subs. by the A.O. 1950, for "Zila Judge".

15. *Ram Saran*, (1882) 5 All 7.

16. *Paranga v State*, (1893) 16 Mad 463.
17. *Guman*, (1873) Unrep. Cr C 75 : (1870) 5 MHC (Appx) 15.
18. *Krishtappa*, (1896) 20 Mad 31.
19. *Venkaji Bhaskar*, (1871) 8 BHC (Cr C) 19 : (1865) 1 Weir 87.
20. *Sreenath Ghose*, (1868) 10 WR (Cr) 33.
21. *Kisan Bapu*, (1885) 10 Bom 93.
22. *Krishtappa*, sup.
23. *Krishan*, [1975 Cr LJ 620](#) (HP).
24. *BC Saxena*, [1983 Cr LJ 1432](#) (AP).

## THE INDIAN PENAL CODE

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#### **25. [[s 174-A] Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.**

**Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of [section 82 of the Code of Criminal Procedure, 1973](#) shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.]**

#### COMMENT.—

**Cr PC (Amendment) Act, 2005—Clause 44.**—This clause amends the [IPC, 1860](#) as follows, namely:—

Clause 12 seeks to insert new sub-sections (4) and (5) in section 82 of the Code to provide for the declaration of a person as proclaimed offender, if he fails to appear in spite of the proclamation published under sub-section (1) of that section. In order to curb the tendency on the part of criminals not to attend the Court in response to proclamation published under sub-section (1) or further proclamation issued under sub-section (4) declaring the accused as "Proclaimed Offender" a new section 174-A is being added to the [Indian Penal Code](#) to prescribe punishment for such offender. [*Notes on Clauses.*]

If Investigating Officer submits charge sheet without arresting the accused persons (unless he is on bail), it can be submitted only if he has been declared absconder and the case under [section 174-A IPC, 1860](#) has also been registered as a result of this proclamation.<sup>26.</sup>

The offence under [section 174A IPC, 1860](#) which arises out of the proceedings conducted during the main case can be tried and disposed of by the same Court. Lodging of separate FIR for commission of offence under [section 174 IPC, 1860](#) is not always required.<sup>27.</sup>

25. Ins. by [Cr PC](#) (Amendment) Act, 2005 (25 of 2005), section 44(b) (w.e.f. 23-6-2006 *vide* Notfn. No. SO 923(E), dated 21 June 2006).
26. *Iqbal v State of UP*, [2013 Cr LJ 1332](#) (All).
27. *A Krishna Reddy v CBI*, 2017 (5) ADR 635.



## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

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**[s 175] Omission to produce <sup>28</sup>[document or electric record] to public servant by person legally bound to produce it.**

**Whoever, being legally bound to produce or deliver up any <sup>29</sup>[document or electronic record] of any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both,**

**or, if the <sup>30</sup>[document or electronic record] is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

#### ILLUSTRATION

A, being legally bound to produce a document before a <sup>31</sup>[District Court], intentionally omits to produce the same. A has committed the offence defined in this section.

#### COMMENT—

This section punishes persons who refuse to produce documents which they are legally bound to produce before a public servant. From reading of [section 345 of the Cr PC, 1973](#), it is clear that offences under sections 175, 178, 179, 180 or 228 would constitute contempt, only if they are committed in the view or presence of the Court. This would also show that offences under sections 175, 178, 179, 180 or 228 *per se* do not amount to contempt. They are contempt only if they are committed "in the view or presence of the Court"; otherwise they remain offences under the [IPC, 1860](#) simpliciter.<sup>32</sup>

<sup>28</sup>. Subs. by Act 21 of 2000, section 91 and Sch. I, for "document" (w.e.f. 17-10-2000).

<sup>29</sup>. Subs. by Act 21 of 2000, section 91 and Sch. I, for "document" (w.e.f. 17-10-2000).

<sup>30</sup>. Subs. by Act 21 of 2000, section 91 and Sch. I, for "document" (w.e.f. 17-10-2000).

<sup>31</sup>. Subs. by the A.O. 1950, for "Zila Court".

<sup>32</sup>. *Arun Paswan v State of Bihar*, AIR 2004 SC 721 [LNIND 2003 SC 1085] : (2004) 5 SCC 53 [LNIND 2003 SC 1085].



## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

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#### **[s 176] Omission to give notice or information to public servant by person legally bound to give it.**

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

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

<sup>33</sup>[or, if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 (now 356) of the [Code of Criminal Procedure, 1898 \(now 1973\)](#)<sup>34</sup>. with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

#### **COMMENT.—**

**Omission to give notice or information.**—This section applies to persons upon whom an obligation is imposed by law to furnish certain information to public servants, and the penalty which the law provides is intended to apply to parties who commit an intentional breach of such obligation,<sup>35</sup> and not where the public servants have already obtained the information from other sources.<sup>36</sup>

A doctor is not obliged to inform the police when he treats a patient who has met with vehicle accident.<sup>37</sup>

#### **[s 176.1] CASE.—**

It was not within the scope of the Magistrate to hold investigative officer guilty for violation of his official duties who had already sought extension to complete the investigation. Omission on the part of IO to complete the investigation within 60 days from date of arrest is not covered under provisions of [section 176, IPC, 1860](#).<sup>38</sup> Under section 39 (i)(v) [Cr PC, 1973](#), where a person is aware of commission or an intention to commit an offence under [sections 302, 303 and 304, IPC, 1860](#), he is bound to give

information to the nearest Magistrate or police-officer of such commission or intention and failure to do so is punishable under this section. Where the mother of a murder suspect merely said that her son and daughter-in-law went to bed at about 10 P.M. and that early next morning, her son came out and ran away and she found her daughter-in-law lying dead on the bed, it was held that her failure to inform the police did not constitute an offence under [section 176, IPC, 1860](#), as she was neither aware that a murder was going to be committed nor aware that a murder had been committed.<sup>39</sup>

33. Added by Act 22 of 1939, section 2.

34. Now see [section 356 of the Code of Criminal Procedure, 1973](#) (2 of 1974).

35. *Phool Chand Brojobassee*, (1871) 16 WR (Cr) 35.

36. *Sashi Bhusan Chuckrabutty*, (1878) 4 Cal 623 ; *Pandya*, (1884) 7 Mad 436; *Gopal Singh*, (1982) 20 Cal 316 .

37. *SN Naik v State of Maharashtra*, 1996 Cr LJ 1463 (Bom).

38. *Manoj Kumar Gautam v State of UP*, 2009 Cr LJ 3176 (Pat).

39. *TS John v State*, 1984 Cr LJ 753 (Ker). See also *Geetha v Sub-Inspector of Excise, Mudigere*, 2007 Cr LJ 3496 (Kar).

## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

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#### [s 177] Furnishing false information.

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

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

#### ILLUSTRATIONS

- (a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.
- (b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause, 5, section VII, Regulation III, 1821,<sup>40</sup> of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the later part of this section.

<sup>41</sup>.**[Explanation.—In section 176 and in this section the word "offence" includes any act committed at any place out of** <sup>42</sup>.**[India], which, if committed in** <sup>43</sup>.**[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.]**

**COMMENT.—**

**Furnishing false information.**—Section 176 deals with the omission to give information; this section deals with the giving of false information. Persons who are not under a legal obligation to furnish information cannot be dealt with under these sections.<sup>44</sup> Furnishing false information is distinct from omission to give information. Omission to mention about a two-wheeler in the statement of assets and liabilities by a public servant is not an offence under [section 177 IPC, 1860](#).<sup>45</sup> It is clear that the accused having been aware of the fact that she belongs to "Havyak Brahmin" by caste, furnished false information to the authority and obtained admission by producing false caste certificate. The ingredients of section 177 are proved.<sup>46</sup> In a case where the allegation was that the complainant filed false information in nomination paper, it was held that a complaint by the Returning officer is mandatory.<sup>47</sup>

The appellant being a *Sarpanch* of the Gram Panchayat was legally bound to give correct information and issue a correct certificate but he issued a false certificate in favour of one Lal Chand that he does not own any land except the land which he has made fit for cultivation, in fact, though Lal Chand owned 13 *kanals*, 13 *marlas* and also his wife owned lands in the village Baruhi. Therefore, the ingredients of section 177 of the Code were proved as against him.<sup>48</sup>

### [s 177.1] Application of [Section 195 and 340 Cr PC, 1973](#).—

[Section 195\(1\), Cr PC, 1973](#) lays down that no Court shall take cognizance of any offence punishable under sections 172–188, [IPC, 1860](#) except on the complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate. The provision of [section 195\(1\), Cr PC, 1973](#) is mandatory.<sup>49</sup>

40. Rep. by Act 17 of 1862.

41. Added by Act 3 of 1894, section 5.

42. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1-4-1951), to read as above.

43. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1-4-1951), to read as above.

44. *Ashok Kumar Mittal v Ram Kumar Gupta*, (2009) 2 SCC 656 [LNIND 2009 SC 33] : (2009) 1 SCC (Cr) 836 : (2009) 1 KLT 398 [LNIND 2009 SC 33] : (2009) 1 CHN 184 (SC) : (2009) 234 ELT 193 .

45. *Veeranna v State of Karnataka*, 2013 Cr LJ (NOC) 335 (Kar).

46. *State of Karnataka v G M Sumanabai*, 2004 Cr LJ 4112 (Kar).

47. *Amita Trivedi v State of Rajasthan*, 2013 Cr LJ (NOC) 240 (Raj). See also *Jayalalitha v Kuppasamy*, 2013 Cr LJ 839 (SC) : 2012 (11) Scale 432 [LNIND 2012 SC 756] .

48. *Bishan Dass v State of Punjab*, 2015 Cr LJ 281 : 2014 (9) Scale 690 [LNINDORD 2014 SC 21072] . See also *State of Karnataka v G M Sumanabai*, 2004 Cr LJ 4112 (Kar).

49. *Lakpa Sherpa v State of Sikkim*, 2004 Cr LJ 3488 (Sik). See also *Ram Dhan v State of UP*, 2012 (4) Scale 259 [LNIND 2012 SC 1057] : 2012 AIR(SCW) 2500 : 2012 Cr LJ 2419 : (2012) 5

SCC 536 [LNIND 2012 SC 1057] : AIR 2012 SC 2513 [LNIND 2012 SC 1057] **relied** on *Sachida Nand Singh v State of Bihar*, (1998) 2 SCC 493 [LNIND 1998 SC 138] .

## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

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#### **[s 178] Refusing oath or affirmation when duly required by public servant to make it.**

**Whoever refuses to bind himself by an oath <sup>50</sup>. [or affirmation] to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

#### **COMMENT.—**

**Refusal to take oath.**—The refusal to take an oath amounts to contempt of Court. The person refusing may be dealt with under [section 345 of the Cr PC, 1973](#) summarily or the Court may proceed under section 195 of the same Code. The penalty of this section would not be attracted where the refusal to take oath is justifiable. This observation of the Supreme Court occurs in *Kiran Bedi and Inder Singh v Committee of Inquiry*.<sup>51</sup> The justification available to the police-officers in question was that they were sought to be cross-examined under oath at the very outset of the inquiry, whereas other officers similarly placed were to figure in the cross-examination at a subsequent stage. This procedure was discriminatory, hence, the justification. The Court accordingly held that the committee should not have directed a complaint to be filed against them under this section.

<sup>50</sup>. Ins. by Act 10 of 1873, section 15.

<sup>51</sup>. *Kiran Bedi and Inder Singh v Committee of Inquiry*, AIR 1989 SC 714 [LNIND 1989 SC 833] : 1989 Cr LJ 903 : (1989) 1 SCR 20 [LNIND 1989 SC 833] : (1989) 1 SCC 494 [LNIND 1989 SC 10].



## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

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#### [s 179] Refusing to answer public servant authorised to question.

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

#### COMMENT.—

**Refusing to answer questions.**—The offence under this section consists in the refusal to answer a question which is relevant to the subject concerning which the public servant is authorised to inquire, or which at least touches that subject. Under sections 121–132 of the [Indian Evidence Act](#) a witness is exempted from answering certain questions. If a person gives false answers, then he will be guilty under section 193 and not under this section.

Refusing to answer the question of a police-officer investigating a case under [section 161 of the Criminal Procedure Code](#) is not an offence under this section.<sup>52</sup> This section also applies to the accused as the words used in [section 161\(1\) Cr PC, 1973](#), are "any person acquainted with facts and circumstances of the case". Thus, the accused too is bound to answer a question put by a police-officer in course of his examination. However, the answer to a question has a tendency to incriminate him; he can claim protection under [Article 20\(3\) of the Constitution](#) and refuse to answer. Of course, it is a matter which has to be ultimately decided by the Court.<sup>53</sup>

The matter is entirely different so far the officers of the Railway Protection Force are concerned first, they are not police-officers<sup>54</sup> and second, the enquiry conducted by them under [sections 8 and 9 of the Railway Property \(Unlawful Possession\) Act, 1966](#) is not a police investigation but should be deemed to be a judicial proceeding.<sup>55</sup> Section 9 of this special Act specifically lays down that during such enquiry by an RPF officer, persons summoned have to obey summons and state the truth and, therefore, by refusing to answer, such persons would make themselves liable under [section 179, IPC, 1860](#). The question of invoking [Article 20\(3\) of the Constitution](#) does not arise in such a case, as till the complaint is filed under section 190(1)(a), [Cr PC, 1973](#) by the RPF officer, a person cannot be regarded as "accused of an offence" within the meaning of [Article 20\(3\) of the Constitution](#).<sup>56</sup>

52. *Mawzanagyi*, (1930) 8 Ran 511.
53. *Nandini Satpathy v PL Dani*, 1978 Cr LJ 968 : AIR 1978 SC 1025 .
54. *State of MP v Chandan Singh*, 1980 Cr LJ 1024 (MP); *R Muthu v Asst. SI, RPF*, 1983 Cr LJ 1309 (Mad); *State of UP v Durga Prasad*, 1974 Cr LJ 1465 : AIR 1974 SC 2136 [LNIND 1974 SC 248] .
55. *Durga Prasad, Supra*; *BC Saxena*, 1983 Cr LJ 1432 (AP).
56. *BC Saxena, Supra*; *Mohd. Dastgir*, 1960 Cr LJ 1159 : AIR 1960 SC 758 .

## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

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#### **[s 180] Refusing to sign statement.**

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

#### **COMMENT—**

The essential ingredients to constitute the offence under this Section are:—

- (i) The accused made a statement before a public servant.
- (ii) The accused was required by public servant to sign such statement.
- (iii) Public servant was legally empowered or competent to require the accused to sign that statement, and
- (iv) That the accused refused to sign statement.<sup>57.</sup>

#### **[s 180.1] Refusal to sign.—**

The statement must be such a one as the accused can be legally required to sign, e.g., a statement recorded under the provisions of sections 164 and 281(5) of the [Cr PC, 1973](#) or a statement under [sections 8 and 9 of the Railway Property \(Unlawful Possession\) Act, 1966](#).<sup>58.</sup> To attract the offence under [section 180 of IPC, 1860](#), the person accused of such offence should be under a legal obligation or compulsion to sign the statement or submissions.<sup>59.</sup>

<sup>57.</sup> *Basavaraj Shivarudrappa Sirsi v State of Karnataka*, [2011 Cr LJ 4809](#) (Kar).

<sup>58.</sup> *Durga Prasad, and BC Saxena, Supra*.

<sup>59.</sup> *Basavaraj Shivarudrappa Sirsi v State of Karnataka* [2011 Cr LJ 4809](#) (Kar).



## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

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#### **[s 181] False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.**

Whoever, being legally bound by an oath <sup>60</sup>[or affirmation] to state the truth on any subject to any public servant or other person authorized by law to administer such oath <sup>61</sup>[or affirmation], makes, to such public servant or other person as aforesaid, touching the subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

#### **COMMENT.—**

**False statement on oath.**—This section should be compared with section 191. Under it a false statement to any public servant, or other person, authorised to administer oath or affirmation, is punishable.<sup>62</sup> It does not apply where the public servant administers the oath in a case wholly beyond his jurisdiction<sup>63</sup> or where he is not competent to make a statement on solemn affirmation.<sup>64</sup>

#### **[s 181.1] Failure to administer oath.—**

In view of [sections 4 and 5](#) of the [Oaths Act, 1969](#), it is always desirable to administer oath or statement may be recorded on affirmation of the witness. The Supreme Court in *Rameshwar v State of Rajasthan*,<sup>65</sup> has categorically held that the main purpose of administering of oath is to render persons who give false evidence, liable to prosecution and further to bring home to the witness the solemnity of the occasion and to impress upon him the duty of speaking the truth, further such matters only touch credibility and not admissibility. However, in view of the provisions of [section 7 of the Oaths Act, 1969](#), the omission of administration of oath or affirmation does not invalidate any evidence.<sup>66</sup>

<sup>60</sup>. Ins. by Act 10 of 1873, section 15.

61. Ins. by Act 10 of 1873, section 15.
62. *Niaz Ali*, (1882) 5 All 17 .
63. *Andy Chetty*, (1865) 2 MHC 438 .
64. *Subba*, (1883) 6 Mad 252.
65. *Rameshwar v State of Rajasthan*, AIR 1952 SC 54 [LNIND 1951 SC 76] .
66. *State of Rajasthan v Darshan Singh*, (2012) 5 SCC 789 [LNIND 2012 SC 334] : 2012 AIR (SCW) 3036 : 2012 Cr LJ 2908 : 2012 (5) Scale 570 [LNIND 2012 SC 334] .

## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

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**67. [s 182] False information, with intent to cause public servant to use his lawful power to the injury of another person.**

**Whoever gives to any public servant any information <sup>1</sup> which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—**

- (a) **to do or omit anything<sup>2</sup> which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or**
- (b) **to use the lawful power of such public servant to the injury or annoyance of any person,**

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

#### ILLUSTRATIONS

- (a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.
- (b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.
- (c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villages or some of them. A has committed an offence under this section.]

**Object.**—The object of this section is that a public servant should not be falsely given information with the intent that he should be misled by a person who believed that information to be false, and intended to mislead him. This section does not require that action must always be taken if the person who makes the public servant knows or believes that action will be taken.<sup>68.</sup>

**[s 182.1] Ingredients.—**

- (1) Giving of an information to a public servant.
- (2) Information must have been known or believed to be false by the giver.
- (3) Such false information was given with intention to cause, or knowing that it is likely to cause such public servant (a) to do or omit anything which he ought not to do or omit to do if the true facts were known to him, or (b) to use his lawful power to the injury or annoyance of any person.<sup>69.</sup>

**1. 'Any information'.—**The Bombay and the Patna High Courts have ruled that any 'false information' given to a public servant, with the intent mentioned in the section, is punishable under it whether that information is volunteered by the informant or is given in answer to questions put to him by the public servant.<sup>70.</sup> Where a driver of a motor vehicle, who had no licence with him, on being asked his name by a police-officer, gave a fictitious name, it was held that he had committed an offence under this section.<sup>71.</sup>

The section makes no distinction between information relating to a cognizable offence and one relating to a non-cognizable offence, nor is there anything in the section to justify the conclusion that it applies only to cases in which the information given to any public servant relates to a cognizable offence.<sup>72.</sup>

**2. 'To do or omit anything'.—**It is not necessary that the public servant to whom false information is given should be induced to do anything or to omit to do anything in consequence of such information. The gist of the offence is not what action may or may not be taken by the public servant to whom false information is given, but the intention or knowledge (to be inferred from his conduct) of the person supplying such information.<sup>73.</sup> Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken.<sup>74.</sup> Under this clause it is not necessary to show that the act done would be to the injury or annoyance of any third person.<sup>75.</sup>

**[s 182.2] Condition precedent for prosecution.—**

This section has to be read in conjunction with [section 195\(1\)\(a\) of the Cr PC, 1973](#) which requires a complaint for offences under sections 172–188, [IPC, 1860](#), to be filed by the public servant concerned or by some other public servant to whom he is administratively subordinate.<sup>76.</sup> It is mandatory to follow the procedure prescribed under section 195 of the Code while initiating action against an accused for an offence punishable under [section 182, IPC, 1860](#) else such action is rendered void *ab initio*.<sup>77.</sup> Thus, investigation into an offence under [section 182, IPC, 1860](#) can be done only on the complaint given by a competent public servant; taking note of the fact that the procedure contemplated is not complied within the line with [section 195, Cr PC, 1973](#) as well as the settled legal position evolved through the decisions of the Apex Court, the cognizance assumed by the Magistrate for the offence under [section 182, IPC, 1860](#) is erroneous and not sustainable in law.<sup>78.</sup> Similar view has been expressed by



the Hon'ble Supreme Court in *PD Lakhani v State of Punjab*,<sup>79</sup> relying upon its earlier judgment in *Daulat Ram's case (supra)* and *Mata Bhikh's case*.<sup>80</sup> It is held that:

no complaint, therefore, could be lodged before the learned Magistrate by the Station House Officer. Even assuming that the same was done under the directions of SP, Section 195, in no uncertain terms, directs filing of an appropriate complaint petition only by the public servant concerned or his superior officer. It, therefore, cannot be done by an inferior officer. It does not provide for delegation of the function of the public servant concerned<sup>81</sup>.

### **[s 182.3] Private Complaint.—**

Since the offence under section 182 is covered by the bar of [section 195 Cr PC, 1973](#) there is absolutely no scope for filing a private complaint. The embargo in [section 195 Cr PC, 1973](#) takes away the right to prosecute in respect of the aforesaid offences by way of filing a private complaint. Going by [section 195 Cr PC, 1973](#) no Court shall take cognizance except in the manner contemplated by [section 195 Cr PC, 1973](#) and consequently, no jurisdiction to refer the case under [section 156\(3\) Cr PC, 1973](#) to the Police for investigation or to issue a direction to proceed under the aforesaid sections to the Police on a private person's complaint.<sup>82</sup>

### **[s 182.4] Mala fide Prosecution.—**

The Supreme Court has laid down that proceedings can be taken under this section as well as under sections 211 and 500 against persons who initiate prosecution against a person in high position with a view to wreaking vengeance for a private and personal grudge.<sup>83</sup>

### **[s 182.5] CASES.—Causing public servant to do what he ought not to do.—**

Mere non-mentioning of the complaint already filed in the Court of Chief Judicial Magistrate, in the petition filed under [section 156\(3\) Cr PC, 1973](#) before the Special Sessions Judge, would not be enough to attract the section.<sup>84</sup> The accused falsely telegraphed to a District Magistrate that the town had been attacked by a gang of 200 robbers, but the Magistrate put no faith in the telegram and took no action; it was held that the accused were guilty of an offence under this section.<sup>85</sup> A personated B at an examination and passed the examination and obtained a certificate in B's name. B, thereupon, applied to have his name entered in the list of candidates for Government service. He attached to this application the certificate issued in his name, and his name was ordered to be entered on the list of candidates. It was held that he was guilty of an offence under this section.<sup>86</sup> Where the ulterior motive of the accused in making a false report of burglary was to suppress certain documents by pleading that they were stolen, it was held that the act of the accused was not punishable under this section.<sup>87</sup> Where a resolution was passed in a public meeting condemning police inaction in regard to an assault case and copies of the said resolution were sent to various authorities including the Superintendent of Police and the officer-in-charge, but the officer-in-charge took exception to it and filed a complaint in Court under [sections 182 and 211, IPC, 1860](#), it was held that forwarding of the resolution did not amount to institution of criminal proceeding and no offence either under [section 182](#) or [section 211, IPC, 1860](#), was committed. It was further observed that police should not be so sensitive over public criticism.<sup>88</sup>

## [s 182.6] Period of Limitation.—

Since the offence under [section 182 IPC, 1860](#) is punishable with imprisonment for a period of six months only, the authority should file the complaint under [section 182 IPC, 1860](#) within one year from the date when that authority found that the allegations made in the complaint were false. Since more than four years was elapsed from the date when the authority found the allegations were false, no question of filing any complaint under [section 182 IPC, 1860](#) at this belated stage arises.<sup>89.</sup>

67. Subs. by Act 3 of 1895, section 1, for section 182.
68. *Daulat Ram*, [AIR 1962 SC 1206 \[LNIND 1962 SC 28\]](#) : [1962 \(2\) Cr LJ 286](#) .
69. *Jiji Joseph v Tomy Ignatius*, [2013 Cr LJ 828](#) (Ker).
70. *Ramji Sajabarao*, (1885) 10 Bom 124; *Lachman Singh*, (1928) 7 Pat 715.
71. *Lachman Singh*, (1928) 7 Pat 715.
72. *Thakuri*, [\(1940\) 16 Luck 55](#) .
73. *Budh Sen v State*, [\(1891\) 13 All 351](#) ; *Raghu Tiwari*, [\(1893\) 15 All 336](#) .
74. *Sham Lal Thukral v State of Punjab*, [2009 Cr LJ 189](#) (PH) **relying** on [AIR 1962 SC1206 \[LNIND 1962 SC 28\]](#) : [\(1962 \(2\) Cr LJ 286\)](#) .
75. *Ganesh Khanderao*, (1889) 13 Bom 506.
76. *Daulat Ram*, [1962 \(2\) Cr LJ 286](#) : [AIR 1962 SC 1206 \[LNIND 1962 SC 28\]](#) ; *TS Venkateswaran*, [1982 Cr LJ NOC 68](#) (Ker); See also *State of Rajasthan v Chaturbhuj*, [1983 Cr LJ NOC 56](#) (Raj).
77. *Saloni Arora v State of NCT of Delhi*, [AIR 2017 SC 391 \[LNIND 2017 SC 23\]](#) .
78. *EK Palanisamy v DySP*, [2010 Cr LJ 1802](#) (Mad); *Geetika Batra v OP Batra*, [2009 Cr LJ 2687](#) (Del).
79. *PD Lakhani v State of Punjab*, 2008 AIR SCW 3357.
80. *Mata Bhikh's case*, [\(1994\) 4 SCC 95 \[LNIND 1994 SC 311\]](#) : (1994 AIR SCW 1935).
81. Also see *Sham Lal Thukral v State of Punjab*, [2009 Cr LJ 189](#) (PH); *Randhir v State of Haryana*, [2004 Cr LJ 479](#) (PH).
82. *Loid Jude Manakkat v State*, [2013 \(2\) KLT 931](#) : [2013 \(3\) KLJ 53](#) .
83. *State of Haryana v Bhajan Lal*, 1992 Supp (1) SCC 335 : [AIR 1992 SC 604](#) : [1992 Cr LJ 527](#) .
84. *Subhash Chandra v State of UP*, [\(2000\) 9 SCC 356 \[LNIND 1999 SC 1565\]](#) : [JT 2000 \(2\) SC 26](#) : 2000 AIR(SCW) 4947.
85. *Budh Sen*, *supra*.
86. *Ganesh Khanderao*, *supra*.
87. *Shambhoo Nath*, [AIR 1959 All 545 \[LNIND 1958 ALL 203\]](#) .
88. *Shiv Kumar Prasad Singh*, [1984 Cr LJ 1417](#) (Pat).
89. *Harbhajan Singh Bajwa v Senior Superintendent of Police, Patiala*, [2000 Cr LJ 3297](#) (PH).

## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

This Chapter contains penal provisions intended to enforce obedience to the lawful authority of public servants. Contempt of the lawful authority of Courts of Justice, of Officers of Revenue, Officers of Police, and other public servants are punishable under this head.

#### **[s 183] Resistance to the taking of property by the lawful authority of a public servant.**

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

#### **COMMENT—**

This section makes it penal to offer resistance to the taking of property by the lawful authority of any public servant. The Bombay High Court has held that there are no words in the section as there are in section 99, extending the operation of the section to acts which are not strictly justifiable by law. Resistance to an act of a public officer acting *bona fide* though in excess of his authority may give rise to some charge in the nature of assault, but it cannot afford any foundation for a prosecution under this section.<sup>90</sup> The Madras High Court is of opinion that this section should be read in conjunction with section 99. Taking the two together, if an officer acts in good faith under colour of his office the mere circumstance that his "act may not be strictly justifiable by law" cannot affect the lawfulness of his authority. In this case, property had been seized in execution by the officer of the Court, and it was held that as the officer was acting *bona fide*, though he had wrongly seized the property of the accused, the accused could be convicted under this section for resisting the execution.<sup>91</sup> This view of the law receives substantial support from the decision of the Supreme Court in *Keshoram's case*<sup>92</sup> where too it has been held that merely because no prior notice was served on the accused before seizing his cattle under the Delhi Municipal Act for recovering arrears of milk tax, it could not be said that the municipal officer's action was entirely illegal and as such the accused had the right of private defence against the *bona fide* act of the public servant. In the instant case the accused was held to have been rightly convicted under sections 353/332/333, [IPC, 1860](#), for assaulting the public servant. On a parity of reasoning it can be said that had the accused been prosecuted under section 183 of the Code, he could have also been convicted under that section as well.

#### **[s 183.1] Lawful authority wanted.—**

Where a person resisted an official in attaching property under a warrant, the term of which had already expired,<sup>93</sup> or which did not specify the date on or before which it was to be executed,<sup>94</sup> it was held that he was not guilty under this section. If the

warrant is executed by a Court official when it is addressed to a peon, resistance to the Court official is not illegal.<sup>95</sup>

If a bailiff breaks open the doors of a third person in order to execute a decree against a judgment-debtor, he is a trespasser if it turns out that the person or goods of the debtor are not in the house; and under such circumstances the owner of the house does not by obstructing the bailiff, render himself punishable under section 183 or section 186.<sup>96</sup>

90. *Sakharam Pawar*, (1935) 37 Bom LR 362 .

91. *Tiruchitrambala Pathan*, (1896) 21 Mad 78.

92. *Keshoram*, 1974 Cr LJ 814 : AIR 1974 SC 1158 [LNIND 1974 SC 130] .

93. *Anand Lal Bera v State*, (1883) 10 Cal 18 .

94. *Mohini Mohan Banerji*, (1916) 1 PLJ 550 , 18 Cr LJ 39.

95. *Ibid.*

96. *Gazi Aba Dore*, (1870) 7 BHC (Cr C) 83.

## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

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#### **[s 184] Obstructing sale of property offered for sale by authority of public servant.**

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

#### **COMMENT—**

This section punishes intentional obstruction of the sale of any property conducted under the lawful authority of a public servant. No physical obstruction is necessary. Use of abusive language by a person at an auction-sale conducted by a public servant makes him liable to be convicted of an offence under this section.<sup>97.</sup>

<sup>97.</sup> *Provincial Govt. CP & Berar v Balaram*, (1939) Nag 139.

## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

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#### **[s 185] Illegal purchase or bid for property offered for sale by authority of public servant.**

**Whoever, at any sale of property<sup>1</sup> held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.**

#### **COMMENT—**

This section makes it penal to bid at a public sale of property on account of a party who is under a legal incapacity to purchase it, or to bid for it not intending to complete the purchase or as it is expressed to perform the obligations under which the bidder lays himself by such "bidding".<sup>98.</sup>

**1. 'Property'.—**This word is used in its wide sense. The right to sell drugs is a monopoly granted for a certain area and comes within the definition of property. A person who bids at an auction of the right to sell drugs within a certain area under a false name and, when the sale is confirmed in his favour, denies that he has ever made any bid at all, is guilty of an offence under this section.<sup>99.</sup>

<sup>98.</sup> 2nd Rep., section 110.

<sup>99.</sup> *Bishan Prasad*, (1914) 37 All 128 .

## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

This Chapter contains penal provisions intended to enforce obedience to the lawful authority of public servants. Contempt of the lawful authority of Courts of Justice, of Officers of Revenue, Officers of Police, and other public servants are punishable under this head.

#### **[s 186] Obstructing public servant in discharge of public functions.**

**Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.**

#### **State Amendment**

**Andhra Pradesh.**— *Offence under section 186 is cognizable.*

*[Vide A.P.G.O. Ms. No. 732, dated 5th December, 1991].*

#### **COMMENT—**

This section provides for voluntarily obstructing a public servant in the discharge of his duties. It must be shown that the obstruction or resistance was offered to a public servant in the discharge of his duties or public functions as authorised by law. The mere fact of a public servant believing that he was acting in the discharge of his duties will not be sufficient to make resistance or obstruction to him amount to an offence.<sup>100</sup> If the public servant is acting in good faith under colour of his office there is no right of private defence against his act.<sup>101</sup>

The word "obstruction" connotes some overt act in the nature of violence or show of violence.<sup>102</sup> To constitute "obstruction", it is not necessary that there should be actual criminal force. It is sufficient if there is either a show of force or a threat or any act preventing the execution of any act by a public servant.<sup>103</sup> Though an offence under this section is a non-cognizable one, by virtue of powers vested in the State Government under [section 10 of the Criminal Law Amendment Act, 1932](#), it can be made a cognizable offence in a specified area by means of a notification, while such notification remains in force.

#### **[s 186.1] Initiation of Prosecution.—**

To initiate prosecution under this section it is necessary to see that the complaint is filed under section 195(1)(a), [Cr PC, 1973](#), by the concerned public servant or his superior officer to whom he is administratively subordinate (See also discussion under sub-head "Condition precedent for Prosecution under section 182 ante.) It is also not possible to bypass the requirements of section 195(1)(a), [Cr PC, 1973](#), by merely changing the label of the offence, say from section 186 to [section 353, IPC, 1860](#).<sup>104</sup>

### **[s 186.2] Offences with bar under [section 195 Cr PC, 1973](#) with some offences without the bar.—**

Where an accused commits some offences which are separate and distinct from those contained in [section 195 of the Cr PC, 1973](#), section 195 will affect only the offences mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of section 195 of the Code.<sup>105</sup> It is a well-accepted proposition of law that when an accused commits some offences which are separate and distinct from those contained in section 195; section 195 will affect only the offences mentioned therein unless such other offences form an integral part of the same so as to amount to offences committed as a part of the same transaction. That in such case the other offences would also fall within the ambit of section 195 of the Code. In other words, the offences charged against the petitioners under [section 143, 147, 148, 149, 332, 333 and 307 of IPC, 1860](#), cannot be split from the complaint for a separate offence in the facts and circumstances of the present case, and thereby cognizance in respect to said offences are also barred under section 195(1)(a)(i) of the Code.<sup>106</sup>

### **[s 186.3] CASES.—Obstruction.—**

A Circle Inspector went into the compound of the accused with a village servant to remove a portion of the hedge which was an encroachment. When the servant put his scythe to the hedge to cut it, the accused caught hold of the scythe and threatened him. It was held that the accused was guilty of an offence under this section, since his laying hold of the scythe amounted to physical obstruction, and the obstruction offered to the servant was tantamount to obstruction to the Circle Inspector under whose orders he was acting.<sup>107</sup> The daughter of the tenant of the accused died of electrocution. The police-officers entered the premises with permission to check fresh wiring and leakage of current. They were prevented from taking photographs by the accused and also not allowed to leave the house. The Court said that this amounted to obstruction within the meaning of section 186 and wrongful confinement within the meaning of section 342.<sup>108</sup> Section 186 contemplates obstruction of a public servant in the discharge of his public duty and section 332 contemplates voluntarily causing hurt to him to deter him from performing his public duty. The gravity of the offences is different. Offence under section 332 is cognizable. The requirement of making a complaint in writing as postulated by [section 195, Cr PC, 1973](#), cannot be extended to the case of an offence under section 332.<sup>109</sup>

### **[s 186.4] Section 186 and Section 353: Distinction between.—**

[Sections 186 and 353, IPC, 1860](#) relate to two distinct offences and while the offence under the latter section is a cognizable offence the one under the former section is not so. The ingredients of the two offences are also distinct. [Section 186, IPC, 1860](#) is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions but under [section 353, IPC, 1860](#) the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary. The quality of the two offences is also different. Section 186 occurs in Chapter X of the [IPC, 1860](#) dealing with Contempts of the lawful authority of public servants, while section 353 occurs in Chapter XVI regarding the Offences affecting the human body. It is well established that [section 195 of the Cr PC, 1973](#) does not bar the trial of an accused person for a distinct offence disclosed by the same set of facts but



which is not within the ambit of that section.<sup>110</sup> If in truth and substance the offence in question falls in the category of sections mentioned in section 195 of the Code and it was not open to bypass its provisions even by choosing to prosecute under [section 353, IPC, 1860](#) only.<sup>111</sup>

100. *Lilla Singh*, (1894) 22 Cal 286 ; *Tulsiram v State*, (1888) 13 Bom 168.
101. *Poomalai Udayan*, (1898) 21 Mad 296; *Pukot Kotu*, (1896) 19 Mad 349.
102. *Phudki*, AIR 1955 All 104 [LNIND 1954 ALL 119] .
103. *Babulal*, (1956) 58 Bom LR 1021 .
104. *Oduvil Devaki Amma*, 1982 Cr LJ NOC 11 (Ker).
105. *State of UP v Suresh Chandra Srivastava*, AIR 1984 SC 1108 [LNIND 1984 SC 575] : 1984 Cr LJ 926 .
106. *Ramji Bhikha Koli v State of Gujarat*, 1999 Cr LJ 1244 (Guj).
107. *Bhaga Mana*, (1927) 30 Bom LR 364 . See also *Gyan Bahadur v State of MP*, 2013 Cr LJ 1729 (MP).
108. *Veena Ranganekar v State*, 2000 Cr LJ 2543 (Del).
109. *State of HP v Vidya Sagar*, 1997 Cr LJ 3893 (HP).
110. *Durgacharan Naik v State of Orissa*, AIR 1966 SC 1775 [LNIND 1966 SC 59] : 1966 Cr LJ 1491 (SC).
111. *Ashok v The State*, 1987 Cr LJ 1750 (MP); *Mrityunjoy Das v State*, 1987 Cr LJ 909 (Cal).

## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

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#### **[s 187] Omission to assist public servant when bound by law to give assistance.**

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

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

#### **COMMENT—**

This section provides, first in general terms for the punishment when a person, being bound by law to render assistance to a public servant in the execution of his public duty, intentionally omits to assist; and second, for the punishment when the assistance is demanded for certain specified purposes.<sup>112.</sup>

This section speaks of assistance to be rendered to public servants, just as sections 176 and 177 speak of furnishing true information. A case was registered against the accused/ Sub-Inspector of Police under [section 187 of the IPC, 1860](#) for not assisting the Assisting Sessions Judge, in the service of summons to witnesses and administration of justice. In the light of the language employed in [sections 195\(1\) of Cr PC, 1973](#), the prosecution initiated at the instance of the Assistant Sessions Judge cannot be sustained for the reason that the Sub-Inspector of Police is not subordinate to the said Officer. Unless a complaint is made by the competent officer as specified under section 195(1) of the Code, the prosecution cannot be further proceeded with. Apart from this aspect of the matter, in as much as the service of summons, being in discharge of the official duties of the Sub-Inspector, sanction under section 197 of the code is also required.<sup>113.</sup>

112. *Ramaya Naika*, (1903) 26 Mad 419, (FB).
113. *Paleti Anil Babu v State*, [2006 Cr LJ 3084](#) (AP).

## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

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#### **[s 188] Disobedience to order duly promulgated by public servant.**

**Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,**

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

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

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

#### ILLUSTRATION

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

#### COMMENT—

**Ingredients.**—To constitute this offence it is necessary to show—

- (1) a lawful order promulgated by a public servant empowered to promulgate it;
- (2) knowledge of the order which may be general or special;
- (3) disobedience of such order; and
- (4) the result that is likely to follow from such disobedience.

The offence under this section has now been made a cognizable offence under the [Cr PC, 1973](#). Though a bailable offence, it can be made non-bailable by a notification by the State Government under [section 10\(2\) of the Criminal Law Amendment Act, 1932](#).

There must be evidence that the accused had knowledge of the order with the disobedience of which he is charged. Mere proof of a general notification promulgating the order does not satisfy the requirements of the section.<sup>114</sup> "Promulgation" does not require publication in newspapers or by posters.<sup>115</sup> Mere disobedience of an order does not constitute an offence in itself; it must be shown that the disobedience has or tends to a certain consequence,<sup>116</sup> namely, annoyance, obstruction, etc. The annoyance has to be proved as a fact; mere mental annoyance of the authorities concerned is not enough.<sup>117</sup> It is also necessary to see that the order was not only lawfully made but duly promulgated and the accused had knowledge of the order, else his conviction cannot be sustained.<sup>118</sup> Where a standing crop was attached by means of an order under [section 145 Cr PC, 1973](#) and the accused, who had come to know the order, reaped and removed the crop, an offence under this section was held to have been committed. It was a disobedience packed with a tendency to cause riot or affray.<sup>119</sup> The complaint of this offence must disclose that the disobedience of the order led to the consequences narrated in clauses (2) and (3) of [section 188, IPC, 1860](#), otherwise no cognizance can be taken on such a complaint.<sup>120</sup> It is not necessary that, if the order disobeyed was that of a civil Court, a complaint should be received from that Court. A criminal Court can entertain a complaint of disobedience from any other source.<sup>121</sup>

It is open to a person charged under this section to plead in defence that the order, though made with jurisdiction, was utterly wrong or improper on merits.<sup>122</sup>

#### **[s 188.1] Necessary particulars in the complaint.—**

In order to attract the provisions of [section 186 IPC, 1860](#), it has to be seen whether the public servant in the discharge of his public functions has been voluntarily obstructed or not. It is reiterated that what was mentioned in the complaint was that the government administration was disrupted for half an hour. Mere disruption of government administration without there being a specific mention that the public servants were obstructed from voluntarily discharging their public functions would not attract [section 186 IPC, 1860](#).<sup>123</sup>

Knowledge of orders.—The offence of disobedience of the orders of a public servant is not committed where there is nothing to show that the accused person had knowledge of the order.<sup>124</sup>

#### **[s 188.2] Curfew Order and Shoot to kill.—**

Violation of a curfew order under [section 144, Cr PC, 1973](#), is a minor offence punishable under [section 188, IPC, 1860](#), and as such the executive instruction to "Shoot to Kill" for violation of a prohibitory order under [section 144 Cr PC, 1973](#), is *ultra vires* [section 144 Cr PC, 1973](#), [section 188 IPC, 1860](#), [Articles 20\(1\) and 21 of the Constitution](#) and is, therefore, void and unlawful.<sup>125</sup>

#### **[s 188.3] Prohibitory order under Food and Safety Standards Act, 2006.—**

Disobedience to a prohibitory order issued by the Food and Safety Commissioner from possessing or transporting *Gutka* or *Pan Masala* would not cause breach of law and order. The Commissioner's order is not an order contemplated under Chapter 10 of the [IPC, 1860](#). Besides, the prohibitory order issued under [section 30 of the FSS Act, 2006](#) and its violation, would amount to offence only under [section 55 of the FSS Act, 2006](#). This specific provision is made in the special enactment, which is a law in itself. It would not permit any one to apply [section 188 of the IPC, 1860](#) for such breach or violation.<sup>126.</sup>

#### **[s 188.4] Complaint.—**

A written complaint by a public servant concerned is *sine qua non* to initiate a criminal proceeding under [section 188 of the IPC, 1860](#) against those who, with the knowledge that an order has been promulgated by a public servant directing either 'to abstain from a certain act, or to take certain order, with certain property in his possession or under his management' disobey that order.<sup>127.</sup>

114. *Ramdas Singh*, (1926) 54 Cal 152 .

115. *Srimati Tugla*, (1955) 2 All 547 .

116. *Lachhmi Devi*, (1930) 58 Cal 971 .

117. *Pradip*, AIR 1960 Assam 20 ; *DN Ramaiah*, 1972 Cr LJ 1158 (Mysore); *Saroj Hazra*, 48 Cr LJ 747 (Cal); *Bharat Raut*, 1953 Cr LJ 1787 24.(Pat); *Dalganjan*, 1956 Cr LJ 1176 (All); *Fakir Charan Das*, 1957 Cr LJ 1151 (Ori); *Pradip Choudhury*, 1960 Cr LJ 251 (Assam); *Ram Manohar Lohia*; 1968 Cr LJ 281 (All).

118. *K Papayya v State*, 1975 Cr LJ 1784 (AP).

119. *Bhagirathi Shrichandan v Damodar*, 1987 Cr LJ 631 (Ori).

120. *Padan Pradhan*, 1982 Cr LJ 534 (Pat).

121. *Thavasiyappan v Periasamy Nadar*, 1992 Cr LJ 283 .

122. *Bachuram v State*, AIR 1956 Cal 102 [LNIND 1955 CAL 186] .

123. *Anurag Thakur v State of HP*, 2016 Cr LJ 3363 : I L R 2016 (III) HP 1314.

124. *Bhoop Singh Tyagi v State*, 2002 Cr LJ 2872 (Del).

125. *Jayantilal v State*, 1975 Cr LJ 661 (Guj); see also *R Deb : Op Cit*, pp 840-841.

126. *Ganesh Pandurang Jadhao v The State of Maharashtra*, 2016 Cr LJ 2401 : III (2016) CCR 334 (Bom).

127. *State of UP v Mata Bhikh*, (1994) 4 SCC 95 [LNIND 1994 SC 311] : JT 1994 (2) SC 565 [LNIND 1994 SC 311] : (1994) 2 Scale 235 : (1994) 1 SCC (Cr) 831 : 1994 (2) SCR 368 [LNIND 1994 SC 311] . See also *C Muniappan v State of TN*, (2010) 9 SCC 567 [LNIND 2010 SC 809] : AIR 2010 SC 3718 [LNIND 2010 SC 809] : (2010) 3 SCC (Cr) 1402 : 2010 (8) Scale 637 : JT 2010 (9) SC 95 [LNIND 2010 SC 809] .

## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

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#### [s 189] Threat of injury to public servant.

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

#### State Amendment

**Andhra Pradesh.**— *In Andhra Pradesh offence under section 189 is cognizable.*

*[Vide A.P.G.O. Ms. No. 732, dated 5th December, 1991].*

#### COMMENT—

Under this section there must be a threat of injury either to the public servant or to any one in whom the accused believes the public servant to be interested. What the section deals with are menaces which would have a tendency to induce the public servant to alter his action. See section 503 which defines criminal intimidation and applies in all cases. This section deals with criminal intimidation of a public servant. Threats of violence to a public servant who accepted bribe money but did not do the promised work are not covered by this section. A public servant deserves protection, since in the performance of his duties, he is likely to cause disappointment to many and invite their wrath. That is why under sections 189 and 353 and various other sections of the [IPC, 1860](#), a public servant is strongly protected and punishment for offences against him is made deterrent. However if a public servant has gone astray and indulged in malpractices, more especially by way of taking bribe, he would necessarily become subject to public criticism and private accountability. What appears then at the forefront is not the performance of duty by the public servant, but the non-performance of some contract *dehors* the normal functions of the public servant. If that illegal contract gives rise to any act of violence at any stage, such acts cannot constitute by any stretch of imagination acts contemplated and punished under [sections 353 and 189, IPC, 1860](#).<sup>128.</sup>

Where workers of Communist Party (Marxist) went to a police station to protest against the arrest of their party workers and in the process asked the police-officer to release them on threat of dire consequences, it was held that the accused had committed an offence under this section.<sup>129.</sup> By a notification under [section 10 of the](#)

[Criminal Law Amendment Act, 1932](#), the State Government can make this section a cognizable offence for a specified area.

128. *Duraikhannu v State of TN*, [1987 Cr LJ 1461](#) (Mad); *Mrityunjoy Das v State*, [1987 Cr LJ 909](#) (Cal).

129. *De Cruz*, (1884) 8 Mad 140.



## THE INDIAN PENAL CODE

### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

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#### **[s 190] Threat of injury to induce person to refrain from applying for protection to public servant.**

**Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.**

#### **State Amendment**

**Andhra Pradesh.—Offence under section 190 is cognizable.**

*[Vide A.P.G.O. Ms. No. 732, dated 5th December, 1991].*

#### **COMMENT—**

The object of this section is to prevent persons from terrorising others with a view to deter them from seeking the protection of public servants against any injury. Where a clergyman, knowing that a civil suit was pending against a person for the possession of certain church property, excommunicated him for withholding it, it was held that the clergyman had committed no offence under this section. By a notification under [section 10\(1\) of the Criminal Law Amendment Act, 1932](#) the State Government can make this offence a cognizable one for a specified area while such notification remains in force.

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **[s 191] Giving false evidence.**

**Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject,<sup>1</sup> makes any statement which is false,<sup>2</sup> and which he either knows or believes to be false or does not believe to be true,<sup>3</sup> is said to give false evidence.**

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

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

#### ILLUSTRATIONS

- (a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.
- (b) A, being bound by an oath to state the truth, states that he believes a certain

signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

- (c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.
- (d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.
- (e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

## COMMENT.—

**Ingredients.**—The offence under this section involves three ingredients:—

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

**1. 'Legally bound by an oath or by an express provision of law, etc.'**— In case the recourse to a false plea is taken with an oblique motive, it would definitely hinder, hamper or impede the flow of justice and prevent the Courts from performing their legal duties.<sup>2</sup> The Courts have to follow the procedures strictly and cannot allow a witness to escape the legal action for giving false evidence before the Court on mere explanation that he had given it under the pressure of the police or for some other reason. Whenever the witness speaks falsehood in the Court, and it is proved satisfactorily, the Court should take a serious action against such witnesses.<sup>3</sup> It is necessary that the accused should be legally bound by an oath before a competent authority. If the Court has no authority to administer an oath the proceeding will be *coram non jure* and a prosecution for false evidence will not stand.<sup>4</sup> Similarly, if the Court is acting beyond its jurisdiction it will not be sustained.<sup>5</sup> For the essentiality of section 191, petitioner must have been legally bound to speak truth or make a declaration and he must have stated or declared what is false. He must also know or believe what he has stated or declared is false or he has believed it true. If there is no compulsion to make any declaration as required by law, Section 191 will not have any

application. The information given by him is not on any oath nor was he bound to give such information under any provision of Law.<sup>6</sup>

### **[s 191.1] 'By an oath'.—**

An oath or a solemn affirmation is not a *sine qua non* in the offence of giving false evidence.<sup>7</sup> The offence may be committed although the person giving evidence has been either sworn or affirmed.<sup>8</sup> Whenever in a Court of law a person binds himself on oath to state the truth, he is bound to state the truth and he cannot be heard to say that he should not have gone into the witness box or should not have made an affidavit. It is no defence to say that he was not bound to enter the witness box.<sup>9</sup>

### **[s 191.2] 'By an express provision of law'.—**

Under this clause sanction of an oath is not necessary; there must be a specific provision of law compelling a person to state the truth. Where the accused is not bound by an express provision of law to state the truth he cannot be charged with giving false evidence.<sup>10</sup>

### **[s 191.3] 'Declaration upon any subject'.—**

In certain cases the law requires a declaration from a person of verification in a pleading—and if such a declaration is made falsely it will come under this clause. The words 'any subject' denote that the declaration must be in connection with a subject regarding which it was to be made.

**2. 'Any statement which is false'.—**It is not necessary that the false evidence should be material to the case in which it is given.<sup>11</sup> If the statement made is designedly false, the accused is liable whether the statement had a material bearing or not upon the matter under enquiry before the Court.<sup>12</sup>

**3. 'Knows or believes to be false or does not believe to be true'.—**The matter sworn to must be either false in fact, or, if true, the accused must not have known it to be so. The making of a false statement, without knowledge as to whether the subject-matter of the statement is false or not, is legally the giving of false evidence.<sup>13</sup> Where a man swears to a particular fact, without knowing at the time whether the fact be true or false, it is as much perjury as if he knew the fact to be false, and equally indictable.<sup>14</sup> However, a man cannot be convicted of perjury for having acted rashly, or for having failed to make reasonable inquiry with regard to the facts alleged by him to be true.<sup>15</sup>

### **[s 191.4] Two Contradictory Statements.—**

Merely because a person makes two contradictory statements, one of which must be false, it does not make out a case of perjury unless the falsity of one of the two statements as charged in the indictment is positively proved to be so.<sup>16</sup> In India a prosecution for perjury seems to be possible in such a case by virtue of illustration (e) of section 221, The [Code of Criminal Procedure, 1973](#), it has been held to be inexpedient to do so in the interest of justice. Thus, where a person made one statement under [section 164 Cr PC, 1973](#) and a diametrically opposite statement in Court during the enquiry or trial, he could in view of this illustration be charged in the

alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false. But to do so may be to tie him down to his previous false statement under [section 164 Cr PC, 1973](#), and preventing him from telling the truth even belatedly at the later stage of enquiry or trial. The Supreme Court too has felt that a witness whose statement has been recorded under [section 164 Cr PC, 1973](#), feels tied to his previous statement and as such his evidence has to be approached with caution.<sup>17</sup> In the instant case as it could not be shown that the earlier statements of the witnesses recorded under [section 164 Cr PC, 1973](#) were true and those given before the Magistrate in course of the enquiry were false, the complaints of perjury filed against the witnesses were directed to be withdrawn.<sup>18</sup>

#### **[s 191.5] As to expert opinion.—**

A scientific expert was asked to give his opinion regarding two cartridges, whether those were fired from one firearm or from two different ones, without sending the suspected firearm to him. He gave opinion, *inter alia*, that no definite opinion could be offered in order to link the firearm unless the firearm was made available to him. During the examination, the Court insisted him to give a definite opinion that too without examining the firearm. At that time, he opined that the cartridges appeared to have been fired from two separate firearms. Considering that there was a deliberate deviation in his opinion the High Court initiated proceedings against him under [section 340 Cr PC, 1973](#) for perjury. The Supreme Court held that it is unjust, if not unfair, to attribute any motive to the appellant that there was a somersault from his original stand in the written opinion.<sup>19</sup>

#### **[s 191.6] Written statements and applications.—**

A person filing a written statement in a suit is bound by law to state the truth, and if he makes a statement which is false to his knowledge or belief, or which he believes not be to true, he is guilty of this offence.<sup>20</sup> Signing and verifying an application for execution containing false statements is an offence under this section, and it makes no difference that at the time when the signature and verification were appended the application was blank.<sup>21</sup> But the verification of an application, in which the applicant makes a false statement, does not subject him to punishment for this offence, if such application does not require verification.<sup>22</sup>

#### **[s 191.7] Incriminating statement no justification.—**

When a party makes a false statement while legally bound by solemn affirmation, the fact that the statement was one tending to incriminate himself will not justify his acquittal on a charge of giving false evidence.<sup>23</sup>

#### **[s 191.8] Illegality of trial does not purge perjury.—**

The fact that the trial in which false evidence is given is to be commenced *de novo* owing to irregularity does not exonerate the person giving false evidence in that trial from the obligation to speak the truth, and he is liable for giving false evidence.<sup>24</sup>

### **[s 191.9] Prosecution for perjury.—**

It has been held by the Supreme Court that the courts should sanction the prosecution for perjury only in those cases where perjury appears to be deliberate and where it would be expedient in the interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement.<sup>25.</sup>

### **[s 191.10] Accused not liable for giving false evidence.—**

The authors of the Code observe:

We have no punishment for false evidence given by a person when on his trial for an offence, though we conceive that such a person ought to be interrogated... If A stabs Z, and afterwards on his trial denies that he stabbed Z, we do not propose to punish A as a giver of false evidence.<sup>26.</sup>

The accused shall not render himself liable to punishment by refusing to answer questions put by the Court or by giving false answers to them.<sup>27.</sup>

### **[s 191.11] CASES.—**

In a case, where the allegation was that the Attorney General and Chief Vigilance Officer gave consent to prosecute the Complainant without due care and without proper application of mind. The Supreme Court held that it cannot be said that the document conveying consent was a 'false document' or that giving of 'consent' amounted to giving of 'false evidence' or 'fabricating false evidence' at any stage of judicial proceeding.<sup>28.</sup> A person could only be held guilty of an offence under section 191 if false evidence is knowingly given or when the statement is believed to be not true.<sup>29.</sup> A witness falsely deposing in another's name,<sup>30.</sup> and a person falsely verifying his plaint,<sup>31.</sup> and an official making a false return of the service of summons,<sup>32.</sup> were held guilty of giving false evidence. The Supreme Court has held that where a false affidavit is sworn by a witness in a proceeding before a Court the offence would fall under this section and section 192. It is the offence of giving false evidence or of fabricating false evidence for the purpose of being used in a judicial proceeding.<sup>33.</sup> Where a notice of perjury was issued to certain eye-witnesses but it could not be shown with certainty that they were liars, it was held that the issue of notices was not proper. The Court used its inherent powers and quashed the notices. The challenge was presented by only one of the witnesses on his own behalf as well as that of others.<sup>34.</sup>

### **[s 191.12] Affidavit.—**

An affidavit is evidence within the meaning of [section 191 of the IPC, 1860](#). It was alleged about an affidavit filed in a Court that it contained false statements. The affidavit was filed by the party *suo motu* and not under direction from the Court. Such an affidavit could not be termed as evidence. Hence, no action could be taken against him under the [IPC, 1860](#).<sup>35.</sup> Process Server while he takes information from the neighbours is not expected to get a sworn statement from them. It is neither an affidavit nor a sworn statement. It is only an information, which he has collected to show his *bona fides* that he made attempts to serve the notice on the party. If on the request of process server if any such information is given that information cannot be

treated as false evidence or fabricating evidence nor it could be treated as certificate nor a declaration under any of the provisions of this section.<sup>36.</sup>

### **[s 191.13] Abetment.—**

Where an accused asked a witness to suppress certain facts in giving his evidence against him (accused), it was held that he was guilty of abetment of giving false evidence in a stage of a judicial proceeding.<sup>37.</sup> Where C falsely represented himself to be U, and the writer of a document signed by U, and T, knowing that C was not U and had not written such document, adduced C as U, the writer of that document, it was held that T was guilty of abetment of giving false evidence.<sup>38.</sup>

### **[s 191.14] Bar under [section 195 Cr PC, 1973](#).—**

Section 195 of the Code lays down the procedure for prosecution for contempt of lawful authority of public servants for offences against public justice and for offences against public documents given in the form of evidence. As per this provision, Court is debarred from taking cognizance of any of the offences punishable under sections 193–196, 199, 200, 205–211 and section 228, when such offence is alleged to have been committed in, or in relation to, any proceedings in any Court except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in that behalf or of some other Court to which that Court is subordinate. The term "Court" in the section means a Civil, Revenue or Criminal Court and includes a tribunal. Section 340 of the Code prescribes the procedure to be followed for offences mentioned in section 195 of the Code. Therefore, the summoning orders of the Magistrate against the petitioners under sections 193/191/209 [IPC, 1860](#) are hit by provisions of section 195 of the Code and the cognizance taken by the Magistrate of the offences is, therefore, without jurisdiction.<sup>39.</sup> [Sections 191 and 192 of the IPC, 1860](#) are the sections that define offences for which punishment is provided for in sections 193 and 195 as mentioned in section 195(1)(b) (i), [Criminal Procedure Code](#). So the bar to initiate proceedings is applicable to sections 191 and 192 also.<sup>40.</sup>

### **[s 191.15] Procedure.—**

A combined reading of the aforequoted provisions of [Cr PC, 1973](#) and [IPC, 1860](#) as also sub-section (3) of [section 195, Cr PC, 1973](#) makes this legal position quite clear that they are applicable to any legal proceeding before a Civil Court or a Criminal Court, including a Tribunal constituted by Central, Provincial or State Acts, if declared by that particular Act to be a Court for the purpose of [section 195, Cr PC, 1973](#). Therefore, if the Family Court finds that any party to the proceeding or a witness therein has intentionally given false evidence at any stage of a judicial proceeding or fabricated false evidence for the purpose of being used in any stage of the proceeding, and the Family Court is of the opinion that it is expedient in the interest of justice that an enquiry should be made into any evidence referred to in clause (b) of sub-section (1) of [section 195, Cr PC, 1973](#) it may hold a preliminary enquiry and if it thinks necessary then it may record a finding to that effect and then proceed to make a complaint in respect of the particular offence/offences stipulated in clause (b) of [section 195, Cr PC, 1973](#) to the concerned Magistrate having jurisdiction against the said person.<sup>41.</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
2. *Chandra Shashi v Anil Kumar Verma*, 1995 (1) SCC 421 [LNIND 1994 SC 1604] .
3. *Mishrilal v State of MP*, (2005)10 SCC 701 [LNIND 2005 SC 1165] : 2005 SCC (Cr) 1712.
4. *Abdul Majid v Krishna Lal Nag*, (1893) 20 Cal 724 ; *Niaz Ali*, (1882) 5 All 17 ; *Mata Dayal* (1897) 24 Cal 755 ; *Subba*, (1883) 6 Mad 252; *Fatteh Ali*, (1894) PR No. 15 of 1894.
5. *Chait Ram*, (1883) 6 All 103 ; *Bharma*, (1886) 11 Bom 702 (FB).
6. *D Jothi v K P Kandasamy*, 2000 Cr LJ 292 (Mad).
7. (1865) 2 WR (CrL) 9.
8. *Gobind Chandra Seal*, (1892) 19 Cal 355 ; *Shava v State*, (1891) 16 Bom 359; contra, *Maru*, (1888) 10 All 207 .
9. *Ranjit Singh*, 1959 Cr LJ 1124 : AIR 1959 SC 843 [LNIND 1959 SC 63] .
10. *Hari Charan Singh*, (1900) 27 Cal 455 .
11. *Parbutty Churn Sircar*, (1866) 6 WR (Cr) 84; *Damodhar P Kulkarni*, (1868) 5 BHC (CrC) 68.
12. *Mohammad Khudabux*, (1949) Nag 355.
13. *Echan Meeah*, (1865) 2 WR (Cr) 47. *Mohammad Hussein v State of Maharashtra*, 1995 Cr LJ 2364 (Bom).
14. *Mawbey*, (1796) 6 TR 619, 637; *Schlesinger*, (1847) 10 QB 670 .
15. *Muhammad Ishaq*, (1914) 36 All 362 .
16. Cross & Jones: *Introduction to Criminal Law*, 9th Edn, p 275.
17. *Ramcharan*, 1968 Cr LJ 1473 : AIR 1968 SC 1267 [LNIND 1968 SC 29] ; *Balak Ram*, 1974 Cr LJ 1486 : AIR 1974 SC 2165 [LNIND 1974 SC 236] .
18. *Ibid. Kuriakose v State of Kerala*, 1995 Cr LJ 2687 : 1994 Supp (1) SCC 602 , contradictory statements as to contents of panchanama by an attesting witness does not make him liable to be prosecuted under the section, gravity of the false statement has also to be taken into account.
19. *Prem Sagar Manocha v State (NCT of Delhi)*, 2016 Cr LJ 1090 : (2016) 4 SCC 571 [LNIND 2016 SC 9] .
20. *Mehrban Singh*, (1884) 6 All 626 ; *Padam Singh*, (1930) 52 All 856 .
21. *Ratanchand v State*, (1904) 6 Bom LR 886 .
22. *Kasi Chunder Mozumdar*, (1880) 6 Cal 440 .
23. (1867) 3 MHC (Appx.) XXXIX.
24. *Virasami v State*, (1896) 19 Mad 375; *Batesar Mandal*, (1884) 10 Cal 604 .
25. *State (Govt. of NCT of Delhi) v Pankaj Chaudhary*, AIR 2018 SC 5412 [LNIND 2018 SC 565] .
26. Note G, p 131.
27. **Criminal Procedure Code, section 313** (3).
28. *Buddhi Kota Subbarao v K Parasaran*, AIR 1996 SC 2687 [LNIND 1996 SC 1254] : (1996) 5 SCC 530 [LNIND 1996 SC 1254] .
29. *Indian Structural Engineering Company Pvt Ltd v Pradip Kumar Saha*, 2009 Cr LJ 4229 (Cal).
30. *Prema Bhika* (1863) 1 BHC 89.
31. *Luxumandas*, (1869) Unrep CrC 25.
32. *Shama Churn Roy*, (1867) 8 WR (Cr) 27.



33. *Baban Singh v Jagdish Singh*, AIR 1967 SC 68 [LNIND 1966 SC 47] : 1967 Cr LJ 6 ; MP Paul, 1973 Cr LJ 1284 (Ker).
34. *State v Manohar Yeshwant Paul*, 1997 Cr LJ 3114 (Bom).
35. *Delhi Lotteries v Rajesh Agarwal*, AIR 1998 : 1332 (Del).
36. *D Jothi v K P Kandasamy*, 2000 Cr LJ 292 (Mad).
37. *Andy Chetty*, (1865) 2 MHC 438 .
38. *Chundi Churn, Nauth*, (1867) 8 WR (Cr) 5.
39. *Kusum Sandhu v Sh Ved Prakash Narang*, 2009 Cr LJ 1078 (Del).
40. *Premjit Kaur v Harsinder Singh*, (1982) 2 SCC 167 : (1982) 1 SCC (Cr) 379 : 1982 CrLR 318.
41. *Arun Kumar Agarwal v Mrs. Radha Arun*, 2001 Cr LJ 3561 (KAR).

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#### **[s 192] Fabricating false evidence.**

**Whoever causes any circumstance to exist or <sup>42</sup>[makes any false entry in any book or record or electronic record or makes any document or electronic record containing a false statement], intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding,<sup>1</sup> or in a proceeding taken by law before a public servant<sup>2</sup> 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<sup>3</sup> to the result of such proceeding, is said "to fabricate<sup>4</sup> 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.

### COMMENT.—

The wording of this section is so general as to cover any species of crime, which consists in the endeavour to injure another by supplying false data upon which to rest a judicial decision.

### [s 192.1] Ingredients.—

The offence defined in this section has three ingredients:—

- (1) Causing any circumstance to exist, or making any false entry in any book or record, or making any document containing a false statement.
- (2) Doing one of the above acts with the intention that it may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant or an arbitrator.
- (3) Doing such act with the intention that it 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.<sup>43</sup> From a careful reading of [section 192, IPC, 1860](#), what transpires is that whoever forges a document, containing false statement or false entry, intending that such 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, 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 in such proceeding, he is said to fabricate false evidence.<sup>44</sup>

**1. 'Judicial proceeding'.—**The [Code of Criminal Procedure](#) says that 'judicial proceeding' includes any proceeding in the course of which evidence is or may be legally taken on oath [section 2(i)]. The power to take evidence on oath, which includes affirmation as well,<sup>45</sup> is the characteristic test of 'judicial proceeding'. 'Judicial proceeding' means nothing more or less than a step taken by a Court in the course of administration of justice in connection with a case.<sup>46</sup> Execution proceedings are judicial proceedings.<sup>47</sup>

It is not essential that there should be any judicial proceeding pending at the time of fabrication. It is enough that there is a reasonable prospect of such a proceeding having regard to the circumstances of the case and that the document in question is intended to be used in such a proceeding.<sup>48</sup>

**2. 'Public servant'.—**The provisions of this section are not confined to false evidence to be used in judicial proceedings, but to any proceeding before a public servant. A Government correspondence was stealthily removed by accused No. 1 and handed over to the pleader of accused Nos. 2 and 3. The correspondence was replaced by accused No. 1. It was afterwards discovered that some papers had disappeared from the correspondence whilst others had been either mutilated or altered. It was held that accused Nos. 2 and 3 were guilty of offences under sections 466 and 193.<sup>49</sup>

**3. 'Material'.—**The false evidence under this section should be material to the case in which it is given though not so under section 191.<sup>50</sup> The word 'material' means of such a nature as to affect in any way, directly or indirectly, the probability of anything to be determined by the proceeding, or the credit of any witness, and a fact may be material although evidence of its existence was improperly admitted.<sup>51</sup>

**4. 'Fabricate'.—**The term fabrication refers to the fabrication of false evidence; and if the evidence fabricated is intended to be used in a judicial proceeding, the offence is committed as soon as the fabrication is complete; it is immaterial that the judicial proceeding has not been commenced,<sup>52</sup> or that no actual use has been made of the evidence fabricated. The mere fabrication is punishable under section 193; the use of the fabricated evidence is punishable under section 196.

The evidence fabricated must be admissible evidence.<sup>53</sup>

### **[s 192.2] Liability of accused for fabricating false evidence.—**

It has been held by the High Courts of Calcutta<sup>54</sup> and Bombay<sup>55</sup> that an offender who fabricates false evidence to screen himself from punishment is liable to be convicted under this section. The Allahabad High Court<sup>56</sup> has veered round to the same view, after distinguishing an earlier case<sup>57</sup> to the contrary.

### **[s 192.3] Vicarious liability.—**

Neither [section 192 IPC, 1860](#) nor [section 199 IPC, 1860](#), incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint.<sup>58</sup> [Penal Code](#) does not contain any provision for attaching vicarious liability on the part of the managing Director or the Director for the Company when the accused is the company. Vicarious liability arise provided any provision exists in that behalf in the statute. It is obligatory on the part of the complainant to make requisite allegations which would attract the provision constituting vicarious liability.<sup>59</sup>

### **[s 192.4] CASES.—Fabrication of evidence to be used in judicial proceeding.—**

The brother of an accused person applied to the Court on behalf of the accused asking that the witnesses for the prosecution might first be made to identify the accused. The Court assenting to this request, he produced before the Court ten or twelve men, none of whom could be identified as the accused by any of the witnesses. Upon being asked by the Court where the accused was, he pointed out a man who was not the accused. It was held that he was guilty of fabricating false evidence.<sup>60</sup> The accused, who was in possession of the complainant's house as a yearly tenant, about the time the tenancy came to an end, prepared another rent-note for a period of four years and got it registered without the complainant's knowledge. It was held that the accused had fabricated false evidence inasmuch as the rent-note, which contained an admission against the interest of the accused, could be admitted in evidence on his behalf.<sup>61</sup> By swearing a false affidavit the accused makes himself *prima facie* liable under section 193 read with [sections 191 and 192 of the IPC, 1860](#).<sup>62</sup> In order to have the value of CFC excluded for the purpose of excise duty, letters were fabricated and the same were

seized in a raid. Fifteen months later, taking up a notice of motion, High Court directed filing of criminal complaints against the appellant under section 192. While agreeing that the Division Bench was not wrong in making the direction, which it did on the merits of the case, Supreme Court held that the High Court did not appear to have bestowed sufficient attention while deciding upon the expediency contemplated by section 340.<sup>63</sup>

**[s 192.5] No fabrication if no erroneous opinion could be formed touching any point material to result of proceeding.—**

It is now well settled that prosecution for perjury should be sanctioned by the Court only in those cases where there is a *prima facie* case of deliberate and conscious falsehood on a matter of substance and the conviction is reasonably probable or likely.<sup>64</sup> It is also very necessary that the portions of the witness's statement in regard to which he has, in the opinion of the Court, perjured himself, should be specifically set out in or form annexure to the show cause notice issued to the accused so that he is in a position to furnish adequate and proper reply in regard thereto and be able to meet the charge.<sup>65</sup>

**[s 192.6] No fabrication of evidence fabricated is inadmissible.—**

The mere fact that a document would be ultimately inadmissible in evidence does not necessarily take it out of the mischief of section 193.<sup>66</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

42. Subs. by The [Information Technology Act, 2000](#) (Act 21 of 2000) section 91 and First Sch, w.e.f. 17 October 2000, for the words "makes any false entry in any book or record, or makes any document contained on false statement". The words "electronic record" have been defined in section 29A.

43. *Babu Lal v State of UP*, (1964) 1 Cr LJ 555 : AIR 1964 SC 725 [LNIND 1963 SC 218] .  
*Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd*, (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 CR LJ. 8 : (2010) 12 SCR 551 : (2011) 1 SCC (Cr) 68; See *State of MP v Asian Drugs*, 1990 Cr LJ 105 MP, the defence exposing fabrication by Inspectors under The [Drugs and Cosmetics Act, 1940](#) (23 of 1940).

44. *Sushanta Sarkar v State of Nagaland* 2012 Cr LJ 4467 (Gau).

45. The [General Clauses Act, 1897](#) (X of 1897), section 3 (37)

46. *Venkatachalam Pillai*, (1864) 2 MHC 43 ; *Tulja v State*, (1887) 12 Bom 36, 42.

47. *Govind Pandurang*, (1920) 22 Bom LR 1239 , 45 Bom 668.

48. *Rajaram*, (1920) 22 Bom LR 1229 [LNIND 1920 BOM 119] ; *Govind Pandurang*, *Ibid.*

49. *Vallabhram Ganpatram*, (1925) 27 Bom LR 1391 .

50. *Tookaram*, (1862) Unrep. CrC 2.
51. *Stephen's Digest*, Art 148; *SP Kohli*, 1978 Cr LJ 1804 : AIR 1978 SC 1753 [LNIND 1978 SC 235] .
52. *Mula*, (1879) 2 All 105 .
53. *Zakir Husain*, (1898) 21 All 159 .
54. *Superintendent and Remembrancer of Legal Affairs, Bengal v Taraknath Chatterji*, (1935) 62 Cal 666 .
55. *Rama Nana*, (1921) 46 Bom 317, 23 Bom LR 987.
56. *Bhagirath Lal*, (1934) 57 All 403 .
57. *Ram Khilawan*, (1906) 28 All 705 .
58. *Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd*, (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ 8 : (2010) 12 SCR 551 : (2011) 1 SCC (Cr) 68.
59. *Maksud Saiyed v State of Gujarat*, (2008) 5 SCC 668 [LNIND 2007 SC 1090] : JT 2007 (11) SC 276 [LNIND 2007 SC 1090] : 2008 (5) SCR 1240 : (2008) 6 Scale 81 [LNIND 2008 SC 848] : (2008) 2 SCC (Cr) 692.
60. *Cheda Lal*, (1907) 29 All 351 .
61. *Rajaram*, (1920) 22 Bom LR 1229 [LNIND 1920 BOM 119] .
62. *Baban Singh*, 1967 Cr LJ 6 : AIR 1967 SC 68 [LNIND 1966 SC 47] .
63. *Phiroze Dinshaw Lam v UOI*, 1996) 8 SCC 209 : (1996) 1 SCC (Cr) 575.
64. *SP Kohli*, 1978 Cr LJ 1804 : AIR 1978 SC 1753 [LNIND 1978 SC 235] .
65. *Ibid.*
66. *Mahesh Chandra Dhupi*, (1940) 1 Cal 465 .

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **[s 193] Punishment for false evidence.**

**Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding,<sup>1</sup> shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case,<sup>2</sup> shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.**

*Explanation 1.*—A trial before a Court-martial; <sup>67</sup>. [\*\*\*] is a judicial proceeding.

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

#### ILLUSTRATION

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

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

#### ILLUSTRATION

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

#### COMMENT.—

Sections 191 and 192 define the offences punishable under this section. The first paragraph applies only to cases in which the false evidence is given in a judicial proceeding, the second to all other cases. If the offence is committed in any stage of a judicial proceeding it is more severely punishable than when it is committed in a non-judicial proceeding.

Intention is the essential ingredient in the [constitution](#) of this offence. If the statement was false, and known or believed by the accused to be false, it may be presumed that in making that statement he intentionally gave false evidence. In order to make a person liable for perjury it is necessary that he should have made a statement on oath regarding the facts on which his statement was based and then deny those facts on oath on a subsequent occasion.<sup>68</sup> The mere fact that a deponent has made contradictory statements at two different stages in a judicial proceeding is not by itself always sufficient to justify a prosecution for perjury under section 193 but it must be established that the deponent has intentionally given false statement in any stage of the 'judicial proceeding' or fabricated false evidence for the purpose of being used in any stage of the 'judicial proceeding'.<sup>69</sup>

It is not necessary that the false statement should be material to the case. The gist of the offence is the giving or fabrication of false evidence intentionally. Where knowledge of falsity is proved, intention is readily presumed.<sup>70</sup>

**1. 'Any stage of a judicial proceeding'.—**The recording of a statement under section 161 itself is a judicial proceeding in view of Explanation 2 to section 193 in so far as recording of a statement is part of the investigation directed by law preliminary to a proceeding before a Court of justice and therefore is a stage of the judicial proceedings. Mere failure to support contention made in said FIR while giving evidence under [section 164 Cr PC, 1973](#), can't conclusively lead to hold that he had given false evidence by departing from contentions made in FIR.<sup>71</sup> Where a witness in Sessions trial deposing contrary to what he had said in a statement recorded under section 164, recourse to section 340 cannot be taken without first deciding whether the earlier statement was false.<sup>72</sup> In the course of proceedings for execution of a decree in a Court which had no jurisdiction to entertain such proceedings the judgment-debtor made a false statement and produced a forged receipt. The Court made a complaint under [section 195 of the Criminal Procedure Code](#) for prosecution of the judgment-debtor in respect of the said offences; it was held that if during the course of the proceedings which were *ultra vires* and illegal any offence under section 471 of the Code was committed, it could not be said that it was committed in or in relation to, or by a party to, any judicial proceedings, in which evidence could be legally taken, and therefore the complaint must be dismissed.<sup>73</sup> Since enquiry conducted by an officer of the Railway Protection Force is a judicial proceeding under [section 9 of The Railway Property \(Unlawful Possession\) Act, 1966](#), furnishing of false documents in course of



such an enquiry would amount to an offence under [section 193, IPC, 1860](#).<sup>74</sup> Giving false evidence in support of the prosecution case during the course of trial falls within the ambit of [sections 193 and 195, IPC, 1860](#), and not under [section 211, IPC, 1860](#), as there is no institution of criminal proceeding in such a case.<sup>75</sup> (See Comments under sub-head "Falsely Charges" under section 211 *infra*.) Where the accused abetted the offence of forgery by creating a false document with a view to use it in a suit but did not use it in the suit, it was held that there was no question of prosecuting him under [section 193, IPC, 1860](#), nor was a Court complaint under section 195(1) (b) (i), [Cr PC, 1973](#), necessary in the case. The accused could be safely prosecuted under [section 467](#) read with [section 114, IPC, 1860](#), on a private complaint.<sup>76</sup>

Where the accused police-officer asked a police official to forge the signature of his superior on the carbon copy of the counter-affidavit containing false averments and the same was filed in the Supreme Court with that forged signature, the accused was held guilty of an offence under section 192.<sup>77</sup>

Questions which a person is compelled to answer and the answers which have a tendency to incriminate, cannot be the sole basis of a charge of perjury.<sup>78</sup>

### **[s 193.1] Court Complaint: When?—**

In *Iqbal Singh Marwah v Meenakshi Marwah*,<sup>79</sup> the [Constitution](#) Bench held that the section 195(1)(b)(ii) -[Cr PC, 1973](#) which mandates that 'no Court shall take cognizance of offences relating to documents given in evidence except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate', would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceedings in any Court, i.e., during the time when the documents was in **custodial legis**.<sup>80</sup> Though the Rent Controller discharges *quasi-judicial* functions, he is not a Court, as understood in the conventional sense and he cannot, therefore, make a complaint under [section 340 Cr PC, 1973](#).<sup>81</sup>

### **[s 193.2] Belated complaint.—**

A witness made false statement before a competent Court and the accused were convicted. The appellate Court (Sessions Court) held that the witness had given false statement and directed that a notice be issued to him to show cause why a complaint under [section 193, IPC, 1860](#) be not filed against him. The notice was issued and after hearing him, the Court directed that a complaint be filed. The High Court found that the notice issued to him was no notice because it did not specify the portions that were found to be false, besides the statement was recorded ten years ago. The Court held that it was not proper to file a complaint at that stage. The Court set aside the order of the Sessions Judge.<sup>82</sup>

### **[s 193.3] Supreme Court cannot convert itself into trial Court.—**

The accused filed a forged affidavit before the Supreme Court. It was held by the three Judge Bench that the Supreme Court could not try and convict the accused. The order of the Supreme Court convicting the accused and sentencing him to three months' imprisonment was liable to be set aside because of non-compliance of procedure prescribed by [sections 195 and 340, Cr PC, 1973](#) and also because of lack of original jurisdiction to try a criminal offence under [section 193, IPC, 1860](#). Directions to the

competent authority to proceed in the matter were not issued because the accused had already served out the sentence of imprisonment imposed on him.<sup>83</sup>

#### **[s 193.4] False Affidavits.—**

The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence commits criminal contempt of the Court and renders himself liable to be dealt with in accordance with the Act. On facts, High Court found that apart from committing contempt of Court the accused-1 has also committed an offence of perjury punishable under [section 193, IPC, 1860](#) committed in relation to proceedings of the Court. Court directed the Registrar (Judicial) under section 340(3)(b), [Cr PC, 1973](#) to file a complaint before the jurisdictional Magistrate in this regard.<sup>84</sup>

#### **[s 193.5] CASES.—**

A father handed over the custody of his minor daughter to the accused woman for household chores, but thereafter his efforts to get back his daughter failed. He filed a *habeas corpus* petition and the Court directed the respondent to produce the girl in response to which the respondent produced some other girl of the same name to mislead the Court. The Court directed that a complaint under sections 193, 196 and 199 be lodged against the respondent.<sup>85</sup> Declaration in an application filed under [section 482 of Cr PC, 1973](#) that the applicant had not approached the Supreme Court or the High Court earlier is not perjury, though applicant had filed for anticipatory Bail before the Sessions Court.<sup>86</sup>

#### **[s 193.6] Hostile witness.—**

In a prosecution under sections 489B and 489C, all prosecution witnesses who were police officials turned hostile. Subsequently they filed affidavits stating that they were threatened by higher officers not to support their previous statements during investigation. Court set aside the order of acquittal of the accused, ordered re-trial and directed to proceed under sections 193 and 195A.<sup>87</sup> After a long span of time, the prosecution witnesses filed a false affidavit stating that they were coerced and tutored by police. They were held liable for perjury.<sup>88</sup>

**2. 'In any other case'.—**A statement made in the course of a public investigation under [section 164 of the Code of Criminal Procedure](#) comes within these words.<sup>89</sup> Whether the accused has really made a false statement or not is a question of fact, which can be decided at the trial and not in quashing proceeding, when the allegations, which have been made against the accused do make out a *prima facie* case under [section 193, IPC, 1860](#).<sup>90</sup> A person married the daughter of his maternal uncle, after converting to Christianity. If they married before conversion this marriage would have come under 'Sapindas relations' which is prohibited under the [Hindu Marriage Act, 1955](#). After conversion into Christianity the marriage does not fall under 'Sapinda' relationship. It

cannot be said that there was any false declaration. It is held that offence punishable under [section 193 of IPC, 1860](#) is not made out.<sup>91.</sup>

**[s 193.7] Section 193 IPC, 1860 and Section 125A of the Representation of Peoples Act, 1950.—**

Where a specific penal provision is made under the Act providing a penalty for filing false affidavit under section 125A of the Act, without anything more, for filing such a false affidavit, that alone, no prosecution under the general penal provision of [section 193 of the Penal Code](#) is entertainable. Furthermore, the penal provision under [section 193 IPC, 1860](#) has to be understood giving significance to the expressions 'intentionally giving or fabricating false evidence', 'in any stage of a judicial proceeding' or 'in any other case.' Giving or fabricating false evidence in the aforesaid section whether it be in the judicial proceeding or in any other case must have been intended to form an opinion on the evidence erroneously and such forming of opinion should be touching the point material to the result of such proceeding. Viewed in that angle the declaration to be made by a candidate in his affidavit filed with his nomination paper over the matters prescribed by the election commission when he contests an election, it cannot be stated that the candidate is giving evidence by affidavit but at best only a declaration on the particulars sought for. If the candidate fails to furnish information or gives false information which he knows or has reason to believe to be false or conceals any information he is liable to be prosecuted only for the offence under section 125A of the Act, and not for the penal offence under [section 193 IPC, 1860](#).<sup>92.</sup>

**[s 193.8] Section 193 IPC, 1860 and proceedings under section 340 Cr PC, 1973.—**

Power to punish under [section 344 Cr PC, 1973](#) and [section 193 Cr PC, 1973](#) are distinct. [Section 344 Cr PC, 1973](#) calls for summary trial, whereas under [section 193 IPC, 1860](#) offender is to be tried as warrant case. [Section 344 Cr PC, 1973](#) vests powers in the Courts to summarily try and punish the accused. It is for this reason that [section 344 Cr PC, 1973](#) prescribes sentence also. The Judge either should have convicted the petitioner under [section 344 Cr PC, 1973](#) or ought not to have invoked [section 193 IPC, 1860](#). Once, the Judge opted to try the petitioner for the offence under [section 193 IPC, 1860](#), it was incumbent upon him to hold an inquiry under [section 340 Cr PC, 1973](#) and then to frame a charge and try the offender for a warrant case as minimum sentence prescribed under [section 193 IPC, 1860](#) is three years.<sup>93.</sup> Before lodging a complaint as provided by section 340 of the Code, the Court has to record a finding of any (i) *prima facie* case and deliberate falsehood on a matter of substance; (ii) there is reasonable foundation for the charge; and (iii) it is expedient in the interest of justice that a complaint should be filed.<sup>94.</sup> An enquiry when made, under [section 340 \(1\) Cr PC, 1973](#), is really in the nature of affording a *locus poenitentiae* to a person and if at that stage the Court chooses to take action, it does not mean that he will not have full and adequate opportunity in due course of the process of justice to establish his innocence. When the trial of the appellant commences under [section 193, IPC, 1860](#) the reasons given or those in the order passed under section 340 (1), [Cr PC, 1973](#) should not weigh with the criminal Court in coming to its independent conclusion whether the offence under [section 193, IPC, 1860](#) has been fully established against the appellant beyond reasonable doubt.<sup>95.</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
67. The words "or before a Military Court of Request" omitted by Act 13 of 1889, section 2 and Sch.
68. *Ismail Khan v State of Karnataka*, 1992 Cr LJ 3566 (Kant).
69. *KTMS Mohd v UOI*, AIR 1992 SC 2199 : 1992 Cr LJ 2781 .
70. *Sadasiba*, (1956) Cut 87; *Pravinchand v Ibrahim Md*, 1987 Cr LJ 1795 (Bom).
71. *Bimal Das v The State of Tripura*, 2012 Cr LJ 1252 (Gau).
72. *Thomman v IInd Adl Sessions Judge*, 1994 Cr LJ 48 (Ker).
73. *Sumat Prasad v State*, (1942) All 42 .
74. *BC Saxena*, 1983 Cr LJ 1432 (AP).
75. *Santosh Singh v Izahar Hussain*, 1973 Cr LJ 1176 : AIR 1973 SC 2190 [LNIND 1973 SC 160] .
76. *State of Karnataka v Hemareddy*, 1981 Cr LJ 1019 : AIR 1981 SC 1417 [LNIND 1981 SC 44] : (1981) 2 SCC 185 [LNIND 1981 SC 44] .
77. *Afzal v State of Haryana*, AIR 1996 SC 2326 [LNIND 1996 SC 130] : 1996 Cr LJ 1679 .
78. *NSR Krishna Prasad v Directorate of Enforcement LBK Market*, 1992 Cr LJ 1888 (AP). See section 132, The [Indian Evidence Act](#), 1972.
79. *Iqbal Singh Marwah v Meenakshi Marwah*, (2005) 4 SCC 370 [LNIND 2005 SC 261] : AIR 2005 SC 2119 [LNIND 2005 SC 261] .
80. *Sushanta Sarkar v State of Nagaland*, 2012 Cr LJ 4467 (Gau).
81. *Iqbal Singh Narang v Veeran Narang*, AIR 2012 SC 466 [LNIND 2011 SC 1189] : (2012) 2 SCC 60 [LNIND 2011 SC 1189] ; 2012 AIR (SCW) 730 : (2012) 1 SCC (Cr) 740.
82. *Jagdish Prasad Singhal v State of Rajasthan*, 1994 Cr LJ 759 (Raj).
83. *Randhir Singh v State of Haryana*, AIR 2000 SC 544 [LNIND 2000 SC 27] : 2000 Cr LJ 755 . Another ruling to the same effect, *MS Ahlawat v State of Haryana*, AIR 2000 SC 168 [LNIND 1999 SC 1395] : (2000) Cr LJ 388 ; *Mohammed Zahid v Govt. of NCT of Delhi*, 1998 Cr LJ 2908 : AIR 1998 SC 2023 [LNIND 1998 SC 557] .
84. *Advocate General, Karnataka v Chidambara*, 2004 Cr LJ 493 (Kant).
85. *R Rathinam v Kamla Vaiduriam*, 1993 Cr LJ 2661 (Mad).
86. *Rajkumar Dhanuji Bombarde v Madhukar Wankhede*, 2008 Cr LJ 661 (Bom).
87. *Court on Its Own Motion v State of Punjab*, 2012 Cr LJ 2240 (PH).
88. *State of MP v Badri Yadav*, 2006 Cr LJ 2128 : AIR 2006 SC 1769 [LNIND 2006 SC 229] : (2006) 9 SCC 549 [LNIND 2006 SC 229] .
89. *Purshottam Ishvar*, (1920) 23 Bom LR 1 ; 45 Bom 834 (FB). *Mohammed Zahid v Govt. of NCT of Delhi*, AIR 1998 SC 2023 [LNIND 1998 SC 557] : 1998 Cr LJ 2908 , false entries in case diary, interpolations, cooking up false case against the accused, show-cause notices issued against the concerned police officer for the offence.
90. *Sushanta Sarkar v State of Nagaland*, 2012 Cr LJ 4467 (Gau).
91. *O P Gogne v State*, 2012 Cr LJ 1718 (Del).
92. *Ganesh Kumar v PK Raju*, 2013 (2) Ker LT 434 : 1 LR 2013 (2) Ker 710 .
93. *Jaskaran v State of Haryana*, 2008 Cr LJ 4261 (PH).
94. *Rit Lai Khatway v State of Bihar*, 2007 Cr LJ 593 (Pat). See also *State (Govt. of NCT of Delhi) v Pankaj Chaudhary*, AIR 2018 SC 5412 [LNIND 2018 SC 565] .

95. *K Karunakaran v TV Eachara Warriar*, AIR 1978 SC 290 [LNIND 1977 SC 319] : (1978) 1 SCC 18 [LNIND 1977 SC 319] .

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#### **[s 194] Giving or fabricating false evidence with intent to procure conviction of capital offence.**

**Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital <sup>96</sup>[by the law for the time being in force in <sup>97</sup>[India]] shall be punished with <sup>98</sup>[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;**

**if innocent person be thereby convicted and executed.**

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

#### **COMMENT.—**

This is an aggravated form of the offence of giving or fabricating false evidence made punishable by section 193.

To constitute an offence under this section the accused must give false evidence intending thereby to cause some person to be convicted of a capital offence. A person who brings before a Court a witness whom he has tutored to tell a false story concerning a murder case before it, commits an offence under this section.<sup>99</sup>.

### [s 194.1] CASE.—

Where the Investigating Officer fabricated false evidence by manipulating the records in large number of documents to get the accused persons convicted and the time was not mentioned in documents prepared during investigation conviction under section 194 was held proper.<sup>100</sup> Where the Investigating Inspector concocted false evidence with the help of two *sarpanchas* and villagers to rope in an innocent man in a false murder case which led to his conviction by the Sessions Court and during the course of hearing of the appeal in the High Court the so-called murdered man appeared in person before the High Court, it was held that the Inspector, the *sarpanchas* and the other witnesses were liable to be prosecuted under [section 194, IPC, 1860](#), read with [section 340, Cr PC, 1973](#).<sup>101</sup>.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

96. Subs. by the A.O. 1948, for "by the law of British India or England".

97. Subs. by Act 3 of 1951, section 3 and Sch, for "the States" (w.e.f. 1 April 1951).

98. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

99. *Sur Nath Bhaduri*, (1927) 50 All 365 .

100. *Suresh Chandra Sharma v State of MP*, AIR 2009 SC 3196 ; 2009 Cr LJ 4288 (SC).

101. *Darshan Singh*, 1985 Cr LJ NOC 71 (P&H). See also *Baij Nath Dubey v Avas Evam Vikas Parishad*, 1997 Cr LJ 2681 (All).

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#### **[s 195] Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.**

**Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which <sup>102</sup>[by the law for the time being in force in <sup>103</sup>[India]] is not capital, but punishable with <sup>104</sup>[imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.**

#### ILLUSTRATION

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is <sup>105</sup>[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to <sup>106</sup>[imprisonment for life] or imprisonment, with or without fine.

#### COMMENT.—



This section is similar to the preceding section except as regards the gravity of the offence in respect of which the perjury is committed. The preceding section deals with perjury in the case of an offence punishable with death, this section deals with perjury of an offence punishable with imprisonment for life or imprisonment for a term of seven years or upwards. In the case of a person who burnt his own house and charged another with the act, it was held that he should not be convicted under this section, but under section 211,<sup>107</sup> but where A, with a view to having B convicted, assisted in concealing stolen railway pins in his house and field, it was held that A was properly convicted of an offence under this section.<sup>108</sup> Giving false evidence in support of the prosecution case amounts to an offence under [sections 193 and 195, IPC, 1860](#), and not under [section 211, IPC, 1860](#).<sup>109</sup> Misstatement of facts and concealment of an essential fact in a writ petition amounts to giving false evidence. The petitioner was liable to face proceedings for giving false evidence.<sup>110</sup> It is not necessary that fabrication of false evidence takes place only inside the Court as it can also be fabricated outside the Court though has been used in the Court.<sup>111</sup>

A Disciplinary Proceedings Tribunal is not a Court for the purposes of this section. It is not "a court in the accepted sense of that term, though it may possess some of the trappings of a court."<sup>112</sup> A party giving an answer to a question put under Order 10 r. 2 of the [CPC](#) when not under oath and when not being examined as a witness, cannot attract [section 195 IPC, 1860](#).<sup>113</sup> Police-officers fabricated the evidence in order to book the appellant under TADA. From the materials on record, Supreme Court was of the opinion that it is expedient in the interest of justice that an enquiry should be made in accordance with sub-section (1) of [section 340, Cr PC, 1973](#) into the commission of offences under sections 193, 195 and 211.<sup>114</sup>

### **[s 195.1] St. Kitts (Chandraswamy) Case.—**

The respondent, was at the relevant time, serving as Director (Enforcement) with the government of India. The respondent was a public servant at the time of the commission of the alleged offence, no cognizance of the offence could have been taken against him in the absence of sanction under [section 197 Criminal Procedure Code](#).<sup>115</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

102. Subs. by the A.O. 1948, for "by the law of British India or England".

103. Subs. by Act 3 of 1951, section 3 and Sch, for "the States" (w.e.f. 1 April 1951).

104. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

105. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

106. Subs. by Act 26 of 1955, section 117 and Sch., for "such transportation" (w.e.f. 1 January 1956).

107. *Bhugwan Ahir*, (1867) 8 WR (Cr) 65.

108. *Rameshar Rai*, (1877) 1 All 379 .

109. *Santokh Singh*, 1973 Cr LJ 1176 : AIR 1976 SC 2190 .
110. *Dehri Cooperative Development v State of Bihar*, 2002 Cr LJ 3396 (Pat); *Mohammed Zahid v Govt. NCT of Delhi*, 1998 Cr LJ 2908 : AIR 1998 SC 2023 [LNIND 1998 SC 557] : (1998) 5 SCC 419 [LNIND 1998 SC 557] , for note on the case see under section 193. Also see *Harrianna Gowda v State of Karnataka*, 1998 Cr LJ 4756 (Kant).
111. *Ram Dhan v State of UP*, 2012 (4) Scale 259 [LNIND 2012 SC 1057] : 2012 AIR (SCW) 2500 : 2012 Cr LJ 2419 : (2012) 5 SCC 536 [LNIND 2012 SC 1057] : AIR 2012 SC 2513 [LNIND 2012 SC 1057] **relied** on *Sachida Nand Singh v State of Bihar*, (1998) 2 SCC 493 [LNIND 1998 SC 138] .
112. *R Venkat Reddy v State of AP*, 1992 Cr LJ 414 .
113. *Kapil Corepacks Pvt Ltd v Harbans Lal*, 2 AIR 2010 SC 2809 [LNIND 2010 SC 697] : 2010 (7) Scale 558 [LNIND 2010 SC 697] : (2010) 9 SCR 500 [LNIND 2010 SC 697] : (2010) 3 SCC (Cr) 924.
114. *Mohd Zahid v Govt. of NCT of Delhi*, AIR 1998 SC 2023 [LNIND 1998 SC 557] : (1998) 5 SCC 419 [LNIND 1998 SC 557] .
115. *State through Central Bureau of Investigation v B L Verma*, (1997) 10 SCC 772 ; See also *Asha Sunder Shivdasani v Aruna Ramesh Kriplani*, 2001 Cr LJ 2146 (Bom) - proceedings quashed as hit by [section 195 Cr PC, 1973](#).

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **116.[s 195A] Threatening or any person to give false evidence.**

**[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 that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both;**

**and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.]**

#### **COMMENTS.—**

In a prosecution under sections 489B and 489C, all prosecution witnesses who were police officials turned hostile. Subsequently they filed affidavits stating that they were threatened by higher officers not to support their previous statements during investigation. Court set aside the order of acquittal of the accused, ordered re-trial and directed to proceed under sections 193 and 195A.<sup>117</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [\(2009\) 10 SCC 664 \[LNIND 2009 SC 1659\]](#) : [\(2009\) 12 SCR 1215 \[LNIND 2009 SC 1659\]](#) .
116. New section 195A Ins. by The [Criminal Law \(Amendment\) Act, 2005](#) (Act No. 2 of 2006), section 2 (w.e.f. 16 April 2006 *vide* Notfn. No. SO 523(E), dated 12 April 2006.
117. *Court on Its Own Motion v State of Punjab*, [2012 Cr LJ 2240](#) (PH).

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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#### **[s 196] Using evidence known to be false.**

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

#### **COMMENT.—**

This section applies to those who make use of such evidence as is made punishable by sections 193, 194 and 195. It must be read with sections 191 and 192, and can only apply to the use of evidence which was false evidence within the meaning of section 191, or fabricated evidence within the definition laid down in section 192.<sup>118</sup> Where an expert witness deposing on behalf of the defence claimed to be a diploma holder in criminology from the Imperial College of Science and Technology, London and it was found that the said claim was totally false and the diploma produced by him was a forged document, it was held he committed an offence in relation to Court proceedings under [sections 193 and 196, IPC, 1860](#), and as such a Court complaint under section 195 (1)(b)(i), [Cr PC, 1973](#), was necessary to prosecute him.<sup>119</sup>

The word 'corruptly' in this section means something different from "dishonestly" or "fraudulently". Although the user may not be dishonest or fraudulent, it may nevertheless be corrupt, if the user is designed to corrupt or prevent the course of justice. A person who files rent receipts alleged to have been granted by one of the landlords, who actually signs the receipts to support a false case of a tenancy under the landlord, does not commit an offence under section 471, but is guilty of corruptly using as true or genuine evidence which he knows to be false within the meaning of this section.<sup>120</sup>.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
118. *Lakshmaji*, (1884) 7 Mad 289, 290.
119. *Dr. S Dutt*, 1966 Cr LJ 459 : AIR 1966 SC 595 [LNIND 1965 SC 196] .
120. *Bibhuranjan Gupta*, (1949) 2 Cal 440 .

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **[s 197] Issuing or signing false certificate.**

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

#### **COMMENT.—**

Several laws require a certificate of some matter to be given. The offence of certifying in any of these, knowing or believing that the certificate is false, is put on the same footing as the offence of giving false evidence. The certificate must, however, be false in a material point. The issuing or signing must be by the officer or person authorized to certify.

#### **[s 197.1] Ingredients.—**

The section has two essentials:—

1. Issuing or signing of a certificate—
  - (a) required by law to be given or signed, or
  - (b) relating to a fact of which such certificate is by law admissible in evidence.
2. Such certificate must have been issued or signed knowing or believing that it is false in any material point.

Before convicting a person for offence under [section 197, IPC, 1860](#) the prosecution must prove the following facts:—

- (i) that the document in question purports to be a certificate;
- (ii) that such certificate is required by law to be given or signed, or that it related to some fact of which such certificate is by law admissible in evidence;
- (iii) that such certificate is false;
- (iv) that it is false in a material point;
- (v) that the accused issued or signed the same;
- (vi) that he, when doing so, knew or believed, such certificate to be false.<sup>121.</sup>

### **[s 197.2] Certificate.—**

As per section 197, certificate contemplated therein is a certificate, which is required not to be given or signed for the use in the Court's administration of Justice. That means, certificate is issued as required by some law and it has some reference to some statutory requirements. Information given by petitioner to Process Server is that he has not heard about the Noticee for the last two years and his whereabouts are not known. That is not a certificate contemplated under any statute. Therefore, section 197 also will have no application.<sup>122.</sup> The expression "by law admissible in evidence" means that the certificate should by some provision of law be admissible in evidence as such a certificate without further proof.<sup>123.</sup> A medical certificate is not such a certificate and the issue or use of a false medical certificate does not render a person liable under this section or section 198.<sup>124.</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

121. *Mangtu Ram v State of Rajasthan*, 2003 Cr LJ 4733 (Raj).

122. *D Jothi v KP Kandasamy*, 2000 Cr LJ 292 (Mad).

123. *Mahabir Thakur*, (1916) 23 CLJ 423; *Kumar Choudhari v State*, (1936) 16 Pat 21; *Prafulla Kumar Khara*, (1942) 1 Cal 573 . A caste certificate issued by an MLA to a student to enable him to get a pre-matric scholarship has been held to be not a certificate within the meaning of this section. *Haladhara Karji v Dileswar Subudhi*, 1989 Cr LJ 629 (Ori), no caste was mentioned in the



certificate. *Premlata v State of Rajasthan*, [1998 Cr LJ 1430](#) (Raj), a statement would become a false certificate if the law requires the issue of such a certificate as a legal proof. In this case the certificate was issued by the headmaster, though he was not authorised to do so. The candidate used the certificate for obtaining an appointment. A *prima facie* case under section 198 was made out against the headmaster.

124. *Prafulla Kumar Khara, Ibid.*

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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#### **[s 198] Using as true a certificate known to be false.**

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

#### **COMMENT.—**

This section is connected with section 197 just as section 196 is connected with sections 193, 194 and 195.<sup>125</sup> Appellant used the duplicate certificate with changes, as a true certificate knowing it to be false in material particular and thereby got admission in Polytechnic. Therefore, there is no reason to interfere with the conviction. However, looking to the nature of the offence and the fact that the appellant's past and present records have been good and the fact that he has already lost his career and is now married, reduced the sentence to that already undergone.<sup>126</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
125. *Premlata v State of Rajasthan*, 1998 Cr LJ 1430 (Raj), for notes on the case see under section 197.
126. *Tulsibhai Jivabhai Changani v State of Gujarat*, (2001) 1 SCC 719 [LNIND 2000 SC 2333] : 2001 Cr LJ 741 .

## THE INDIAN PENAL CODE

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#### **[s 199] False statement made in declaration which is by law receivable as evidence.**

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

#### **COMMENT.—**

This section makes the penalty attached to the offence of giving false evidence applicable to declarations which, although not compellable, have, on being made, the same effect as the compulsory declarations referred to in sections 51 and 191.<sup>127</sup> Voluntary declarations are thus placed on the same level as compulsory declarations. The Supreme Court has said that the complaint for an offence under [section 199, IPC, 1860](#), must make out the offence by singling out false averment in the complaint. Thus, where the allegation was that the accused had used a false affidavit before the Rent

Controller but the complaint did not set out a single averment from the said affidavit, which is said to be false, it was held that the complaint was not maintainable.<sup>128.</sup>

### **[s 199.1] Ingredients.—**

This section requires three essentials:—

1. Making of a declaration that a Court or a public servant is bound or authorised by law to receive in evidence.
2. Making of a false statement in such declaration knowing or believing it to be false.
3. Such false statement must be touching any point material to the object for which the declaration is made or used.<sup>129.</sup> Section 199 provides punishment for making a false statement in a declaration that is by law receivable in evidence. Rival contentions set out in affidavits accepted or rejected by Courts with reference to *onus probandi* do not furnish foundation for a charge under [section 199, IPC, 1860](#).<sup>130.</sup> A declaration before it could be made the foundation of charge under [section 199 of IPC, 1860](#), it is necessary that it must be admissible in evidence as proof of the fact declared under any law in consequence of which the Court is bound or authorised to receive it as such.<sup>131.</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

127. *A Vedamuttu*, (1868) 4 MHC 185 ; *Asgarali v State*, (1943) Nag 547.

128. *Chandrapal Singh*, 1982 Cr LJ 1731 : AIR 1982 SC 1238 : (1982) 1 SCC 466 . *Shiv Raman Gaur v Madan Mohan Kanda*, 1990 Cr LJ 1033 P&H.

129. *Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd*, (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ 8 L : (2010) 12 SCR 551 : (2011) 1 SCC (Cr) 68.

130. *Chandrapal Singh v Maharaj Singh*, AIR 1982 SC 1238 (1982) 1 SCC 466 .

131. *D Jothi v KP Kandasamy*, 2000 Cr LJ 292 (Mad).

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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#### **[s 200] Using as true such declaration knowing it to be false.**

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

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

#### **COMMENT.—**

This section is connected with the last section just as section 198 is with section 197 or section 196 with sections 193, 194 and 195. The person who uses a false declaration is made liable as one who makes it.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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#### **[s 201] Causing disappearance of evidence of offence, or giving false information to screen offender—.**

**Whoever, knowing or having reason to believe that an offence has been committed,<sup>1</sup> causes any evidence of the commission of that offence to disappear, with the intention of screening the offender<sup>2</sup> from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;**

**if a capital offence;**

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

**if punishable with imprisonment for life;**

**and if the offence is punishable with <sup>132</sup>[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;**



**if punishable with less than ten years' imprisonment.**

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

#### ILLUSTRATION

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

#### COMMENT.—

**Object.**—This section relates to the disappearance of any evidence of the commission of an offence and includes also the giving of false information with the intention of screening an offender. Sections 202 and 203 relate to the giving or omitting to give such information, and section 204 to the destruction of documentary evidence.

There are three groups of sections in the Code relating to the giving of information. First, sections 118–120 deal with concealment of a design to commit an offence; second sections 176, 177, 181 and 182 deal with omission to give information and with the giving of false information; and, third, sections 201–203 deal with causing the disappearance of evidence.

#### [s 201.1] Scope.—

The Supreme Court has held that this section is not restricted to the case of a person who screens the actual offender; it can be applied even to a person guilty of the main offence, though as a matter of practice a Court will not convict a person both of the main offence and under this section.<sup>133.</sup>

But, if the commission of the main offence is not brought home to the accused, then he can be convicted under this section.<sup>134.</sup> Where it is impossible to say definitely that a person has committed the principal offence he cannot escape conviction under this section merely because there are grounds for suspicion that he might be the principal culprit.<sup>135.</sup> A woman's husband and in-laws could not be convicted of murdering her because there was no evidence whatsoever. They were convicted under this section because they gave no reasonable explanation of the unnatural death and had also disposed of the body in suspicious circumstances (dead body found near railway track).<sup>136.</sup> The fact that the accused persons cannot be convicted for offence punishable under [section 302 IPC, 1860](#) does not extricate them from the offence under [section 201 IPC, 1860](#).<sup>137.</sup> In a case of bride burning, where the *post-mortem* report was that death was due to throttling, burning her subsequently was held to be a clear proof of the fact that the evidence of strangulation was sought to be destroyed by the accused husband by pouring kerosene and setting her ablaze. The conviction of the husband under sections 201, 302 and 498-A was held to be proper.<sup>138.</sup>

A statement given by a person in the course of an investigation by the police cannot amount to an offence under this section and section 203, even if it ultimately turns out to be false.<sup>139.</sup> The allegation against the appellant was that, he had deliberately shielded the real offenders in the murder case and was accordingly liable for the offence under [section 201 of the IPC, 1860](#). Supreme Court acquitted the accused

holding that it is not possible on the evidence to ascertain, as to whether the appellant was, in fact, guilty of the offence alleged against him.<sup>140.</sup>

The Supreme Court has held that where the evidence showed that a person had died and his body was found in a trunk and discovered in a well, and that the accused had taken part in the disposal of the body but there was no evidence to show the cause of his death, or the manner or circumstances in which it came about, it was held that the accused could not be convicted for an offence under this section.<sup>141.</sup> In other words, the mere secreting of a dead body without first proving that the corpse secreted was the *corpus delicti* of a murder case is no offence under [section 201, IPC, 1860](#).<sup>142.</sup>

### **[s 201.2] Independent offence.—**

A charge under [section 201 of the IPC, 1860](#) can be independently laid and conviction maintained also, in case the prosecution is able to establish that an offence had been committed, the person charged with the offence had the knowledge or the reason to believe that the offence had been committed, the said person has caused disappearance of evidence and such act of disappearance has been done with the intention of screening the offender from legal punishment. Mere suspicion is not sufficient, it must be proved that the accused knew or had a reason to believe that the offence has been committed and yet he caused the evidence to disappear so as to screen the offender. The offender may be either himself or any other person.<sup>143.</sup> It has been held that the offence under the section is of independent nature, though it cannot be separated from the substance of the main offence. Accordingly, a conviction under the section can be recorded even though the commission of the main offence is not established. The Court, however, pointed out that such cases are likely to be very small in number. Applying this to the facts of the case, the Court held that the accused was guilty of offence under this section because he had buried the dead body of his wife in his field and misguided the police of her disappearance, though, because of decomposition, it could not be proved that he was responsible for her death.<sup>144.</sup>

### **[s 201.3] Ingredients.—**

To bring home a charge under [section 201, IPC](#), the prosecution must prove:—

- (1) That an offence has been committed.
- (2) That the accused knew or had reason to believe the commission of such an offence.
- (3) That with such knowledge or belief he
  - (a) caused any evidence of the commission of that offence to disappear, or
  - (b) gave any information relating to that offence which he then knew or believed to be false.
- (4) That he did so as aforesaid with the intention of screening the offender from legal punishment.
- (5) If the charge be of an aggravated form, it must be further proved that the offence in respect of which the accused did as in (3) and (4) *supra*, was punishable with death or imprisonment for life or imprisonment extending to ten years.<sup>145.</sup>

**1. 'Knowing or having reason to believe that an offence has been committed'.—**It must be proved that an offence, the evidence of which the accused is charged with causing to disappear, has actually been committed,<sup>146.</sup> and that the accused knew, or had information sufficient to lead him to believe, that the offence had been committed.<sup>147.</sup> Unless the prosecution was able to establish that the accused person knew or had reason to believe that an offence has been committed and had done something causing the offence of commission of evidence to disappear, he cannot be convicted.<sup>148.</sup>

Where the accused committed rape on a seven-year-old minor girl at his studio, killed her and disposed of her dead body in a carton. The dead body of the deceased was found in the carton, which the accused procured from witness. Conviction under [sections 302, 376 and 201 IPC, 1860](#) is maintained.<sup>149.</sup>

The charge framed was for causing disappearance for evidence. The fact that concealment was the likely effect of the Act is not enough. There was no evidence to attribute the knowledge of the death of the victim woman to the accused. Hence, the essential ingredient of the offence was missing.<sup>150.</sup>

#### **[s 201.4] Causing disappearance by preventing information from reaching police.—**

Where after raping a girl of 11 years the accused persons thrust a stick into her private part of which she died and they falsely told the mother of the victim that they had already reported the matter to the police and in the meantime there was disappearance of evidence, they were held liable under this section.<sup>151.</sup> Where the Court has no case that there is any intentional omission to give information by the accused to the police, the conviction under section 201 cannot be maintained only on the ground that no communication was given to the police and that the post-mortem had not been performed. It is also no case of the complainant that he had requested for post-mortem of the body and that intimation should have been given to the police before the last rites were performed and there is also no charge under [section 202 of the IPC, 1860](#) of intentionally omitting to give information of the unnatural death to the police.<sup>152.</sup>

**2. 'Intention of screening offence of offender'.—**The intention to screen the offender must be the primary and sole object of the accused. The fact that the concealment was likely to have that effect is not sufficient.<sup>153.</sup> The accused person killed his brother and his whole family in order to avoid partition of the joint family property. There was no evidence to show that his son had common intention with him or participated in the commission of the crime. But because he had seen his father commit multiple murders, he tried to destroy the evidence by throwing away certain articles on two occasions from over a bridge. It seemed obvious that he had done that with the primary object of saving his father. He was convicted under this section.<sup>154.</sup>

Where a man shot down his wife with his pistol, his companion, who played no other role, but concealed the authorship of the homicide, he was held guilty under this section.<sup>155.</sup> Where the co-accused persons told the investigating officer that the deceased was not present in the house at the material time, it was held that this amounted to the offence of screening the offender.<sup>156.</sup>

#### **[s 201.5] Cases.—**

In the *Jessica Lal* murder Case<sup>157</sup>, the Supreme Court upheld the conviction of co-accused under [section 201](#) read with [section 120-B IPC, 1860](#) considering the evidence relating to their presence at the time of incident, removal of Tata Safari, his call details etc. as well as the evidence of PWs 30 and 101. In another case where the accused committed murder of his wife assaulting on her head with a chopper did cause the evidence to disappear by setting fire to the dead body after pouring kerosene on her, it is found that the accused has committed an offence punishable under [sections 302 and 201 of IPC, 1860](#).<sup>158</sup> Where unnatural conduct of appellants to dispose of dead body of victim without having awaited for victim's husband who was already on his way to home and the evidence shows that victim died under unnatural circumstances, conviction under [sections 302 and 201 IPC, 1860](#) is upheld.<sup>159</sup> Where the accused husband strangled his young wife to death and attempted to destroy evidence by burning her dead body, the order of acquittal of the accused of the offence under sections 300 and 201 was reversed by the Apex Court.<sup>160</sup>

#### **[s 201.6] Help rendered to conceal crime.—**

Where a person through fear did not interpose to prevent the commission of a murder, and afterwards helped the murderers in concealing the body, it was held that he was not guilty of abetment of murder but was guilty of an offence under this section.<sup>161</sup> A person who assists the actual murderers in removing the corpse of their victim to a distance from the place where the murder was committed is *prima facie* guilty of an offence under this section, until he can establish that he acted under compulsion.<sup>162</sup> Where it appeared from the statement of the accused that he took from the men who, according to him committed the murder, a jewel which was unquestionably the property of the deceased and he hid it and produced it later, it was held that the accused, when he hid the jewel, had the intention of screening the offender, whoever he was, from legal punishment and so was guilty of an offence under this section.<sup>163</sup> The death of a woman was caused on the first floor of the house and her mother-in-law, the only other occupant of the house at the time of the occurrence, was residing on the ground floor. The place of incident was intermeddled and bamboo pieces, rafters, and broken tiles were thrown over the dead body with a view to cause disappearance of evidence and to screen the offender. It was held that it was not possible without the complicity of the mother-in-law and hence though she could not be held guilty of murder or abetting it, she was guilty of an offence under section 201.<sup>164</sup>

#### **[s 201.7] Death in custody.—**

Where there was death of a person in the police custody while he was detained there for interrogation and his dead body was not traced, however, the evidence of other witnesses who were also beaten up and injured by the police, categorically established that the deceased became unconscious on receipt of injuries inflicted by the police and died, it was held that an irresistible inference could be drawn that the police personnel who caused the death, must also have caused the disappearance of the body.<sup>165</sup>

#### **[s 201.8] Bride burning.—**

In a bride burning case, the victim was murdered and thereafter her body was burnt to screen the offence. The guilt of the accused mother-in-law and that of the husband of the victim as *particeps criminis* was established beyond any shadow of doubt. The

order of acquittal passed by the High Court from the offence of murder was reversed and set aside and that of the trial Court convicting both the accused under section 300 was upheld. The mother-in-law was also convicted under section 201.<sup>166.</sup>

#### **[s 201.9] False explanation by wife of death of husband.—**

The accused wife attempted to explain away the death of her husband by saying that he was attempting suicide and while she attempted to save him, he fell, down to death. A search of her house showed evidence of murder. The Court said that even if she had not herself caused death, she was in know of things and attempted to explain away the incident by false explanations. The finding of guilt and her conviction under the section could not be interfered with.<sup>167.</sup>

#### **[s 201.10] Kidnapping, murder and concealment.—**

The charge was that of Kidnapping the girl, murdering her and then concealing the dead body. The police brought the accused to his house. He himself dug the place from where the body was exhumed. The accused admitted that the house belonged to him. The accused failed to explain how the body came to be buried in his house. The Supreme Court confirmed his conviction under sections 300, 364 and 201.<sup>168.</sup>

#### **[s 201.11] Disposal of dead body by burning.—**

The fact that the accused, after killing his two minor daughters, threw their dead bodies in the river, which amounted to causing disappearance of the evidence of murder.<sup>169.</sup>

#### **[s 201.12] Failure of doctor to give information.—**

The failure on the part of the doctor to give information to police for six days after the admission of a burnt patient has been held not to constitute any offence under section 201 by itself.<sup>170.</sup>

#### **[s 201.13] Threat to approver.—**

Oral threat or inducement given by the two lady lawyers to the approver not to give any statement against the petitioner, cannot amount to commission of an offence under [section 201 IPC, 1860](#).<sup>171.</sup>

#### **[s 201.14] Sanction under [section 197 Cr PC, 1973](#).—**

In a case where the allegation was that HIV contaminated blood was supplied to the Government Medical College Hospital and as a result, some patients who were given blood transfusion had tested HIV positive. Accused tampered with the entries made in official register, tearing of pages from the different official registers and stowing them

away in house. The acts cannot be related to the discharge of his official duties and hence sanction for prosecution under [section 197 Cr PC, 1973](#) not required.<sup>172.</sup>

### **[s 201.15] Acquittal for main offence, conviction under section 201.—**

One *Palvinder Kaur* was tried for offence under [sections 302 and 201 Penal Code](#) and was convicted under [section 302 IPC, 1860](#) but no verdict was recorded regarding the charge under [section 201 Penal Code](#). In appeal, High Court acquitted her of the charge of murder, but convicted under [section 201 of Penal Code](#). In the appeal before Supreme Court, it was held that in order to establish the charge under [section 201 IPC, 1860](#) it is essential to prove that substantive offence has been committed and the accused knew or had reason to believe that such offence has been committed with requisite knowledge and intention of screening the offender from such legal punishment, caused any evidence of the commission of that offence to disappear or gave any information respecting such offence or having such knowledge or believed to be false. She is acquitted under [section 201 IPC, 1860](#).<sup>173.</sup> Conviction for causing disappearance of evidence is possible even if nobody has been convicted for the main offence.<sup>174.</sup> Where the allegation was that the appellant killed his wife with a bamboo stick and buried her dead body in dry portion of pond located in his compound and there was no mark of injury found on the dead body; Court held that the possibility that deceased committed suicide by consuming poison cannot be ruled out. Though he was acquitted under section 302, but was convicted under [section 201 IPC, 1860](#).<sup>175.</sup>

### **[s 201.16] Main accused died during pendency of trial.—**

Where main accused died during pendency of trial, conviction of co-accused for causing disappearance of evidence is held not proper.<sup>176.</sup>

### **[s 201.17] CASES.—**

however, submitted with respect that having regard to the decisions of the Supreme Court in the cases of *Om Prakash*,<sup>177.</sup> and *Abhayanand*,<sup>178.</sup> where it has been held that to constitute an attempt to commit an offence it is not essential that the last proximate act must be done by the accused, in the instant case too the accused could perhaps be held guilty of an attempt to cause disappearance of the evidence of murder under [sections 201/511, IPC, 1860](#), as they, in fact, did all that lay within their power to do towards causing disappearance of the evidence of murder but the plot failed as the police intervened in the matter. Where the members of an unlawful assembly indiscriminately killed five persons, dragged the dead bodies over a distance, beheaded the victims and threw their limbs and bodies in the raging fire, they not only committed an offence under [section 201, IPC, 1860](#), but were also liable under [sections 302/149, IPC, 1860](#).<sup>179.</sup> If murder of an illegitimate child remains unproved, mere secreting of the dead body of the child does not constitute an offence under [section 201 IPC, 1860](#).<sup>180.</sup> Where the complaint filed under [section 201, IPC, 1860](#), besides mentioning the section did not contain a single word as to how the evidence of the crime was destroyed, it was held that no cognizance could be taken on such a complaint as it did not even contain allegations to constitute the offence under [section 201, IPC, 1860](#).<sup>181.</sup> Mere removal of dead body from one place to another does not by itself amount to causing disappearance of evidence under [section 201, IPC, 1860](#).<sup>182.</sup> Where the dead bodies were disposed of by some of the members of the unlawful assembly, all of them could

be convicted under [section 201](#) read with [section 149, IPC, 1860](#).<sup>183</sup> Where the accused cremated the dead body of his wife who had committed suicide without informing the police, the accused was held liable under section 201 in spite of he being acquitted under sections 304-B and 498-A.<sup>184</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

132. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1-1-1956).

133. *Kalawati*, (1953) SCR 546 [LNIND 1953 SC 5] , at p 557. **Followed** in *VL Tresa v State of Kerala*, AIR 2001 SC 953 [LNIND 2001 SC 364] , wife of the deceased concealing the real circumstances of death. *Ram Singh v State of HP*, 1997 Cr LJ 1829 : 1997 SCC (Cr) 729, for notes see under section 120-B.

134. *Nebti Mandal*, (1939) 19 Pat 369.

135. *Public Prosecutor v Venkatamma*, (1932) 56 Mad 63.

136. *Bakhora Chowdhary v State of Bihar*, 1991 Cr LJ 91 (Pat). A father-in-law convicted for lodging report of suicide of his daughter-in-law when he knew it was murder. *Brij Kishore v State of UP*, 1989 Cr LJ 616 (All).

137. *Asar Mohammad v State of UP*, AIR 2018 SC 5264 .

138. *Deepak v State of Maharashtra*, (1995) 2 Cr LJ 2219 (Bom).

139. *Markose*, (1962) 1 Cr LJ 610 .

140. *Rathinam v State of TN*, (2011) 3 SCC (Cr) 111 : (2011) 11 SCC 140 [LNIND 2009 SC 1873] : 2010 (11) Scale 6 [LNINDORD 2009 SC 542]

141. *Palvinder Kaur*, (1953) SCR 94 [LNIND 1952 SC 54] : 1953 Cr LJ 154 : AIR 1952 SC 354 [LNIND 1952 SC 54] . See *Bhupendra Singh v State of UP*, AIR 1991 SC 1083 [LNIND 1991 SC 151] : 1991 Cr LJ 1337 : 1991 All LJ 379 : (1991) 2 SCC 750 [LNIND 1991 SC 151] . See also *State of UP v Kapil Deo*, AIR 1991 SC 2257 [LNIND 1991 SC 397] : 1991 Cr LJ 3321 : 1991 Supp (2) SCC 170 ; *Suleman Rahiman v State of Maharashtra*, AIR 1968 SC 829 [LNIND 1967 SC 354] : 1968 Cr LJ 1013 ; *Roshan Lal v State of Punjab*, AIR 1965 SC 1413 [LNIND 1964 SC 339] : 1965 (2) Cr LJ 426 ; *Batapa Bada Seth v State of Orissa*, 1987 Cr LJ 1976 (Ori); *Sardar Singh v State (Delhi Admn.)*, AIR 1993 SC 1696 [LNIND 1993 SC 153] : 1993 Cr LJ 1489 : 1993 Supp (2) SCC 393 . *Ram Saran Mahto v State of Bihar*, 1999 Cr LJ 4311 : AIR 1999 SC 3435 [LNIND 1999 SC 782] ; *Gati Bahera v State of Orissa*, 1997 Cr LJ 4331 (Ori).

142. *Basanti v State of HP*, AIR 1987 SC 1572 : 1987 Cr LJ 1869 : (1987) 3 SCC 227 . For other examples of acquittals under benefit of doubt, see *Kedar Nath v State of UP*, AIR 1991 SC 1224 : 1991 Cr LJ 989 ; *Kishore Chand v State of HP*, AIR 1990 SC 2140 [LNIND 1990 SC 468] : 1990 Cr LJ 2289 . *Sudhir Mondal v State of WB*, 1988 Cr LJ 569 (Cal); *State of Rajasthan v Kamla*, AIR 1991 SC 967 : 1991 Cr LJ 602 .

143. *Dinesh Kumar Kalidas Patel v State of Gujarat*, AIR 2018 SC 951 .

144. *Suresh v State of Karnataka*, 2002 Cr LJ 3273 (Kant).

145. *K Purnachandra Rao*, 1975 Cr LJ 1671 : AIR 1975 SC 1925 [LNIND 1975 SC 316] . *Sukhram v State of Maharashtra*, (2007) 7 SCC 502 [LNIND 2007 SC 969] : AIR 2007 SC 3050 [LNIND 2007 SC 969] , the Supreme Court restated the ingredients of the offence.

146. *Abdul Kadir v State*, (1880) 3 All 279 (FB).
147. *Matuki Misser*, (1885) 11 Cal 619 . *Hanuman v State of Rajasthan*, AIR 1994 SC 1307 [LNIND 1993 SC 992] : (1994) 2 Cr LJ 2092 : 1994 Supp (2) SCC 39 , where it was not proved that the dead body in question was that of the victim of murder or that the accused persons were themselves the assailants or knew the assailants, the Supreme Court held that it was not safe to convict them only on the ground that they performed the ceremonies for cremation of the body and took part in cremation. *Arbind Singh v State of Bihar*, AIR 1994 SC 1068 : 1994 Cr LJ 1227 (SC), another case where the participants in a cremation were acquitted because they had no knowledge or reason to believe that the death was homicidal.
148. *Dinesh Kumar Kalidas Patel v State of Gujarat*, AIR 2018 SC 951 .
149. *Samir Bhowmik v State of Tripura*, 200 Cr LJ 3018 (Gau).
150. *Vijaya v State of Maharashtra*, (2003) 8 SCC 296 [LNIND 2003 SC 739] : AIR 2003 SC 3787 [LNIND 2003 SC 739] .
151. *Ghuraiyaa v State of MP*, 1990 Cr LJ 1129 . *Naba Kumar Das v State of Assam*, 2002 Cr LJ 1950 (Gau).
152. *Dinesh Kumar Kalidas Patel v State of Gujarat*, AIR 2018 SC 951 .
153. *Jamnadas*, (1963) 1 Cr LJ 433 ; *Dr. Ravindra Kumar v State of Bihar*, 1991 Cr LJ 3052 (Pat).
154. *Prakash Dhawal Khairnar v State of Maharashtra*, AIR 2002 SC 340 [LNIND 2001 SC 2841] at 348.
155. *Bhanu Pratap Tewari v State of UP*, 2002 Cr LJ 1243 (All).
156. *Vithal Thukaram More v State of Maharashtra*, AIR 2002 SC 2715 [LNIND 2002 SC 449] ; *Hargovindas Devrajibhai Patel v State of Gujarat*, 1998 Cr LJ 662 : AIR 1998 SC 370 [LNIND 1997 SC 1443] . In *Rabin Mallick v State of West Bengal*, 2011 Cr LJ 3801 (Cal) the body of the deceased boy was concealed in a place in the exclusive knowledge of accused. Conviction was held proper but in *Udaimanik Jamatia v The State of Tripura*, 2011 Cr LJ 4167 (Gau) accused was acquitted though there was recovery of skeleton at the instance of accused.
157. *Sidhartha Vashisht v State (NCT of Delhi)*, AIR 2010 SC 2352 [LNIND 2010 SC 367] : (2010) 2 SCC (Cr) 1385.
158. *Channaraja v State of Karnataka*, 2012 Cr LJ 159 (Kar) *Sk Waheed v State of Bihar*, 2010 Cr LJ 1870 (Pat).
159. *Diwan Singh v State of Uttaranchal*, 2012 Cr LJ 3256 (Utt) But in *Ramakanta Patel v State of Orissa*, 2011 Cr LJ 600 (Ori). See also *Netrananda Naik v State of Orissa*, 2011 Cr LJ 813 (Ori).
160. *Mulakh Raj v Satish Kumar*, AIR 1992 SC 1175 [LNIND 1992 SC 322] : 1992 Cr LJ 1529 . *Turuku Budha Karkaria v State of Orissa*, 1994 Cr LJ 552 (Ori), killing a woman, removing her ornaments, concealing her body in a bush in deep forest, killers guilty under the section, sentenced under section 302.
161. *Goburdhun Bera*, (1866) 6 WR (Cr) 80.
162. *Autar*, (1924) 47 All 306 ; *Begu*, (1925) 52 IA 191 , 6 Lah 226, 27 Bom LR 707, **followed** in *Mata Din v State*, (1929) 5 Luck 255 . *Raveendran v State of Kerala*, 1994 Cr LJ 3562 (Ker), the accused offered a helping hand to the main accused in disposing of the dead body, conviction under section 201.
163. *Public Prosecutor v Munisami*, (1941) Mad 503.
164. *Vinod Bhalla v State of MP*, 1992 Cr LJ 3527 (MP). See also *Sankarapandian v State of TN*, 1992 Cr LJ 3662 (Mad); *Budhan Singh v State of Bihar*, 2006 Cr LJ 2451 SC : AIR 2006 SC 1959 [LNIND 2006 SC 300] .
165. *Bhagwan Singh v State of Punjab*, AIR 1992 SC 1689 [LNIND 1992 SC 396] : 1992 Cr LJ 3144 .



166. *Sarojini v State of MP*, 1993 AIR SCW 817 : [1993 Cr LJ 1648](#) (SC). See also *Bhuneshwar Pd Chaurasia v Bhuneshwar Chaurasia*, [2001 Cr LJ 3541](#) (Pat), a married woman died of poisoning, she was cremated hurriedly during the same night without informing police or her relatives. Those who participated in the activity were held guilty under the section; *Shambir Gowada v State of WB*, [2000 Cr LJ 1602](#) (Cal); *SK Usman v State of Maharashtra*, [2000 Cr LJ 3301](#) (Bom).
167. *VL Tresa v State of Kerala*, [AIR 2001 SC 953](#) [[LNIND 2001 SC 364](#)] .
168. *Damodar v State of Karnataka*, [AIR 2000 SC 50](#) [[LNIND 1999 SC 884](#)] : [2000 Cr LJ 175](#) .
169. *State of West Bengal v Rakesh Singh*, (2016)1 CALLT 178 (HC) : [2015 Cr LJ 3847](#) .
170. *KK Patnayak (Dr) v State of MP*, [1999 Cr LJ 4911](#) (MP).
171. *Sri Jayendra Saraswathy Swamigal v State of TN*, [AIR 2006 SC 6](#) [[LNIND 2005 SC 815](#)] : [\(2005\) 8 SCC 771](#) [[LNIND 2005 SC 815](#)] : [2005 Cr LJ 4626](#) .
172. *State of Maharashtra v Devahari Devasingh Pawar*, [AIR 2008 SC 1375](#) [[LNIND 2008 SC 103](#)] : [\(2008\) 2 SCC 540](#) [[LNIND 2008 SC 103](#)] : 2008 AIR (SCW) 815 : [2008 Cr LJ 1593](#) .
173. *Palvinder Kaur v State of Punjab*, [AIR 1952 SC 354](#) [[LNIND 1952 SC 54](#)] .
174. *State of Karnataka v Madesha*, (2007) 7 SCC 35 [[LNIND 2007 SC 918](#)] : [AIR 2007 SC 2917](#) [[LNIND 2007 SC 921](#)] ; *Sukhram v State of Maharashtra*, (2007) 7 SCC 502 [[LNIND 2007 SC 969](#)] : [AIR 2007 SC 3050](#) [[LNIND 2007 SC 969](#)] , conviction under section 201 possible despite acquittal from the main offence.
175. *Suman Rajowar v State of Assam*, [2011 Cr LJ 2984](#) (Gau).
176. *Keshave Kishore Sinha v State of Bihar*, [2013 Cr LJ \(NOC\)7](#) (Pat).
177. *Om Prakash*, [1961 \(2\) Cr LJ 848](#) : [AIR 1961 SC 1782](#) [[LNIND 1961 SC 201](#)] .
178. *Abhayanand*, [1961 \(2\) Cr LJ 822](#) .
179. *State of UP v Mahendra Singh*, [1975 Cr LJ 425](#) : [AIR 1975 SC 455](#) [[LNIND 1974 SC 320](#)] .
180. *Re Sumitra Sherpani*, [1975 Cr LJ 169](#) (Gau), See also *Mazahar Ali*, [1976 Cr LJ 1629](#) (J&K).
181. *Chandrapal Singh*, [1982 Cr LJ 1731](#) : [AIR 1982 SC 1238](#) : (1982) 1 SCC 466 .
182. *Bhagaban Kirshani*, [1985 Cr LJ 868](#) (Ori).
183. *Ram Avtar*, [1985 Cr LJ 1865](#) (SC) : [AIR 1985 SC 880](#) [[LNIND 1985 SC 4](#)] .
184. *Sunkara Suri Babu v State of AP*, [1996 Cr LJ 1480](#) (AP).

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **[s 202] Intentional omission to give information of offence by person bound to inform.**

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

#### **COMMENT.—**

This section punishes the illegal omission to give information of those who are by some law bound to give information, when such omission is intentional. It is similar to section 176. See [sections 39 and 40, Criminal Procedure Code](#), as to the persons legally bound to give information. The word "whoever" in [section 202, IPC, 1860](#), refers to persons other than the offender.<sup>185</sup> Moreover to compel a criminal to incriminate himself would violate the spirit of [Article 20\(3\) of the Constitution](#). Where the duty to inform arises first and is not performed, the liability under this section would arise and it would be no defence that subsequent to the breach of duty there was involvement of

the accused person in some crimes. The person who knew or had reason to believe that death was not natural was obliged under the section to give information.<sup>186.</sup>

### **[s 202.1] Essential Ingredients.—**

To sustain a conviction under the above quoted [section 202 of the Penal Code](#), it is necessary for the prosecution to prove:

- (1) that the accused had knowledge or reason to believe that some offence had been committed,
- (2) that the accused had intentionally omitted to give information respecting that offence and
- (3) that the accused was legally bound to give that information.<sup>187.</sup>

332 The [Indian Penal Code](#) [Chapter XI

### **[s 202.2] CASES.—**

The accused persons who raped a girl of 11 years and caused her death by thrusting a stick into her private part were under no obligation to file information of their own criminality, they became liable under this section because by falsely telling the mother of the victim that they had already reported the matter, they prevented her from lodging report with the police.<sup>188.</sup>

This section has also no application where the principal offence has not been established.<sup>189.</sup>

### **[s 202.3] Failure of doctor to give information.—**

The allegation was the Accused, a dentist treated one of the injured assailants by suturing (stitching) his wound on the back after applying local anaesthesia pursuant of a previous plan that if and when any of the assailants got injured in the attack then immediate medical treatment would be given by the accused to the injured. The accused stitched the back of an assailant, which is not the job of a dentist. Offence under section 201 *prima facie* made out.<sup>190.</sup> The failure on the part of the doctor to give information to the police (in this case information was given after a gap of six days) has been held not to constitute any offence under section 202. It would have to be shown that doctors were duty bound to give such information that there was knowledge that in the burning of the lady some offence was involved. Even where this would be so, it would be a separate offence. The doctors cannot be prosecuted jointly with the main accused.<sup>191.</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
185. *HS Rathod*, 1979 Cr LJ 1025 : AIR 1979 SC 1232 [LNIND 1979 SC 43] .
186. *Bhagwan Swarup v State of Rajasthan*, AIR 1991 SC 2062 [LNIND 1991 SC 416] : 1991 Cr LJ 3123 .
187. *HS Rathod*, (*supra*).
188. *Ghuraiyaa v State of MP*, 1990 Cr LJ 1129 . *State of Rajasthan v Chhote Lal*, 2012 Cr LJ 1214 (SC) : 2011 (6) Scale 526 : 2012 AIR (SCW) 1159.
189. *HS Rathod*, *supra*.
190. *State of Kerala v Raneef*, (2011) 1 SCC 784 [LNIND 2011 SC 3] : AIR 2011 SC 340 [LNIND 2011 SC 3] : 2011 Cr LJ 982 : (2011) 1 SCC (Cr) 409.
191. *KK Patnayak (Dr) v State of MP*, 1999 Cr LJ 4911 (MP).

## THE INDIAN PENAL CODE

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#### **[s 203] Giving false information respecting an offence committed.**

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

<sup>192</sup>.**[Explanation.—In sections 201 and 202 and in this section the word "offence", includes any act committed at any place out of** <sup>193</sup> **[India], which, if committed in** <sup>194</sup> **[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.]**

#### **COMMENT.—**

The liability under this section attaches to anyone who gives false information whether he is legally bound to furnish such information or not. The object of the Legislature is to discourage and punish the giving of false information to the police concerning offences which are actually committed and which the person charged with knows, or

has reason to believe, have been actually committed. The section contemplates information volunteered by some person.

### **[s 203.1] Ingredients.—**

To secure a conviction under [section 203, IPC, 1860](#), the prosecution must prove,

- (1) that an offence has been committed;
- (2) that the accused knew or had reason to believe that such offence had been committed;
- (3) that he gave the information with respect to that offence;
- (4) that the information so given was false;
- (5) that when he gave such information he knew or believed it to be false.<sup>195.</sup>

A complaint against the petitioners/accused for committing an offence under [section 203 of the IPC, 1860](#) would lie only in a case where such accused had voluntarily given false information in respect of an offence committed knowing or believing it to be false. Statements given by them to police during investigation of the crime and recorded under section 161 of the Code even if it is false, will not constitute an offence under [section 203 of the IPC, 1860](#).<sup>196.</sup> Where two nuns died due to fall of bricks lifted by hoist lift without protective measures at construction site. Deed of settlement purportedly made in the name of a fictitious person so as to save the culpability of the contractor. Offence made out.<sup>197.</sup> Where the accused were prosecuted for throttling a man to death and also for giving for the purpose of screening murder wrong information that he died of excessive drinking, there being no direct evidence for the offence of murder, the accused were acquitted of the offence of murder and their conviction under section 201 was modified into one under section 203 for giving false information.<sup>198.</sup> Where petitioners were charged under [section 203](#) and [section 211, IPC, 1860](#) by the police only to cover up their mishandling of the investigation and their having falsely charged the petitioners of a crime which never took place, Court ordered compensation to the petitioners.<sup>199.</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

192. Added by Act 3 of 1894, section 6.

193. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

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195. *Bhagguram*, 1982 Cr LJ 106 (MP).

196. *Jiji joseph v Tomy Ignatius*, 2013 Cr LJ 828 (Ker).

197. *Kumar v State of Kerala*, 2012 Cr LJ 3193 (Ker).

198. *Nagireddi Siva v State of AP*, 1992 Cr LJ 1339 (AP).

199. *Peruboyina Satyanarayana v State of AP*, [2006 Cr LJ 3027](#) (AP).

## THE INDIAN PENAL CODE

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#### **[s 204] Destruction of document to prevent its production as evidence.**

**Whoever secretes or destroys any <sup>200</sup>. [document or electronic record] which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such <sup>201</sup>. [document or electronic record] with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### **COMMENT.—**

Section 175 deals with omission to produce or deliver up any document to any public servant, this section deals with secretion or destruction of a document which a person may lawfully be compelled to produce in a Court. A person may secrete a document not only when the existence of the document is unknown to other persons and for the



purpose of preventing the existence of the document coming to the knowledge of anybody, but also when the existence of the document is known to others.<sup>202.</sup>

The offence under this section is an aggravated form of the offence punishable under section 175. The section applies whether the proceeding is of a civil or criminal nature.

#### **[s 204.1] CASES.—Secreting document.—**

Where the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond, snatched up the bond which was lying beside the arbitrator, ran away, and refused to produce it, it was held that he had committed this offence.<sup>203.</sup>

#### **[s 204.2] Destroying document.—**

Where a police-officer took down at first the report of the commission of a dacoity made to him, but subsequently destroyed that report and framed another and a false report of the commission of a totally different offence, he was held guilty of this offence.<sup>204.</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

200. Subs. by The [Information Technology Act, 2000](#) (Act 21 of 2000), section 91 and First Sch, w.e.f. 17 October 2000, for the word "document". The words "electronic record" have been defined in section 29A.

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202. *Susenbihari Ray*, (1930) 58 Cal 1051 (SB).

203. *Subramania Ghanapati*, (1881) 3 Mad 261.

204. *Muhammad Shah Khan*, (1898) 20 All 307 . See also *Jagdish v State of Rajasthan*, 2002 Cr LJ 2171 .

## THE INDIAN PENAL CODE

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#### **[s 205] False personation for purpose of act or proceeding in suit or prosecution.**

**Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment,<sup>1</sup> or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.**

#### **COMMENT.—**

The offence punishable under this section is not merely cheating by using a fictitious name, but by falsely assuming to be some other real person and in that character making an admission, confessing judgment, or causing any process to be issued, etc.

Any fraudulent gain or a benefit to the offender is not an essential element of this offence.<sup>205</sup> Where A personated B at a trial with B's consent, which was given to save himself from the trouble of making an appearance in person before a Magistrate, it was held that A was guilty of an offence under this section, and B was guilty of abetment of

the offence.<sup>206</sup> Act of impersonating another for purpose of giving evidence in Court falls under [section 205 IPC, 1860](#). [Section 205, IPC, 1860](#) is squarely covered under section 195(b)(i) of the [Code of Criminal Procedure](#) and cognizance could be taken only by a Court on the complaint in writing of that Court in which such offence was committed.<sup>207</sup>

1. '**Confesses judgment**'.—Allows a decree to be passed against himself.

### **[s 205.1] Personation of imaginary person.—**

There is a conflict of opinion on the point whether a person commits an offence under this section by personating a purely imaginary person. The Calcutta High Court has held that a person by such personation commits an offence under this section.<sup>208</sup> The Madras High Court, dissenting from the above ruling, has held that it is not enough to show the assumption of a fictitious name; it must also appear that the assumed name was used as a means of falsely representing some other individual.<sup>209</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [\(2009\) 10 SCC 664](#) [[LNIND 2009 SC 1659](#)] : [\(2009\) 12 SCR 1215](#) [[LNIND 2009 SC 1659](#)] .

205. *Suppakon*, [\(1863\) 3 MHC 450](#) ; *Kalya*, [\(1903\) 5 Bom LR 138](#) .

206. *Suppakon*, *supra*.

207. *Jawahar Yadav v State of Chhattisgarh*, [2006 Cr LJ 2078](#) (Chh).

208. *Bhitto Kahar*, (1862) 1 Ind Jur OS 128. See also *K M Chitharanjan v P M Kunhunni*, [2005 Cr LJ 4434](#) (Ker).

209. *Kadar Ravuttan*, [\(1868\) 4 MHC 18](#) . By virtue of the provision in [section 195 Cr PC, 1973](#), cognizance of an offence under this section is barred except on a complaint by the court where the offence is committed. *Sardul Singh v State of Haryana*, [1992 Cr LJ 354](#) (P&H).

## THE INDIAN PENAL CODE

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#### **[s 206] Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.**

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

#### **COMMENT.—**

The concealment or removal of property contemplated in this section must be to prevent the property from being taken. Where the property is already taken and the removal is subsequent, the offence under this section is not committed.<sup>210</sup> The word 'taken' has been used in the sense of 'seized' or 'taken possession of'.<sup>211</sup> Where the

removal was open and without any element of secrecy or deception, it was held that the removal was not "fraudulent removal" and hence this section could not apply.<sup>212</sup>.

A creditor commits no fraud who anticipates other creditors and obtains a discharge of his debt by the assignment of any property which has not already been attached by another creditor.<sup>213</sup>.

Sections 206, 207 and 208 have the effect of rendering criminal all collusive modes by which creditors, or lawful claimants may be defeated of their just remedies. Sections 421–424 deal with fraudulent transfers.

Under this and the next section a civil suit must be actually pending before a Court, and not merely intended to be filed.<sup>214</sup>.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

210. *Murli v State*, (1888) 8 AWN 237.

211. *Sahebrao Baburao*, (1936) 38 Bom LR 1192 .

212. *Kudumban v Dinakaran*, 1962 Cr LJ 555 .

213. *Appa Mallya*, (1876) Unrep CrC 110.

214. *MS Ponuswami*, (1930) 8 Ran 268.

## THE INDIAN PENAL CODE

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#### **[s 207] Fraudulent claim to property to prevent its seizure as forfeited or in execution.**

**Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practices any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### **COMMENT.—**

This section deals with the receiver, acceptor, or claimer of property who tries to prevent its seizure as a forfeiture. It punishes the accomplice just as the preceding section punishes the principal offender.

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

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#### **[s 208] Fraudulently suffering decree for sum not due.**

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

#### ILLUSTRATION

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

#### COMMENT.—



This section prevents the abuse of getting someone to file a collusive suit for recovery of the whole property and suffering a decree to be passed. It punishes persons making fictitious claims in order to secure the property of the defendant against person to whom he may become indebted in future.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

## THE INDIAN PENAL CODE

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#### [s 209] Dishonestly making false claim in Court.

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

#### COMMENT.—

This section relates to false and fraudulent claims in a Court of Justice. It is much wider than the last section as it applies to a person who is acting fraudulently or dishonestly. Not only must the claim be false to the knowledge of the person making it, but the object of it must be to defraud, to cause wrongful loss or wrongful gain, to injure or to annoy. The section punishes the making of a false claim. The offence will be complete as soon as a suit is filed. If a person applies for the execution of a decree which has already been executed his act will be an offence under the next section.<sup>215</sup>

Where the Court took cognizance of a complaint against dishonestly making a false claim in a Court without complaint of the concerned civil judge, the cognizance was held to be not justified by reason of section 195(b)(ii), [Cr PC, 1973](#) that covers such

offences.<sup>216</sup> The Court had no jurisdiction to take cognizance of offence under sections 193/ 209/34 IPC, 1860 without having received any complaint under section 195 from the concerned civil Court.<sup>217</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

215. *Beegum Mahtoon*, (1869) 12 WR (Cr) 37; *Bismilla Khan v Rambhau*, (1946) Nag 686. Cognizance of an offence under this section can be taken on a complaint by the court concerned. See [section 195 Cr PC, 1973](#). *Sardul Singh v State of Haryana*, 1992 Cr LJ 354 P&H.

216. *Babu Lal v State*, 1998 Cr LJ 3595 (Raj). See also *Vinod Kumar v State*, 1997 Cr LJ 2893 (P&H).

217. *Kusum Sandhu v Sh Ved Prakash Narang*, 2009 Cr LJ 1078 (Chh); *Babu Lal v State of Rajasthan*, 2009 Cr LJ 3595 (Raj).

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **[s 210] Fraudulently obtaining decree for sum not due.**

**Whoever fraudulently obtains <sup>1</sup> a decree or order against any person for a sum not due or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied <sup>2</sup> or for anything in respect of which it has been satisfied or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### **COMMENT.—**

This section is the counterpart to section 208 in respect of fraudulent decrees, just as section 207 is the counterpart to section 206 in respect of fraudulent transfers and conveyances, the object of the Code being to strike both parties alike with the same penalty. This section, taken together with section 208, will enable both plaintiff and defendant to a fraudulent or collusive suit or execution to be dealt with alike.

**1. 'Obtains'.—**The offence is committed when the decree is fraudulently obtained and the fact that the decree has not been set aside, though admissible to prove that there

was no fraud, is not a bar to a prosecution under the section.<sup>218</sup>.

**2. 'Causes a decree or order to be executed...after it has been satisfied'.—**The mere presentation of an application for the execution of a decree already executed will not be sufficient. The accused must have caused the decree to be executed against the opposite party after it had been satisfied,<sup>219</sup> or obtained an order for attachment for a sum already paid.<sup>220</sup> Where the decree-holder does not want to proceed with the execution and gets his execution application dismissed he cannot be convicted of an offence under this section.<sup>221</sup>.

The fact that the satisfaction is of such a nature that the Court executing the decree could not recognize it does not prevent the decree-holder from being convicted of an offence under this section.<sup>222</sup>.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

218. *Molla Fuzla Karim*, (1905) 33 Cal 193 .

219. *Shama Charan Das v Kasi Naik*, (1896) 23 Cal 971 .

220. *Hikmat-ullah Khan v Sakina Begam*, (1930) 53 All 416 .

221. *Bismilla Khan v Rambhau*, (1946) Nag 686.

222. *Madhub Chunder Mozumdar v Novodeep Chunder Pandit*, (1888) 16 Cal 126 ; *Mutturaman Chetti*, (1881) 4 Mad 325; *Pillala*, (1885) 9 Mad 101.

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#### **[s 211] False charge of offence made with intent to injure.**

**Whoever, with intent to cause injury<sup>1</sup> to any person, institutes or causes to be instituted any criminal proceedings<sup>2</sup> against that person, or falsely charges<sup>3</sup> any person with having committed an offence, knowing that there is no just or lawful ground<sup>4</sup> for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted<sup>5</sup> on a false charge of an offence punishable with death, <sup>223.</sup>[imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

#### **COMMENT.—**

This section includes two distinct offences:—

- (1) Actually instituting or causing to be instituted false criminal proceeding against a person.<sup>224.</sup>

- (2) Preferring a false charge against a person.

The first assumes the second, but the second may be committed where no criminal proceedings follow.

The necessary ingredients to constitute either of the above offences are—

- (1) the criminal proceedings must be instituted, or the false charge made with intent to injure;
- (2) the criminal proceedings must be instituted, or the false charge must be made, without just or lawful ground, in other words, it must be made maliciously.

Difference is made in punishment according as the charge relates to offences punishable with imprisonment which may extend to seven years or more or otherwise.

The mere making of a false charge is punishable under the first part of the section. If a case gets no further than a police inquiry, it falls within that part. But under the second part there should be an actual institution of criminal proceedings on a false charge.<sup>225</sup> Two conditions are necessary before the enhanced punishment provided in the second paragraph could be inflicted: (1) proceedings on the false charge should have been actually instituted, and (2) the false charge must be in respect of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards.

### **[s 211.1] Sections 182 and 211.—**

According to the Bombay High Court there is a clear distinction between a false charge that falls under section 211 and false information given to the police, in which latter case the offence falls under section 182. A person prosecuting another under section 182 need not prove malice and want of reasonable and probable cause except so far as they are implied in the act of giving information known to be false, with the knowledge or likelihood that such information would lead a public servant to use his power to the injury or annoyance of the complainant. In an inquiry under section 211, on the other hand, proof of the absence of just and lawful ground for making the charge is an important element.<sup>226</sup> If the information conveyed to the police amounts to the institution of criminal proceedings against a defined person or amounts to the falsely charging of a defined person with an offence, then the person giving such information is guilty of an offence under section 211. In such a case, section 211 is, and section 182 is not, the appropriate section under which to frame a charge. Section 182, when read with section 211, must be understood as referring to cases where the information given to the public servant falls short of amounting to institution of criminal proceedings against a defined person and falls short of amounting to the falsely charging of a defined person with an offence as defined in the [Penal Code](#).<sup>227</sup>

The Calcutta, the Madras, the Allahabad and the Patna High Courts differ from this view of the Bombay High Court. The Calcutta High Court has ruled that a prosecution for a false charge may be under section 182 or section 211, but if the false charge was a serious one, the graver section 211 should be applied and the trial should be full and fair.<sup>228</sup> Where a false charge is made to the police of a cognizable offence the offence committed by the person making the charge falls within the meaning of section 211 and not section 182.<sup>229</sup>

The Madras High Court has held that there is no error in a conviction under section 182, when the false charge made before the police was punishable under the final clause of section 211. The High Court may quash the conviction and sentence for the minor offence and direct a trial before a tribunal having jurisdiction for the graver offence.

Whether it will do so, or not, is a question, not of law, but of expediency on the facts of the particular case.<sup>230.</sup>

The Allahabad High Court had held that where a specific false charge is made, the proper section, for proceedings to be adopted under section 211.<sup>231.</sup> Although it is difficult to see what case would arise under section 211 to which section 182 could not be applied yet section 182 would apply to a case that might not fall under section 211. The offence under section 182 is complete when false information is given to a public servant by a person who believes it to be false, but who intends thereby to cause such public servant to institute criminal proceedings against a third person. The offence is complete although the public servant takes no steps towards the institution of such criminal proceedings. There is no restriction imposed by the [Penal Code](#) or by the [Criminal Procedure Code](#) upon the prosecution of an offence either under section 182 or section 211. It appears that it has been left to the discretion of the Court to determine when and under what circumstances prosecution should be proceeded with under sections 182 and 211.<sup>232.</sup> The soundness of this view is doubted in subsequent cases.<sup>233.</sup>

The Patna High Court has followed the view of the Calcutta High Court.<sup>234.</sup>

The Lahore High Court has held that an offence under section 182 is included in the more serious offence under section 211 and a prosecution for a false charge may be either under section 182 or section 211, though clearly if section 211 does apply and the false charge is serious, the prosecution should be under section 211.<sup>235.</sup>

**1. 'Intent to cause injury'.—**This is an essential part of the offence.<sup>236.</sup>

**2. 'Institutes or causes to be instituted any criminal proceedings'.—**The word "proceedings" is used in this section in the ordinary sense of a prescribed mode of action for prosecuting a right or redressing a wrong. It is not used in the technical sense of a proceeding taken in a Court of law.<sup>237.</sup> Neither the proceedings before the Disciplinary Committee of the Bar Council of India, is a criminal proceeding nor was the charge in the Disciplinary Proceedings in relation to an offence. Charge in the Disciplinary Proceedings before the Bar Council of India is only in respect of professional misconduct and not offence as such.<sup>238.</sup> Under this section 'instituting a criminal proceeding' may be treated as an offence in itself apart from 'falsely charging' a person with having committed an offence. There are two modes in which a person aggrieved may seek to put the criminal law in motion: (1) by giving information to the police ([Criminal Procedure Code, section 154](#)) and (2) by lodging a complaint before a Magistrate ([Criminal Procedure Code, sections 190, 200](#)). A person who sets the criminal law in motion by making to the police a false charge in respect of a *cognizable offence* institutes criminal proceedings.<sup>239.</sup> But as the police have no power to take any proceedings in *non-cognizable* cases without orders from a Magistrate, a false charge of such offence, made to the police, is not an institution of criminal proceedings, but merely a false charge.<sup>240.</sup> The distinction between cognizable and non-cognizable offences relates to the powers of the police only, and it will, therefore, seem that the false charge of any offence, whether cognizable or non-cognizable, before a Magistrate is an institution of criminal proceedings.

**3. 'Falsely charges'.—**The word 'charges' means something different from 'gives information'. The true test seems to be, does the person who makes the statement that is alleged to constitute the 'charge' do so with the intention and object of setting the criminal law in motion against the person against whom the statement is directed? Such object and intention may be inferred from the language of the statement and the circumstances in which it is made.<sup>241.</sup> The false charge must be made to a Court, or to an officer who has power to investigate and send it up for trial.<sup>242.</sup> Where the tribunal



before whom the complaint is made is not competent to take any action direct or indirect to punish the persons complained against, it cannot be said that the accused 'charged' such persons with any offence or that his intention necessarily was that action should be taken against them.<sup>243</sup> A false petition to the Superintendent of Police, praying for the protection of the petitioners from the oppression of a Sub-Inspector, which may be effected by some departmental action, does not amount to such a false charge.<sup>244</sup> It is enough that a false charge is made though no prosecution is instituted thereon.<sup>245</sup> Where a person who gives false information as to the commission of an offence merely states that he suspected a certain other person to be the offender, it may be that he would not be liable under this section, but where it is clear that the informant's intention was not merely that the police should follow up a clue but that they should put the alleged offender on trial, the informant is guilty of an offence under this section.<sup>246</sup> The Calcutta High Court has held that the meaning of the expression 'falsely charges' is simply 'falsely accuses' and as the section stands there is no necessity of this false accusation being made in connection with a criminal proceeding.<sup>247</sup>

### **[s 211.2] Giving false Evidence: No false charge.—**

The words "falsely charges" in this section cannot mean giving false evidence against the accused as a prosecution witness during the course of a trial. To "falsely charge" must refer to the criminal or initial accusation putting or seeking to put in motion the machinery of criminal investigation and not when seeking to prove the false charge by making deposition in support of the charge framed in that trial. The words "falsely charges" have to be read along with the expression "institution of criminal proceedings". The false charge must, therefore, be made initially to a person in authority or to someone who is in a position to get the offender punished by appropriate proceedings. In other words it must be embodied either in a complaint or in a report of a cognizable offence to the police-officer or to an officer having authority over the person against whom the allegations are made. Giving false evidence in course of a trial amounts to an offence under sections 193 and 195 and not under [section 211, IPC, 1860](#).<sup>248</sup>

### **[s 211.3] Bare statement is not false charge.—**

A statement to the police of a suspicion that a particular person has committed an offence is not a charge within the meaning of this section, nor does it amount to institution of criminal proceedings; and a conviction cannot be had on proof that the suspicion was unfounded.<sup>249</sup> The accused made a report to the police that his buffalo had been poisoned and that he suspected two persons whom he named of having administered the poison. The police made an inquiry and reported that there was no case of poisoning and the charge was struck off. One of the persons then brought a complaint under this section against the accused. It was held that the report to the police did not amount to a charge of a criminal offence.<sup>250</sup>

### **[s 211.4] Statement under [section 162, Criminal Procedure Code](#).—**

A statement under [section 162, Criminal Procedure Code](#), in answer to questions put by a police-officer making an investigation under section 161 of the Code, cannot be made

the basis of a prosecution under this section.<sup>251.</sup> False identification in a Test Identification Parade is not falsely charging.<sup>252.</sup>

**4. 'Knowing that there is no just or lawful ground'.—**This expression is the equivalent of the English technical phrase "without reasonable or probable cause," which means an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. There must be:

First, an honest belief of the accuser in the guilt of the accused;

Second, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion;

Third, such belief must be based upon reasonable grounds; that is, such grounds as would lead any fairly cautious man in the defendant's situation so to believe;

Fourth, the circumstances so believed and relied on by the accuser must be such as amount to reasonable ground for belief in the guilt of the accused.<sup>253.</sup>

A person may, in good faith, institute a charge that is subsequently found to be false, or he may, with intent to cause injury to an enemy, institute criminal proceedings against him, believing there are good grounds for them but in neither case has he committed an offence under this section. To constitute this offence it must be shown that the person instituting criminal proceedings knew there was no just or lawful ground for such proceedings.<sup>254.</sup>

In the absence of any special circumstances to rebut it, the judgment of one competent tribunal against the complainant affords very strong evidence of reasonable and probable cause.<sup>255.</sup>

**5. 'If such criminal proceeding be instituted'.—**There is a divergence of views between the Calcutta, the Madras and the Patna High Courts on the one hand, and the Allahabad and the Lahore High Courts on the other, on the question whether the latter part of the section applies to such cases of complaints to the police which are disposed of without a formal magisterial inquiry. A Full Bench of the Calcutta High Court has held that the latter part would apply to such cases where the charge related to the more serious offence.<sup>256.</sup> This case is followed by the Madras<sup>257.</sup> and the Patna<sup>258.</sup> High Courts. The test to apply is,—did the person who made the charge intend to set the criminal law in motion against the person on whom the charge is made.<sup>259.</sup>

The Allahabad High Court has, on the other hand, held that to constitute the offence defined in the second paragraph of this section, it is necessary that criminal proceedings should be instituted. Where the offence committed does not go further than the making of a false charge to the police, the making of such charge does not amount to institution of criminal proceedings, and the offence committed will fall within the first paragraph, notwithstanding that the offence so falsely charged may be one of those referred to in the second paragraph.<sup>260.</sup> The former Chief Court of the Punjab held likewise.<sup>261.</sup>

**[s 211.5] Complaint by Court: when.—**

A complaint alleging commission of an offence punishable under [section 211 IPC, 1860](#), "in or in relation to any proceedings in any Court", is maintainable only at the instance of that Court or by an officer of that Court authorized in writing for that purpose or some other Court to which that Court is subordinate, is abundantly clear from the language employed in the provision.<sup>262</sup> When the offence under [section 211, IPC, 1860](#), is committed in relation to Court proceedings, cognizance without Court's complaint is barred by section 195 (1)(b)(i), [Cr PC, 1973](#).<sup>263</sup> Since an order of a Magistrate discharging an accused on submission of a police report under [section 173, Cr PC, 1973](#), is a judicial and not administrative order, a complaint by the Magistrate or his superior Court under section 195(1)(b)(i), [Cr PC, 1973](#), would be necessary to take cognizance of an offence under [section 211, IPC, 1860](#).<sup>264</sup> Similarly, remand and bail proceedings too have been held to be Court proceedings and as such a complaint by the Court would be necessary to take cognizance of the offence under [section 211, IPC, 1860](#).<sup>265</sup> This view of the law has now been affirmed by the Supreme Court as well.<sup>266</sup>

### **[s 211.6] Proceedings in any Court.—**

There are three situations that are likely to emerge while examining the question whether there is any proceedings in any Court, namely,

(a) there might not be any proceeding in any Court at all,

(b) proceeding in a Court might actually be pending at the relevant time when cognizance is sought to be taken of the offence punishable under [section 211, IPC, 1860](#) and

(c) there might have been proceedings which had already been concluded though there might not be any proceedings pending in any Court when cognizance of offence under [section 211, IPC, 1860](#) is taken. It is only in second and third situation that [section 195\(1\), Cr PC, 1973](#) would apply. The fact that proceedings had been concluded would not be material because section 195(1) does not require that proceedings in any Court must actually be pending at the time when the question of applying the bar arises if the offence under [section 211, IPC, 1860](#) is alleged to have been committed in relation to those proceedings.<sup>267</sup> A complaint by the concerned Executive Magistrate could be necessary under section 195(1)(a)(i), and there could be no sufficient reason for dispensing with the necessity for a complaint by him for prosecution of an offence under [section 211, IPC, 1860](#) committed in relation to a proceeding before him under [section 144, Cr PC, 1973](#).<sup>268</sup>

### **[s 211.7] Sections 211 and 500 IPC, 1860.—**

If we read [sections 211 and 500 of IPC, 1860](#) together, we would find a clear distinction. Section 211 imposes a punishment in case of a false charge or offence made with the intent to injure someone before any Court of law, whereas section 500 provides for punishment in case of a defamation of a person by any one. Defamation has been defined under section 499 which provides inter alia 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. Making a false complaint before a Court of law would amount to committing fraud on Court. It is for

the Court to proceed against the erring person. The provision has been made to preserve the sanctity of the Court. Section 500 gives right to sue to a person who is defamed within the meaning of section 499 by the conduct of the accused. These two provisions are totally distinct and can be tried in absence of each other.<sup>269.</sup>

#### **[s 211.8] Civil remedy.—**

A person aggrieved by a false charge may, if he chooses, sue in a civil Court for damages for malicious prosecution, instead of taking criminal proceedings under this section.

#### **[s 211.9] CASES.—**

It was alleged that petitioner's son was kidnapped by opposite party, petitioner's son himself appeared and made his statement that he was not kidnapped, rather he had himself voluntarily gone to marry with a girl. The girl also had appeared and made her statement that petitioner's son and herself have married and for that reason the petitioner threatening to kill them. It was held that the order, taking cognizance of offences against petitioner for falsely implicating the opposite party, is proper.<sup>270.</sup>

#### **[s 211.10] False charge should be made to Court or officer having jurisdiction to investigate.—**

A woman appeared before the Station Staff Officer and accused a non-commissioned officer of rape, and, after a military inquiry, the military authority held that the charge was false and directed the complainant to be prosecuted under this section. The conviction was set aside, as the false charge was not made to a Court having jurisdiction.<sup>271.</sup> Where the accused laid a charge of mischief by fire at a police station, which was reported to be false, and the District Magistrate, upon the receipt of a report to the same effect from the Deputy Magistrate, to whom he had sent the case for a judicial inquiry, passed an order to prosecute the accused, it was held that the order of the District Magistrate was bad, as the matter of the false charge had not come before him in the course of judicial proceedings.<sup>272.</sup>

Where a letter falsely charging a person with having committed an offence was written and posted at Kumbakonam and was addressed to the Inspector-General of Police, Madras, an offence under this section could be said to be completed only when the letter reached the destination, i.e., the office of the Inspector-General of Police, Madras. The communication of the false accusation was, in fact, the laying of the false charge and, unless the matter was actually communicated to the superior officer, it could not be said that a false charge had been made. So, the Magistrate at Kumbakonam would have no territorial jurisdiction to try the case.<sup>273.</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
223. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1-1-1956).
224. *Jitendra v State of UP*, 2000 Cr LJ 3087 (All), the accused was falsely implicated and convicted for offences under IPC. The court directed the authorities to register case against the prosecutrix and take necessary action; *AN Gupta v State of Rajasthan*, 1999 Cr LJ 4932 (Raj), FIR lodged containing false and baseless allegations, intending *prima facie* to injure the reputation of the complainant. Falsity was proved by the statements of the accused under section 313, Cr PC, 1973. The order acquitting the accused under sections 500 and 211 was set aside; *Rubin Roy Chaudhury v State of WB*, 1998 Cr LJ 1699 (Cal), order taking cognizance of offence was held to be proper. The office bearers of an Institute hatched a plot to bring about expulsion of the complainant and his wife, *prima facie* on false basis.
225. *Karsan Jesang*, (1941) 43 Bom LR 858 , (1942) Bom 22.
226. Per Ranade, J, in *Raghavendra v Kashinathbhat*, (1894) 19 Bom 717, 725.
227. *Apaya*, (1913) 15 Bom LR 574 [LNIND 1913 BOM 44] .
228. *Sarada Prosad Chatterjee*, (1904) 32 Cal 180 , followed in *Gati Mandal*, (1905) 4 CLJ 88.
229. *Giridhari Naik*, (1901) 5 Cal WN 727.
230. (1872) 7 MHC (Appx) 5.
231. *Jugal Kishore*, (1886) 8 All 382 .
232. Per Edge, CJ in *Raghu Tiwari*, (1893) 15 All 336 , 338.
233. *Kashi Ram*, (1924) 22 ALJR 829; *Samokhan*, (1924) 26 Cr LJ 594 .
234. *Daroga Gope*, (1925) 5 Pat 33.
235. *Nota Ram*, (1941) 23 Lah 675. See *Muthra v Roora*, (1870) PR No. 16 of 1870; *Todur Mal v Mussammat Bholi*, (1882) PR No. 14 of 1882.
236. *Gopal Dhanuk*, (1881) 7 Cal 96 .
237. *Albert*, AIR 1966 Kerala 11 [LNIND 1965 KER 172] (FB).
238. *Rajkumar Malpani v Akella Sreenivasa Rao*, 2011 Cr LJ 2997 (AP).
239. *Jijibhai Govind*, (1896) 22 Bom. 596; *Karim Buksh*, (1888) 17 Cal 574 , FB; *Parahu*, (1883) 5 All 598 ; *Nanjunda Rau*, (1896) 20 Mad 79; *Mst Binia*, (1937) Nag 338; *Albert*, AIR 1966 Kerala 11 [LNIND 1965 KER 172] (FB).
240. *Karim Buksh*, *supra*.
241. *Rayan Kutti*, (1903) 26 Mad 640, 643; *Nihala*, (1872) PR No. 14 of 1872.
242. *Jamoon*, (1881) 6 Cal 620 ; *Sivan Chetti*, (1909) 32 Mad 258, overruling *Ramana Gowd*, (1908) 31 Mad 506; *Mathura Prasad*, (1917) 39 All 715 .
243. *Bhawani Sahai*, (1932) 13 Lah 568.
244. *Abdul Hakim Khan Chaudhuri*, (1931) 59 Cal 334 .
245. *Abdul Hasan*, (1877) 1 All 497 ; *Chenna Malli Gowda*, (1903) 27 Mad 129.
246. *Parmeshwar Lal*, (1925) 4 Pat 472.
247. *Dasarathi Mondal v Hari Das*, AIR 1959 Cal 293 [LNIND 1959 CAL 1] . On appeal *sub. nom. Hari Das*, AIR 1964 SC 1773 [LNIND 1964 SC 84] : 1964 (2) Cr LJ 737 .
248. *Santokh Singh*, 1973 Cr LJ 1176 : AIR 1976 SC 1489 .
249. *Bramanund Bhuttacharjee*, (1881) 8 CLR 233 ; *Karigowda*, (1894) 19 Bom 51; *Ganpatram v Rambai*, (1950) Nag 208.
250. *Abdul Ghafur*, (1924) 6 Lah 28.
251. *Ramana Gowd*, (1908) 31 Mad 506.
252. *Ibid*.
253. *Hicks v Faulkner*, (1878) 8 QBD 167 , 171; *Kapoor v Kairon*, 1966 Cr LJ 115 .

254. *Chidda*, (1871) 3 NWP 327; *Murad*, (1893) PR No. 29 of 1894.
255. *Parimi Bapirazu v Venkayya*, (1866) 3 MHC 238 .
256. *Karim Buksh*, (1888) 17 Cal 574 (FB).
257. *Nanjunda Rau*, (1896) 20 Mad 79.
258. *Parmeshwar Lal*, (1925) 4 Pat 472.
259. *Mallappa Reddi*, (1903) 27 Mad 127, 128.
260. *Bisheshar*, (1893) 16 All 124 ; *Pitam Rai v State*, (1882) 5 All 215 .
261. *Sultan*, (1887) PR No. 3 of 1888; *Khan Bahadar*, (1888) PR No. 26 of 1888; *Humayun*, (1907) PR No. 26 of 1908.
262. *Abdul Rehman v K M Anees-Ul-Haq*, 2012 Cr LJ 1060 (SC) : 2011 (10)SCC 696 [LNIND 2011 SC 1156] . See also *Harish Chandra Pathak v Anil Vats*, 2008 Cr LJ 2965 (All).
263. *M Devasenapathi*, 1984 Cr LJ NOC 34 (Mad); *K Ramakrishnan*, 1986 Cr LJ 392 (Ker).
264. *Narayan*, 1972 Cr LJ 1446 (Del—FB).
265. *PC Gupta v State*, 1974 Cr LJ 945 (All-FB).
266. *Kamalapati*, 1979 Cr LJ 679 : AIR 1979 SC 777 [LNIND 1978 SC 383] .
267. *Geetika Batra v OP Batra*, 2009 Cr LJ 2687 (Del). A private complaint cannot be filed for an offence under section 211-See *Subhash Ramchandra Durge v Deepak Annasaheb Gat*, 2000 Cr LJ 4774 (Bom).
268. *Rabin Roy Choudhury v State*, 1997 Cr LJ 1699 (Cal); *Dongari Venkatram v M Tirpathanna S I of Police, Kodad* 2006 Cr LJ 2697 (AP).
269. *Bir Chandra Das v Anil Kumar Sarkar*, 2011 Cr LJ 3422 (Cal).
270. *Chintamani Paul (Kumhar) v State of Jharkhand*, 2009 Cr LJ 2283 (Jhar).
271. *Jamoon*, (1881) 6 Cal 620 ; See also *Santokh Singh*, 1973 Cr LJ 1176 : AIR 1973 SC 2190 [LNIND 1973 SC 160] .
272. *Haibat Khan*, (1905) 33 Cal 30 .
273. *Sivaprakasam Pillai*, (1948) Mad 893.

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **[s 212] Harbours offender—.**

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

**If a Capital Offence;**

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

**if punishable with imprisonment for life, or with imprisonment.**

**and if the offence is punishable with <sup>274</sup>[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;**

**and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description**

provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

**275.**["Offence" in this section includes any act committed at any place out of **276.** [India], which, if committed in **277.** [India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460 and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in **278.** [India].]

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

#### ILLUSTRATION

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to **279.** [imprisonment for life], A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

#### COMMENT.—

**Ingredients.**—(i) the offence must have been committed, i.e., completed and there must be an 'offender';

(ii) there must be harbouring or concealment of a person by the accused;

(iii) the accused knows or has reason to believe that such harboured or concealed person is the offender;

(iv) there must be an intention on the part of the accused to screen the offender from legal punishment. **280.**

#### [s 212.1] Offender.—

The word used is 'offender' and not 'accused' or a person convicted for that offence. The person who is sheltering, harbouring or concealing that person must have knowledge or has reason to believe that he is the 'offender'. The word "offender" is not defined under [IPC, 1860](#). "Offender" as per the Dictionary, means "a person who has committed a crime or offence." Hence, a person who is convicted or acquitted may be an offender, for the purpose of section 212. An "offender" for the purpose of section 212 is neither a convict nor an accused, but he is a person who has actually committed the offence. The failure of the prosecution to prove the identity of the person who committed the offence does not render the person, who committed the offence, not an offender. He can be said to be an offender whose guilt has not been proved in Court. Yet, he is an offender, if he has committed an offence. **281.**

This section applies to the harbouring of persons who have actually committed some offence under the [Penal Code](#) or an offence under some special or local law, when the thing punishable under such special or local law is punishable with imprisonment for a term of six months or upwards. It does not apply to the harbouring of persons, not being criminals, who merely abscond to avoid or delay a judicial investigation. **282.** Where there was no material to show that the accused had the knowledge or that he reasonably believed that he was harbouring or concealing a person who was an



offender and the essential feature of secrecy was totally absent, it was held that no offence under section 212 was made out.<sup>283</sup> It is the knowledge or the reasonable belief of the accused under section.212 that the person whom, he has harboured or concealed to be the offender, which is relevant. But, such knowledge or belief must be entertained by the accused, on the date on which he commits the offence by harbouring or concealing him.<sup>284</sup>

In the conspiracy for assassination of the former Prime Minister of India (Mr. Rajiv Gandhi), some of the accused persons appeared at the scene after achievement of the object. They played the role of harbouring and sheltering the main accused persons with full knowledge of their involvement in the assassination. They also made efforts to destroy evidence. Their conviction under section 212 was held to be proper.<sup>285</sup>

### **[s 212.2] Exception.—**

The Exception only extends to cases where harbour is afforded by a wife or husband. No other relationship can excuse the wilful receipt or assistance of felons; a father cannot assist his child, a child his parent, a brother his brother, a master his servant, a servant his master.

### **[s 212.3] Section 212 IPC, 1860 and section 39 of Code of Criminal Procedure 1973.—**

It is the duty of every citizen who is aware of commission of or of the intention of any other person to commit any offence punishable under sections 302, 304, 449, etc., to forthwith give information to the nearest Magistrate or police-officer of such commission of offence or intention. This provision is mandatory unless there is a reasonable excuse for omission or failure to inform. [Section 39 of the Code of Criminal Procedure](#) specifically provides that public "shall" give information to the police or the nearest Magistrate regarding commission of certain offences referred to in the said section. Section 39 is only a procedural section, violation of which is not made punishable under any penal statute, but, if a person who has knowledge or reasonable belief that a person is the offender can be treated as a person who is aware of the commission of the offence and even if he is not punishable for violating [section 39 of the Code of Criminal Procedure](#) when he harbours or conceals such an offender, he must certainly be guilty for offence under section 212.<sup>286</sup>

### **[s 212.4] Conviction of the person concealed—whether mandatory.—**

Nowhere in section 212 it is stated that the person concealed should be convicted for an offence. Even if the main offender leaves unpunished by the Court, the object of the provision under section 212 requires that the person who has concealed or harboured the offender whom he believes and knows has committed the offence shall not leave unpunished if the other ingredients are established. The criminality lies in the act of concealment committed with the knowledge or belief that the person who is harboured or concealed is the offender and also with the criminal intention of screening him from legal punishment.<sup>287</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [\(2009\) 10 SCC 664 \[LNIND 2009 SC 1659\]](#) : [\(2009\) 12 SCR 1215 \[LNIND 2009 SC 1659\]](#) .
274. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).
275. Ins. by Act 3 of 1894, section 7.
276. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.
277. *Ibid.*
278. *Ibid.*
279. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).
280. *Sujith v State of Kerala*, [2008 Cr LJ 824](#) (Ker), *Aleem v State of AP*, [\(1995\) 1 Cr LJ 866](#) (AP). See also *State v Siddarth Vashisth, (alias Manu Sharma)*, [2001 Cr LJ 2404](#) (Del), the co-accused had knowledge that the accused had committed murder, both of them were fellow directors in a company. He sent the car to pick up the accused from the place of occurrence to facilitate his escape. Liable to be punished under the section.
281. *Sujith v State of Kerala*, [2008 Cr LJ 824](#) (Ker).
282. *Ramraj Choudhury*, (1945) 24 Pat 604; *Mir Faiz Ali v State of Maharashtra*, [1992 Cr LJ 1034](#) (Bom).
283. *State v Sushil Sharma*, [2007 Cr LJ 4008](#) (Del); *Niranjan Ojha v State of Orissa*, [1992 Cr LJ 1863](#) (Ori); Also see *Durga Shankar v State of Madhya Pradesh*, [2006 Cr LJ 2494](#) (MP).
284. *Sujith v State of Kerala*, [2008 Cr LJ 824](#) (Ker).
285. *State of TN v Nalini*, AIR [1999 Cr LJ 3124](#) : AIR [1999 SC 2640 \[LNIND 1999 SC 1584\]](#) .
286. *Sujith v State of Kerala*, [2008 Cr LJ 824](#) (Ker).
287. *Sujith v State of Kerala*, [2008 Cr LJ 824](#) (Ker).

# THE INDIAN PENAL CODE

## CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

### **[s 213] Taking gift, etc., to screen an offender from punishment—**

**Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,**

**if a capital offence;**

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

**if punishable with imprisonment for life, or with imprisonment.**

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

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

### **COMMENT.—**

The compounding of a crime, by some agreement not to bring the criminal to justice if the property is restored or a pecuniary or other gratification is given, is the offence punished by this and the following sections. It is the duty of every State to punish criminals. No individual has, therefore, a right to compound a crime because he himself is injured and no one else.

### **[s 213.1] Ingredients.—**

The section has two essentials:

1. A person accepting or attempting to obtain any gratification or restitution of property for himself or any other person.
2. Such gratification must have been obtained in consideration of (a) concealing an offence, or (b) screening any person from legal punishment for an offence, or (c) not proceeding against a person for the purpose of bringing him to legal punishment. The most important ingredient of the charge, under section 213, viz., is that the payment was in relation to the interference with the course of a judicial proceeding and the tampering with the evidence.<sup>288.</sup>

### **[s 213.2] Scope.—**

According to the Calcutta High Court this section applies only where there has been an actual concealment of an offence, or screening of a person from legal punishment, or abstention from proceeding criminally against a person, and, as consideration for the same, there has been an acceptance of, or attempt to obtain, or agreement to accept, any gratification or restitution of property. It has no application where only an acceptance of or attempt to obtain, or agreement to accept, any gratification or restitution on a promise to conceal, screen or abstain, is proved and nothing more.<sup>289.</sup> The Bombay High Court has dissented from this view and has held that this section does not require the actual concealment of an offence or the screening of any person from legal punishment or the actual forbearing of taking any proceedings. It is sufficient if an illegal gratification is received in consideration of a promise to conceal an offence or screen any person from legal punishment or desist from taking any proceedings.<sup>290.</sup>

The section does not apply where the compounding of an offence is legal.

### **[s 213.3] Mere suspicion.—**

This section is applicable only when it is proved that the person screened or attempted to be screened from legal punishment has been guilty of an offence, and not when there is merely a suspicion of his having committed some offence.<sup>291.</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
288. *Mir Faizali Shaheen v The State of Maharashtra*, 1991 Cr LJ 1034 (Bom).
289. *Hemachandra Mukherjee*, (1924) 52 Cal 151 .
290. *Biharilal Kalacharan*, (1949) 51 Bom LR 564 .
291. *Girish Myte*, (1896) 23 Cal 420 ; *Sanalal; Gordhandas*, (1913) 15 Bom LR 694 [LNIND 1913 BOM 68] , 37 Bom 658, there must be knowledge that such person was an offender; *Sumativijay Jain v State of MP*, 1992 Cr LJ 97 (MP)

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **[s 214] Offering gift or restoration of property in consideration of screening offender—.**

**Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or <sup>292</sup>[restores or causes the restoration of] any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment;**

**if a capital offence;**

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

**if punishable with imprisonment for life, or with imprisonment.**

**and if the offence is punishable with <sup>293</sup>[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;**

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

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

**Illustrations.** [Rep. by Act 10 of 1882, section 2 and Sch I.]

## COMMENT.—

The preceding section punishes the receiver of a gift in consideration of compromising an offence, whereas this section punishes the offerer of the gift.

### [s 214.1] Ingredients.—

This section has two essentials—

1. Offering any gratification or restoration of property to some person.
2. Such offer must have been in consideration of the person's (a) concealing an offence, or (b) of his screening any person from legal punishment for an offence, or (c) of his not proceeding against a person, for the purpose of bringing him to legal punishment. The section presupposes the actual commission of an offence or the guilt of the person screened from punishment. Where the accused, an overseer who was charged with preparing false muster rolls and misappropriating Government money allegedly tried to bribe someone with a view to prevent action being taken against him and was thus prosecuted under [sections 165A and 214, IPC, 1860](#), but was acquitted of the offence under [section 165A, IPC, 1860](#), for want of evidence, he could not also be convicted in view of infirmities of the case of an offence under [section 214, IPC, 1860](#).<sup>295</sup>

[Section 320\(1\) of the Criminal Procedure Code](#) enumerates the offences that can be lawfully compounded.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

292. Subs. by Act 42 of 1953, section 4 and Sch III, for "to restore or cause the restoration of" (w.e.f. 23 December 1953).

293. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

294. Subs. by Act 8 of 1882, section 6, for *Exception*.

295. *Mohd Aslam*, 1981 Cr LJ 1285 : AIR 1981 SC 1735 .





## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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#### **[s 215] Taking gift to help to recover stolen property, etc.**

**Whoever takes or agrees or consents to take <sup>1</sup> any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended <sup>2</sup> and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### **COMMENT.—**

**Scope.**—This section is intended to apply to someone who, being in league with the thief, receives some gratification on account of helping the owner to recover the stolen property, without at the same time using all the means in his power to cause the thief to be apprehended and convicted of the offence. There is nothing in this section that should exclude an actual thief from liability under it if in addition to committing theft he also tried to realise money by a promise to return the stolen article. An actual thief or a person suspected to be the thief can be convicted under this section.<sup>296</sup>

### [s 215.1] Ingredients.—

This section has three essentials—

1. Taking or agreeing or consenting to take any gratification under pretence or on account of helping any person to recover any movable property.
2. The owner of such property must have been deprived of it by an offence punishable under the [Penal Code](#).
3. The person taking the gratification must not have used all means in his power to cause the offender to be apprehended and convicted of the offence.

### [s 215.2] Object.—

The primary aim of this section is to punish all trafficking by which a person, knowing that property has been obtained by crime, and knowing the criminal, makes a profit out of the crime while screening the offender from justice. The clear meaning of the section is that it is an offence to receive money for helping any person to recover property stolen or misappropriated and that there is an exception only in favour of the man who can show that he used all means in his power to cause the apprehension of the offender.<sup>297.</sup>

**1. 'Takes or agrees or consents to take'.—**These words imply that the person taking the gratification and the person giving it have agreed not only as to the object for which the gratification is to be given, but also as to the shape or form the gratification is to take.<sup>298.</sup>

**2. 'Unless he uses all means in his power to cause the offender to be apprehended'.—**It is not for the prosecution to prove the negative that the accused did not use all his power to cause the offender to be apprehended. It is for the defence to establish that the accused did all in his power to cause the offender to be apprehended.<sup>299.</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

296. *Mukhtara*, (1924) 46 All 915 ; *Deo Suchit Rai*, (1947) ALJ 48 (FB); **overruling** *Muhammad Ali*, (1900) 23 All 81 and *Mangu*, (1927) 50 All 186 .

297. *Yusuf Mian v State*, (1938) All 681 .

298. *Hargayan v State*, (1922) 45 All 159 .

299. *Deo Suchit Rai*, 1947 All LJ 48 (FB); *DK Balai*, 1959 Cr LJ 1438 .

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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#### **[s 216] Harbours offender who has escaped from custody or whose apprehension has been ordered—.**

**Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody;**

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

**if a capital offence;**

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

**if punishable with imprisonment for life, or with imprisonment.**

if the offence is punishable with <sup>300</sup>. [imprisonment for life], or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

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

<sup>301</sup>. ["Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of <sup>302</sup>. [India], which, if he had been guilty of it in <sup>303</sup>. [India], would have been punishable as an offence, and for which he is, under any law relating to extradition, <sup>304</sup>. [\*\*\*] or otherwise, liable to be apprehended or detained in custody in <sup>305</sup>. [India]; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in <sup>306</sup>. [India].]

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

## COMMENT.—

To establish an offence under this section it must be shown, (1) that there has been an order for the apprehension of a certain person as being guilty of an offence; (2) knowledge by the accused party of that order, and (3) the harbouring or concealing by the accused of the person with the intention of preventing him from being apprehended.<sup>307</sup> It would not be safe to convict the appellant for the offence punishable under [section 216 IPC, 1860](#) in absence of evidence in this regard.<sup>308</sup>

This section may be compared with section 212. The latter deals with the offence of harbouring an offender who having committed an offence absconds. This section deals with harbouring an offender who has escaped from custody after being actually convicted or charged with the offence, or whose apprehension has been ordered; the latter offence is in the eye of the law more aggravated, and a heavier punishment is, therefore, awarded for it. It is thus an aggravated form of the offence punishable under section 212.

The section only takes into consideration cases where the man who is harboured is wanted for an offence for which a maximum sentence of at least one year's imprisonment is provided. No provision is made for cases where he is wanted for offences for which the maximum sentence is less than one year.<sup>309</sup> Where certain persons were apprehended for gaming and they escaped from police custody, it was held by the Supreme Court that this section was not applicable because they were neither charged nor convicted of any offence and that the conviction should have been under section 224.<sup>310</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
300. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).
301. Ins. by Act 10 of 1886, section 23.
302. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951), to read as above.
303. *Ibid.*
304. The words "or under the Fugitive [Offenders Act](#), 1881," omitted by Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951).
305. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951), to read as above.
306. *Ibid.*
307. *Easwaramurthi*, (1944) 71 IA 83 , 46 Bom LR 844, (1945) Mad 237.
308. *Anadharaj v State of TN*, (2000) 9 SCC 45 : JT 2000 (3) SC 368 : 2000 AIR (SCW) 4957; (2000) 1 SCC (Cr) 1154.
309. *Deo Baksh Singh*, (1942) 18 Luck 617 .
310. *Ajab v State of Maharashtra*, AIR 1989 SC 827 : 1989 Cr LJ 954 : 1989 Supp (1) SCC 601 .

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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#### **311.**[s 216A] Penalty for harbouring robbers or dacoits.

**Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.**

**Explanation.**—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without **312.** [India].

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

#### **COMMENT.—**

This section enables the Court to inflict enhanced punishment, where the persons harboured are robbers or dacoits or where they intended to commit robbery or dacoity.

Where a person charged with the substantive offence of dacoity or robbery has been acquitted of that offence, another person who is said to have intended to screen him from legal punishment in respect of that offence cannot be held guilty of harbouring the alleged offender under this section.<sup>313</sup>.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

311. Ins. by Act 3 of 1894, section 8.

312. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951), to read as above.

313. *Subramanya Ayyar*, (1947) Mad 793. See for acquittal under section 216A, acquitted on fact, *State of Madhya Pradesh v Veeru Singh*, 2010Cr LJ 2896 (MP)

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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#### **[s 216B] [Repealed]**

**314.[\*\*\*] Definition of "harbour" in sections 212, 216 and 216A. [Repealed by Indian Penal Code (Amendment) Act, 1942 (VIII of 1942), section 3].**

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

314. Ins. by Act 3 of 1894, section 8.



## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **[s 217] Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.**

**Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### **COMMENT.—**

This section and the three following sections deal with disobedience on the part of public servants in respect of official duty.

This section punishes intentional disobedience of any direction of law on the part of a public servant to save a person from punishment. It is not necessary to show that, in point of fact, the person so intended to be saved had committed an offence, or was

justly liable to legal punishment. A public servant charged under this section is equally liable to be punished, although the intention, which he had of saving any person from legal punishment, was founded upon a mistaken belief as to that person's liability to punishment.<sup>315</sup>

**[s 217.1] 'Legal punishment'**

does not include departmental punishment.<sup>316</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

315. *Amiruddeen v State*, (1878) 3 Cal 412 , 413. See *Anup Singh v State of HP*, AIR 1995 SC 1941 ; 1995 Cr LJ 3223 (SC) in which conviction under the section upheld by SC

316. *Jungle v State*, (1873) 19 WR (Cr) 40.

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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#### **[s 218] Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.**

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

#### **COMMENT.—**

This section deals with intentional preparation by a public servant of a false record with the object of saving or injuring any person or property. The correctness of the record is of the highest importance to both the State and the public. The intention with which the public servant does the act mentioned in the section is an essential ingredient of the offence punishable under it.

### **[s 218.1] Ingredients.—**

1. Accused was a public servant;
2. He was entrusted with preparation of any record or writing in his capacity as public servant;
3. He framed the record and writing incorrectly,
4. He did it intentionally,
5. He did so with the intention or knowledge that it will—
  - (i) cause loss or injury to someone,
  - (ii) Save any person from legal punishment and,
  - (iii) Save from property from forfeiture or other charges.<sup>317.</sup>

In order to sustain the conviction for making an incorrect entry in a record it is not sufficient that the entries are incorrect but it is essential that the entry should have been made with the intention to cause injury.<sup>318.</sup>

It is not necessary that the incorrect document should be submitted to another person, or otherwise used by the writer.

A public servant commits the offence punishable under this section even if the person whom he intends to save from legal punishment is himself.<sup>319.</sup>

### **[s 218.2] Actual commission of offence not necessary.—**

The actual guilt or innocence of the alleged offender is immaterial if the accused believes him guilty and intends to screen him.<sup>320.</sup>

The Supreme Court has held that if a police-officer has made a false entry in his diary and manipulated other records with a view to save the accused from legal punishment that might be inflicted upon him, the mere fact that the accused was subsequently acquitted of the offence cannot make it any the less an offence under this section.<sup>321.</sup>

### **[s 218.3] CASES.—**

Where the accused increased the marks of particular persons for pecuniary benefits during the course of preparing final record for appointment of physical education teacher, it is held that the offence alleged is clearly made out.<sup>322.</sup>

### **[s 218.4] Public servant framing incorrect record to save any person from legal punishment.—**

A Superintendent of Police gave a warrant under the Gambling Act, 1867 to D, a Sub-Inspector, to arrest persons found gambling in a certain house. In order to save the persons from the legal punishment for having committed an offence under the Gambling Act, 1867 in that house, D framed a first information and a special diary incorrectly. It was held that he was properly charged with, and found guilty of, having

committed an offence under this section.<sup>323</sup> A report of the commission of a dacoity was made at a police station. The police-officer in charge of the station took down the report which was made to him, but subsequently destroyed the report and framed another and a false report of the commission of a totally different offence to which he obtained the signature of the complainant, and which he endeavoured to pass off as the original and correct report made to him by the complainant. It was held that the police-officer was guilty of offences punishable under sections 204 and 218.<sup>324</sup> Where it was proved that the accused's intention in making a false report was to stave off the discovery of the previous fraud and save himself or the actual perpetrator of that fraud from legal punishment, it was held that he was guilty of this offence.<sup>325</sup> Under this section, substitution of one leaf by another so as to omit a given entry from the page substituted is penal.<sup>326</sup> Where a Sub-Inspector in his capacity as public servant wrongly prepared certain notes in order to concoct a false defence for himself and his colleagues, he was to be convicted under [section 218, IPC, 1860](#).<sup>327</sup> Where, however, the main offence remains unproved the accused is entitled to have the benefit of doubt in regard to the offence under [section 218, IPC, 1860](#).<sup>328</sup>

#### **[s 218.5] Section 218 and section 192—Difference.—**

The offence of [section 218 IPC, 1860](#) is not a minor offence included within section 192. There is some resemblance between [sections 192 and 218 IPC, 1860](#), because both deal with the preparation of a false record. There the resemblance ceases. Whereas in section 192 the record is prepared for use in a judicial proceeding with the intention that an erroneous opinion be formed regarding a material point, the offence in section 218 is the preparation of a false record by a public servant with the intention of saving or injuring any person or property.<sup>329</sup>

#### **[s 218.6] Bar under [section 195 Cr PC, 1973](#) not applicable, private complaint can be filed.—**

Section 218 is a distinct offence which can be proceeded against without the bar of [section 195 of the Code of Criminal Procedure](#). There could be a private complaint in respect of an offence under [section 218 IPC, 1860](#).<sup>330</sup>

#### **[s 218.7] Sanction under [section 197 Cr PC, 1973](#).—**

Issuing false certificate by the Deputy Civil Surgeon cannot be an official act and as such no sanction under [section 197 of the Code of Criminal Procedure](#) is required.<sup>331</sup> But in a particular case<sup>332</sup> the Calcutta High Court took an opposite view and quashed the proceedings under [section 218 IPC, 1860](#) holding that in the absence of sanction, the proceeding cannot be continued.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
317. *Jayanta Mukherjee v State of West Bengal*, 2009 Cr LJ 4178 (Cal).
318. *Raghubansh Lal*, (1957) 1 All 368 : AIR 1957 SC 486 [LNIND 1957 SC 21] : 1957 Cr LJ 595
319. *Nand Kishore v State*, (1897) 19 All 305 , **overruling** *Gauri Shankar*, (1883) 6 All 42 .
320. *Hurdut Surma*, (1967) 8 WR (Cr) 68.
321. *Maulud Ahmad*, (1964) 2 Cr LJ 71 : 1963 Supp (2) SCR 38 .
322. *Rakesh Kumar Chhabra v State of H P*, 2012 Cr LJ 354 (HP).
323. *Deodhar Singh*, (1899) 27 Cal 144 .
324. *Muhammad Shah Khan*, (1898) 20 All 307 .
325. *Girdhari Lal*, (1886) 8 All 633 .
326. *Madan Lal v Inderjit*, AIR 1970 P&H 200 .
327. *Sarju Singh*, 1978 Cr LJ NOC 286 (All).
328. *Natarajan Narayan Kurup*, 1982 Cr LJ NOC 69 (Ker). See also *DV Venkateswara Rao v State of AP*, 1997 Cr LJ 919 (AP).
329. *Kamla Prasad Singh v Hari Nath Singh*, AIR 1968 SC 19 [LNIND 1967 SC 170] : 1967 (3) SCR 828 [LNIND 1967 SC 170] : 1968 Cr LJ 86 .
330. *Kamla Prasad Singh v Hari Nath Singh*, AIR 1968 SC 19 [LNIND 1967 SC 170] : 1967 (3) SCR 828 [LNIND 1967 SC 170] : 1968 Cr LJ 86 .
331. *D V Venkateswara Rao v State of AP*, 1997 Cr LJ 919 ; *Dr Z U Ahmad v State of UP*, 1998 Cr LJ 2100 (All).
332. *Jayanta Mukherjee v State of West Bengal*, 2009 Cr LJ 4178 (Cal).

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

**[s 219] Public servant in judicial proceeding corruptly making report etc. contrary to law.**

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

#### COMMENT.—

This section should be read in conjunction with section 77. It contemplates some wilful excess of authority, in other words, a guilty knowledge superadded to an illegal act. This section and the following one deal with corrupt or malicious exercise of the power vested in a public servant for a particular purpose. From the language of [section 219 IPC, 1860](#), it is clear that when any public servant corruptly or maliciously makes or pronounces in any stage of judicial proceeding any report, order, verdict or decision which he knows to be contrary to law, shall be punished.<sup>333</sup>

**[s 219.1] Case against judicial officers.—**

In the present case, there was no allegation that any of the three respondents had passed concerned orders corruptly or maliciously or knowing that they were contrary to law. Merely because the first order passed by the respondent No. 1 was set aside in the revision filed by the petitioner, it cannot be inferred that respondent No. 1 had acted corruptly or maliciously and that too knowing that it was contrary to law.<sup>334</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

333. *Pravin Niwritti Sawant v Hon'ble Shri J B Anandgaonkar Saheb*, 2008 Cr LJ 984 (Bom).

334. *Pravin Niwritti Sawant v Hon'ble Shri J B Anandgaonkar Saheb*, 2008 Cr LJ 984 (Bom).



## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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**[s 220] Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.**

**Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.**

#### COMMENT.—

This section is a further extension of the principle laid down in the preceding section. It is general in its application, whereas the last section applies to judicial officers. In order to bring home the charge under the section it must next be shown that the accused corruptly or maliciously committed such person for trial or to confinement or kept him in confinement in exercise of that authority knowing that in so doing he was acting contrary to law. This analysis of the section by the Supreme Court occurs in a case in which a police constable made the victims to alight from a bus and took them to a nearby street. The Court said that at best it could amount to wrongful restraint but not

to wrongful confinement.<sup>335</sup> Under [section 220 IPC, 1860](#) it is necessary to establish that the officer, who committed any person for trial or to confinement, must have acted corruptly or malicious and knowing that he was doing that act contrary to law.<sup>336</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [\(2009\) 10 SCC 664 \[LNIND 2009 SC 1659\]](#) : [\(2009\) 12 SCR 1215 \[LNIND 2009 SC 1659\]](#) .

<sup>335</sup>. *Suryamoorthy v Govindaswamy*, 1989 Cr LJ 1451 : [AIR 1989 SC 1410 \[LNIND 1989 SC 232\]](#) at p 1415 : [\(1989\) 3 SCC 24 \[LNIND 1989 SC 232\]](#) .

<sup>336</sup>. *Pravin Niwritti Sawant v Hon'ble Shri J B Anandgaonkar Saheb*, [2008 Cr LJ 984](#) (Bom).

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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#### **[s 221] Intentional omission to apprehend on the part of public servant bound to apprehend.**

**Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—**

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

**with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with <sup>337</sup>[imprisonment for life] or imprisonment for a term which may extend to ten years; or**

**with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been**

**apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.**

#### **COMMENT.—**

Sections 221, 222 and 223 provide for intentional omission to apprehend, or negligently suffering the escape of, offenders on the part of public servant bound to apprehend or to keep in confinement.

#### **[s 221.1] CASE.—**

Where a constable acting as a Court *Moharrir* instead of sending the accused to jail custody as ordered by the Magistrate directed his release and thus allowed him to escape, it was held that the release being in violation of his legal obligation to have the accused detained in jail custody, the *Moharrir* was clearly liable under [section 221, IPC, 1860](#).<sup>338</sup> Accused was entrusted with escort duty for the convict to the Hospital. Convict was the younger brother of accused's wife. Accused allowed him to escape from Custody. The Karnataka High Court upheld the conviction under sections 221, 222 and 223.<sup>339</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

337. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1-1-1956).

338. *Rampal*, 1979 Cr LJ 711 : AIR 1979 SC 1184 .

339. *Younus Khan v State of Karnataka*, 2013 Cr LJ 1040 (Kar)

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **[s 222] Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.**

Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence <sup>340</sup>[or lawfully committed to custody], intentionally omits to apprehend such person, or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—

with <sup>341</sup>[imprisonment for life] or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to <sup>342</sup>[imprisonment for life] <sup>343</sup>[\*\*\*] <sup>344</sup>[\*\*\*] <sup>345</sup>[\*\*\*] <sup>346</sup>[\*\*\*] or imprisonment for a term of ten years or upwards; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been

**apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not exceeding to ten years [or if the person was lawfully committed to custody].**

### **COMMENT.—**

This section is similar to the last section with the exception that the person to be apprehended has already been convicted or committed for an offence. It is thus an aggravated form of the offence made punishable by the last section.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [\(2009\) 10 SCC 664](#) [[LNIND 2009 SC 1659](#)] : [\(2009\) 12 SCR 1215](#) [[LNIND 2009 SC 1659](#)] .

340. Ins. by Act 27 of 1870, section 8.

341. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 April 1956).

342. *Ibid.*

343. The words "or penal servitude for life" omitted by Act 17 of 1949, section 2 (w.e.f. 6 April 1949).

344. The words "or to" omitted by Act 36 of 1957, section 3 and Sch II (w.e.f. 17 September 1957).

345. The word "transportation" omitted by Act 26 of 1955, section 117 and Sch (w.e.f. 1 January 1956).

346. The words "or penal servitude" omitted by Act 17 of 1949, section 2 (w.e.f. 6 April 1949).

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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#### **[s 223] Escape from confinement or custody negligently suffered by public servant.**

**Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with <sup>347</sup>[or convicted of any offence or lawfully committed to custody], negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.**

#### **COMMENT.—**

This section further extends the principle laid down in the two preceding sections. It punishes a public servant who *negligently* suffers any person charged with an offence to escape from confinement. The last two sections deal *with intentional omission* to apprehend such person.

#### **[s 223.1] Ingredients.—**

In order to establish the charge under [section 223, IPC, 1860](#) the following facts have to be established:—

- (i) The accused was a public servant.
- (ii) As such public servant he was bound to keep in confinement any person.
- (iii) Such person was charged with or convicted of an offence or lawfully committed to custody.
- (iv) The accused suffered such person to escape.
- (v) The escape was due to the negligence of the public servant.<sup>348.</sup>

### **[s 223.2] Lawful custody.—**

Unless the custody is lawful no offence under this section is committed. If a public servant has no right to keep a person in custody, he is not guilty of allowing that person to escape.<sup>349.</sup> Since the check post officer appointed under section 41(2) Bihar Sales Tax Act had no power to detain personnel or driver of a truck which contravened the provisions of the Act, he could not be prosecuted for an offence under [section 223, IPC, 1860](#), for allowing detained person to escape especially because section 223 speaks of "confinement of persons charged with or convicted of any offence or lawfully committed to custody". Even assuming that such a check post officer could detain a person, still he could not be prosecuted as detention was not synonymous with confinement nor the persons escaping were charged or convicted of any offence.<sup>350.</sup> A constable who moved about in a market place with the prisoner whom he was supposed to bring to the Court and he escaped, the case was held to be fit one for imposing substantive punishment.<sup>351.</sup>

This section applies only to cases where the person who is allowed to escape is in custody for an offence, or has been committed to custody, and not to cases where such person has merely been arrested under a civil process.<sup>352.</sup> The latter case would come under section 225A. Due to the negligence and carelessness of the police constable one accused escaped from police lock-up. It is proved that the petitioner was on duty at lock-up room when the accused escaped. Conviction is held proper.<sup>353.</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

<sup>347.</sup> Ins. by Act 27 of 1870, section 8.

<sup>348.</sup> *Banshidhar Swain v State of Orissa*, 1987 Cr LJ 1819 (Ori).

<sup>349.</sup> *Debi*, (1907) 29 All 377 .

<sup>350.</sup> *Girja Shankar Sahay*, 1972 Cr LJ 988 (Pat).

<sup>351.</sup> *Banshidhar Swain v State of Orissa*, 1987 Cr LJ 1819 (Ori).

<sup>352.</sup> *Tafaulah v State*, (1885) 12 Cal 190 .

<sup>353.</sup> *Gurdeep Singh v State of Punjab*, 2009 Cr LJ 3745 (PH).



## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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#### **[s 224] Resistance or obstruction by a person to his lawful apprehension.**

**Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence,<sup>1</sup> shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

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

#### **COMMENT.—**

This and the section following relate to resistance or illegal obstruction offered to the lawful apprehension of any person. Sections 221–223 punish public servants who fail to apprehend or confine persons liable to be apprehended or confined.

[Section 224, IPC, 1860](#) has two distinct parts. The first relates to resistance to apprehension and the second part relates to escape from custody. In order to bring

home the guilt of the accused under first part, the prosecution is to prove the following ingredients:—

- (1) that the accused was charged or convicted;
- (2) that he offered resistance or obstruction to his apprehension;
- (3) that such resistance or obstruction was illegal; and
- (4) that the accused offered such resistance or obstruction illegally.

When the offence charged is that of escape or attempt to escape from custody, the prosecution is to prove the following:

- (1) that the accused was taken into custody for commission of an offence;
- (2) that such detention in custody was lawful;
- (3) that the accused escaped from such custody or made an attempt to do so; and
- (4) that the accused did so intentionally.<sup>354</sup>

**1. 'Escapes...from any custody in which he is lawfully detained for any such offence'.—**

Escape must be from the custody in which the person escaping has been detained legally. A person of the same name as the offender was arrested, tried and acquitted. Whilst under arrest he escaped from custody. It was held that he was not liable to be convicted under this section because he was not lawfully detained for any offence.<sup>355</sup>

It is only after a person has been arrested that the question of custody arises merely because the person was brought to the *thana* for the purpose of interrogation it could not be said that he was under lawful custody, even though two constables might be sitting by his side.<sup>356</sup> Where certain persons were apprehended for gaming and they escaped from police custody, it was pointed out by the Supreme Court that they could have been convicted under this section.<sup>357</sup> Where the accused attacked the police personnel and rescued a person from the legal custody of the police but the person rescued neither resisted the arrest nor joined in the attack, he could only be convicted under section 224 for taking advantage of his release.<sup>358</sup> Where an accused lawfully arrested escaped after causing a knife injury to the Head Constable, he was guilty under section 224 and his friends who pelted stones at the police party with a view to rescue him were guilty under [section 225, IPC, 1860](#).<sup>359</sup>

**[s 224.1] Explanation.—**

The Explanation does not require that a sentence of imprisonment must be made to run consecutively to a sentence imposed for the main offence of which the accused has been convicted.<sup>360</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

354. *State of Orissa v Purna Chandra Jena*, 2005 Cr LJ 505 (Ori).

355. *Ganga Charan Singh*, (1893) 21 Cal 337 ; *People's Union for Civil Liberties v State of Maharashtra*, 1998 Cr LJ 2138 (Bom).
356. *Maheswar v State of UP*, (1953) Cut 751.; 2003 Cr LJ 3663 (Bom).
357. *Ajab v State of Maharashtra*, AIR 1989 SC 827 : 1989 Cr LJ 954 : 1989 Supp (1) 601 .
358. *Prithvi Nath Pandey v State of UP*, 1994 Cr LJ 3623 (All).
359. *Vaghari Kala Bhikha*, 1985 Cr LJ 237 (Guj).
360. *Chokhu*, (1934) 36 Bom LR 963 .

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **[s 225] Resistance or obstruction to lawful apprehension of another person.**

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

**or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with [361](#). [imprisonment for life] or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;**

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

**or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to [362](#). [imprisonment for life] [363](#). [\*\*\*] [364](#). [\*\*\*] [365](#). [\*\*\*] or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either**

description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

#### COMMENT.—

Persons who offer resistance or illegal obstruction to the apprehension of other persons who have committed offences are punishable under this section. The preceding section punishes the offenders themselves. Section 130 deals with rescuing a prisoner of State or war and section 186, with rescuing in any other case.

'Rescue' is the act of forcibly freeing a person from custody against the will of those who have him in custody.<sup>366</sup> It has no application to a person who is in lawful custody and who has offered no resistance or obstruction.<sup>367</sup> It is also not necessary that the rescuing should be done intentionally for in the second part of this section the word "intentionally" has been deliberately omitted. Thus where a person even in order to pacify a situation released an accused from the lawful custody of the *chowkidar* by untying the turban with which the accused had been tied, it was held that the person so releasing the accused was clearly guilty of an offence under [section 225, IPC, 1860](#), for rescuing an offender from lawful custody.<sup>368</sup>

One can be held guilty for an offence under section 225 if he rescues a person who was detained lawfully. Here the word 'rescue' though not defined in the Code, will always mean an act of getting a person free forcibly from custody against the will of person in whose lawful custody he was. Therefore, some overt act needs to be there, if one is said to have rescued a person from the lawful custody.<sup>369</sup>

Where the accused obstructed the lawful apprehension of a person and wrongfully confined two police personnel and the evidence of the prosecution was amply corroborated and supported by medical evidence, conviction and sentence of the accused under sections 225, 332 and 342 was upheld.<sup>370</sup> The act for which the person rescued is detained must amount to an offence under the Code. Thus an escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour,<sup>371</sup> or an escape from arrest under [section 41\(2\), Criminal Procedure Code](#),<sup>372</sup> will not fall under this section. If the apprehension is not lawful the person resisting it will not be guilty of any offence.<sup>373</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

<sup>361</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>362</sup>. *Ibid*.

363. The words "or to" omitted by Act 36 of 1957, section 3 and Sch II (w.e.f. 17 September 1957).
364. The word "transportation" omitted by Act 26 of 1955, section 117 and Sch (w.e.f. 1 January 1956).
365. The words "penal servitude" omitted by Act 17 of 1949, section 2 (w.e.f. 6 April 1949).
366. *Vaghari Kala Bhikha*, [1985 Cr LJ 237](#) (Guj).
367. *Salim*, [1972 Cr LJ 1454](#) (Guj).
368. *Awadhesh Mahato*, [1979 Cr LJ 1275](#) (Pat).
369. *Radha Sah v State of Jharkhand*, [2007 Cr LJ 2805](#) (Jha).
370. *Prithvi Nath Pandey v State of UP*, [1994 Cr LJ 3623](#) (All).
371. *Shasti Churn Napit*, [\(1882\) 8 Cal 331](#) .
372. *Kandhaia*, [\(1884\) 7 All 67](#) .
373. *PB Gosain v State*, [\(1962\) 1 Cr LJ 91](#) ; *Kunju Kunju*, [\(1962\) 2 Cr LJ 437](#) . *Matha Yadav v State of Bihar*, [2002 Cr LJ 2819](#) : [AIR 2002 SC 2137](#) [[LNIND 2002 SC 359](#)] , the accused was caught red-handed when he was uprooting the crops of the victim's family. They refused to release him till he was brought before the village *panchayat*, They were not intending to hand him over to police. It was held that their conviction under section 225 was not possible.

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

**[s 225A] Omission to apprehend or sufferance of escape, on part of public servant, in cases not otherwise provided for.**

**[Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished –**

- (a) **if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and**
- (b) **if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.]**

#### COMMENT.—

This section punishes intentional or negligent omission to apprehend on the part of a public servant not coming within the purview of sections 221, 222 or 223.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .



## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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**[s 225B] Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.**

**[Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues<sup>1</sup> or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.]**

#### COMMENT.—

This section is intended to meet cases not covered by section 224 or section 225. Under section 225 a person, escaping from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour, or escaping from a jail in which he is confined by reason of his having failed to furnish security to be of good behaviour,<sup>374</sup> cannot be punished; under this section he can.

There must be an overt act of resistance or obstruction. If a person runs away to avoid an arrest, his act does not amount to resistance or obstruction.<sup>375.</sup>

The apprehension or detention must be lawful. If the warrant is defective the rescue of the person arrested under such warrant is no offence under this section. The liberty of the subject cannot be trifled with, and every person can require by right that the Court ordering his arrest shall observe the law.<sup>376.</sup>

1. '**Rescues**'.—Rescuing indicates some positive overt act on the part of the accused by which the liberation of the person arrested is effected.<sup>377.</sup>

### **[s 225B.1] CASES.—**

**Resistance to arrest without warrant justifiable.**—An arrest by a police-officer, without notifying the substance of the warrant to the person against whom the warrant is issued, as required by [section 80 of the Criminal Procedure Code](#), is not a lawful arrest, and resistance to such an arrest is no offence under this section.<sup>378.</sup> A person, about to be arrested, is entitled to know under what power the constable is arresting him and, if he specifies a certain power which the person knows the constable has not got, he is entitled to object to such arrest and escape from custody, such custody not being a lawful one. For a charge of escaping from lawful custody the prosecution must first establish that the constable who arrested the man had power to act under the specific authority that he claimed to have.<sup>379.</sup>

### **[s 225B.2] Resistance to improper warrant justifiable.—**

A person cannot be arrested under sections 225B and 353 when the warrant attempted to be executed was addressed to the person with a wrong description to which he did not answer,<sup>380.</sup> or when it was illegal owing to want of the seal of the Court,<sup>381.</sup> or when it did not contain the name of the person to be arrested,<sup>382.</sup> or for any other defect.<sup>383.</sup> But even if a Court has wrongly exercised its discretion in issuing a warrant, an accused escaping from the custody of the peon apprehending him or obstructing his apprehension would be guilty under this section.<sup>384.</sup> This is, however, not to say that an outright illegality in issuing the warrant too would have no consequence. Thus, where the warrant was signed by a *sheristadar* who had no authority to sign the warrant, it was held by offering resistance to arrest under such an illegal warrant the accused did not come under the mischief of this section.<sup>385.</sup>

### **[s 225B.3] Escape must be from lawful custody.—**

The accused was arrested by a Process-Server, and after the arrest he managed to escape from custody, went inside his house, shut himself up there, and refused to come out. It was held that an offence under section 186 was not established, but that the accused was guilty of the offence of escaping from lawful custody under this section.<sup>386.</sup> But when the accused was merely requested by the *Amin* of the Civil Court to accompany him to the Court and the accused was not informed that he was being put under arrest, it was held that the accused committed no offence under this section by refusing to accompany the *Amin*.<sup>387.</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
374. *Muli v State*, (1920) 43 All 185 .
375. *Annaudin*, (1923) 1 Ran 218.
376. *Fattu*, (1932) 55 All 109 , 111, 112.
377. *Thangal*, AIR 1961 Ker 331 [LNIND 1960 KER 261] .
378. *Satish Chandra Rai v Jodu Nandan Singh*, (1899) 26 Cal 748 .
379. *Appasami Mudaliar*, (1924) 47 Mad 442.
380. *Debi Singh*, (1901) 28 Cal 399 .
381. *Mahajan Sheikh*, (1914) 42 Cal 708 .
382. *Jogendra Nath Laskar v Hiralal*, (1924) 51 Cal 902 .
383. *Gokal v State*, (1922) 45 All 142 ; *Gaman*, (1913) PR No. 16 of 1913; *Muhammad Baksh*, (1904) PR No. 16 of 1904.
384. *Puna Mahton*, (1932) 11 Pat 743.
385. *I Venkayya v State*, 1973 Cr LJ 245 (AP). See also *Subbramaniah*, AIR 1934 Mad 206 [LNIND 1934 MAD 4] .
386. *Jamna Das*, (1927) 9 Lah 214.
387. *Heer Singh*, AIR 1961 Raj 156 [LNIND 1960 RAJ 162] .

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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**[s 226] [Omitted]**

**[\* \* \*] [Omitted]. [by Act XXVI of 1955, section 117 and Sch.]**

1. *S Palani Velayutham v District Collector Tirunelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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#### **[s 227] Violation of condition of remission of punishment.**

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

#### **COMMENT.—**

This section deals with those cases in which remission of punishment is made conditional by Government under [section 432 of the Code of Criminal Procedure](#). [Section 227 of the IPC, 1860](#) makes it a specific offence on the part of any person who has accepted any conditional remission of punishment if he knowingly violates any condition on which such remission was granted. In other words while the [Code of Criminal Procedure](#) envisages arrest of a person who violates the conditions of remission and remand straightway to jail, [section 227 of the IPC, 1860](#) envisages for the same act of violation of conditions, prosecution and the punishment, if the prosecution succeeds, is the same, as the consequence contemplated under section 432 (3), namely, remanding of the person concerned for the rest of his term.<sup>388</sup>

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
  388. *Krishnan Nair v State*, 1983 Cr LJ 87 .

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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#### **[s 228] Intentional insult or interruption to public servant sitting in judicial proceeding.**

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

#### **STATE AMENDMENT**

**Andhra Pradesh.**— *Offence under section 228 is cognizable. [Vide A.P.G.O. Ms. No. 732, dated 5th December, 1991].*

#### **COMMENT.—**

The object of this section is to punish a person who intentionally insults in any way the Court administering justice. It lays down the highest sentence that can be inflicted for contempt of Court. By a notification under [section 10\(1\) of The Criminal Law Amendment Act, 1932](#) the State Government can make an offence under [section 228, IPC, 1860](#), a cognizable offence for a specified area for such time as the notification

remains in force. No Court shall take cognizance of the offence under section 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is sub-ordinate.<sup>389.</sup>

### **[s 228.1] Ingredients.—**

The essential ingredients of the offence under this section are— (1) intention, (2) insult or interruption to a public servant and (3) the public servant insulted or interrupted must be sitting in any stage of a judicial proceeding.<sup>390.</sup> The fact that the Court feels insulted is no reason for holding that any insult is intended.<sup>391.</sup>

The whole sitting of a Court for the disposal of judicial work from the opening to the rising of the Court is a judicial proceeding, and the necessary interval between the conclusion of one case and the opening of another is a stage in a judicial proceeding.<sup>392.</sup>

Acts, such as rude and contumelious behaviour, obstinacy, perverseness, prevarication, or refusal to answer any lawful question, breach of the peace or any wilful disturbance whatever, will amount to contempt of Court.

If the offence of contempt of Court is summarily dealt with under [section 345 of the Criminal Procedure Code](#), the maximum punishment that can be imposed is fine not exceeding Rs. 200.

The offence under the section is not punishable as contempt of Court. The definition of "criminal contempt" in [section 2\(c\) of The Contempt of Courts Act, 1971](#) includes acts which constitute an offence under [section 228, IPC, 1860](#) and also goes beyond such acts, being wider than section 228.<sup>393.</sup>

### **[s 228.2] CASES.—Contempt.—**

A person persisting in putting irrelevant and vexatious questions to a witness after warning,<sup>394.</sup> a person making an impertinent threat to a witness in the box,<sup>395.</sup> a person sentenced to two hours' imprisonment and ordered to be kept in custody insulting the Judge in the grossest manner;<sup>396.</sup> a person calling the trial Judge as "a prejudiced judge;"<sup>397.</sup> a person stating in an application for transfer of a case that the Court had become hostile to him;<sup>398.</sup> and a person insisting upon staying in the Court room after the presiding officer of the Court had asked him to leave the Court and after he had been warned that action for contempt of Court would be taken against him,<sup>399.</sup> were all held guilty of contempt of Court under this section. A Commissioner appointed by the Court being a public servant a person who intentionally insults or interrupts him while he is sitting in a judicial proceeding commits an offence under [section 228, IPC, 1860](#), and should be punished under that section and not under [section 345, Cr PC, 1973](#).<sup>400.</sup> Hurling of shoes by an Advocate at the presiding officer of the Court was contempt. Where the party to a case shouted inside a Court room in offensive language as the presiding officer told that after filing of the rejoinder by the opposite party arguments were closed, summary contempt proceedings under section 480 (now section 345) [Cr PC, 1973](#), read with [section 228, IPC, 1860](#), were fully justified though in view of the written apology tendered then and there the party should not be convicted under [section 228, IPC, 1860](#).<sup>401.</sup>



### **[s 228.3] Refusal to answer question.—**

Prevarication by a witness and refusal to answer a question amount to intentional interruption within the meaning of the section.<sup>402.</sup>

### **[s 228.4] No contempt.—**

A person leaving the Court when ordered to remain,<sup>403.</sup> or making signs from outside to a prisoner on his trial;<sup>404.</sup> a person listening to evidence after being told to leave the Court;<sup>405.</sup> a person using vulgar language for the purpose of emphasis;<sup>406.</sup> a person walking out of the Court without answering the question whether he had any witness;<sup>407.</sup> a person giving away in marriage a minor girl while she was in the custody of a guardian appointed by the Court;<sup>408.</sup> a person appearing as an assessor in Court dressed in a shirt and a cap;<sup>409.</sup> a person writing a letter to a Judge imputing an unlawful act causing loss to him,<sup>410.</sup> and a pleader saying that he 'resented' the remark of the Court and that another remark was 'improper', and that a certain action of the Court was 'strange',<sup>411.</sup> were held to have committed no offence under this section.

### **[s 228.5] Allocation of sitting accommodation in Court room.—**

A litigant, conducting his case without the aid of counsel, was occupying the seat in the Court room meant for the advocates while senior advocates were standing. He refused to vacate the seat when asked to do so by the presiding officer. His conviction under section 228 was upheld.<sup>412.</sup>

### **[s 228.6] Free legal assistance.—**

It was held in *Shrichand v State of MP* that the right to free legal assistance has to be confined to the offences that are punishable with substantive sentence of imprisonment. The right to free legal assistance at the State cost could not be extended to an offence under [section 228, IPC, 1860](#) of which the accused was being tried summarily because on conviction he could not have been visited with any substantive imprisonment.<sup>413.</sup>

### **[s 228.7] Insult to Court.—**

Several accused persons faced a trial and were found guilty of various offences. One of them, on hearing the judgment, addressed to the Court and uttered filthy abuses and made contemptuous statements. The Court said that it amounted to an insult of the Court. The Court had jurisdiction under the section to punish the accused.<sup>414.</sup> Where an accused wrote a letter to the Magistrate asking him for the reasons as to why he had returned the petition filed by him and also requested him, to give a copy of the document connected with the case, Magistrate found him to be guilty of offence under [section 228, IPC, 1860](#). But the Madras High Court set aside the judgment by holding that it may not be said that the letter has been received by the judicial officer when he was in any stage of the proceedings in Court and, therefore, the offence under [section 228, IPC, 1860](#) is not be made out.<sup>415.</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
389. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] : JT 2009 (12) SC 485 [LNIND 2009 SC 1659] : 2009 (11) Scale 658 [LNIND 2009 SC 1659] .
390. *Revashankar*, AIR 1959 SC 102 [LNIND 1958 SC 110] : (1958) Cr LJ 251 .
391. *Pranlal*, 1966 Cr LJ 1087 .
392. *Salig Ram v State*, (1898) PR No. 16 of 1897.
393. *Daroga Singh v BK Pandey*, (2004) 5 SCC 26 [LNIND 2004 SC 485] : 2004 Cr LJ 2084 : AIR 2004 SC 2579 [LNIND 2004 SC 485] .
394. *Azeemoola*, (1867) PR No. 44 of 1867.
395. *Allu*, (1922) 45 All 272 .
396. *Venkatasami*, (1891) 15 Mad 131.
397. *Venkatrao v State*, (1922) 24 Bom LR 386 [LNIND 1922 BOM 43] , 46 Bom 973.
398. *Narotam Das*, (1943) All 186 .
399. *Rameshwar*, 1960 Cr LJ 976 .
400. *CK Nanavati*, 1978 Cr LJ 1040 (Guj).
401. *State of UP v Pateswari Prasad*, 1980 Cr LJ NOC 1 (All).
402. *Jaimal Shravan*, (1873) 10 BHC 69; *Gopi Chand*, (1917) PR No. 14 of 1918.
403. (1870) 1 Weir 215.
404. (1870) 1 Weir 214.
405. *Papa Naiken*, (1882) 1 Weir 217.
406. (1880) 1 Weir 216.
407. *Abdul Rahiman*, (1899) 1 Weir 218.
408. *Kaulashia*, (1932) 12 Pat 1, the offence committed was disobedience of a lawful order.
409. *Chhaganlal Ishwardas*, (1933) 35 Bom LR 1025 .
410. *Subordinate Judge, Hoshangabad v Jawaharlal*, (1941) Nag 304.
411. *Hakumat Rai*, (1942) 24 Lah 791.
412. *Omana v State of Kerala*, 1994 Cr LJ 687 (Ker). Another **similar ruling** is *PC Jose v Nandakumar*, AIR 1997 Ker 243 [LNIND 1993 KER 251] .
413. 1993 Cr LJ 495 (MP).
414. *Ram Vishal Re*, 1997 Cr LJ 3736 (MP).
415. *C R Rajasekaran, v Judicial Magistrate, Nagapattinam*, 2003 Cr LJ 4024 (Mad).

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **416.**[s 228A]– Disclosure of identity of the victim of certain offences, etc.

- (1) **Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an <sup>417.</sup>[offence under section 376, 418. [section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB] or section 376E] is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.**
- (2) **Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—**
  - (a) **by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or**
  - (b) **by, or with the authorisation in writing of, the victim; or**
  - (c) **where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:**

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

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

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

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

#### **COMMENT.—**

This section has been introduced by The [Criminal Law Amendment Act, 1983, section 2](#) (43 of 1983) to prevent social victimisation or ostracism of the victim of a sexual offence.

#### **[s 228A.1] Exemption from prosecution.—**

A complaint was filed against the accused (petitioners) for the alleged disclosure of identity of the victim of a rape in their newspaper. The reply notice showed that the publication was made at the instance of a recognised welfare association. It was held that the petitioners were exempt from prosecution.<sup>419</sup> Publishing the photographs of rape victims in newspapers, journals and magazines would certainly fall under the category of making disclosure of identity of victim and such act would fall under [section 228-A of IPC, 1860](#).<sup>420</sup>

#### **[s 228A.2] Judgments.—**

[Section 228A IPC, 1860](#) makes disclosure of identity of victim of certain offences punishable. Printing or publishing name of any matter which may make known the identity of any person against whom an offence under sections 376, 376A, 376B, 376C or 376D is alleged or found to have been committed can be punished. Keeping in view the social object of preventing social victimisation or ostracism of the victim of a sexual offence for which section 228A has been enacted, it would be appropriate that in the judgments, be it of the Supreme Court, High Court or lower Court, the name of the victim should not be indicated.<sup>421</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
416. Ins. by Act 43 of 1983, section 2 (w.e.f. 25 December 1983).
417. Subs. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 4 (w.e.f. 3 February 2013) for "offence under section 376, section 376A, section 376B, section 376C or section 376D".
418. Subs. by Act 22 of 2018, section 3, for "section 376A, section 376B, section 376C, section 376D" (w.r.e.f. 21 April 2018).
419. *R Lakshmipathi v Ramalingam*, 1998 Cr LJ 3683 (Mad).
420. *National Federation of Indian Women v Government of Tamil Nadu*, 2007 Cr LJ 3385 (Mad).
421. *S Ramakrishna v State*, (2009) 1 SCC 133 [LNIND 2008 SC 2066] : (2009) 1 SCC Cri 487 : AIR 2009 SC 885 [LNIND 2008 SC 2066] . See also *Om Prakash v State of UP*, 2006 Cr LJ 2913 : AIR 2006 SC 2214 [LNIND 2006 SC 382] : (2006) 9 SCC 787 [LNIND 2006 SC 382] , it would be appropriate that the name of victim of rape should not be disclosed be it a judgment of the Supreme Court, High Court or lower court. This is necessary to prevent victimisation or ostracism of the victim. To the **same effect** is *Dinesh v State of Rajasthan*, 2006 Cr LJ 1679 (SC), *Bhupinder Sharma v State of HP*, (2003) 8 SCC 551 . *State of Karnataka v Puttaraja*, (2004 (1) SCC 475) [LNIND 2003 SC 1033] .

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **[s 229] Personation of a Juror or Assessor.**

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

#### **COMMENT.—**

This section was intended to punish personation of a juror or an assessor. It has now become obsolete with the abolition of assessor or jury system of trial.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

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Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **422.** [s 229-A] Failure by person released on bail or bond to appear in Court.

**[Whoever, having been charged with an offence and released on bail or on bond without sureties, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in Court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.]**

**Explanation.**—The punishment under this section is—

- (a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and
- (b) without prejudice to the power of the Court to order forfeiture of the bond].

#### **COMMENT.—**

**Cr PC, 1973 (Amendment) Act 2005—clause 44.**—This clause amends the [IPC, 1860](#) as follows, namely:—



Under clause 37 an obligation is cast on the person released on bail or on bond to appear and surrender to custody. In order to enforce this obligation, a new section 229-A is being inserted in the [IPC, 1860](#) to prescribe punishment for those who fail to do so. [Notes on clauses.]

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [\(2009\) 10 SCC 664](#) [[LNIND 2009 SC 1659](#)] : [\(2009\) 12 SCR 1215](#) [[LNIND 2009 SC 1659](#)] .

422. Ins. by [Cr PC, 1973](#). (Amendment) Act, 2005 (25 of 2005), section 44(c) (w.e.f. 23 June 2006 *vide* Notfn. No. SO 923(E), dated 21 June 2006.

# THE INDIAN PENAL CODE

## CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

### (I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

#### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

#### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

#### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

### (II) Government Stamps.—

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 230] "Coin" defined.**

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

**Indian coin.**

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

**ILLUSTRATIONS**

- (a) Cowries are not coin.
- (b) Lumps of unstamped copper, though used as money, are not coin.
- (c) Medals are not coin, in as much as they are not intended to be used as money.
- (d) The coin denominated as the Company's rupee is <sup>3</sup>[Indian coin].
- <sup>4</sup>[(e) The "Farukhabad rupee" which was formerly used as money under the authority of the Government of India is <sup>5</sup>[Indian coin] although it is no longer so used].

**COMMENT.—**

In view of the definition of "Indian coin" in this section, it is immaterial whether the coins are still current or they have ceased to be used as money.<sup>6</sup>

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1. Subs. by Act 19 of 1872, section 1, for the original first paragraph.
  2. Subs. by A.O. 1950, for the former paragraph.
  3. Subs. by the A.O. 1950, for "the Queen's coin".
  4. Ins. by Act 6 of 1896, section 1.
  5. Subs. by the A.O. 1950, for "the Queen's coin".
  6. *Ranchhod Mula v State*, [\(1961\) 2 Cr LJ 472](#) .

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

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#### **(I) Coins.—**

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(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

### **[s 231] Counterfeiting coin.**

**Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

**Explanation.—A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.**

#### **COMMENT.—**

It is not necessary under this section that the counterfeit coin should be made with the primary intention of its being passed as genuine; it is sufficient if the resemblance to genuine coin is so close that it is capable of being passed as such.<sup>7</sup> It is not essential for coins to be counterfeit that they should be of exact resemblances to genuine coins. It is sufficient that they are such as to cause deception and may be passed as genuine.<sup>8</sup> But where the alleged counterfeit coins are such that none would be deceived, these cannot be counterfeit coins within the meaning of this section.<sup>9</sup>

<sup>7</sup> *Qadir Bakhsh*, (1907) 30 All 93 ; *Premsookh Dass*, (1870) PR 38 of 1870.

<sup>8</sup> *Amrit Sonar*, (1919) 4 PLJ 525 , 20 Cr LJ 439.

<sup>9</sup> *Ranchhod Mula v State*, (1961) 2 Cr LJ 472 .

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

### **[s 232] Counterfeiting Indian coin.**

**Whoever counterfeits, or knowingly performs any part of the process of counterfeiting <sup>10</sup>. [Indian coin], shall be punished with <sup>11</sup>. [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.**

#### **COMMENT.—**

The Code provides heavier punishment in cases of offences relating to Indian coin than those relating to foreign coins.<sup>12</sup>

The basic requirement for the prosecution to succeed against the accused in respect of counterfeiting coins is that the witnesses examined by the prosecution must speak of the manufacture of one coin resembling a genuine one. A presumption can also be drawn under Explanation 2 of section 28 that a person is counterfeiting coins when he causes one coin to resemble another so closely that the person intended to practice deception or knew it would be likely to cause deception. Section 232 prescribes the punishment for counterfeiting Indian coins. Section 235 prescribes the punishment for a person who is in possession of any instrument or material used for counterfeiting coins. Thus, a conviction under sections 232 or 235 would be maintained only if the prosecution satisfactorily proves the ingredients of section 28. The prosecution must establish that the coins manufactured resemble the original. It must also establish that there is an intention to deceive, or the knowledge that deception would be caused by such resemblance.<sup>13</sup>

'Counterfeiting' means causing one thing to resemble another.<sup>14</sup>

<sup>10</sup>. Subs. by the A.O. 1950, for "the Queen's coin".

<sup>11</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).



12. Note I, p 134.

13. *Shahid Sultan Khan v State of Maharashtra*, [2007 Cr LJ 568](#) (Bom).

14. *Muhammad Husain*, [\(1901\) 23 All 420](#) .

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

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(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 233] Making or selling instrument for counterfeiting coin.**

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

**COMMENT.—**

In this as well as in the following sections mere acts of preparation towards the offence of coining are made substantive offences, such as the making of dies or other instruments used in the manufacture of coin.

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

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#### **(I) Coins.—**

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##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 234] Making or selling instrument for counterfeiting Indian coin.**

**Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting <sup>15.</sup>[Indian coin], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

<sup>15.</sup> Subs. by the A.O. 1950, for "the Queen's coin".

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

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- (1) Counterfeiting coins (sections 231, 232).
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- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
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##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
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- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
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- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 235] Possession of instrument, or material for the purpose of using the same for counterfeiting coin.**

**Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;**

**If Indian coin.**

**and if the coin to be counterfeited is <sup>16</sup>[Indian coin], shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

**COMMENT.—**

'Possession' connotes the intention to exercise power or control over the object possessed and therefore necessarily implies that the possessor has been conscious of the possibility of exercising that power or control. Mere possession of instruments and materials capable of counterfeiting coins is no offence. Possession of such instruments should be with the intention of counterfeiting coins and the intention must be proved. The onus of proving the fitness of the materials for the purpose of counterfeiting coins was upon the prosecution.<sup>17</sup> The minimum that would be required for prosecution to establish a charge under sections 232 and 235 is that it establishes that the coins seized resembled the original and that the resemblance is such that it would deceive a person or that the accused knew that if the coin is used it would be likely to deceive a person. Unless there is intrinsic evidence on record to show that the coins indeed resemble genuine coins, it is difficult to accept the case of the prosecution.<sup>18</sup>

16. Subs. by the A.O. 1950, for "the Queen's coin".
17. *Khadim Hussain*, (1924) 5 Lah 392.
18. *Shahid Sultan Khan v State of Maharashtra*, [2007 Cr LJ 568](#) (Bom).



## **THE INDIAN PENAL CODE**

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- (3) Possession of instrument for counterfeiting (section 235).
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- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 236] Abetting in India the counterfeiting out of India of coin.**

**Whoever, being within <sup>19</sup>[India], abets the counterfeiting of coin out of <sup>20</sup>[India], shall be punished in the same manner as if he abetted the counterfeiting of such coin within <sup>21</sup>[India].**

**COMMENT.—**

Any person in India, whether an Indian or a foreigner, who supplied instruments or materials for the purpose of counterfeiting any coin, or assists in any other way, is punishable under this section. Abetment in India must be complete.

<sup>19</sup>. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951), to read as above.

<sup>20</sup>. *Ibid.*

<sup>21</sup>. *Ibid.*

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 237] Import or export of counterfeit coin.**

**Whoever imports into <sup>22.</sup> [India], or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.**

**COMMENT.—**

The offence under this and the following section consists in an import or export, of any coin known by the importer, or which he has reason to believe, to be counterfeit.

<sup>22.</sup> The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1-4-1951), to read as above.

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

### **[s 238] Import or export of counterfeits of Indian coin.**

**Whoever imports into <sup>23.</sup>[India], or exports therefrom, any counterfeit coin, which he knows or has reason to believe to be a counterfeit of <sup>24.</sup>[Indian coin], shall be punished with <sup>25.</sup>[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.**

<sup>23.</sup> The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951), to read as above.

<sup>24.</sup> Subs. by the A.O. 1950, for "the Queen's coin".

<sup>25.</sup> Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 239] Delivery of coin, possessed with knowledge that it is counterfeit.**

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

**COMMENT.—**

This section is directed against a person other than the coiner, who procures or obtains or receives counterfeit coin, and not to the offence committed by the coiner.

Three classes of offences are created by sections 239–243:

- (1) Delivery to another of coin, possessed with the knowledge that it is counterfeit (sections 239, 240).
- (2) Delivery to another of coin as genuine, which when *first* possessed, the deliverer did not know to be counterfeit (section 241).
- (3) Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof (sections 242, 243).



## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 240] Delivery of Indian coin, possessed with knowledge that it is counterfeit.**

**Whoever, having any counterfeit coin which is a counterfeit of <sup>26</sup>[Indian coin], and which, at the time when he became possessed of it, he knew to be a counterfeit of <sup>27</sup>[Indian coin], fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

**COMMENT.—**

The offence under this section is an aggravated form of the offence described in the last section. This section does not apply to the actual coiner.<sup>28</sup> It must be established that the accused knew that the coins were counterfeit when he became possessed of them.<sup>29</sup>

<sup>26</sup>. Subs. by the A.O. 1950, for "Queen's coin".

<sup>27</sup>. *Ibid.*

<sup>28</sup>. *Ahmad Shah*, (1892) PR No. 10 of 1892.

<sup>29</sup>. *Dost Mohammad*, (1937) Nag 133.

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 241] Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.**

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

**ILLUSTRATION**

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

**COMMENT.—**

This section applies to a casual utterer of base coins. Section 239 deals with professional utterers.

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 242] Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.**

**Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.**

**COMMENT.—**

Mere possession of a counterfeit coin is an offence under this and the following section, even though no attempt is made to pass it off, provided it was kept for a fraudulent purpose and was originally obtained with guilty knowledge.

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 243] Possession of Indian coin by person who knew it to be counterfeit when he became possessed thereof.**

**Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of <sup>30</sup>[Indian coin], having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

**COMMENT.—**

For an offence under [section 243, IPC, 1860](#), it has to be established by the prosecution that accused fraudulently or with intent that fraud may be committed, came into possession of counterfeit coins which were counterfeit of Indian coins, having known at the time he became possessed of them that they were counterfeit.<sup>31</sup> Where the coins were not counterfeit coins but were in the process of being made counterfeit coins, section 243 has no application.<sup>32</sup>

<sup>30</sup>. Subs. by the A.O. 1950, for "Queen's coin".

<sup>31</sup>. *Mohd Ibrahim v State*, [1968 Cr LJ 1377](#) (Del).

<sup>32</sup>. *Ranchhod Mula v State*, [1960 Cr LJ 472](#) (Guj).



# THE INDIAN PENAL CODE

## CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

### (I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

#### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

#### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

#### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

### (II) Government Stamps.—

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 244] Person employed in mint causing coin to be of different weight or composition from that fixed by law.**

**Whoever, being employed in any mint lawfully established in <sup>33</sup>[India], does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

**COMMENT.—**

The object of this section is to secure purity of coinage and its exact conformity to the legal standard against the act or omission of person employed in mints. The law has fixed the weight and composition of various coins and has declared in what cases they shall be a legal tender.

<sup>33</sup>. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 245] Unlawfully taking coining instrument from mint.**

**Whoever, without lawful authority, takes out of any mint, lawfully established in <sup>34</sup> [India], any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

<sup>34</sup> The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 246] Fraudulently or dishonestly diminishing weight or altering composition of coin.**

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

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

# THE INDIAN PENAL CODE

## CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

### (I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

#### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

#### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

#### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

### (II) Government Stamps.—

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 247] Fraudulently or dishonestly diminishing weight or altering composition of Indian coin.**

**Whoever fraudulently or dishonestly performs on any <sup>35</sup>[Indian coin] any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

<sup>35</sup> Subs. by the A.O. 1950, for "any of the Queen's coin".



## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### **1. Counterfeiting—**

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### **2. Alteration—**

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### **3. Acts of mint employees—**

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 248] Altering appearance of coin with intent that it shall pass as coin of different description.**

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

**COMMENT.—**

This section refers to any operation which alters the appearance of a coin with the intention that the said coin shall pass as a coin of a different description, e.g., gilding, silvering. If the weight of the coin is diminished, either section 246 or section 247 applies.

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 249] Altering appearance of Indian coin with intent that it shall pass as coin of different description.**

**Whoever performs on any <sup>36.</sup>[Indian coin] any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

<sup>36.</sup> Subs. by the A.O. 1950, for "any of the Queen's coin".

# THE INDIAN PENAL CODE

## CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

### (I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

#### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

#### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

#### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

### (II) Government Stamps.—

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 250] Delivery of coin possessed with knowledge that it is altered.**

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

**COMMENT.—**

This and the following section are intended to punish persons who are traders in spurious or altered coins. They correspond to sections 239 and 240. There must be both possession with knowledge and fraudulent delivery.

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 251] Delivery of Indian coin possessed with knowledge that it is altered.**

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



## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### **1. Counterfeiting—**

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### **2. Alteration—**

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### **3. Acts of mint employees—**

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 252] Possession of coin by person who knew it to be altered when he became possessed thereof.**

**Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.**

**COMMENT.—**

Possession of debased or altered coin by the professional dealer, with fraudulent intention is made punishable by this section. This and the next section resemble sections 242 and 243. Under sections 250 and 251 the accused is punished for uttering, under this section and the next he is punished for possessing a coin in respect of which the offence defined either in section 246 or section 247 has been committed.

# THE INDIAN PENAL CODE

## CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

### (I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

#### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

#### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

#### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

### (II) Government Stamps.—

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 253] Possession of Indian coin by person who knew it to be altered when he became possessed thereof.**

**Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 247 or 249 has been committed, having known at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.**

# THE INDIAN PENAL CODE

## CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

### (I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

#### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

#### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

#### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

### (II) Government Stamps.—

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 254] Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.**

**Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in section 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.**

#### **COMMENT.—**

Section 241 corresponds to this section. Where possession is acquired innocently but on subsequent knowledge that the coin is counterfeit if a person passes it off or attempts to pass it off as a genuine coin, he will be punished under this section.

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

### **[s 255] Counterfeiting Government stamp.**

**Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with <sup>37</sup>[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

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

#### **COMMENT.—**

This and the remaining sections of the Chapter deal with offences relating to Government stamps. These stamps are impressions upon paper, parchment, or any material used for writing, made by the Government mostly for the purpose of revenue.

A stamp does not cease to be a stamp because it is cancelled. A person selling a forged stamp, although it bears a cancellation mark commits an offence of selling forged stamps.<sup>38</sup>

<sup>37</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>38</sup>. *Lowden*, (1914) 1 KB 144 .



## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 256] Having possession of instrument or material for counterfeiting Government stamp.**

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

**COMMENT.—**

This section resembles section 235.

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 257] Making or selling instrument for counterfeiting Government stamp.**

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

**COMMENT.—**

This section corresponds to section 234.

# THE INDIAN PENAL CODE

## CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

### (I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

#### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

#### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

#### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

### (II) Government Stamps.—

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 258] Sale of counterfeit Government stamp.**

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

## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 259] Having possession of counterfeit Government stamp.**

**Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

**COMMENT.—**

This section corresponds to section 243.



## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 260] Using as genuine a Government stamp known to be counterfeit.**

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

**COMMENT.—**

This section corresponds to section 254.

# THE INDIAN PENAL CODE

## CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

### (I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

#### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

#### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

#### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

### (II) Government Stamps.—

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 261] Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.**

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

**COMMENT.—**

This section may be compared with sections 246 and 248. It punishes (1) the effacing of a writing from a stamp, and (2) removing of a stamp from a document.

# THE INDIAN PENAL CODE

## CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

### (I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

#### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

#### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

#### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

### (II) Government Stamps.—

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 262] Using Government stamp known to have been before used.**

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

**COMMENT.—**

Under this section the fraudulent use of a stamp already used is made punishable.

# THE INDIAN PENAL CODE

## CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

### (I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

#### 1. Counterfeiting—

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

#### 2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

#### 3. Acts of mint employees—

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

### (II) Government Stamps.—

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

**[s 263] Erasure of mark denoting that stamp has been used.**

**Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by the Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.**

**COMMENT.—**

This section punishes (1) erasure or removal of a mark denoting that a stamp has been used, (2) knowingly possessing any such stamp, and (3) selling or disposing of any such stamp.



## **THE INDIAN PENAL CODE**

### **CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS**

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

#### **(I) Coins.—**

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

##### **1. Counterfeiting—**

- (1) Counterfeiting coins (sections 231, 232).
- (2) Making or selling instrument for counterfeiting (sections 233, 234).
- (3) Possession of instrument for counterfeiting (section 235).
- (4) Abetting in India the counterfeiting of coin out of India (section 236).
- (5) Importing or exporting of counterfeit coin (sections 237, 238).
- (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
- (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
- (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).

##### **2. Alteration—**

- (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
- (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
- (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
- (4) Possessing altered coin knowing it to be so (sections 252, 253).
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).

##### **3. Acts of mint employees—**

- (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
- (2) Unlawful taking from a mint any coining instrument (section 245).

#### **(II) Government Stamps.—**

- (1) Counterfeiting a stamp (section 255).
- (2) Possession of an instrument for counterfeiting a stamp (section 256).

- (3) Making or selling an instrument for counterfeiting a stamp (section 257).
- (4) Sale of a counterfeit stamp (section 258).
- (5) Possession of a counterfeit stamp (section 259).
- (6) Using as genuine a stamp known to be counterfeit (section 260).
- (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).
- (8) Using a stamp known to have been before used (section 262).
- (9) Erasure of mark denoting that a stamp has been used (section 263).
- (10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

### **[s 263A] Prohibition of fictitious stamps.**

- (1) **Whoever—**
  - (a) **makes, knowingly utters, deals in or sells any fictitious stamps, or knowingly uses for any postal purpose any fictitious stamp, or**
  - (b) **has in his possession, without lawful excuse, any fictitious stamp, or**
  - (c) **makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,**

**shall be punished with fine which may extend to two hundred rupees.**
- (2) **Any such stamps, die, plate, instrument or materials in the possession of any person for making any fictitious stamp <sup>39</sup> [may be seized and, if seized] shall be forfeited.**
- (3) **In this section "fictitious stamp" means any stamp falsely purporting to be issued by the Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government, for that purpose.**
- (4) **In this section and also in sections 255 to 263, both inclusive, the word "Government", when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive Government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country.**

### **COMMENT.—**

This section makes it an offence to manufacture fictitious stamps, which are defined to be stamps purporting to be used for purposes of postage by any foreign Government. It

was enacted for the purpose of stopping the use of fictitious stamps on letters coming from abroad.

39. Subs. by Act 42 of 1953, sec. 4 and Sch. III, for "may be seized and" (w.e.f. 23-12-1953).

## THE INDIAN PENAL CODE

### CHAPTER XIII OF OFFENCES RELATING TO WEIGHTS AND MEASURES

#### [s 264] Fraudulent use of false instrument for weighing.

**Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.**

#### COMMENT.—

Intention is an essential part of the offence under this section. The section requires two things: (1) fraudulent use of any false instrument for weighing, and (2) knowledge that it is false. The word 'false' in this and the following sections means different from the instrument, weight, or measure, which the offender and the person defrauded have fixed upon, expressly or by implication, with reference to their mutual dealings. Where it was agreed between the seller and purchaser that a particular measure was to be used in measuring the commodity sold, it was held that, even though the measure was not of the standard requirement, it was not 'false' and there was no fraudulent intent within the meaning of this section.<sup>1</sup>

1. *Kanayalal*, (1939) 41 Bom LR 977 .

## THE INDIAN PENAL CODE

### CHAPTER XIII OF OFFENCES RELATING TO WEIGHTS AND MEASURES

[s 265] Fraudulent use of false weight or measure.

Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

#### COMMENT.—

It is clear from the above definition that the prosecution must prove three essential ingredients amongst others as

- (1) a weight or measure is a false one,
- (2) that the accused used such a weight or measure, and
- (3) that he did so fraudulently.<sup>2</sup>

<sup>2</sup> *Suwalal v State*, 1962 (2) Cr LJ 693.

## THE INDIAN PENAL CODE

### CHAPTER XIII OF OFFENCES RELATING TO WEIGHTS AND MEASURES

#### [s 266] Being in possession of false weight or measure.

Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, <sup>3</sup>intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

#### COMMENT.—

This section punishes a person who is in possession of a false weight or measure just as sections 235, 239 and 240 punish a person who is in possession of a counterfeit coin, and section 259 punishes a person who is in possession of a counterfeit stamp.

A measure is false if it is something other than what it purports to be. If both the purchaser and seller are aware of the actual measure being used, there is no fraudulent intent as required by this section. It is only when the seller purports to sell according to a certain standard, and sells below that standard, that he can be said to be guilty of fraud.<sup>4</sup>

The mere possession of false weights or measures will not in itself raise any strong presumption of fraud. It is necessary to show that the accused knew the scales to be false and intended to use them fraudulently.<sup>5</sup>

<sup>3</sup>. The word and omitted by Act 42 of 1953, section 4 and Sch. III (w.e.f. 23-12-1953).

<sup>4</sup>. *Kanayalal*, (1939) 41 Bom LR 977 .

<sup>5</sup>. *Hamirmal*, (1890) Unrep Cr C 514.

## **THE INDIAN PENAL CODE**

### **CHAPTER XIII OF OFFENCES RELATING TO WEIGHTS AND MEASURES**

**[s 267] Making or selling false weight or measure.**

**Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.**

#### **COMMENT.—**

The object of this section is to prevent the circulation of false scales, weights or measures. It punishes a person who makes, sells, or disposes of a false balance, weight or measure.

## THE INDIAN PENAL CODE

### CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

The following specific instances of nuisance are dealt with in this Chapter:—

1. Act likely to spread infection (sections 269–271).
2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280–282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 268] Public nuisance.**

**A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.**

**A common nuisance is not excused on the ground that it causes some convenience or advantage.**

#### **COMMENT.—**

Nuisance is an inconvenience that materially interferes with the ordinary physical comfort of human existence. It may be public or private nuisance. As defined in [section 268 Indian Penal Code, 1860 \(IPC, 1860\)](#) public nuisance is an offence against public either by doing a thing which tends to the annoyance of the whole community in general or by neglect to do anything which the common good requires. On the alternative it causes injury, obstruction, danger or annoyance to persons who may have



occasion to use public right. It is the quantum of annoyance or discomfort in contra distinction to private nuisance which affects an individual is the decisive factor.<sup>1</sup>

Nuisance is of two kinds: (1) public and (2) private.

(1) Public nuisance or common nuisance is an offence against the public either by doing a thing, which tends to the annoyance of the whole community in general, or by neglecting to do anything that the common good requires. It is an act affecting the public at large, or some considerable portion of them and it must interfere with rights, which members of the community might otherwise enjoy.

It is not a *sine qua non* that the annoyance should injuriously affect every member of the public within its range of operation. It is sufficient that it should affect people in general who dwell in the vicinity.<sup>2</sup>

As to when an individual can bring a civil action in respect of a public nuisance, see the authors' *Law of Torts*, 19th Edn, chapter XXI.

(2) Private nuisance is defined to be anything done to the hurt or annoyance of the lands, tenements or hereditaments of another, and not amounting to trespass. It is an act affecting some particular individual or individuals as distinguished from the public at large. It is in the quantum of annoyance that private nuisance differs from public. It cannot be the subject of an indictment, but may be the ground of a civil action for damages or an injunction or both.<sup>3</sup>

#### **[s 268.1] Liability of owner.—**

Where the use of premises gives rise to a public nuisance it is generally the occupier for the time being who is liable for it, and not the absent proprietor.<sup>4</sup>

#### **[s 268.2] Civil Remedy.—**

'Private nuisance' affects some individuals as distinguished from the public at large. The remedies are of two kinds—civil and criminal. The remedies under the civil law are of two kinds. One is under [section 91 of the Code of Civil Procedure, 1908](#). Under it, a suit lies and the plaintiffs need not prove that they have sustained any special damage. The second remedy is a suit by a private individual for a special damage suffered by him.<sup>5</sup>

#### **[s 268.3] Criminal remedy.—**

There are three remedies under the criminal law. The first relates to the prosecution under Chapter XIV of [IPC, 1860](#). The second provides for summary proceedings under sections 133–144 of the [Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#) and the third relates to remedies under special or local laws. Sub-sections (2) of [section 133 of Cr PC, 1973](#) postulates that no order duly made by a Magistrate under this section shall be called in question in any civil court. The provisions of Chapter X of the [Cr PC, 1973](#) should be so worked as not to become themselves, a nuisance to the community at large. A lawful and necessary trade ought not to be interfered with unless it is proved to be injurious to the health or physical comfort of the community.<sup>6</sup>

**[s 268.4] Noise.—**

Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is nuisance. How and when a nuisance created by noise becomes actionable has to be answered with reference to its degree and the surrounding circumstances, the place and the time.<sup>7</sup>.

1. *Vasant Manga Nikumba v Baburao Bhikanna Naidu*, (1995) Supp4 SCC 54 : (1996) 1 SCC (Cr) 27.
2. *Ibid.*
3. *vide THE LAW OF TORTS*, 19th Edn chapter XXI, by the author of this book.
4. *Bibhuti Bhusan v Bhuban Ram*, (1918) 46 Cal 515 .
5. *Kachrual Bhagirath Agrawal v State of Maharashtra*, AIR 2004 SC 4818 [LNIND 2004 SC 960] : (2005) 9 SCC 36 [LNIND 2004 SC 960] .
6. *Kachrual Bhagirath Agrawal v State of Maharashtra*, AIR 2004 SC 4818 [LNIND 2004 SC 960] : (2005) 9 SCC 36 [LNIND 2004 SC 960] .
7. *Noise Pollution (V), Re v.* (2005) 5 SCC 733 : JT 2005 (6) SC 210 : AIR 2005 SC 3136 .

## THE INDIAN PENAL CODE

### CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

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3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280–282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 269] Negligent act likely to spread infection of disease dangerous to life.**

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

#### **COMMENT.—**

This section is framed in order to prevent people from doing acts which are likely to spread infectious diseases. Welfare of the society is the primary duty of every civilised State. [Section 269, IPC, 1860](#) makes the negligent act likely to spread infection or disease dangerous to life as an offence. The essential ingredients are:

- (1) that the accused does any act unlawfully or negligently; that such act is likely to spread infection of any disease dangerous to life; and
- (2) that he knows or had reasons to believe that the act is likely to cause such infection.

Thus causing infection of the disease, which is dangerous to life, is covered by this section.<sup>8</sup> The expression "reason to believe" has been defined under [section 26 IPC, 1860](#) and it lays down that a person said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise. A person can be supposed to know where there is a direct appeal to his senses. Suspicion or doubt cannot be raised to the level of "reason to believe".<sup>9</sup>

8. *Dr. Meeru Bhatia Prasad v State*, [2001 Cr LJ 1674](#) (Del).

9. *Dr. Prabha Malhotra v State*, [1999 Cr LJ 549](#) (All).

## THE INDIAN PENAL CODE

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3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280–282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 270] Malignant act likely to spread infection of disease dangerous to life.**

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

#### **COMMENT.—**

The offence under this section is an aggravated form of the offence punishable under the preceding section.

In this section, the use of the word 'maliciously' indicates that the person spreading infection should be actuated by malice.<sup>10.</sup>

There is no provision in the [Prevention of Food Adulteration Act, 1954](#) which nullifies sections 270–273 of the [IPC, 1860](#) or which make them dormant and non-applicable.<sup>11.</sup>

### [s 270.1] Confrontation with Special Law.—

Even if [section 270 of IPC, 1860](#) is invoked for supply of substandard food articles the special procedure laid down under [Food Safety and Standards Act, 2006](#) for testing and declaring the product as substandard should have been followed.<sup>12.</sup>

10. 2nd Rep section 226.

11. *Mahesh Ramchandra Jadhav v State of Maharashtra*, 1999 Cr LJ 2310 (Bom).

12. *Christy Fried Gram Industry v State of Karnataka*, 2016 Cr LJ 482 (Kant) : 2016 (1) KCCR 83 .

## THE INDIAN PENAL CODE

### CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

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3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 271] Disobedience to quarantine rule.**

**Whoever knowingly disobeys any rule made and promulgated <sup>13.</sup>[by the <sup>14.</sup>\*\*\*] Government <sup>15.</sup>\*\*\* for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.**

#### **COMMENT.—**

The motive for disobeying any rule is quite immaterial. The disobedience is punishable whether any injurious consequence flows from it or not.

13. Subs. by the A.O. 1937, for by the Government of India or by any Government.
14. The words Central or any Provincial omitted by the A.O. 1950.
15. The words or the Crown Representative omitted by the A.O. 1948.



## THE INDIAN PENAL CODE

### CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

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7. Rash navigation (sections 280–282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 272] Adulteration of food or drink intended for sale.**

**Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

#### **State Amendments**

**Orissa.**—1. The following amendments were made by Orissa Act No. 3 of 1999, s. 2.

In its application to the State of Orissa, in sections 272, 273, 274, 275 and 276, for the words "shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both", substitute the following, namely:—

"shall be punished with imprisonment for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."—Orissa Act 3 of 1999, section 2.

2. The offence is cognizable, non-bailable and triable by Court of Session *vide* Orissa Act No. 3 of 1999, s. 2.

**Uttar Pradesh.**—1. The following amendments were made by U.P. Act No. 47 of 1975, s. 3(1) (w.e.f. 15-9-1975).

In its application to the State of Uttar Pradesh, in s. 272, for the words "shall be punished with imprisonment of either description, for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both"

substitute the following words.—

"shall be punished with imprisonment for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life".

2. The offence is cognizable, non-bailable and triable by Court of Session, *vide* U.P. Act No. 47 of 1975.

**West Bengal.**—1. The following amendments were made by W.B. Act No. 42 of 1973, s. 3(i), (w.e.f. 29-4-1973).

In its application to the State of West Bengal in s. 272, for the words "of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both", substitute the following words—

"for life with or without fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life".

2. The offence is cognizable, non-bailable and triable by Court of Session, *vide* W.B. Act No. 34 of 1974.

## COMMENT.—

The mixing of noxious ingredients in food or drink or otherwise rendering it unwholesome by adulteration is punishable under this section. Mere adulteration with harmless ingredients for the purpose of getting more profit is not punishable under it, e.g., mixing water with milk<sup>16</sup>. or *ghee* (clarified butter) with vegetable oil.<sup>17</sup>

'Adulteration' means mixing with any other substance whether wholly different or of the same kind but of inferior quality.

The expression 'noxious as food' means unwholesome as food or injurious to health and not repugnant to one's feelings.<sup>18</sup> It is essential to show that an article of food or drink has been adulterated and that it was intended to sell such article or that it was known that it would be likely to be sold as food or drink.<sup>19</sup>

## [s 272.1] Adulteration of liquor.—

In order to establish that the offence under [section 272, IPC, 1860](#) has been committed, the prosecution has to prove that the article involved was food or drink meant to be

consumed by live persons, that the accused adulterated it, that such adulteration rendered it noxious as food or drink and that the accused at the time of such adulteration intended to sell such article as food or drink or knew it to be likely that such article would be sold as food or drink. Now noxious rendering is making it poisonous or harmful or both. As is plain the offence is complete on introduction of the adulterant in the food or drink, provided it is meant for the purposes of sale, actual or likely.<sup>20</sup>

### **[s 272.2] Local Amendments.—**

In West Bengal, [sections 272, 273, 274, 275 and 276](#) of the [Penal Code](#) have been amended by section 3 of West Bengal Act XLII of 1973 so as to provide life imprisonment with or without fine for the aforesaid offences. By section 5 of West Bengal Act XXXIV of 1974, all these offences have been made cognizable, non-bailable and triable by Court of Sessions. The State of Uttar Pradesh too has similarly made all these offences punishable with life imprisonment and fine with similar discretion of Court to award lesser imprisonment by virtue of Uttar Pradesh Act 47 of 1975.

There is no bar under the [Prevention of Food Adulteration Act, 1954](#) and the said Rules made thereunder that the concerned authorities under [Prevention of Food Adulteration Act](#) have no jurisdiction and/or authority to prosecute the guilty person for the offences under the [IPC](#) based on the same averments along with the provisions of the special statutes. All such authorities have jurisdiction to launch a prosecution by invoking various provisions of the [IPC](#), along with the special statutes.<sup>21</sup>

### **[s 272.3] Gutka and Pan Masala.—**

In order to find out whether the food is unsafe, due to an adulterant, the sample is to be sent to an analyst. Violation of the order of the Food Safety Commissioner is not an offence, under [section 272 IPC, 1860](#).<sup>22</sup>

16. *Chinniah*, (1897) 1 Weir 228.

17. *Chokraj Marwari*, (1908) 12 Cal WN 608.

18. *Ram Dayal v State*, (1923) 46 All 94 .

19. *Suleman Shamji*, (1943) 45 Bom LR 895 . *Joseph Kurian v State of Kerala*, (1995) 1 Cr LJ 502 : AIR 1995 SC 4 [LNIND 1994 SC 927] : (1994) 6 SCC 535 [LNIND 1994 SC 927] , conviction for sale of adulterated arrack, sentence of six months' RI converted to simple imprisonment.

20. *Joseph Kurian v State of Kerala*, AIR 1995 SC 4 [LNIND 1994 SC 927] : (1994) 6 SCC 535 [LNIND 1994 SC 927] Also see *EK Chandrasenan v State of Kerala*, AIR 1995 SC 1066 [LNIND 1995 SC 88] : (1995) 2 SCC 99 [LNIND 1995 SC 88] .

21. *Rajiv Kumar Gupta v The State of Maharashtra*, 2005 Cr LJ 581 (Bom).

22. *Ganesh Pandurang Jadhao v The State of Maharashtra*, 2016 Cr LJ 2401 : 2016 (2) Bom CR (Cr) 4 .



## THE INDIAN PENAL CODE

### CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

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3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280–282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 273] Sale of noxious food or drink.**

**Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

#### **State Amendments**

**Orissa.**—1. *Same as in section 272, the amendments were made by Orissa Act No. 3 of 1999, s. 2.*

**Uttar Pradesh.**—1. *The following amendments were made by U.P. Act No. 47 of 1975, s. 3(ii), (w.e.f. 15-9-1975).*

In its application to the State of Uttar Pradesh in S. 273, for the words, "shall be punished with imprisonment of either description for a term which may extend to six months, or with a fine which may extend to one thousand rupees or with both, substitute the following words.—

"shall be punished with imprisonment for life and shall also be liable to fine:

*Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."*

2. *The offence is cognizable, non-bailable and triable by Court of Session, vide U.P. Act No. 47 of 1975.*

**West Bengal.**—1. *The following amendments were made by W.B. Act No. 42 of 1973, s. 3(ii) (w.e.f. 29-4-1973).*

In its application to the State of West Bengal in s. 273, for the words "of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both", substitute the following,—

"for life with or without fine:

*Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."*

2. *The offence is cognizable, non-bailable and triable by Court of Session, vide W.B. Act No. 34 of 1974.*

## **COMMENT.—**

It is not an offence to sell inferior food cheap if it is not noxious.

### **[s 273.1] Ingredients.—**

This section requires three things—

- (1) Selling or offering for sale as food or drink some article.
- (2) Such article must have become noxious or must be in a state unfit for food or drink.
- (3) The sale or exposure must have been made with a knowledge or reasonable belief that the article is noxious as food or drink. The word "noxious" as stated in *Advanced Law Lexicon* by *P Ramanatha Aiyar* (3rd Edition Reprint 2009), when used in relation to article of food is to mean that the article is poisonous, harmful to health or repugnant to human use. Having regard to language used in section 273, noxious food or drink, literally would mean article of food or drink which earlier was not noxious, but should have become noxious or had been rendered noxious by lapse of time or by not taking proper precaution or for not adding preservatives or the like.<sup>23.</sup>

What is punishable under this section is the sale of noxious articles as food or drink and not the mere sale of noxious article. Where the owner of a grain pit sold the contents of it before it was opened at a certain sum per *maund* whether the grain was good or bad, and on the pit being opened it was found that a large proportion of the grain was unfit for human consumption, it was held that the vendor could not be convicted under this section.<sup>24.</sup> Similarly, the selling of wheat containing a large admixture of extraneous matter, such as dirt, wood, matches, charcoal, was held to constitute no offence.<sup>25.</sup>

For local amendments see comment under section 272 *ante*.

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23. *Dilipsinh Ramsinh Bhatia v State of Maharashtra*, [2010 Cr LJ 2014](#) (Bom).
  24. *Salig Ram v State*, [\(1906\) 28 All 312](#) .
  25. *Narumal*, [\(1904\) 6 Bom LR 520](#) ; *Gunesha v State*, (1873) PR No. 15 of 1873.

## THE INDIAN PENAL CODE

### CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

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2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280–282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 274] Adulteration of drugs.**

**Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

#### **State Amendments**

**Orissa.**—1. *Same as in section 272, the amendments were made by Orissa Act No. 3 of 1999, s. 2.*

**Uttar Pradesh.**—1. *The following amendments were made by U.P. Act No. 47 of 1975, s. 3(ii), (w.e.f. 15-9-1975).*

In its application to the State of Uttar Pradesh in S. 274, for the words, "shall be punished with imprisonment of either description for a term which may extend to six months, or with a fine which may extend to one thousand rupees or with both, substitute the following words.—



"shall be punished with imprisonment for life and shall also be liable to fine:

*Provided* that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."

2. *The offence is cognizable, non-bailable and triable by Court of Session, vide U.P. Act No. 47 of 1975.*

**West Bengal.**—1. *The following amendments were made by W.B. Act No. 42 of 1973, s. 3(iii) (w.e.f. 29-4-1973).*

In its application to the State of West Bengal, in s. 274, for the words "of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both", substitute the following.—

"for life with or without fine:

*Provided* that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."

2. *The offence is cognizable, non-bailable and triable by Court of Session, vide W.B. Act No. 34 of 1974.*

#### **COMMENT.—**

To preserve the purity of drugs for medicinal purposes this section is enacted. It is sufficient if the efficacy of a drug is lessened, it need not necessarily become noxious to life.

For local amendment see comment under section 272 *ante*.

## THE INDIAN PENAL CODE

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4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280–282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 275] Sale of adulterated drugs.**

**Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

#### **State Amendments**

**Orissa.**—1. *Same as in section 272, the amendments were made by Orissa Act No. 3 of 1999, s. 2.*

**Uttar Pradesh.**—1. *The following amendments were made by U.P. Act No. 47 of 1975, s. 2(iv), (w.e.f. 15-9-1975).*

In its application to the State of Uttar Pradesh in S. 275, for the words, "shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both, substitute the following words.—

"shall be punished with imprisonment for life and shall also be liable to fine:

*Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."*

2. *The offence is cognizable, non-bailable and triable by Court of Session, vide U.P. Act No. 47 of 1975.*

**West Bengal.**—1. *The following amendments were made by W.B. Act No. 42 of 1973, s. 3(iv) (w.e.f. 29-4-1973).*

In its application to the State of West Bengal in s. 275, for the words "of either description for a term which may extend to one thousand rupees or with both", substitute the words "for life with or without fine:

*Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."*

2. *The offence is cognizable, non-bailable and triable by Court of Session, vide W.B. Act No. 34 of 1974.*

#### **COMMENT.—**

The offence under this section consists in selling, or offering, or exposing for sale, or issuing from any dispensary, an adulterated drug as unadulterated. This section not only prohibits the sale of an adulterated drug but also its issue from any dispensary.

For local amendment, see comment under section 272 *ante*.

## THE INDIAN PENAL CODE

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3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 276] Sale of drug as a different drug or preparation.**

**Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

#### **State Amendments**

**Orissa.**—1. *Same as in section 272, the amendments were made by Orissa Act No. 3 of 1999, s. 2.*

**Uttar Pradesh.**—1. *The following amendments were made by U.P. Act No. 47 of 1975, s. 3(v), (w.e.f. 15-9-1975).*

In its application to the State of Uttar Pradesh in S. 276, for the words, "shall be punished with imprisonment of either description for a term which may extend to one thousand rupees, or with both, substitute the following:—

"shall be punished with imprisonment for life and shall also be liable to fine:

*Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."*

2. The offence is cognizable, non-bailable and triable by Court of Session, *vide* U.P. Act No. 47 of 1975.

**West Bengal.**—1. *The following amendments were made by W.B. Act No. 42 of 1973, s. 3(v) (w.e.f. 29-4-1973).*

In its application to the State of West Bengal in s. 276, for the words "of either description for a term which may extend to, "six months, or with fine which may extend to one thousand rupees, or with both", substitute the following:

"for life with or without fine:

*Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."*

2. *The offence is cognizable, non-bailable and triable by Court of Session, vide W.B. Act No. 34 of 1974.*

## **COMMENT.—**

The offence constituted by this section does not involve the idea of any adulteration or inferiority in the substituted medicine. It is sufficient that it is not in fact what it purports to be; for e.g., supplying savin instead of saffron.<sup>26</sup>

This section is connected with section 275 in the same way as section 274 is connected with section 273.

### **[s 276.1] Possession as evidence of intention.—**

Dealing with an Act for prevention of drug trafficking, the Privy Council observed in a case in which the accused was found in possession of the banned drug and there was nothing in the Act to exclude the common law rule that facts could be established by inference from proven facts; therefore, the judge had applied the appropriate standard of proof. The accused had given no evidence to explain his possession.<sup>27</sup>

For local amendment, see Comment under section 272 *ante*.

<sup>26</sup>. *Knight v Bowers*, (1885) 14 QBD 845 .

<sup>27</sup>. *Sabapathee v State (Mauritius)*, (1999) 1 WLR 1836 (PC).

## THE INDIAN PENAL CODE

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5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280–282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 277] Fouling water of public spring or reservoir.**

**Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.**

#### **COMMENT.—**

The water of a public spring or reservoir belongs to every member of the public in common, and if a person voluntarily fouls it he commits a public nuisance.

#### **[s 277.1] Ingredients.—**

The section requires—

- (1) voluntary corruption or fouling of water;
- (2) the water must be of a public spring or reservoir; and

(3) the water must be rendered less fit for the purpose for which it is ordinarily used.

As a general rule, a place is a public place if people are allowed access to it, though they may have no legal right to it.

**[s 277.2] Section 277 and [Water \(Prevention and Control of Pollution\) Act, 1974](#).—**

The contention that the provisions contained in the [Water Act](#) take away the effect of section 277 cannot readily be assumed especially when there is nothing in the [Water Act](#) to hold that the provisions therein are intended to nullify section 277 from the [Penal Code](#). The argument that the non-obstante clause in section 60 has the effect of repealing [section 277 of IPC, 1860](#), also is unsustainable. The non-obstante clause in section 60 cannot be assumed to supersede or extinguish such provisions in the General Law. If the non-obstante clause in section 60 was intended to exclude or nullify [section 277 of IPC, 1860](#), then there would have been strong indication available in the specific provision itself.<sup>28</sup>

<sup>28</sup>. *Prasad v State*, 2012 (1) Ker LT 861 .

## THE INDIAN PENAL CODE

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5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280–282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 278] Making atmosphere noxious to health.**

**Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.**

#### **COMMENT.—**

Though concepts of air and ecological pollution are rather new, it must be said to the credit of the first Law Commission that they too, drafting the code as they did in the first half of the nineteenth century, were not oblivious of these social needs.

#### **[s 278.1] Smoking in public places.—**

There can be no doubt that smoking in a public place will vitiate the atmosphere to make it noxious to the health of persons who happened to be there. Therefore, smoking in a public place is an offence punishable under [section 278 IPC, 1860](#).<sup>29</sup>



29. *Ramakrishnan v State*, AIR 1999 Ker 385 [LNIND 1999 KER 234] .

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7. Rash navigation (sections 280–282).
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10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 279] Rash driving or riding on a public way.**

**Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent <sup>1</sup> as to endanger human life, <sup>2</sup> or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

#### **COMMENT.—**

Under this section the effect of driving or riding must be either that human life was in fact endangered or that hurt or injury was likely to be caused.

#### **[s 279.1] Ingredients.—**

The section requires two things—

1. Driving of a vehicle or riding on a public way.

2. Such driving or riding must be so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person.

**1. 'Rash or negligent'.**—Rash and negligent driving has to be examined in light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. The preliminary conditions, thus, are that

(a) it is the manner in which the vehicle is driven;

(b) it be driven either rashly or negligently; and

(c) such rash or negligent driving should be such as to endanger human life.<sup>30</sup> The criminality lies in running the risk of doing such an act with recklessness and indifference to the consequences. The words "rashly and negligently" are distinguishable and one is exclusive of the other. The same act cannot be "rash" as well as "negligent".<sup>31</sup> Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. Simple lack of care such as will constitute civil liability, is not enough; for liability under the criminal law, a very high degree of negligence is required to be proved.<sup>32</sup>

There is a distinction between a rash act and a negligent act. A reckless act has to be understood in two different senses—subjective and objective. In the subjective sense, it means deliberate or conscious taking of an unjustified risk, which could be easily foreseen and in the circumstances of the case was unreasonable to take. In the objective sense, the accused is not conscious of the result though he ought to be aware that it might follow and in this sense, it is almost equivalent to negligence. In other words, negligence involves blameworthy heedlessness on the part of the accused which a normal prudent man exercising reasonable care and caution ought to avoid. Negligence is an omission to do something, which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. A culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happening. Culpable negligence is acting without the consciousness, that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and if he had he would have had the consciousness. As between rashness and negligence, rashness is a graver offence.<sup>33</sup> Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence, or lack of it, can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.<sup>34</sup> Absence of high speed itself cannot absolve the petitioner from the culpability.<sup>35</sup>

There are several offences in the Code in which the element of criminal rashness or negligence occurs, viz.,—sections 279, 280, 283–289, 304A, 336, 337, 338.

**2. 'Endanger human life'.**—It must be proved that the accused was driving the vehicle on a public way in a manner which endangered human life or was likely to cause hurt or injury to any other person.<sup>36</sup> It is not necessary that the rash or negligent act should result in injury to life or property.<sup>37</sup>

### **[s 279.2] Reasonable care.—**

The Court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for e.g., a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happens to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others.<sup>38</sup>

### **[s 279.3] Mens rea.—**

The essential ingredient of *mens rea* cannot be excluded from consideration when the charge in a criminal Court consists of criminal negligence.<sup>39</sup>

### **[s 279.4] Res ipsa Loquitur.—**

This doctrine serves two purposes—one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is prima facie evidence of such negligence. Second, to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The Courts have also applied the principle of *res ipsa loquitur* in cases where no direct evidence was brought on record. Elements of this doctrine may be stated as:

(a) The event would not have occurred but for someone's negligence.

(b) The evidence on record rules out the possibility that actions of the victim or some third party could be the reason behind the event.

(c) Accused was negligent and owed a duty of care towards the victim.<sup>40</sup> The principle of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence.<sup>41</sup> This doctrine operates in the domain of civil law especially in the cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed 'in service for determining per se the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence.<sup>42</sup> Where a vehicle was being driven on a wrong side, accident resulting in the death of two persons, the principle of *res ipsa loquitur* should have been applied.<sup>43</sup> In the case of *Thakur Singh v State of Punjab*,<sup>44</sup> the accused drove a bus rashly and negligently with 41 passengers and while crossing a bridge, the bus fell into the nearby canal resulting in death of all the passengers. The Court applied the doctrine of *res ipsa loquitur* since admittedly the petitioner was driving the bus at the relevant time and it was going over the bridge when it fell down.

### **[s 279.5] Abetment.—**

The mere fact that petitioner was the owner of the offending vehicle at the relevant time, *ipso facto* is not a cogent ground to array him as an accused under [section 109](#)

IPC, 1860. In this manner, no offence of abetment is made out against the petitioner.<sup>45.</sup>

### **[s 279.6] Difference between civil and criminal liability.—**

There can be no civil action for negligence if the negligent act or omission has not been attended by an injury to any person; but bare negligence involving the risk of injury is punishable criminally, though nobody is actually hurt by it.

If actual hurt is caused the case would come under sections 337 or 338, and if death is caused, under section 304A.<sup>46.</sup>

In a case of collision or injury arising out of rash driving, the actual driver and not the owner of the carriage is liable under this section;<sup>47.</sup> whereas, in a civil suit, the injured party has an option to sue either or both of them. In a criminal case, every man is responsible for his own act; there must be some personal act.<sup>48.</sup>

### **[s 279.7] Mechanical failure.—**

Poor maintenance of vehicle is itself a negligent act.<sup>49.</sup> In cases where the prosecution alleges that the brakes were defective, it must establish by evidence that the brakes were so defective that the driving of the vehicle endangered human life or was likely to cause hurt or injury to any other person. Merely because the vehicle swerved to the right when its brakes were pulled up, it could not be said that there was danger to human life or it was likely to cause hurt or injury to others.<sup>50.</sup> Failure to apply brakes at relevant time does not by itself constitute rash and negligent act for it may as well be due to error of judgment.<sup>51.</sup> A vehicle of which handbrake and speedometer were not in working order is a very serious hazard to the public as the driver would never know his speed. It is a danger to the traffic in general.<sup>52.</sup>

### **[s 279.8] Contributory negligence.—**

The doctrine of contributory negligence does not apply to criminal actions.<sup>53.</sup> The deceased stood protruding his body out of the vehicle that too having his back towards the driver, which fact suggests that he himself was quite negligent and responsible for the accident.<sup>54.</sup>

### **[s 279.9] CASES.—**

In a case the allegation was that the accused, car driver, drove car in a rash and negligent manner and caused injury to a child who was playing on side of road. But the evidence showed that vehicle was going in middle of road and child was also playing on road. Brake skid marks on road were duly depicted in site plan, acquittal was held proper by the High Court.<sup>55.</sup> Where a tractor driver was driving the tractor at a speed of six miles per hour at night and a man who was sitting on it in a careless fashion unmindful of bumps and jolts fell down and died, it was held that the driver was not guilty of any rash or negligent act within the meaning of [sections 279](#) and [304A, IPC, 1860](#).<sup>56.</sup> Where a truck dashed against a cyclist and a cart resulting in injuries to both the cyclist and the cartman but there was no evidence to the actual dashing of the

truck against the cyclist and the cart and no evidence was either available about the mechanical fitness or otherwise of the truck as the same had been set on fire by an angry mob, it could not be presumed that the truck must have been driven rashly and negligently merely because two persons were injured. In the circumstances, the conviction of the accused under [sections 279 and 304A, IPC, 1860](#) was set aside.<sup>57</sup> Merely because the driver ran away from the spot immediately after the incident, it could not be said that he must have been driving rashly and negligently.<sup>58</sup> Driving at a high speed or non-sounding of horn by itself does not mean that the driver is rash or negligent. Place, time, traffic and crowd are important factors to determine rashness or negligence.<sup>59</sup> High speed at a crowded road and pressing a person against a wall in order to save accident was held to be negligence within the meaning of this section.<sup>60</sup> To drive at a high speed on an empty road or at a lonely place is not the same thing as driving in a crowded city street.<sup>61</sup> Crushing a school child while driving past a school was held to be *ipso facto* rashness. Everybody is expected to slow down and take extra precautions near the vicinity of an educational institution.<sup>62</sup> The mere fact that there are more than two persons in a two-wheeled vehicle will not make out an offence under [section 279, IPC, 1860](#) as it by itself does not amount to so rash and negligent an act as to endanger human life, [section 279, IPC, 1860](#) is not attracted where the driving is ordinarily rash or negligent. Moreover, if an offence is really made out, then driver alone is responsible and not the pillion rider or riders. Therefore, the police practice of apprehending all occupants of the vehicle is deprecated.<sup>63</sup>

#### **[s 279.10] Site plan.—**

Where in a case of rash and negligent driving, the site plan, recovery memo, inspection report of the offending vehicle were not proved by the prosecution and the investigating officer was also not examined, conviction of the accused was set aside.<sup>64</sup> However, Supreme Court in a case held that the site plan only indicates the place where the accident happened and nothing more can be read into it.<sup>65</sup>

#### **[s 279.11] Hitting from behind.—**

Where the truck of the accused, driven rashly and negligently, hit a bullock-cart from behind killing the buffalo and the cartman, the accused could not be convicted under section 429 as the *mens rea* of causing loss was absent. However, his conviction under sections 279 and 304-A was upheld.<sup>66</sup> Where the accused, bus driver when attempted to overtake a lorry, on seeing one other bus coming in opposite direction swerved the bus towards the left and came in a violent contact with the victim, a cyclist, the Madras High Court held that the very act of the accused in driving the bus and dashing from behind the cyclist clearly constitutes the rashness and negligence on his part.<sup>67</sup>

#### **[s 279.12] Section 279 is not a petty offence.—**

'Petty offence' within the meaning of [section 206 Cr PC, 1973](#) is an offence which is punishable only with fine not exceeding Rs1,000 but does not include any offence so punishable under the [Motor Vehicles Act](#). If so, [section 279 IPC, 1860](#) which is a cognizable offence and which is not an offence punishable only with fine is not a 'petty offences'.<sup>68</sup>

### **[s 279.13] Compounding.—**

Though the Supreme Court held in *Manish Jalan v State of Karnataka*,<sup>69</sup> that offences punishable under [section 279](#) and [section 304A, IPC, 1860](#) are not compoundable, in *Puttuswamy v State of Karnataka*,<sup>70</sup> the Supreme Court while maintaining the conviction under [section 304A IPC, 1860](#) notwithstanding the agreement arrived at between the parties, increased the amount of fine from Rs 2,000 to Rs 20,000 to be paid to the parents of the deceased and reduced the sentence to the period already undergone, subject to payment of the fine.

### **[s 279.14] Sentence.—**

One of the most effective ways of keeping drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.<sup>71</sup> For lessening the high rate of motor accidents due to careless and callous driving of vehicles, the Courts are expected to consider all the relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence if the prosecution is able to establish the guilt beyond reasonable doubt.<sup>72</sup> Where the accused dashed the jeep against a tree, as a result of which one person, who was travelling in the jeep got injured and died, and another person, who was also in the same vehicle received injuries, the Supreme Court held that the High Court, without proper appreciation of the evidence and consideration of the gravity of the offence, showed undue sympathy by reducing the sentence.<sup>73</sup>

### **[s 279.15] Whether a Court can convict a person under [sections 279 and 337, IPC](#) for commission of the same act of offence and accordingly pass sentence under both the Sections.—**

In this case, as the offence having been outcome of the same act, the Court should punish the accused for one offence and at the same time, while passing the order of sentence, the Court should also consider that when the sentence prescribed under [section 279, IPC, 1860](#) is a more severe offence than the offence prescribed under [section 337, IPC, 1860](#) the accused could be punished under [section 279, IPC, 1860](#) only.<sup>74</sup> However, in another case, Madras High Court held that simply because accused are found guilty under [section 304-A IPC, 1860](#) and sentence is imposed, there is no embargo for Court to impose separate sentence under [section 279 IPC, 1860](#).<sup>75</sup>

30. *Ravi Kapur v State of Rajasthan*, AIR 2012 SC 2986 [LNIND 2012 SC 474] : (2012) 9 SCC 284 [LNIND 2012 SC 474] : 2012 Cr LJ 4403 .

31. *State of HP v Manohar Singh*, 2011 Cr LJ 3402 (HP).

32. *Kuldeep Singh v State*, AIR 2008 SC 3062 [LNIND 2008 SC 1436] : (2008) 14 SCC 795 [LNIND 2008 SC 1436] relied on *Syed Akbar v State of Karnataka*, 1980 (1) SCC 30 [LNIND 1979 SC 297]

33. *Bhalchandra*, (1967) 71 Bom LR 634 , SC approving *Idu Beg v State*, (1881) ILR 3 All 766 and *Nidamarti Nagabhushanam*, (1872) 7 Mad HCR 119 .
34. *Ravi Kapur v State of Rajasthan*, AIR 2012 SC 2986 [LNIND 2012 SC 474] : (2012) 9 SCC 284 [LNIND 2012 SC 474] : 2012 Cr LJ 4403 .
35. *Mehnga Singh v State*, 2012 Cr LJ 4930 (Del).
36. *Braham Das v State of HP*, (2009) 7 SCC 353 [LNIND 2009 SC 1130] : (2009) 3 SCC (Cr) 406 : (2009) 81 AIC 265 .
37. (1871) 6 Mad HCR (Appx) xxxii. *State of Karnataka v Sadanand Parshuram*, 2000 Cr LJ 2426 (Kant).
38. *Ravi Kapur v State of Rajasthan*, AIR 2012 SC 2986 [LNIND 2012 SC 474] : (2012) 9 SCC 284 [LNIND 2012 SC 474] : 2012 Cr LJ 4403 .
39. *Dr. PB Desai v State of Maharashtra*, 2013 (11) Scale 429 [LNIND 2013 SC 815] ; In *Saroja Dharmapal Patil v State of Maharashtra*, 2011 Cr LJ 1060 (Bom), Bombay High Court held that section 304-A or section 279 of the IPC do not require any mens rea. But in view of the Supreme Court Judgment, in Desai's case, it is not relevant.
40. *Ravi Kapur v State of Rajasthan*, AIR 2012 SC 2986 [LNIND 2012 SC 474] : (2012) 9 SCC 284 [LNIND 2012 SC 474] : 2012 Cr LJ 4403 ; *Syad Akbar v State of Kamataka*, 1980 SCC (Cr) 59 : (AIR 1979 SC 1848 [LNIND 1979 SC 297] ).
41. *Mohd. Aynuddin alias Miyam v State of AP*, 2000 (7) SCC 72 [LNIND 2000 SC 1014] : AIR 2000 SC 2511 [LNIND 2000 SC 1014] : 2000 SCC (Cr) 1281 : 2000 Cr LJ 3508 .
42. *Jacob Mathew v State of Punjab*, AIR 2005 SCW 3685 : AIR 2005 SC 3180 [LNIND 2005 SC 587] .
43. *Francis Xavier Rodriguez v State of Maharashtra*, 1997 Cr LJ 1374 (Bom); *Dwarka Das v State of Rajasthan*, 1997 Cr LJ 4601 (Raj).
44. *Thakur Singh v State of Punjab*, 2003 (9) SCC 208 .
45. *Ranjit Singh v State of Punjab*, 2012 (4) Crimes 315 .
46. No separate sentence would be necessary under this section if the act is punished under section 304A. *Nanne Khan v State of MP*, 1987 Cr LJ 1403 (MP).
47. *AW Larrymore v Pernendoo Deo Rai*, (1870) 14 WR (Cr) 32.
48. *Allen*, (1835) 7 C & p 153.
49. *Binoda Bihari Sharma v State of Orissa*, 2011 Cr LJ 1989 (Ori).
50. *Ajit Singh v State*, 1975 Cr LJ 77 (HP).
51. *Padmacharan Naik*, 1982 Cr LJ NOC 192 (Ori).
52. *Amar Lal v State of Rajasthan*, 1988 Cr LJ 1 (Raj).
53. *Kew*, (1872) 12 Cox 355; *Blenkinsop v Ogden*, (1898) 1 QB 783 ; *Fagu Moharana*, AIR 1961 Ori 71 [LNIND 1959 ORI 42] .
54. *Bhupinder Sharma v State of HP*, 2016 Cr LJ 3832 : IV (2016) ACC 461 (HP).
55. *State of HP v Jawahar Lal Jindal*, 2011 Cr LJ 3827 (HP). See also *Aleem Pasha v State of Karnataka*, 2013 Cr LJ 174 (Kant); *Ponnusamy v State*, 2010 Cr LJ 2656 (Mad); *State of HP v Baljit Singh*, 2012 Cr LJ 237 (HP).
56. *Penu*, 1980 Cr LJ NOC 132 (Ori).
57. *Bijuli Swain*, 1981 Cr LJ 583 (Ori).
58. *Padmacharan Naik*, *supra*.
59. *P Rajappan*, 1986 Cr LJ 511 (Ker).
60. *State of HP v Man Singh*, (1995) 1 Cr LJ 299 (HP). The court also found that the brakes of the vehicle were in poor state of maintenance and, therefore, the principle of *res ipsa loquitur*



applied. The court **followed** *Thomas v State of Kerala*, [ILR \(1971\) 1 Ker 318](#) ; *Duli Chand v Delhi Admn*, [1975 Cr LJ 1732](#) : [AIR 1975 SC 1960](#) [[LNIND 1975 SC 258](#)] and *Usman Gani Mohd. v State of Maharashtra*, [\(1979\) 3 SCC 362](#) : 1979 SCC Cr 675, which was a case where a girl was knocked down and the version of the driver was that he did not notice how the impact took place and how the girl came under his lorry, it was, therefore, held that he was inattentive and this would establish negligence on his part.

61. *Padmacharan, supra; Mahommed Saffique*, [1983 Cr LJ 535](#) (Ori).
62. *Prafulla Kumar Rout v State of Orissa*, [\(1995\) 2 Cr LJ 1277](#) (Ori).
63. *Prabhudas*, [1986 Cr LJ 390](#) (Guj). In *State of Karnataka v Krishna*, [\(1987\) 1 SCC 538](#) [[LNIND 1987 SC 701](#)] : [1987 Cr LJ 776](#) : [AIR 1987 SC 861](#) [[LNIND 1987 SC 701](#)] the Supreme Court enhanced the punishment from two months' simple imprisonment being unconscionably low to six months' R. I. for causing death by rash and negligent driving. *NP Ganesan Re*, [1989 Cr LJ 1160](#) (Mad). Bus hitting a pedestrian and dragging him for about 76 feet before stopping, the sentence of imprisonment was converted into fine in view of his 55 years of age having sole child (daughter) suffering from paralysis but no order about his disability for re-employment. *State of Karnataka v SB Marigowda*, [1999 Cr LJ 2171](#) (Kant), the accused, driving a matador suddenly turning to right in order to overtake a vehicle and hitting a person to death who was standing at that side, held guilty under the section *Mallesi v State of Karnataka*, [1999 Cr LJ 2617](#) (Kant), the accused car driver hit bullocks and two persons on road and then dashed against a house 40 feet away from the road. Conviction proper. *Ram Singh v State of Rajasthan*, [1999 Cr LJ 2622](#) (Raj) death of a lady caused by rash and negligent driving, no leniency was shown to the accused because the whole family of the victim was upset. *Bhagirath Singh v State of Rajasthan*, [1999 Cr LJ 4237](#) (Raj), a pedestrian suddenly attempted to cross the road and was hit by a vehicle. It could not be known whether the driver was able to spot him. Negligence on the part of the driver not proved. *State v Santanam*, [1998 Cr LJ 3045](#) (Kant), accused, a military personnel, under influence of alcohol, drove his military truck in a zig zag manner, made three accidents in one sequence. A moped driver, who was hit, died but it was not known whether death was due to fatal injury. Others were only injured. Held, liable under section 279, but not under [section 337](#) or [section 304A, IPC, 1860](#) nor under section 117 of MV Act. *Bharat Amratlal Kothari v Dosukhan Samadkhan Sindhi*, [\(2010\) 1 SCC 234](#) [[LNIND 2009 SC 1949](#)] : [2010 Cr LJ 379](#) , FIR under section 279 for an order to prevent filling of animals in trucks in a cruel manner and carrying them for slaughter contrary to statutory requirements.
64. *Thana Ram v State of Haryana*, [1996 Cr LJ 2020](#) (P&H), **relying** on *Nageshwar Sh Krishna Ghobe v State of Maharashtra*, [AIR 1973 SC 165](#) [[LNIND 1972 SC 450](#)] : [1973 Cr LJ 235](#) .
65. *Shivanna v State*, [\(2010\) 15 SCC 9](#) : 2010 (9) Scale 87 [[LNIND 2010 SC 775](#)] .
66. *Pawan Kumar Sharma v State of UP*, [1996 Cr LJ 369](#) (All).
67. *K K Mani v State*, [2010 Cr LJ 4595](#) (Mad).
68. *Ramesan v State*, [2010 Cr LJ 4423](#) .
69. *Manish Jalan v State of Karnataka*, [AIR 2008 SC 3074](#) [[LNIND 2008 SC 1396](#)] : [\(2008\) 8 SCC 225](#) [[LNIND 2008 SC 1396](#)] .
70. *Puttuswamy v State of Karnataka*, [\(2009\) 1 SCC 711](#) [[LNIND 2008 SC 2398](#)] : 2008 (15) Scale 483 [[LNIND 2008 SC 2398](#)] .
71. *Dalbir Singh v State of Harayana*, [2000 \(5\) SCC 82](#) [[LNIND 2000 SC 810](#)] : [AIR 2000 SC 1677](#) [[LNIND 2000 SC 810](#)] : [2000 Cr LJ 2283](#) ; *B Nagabhusanam v State of Karnataka*, [2008 \(5\) SCC 730](#) [[LNIND 2008 SC 1172](#)] : 2008 (7) Scale 716 [[LNIND 2008 SC 1172](#)] : [AIR 2008 SC 2557](#) [[LNIND 2008 SC 1172](#)] .
72. *State of Punjab v Balwinder Singh*, [2012 \(2\) SCC 182](#) [[LNIND 2012 SC 8](#)] : 2012 (1) Scale 62 [[LNIND 2012 SC 8](#)] : [AIR 2012 SC 861](#) [[LNIND 2012 SC 8](#)] .

73. *State of MP v Surendra Singh*, 2015 Cr LJ 600 : AIR 2015 SC 398 [LNIND 2014 SC 933] .
74. *Hiran Mia v State of Tripura*, 2010 Cr LJ 189 (Gau) section 279 is punishable with imprisonment of either description of a term which may extend to six months, or with fine which may extend to **Rs 1,000**, or with both, while section 337 is punishable with imprisonment of either description for a term which may extend to six months, or with fine which may extend to **Rs 500**, or with both.
75. *Rajaram v State*, 2010 Cr LJ 1644 (Mad).

## THE INDIAN PENAL CODE

### CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

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2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 280] Rash navigation of vessel.**

**Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

#### **COMMENT.—**

The last section deals with public ways on land: this section deals with waterways. It deals with the case of inland navigation. Rash or negligent navigation on the high seas is not punished under the Code but under certain special statutes.

#### **[s 280.1] CASES.—**

Petitioners, 33 in number were the distressed and marooned seamen belonging to different nationalities who were the crew of "ISABELL-III", wrecked at the reefs of the sea near the Islet of Suheli Par, part of the Lakshadweep group of Islands. The accident happened when the vessel was passing through the Indian territorial waters by way of

innocent passage; and immediately the matter was informed to the Indian Coast Guard. The Merchant Shipping (Distressed Seamen) Rules, 1960 prescribes that the derelict seamen should be saved at any cost and repatriated to their return port at the cost of the owner of the vessel. The petitioners were forced to enter the Lakshadweep Island and hence they were held protected under the [Merchant Shipping Act, 1958](#) the Merchant Shipping (Distressed Seamen) Rules, 1960 and the U.N. Conventions On the Law Of the Sea (UNCLOS). It was held that at best the offence under [section 280 IPC, 1860](#), i.e., rash navigation of the vessel, would lie only against the first accused, who was the Master of the vessel. Proceedings against the crew was quashed.<sup>76.</sup>

<sup>76.</sup> *Hisa A Sheng v Administrator, Union Territory of Lakshadweep*, 2007 Cr LJ 821 .

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7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 281] Exhibition of false light, mark or buoy.**

**Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.**

#### **COMMENT.—**

Intentional exhibition of a false light, mark or buoy, with a view to mislead any navigator is punishable under this section.

## THE INDIAN PENAL CODE

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7. Rash navigation (sections 280–282).
8. Exhibition of false light, mark or buoy (section 281).
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10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 282] Conveying person by water for hire in unsafe or overloaded vessel.**

**Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

#### **COMMENT.—**

This section provides against the negligence of common carriers by water. Where a person, with the assistance of two others, plied a ferryboat, which was out of order and had a crack, and he took in one hundred passengers, and consequently the boat was upset, and seven persons were drowned, it was held that the accused had committed an offence under this section.<sup>77</sup> Where the lessee of a public ferry knew that boats were usually overloaded but took no steps against it and allowed his boatmen to overload them as they liked and in consequence, a boat sank with some passengers, it was held that the lessee was guilty of criminal negligence and liable under this

section.<sup>78</sup> Where a launch, which was overloaded with passengers, capsized at the jetty owing to the onrush of persons waiting at the jetty to get on deck and the passengers on the launch wanting to get down at the jetty, resulting in displacement of balance of the launch, it was held that the capsizing of the launch was not because of any negligence of the owners or the master and, therefore, their conviction under this section could not be sustained.<sup>79</sup> The owner who knowingly or negligently allows overloading of his boat so as to endanger the life of the persons therein will be liable under [section 282, Penal Code](#).<sup>80</sup>

There is no provision in the Code for the negligence of a common carrier by land.

<sup>77</sup>. *Khoda Jagta*, (1864) 1 BHC (Cr C) 137.

<sup>78</sup>. *Tofel Ahmad Miya*, (1933) 61 Cal 253 .

<sup>79</sup>. *VR Bhat*, AIR 1970 SC 1362 : 1970 Cr LJ 1261 .

<sup>80</sup>. *Re K S M Mohammad Abdul Kadar Marakayar*, 1950 Cr LJ 729 (Mad).

## THE INDIAN PENAL CODE

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6. Rash driving or riding (section 279).
7. Rash navigation (sections 280–282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 283] Danger or obstruction in public way or line of navigation.**

**Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way <sup>1</sup> or public line of navigation, shall be punished with fine which may extend to two hundred rupees.**

#### **COMMENT.—**

The offence punishable under this section is the nuisance of causing obstruction, in a public way or navigable river or canal:

#### **[s 283.1] Ingredients.—**

The section requires two things—

1. A person must do an act or omit to take order with any property in his possession or under his charge.



2. Such act or omission must cause danger, obstruction or injury to any person in any public way or line of navigation.

It is not necessary to prove that any specific individual was actually obstructed.<sup>81</sup>

**1. 'Public way'.—**Where the privilege of a right of way is enjoyed only by a particular section of the community or by the inhabitants of two or three villages and not by others, the way is not a public way within the meaning of this section.<sup>82</sup> The section cannot be extended to a case where a party prohibits strangers from passing through its fields, even though they may have been allowed access on earlier occasion.<sup>83</sup>

### **[s 283.2] CASES.—**

A tractor trolley duly loaded with fertilizers was negligently parked in the middle of the road by its driver without there being any signal of its being stationary and as such three persons who were proceeding on a motor-cycle collided with the stationary trolley and sustained severe injuries. The Rajasthan High Court declined to quash the proceedings.<sup>84</sup>

<sup>81</sup>. *Venkappa v State*, (1913) 38 Mad 305.

<sup>82</sup>. *Prannath Kundu*, (1929) 57 Cal 526 .

<sup>83</sup>. *Nand Ram v State*, (1969) Cr LJ 77 .

<sup>84</sup>. *Jai Ram v State of Rajasthan*, 2001 Cr LJ 3915 (Raj).

## THE INDIAN PENAL CODE

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11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 284] Negligent conduct with respect to poisonous substance.**

**Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,**

**or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance,**

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

#### **COMMENT.—**

Under the second part of this section, a person in possession of a poisonous substance should have negligently omitted to take such order with it as is sufficient to guard against any probable danger to human life from such substance. It is not

necessary that the negligent omission should be followed by any disastrous consequences.<sup>85</sup>

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<sup>85</sup> *Hosein Beg*, (1882) PR No. 16 of 1882.

## **THE INDIAN PENAL CODE**

### **CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS**

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1. Act likely to spread infection (sections 269–271).
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3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280–282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 285] Negligent conduct with respect to fire or combustible matter.**

**Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,**

**or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,**

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

#### **COMMENT.—**

This section extends the provisions of the preceding section to fire or any other combustible matter.

#### **[s 285.1] Cases.—**

A factory worker allegedly died due to rash and negligent act of occupier or manager. It was argued that [section 92 of Factories Act, 1948](#) prescribes punishment to occupier or manager of factory for contravention of any of the provisions of [Factories Act](#) or any rules made thereunder. It was held that there is nothing in [Factories Act](#) (Special Law) which prescribes punishment for rash and negligent act of occupier or manager of factory which resulted into the death of any worker or any other person. Hence, offences under [IPC, 1860](#) including section 285 will apply.<sup>86</sup> Where a factory manager, in breach of conditions in the licence kept naked fire in proximity of stores of turpentine and vanish and the fire caused death of seven workers, the court found that he is guilty under [sections 285 and 304A IPC, 1860](#).<sup>87</sup> The acts of accused in setting fire to the Tobacco Stock inside the house after pouring petrol and further act of throwing petrol on the deceased when he tried to pacify, cannot be held as either rash or negligent act so as to attract the offence under [section 285 of IPC, 1860](#).<sup>88</sup>

<sup>86</sup>. *Ejaj Ahmad v State of Jharkhand*, [2010 Cr LJ 1953](#) (Jha).

<sup>87</sup>. *Kurban Hussein Mohamedalli Bangawalla v State of Maharashtra*, [AIR 1965 SC 1616](#) [[LNIND 1964 SC 355](#)] : [1965 \(2\) SCR 622](#) [[LNIND 1964 SC 355](#)] .

<sup>88</sup>. *Madhusudan v State of Karnataka*, [2011 Cr LJ 215](#) (Kant).

## **THE INDIAN PENAL CODE**

### **CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS**

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10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 286] Negligent conduct with respect to explosive substance.**

**Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,**

**or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,**

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

#### **COMMENT.—**

The foregoing section deals with 'fire or combustible matter', this with 'explosive substance'; otherwise, the provisions of both the sections are alike.

The word 'knowingly' is evidently used in this section advisedly.

**[s 286.1] Limitation.—**

In a case, the occurrence took place as far back as in the year 1995 and the challan was presented in the year 2006. The prosecution was launched against the petitioners beyond the period of limitation as prescribed under the statute. Proceedings under sections 286 and 9-B and 9-C of the [Explosive Substances Act, 1908](#), were quashed.<sup>89.</sup>

<sup>89.</sup> *T Amudha Sidhanathan v Union Territory, Chandigarh*, [2008 Cr LJ 937](#) (P&H).

## THE INDIAN PENAL CODE

### CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

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11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 287] Negligent conduct with respect to machinery.**

**Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,**

**or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,**

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

#### **COMMENT.—**

Machinery is dangerous to human life if proper precaution is not taken in its working. This section renders any rash or negligent conduct in respect of machinery punishable. Section 284 deals with poison; section 285, with fire or combustible matter, section 286, with explosive substance; and this section, with machinery.



Death of the victim occurred when his hand got crushed in conveyor belt while repairing it. There is no evidence to prove that the accused knowingly or negligently failed to take precautions against probable danger. It is held that no offence under section 287 or section 304A is made out.<sup>90</sup>

<sup>90</sup>. *Raj Kumar Bansal v State of Jharkhand*, 2012 Cr LJ (NOC) 554 (Jha).

## THE INDIAN PENAL CODE

### CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

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8. Exhibition of false light, mark or buoy (section 281).
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10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 288] Negligent conduct with respect to pulling down or repairing buildings.**

**Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

#### **COMMENT.—**

This section deals with negligent conduct with respect to pulling down or repairing buildings. The injury complained of must be the direct consequence of such negligent conduct.<sup>91</sup> [section 288, IPC, 1860](#), concerns itself with a situation where a person, in pulling down or repairing and building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or any part thereof.<sup>92</sup>

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91. *Manohar Shrinivas v Avtarsingh*, (1969) 72 Bom LR 629 .
  92. *Abdul Kalam v State*, 2006 Cr LJ 3071 (Del).

## THE INDIAN PENAL CODE

### CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

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11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 289] Negligent conduct with respect to animal.**

**Whoever knowingly or negligently omits to take such order with any animal in his possession <sup>1</sup> as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, <sup>2</sup> shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

#### **COMMENT.—**

This section deals with improper or careless management of animals. It does not refer to savage animals alone, but to any 'animal', wild or domestic, e.g., a pony.<sup>93</sup>

In the case of wild and savage animals, a savage or mischievous temper is presumed to be known to their owner and to all men as a usual accompaniment of such animals; and hence a positive duty is cast on the owner to protect the public against the mischief resulting from such animals being at large. Anyone who keeps such a wild

animal as a tiger or bear, which escapes and does damage, is liable without any proof of notice of the animal's ferocity; in such a case it may be said '*res ipsa loquitur*'.

In the case of animals, which are tame and mild in their general temper, no mischievous disposition is presumed. It must be shown that the defendant knew that the animal was accustomed to do mischief. Some evidence must be given of the existence of an abnormally vicious disposition. A single instance of ferocity, even a knowledge that it has evinced a savage disposition, is held to be sufficient notice.<sup>94.</sup>

**1. 'Animal in his possession'.** Where the owner knowing that his buffalo was of a savage and vicious disposition *vis-a-vis* human beings, negligently omitted to take such order with the animal as was sufficient to guard against probable danger to human life or any probable danger of grievous hurt, and the animal attacked the complainant in a jungle and wounded him with her horn, it was held that he was guilty of an offence under this section.<sup>95.</sup>

**2. 'As is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal'.**—Where a pony, which was tied negligently, got loose and ran through a crowded bazar, it was held that the conviction under this section was good, because the pony on such an occasion might create danger to the lives or limbs of men, women and children walking in the bazar.<sup>96.</sup> The accused, a horse-keeper, harnessed his master's horse, put him into his carriage, and then went away, leaving the horse and carriage standing in the road of the compound of his master's house without any justification; it was held that the accused had committed an offence under this section, since the horse was not the less in the actual possession of the servant, because it was for some purpose in the constructive possession of his master.<sup>97.</sup>

<sup>93.</sup> *Chand Manal*, (1872) 19 WR (Cr) 1.

<sup>94.</sup> See the authors' *LAW OF TORTS*, 19th Edn, chapter XX.

<sup>95.</sup> *Moti*, (1954) Nag 585.

<sup>96.</sup> *Chand Manal*, (1872) 19 WR (Cr) 1.

<sup>97.</sup> *Natha Reva*, (1881) Unrep Cr C 163.

## THE INDIAN PENAL CODE

### CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

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11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 290] Punishment for public nuisance in cases not otherwise provided for.**

**Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.**

#### **COMMENT.—**

This section provides for the punishment of a nuisance falling within the four corners of the definition given in section 268 but not punishable under any other section.

#### **[s 290.1] CASES.—**

The display of unauthorized hoardings / banners / posters not only result in defacement of public property and any place open to public view, but is an eyesore to the viewers thereby causing public nuisance. In a given case, it may also result in obstructing the free flow of traffic on the public roads. The same would not only be unlawful but unjust and unreasonable, irrespective of whether it has the effect of advertisement or otherwise. Suffice it to observe that the Authorities have a bounden duty to prevent and regulate display of illegal hoardings / banners / posters in the

interests of amity and public safety.<sup>98</sup> Though corporate bodies act through their agents, there is no reason to exempt such bodies when their agents or servants, while purporting to act on their behalf commit an offence like public nuisance, which is punishable with fine only. So a Municipality could be convicted for not maintaining the cleanliness of the town under [section 290, IPC, 1860](#).<sup>99</sup> But in deciding cases of nuisance the rigid standards of urban society cannot be applied to Indian villages.<sup>100</sup> Where a Coal Depot had been in existence for seven or eight years and only two neighbours complained against its continuance at that site, it could not be said that it constituted a public nuisance. At best, it was a private nuisance.<sup>101</sup> Playing the radio loud at a particular time did not constitute public nuisance and it was too trivial a matter for the Court to take notice of it.<sup>102</sup>

<sup>98</sup>. *SP Jadhav v State of Maharashtra*, [AIR 2010 \(4\) Bom section 548](#).

<sup>99</sup>. *Kurnool Municipality*, [1973 Cr LJ 1227 \(AP\)](#).

<sup>100</sup>. *Chakra Behera*, [1974 Cr LJ 423 \(Ori\)](#).

<sup>101</sup>. *Berhampore Municipality v Oruganti Kondaya*, [1977 Cr LJ NOC 279 \(Ori\)](#).

<sup>102</sup>. *Ivor Heyden v State*, [1984 Cr LJ NOC 16 \(AP\)](#).

## THE INDIAN PENAL CODE

### CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

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12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **[s 291] Continuance of nuisance after injunction to discontinue.**

**Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.**

#### **COMMENT.—**

This section punishes a person repeating or continuing a nuisance after he is enjoined by a public servant not to repeat or continue it. [Sections 142](#) and [143](#) of the [Cr PC, 1973](#) empower a Magistrate to forbid an act causing public nuisance.



## **THE INDIAN PENAL CODE**

### **CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS**

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13. Keeping a lottery office (section 294A).

#### **103.[s 292] Sale, of obscene book,**

**104.[(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.]**

#### **105.[(2)] Whoever—**

- (a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or
- (b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that

such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

- (c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or
- (d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or
- (e) offers or attempts to do any act which is an offence under this section,

shall be punished <sup>106.</sup>[on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees].

<sup>107.</sup>[Exception.—This section does not extend to—

- (a) any book, pamphlet, paper, writing, drawing, painting, representation or figure—
  - (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or
  - (ii) which is kept or used *bona fide* for religious purposes;
- (a) any representation sculptured, engraved, painted or otherwise represented on or in—
  - (i) any ancient monument within the meaning of the [Ancient Monuments and Archaeological Sites and Remains Act, 1958](#) (24 of 1958), or
  - (ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.]]

### State Amendments

**Orissa.**— *The following amendments were made by Orissa Act No. 13 of 1962, s. 2 (w.e.f. 16-5-1962).*

In its application to the whole State of Orissa, in Section 292, for the words, "which may extend to three months", substitute the words "which may extend to two years" and insert the following proviso before the Exception, namely:—

*"Provided that for a second or any subsequent offence under this section, he shall be punished with imprisonment of either description for a term which shall not be less than six months and not more than two years and with fine".*

**Tamil Nadu.**— *The following amendments were made by Tamil Nadu Act No. 25 of 1960, s. 2 (w.e.f. 9-11-1960).*

In its application to the whole of the State of Tamil Nadu, in Section 292, for the words "shall be punished with imprisonment of either description for a term which may extend to three months or with fine or with both", substitute the following, namely:—

"shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

*Provided* that for a second or any subsequent offence under this section, he shall be punished with imprisonment of either description for a term which shall not be less than six months and not more than two years and with fine".

## COMMENT.—

[section 292 IPC, 1860](#), was enacted by the Obscene Publications Act to give effect to Article I of the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications to which India is a signatory. By Act 36 of 1969, section 292 was amended to give more precise meaning to the word 'obscene' as used in the section in addition to creating an exception for publication of matter which is proved to be justified as being for the public good, being in the interest of science, literature, art or learning or other objects of general concern. Prior to its amendment, section 292 contained no definition of obscenity. The amendment also literally does not provide for a definition of 'obscenity' in as much as it introduces a deeming provision.<sup>108</sup> In order to make the law relating to the publication of obscene matters or objects deterrent, the section provides for enhanced punishment. The Exception to the original section, which is now redrafted, exempts from the provisions of the section any representation, sculptured, engraved or painted on or in any ancient monument. The possession referred to in this section connotes conscious possession.<sup>109</sup> By Act 25 of 1960, the State of Tamil Nadu has added a new section as section 292A for dealing with printing, of grossly indecent or scurrilous matter or matter intended for blackmail. The State of Orissa has followed suit by Act 13 of 1962. The intention of the Legislature while amending the provision is to deal with this type of offences which corrupt the mind of the people to whom objectionable things can easily reach and need not be emphasized that corrupting influence is more likely to be upon the younger generation who has got to be protected from being easy prey.<sup>110</sup> This section was amended by Act XXXVI when apart from enlarging the scope of the exceptions, the penalty was enhanced which was earlier up to three months or with fine or with both. By the amendment a dichotomy of penal treatment was introduced for dealing with the first offenders and the subsequent offenders. In the case of even a first conviction, the accused shall be punished with imprisonment of either description for a term which may extend to two years and with fine which may extend to Rs 2,000.<sup>111</sup>

**1. 'Obscene'.—**The word obscenity is not defined in the [IPC, 1860](#). The word 'obscene' was originally used to describe anything disgusting, repulsive, filthy or foul. The use of the word is now said to be somewhat archaic or poetic; and it is ordinarily restricted to something offensive to modesty or decency, or expressing or suggesting unchaste or lustful ideas, or being impure, indecent, or lewd.<sup>112</sup> The obscene matter in a book must be considered by itself and separately to find out whether it is so gross and its obscenity, so decided, that it is likely to deprave and corrupt those whose minds are open to influences of this sort and into whose hands the book is likely to fall. In this connection, the interests of our contemporary society and particularly the influence of the book on it must not be overlooked.<sup>113</sup> It was further observed in this case that

merely treating with sex and nudity in art and literature cannot be regarded as evidence of obscenity without something more. It was held that where obscenity and art are mixed, art must be so preponderating as to throw the obscenity into the shadow or the obscenity so trivial and insignificant that it can have no effect and may be overlooked. When treatment of sex becomes offensive to public decency and morality as judged by the prevailing standards of morality in the society, then only the work may be regarded as an obscene production.<sup>114</sup> In considering the question of obscenity of a publication what the Court has to see is that whether a class, not an isolated case, into whose hands the book, article or story falls suffer in their moral outlook or become depraved by reading it or might have impure and lecherous thoughts aroused in their minds.<sup>115</sup> It was also observed in this case that the question of obscenity may have to be judged in the light of the claim that the work has a predominant literary merit. Referring to the impact on the mind of the youth, the Court said:<sup>116</sup>

We do not think that it can be said with any assurance that merely because the adolescent youth read situations of the type presented in the book, they would become deprived, debased and encouraged to lasciviousness. It is possible that they may come across such situations in life and may have to face them. But if a narration or description of a similar situation is given in a setting emphasising a strong moral to be drawn from it and condemns the conduct of the erring party as wrong and loathsome, it cannot be said that they have a likelihood of corrupting the morals of, those in whose hands it is likely to fall—particularly the adolescent.

In *KA Abbas v UOI*,<sup>117</sup> the Supreme Court has called the test laid down in *Mishkin's case*<sup>118</sup> as 'selective audience obscenity test' and observed as:

our standards must be so framed that we are not reduced to a level where the protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read ....

The requirements of art and literature include within themselves a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth.

In the case of *Samaresh Bose v Amal Mitra*<sup>119</sup>, wherein the Supreme Court provided the following guidance:<sup>120</sup>

In our opinion, in judging the question of obscenity, the judge in the first place should try to place himself in the position of the author and from the view point of the author the judge should try to understand what is it that the author seeks to convey and what the author conveys has any literary and artistic value. The judge should thereafter place himself in the position of a reader of every age group in whose hands the book is likely to fall and should try to appreciate what kind of possible influence the book is likely to have in the minds of the readers. The judge should thereafter apply his judicial mind dispassionately to decide whether the book in question can be said to be obscene within the meaning of the section by an objective assessment of the book as a whole and also of the passages complained of as obscene separately.

It is no defence to a charge of obscenity merely to urge that the information has been copied from similar works.<sup>121</sup>

In *Promilla Kapur (Dr) v Yash Pal Bhasin, Promilla Kapur (Dr) v Yash Pal Bhasin*,<sup>122</sup> the Delhi High Court felt<sup>123</sup> that there was nothing wrong if a sociologist made a research on the subject of call-girls in order to know the reasons as to why and how the young girls fall in this profession and what society could do in order to eradicate or at least minimise the possibility of young budding girls joining the flesh trade. The book was in the form of interviews with the girls in the profession. The portion marked by the Magistrate as obscene was a description of their encounters with unscrupulous males

including a description by some girls of their first experience with sex. But by far the bulk of the book dealt with the ways and means of running the profession and the methods of encountering them. Thus, the book was within the scope of clause (a) of the first exception. In *Bobby Art International v Om Pal Singh Hoon*,<sup>124</sup> while examining the validity of certificate of exhibition awarded to the film "Bandit Queen" it was held that nakedness does not always arouse the baser instinct. In *Director General, Directorate General of Doordarshan v Anand Patwardhan*,<sup>125</sup> the Supreme Court again referred to the Hicklin test and observed that the relevant questions are:

- (a) whether the average person applying contemporary community standards would find that the work, taken as a whole appeal to the prurient interest.
- (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically, defined by the applicable state law,
- (c) whether the work taken as a whole, lacks serious literary, artistic, political or scientific value.

In the case of *Ajay Goswami v UOI*,<sup>126</sup> the Supreme Court, while recognizing the right of adult entertainment, reviewed the position of law on obscenity and summarized the various tests laid down regarding obscenity.

#### **[s 292.1] A picture of a woman in the nude is not per se obscene.—**

Unless the picture of a nude/semi-nude female is an incentive to sensuality or impure or excite the thoughts in the mind of an ordinary person of normal temperament, the pictures cannot be regarded as obscene within the meaning of [section 292 IPC, 1860](#). But where repetitive photographs without any backdrop content are published in a magazine and nearly 1/4th of the magazine consists of nothing but repetitive photographs of semi-nude women, prominence being to display their breast, there being hardly any literary contents in the magazine, the matter loses any literary content and therefore the broad social outlook penned in *Ranjit Udeshi's case*<sup>127</sup> may not be available as a defence.<sup>128</sup> To fall within the scope of 'obscene' under [sections 292 and 294 IPC](#), the ingredients of the impugned matter/art must lie at the extreme end of the spectrum of the offensive matter. The legal test of obscenity is satisfied only when the impugned art/matter can be said to appeal to an unhealthy, inordinate person having perverted interest in sexual matters or having a tendency to morally corrupt and debase persons likely to come in contact with the impugned art.<sup>129</sup>

#### **[s 292.2] Hicklin Test and Community Standard Test.—**

One of the tests to be applied to find whether an article possesses the standard of obscenity is the Hicklin Test.<sup>130</sup> As per this, *the test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall*. The other test is *Community Standard Test*, whereby the obscenity has to be judged from the point of view of an average person, by applying contemporary community standards. In *Aveek Sarkar v State of WB*,<sup>131</sup> the Supreme Court was of the view that Hicklin test is not the correct test to be applied to determine "what is obscenity".

When the name of Mahatma Gandhi is alluded or used as a symbol, speaking or using obscene words, the concept of "degree" comes in. To elaborate, the "contemporary

community standards test" becomes applicable with more vigour, in a greater degree and in an accentuated manner.<sup>132.</sup>

### **[s 292.3] Khushboo Case.—**

In *Khushboo v Kanniammal*,<sup>133.</sup> the appellant, a popular actress expressed her personal opinion wherein she had noted the increasing incidence of pre-marital sex, especially in the context of live-in relationships and called for the societal acceptance of the same. However, appellant had also qualified her remarks by observing that girls should take adequate precautions to prevent unwanted pregnancies and the transmission of venereal diseases. The Supreme Court said it failed to see how the appellant's remarks amount to 'obscenity' in the context of [section 292 IPC, 1860](#). It was difficult to appreciate the claim that the statements published as part of the survey were in the nature of obscene communications.

### **[s 292.4] Meaning of the word obscene in sections 292, 293 and section 294(b).—**

The word 'obscene' is not defined differently in these sections but the punishments were prescribed differently in other sections depending upon the effect of 'obscenity' that causes on the viewer or hearer as the case may be. That also would sufficiently indicate that the said word is to be understood as understood for the purpose of section 292.<sup>134.</sup>

### **[s 292.5] Certificate of Censor Board.—**

Once the film is given a particular certification, no doubt the case of obscenity under [section 292 of the IPC, 1860](#), cannot be made out when the said film is shown to the particular category for which the certificate is granted. Again, the pre-condition is that there has to be a certification by the Board of Film Censors. In the absence of any such certificate, the petitioners cannot claim immunity from prosecution under [section 292 of the IPC](#).<sup>135.</sup> In *GP Lamba v Tarun Mehta*,<sup>136.</sup> explaining the role of the Censor Board certificate,<sup>137.</sup> the Court said:

The law presumes the regular performance of official acts. This is not to suggest that the grant of a certificate debars the court from judging the obscenity of a film..... or that the certificate is conclusive.... such a certificate is the opinion of a high powered Board especially entrusted with power to screen off the silver screen pictures which offensively invade or deprave public morale through over-sex... The rebuttable presumption, which arises in favour of the statutory certificate, can be negated by positive evidence. No such evidence was before the court.<sup>138.</sup>

In the matter of sex knowledge, the Court said:

In the present day society in India, a book, picture or a publication which deals with such matter cannot *per se* be said to be obscene.<sup>139.</sup>

The Court further added that in order to satisfy the requirement of *mens rea* there must be a distinct finding that the matter complained of was inserted by the order or owing to the negligence of the proprietor.<sup>140.</sup>

### **[s 292.6] Public interest.—**

An obscene advertisement was published in a daily. The advertiser said that the publication was intended in good faith to promote sale of condoms. The advertisement was withdrawn because of social objections. The advertiser also apologised. The complaint filed by a social worker was no doubt maintainable but it was quashed because the complainant's interest should give way to the larger public interest as to whether prosecution would be proper in the circumstances of the case.<sup>141.</sup>

### **[s 292.7] For sale.—**

Possession of obscene objects is punishable if the possession is for the purpose of sale, hire, distribution, public exhibition or circulation. Persons who were found viewing obscene films on television with the help of VCR could not be charged for the offence punishable under section 292.<sup>142.</sup>

### **[s 292.8] Effect upon children.—**

The accused could not be convicted of possessing an indecent photograph unless he knew that he had the photograph in his possession. The "making" of an indecent photograph included copying, downloading or storing it on a computer, provided that it was done knowingly.<sup>143.</sup>

### **[s 292.9] Pornography, incitement for supply of material.—**

Act of accused, privately viewing obscene film does not constitute an offence under [section 292 of IPC, 1860](#).<sup>144.</sup> Mere possession of an obscene cassette by itself does not amount to an offence punishable under [section 292\(2\) IPC](#). In the case on hand, the accused was found managing a video shop wherein obscene cassette containing a blue-film evidently kept for hire to the potential customers, was found. In such circumstances, it cannot be said that the possession of the cassette was without the requisite *mens rea* or that it does not attract the ingredients of the offence punishable under [section 292 IPC](#).<sup>145.</sup> In another case, it was proved that the accused showed pornographic film on the handycam to the prosecutrix. Though the charge of rape failed, conviction under sections 292 and 506 was upheld.<sup>146.</sup>

Generally, evidence of expert is inadmissible whether an article or book has a tendency to deprave and corrupt persons who are likely to read, hear or see the matter in question.<sup>147.</sup> The only exception is where the likely readers belong to a special class such as young children,<sup>148.</sup> In *Samaresh Bose's case*<sup>149.</sup> the Supreme Court of India considered the evidence of two eminent Bengali novelists to determine whether the book 'Prajapati', a Bengali novel, has a tendency to deprave and corrupt youth, who are likely to read it and having regard to their evidence decided the case in favour of the accused. It was however held that, though a Court of law may consider the views of reputed authors or leading literatures, the ultimate duty to make a proper assessment regarding obscenity or otherwise of a book rests only with the Court.<sup>150.</sup> The prosecution need not prove something which the law does not burden it with. As regards the second part of the guilty act (*actus reus*), i.e. the selling or keeping for sale an object which is found to be obscene, here of course the ordinary *mens rea* is required to be shown before the offence can be said to be complete. Even so, it was

held in this case that in criminal prosecution *mens rea* must necessarily be proved by circumstantial evidence alone unless the accused confesses. Thus, it is not required that prosecution must prove guilty intention to possess or possess for sale, by positive evidence. The Court will presume that the owner of the shop is guilty if the book is sold on his behalf and later found to be obscene unless he can establish that the sale was without his knowledge or consent. Thus to escape liability he has to prove his lack of knowledge.<sup>151</sup> In India, it is also a defence to plead a certificate given by the Board of Censors. Thus, a certificate granted by the Board of Censors under [section 5A of the Cinematograph Act 1952](#), certifying a film to be fit for public exhibition, circulation or distribution would by virtue of [section 79, IPC, 1860](#), make prosecution under [section 292, IPC](#), unsustainable even if the film be obscene, lascivious or tending to deprave or corrupt public morale. This is so as [section 79, IPC](#), (justification on ground of *bona fide* mistake of fact) is exculpatory when read with [section 5A of the Cinematograph Act](#) and the certificate issued thereunder.<sup>152</sup>

### [s 292.10] Obscenity in the internet and other electronic mediums.—

[section 67 of the Information Technology Act 2000](#) is the first statutory provisions dealing with obscenity on the Internet in India. [Sections 67, 67A and 67B](#) of the [Information Technology Act 2000](#) deal with obscenity in electronic sphere.

It must be noted that the both under [IPC, 1860](#), and the [Information Technology Act, 2000](#), the test to determine obscenity is similar.<sup>153</sup>

A special law shall prevail over the general and prior laws. Electronic forms of transmission is covered by the [IT Act](#), which is a special law. When the Act in various provisions deals with obscenity in electronic form, it covers the offence under [section 292 IPC, 1860](#). Once the special provisions having the overriding effect do cover a [criminal act](#) and the offender, he gets out of the net of the [IPC](#) and in this case, [section 292 IPC, 1860](#). Though charge has not been made out under [section 67 of the IT Act](#), yet the accused-appellant could not be proceeded under [section 292 IPC](#).<sup>154</sup>

### State Amendments

#### (Section 292-A insertion)

**Orissa.**— *The following amendments were made by Orissa Act No. 13 of 1962, s. 3 (w.e.f. 16-5-1962).*

In its application to the whole State of Orissa, after Section 292, insert the following new section, namely:—

*292-A. Printing, etc. of grossly indecent or scurrilous matter or matter intended for blackmail.*— Whoever—

(a) prints or causes to be printed in any newspaper, periodical or circular, or exhibits or causes to be exhibited, to public view or distributes or causes to be distributed or in any manner puts into circulation any picture or any printed or written document which is grossly indecent, or is scurrilous or intended for blackmail; or

(b) sells or lets for hire, or for purposes of sale or hire makes, produces or has in possession, any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail; or

(c) conveys any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail knowing or having reason to believe that such



picture or document will be printed, sold, let for hire, distributed or publicly exhibited or in any manner put into circulation; or

(d) takes part in, or receives profits from any business in the course of which he knows, or has reason to believe that any such newspaper, periodical, circular, picture, or other printed or written document is printed, exhibited, distributed, circulated, sold, let for hire, made, produced, kept, conveyed or purchased; or

(e) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such newspaper, periodical, circular, picture or other printed or written document which is grossly indecent or is scurrilous or intended for blackmail can be procured from or through any person; or

(f) offers or attempts to do any act which is an offence under this section, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both:

*Provided* that for a second or any subsequent offence under this section, he shall be punished with imprisonment of either description for a term which shall not be less than six months and not more than two years and with fine.

*Explanation I.*—For the purposes of this section, the word "scurrilous" shall be deemed to include any matter which is likely to be injurious to morality or is calculated to injure any person:

*Provided* that it is not scurrilous to express in good faith anything whatever respecting the conduct of—

(i) 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; or

(ii) any person touching any public question, and respecting his character, so far as his character appears in that conduct and no further.

*Explanation II.*—In deciding whether any person has committed an offence under this section, the Court shall have regard, *inter alia*, to the following considerations:—

(a) the general character of the person charged, and where relevant, the nature of his business;

(b) the general character and dominant effect of the matter alleged to be grossly indecent or scurrilous or intended for blackmail;

(c) any evidence offered or called by or on behalf of the accused person as to his intention in committing any of the acts specified in this section".

**Tamil Nadu.**— *The following amendments were made by T.N. Act No. 25 of 1960, s. 2 (w.e.f. 9-11-1960).*

In its application to the whole of the State of Tamil Nadu, after Section 292, insert the following new section, namely:—

*"292-A. Printing, etc., of grossly indecent or scurrilous matter or matter intended for blackmail.*— Whoever—

(a) prints or causes to be printed in any newspaper, periodical or circular, or exhibits or causes to be exhibited, to public view or distributes or causes to be distributed or in

any manner puts into circulation any picture or any printed or written document which is grossly indecent, or is scurrilous or intended for blackmail; or

(b) sells or lets for hire, or for purposes of sale or hire makes, produces or has in his possession, any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail; or

(c) conveys any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail knowing or having reason to believe that such picture or document will be printed, sold, let for hire, distributed or publicly exhibited or in any manner put into circulation; or

(d) takes part in, or receives profits from, any business in the course of which he knows or has reason to believe that any such newspaper, periodical, circular, picture or other printed or written document is printed, exhibited, distributed, circulated, sold, let for hire, made, produced, kept, conveyed or purchased; or

(e) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such newspaper, periodical, circular, picture or other printed or written document which is grossly indecent or is scurrilous or intended for blackmail can be procured from or through any person; or

(f) offers or attempts to do any act which is an offence under this section, <sup>155.</sup>[shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both].

*Provided* that for a second or any subsequent offence under this section, he shall be punished with imprisonment of either description for a term which shall not be less than six months <sup>156.</sup>[and not more than two years] and with fine.

*Explanation I.*—For the purposes of this section, the word 'scurrilous' shall be deemed to include any matter which is likely to be injurious to morality or is calculated to injure any person:

*Provided* that it is not scurrilous to express in good faith anything whatever respecting the conduct of—

(i) 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; or

(ii) any person touching any public question, and respecting his character, so far as his character appears in that conduct and no further.

*Explanation II.*—In deciding whether any person has committed an offence under this section, the Court shall have regard, *inter alia*, to the following considerations:—

(a) the general character of the person charged, and where relevant, the nature of his business;

(b) the general character and dominant effect of the matter alleged to be grossly indecent or scurrilous or intended for blackmail;

(c) any evidence offered or called by or on behalf of the accused person as to his intention in committing any of the acts specified in this section".

103. Subs. by Act 8 of 1925, section 2, for section 292.
104. Ins. by Act 36 of 1969, section 2 (w.e.f. 7-9-1969).
105. Section 292 renumbered as sub-section (2) thereof by Act 36 of 1969, section 2 (w.e.f. 7-9-1969).
106. Subs. by Act 36 of 1969, section 2, for certain words (w.e.f. 7-9-1969).
107. Subs. by Act 36 of 1969, section 2, for *Exception* (w.e.f. 7-9-1969).
108. *MF Husain v Raj Kumar Pandey*, 2008 Cr LJ 4107 (Del).
109. *CT Prim*, AIR 1961 Cal 177 [LNIND 1959 CAL 81] .
110. *Gita Ram v State of HP*, AIR 2013 SC 641 [LNINDORD 2013 SC 18666] : (2013) 2 SCC 694 [LNIND 2013 SC 82] .
111. *Uttam Singh v The State (Delhi Administration)*, (1974) 4 SCC 590 [LNIND 1974 SC 113] : 1974 SCC (Cr) 626 : AIR 1974 SC 1230 [LNIND 1974 SC 113] : 1974 (3) SCR 722 [LNIND 1974 SC 113] : 1974 Cr LJ 423 .
112. *Devidas Ramachandra Tuljapurkar v State of Maharashtra*, AIR 2015 SC 2612 [LNIND 2015 SC 338] : 2015 (6) Scale 356 [LNIND 2015 SC 338] .
113. *Ranjit D Udeshi*, (1965) 1 SCR 65 [LNIND 1964 SC 205] SC : (1964) 67 Bom LR 506 : AIR 1965 SC 881 [LNIND 1964 SC 205] : 1965 (2) Cr LJ 8 .
114. *Ibid*.
115. *Chandrakant Kalyandas Kakodkar*, (1969) 72 Bom LR 917 SC : AIR 1970 SC 1390 [LNIND 1969 SC 293] : 1970 Cr LJ 1273 .
116. AIR 1970 SC 1390 [LNIND 1969 SC 293] at p 1394 : 1970 Cr LJ 1273 .
117. *KA Abbas v UOI*, 1970 (2) SCC 780 [LNIND 1970 SC 388] : AIR 1971 SC 481 [LNIND 1970 SC 388] : 1971 (2) SCR 446 [LNIND 1970 SC 388] .
118. *Mishkin v New York*, 383 US 502.
119. *Samaresh Bose v Amal Mitra*, AIR 1986 SC 967 [LNIND 1985 SC 296] : 1986 Cr LJ 24 : (1985) 4 SCC 289 [LNIND 1985 SC 296] .
120. 1986 Cr LJ 24 , at p 38.
121. *Thakur Prasad*, AIR 1959 All 49 [LNIND 1958 ALL 94] .
122. *Promilla Kapur (Dr) v Yash Pal Bhasin*, *Promilla Kapur (Dr) v Yash Pal Bhasin*, 1989 Cr LJ 1241 (Del).
123. At p 1245 per PK Bahri J.
124. *Bobby Art International v Om Pal Singh Hoon*, 1996 (4) SCC 1 [LNIND 1996 SC 2602] : AIR 1996 SC 1846 [LNIND 1996 SC 2602] .
125. *Director General, Directorate General of Doordarshan v Anand Patwardhan*, 2006 (8) SC 255 .
126. *Ajay Goswami v UOI*, 2007 (1) SCC 143 [LNIND 2006 SC 1133] : AIR 2007 SC 493 [LNIND 2006 SC 1133] .
127. *Supra*.
128. *Vinay Mohan Sharma v Administration*, 2008 Cr LJ 1672 (Del); *Sree Ram Saksena*, (1940) 1 Cal 581 .
129. *MF Husain v Raj Kumar Pandey*, 2008 Cr LJ 4107 (Del).
130. *R v Hicklin*, 1868 L.R. 2 Q.B. 360.
131. *Aveek Sarkar v State of WB*, 2014 Cr LJ 1560 : (2014) 4 SCC 257 [LNIND 2014 SC 84] .
132. *Devidas Ramachandra Tuljapurkar v State of Maharashtra*, 2015 Cr LJ 3492 .

133. *Khushboo v Kanniammal*, 2010 (5) SCC 600 [LNIND 2010 SC 411] : 2010 (4) Scale 462 [LNIND 2010 SC 411] : AIR 2010 SC 3196 [LNIND 2010 SC 411] : 2010 Cr LJ 2828 .
134. *Dhanisha v Rakhi N Raj*, 2012 Cr LJ 3225 .
135. *R Basu and Etc v National Capital Territory of Delhi*, 2007 Cr LJ 4254 (Del). See other SC cases relating to censorship *KA Abbas*, AIR 1971 SC 481 [LNIND 1970 SC 388] ; *Raj Kapoor*, 1980 Cr LJ 436 ; *Bobby Art International v Om Pal Singh*, AIR 1996 SC 1846 [LNIND 1996 SC 2602] ; *S Rangarajan's case*, (1989) 2 SCC 574 [LNIND 1986 SC 198] : 1989 (2) JT (SC) 170; *Ramesh v UOI*, (1988) 1 SCC 668 [LNIND 1988 SC 74] : 1988 SCC (Cr) 266; *Director General, Directorate General of Doordarshan v Anand Patwardhan*, AIR 2006 SC 3346 [LNIND 2006 SC 661] .
136. *GP Lamba v Tarun Mehta*, 1988 Cr LJ 610 (P&H).
137. Issued under the Cinematographic Act, 1952. See also *PK Somnath v State of Kerala*, 1990 Cr LJ 542 (Ker), Violation of Indecent Representation of Woman (Prohibition) Act, 1986 proceedings not quashed and points of difference between obscenity and pornography explained.
138. *GP Lamba v Tarun Mehta*, 1988 Cr LJ 610 (P&H).
139. Issued under the Cinematographic Act, 1952. See also *PK Somnath v State of Kerala*, 1990 Cr LJ 542 (Ker), Violation of Indecent Representation of Woman (Prohibition) Act, 1986 proceedings not quashed and points of difference between obscenity and pornography explained.
140. *Ibid*, see at p 613.
141. *Chairman & MD, Hindustan Latex Ltd v State of Kerala*, 1999 Cr LJ 808 (Ker).
142. *Jagdish Chawla v State of Rajasthan*, 1999 Cr LJ 2562 (Raj). *Damodar Sarma v State of Assam* 2007 Cr LJ 1526 (Gau) - Obscene books.
143. *Atkins v DPP; Goodland v DPP*, (2000) 1 WLR 1427 (QBD).
144. *Deepankar Chowdari v State of Karnataka*, 2008 Cr LJ 3408 (Kar); *Jagdish Chawla v State of Rajasthan*, 1999 Cr LJ 2562 (Raj).
145. *Abdul Rasheed v State of Kerala*, 2008 Cr LJ 3480 (Ker).
146. *Vijay Sood v State of HP*, 2009 Cr LJ 4530 (HP).
147. *Ibid*.
148. *Ibid; Director of Public Prosecutions v A & BC Chewing*, (1967) 2 All ER 504 .
149. *Samaresh Bose v Amal Mitra*, 1986 Cr LJ 24 : AIR 1986 SC 967 [LNIND 1985 SC 296] : (1985) 4 SCC 289 [LNIND 1985 SC 296] .
150. *Ibid*.
151. *Ibid*; See also *State of Karnataka v Basheer*, 1979 Cr LJ 1183 (Kar).
152. *Raj Kapoor v Laxman*, 1980 Cr LJ 436 : AIR 1980 SC 605 [LNIND 1979 SC 492] .
153. *MF Husain v Raj Kumar Pandey*, 2008 Cr LJ 4107 (Del).
154. *Sharat Babu Digumarti v Govt of NCT of Delhi*, AIR 2017 SC 150 [LNIND 2016 SC 616] .
155. Subs. for the words "shall be punished on first conviction with imprisonment of either description for a term which may extend to two years or with fine or with both, and, in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to five years and with fine" by the T.N. Act 30 of 1984, section 2 (w.e.f. 28-6-1984).
156. Ins. by T.N. Act 30 of 1984, section 2 (w.e.f. 28-6-1984).

## THE INDIAN PENAL CODE

### CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

The following specific instances of nuisance are dealt with in this Chapter:—

1. Act likely to spread infection (sections 269–271).
2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **157.[s 293] Sale, of obscene objects to young person.**

**Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished <sup>2</sup> [on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees].**

#### **State Amendments**

**Orissa.**—*The following amendments were made by Orissa Act No. 13 of 1962, s. 4 (w.e.f. 16-5-1962).*

In its application to the whole State of Orissa, in Section 293:—

In section 293 of the said Code—

(i) for the words "any such obscene object as is referred to in the last preceding section", the words, figures and letter "any such obscene object as is referred to in

section 292 or any such newspaper, periodical, circular, picture or other printed or written document as is referred to in section 292-A" shall be substituted;

(ii) for the words "which may extend to six months", the words "which may extend to three years" shall be substituted;

(iii) in the marginal note, after the words "obscene objects" the words "and grossly indecent or scurrilous matter or matter intended for blackmail", shall be inserted.

**Tamil Nadu.**— *The following amendments were made by T.N. Act No. 25 of 1960, s. 4 (w.e.f. 9-11-1960).*

In its application to the whole of the State of Tamil Nadu, in Section 293,—

*Amendment of section 293, Central Act XLV of 1860.*—In section 293 of the said Code—

(i) for the words 'any such obscene object as is referred to in the last preceding section', the words, figures and letter "any such obscene object as is referred to in Section 292 or any such newspaper, periodical, circular, picture or other printed or written document as is referred to in Section 292A", shall be substituted;

(ii) for the words 'which may extend to six months', the words 'which may extend to three years" shall be substituted; and

(iii) in the marginal note, after the words "obscene objects" the words "and grossly indecent or scurrilous matter or matter intended for blackmail", shall be inserted.

## COMMENT.—

This section provides for enhanced sentence where the obscene objects are sold, to persons under the age of 20 years. By Act 36 of 1969 the punishment for the offence is further enhanced. On going through section 293, it is clear that a separate penal provision was made with regard to the sale, exhibition, of such obscene object to any person under the age of 20 years where as section 292 (1) deals with sale, exhibition, of such obscene object to any person. Therefore, in order to make the provision more stringent and grave insofar as it relates to the sale, of obscene objects to younger persons—aged less than 20 years, a separate penal provision, made applicable in section 293, was introduced. It is in that context, the word 'obscene' occurring in section 292(1) is made applicable to section 293 also.<sup>158</sup> In a trial for the offences under sections 292 and 293 of the IPC, 1860, a certificate granted under section 6 of the Cinematograph Act by the Board of Censors does not provide an irrebuttable defence to accused who have been granted such a certificate, but it is certainly a relevant fact of some weight to be taken into consideration by the criminal Court in deciding whether the offence charged is established. The Court must have regard to the fact that the certificate represents the judgment of a body of persons particularly selected under the statute for the specific purpose of adjudging the suitability of films for public exhibition, and that judgment extends to a consideration of the principal ingredients which go to constitute the offences under sections 292 and 293 of the IPC, 1860. At the same time, the Court must remind itself that the function of deciding whether the ingredients are established is primarily and essentially its own function, and it cannot abdicate that function in favour of another, no matter how august and qualified be the statutory authority.<sup>159</sup>

## [s 293.1] CASE.—

The allegation is that the petitioner was a spectator of the blue-film and therefore an abettor of the offences under [sections 292, 293 and 294 IPC, 1860](#). This interposition as a mere spectator to the exhibition of a blue-film without any further complicity, in view of the above Supreme Court decision, cannot be taken to be amounting to abetment of the main offence.<sup>160</sup>

### **[s 293.2] Benefit of Probation.—**

Exhibiting a blue-film in which man and woman were shown in the act of sexual intercourse to young boys would definitely deprave and corrupt their morals. Their minds are impressionable. On their impressionable minds, anything can be imprinted. Things would have been different if that blue-film had been exhibited to mature minds. Showing a man and a woman in the act of sexual intercourse tends to appeal to the carnal side of the human nature. Even if he is the first offender, he cannot be given the benefit of [Probation of Offenders Act, 1958](#).<sup>161</sup>

<sup>157</sup>. Subs. by Act 8 of 1925, section 2, for section 293.

<sup>158</sup>. *Dhanisha v Rakhi N Raj*, [2012 Cr LJ 3225](#) .

<sup>159</sup>. *Raj Kapoor v State (Delhi Administration)*, [AIR 1980 SC 258](#) [[LNIND 1979 SC 428](#)] : (1980) 1 SCC 43 [[LNIND 1979 SC 428](#)] .

<sup>160</sup>. *Dr B Rosaiah v State of AP*, [1990 Cr LJ 189](#) (AP).

<sup>161</sup>. *Gita Ram v State of HP*, [AIR 2013 SC 641](#) [[LNINDORD 2013 SC 18666](#)] : (2013) 2 SCC 694 [[LNIND 2013 SC 82](#)] ; *Uttam Singh v The State (Delhi Administration)*, (1974) 4 SCC 590 [[LNIND 1974 SC 113](#)] : 1974 SCC (Cr) 626 : [AIR 1974 SC 1230](#) [[LNIND 1974 SC 113](#)] : 1974 (3) SCR 722 [[LNIND 1974 SC 113](#)] : [1974 Cr LJ 423](#) ; *Bharat Bhushan v State of Punjab*, reported in 1999 (2) RCR (Cr) 148.

## THE INDIAN PENAL CODE

### CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

The following specific instances of nuisance are dealt with in this Chapter:—

1. Act likely to spread infection (sections 269–271).
2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280–282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **162. [s 294] Obscene acts and songs.**

**[Whoever, to the annoyance of others—**

- (a) **does any obscene act in any public place, or**
- (b) **sings, recites or utters any obscene songs, ballad or words, in or near any public place,**

**shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.]**

#### **COMMENT.—**

**Ingredients.**—(i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited



or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed.<sup>163</sup> To fall within the scope of 'obscene' under [sections 292 and 294 IPC, 1860](#), the ingredients of the impugned matter/art must lie at the extreme end of the spectrum of the offensive matter. The legal test of obscenity is satisfied only when the impugned art/matter can be said to appeal to an unhealthy, inordinate person having perverted interest in sexual matters or having a tendency to morally corrupt and debase persons likely to come in contact with the impugned art. It must also be remembered that a piece of art may be vulgar but not obscene. In order to arrive at a dispassionate conclusion where it is crucial to understand that art from the perspective of the painter, it is also important to picture the same from a spectator's point of view who is likely to see it.<sup>164</sup> The obscene act or song must cause annoyance. Though annoyance is an important ingredient of this offence, it being associated with mental condition, has often to be inferred from proved facts. Thus, where a Doctor was filthily abused in a public place by dragging the name of his wife and he and some members of the public were impelled to complain to the police, it was held that there was sufficient indication of the fact that they were all annoyed even though it was not stated or spoken to by them in their evidence.<sup>165</sup>

### **[s 294.1] Public Place.—**

Hotels like the one where cabaret dances are performed and entry is restricted by purchase of the tickets, would still be the public places within the meaning of [section 294 of the IPC, 1860](#).<sup>166</sup> An offence under the section could not be made out by uttering words in a private garden which was not a public place.<sup>167</sup>

### **[s 294.2] CASES.—**

Where the accused addressed openly two respectable girls who were strangers to him, in amorous words suggestive of illicit sex relations with them and asked them to go along with him on his rickshaw, he was held to have committed an obscene act.<sup>168</sup> Performance of cabaret dance devoid of nudity and obscenity according to Indian social standards in hotels and restaurants is not liable to be banned or prevented.<sup>169</sup>

### **[s 294.3] MF Husain's case.—**

The renowned artist MF Husain challenged the summoning orders against him which arose from a contemporary painting celebrating nudity made by petitioner. Subsequently in the year 2006, the said painting entitled 'Bharat Mata' was advertised as part of an online auction for charity for Kashmir earthquake victims organised by a non-governmental organisation with which the petitioner claimed to have no involvement. It was stated that the petitioner at no point in time had given a title to the said painting. There can be no exasperation caused by viewing such painting on the website for the reason that a person would first access such a website only if he has some interest in art and that too contemporary art, and in case he does view such a website, he always would have the option to not to view or close the said web page. It appeared that the complainants are not the types who would go to art galleries or have an interest in contemporary art, because if they did, they would know that there are many other artists who embrace nudity as part of their contemporary art. Hence, the offence alleged under [section 294 IPC, 1860](#), could not be made out.<sup>170</sup>

#### [s 294.4] Cabaret dance.—

In *Narendra H Khurana v Commissioner*,<sup>171</sup> a division bench of Bombay High Court examined the question whether the nude cabaret dances which are *per se* indecent and obscene, held in a restaurant on purchase of tickets would warrant prosecution under [section 294 of the IPC, 1860](#), in the absence of express evidence of annoyance by any of the persons who attend such shows. It was held that cabaret dances where indecent and obscene act *per se* is involved would not attract the provision of [section 294 of the IPC](#) without fulfilment of its essential ingredients, i.e. Evidence pertaining to "annoyance to others". In *State of Maharashtra v Indian Hotel & Restaurants Association*,<sup>172</sup> the Supreme Court lifted the ban on dance bars holding that "we fail to see how exactly the same dances can be said to be morally acceptable in the exempted establishments and lead to depravity if performed in the prohibited establishments. Rather it is evident that the same dancer can perform the same dance in the high-class hotels, clubs, and gymkhanas but is prohibited of doing so in the establishments covered under section 33A of Bombay [Police Act, 1951](#). We see no rationale which would justify the conclusion that a dance that leads to depravity in one place would get converted to an acceptable performance by a mere change of venue".

#### [s 294.5] Moral turpitude.—

Offence under section 294 does not involve moral turpitude.<sup>173</sup>

#### [s 294.6] Section 294(b).—

To make out an offence under section 294(b) of [IPC, 1860](#), the alleged obscene act must have been committed by the accused in or near a public place. Writing obscene letters and sending them to the victim on her personal address and which were expected to be read by her privately does not constitute the offence.<sup>174</sup>

<sup>162</sup>. Subs. by Act 3 of 1895, section 3, for section 294.

<sup>163</sup>. *Pawan Kumar v State of Haryana*, [AIR 1996 SC 3300](#) [[LNIND 1996 SC 2868](#)] : (1996) 4 SCC 17 [[LNIND 1996 SC 2868](#)].

<sup>164</sup>. *MF Husain v Raj Kumar Pandey*, [2008 Cr LJ 4107](#) (Del).

<sup>165</sup>. *Patel HM v Malle Gowda*, [1973 Cr LJ 1047](#) (Mys).

<sup>166</sup>. *Narendra H Khurana v Commissioner*, [2004 Cr LJ 3393](#) (Bom).

<sup>167</sup>. *Saraswathi v State of TN*, [2002 Cr LJ 1420](#) (Mad); *K Jayaramanuja v Kanakraj*, [1997 Cr LJ 1623](#) (Mad), words complained of did not show annoyance to others. Acquittal, no interference in revision.

<sup>168</sup>. *Zafar Ahmad*, [AIR 1963 All 105](#) [[LNIND 1962 ALL 125](#)] ; *Sadar Prasad*, [1970 Cr LJ 1323](#) (Pat).

169. *KP Mohammad*, 1984 Cr LJ 745 (Ker). See also *Chander Kala v Ram Kishan*, AIR 1985 SC 1268 [LNIND 1985 SC 166] : 1985 Cr LJ 1490 : (1985) 4 SCC 212 [LNIND 1985 SC 166] : 1985 SCC (Cr) 491, where the offence was proved with cogent evidence.
170. *MF Husain v Raj Kumar Pandey*, 2008 Cal LJ 4107 (Del).
171. *Narendra H Khurana v Commissioner*, 2004 Cr LJ 3393 (Bom),
172. *State of Maharashtra v Indian Hotel & Restaurants Association*, AIR 2013 SC 2582 [LNIND 2013 SC 665] : (2013) 8 SCC 519 [LNIND 2013 SC 665] .
173. *Pawan Kumar v State of Haryana*, AIR 1996 SC 3300 [LNIND 1996 SC 2868] : (1996) 4 SCC 17 [LNIND 1996 SC 2868] .
174. *MM Haris v State*, 2005 Cr LJ 3314 .

## THE INDIAN PENAL CODE

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4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

#### **175. [s 294A] Keeping lottery office.**

**[Whoever keeps any office or place for the purpose of drawing any lottery <sup>1</sup> 176. [not being <sup>177.</sup> [a State lottery] or a lottery authorised by the <sup>178.</sup> [State] Government], shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.**

**And whoever publishes <sup>2</sup> any proposal to pay any sum, or to deliver any goods, <sup>3</sup> or to do or forbear from doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.]**

#### **State Amendments**

**Andhra Pradesh.**—*This amendment was made by A.P. Act No. 16 of 1968, s. 27, (w.e.f. 1-2-1969).*

In its application to the State of Andhra Pradesh, the provisions of section 294-A are repealed.

**Gujarat.**— *The following amendments were made by Bombay Act No. 82 of 1958, s. 33 read with Bom.*

*Act No. 11 of 1960, s. 87.*

In its application to the State of Gujarat, the provisions of section 294A are repealed.

**Karnataka (Mysore).**— *The following amendments were made by Mys. Act 27 of 1951, s. 33.*

In its application to the whole of the Mysore area except Bellary district, the provisions of section 294A are repealed.

**Maharashtra.**— *The following amendments were made by Bom. Act No. 82 of 1958, s. 33 (w.e.f. 1-5-1959).*

In its application to the State of Maharashtra, the provisions of section 294A are repealed.

**Uttar Pradesh.**— *Section 294A of Indian Penal Code shall be omitted, vide U.P. Act No. 24 of 1995.*

## COMMENT.—

Lottery stands on the same footing as gambling because both of them are games of chance. The section does not touch authorized lotteries, but intends to save people from the effects of those not authorised by prohibiting (1) the keeping of offices or places for drawing them, and (2) the publication of any advertisement relating to them.

Bombay Lotteries (Control and Tax) and Prize Competitions (Tax) Act 1958, Bombay Act No. LXXXII of 1958, by section 33 repeals the operation of this section in the State of Maharashtra.

State Governments can authorise lotteries in any way. No procedure is prescribed.<sup>179.</sup>

## [s 294A.1] Ingredients.—

This section requires two things—

1. Keeping of any office or place for the purpose of drawing any lottery.
2. Such lottery must not be authorized by Government.

**1. 'Drawing any lottery'.—**A lottery is a distribution of prizes by lot or chance without the use of any skill.<sup>180.</sup> It makes no difference that the distribution is part of a genuine mercantile transaction.<sup>181.</sup>

**2. 'Publishers'.—**This word includes both the persons who sends a proposal as well as proprietor of a newspaper who prints the proposal as an advertisement.<sup>182.</sup> The proprietor of a Bombay newspaper who published an advertisement in his paper relating to a Melbourne lottery was held to be guilty under this section.<sup>183.</sup>

**3. 'Goods'.—**The term 'goods' includes both movable and immovable property. The publication of an advertisement of a lottery by which the lucky winner would get a factory for less than its real value is an offence under this section.<sup>184.</sup>

## [s 294A.2] CASES.—

**Agreement for contributions to be paid by lot is not lottery.**— An agreement whereby a number of persons subscribe, each a certain sum, by a periodical instalment, with the object that each in his turn, (to be decided by lot), shall take the whole subscription for each instalment, all such persons being returned the amount of their contributions, the common fund being lent to each subscriber in turn, was held to be not illegal.<sup>185</sup>

## [s 294A.3] Prize chit.—

A prize chit was started with the object of creating a fund for a temple. It consisted of 625 subscribers, the monthly subscription being Rs 3. The subscription was to be paid for 50 months. A drawing was to take place every month, one ticket was to be drawn out of 625 tickets and the subscriber who drew the ticket was to be paid Rs 150 without any liability to pay future instalments. That process was to be repeated every month till the 50th month. After the 50th month the remaining 575 subscribers were to be each paid in a particular order Rs 150, and the chit fund was to be closed. It was held that the chit fund was a lottery.<sup>186</sup>

## [s 294A.4] Transaction in which prizes are decided by chance amounts to lottery.—

It has, been held by the High Court of Kerala that lucky draw prize schemes organised by manufacturers as part of promotion of sale of manufactured goods come within the ambit of this section. Government, however, has a discretion to select firms by rotation and such a *bona fide* selection cannot be attacked as discriminatory under [Article 14 of the Constitution](#).<sup>187</sup>

<sup>175</sup>. Ins. by Act 27 of 1870, section 10.

<sup>176</sup>. Ins. by Act 27 of 1870, section 10.

<sup>177</sup>. Subs. by Act 3 of 1951, section 3 and Sch., for "a lottery organised by the Central Government or the Government of a Part A State or a Part B State" (w.e.f. 1-4-1951).

<sup>178</sup>. Subs. by the A.O. 1950, for "Provincial".

<sup>179</sup>. *Rama Nava Nirman Samithi v State of TN*, [1990 Cr LJ 2620](#) (TN).

<sup>180</sup>. *Sesha Ayyar v Krishna Ayyar*, (1935) 59 Mad 562 : 566 (FB); *Taylor v Smetten*, (1883) 11 QBD 207 ; *Mukandi Lal*, (1917) PR No. 35 of 1917.

<sup>181</sup>. *GC Chakrabatty*, (1915) 9 BLT 124 , 17 Cr LJ 143.

<sup>182</sup>. *Mancherji Kavasji*, (1885) 10 Bom 97.

<sup>183</sup>. *Ibid*.

<sup>184</sup>. *Malla Reddi v State*, (1926) 50 Mad 479.

<sup>185</sup>. *Vasudevan Namburi v Mammod*, (1898) 22 Mad 212.

<sup>186</sup>. *Sesha Ayyar v Krishna Ayyar*, (1935) 59 Mad 562 (FB).

187. *Tata Oil Mills Co Ltd*, [1982 Cr LJ NOC 171](#) (Ker).

# THE INDIAN PENAL CODE

## CHAPTER XV OF OFFENCES RELATING TO RELIGION

The principle on which this chapter has been framed is a principle on which it would be desirable that all governments should act, but from which the Government of India cannot depart without risking the dissolution of society; it is this, that every man should be suffered to profess his own religion and that no man should be suffered to insult the religion of another.<sup>1</sup>

### **[s 295] Injuring or defiling place of worship with intent to insult the religion of any class.**

**Whoever destroys, damages or defiles <sup>1</sup> any place of worship, or any object<sup>2</sup> held sacred by any class of persons<sup>3</sup> with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### **COMMENT.—**

The object of this section is to punish those persons who intentionally wound the religious feelings of others by injuring or defiling a place of worship. This section is intended to prevent wanton insult to the religious notions of a class of persons.<sup>2</sup>

#### **[s 295.1] Ingredients.—**

This section requires two things—

1. Destruction, damage or defilement of (a) any place of worship or (b) any object held sacred by a class of persons.
2. Such destruction, etc., must have been done (i) with the intention of insulting the religion of a class of persons, or (ii) with the knowledge that a class of persons is likely to consider such destruction, etc., as an insult to their religion.

**1. 'Defiles'.—**This word is not to be restricted in meaning to acts that would make an object of worship unclean as a material object, but extends to acts done in relation to the object of worship which would render such object ritually impure.<sup>3</sup>

**2. 'Object'.—**The word 'object' does not include animate objects. It refers only to inanimate objects such as churches, mosques, temples, and marble or stone figures representing gods.<sup>4</sup> Killing of a cow by a Mohammedan, within the sight of a public road frequented by Hindus, is not punishable under this section.<sup>5</sup> Similarly, where a bull dedicated and set at large on a ceremonial occasion of Hindus in accordance with a religious usage was killed by certain Mohammedans secretly and at night in the presence of none but Mohammedans; it was held that no offence was committed.<sup>6</sup> Any object, however trivial or destitute of real value in itself, if regarded as sacred by any class of persons would come within the meaning of this section nor is it absolutely



necessary that the object, in order to be held sacred, should have been actually worshipped.<sup>7</sup>.

**3. 'Class of persons'.—**In order that a body of persons may form a class there must be a principle of classification.<sup>8</sup>.

### [s 295.2] CASES.—

The damaging or destroying of a sacred thread worn by a person, who is not entitled under the Hindu custom to wear it or for whom the wearing of the sacred thread was not part of his ceremonial observance under the Hindu religion, in assertion of a mere claim to higher rank, was held to be not an insult to his religion.<sup>9</sup> Where a pastor of the church who himself was a Christian was running a nursery school and a charitable dispensary in a portion of the Church, it could not be said that by using a portion of the Church property for such secular and non-religious purposes he was insulting the religion of a class of persons within the meaning of [section 295, Indian Penal Code, 1860 \(IPC, 1860\)](#).<sup>10</sup>.

1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.
2. *Gopinath v Ramchandra*, (1958) Cut 485.
3. *Sivakoti Swami*, (1885) 1 Weir 253.
4. *Imam Ali v State*, (1887) 10 All 150 (FB); *Romesh Chunder Sanyal v Hiru Mondal*, (1890) 17 Cal 852 .
5. *Imam Ali*, *sup*; *Ali Muhammad*, (1917) PR No. 10 of 1918 (FB).
6. *Romesh Chunder Sanyal v Hiru Mondal*, *supra*.
7. *Veerabadran v Ramaswami*, AIR 1958 SC 1032 [LNIND 1958 SC 95] : 1958 Cr LJ 1565 . See also *Zac Poonen v Hidden Treasure Literature Incorporated In Canada*, 2002 Cr LJ 481 (Kant).
8. *Benarashi Lal*, (1956) 98 CLJ 139.
9. *Sheo Shankar*, (1940) 15 Luck 696 .
10. *DP Titus v LW Lyall*, 1981 Cr LJ 68 (All).

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**11.[s 295A] Deliberate and malicious acts intended to outrage religious feelings of any class, by insulting its religion or religious beliefs.**

**[Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of <sup>12</sup>[citizens of India], <sup>13</sup>[by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to <sup>14</sup>[three years], or with fine, or with both.]**

#### State Amendment

Andhra Pradesh.—*In Andhra Pradesh the offence is cognizable vide A.P. G.O. Ms. No. 732, dated 5 December 1991.*

#### COMMENT.—

This section was brought into [IPC, 1860](#) by the [Criminal Law Amendment Act, 1927](#) (25 of 1927) following the wide spread agitations erupting from the decision in *Rajpaul v Emperor*,<sup>15</sup> commonly called as "Rangila Rasul's case", rendered by the Lahore High Court. Interpreting [section 153A of IPC, 1860](#), which alone was there in the Statute then, it was held that no offence would lie thereunder however indecent be the comments made against a deceased religious leader. In fact a few months before *Rangila Rasul's* case was decided by the Lahore High Court, a totally dissenting view over the application of [section 153A of IPC, 1860](#) had been rendered by the Allahabad High Court in *Kali Charan Sharma v Emperor*,<sup>16</sup> holding that scurrilous and bad taste remarks against a religion or its founder promoting ill feelings between sects of different faith could be proceeded under [section 153A of IPC, 1860](#). It was at that stage; the Legislature stepped in and brought in a new penal provision under section 295A in [IPC, 1860](#). [Section 295A of IPC, 1860](#) does not penalise every act of insult but penalises only deliberate acts of insult, so that even if by any expression insult is in fact caused, that expression is not an offence if the insult offered is unwilling or unintended.<sup>17</sup> In order to attract the mischief of the provision of section 295A, the following ingredients are to be satisfied, viz., a person (1) by written words (2) with deliberate and malicious intention (3) of outraging the religious feelings (4) of any class of citizens of India, (5) insults or attempts to insult the religion or the religious beliefs of that class. In other words, (1) the intention has to be deliberate and malicious both and (2) for outraging the religious feelings (3) of a class of citizens of India (4) in order to insult or attempt to insult the religious or religious belief of that class, i.e., in India (5) by written words.<sup>18</sup> Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that

class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.<sup>19</sup>

The essence of the offence under this section is that the insult to religion or the outrage to religious feelings must be the sole, or primary, or at least the deliberate and conscious intention. In order to bring the case within this section it is not so much the matter of discourse as the manner of it. The words used should be such as are bound to be regarded by any reasonable man as grossly offensive and provocative and maliciously and deliberately intended to outrage the feeling of any class of citizens of India. It is no defence to a charge under this section for anyone to plead that he was writing a book in reply to the one written by one professing another religion who has attacked his own religion.<sup>20</sup> In order to establish malice as contemplated by this section, it is not necessary for the prosecution to prove that, the applicant bore ill will or enmity against specific persons. If the injurious act was done voluntarily without a lawful excuse, malice may be presumed.<sup>21</sup> Malice is often not capable of direct and tangible proof and in almost all cases has to be inferred from the surrounding circumstances having regard to the setting, background and connected facts in relation to the offending article.<sup>22</sup> The truth of the allegation is not a good defence to a charge under this section.<sup>23</sup>

The Supreme Court, while quashing a complaint observed that section 295A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of class of citizens. It penalises only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. Further the said provision only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.<sup>24</sup>

#### **[s 295A.1] Constitutional validity.—**

This section is well within the protection of clause (2) of [Article 19 of the Constitution](#) and its validity neither is beyond question,<sup>25</sup> nor is it inconsistent with the right guaranteed by [Article 25\(1\) of the Constitution](#).<sup>26</sup>

Where the arrangement of the scenes and the script of the drama outraged the religious feelings of the Christian community, an offence under this section was held to have been committed irrespective of the fact whether the beliefs which were made the subject-matter of the attack were rational or irrational. An attack on even an incredible belief may be capable of causing hurt to feelings.<sup>27</sup> Where the articles published by the accused highlighted the ideological differences that existed between the members of a Christian group and the members of the Christian fellowship centre, it was held that an expression of opinion by a person who is having a different religious belief did not amount to defamation.<sup>28</sup> An offence under this section has been made a cognizable and non-bailable one under new [Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#).

#### **[s 295A.2] Sanction.—**

No Court can take cognizance of an offence under this section except with the previous sanction of the concerned Government under [section 196\(1\), Cr PC, 1973](#).<sup>29</sup>.

In the matter of the publication of a book outraging the religious feelings of a section of the society, a Notification was issued directing forfeiture of the book under [section 95, Cr PC, 1973](#). It was held that the order contained in the Notification was not violative of [Article 19\(1\)\(a\) or 19\(1\)\(g\) of the Constitution](#).<sup>30</sup>.

### [s 295A.3] CASES.—

It is well settled that the offending publication has to be viewed as a whole and the malicious intent of the author has to be gathered from a broader perspective and not merely from a few solitary lines or quotations.<sup>31</sup> The same view of the law was taken in *Chandanmal's* case by the High Court of Calcutta to say that [section 295A, IPC, 1860](#), does not punish every act of insult to religion. It punishes only aggravated acts of insult, etc., which are deliberate and malicious. And in judging if a publication falls within the mischief of this section the publication has to be judged as a whole. "Isolated passages picked out from here and there and read out of context cannot change the position".<sup>32</sup>.

A petition was filed to protest against the practice of printing and pasting photographs of Gods and Goddesses of Hindu religion on fire crackers. The practice in question had been going on since long without any objections. The Court viewed it as a whimsical petition and dismissed it.<sup>33</sup>.

In this connection see also sub-para entitled "Cases" under section 153A *ante*.

1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.

11. Ins. by Act 25 of 1927, section 2.

12. Subs. by the A.O. 1950, for "His Majesty's subjects".

13. Subs. by Act 41 of 1961, section 3, for "by words, either written or spoken, or by visible representations" (w.e.f. 12-9-1961).

14. Subs. by Act 41 of 1961, section 3, for "two years" (w.e.f. 12-9-1961)

15. *Rajpaul v Emperor*, AIR 1927 Lahore 590 .

16. *Kali Charan Sharma v Emperor*, AIR 1927 Allahabad 649 .

17. *Jayamala v State*, 2013 Cr LJ 622 .

18. *Sujato Bhadra v State of WB*, 2006 Cr LJ 368 (Cal).

19. *R V Bhasin v State of Maharashtra*, 2012 Cr LJ 1375 (Bom) (FB); *Ramji Lal Modi*, AIR 1957 SC 620 [LNIND 1957 SC 36] : (1957) SCR 860 [LNIND 1957 SC 36] .

20. *Shiv Ram Dass v Udasi Chakarvarti*, (1954) Pun 1020 (FB).

21. *Khalil Ahamad*, AIR 1960 All 715 [LNIND 1960 ALL 96] (SB). *Trustees of Safdar Hashmi Memorial Trust v Govt. of NCT of Delhi*, 2001 Cr LJ 3689 (Del), the basic requirement of the

section is that of deliberate and malicious act. Malice is a negation of *bona fides* and one who alleges it has to prove it.

22. *Sujato Bhadra v State of WB*, 2005 Cr LJ 368 (Cal); 2005 (4) CHN 601 [LNIND 2005 CAL 620]  
The Trustees of Safdar Hashmi Memorial Trust v Govt. of NCT of Delhi, 2001 Cr LJ 3869 (Del) (FB).
23. *Henry Rodrigues*, (1962) 2 Cr LJ 564 .
24. *Mahendra Singh Dhoni v Yerraguntla Shyamsundar*, AIR 2017 SC 2392 [LNIND 2017 SC 217] : 2017 (2) RCR (Criminal) 746 : 2017 (5) Scale 83 .
25. *Ramji Lal Modi*, (1957) SCR 860 [LNIND 1957 SC 36] .
26. *Henry Rodrigues*, *supra*.
27. *T Parameswaran v Distt. Collector*, AIR 1988 Ker 175 [LNIND 1987 KER 607] .
28. *Zac Poonen v Hidden Treasure Literature Incorporated in Canada*, 2002 Cr LJ 481 (Kant).
29. *Shalibhadra Shah*, 1981 Cr LJ 113 (Guj). *Acharya Rajneesh v Naval Thakur*, 1990 Cr LJ 2511 (HP). *Manoj Rai v State of MP*, AIR 1999 SC 300 : 1999 Cr LJ 470 , proceedings quashed because of no sanction.
30. *Baragur Ramchandrapa v State of Karnataka*, 1998 Cr LJ 3639 (Kant—FB).
31. *Nand Kishore Singh*, 1985 Cr LJ 797 (Pat—SB).
32. *Chandanmal Chopra*, 1986 Cr LJ 182 (Cal).
33. *Bhau v State of Maharashtra*, 1999 Cr LJ 1230 (Bom).

# THE INDIAN PENAL CODE

## CHAPTER XV OF OFFENCES RELATING TO RELIGION

The principle on which this chapter has been framed is a principle on which it would be desirable that all governments should act, but from which the Government of India cannot depart without risking the dissolution of society; it is this, that every man should be suffered to profess his own religion and that no man should be suffered to insult the religion of another.<sup>1.</sup>

### **[s 296] Disturbing religious assembly.**

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

### **COMMENT.—**

Assemblies held for religious worship, or for the performance of religious ceremonies, are hereby protected from intentional disturbance.

The object of this section is to secure freedom from molestation when people meet for the performance of acts in a quiet spot vested for the time in the assembly exclusively, and not when they engage in worship in an unquiet place, open to all the public as a thoroughfare.<sup>34.</sup>

### **[s 296.1] Ingredients.—**

To constitute an offence under this section—

- (1) There must be a voluntary disturbance caused.
- (2) The disturbance must be caused to an assembly engaged in religious worship or religious ceremonies.
- (3) The assembly must be lawfully engaged in such worship or ceremonies, i.e., it must be doing what it has a right to do.

### **[s 296.2] CASES.—Disturbance caused by saying 'amin'.—**

A mosque is a place where all sects of Mohammedans are entitled to go and perform their devotion as of right, according to their conscience; and a Mohammedan of one sect pronouncing the word "amin" loudly, in the honest exercise of conscience, commits no offence or civil wrong,<sup>35.</sup> though he may by such conduct cause annoyance in the mosque to other worshippers of another sect who do not pronounce that word loudly.<sup>36.</sup> But any person, Mohammedan or not, who goes into a mosque not *bona fide* for a religious purpose, but *mala fide*, for the purpose of disturbing others engaged in their devotions, will render himself criminally liable.<sup>37.</sup>

**[s 296.3] Religious procession.—**

Persons of every sect are entitled to take out religious processions with music through public streets provided that they do not interfere with the ordinary use of the streets by the public or contravene any traffic regulation or lawful directions issued by the Magistrate. A religious procession does not change its character merely because the music is temporarily stopped in front of a mosque.<sup>38.</sup>

1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste.

Note j.

34. *Vijjaraghava Chariar*, (1903) 26 Mad 554, 574 (FB).

35. *Ata-Ullah v Azim-Ullah*, (1889) 12 All 494 (FB).

36. *Jangu v Ahmadullah*, (1889) 13 All 419 (FB).

37. *Ibid.*

38. *Mohamud Khan*, (1948) Nag 657.

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#### [s 297] Trespassing on burial places, etc.

**Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship<sup>1</sup> or on any place of sepulchre, or any place set apart from the performance of funeral rites<sup>2</sup> or as a depository for the remains of the dead, or offers any indignity to any human corpse,<sup>3</sup> or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.**

#### COMMENT.—

This section deals more especially with trespasses on places of sepulchre and places set apart for the performance of funeral rites and as depositories for the remains of the dead. It extends the principle laid down in section 295 to places which are treated as sacred. The essence of the section is an intention, or knowledge of likelihood, to wound feelings or insult religion and when with that intention or knowledge trespass on a place of sepulchre, indignity to a corpse, or disturbance to persons assembled for funeral ceremonies is committed, the offence is complete.<sup>39.</sup>

**1. 'Trespass in any place of worship'.—**'Trespass' here implies not only criminal trespass but also an ordinary act of trespass, i.e., an entry on another's land without lawful authority with the intention specified in section 441.<sup>40.</sup> The term 'trespass' means any violent or injurious act, committed in such place and with such knowledge or intention as is defined in this section.<sup>41.</sup>

The trespass must be in a place of worship with the knowledge that the religious feelings of persons would be wounded thereby. Where some persons had sexual connection inside a mosque, it was held that they were guilty of an offence under this section.<sup>42.</sup>

**2. 'Funeral rites'.—**The section contemplates disturbance of persons engaged in performing funeral ceremonies. But a *moharram* procession is not a funeral ceremony within the meaning of this section.<sup>43.</sup> Obstruction to the performance of obsequies comes under this section.<sup>44.</sup>

**3. Indignity to corpse.—**What is indignity to corpse is not defined anywhere. Indignity is generally synonymous to humiliation or disgrace. A conduct to be criminal in the sense



of [section 297, IPC, 1860](#) should be spiteful to become humiliating or disgraceful. In a particular situation, an act may not cause disgrace or may not humiliate, but, in other situations that very act may cause disgrace or humiliation. So the intentions of the person concerned as well as surrounding circumstances are important factors.<sup>45.</sup>

1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.

39. *Burhan Shah*, (1887) PR No. 26 of 1887.

40. *Subhan*, (1896) 18 All 395 ; *Jhulan Saib*, (1913) 40 Cal 548 ; *Ratna Mudali*, (1886) 10 Mad 126; *Umar Din*, (1915) PR No. 23 of 1915.

41. *Mustan*, (1923) 1 Ran 690; *Sanoo v State*, (1941) Kant 316.

42. *Maqsud Husain*, (1923) 45 All 529 .

43. *Ghosita v Kalka*, (1885) 5 AWN 49.

44. *Subramania v Venkata*, (1883) 6 Mad 254 : 257. *Sudarshan Kumar v Gangacharan Dubey*, 2000 Cr LJ 1618 (MP), killing of a criminal in police encounter. His body was roped to a tower for a few minutes in order to show to the public the results of a life in crime. This being not an indignity to the body, no offence under the section was made out.

45. *Surdarshan Kumar v Gangacharan Dubey*, 1999 Cr LJ 1618 (MP).

## THE INDIAN PENAL CODE

### CHAPTER XV OF OFFENCES RELATING TO RELIGION

The principle on which this chapter has been framed is a principle on which it would be desirable that all governments should act, but from which the Government of India cannot depart without risking the dissolution of society; it is this, that every man should be suffered to profess his own religion and that no man should be suffered to insult the religion of another.<sup>1.</sup>

#### **[s 298] Uttering words, etc., with deliberate intent to wound religious feelings.**

**Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.**

#### **State Amendment**

**Andhra Pradesh.**— *In Andhra Pradesh the offence is cognizable vide A.P. G.O. Ms. No. 732, dated 5-12-1991.*

#### **COMMENT.—**

The authors of the Code observe: "In framing this clause we had two objects in view: we wish to allow all fair latitude to religious discussion, and at the same time to prevent the professors of any religion from offering, under the pretext of such discussion, intentional insults to what is held sacred by others. We do not conceive that any person can be justified in wounding with deliberate intention the religious feelings of his neighbours by words, gestures or exhibitions. A warm expression dropped in the heat of controversy, or an argument urged by a person, not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own will not fall under the definition contained in this clause."<sup>46.</sup> This section does not apply to a written article.<sup>47.</sup>

This section can be made cognizable by the State Government by a notification in the official Gazette under [section 10 of the Criminal Law Amendment Act, 1932](#).

The malicious intention should either be shown to exist or should be apparent from the nature of the act alleged to constitute an offense.<sup>48.</sup>

#### **[s 298.1] CASES.—**

**Interpolation of forbidden chant.**— Interpolation of a forbidden chant in an authorised ritual is an offence under this section.<sup>49.</sup>

#### **[s 298.2] Exhibiting cow's flesh.—**

Exhibiting cow's flesh by carrying it in an uncovered state round a village with the deliberate intention of wounding the religious feelings of Hindus was held to be an offence under this section.<sup>50.</sup>

### **[s 298.3] Killing of cow.—**

Where on the occasion of Bakr-i-Id, the accused killed a cow at dawn in a semi-private place and the killing was seen by some Hindus walking along the village pathway 50 feet away, it was held that no offence under this section was committed.<sup>51.</sup> The sacrifice of a cow on the Bakr-i-Id day is not an obligatory religious act for a Muslim and the protection of [Article 25 of the Constitution](#) cannot be claimed for such an act.<sup>52.</sup>

1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.

46. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.

47. *Shalibhadra Shah*, [1981 Cr LJ 113](#) (Guj).

48. *Mudassir Ullah Khan v State of UP*, 2013 (81) ALLCC 152 : 2013 Cr LJ 3741.

49. *Narasimha v Shree Krishna*, (1892) 2 Mad Jur 236.

50. *Rahman v State*, (1893) 13 AWN 144.

51. *Sheikh Amjad v State*, (1942) 21 Pat 315.

52. *Kitab Ali v Santi Ranjan*, [AIR 1965 Tripura 22](#) .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### [s 299] Culpable homicide.

**Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.**

#### ILLUSTRATIONS

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

***Explanation 1.*—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.**

***Explanation 2.*—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.**

***Explanation 3.*—The causing of the death of 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.**

#### COMMENT.—

Homicide is the killing of a human being by a human being. It is either (A) lawful, or (B) unlawful.

(A) Lawful homicide, or simple homicide, includes several cases falling under the General Exceptions (Chapter IV).

(B) Unlawful homicide includes—

- (1) Culpable homicide not amounting to murder (section 299).
- (2) Murder (section 300).
- (3) Rash or negligent homicide (section 304A).
- (4) Suicide (sections 305, 306).

**(A) Lawful or simple homicide.**—This is committed where death is caused in one of the following ways:—

1. Where death is caused by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act, in a lawful manner, by lawful means, and with proper care and caution (section 80).
2. Where death is caused justifiably, that is to say,
  - (i) By a person, who is bound, or by mistake of fact in good faith believes himself bound, by law (section 76).
  - (ii) By a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law (section 77).
  - (iii) By a person acting in pursuance of the judgment or order of a Court of Justice (section 78).
  - (iv) By a person who is justified or who by reason of a mistake of fact, in good faith, believes himself to be justified by law (section 79).
  - (v) By a person acting without any criminal intention to cause harm and in good faith, for the purpose of preventing or avoiding other harm to person or property (section 81).
  - (vi) Where death is caused in the exercise of the right of private defence of person or property (sections 100, 103).
3. Where death is caused by a child, or a person of unsound mind, or an intoxicated person as will come under sections 82, 83, 84 and 85.
4. Where death is caused unintentionally by an act done in good faith for the benefit of the person killed, when—
  - (i) he or, if a minor or lunatic, his guardian, has expressly or impliedly consented to such an act (sections 87, 88); or
  - (ii) where it is impossible for the person killed to signify his consent or where he is incapable of giving consent, and has no guardian from whom it is possible to obtain consent, in time for the thing to be done with benefit (section 92).

**(B) Unlawful homicide.**—Culpable homicide is the first kind of unlawful homicide. It is the causing of death by doing:

- (i) an act with the intention of causing death;
- (ii) an act with the intention of causing such bodily injury as is likely to cause death;  
or
- (iii) an act with the knowledge that it was likely to cause death.

Without one or other of those elements, an act, though it may be in its nature criminal and may occasion death, will not amount to the offence of culpable homicide.<sup>1.</sup>

Culpable homicide may be classified in three categories—(1) in which death is caused by the doing of an act with the intention of causing death; (2) when it is committed by causing death with the intention of causing such bodily injury as is likely to cause death; and (3) where the death is caused by an act done with the knowledge that such act is likely to cause death. Knowledge and intention should not be confused. Section 299 in defining first two categories does not deal with the knowledge whereas it does in relation to the third category. It would also be relevant to bear in mind the import of the terms "likely by such act to cause death". Herein again lies a distinction as "likely" would mean probably and not possibly. When an intended injury is likely to cause death, the same would mean an injury which is sufficient in the ordinary course of nature to cause death which in turn would mean that death will be the most probable result.<sup>2.</sup>

### **[s 299.1] Ingredients.—**

The section has the following essentials:

1. Causing of death of a human being.
2. Such death must have been caused by doing an act
  - (i) with the intention of causing death; or
  - (ii) with the intention of causing such bodily injury as is likely to cause death; or
  - (iii) with the knowledge that the doer is likely by such act to cause death.

The fact that the death of a human being is caused is not enough. Unless one of the mental states mentioned in ingredient<sup>3.</sup> is present, an act causing death cannot amount to culpable homicide.

### **[s 299.2] 'Causes death'.—**

Death means the death of a human being (section 46). But this word does not include the death of an unborn child (*vide* Explanation 3). It is immaterial if the person whose death has been caused is not the very person whom the accused intended to kill: see Illustration (a) and section 301.<sup>4.</sup> The offence is complete as soon as any person is killed. Death occurs when brain dies completely. A person cannot be said dead if some brain activity is present.<sup>5.</sup>

### **[s 299.3] Five-step enquiry.—**

According to the Supreme Court, in case where death is alleged to have been caused by a person, there shall be a five-step enquiry:

- (i) Is there a homicide? (ii) If yes, is it a culpable homicide or a 'not culpable homicide'? (iii) If it is a culpable homicide, is the offence one of culpable homicide amounting to murder ([s. 300 of the Indian Penal Code](#)) or is it a culpable homicide not amounting to murder ([s. 304 of the Indian Penal Code](#))? (iv) If it is a 'not culpable homicide' then a case [u/s. 304-A of the Indian Penal Code](#) is made out. (v) If it is not possible to identify the person who has committed the homicide, the provisions of [s. 72 of the Indian Penal Code](#) may be invoked.<sup>6.</sup>

#### **[s 299.4] 'By doing an act with the intention of causing death'.—**

None of the endless variety of modes by which human life may be cut short before it becomes in the course of nature extinct, is excluded. Death may be caused by poisoning, starving, striking, drowning, and by a hundred different ways.

Under section 32, words which refer to acts done extend also to illegal omissions, and the word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action (section 43). Therefore, death caused by illegal omission will amount to culpable homicide.<sup>7</sup>

#### **[s 299.5] Need for viscera report.—**

Having noticed that, in several cases, where poisoning is suspected, the prosecuting agencies are not taking steps to obtain *viscera* report, the Supreme Court, in *Joshinder Yadav v State of Bihar*<sup>8</sup>, issued certain directions in this behalf. It was held:

We direct that in cases where poisoning is suspected, immediately after the *post-mortem*, the *viscera* should be sent to the FSL. The prosecuting agencies should ensure that the *viscera* is, in fact, sent to the FSL for examination and the FSL should ensure that the *viscera* is examined immediately and report is sent to the investigating agencies/Courts *post-haste*. If the *viscera* report is not received, the concerned Court must ask for explanation and must summon the concerned officer of the FSL to give an explanation as to why the *viscera* report is not forwarded to the investigating agency/Court. The criminal Court must ensure that it is brought on record.

#### **[s 299.6] Death caused by effect of words on imagination or passions.**

This may sometimes require a complete study of the person of the deceased, her psychology, nature and disposition. Going by these considerations in a case before it, the Supreme Court came to the conclusion that the death of the young married woman in her matrimonial home was a case of suicide and not that of murder. A letter of hers sensing some foul play against her was neither sufficient for conviction for murder nor to dispel the presumption of suicide generated by the type of person she was and her mental make-up.<sup>9</sup>

#### **[s 299.7] 'With the intention of causing such bodily injury as is likely to cause death'.—**

The connection between the 'act' and the death caused thereby must be direct and distinct; and though not immediate, it must not be too remote.<sup>10</sup> Where bodily injury sufficient to cause death is actually caused, it is immaterial to go into the question as to whether the accused had intention to cause death or knowledge that the act will cause death.<sup>11</sup> In finding out whether there was the requisite intention or not, the Court has not to go merely by the part of the body where the blow fell, but also the circumstances and the background of the offence and also the ferocity of the attack.

#### **[s 299.8] 'With the knowledge that he is likely by such act to cause death'.—**

'Knowledge' is a strong word and imports a certainty and not merely a probability.<sup>12.</sup>

### **[s 299.9] Beating for exorcising evil spirit.—**

Where the accused, in exorcising the spirit of a girl whom they believed to be possessed, subjected her to a beating which resulted in her death, it was held that they were guilty of culpable homicide.<sup>13.</sup>

### **[s 299.10] Clauses 1 and 2.—'Intention of causing such bodily injury as is likely to cause death'.—'Knowledge that he is likely by such act to cause death'.—**

The practical difference between these two phrases is expressed in the punishment provided in section 304. But the phrase 'with the knowledge that he is likely by such act to cause death' includes all cases of rash acts by which death is caused, for rashness imports a knowledge of the likely result of an act which the actor does in spite of the risk.

Both the expressions "intent" and "knowledge" occurring in section 299 postulate existence of a positive mental attitude which is of different degrees. Further, such mental attitude towards consequences of conduct is one of intention and knowledge. If death is caused in any of the circumstances envisaged in section 299, offence of culpable homicide is said to have been committed.<sup>14.</sup>

### **[s 299.11] Distinction between knowledge and intention.—**

Knowledge denotes a bare state of conscious awareness of certain facts in which the human mind might itself remain supine or inactive whereas intention connotes a conscious state in which mental faculties are roused into activity and summed up into action for the deliberate purpose of being directed towards a particular and specific end which the human mind conceives and perceives before itself. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact.<sup>15.</sup>

### **[s 299.12] Death caused without 'requisite intention' or 'knowledge' not culpable homicide.—**

If the death is caused under circumstances specified in section 80, the person causing the death will be exonerated under that section. But, if it is caused in doing an unlawful act, the question arises whether he should be punished for causing it. The Code says that when a person engaged in the commission of an offence causes death by pure accident, he shall suffer only the punishment of his offence, without any addition on account of such accidental death. See Illustration (c) to this section. The offence of culpable homicide supposes an intention, or knowledge of likelihood of causing death. In the absence of such intention or knowledge, the offence committed may be grievous hurt,<sup>16.</sup> or simple hurt.<sup>17.</sup> It is only where death is attributed to an injury which the offender did not know would endanger life or would be likely to cause death and which in normal conditions would not do so notwithstanding death being caused, that the offence will not be culpable homicide but grievous or simple hurt. Every such case depends upon the existence of abnormal conditions unknown to the person who



inflicts the injury.<sup>18</sup> A person who voluntarily inflicts injury such as to endanger life must always, except in the most extraordinary and exceptional circumstances, be taken to know that he is likely to cause death. If the victim is actually killed, the conviction in such cases ought ordinarily to be of the offence of culpable homicide.<sup>19</sup> Once it is established that an act was a deliberate act and was not the result of accident or rashness or negligence, it is obvious that the offence would be culpable homicide.<sup>20</sup>

### **[s 299.13] Death due to diseased spleen.—**

Where the accused gave a blow with a light bamboo stick, not more than an inch in diameter, to the deceased who was suffering from diseased spleen on the region of that organ, it was held that he was guilty of causing grievous hurt.<sup>21</sup>

### **[s 299.14] CASES.—Knowledge of probable consequence of act.—Beating.—**

Where a person struck with a heavy stick and killed a man, being at the time under the *bona fide* belief that the object at which he struck was not a human being but something supernatural, but through terror, having taken no steps to satisfy himself that it was not a human being, he was held to have committed culpable homicide.<sup>22</sup>

### **[s 299.15] Explanation 1.—**

A person causing bodily injury to another who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerating the death of that other, is deemed to have 'caused his death'. But one of the elements of the offence of culpable homicide must be present.<sup>23</sup>

### **[s 299.16] Explanation 2.—'By resorting to proper remedies death might have been prevented'.—**

This Explanation is explicit and gives no room for discussion. The reason for this provision is obvious that it is not always that proper remedies and skilful treatment are within the reach of a wounded man.<sup>24</sup>

Although proof be given that the wound or other bodily injury if skilfully treated might not have resulted in death, yet, if in fact death is the result, the wound 'causes' death. And it does not avail the offender to prove that the first cause might have been removed or rendered inoperative by the application of proper remedies and that death might have been prevented. 'Proper remedies and skilful treatment' may not be within the reach of the wounded man; or if they are at hand, he may be unable or unwilling to resort to them. But this is immaterial so far as it relates to the due interpretation of the words 'cause of death'. The primary cause which sets in motion some other cause,—as the severe wound which induces gangrene or fever, and the ultimate effect, death, are sufficiently connected as cause and effect, notwithstanding that the supervening sickness or disease might have been cured by medical skill. All that it is essential to establish is that the death has been caused by the bodily injury and, if there be any intervening cause, that it is connected with a sufficient degree of probability with the primary one.<sup>25</sup>

If death results from an injury voluntarily caused, the person who causes that injury is deemed to have caused death although the life of the victim might have been saved if proper medical attention had been given, and even if medical treatment was given but

was not the proper treatment, provided that it was administered in good faith by a competent physician or surgeon.<sup>26.</sup>

### **[s 299.17] CASES.—**

Where the deceased did not actually die from the injuries but died from the gangrene which set in in consequence of some dirty substance, such as a bandage or the *da* with which the injuries were caused, coming into contact with one injury, although the injuries were not the direct cause of death, the person causing the injuries was held to have caused death.<sup>27.</sup> Where the facts were that the acts of the accused were in the category of a rash act which brought about dashing against the victim leading to his death. There appeared to be no intention or knowledge of bringing about a fatal consequence. The liability was under section 304A.<sup>28.</sup>

### **[s 299.18] Explanation 3.—**

The causing of death of a child in the mother's womb is not homicide; such an offence is punishable under section 315. But it is 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. The former Chief Court of Punjab has observed that "if it is not homicide to kill a child in its mother's womb, it can hardly be urged that it is homicide to kill a child that has breathed in the womb and died while yet in the womb and has been brought forth still-born".<sup>29.</sup>

### **[s 299.19] Applicability of section 299 whether conviction under section 304 Part I or Part II.—**

A plain reading of section 299 will show that it contains three clauses, in two clauses it is the intention of the offender which is relevant and is the dominant factor and in the third clause it is the knowledge of the offender which is relevant and is the dominant factor. Analysing section 299 as aforesaid, it becomes clear that a person commits culpable homicide if the act by which the death is caused is done.

- "(i) with the intention of causing death; or
- (ii) with the intention of causing such bodily injury as is likely to cause death; or
- (iii) with the knowledge that the act is likely to cause death."

If the offence is such which is covered by any one of the clauses, but does not fall within the ambit of clauses, Firstly–Fourthly of [section 300 IPC, 1860](#), it will not be murder and the offender would not be liable to be convicted under section 302. In such a case, if the offence is such which is covered by clause (i) or (ii), the offender would be liable to be convicted under section 304 Part I [IPC, 1860](#) as it uses the expression "if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death" where intention is the dominant factor. However, if the offence is such which is covered by clause (iii), the offender would be liable to be convicted under section 304, Part II, [IPC, 1860](#) because of the use of the expression "if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death" where knowledge is the dominant factor.<sup>30.</sup>

1. *Rahee*, (1866) Unrep Cr C 6. *State v Ram Swarup*, 1998 Cr LJ 1067 (All).
2. *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] .
3. *Nirbhai Singh*, 1972 Cr LJ 1474 (MP).
4. *Ballan*, 1955 Cr LJ 1448 .
5. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .
6. *Richhpal Singh Meena v Ghasi*, 2014 Cr LJ 4339 : AIR 2014 SC 3595 [LNIND 2014 SC 691] .
7. *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] , the enquiry is broad-based without going into every detail, whether there was the intention to strike at a vital part of the body with sufficient force to cause the kind of injury found on the body. *Mohd Asif v State of Uttaranchal*, (2009) 11 SCC 497 [LNIND 2009 SC 558] : 2009 Cr LJ 2789 , no hard and fast rule can be laid down for determining the existence of intention. *Sellappan v State of TN*, (2007) 15 SCC 327 [LNIND 2007 SC 91] , death caused by head injury, despite hospitalisation, plea that proper treatment could have saved, not tenable in view of Explanation 2, section 299.
8. *Joshinder Yadav v State of Bihar*, 2014 Cr LJ 1175 : (2014) 4 SCC 42 [LNIND 2014 SC 34] .
9. *Sharad Birdichand Sarda v State of Maharashtra*, AIR 1984 SC 1622 [LNIND 1984 SC 359] : 1984 Cr LJ 1738 : (1984) 4 SCC 116 [LNIND 1984 SC 359] : 1984 SCC (Cr) 487. See also *Bijoy Kumar Sen v State*, 1988 Cr LJ 1818 (Cal); *Prabhu v State of MP*, 1991 Cr LJ 1373 : AIR 1991 SC 1069 .
10. *Laxman*, 1974 Cr LJ 1271 : AIR 1974 SC 1803 .
11. *Re Thangavelu*, 1972 Cr LJ 390 (Mad); *State of Bihar v Pasupati Singh*, 1973 Cr LJ 1832 : AIR 1973 SC 2699 [LNIND 1973 SC 284] ; *Nishan Singh v State of Punjab*, (2008) 17 SCC 505 [LNIND 2008 SC 2718] : AIR 2008 SC 1661 [LNIND 2008 SC 2718] : (2008) 65 AIC 172 .
12. *Shankar Kondiba Gore v State of Maharashtra*, 1995 Cr LJ 93 (Bom), where a stab injury was inflicted on abdomen but death was caused because the right artery was punctured at ilium, it was held that the accused could only be saddled with knowledge of causing death and could be convicted under section 304, Part II and not under section 302. See also *Dharamvir v State of Haryana*, (1994) 2 Cr LJ 1281 (P&H), sudden and unpremeditated fight, there being no previous enmity, single blow death of one, culpable homicide, not murder. *Muniappan v State of TN*, 1994 Cr LJ 1309 (Mad), in a fight between brother and sister, the brother hit her and her son with a crow-bar, the sister died and the son was injured who in anger attacked the accused in reply, the accused was held to be guilty of culpable homicide and not entitled to the plea of private defence. *Nizamuddin v State of MP*, AIR 1994 SC 1041 : 1994 Cr LJ 1386 : 1995 SCC (Cr) 699, fatal injury caused in exceeding the right of private defence.
13. *Jamaludin*, (1892) Unrep Cr C 603; *Haku*, (1928) 10 Lah 555; *State of MP v Godhe Faguwa*, 1974 Jab LJ 302 : 1974 MPLJ 203 [LNIND 1973 MP 3] : ILR [1976] MP 361 [LNIND 1973 MP 3] .
14. *Jagriti Devi v State of HP*, (2009) 14 SCC 771 [LNIND 2009 SC 1376] : AIR 2009 SC 2869 [LNIND 2009 SC 1376] : (2009) 80 AIC 225 (SC) : (2009) 3 AP LJ 52 (SC).
15. *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] ; *Daya Nand v State of Haryana*, (2008) 15 SCC 717 [LNIND 2008 SC 827] : AIR 2008 SC 1823 [LNIND 2008 SC 827] : 2008 Cr LJ 2975 , murder and culpable homicide not amounting to murder, distinction

explained and restatement of interpretation of sections 299 and 300. A similar explanation is to be seen in *Ghelabhai Jagmalbhai Bhawad v State of Gujarat*, (2008) 17 SCC 651 ; *Harendra Nath Borah v State of Assam*, (2007) 15 SCC 249 [LNIND 2007 SC 84] and *Raj Kumar v State of Maharashtra*, (2009) 15 SCC 292 [LNIND 2009 SC 1504] , ingredients and **distinction** restated.

16. *O'Brien*, (1880) 2 All 766 ; *Idu Beg*, (1881) 3 All 776 .
17. *Safatulla*, (1879) 4 Cal 815 ; *Fox*, (1879) 2 All 522 ; *Randhir Singh*, (1881) 3 All 597 .
18. *Bai Jiba*, (1967) 19 Bom LR 823 .
19. *Mana*, (1930) 32 Bom LR 1143 , 1144.
20. *Afrahim Sheikh*, AIR 1964 SC 1263 [LNIND 1964 SC 1] : (1964) 2 Cr LJ 350 .
21. *Megha Meeah*, (1865) 2 WR (Cr) 39; *O'Brien*, (1880) 2 All 766 .
22. *Kangla v State*, (1898) 18 AWN 163.
23. *Fox*, (1879) 2 All 522 .
24. *Krishnaswami*, AIR 1965 Mad 261 .
25. M&M 228. [This is Morgan & Macpherson's [Indian Penal Code](#). Please see 'Explanation of Abbreviations' in the Prelim pages]
26. *Sah Pai*, (1936) 14 Ran 643, as explained in *Abor Ahmed v State*, (1937) Ran 384 (FB). *Pappachan v State of Kerala*, 1994 Cr LJ 1765 (Ker), defence that proper medical attendance was not there was not allowed to be raised.
27. *Nga Paw v State*, AIR 1936 Ran 526
28. *Satpal v State of Haryana*, (2004) 10 SCC 794 .
29. *Mussammat Budho*, AIR 1916 Lah 184 .
30. *Arun Nivalaji More v State of Maharashtra*, (2006) 12 SCC 613 [LNIND 2006 SC 591] : (2007) 2 SCC (Cr) 221 : AIR 2006 SC 2886 [LNIND 2006 SC 591] : 2006 Cr LJ 4057 .

## **THE INDIAN PENAL CODE**

### **CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE**

#### **[s 300] Murder.**

**Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—**

**Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—**

**Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—**

**Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.**

#### **ILLUSTRATIONS**

- (a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.
- (b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.
- (c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.
- (d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

#### **When culpable homicide is not murder.**

**Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:—**

**First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.**

**Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.**

**Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.**

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

#### ILLUSTRATIONS

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

**Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence 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 for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.**

**Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.**

**Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.**

**Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.**

#### ILLUSTRATION

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

#### COMMENT.—

In this section, the definition of culpable homicide appears in an expanded form. Each of the four clauses requires that the act which causes death should be done intentionally, or with the knowledge or means of knowing that death is a natural consequence of the act. An intention to kill is not always necessary to make out a case of murder. A knowledge that the natural and probable consequence of an act would be death will suffice for a conviction under [section 302, IPC, 1860](#).<sup>31</sup>

#### [s 300.1] Scope.—

An offence cannot amount to murder unless it falls within the definition of culpable homicide; for this section merely points out the cases in which culpable homicide is murder. But an offence may amount to culpable homicide without amounting to murder.

It does not follow that a case of culpable homicide is murder, because it does not fall within any of the Exceptions to section 300. To render culpable homicide murder, the case must come within the provisions of clauses 1, 2, 3, or 4 of section 300 and must not fall within any one of the five Exceptions attached thereto.

#### [s 300.2] Culpable homicide and murder distinguished.—

The distinction between these two offences is very ably set forth by Melvill, J, in *Govinda's case*<sup>32</sup>. and by Sarkaria, J, in *Punnayya's case*.<sup>33</sup> Since the decision of the

Supreme Court is the law of the land by virtue of [Article 141 of the Constitution](#), relevant passages from *Punnayya's* case are reproduced below for the guidance of all concerned.

In the scheme of the [Penal Code](#), '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 this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, culpable homicide of the first degree. This is the gravest form of culpable homicide which is defined in s. 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the 1st part of s. 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 s. 304.

The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the Courts for more than a century. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be keeping in focus the key words used in the various clauses of sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done -	Subject to certain exceptions, culpable homicide is murder if the act by which the death is caused is done -
<b>INTENTION</b>	
(a) with the intention of causing death; or	(1) with the intention of causing death; or
(b) with the intention of causing such bodily injury as is likely to cause death; or	(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
	(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
<b>KNOWLEDGE</b>	
(c) with the knowledge that the 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 or such bodily injury as is likely to cause death, and without any excuse or incurring the risk of causing death or such injury as is mentioned above.

Clause (b) of section 299 corresponds with clauses (2) and (3) of section 300. The distinguishing feature of the *mens rea* requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of clause (2). Only the intention of *causing the bodily injury* coupled with the offender's *knowledge* of the likelihood of such injury causing the death of the particular victim is sufficient to bring



the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to section 300.

Clause (b) of section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

In clause (3) of section 300, instead of the words, 'likely to cause death' occurring in the corresponding clause (b) of section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury *likely* to cause death and a bodily injury *sufficient in the ordinary course* of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of section 299 and clause (3) of section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (b) of section 299 conveys the sense of 'probable' as distinguished from a mere possibility. The words 'bodily injury... sufficient in the ordinary course of nature to cause death' mean that death will be the most probable result of the injury, having regard to the ordinary course of nature.

For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature.

Clause (c) of section 299 and clause (4) of section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of section 300 would be applicable where the knowledge of the offender as to the probability of death of a person in general as distinguished from a particular person or persons being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.<sup>34</sup>

In *Ajit Singh v State of Punjab*,<sup>35</sup> the Supreme Court observed that:

In order to hold whether an offence would fall u/s. 302 or s. 304 Part I of the Code, the Courts have to be extremely cautious in examining whether the same falls u/s. 300 of the Code which states whether a culpable homicide is murder, or would it fall under its five exceptions which lay down when culpable homicide is not murder.

In other words, section 300 states both, what is murder and what is not. First finds place in section 300 in its four stated categories, while the second finds detailed mention in the stated five Exceptions to section 300. The legislature in its wisdom, thus, covered the entire gamut of culpable homicide 'amounting to murder' as well as that 'not amounting to murder' in a composite manner in section 300 of the Code.<sup>36</sup>

From the above conspectus, it emerges that whenever a Court is confronted with the question of whether the offence is 'murder' or 'culpable homicide not amounting to murder' on the facts of a case, it will be convenient for it to approach the problem in

three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in section 299. If the answer to this question is *prima facie* found in the affirmative, the stage for considering the operation of [section 300, IPC, 1860](#), is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' contained in section 300. If the answer to this question is in the negative, the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of section 304, depending, respectively, on whether the second or the third clause of section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the first part of [section 304, IPC, 1860](#).

The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the Court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.

To sum up:

Section 299 is divided into three parts. The first part refers to the act by which the death is caused by being done with the intention of causing death. That part corresponds to the first part of the [section 300, IPC](#). The second part of [section 299, IPC](#) speaks of the intention to cause such bodily injury as is likely to cause death. This has corresponding provisions in clauses "Secondly" and "Thirdly" of [section 300, IPC](#), section 304, Part I, [IPC](#), covers cases which by reason of the Exceptions under [section 300, IPC](#), are taken out of the purview of cls. (1), (2) and (3) of [section 300, IPC](#), but otherwise would fall within it and also cases which fall within the second part of section 299 but not within section 300 clauses (2) and (3). The third part of section 299 corresponds to "fourthly" of section s. 300. Section 304, Part-II, [IPC](#), covers those cases which fall within the third part of section 299 but do not fall within the fourth clause of section 300.<sup>37</sup>

Section 300 states both, what is murder and what is not. First finds place in section 300 in its four stated categories, while the second finds detailed mention in the stated five Exceptions to section 300. The legislature in its wisdom, thus, covered the entire gamut of culpable homicide 'amounting to murder' as well as that 'not amounting to murder' in a composite manner in section 300 of the Code.<sup>38</sup>

### **[s 300.3] Clause 1.— 'Act by which the death is caused is done with the intention of causing death'.—**

The word 'act' includes omission as well (section 33). Any omission by which death is caused will be punishable as if the death is caused directly by an act.<sup>39</sup> Thus, where a person neglected to provide his child with proper sustenance although repeatedly warned of the consequences and the child died, it was held to be murder.<sup>40</sup> Intention to cause death may be revealed by the whole circumstances of the story.

### **[s 300.4] Honour Killing.—**

In *Shakti Vahini v UOI*,<sup>41</sup> the Supreme Court observed that honour killing is not the singular type of offence. It is a grave one but not the lone one. It is a part of honour crime. Honour crime is the genus and honour killing is the species, although a

dangerous facet of it. In *Arumugam Servai v State of TN*,<sup>42</sup> the Supreme Court strongly deprecated the practice of *khap/katta* panchayats taking law into their own hands and indulging in offensive activities which endanger the personal lives of the persons marrying according to their choice.<sup>43</sup> Law Commission of India studied the matter and submitted the 242nd report to the Government. Some proposals are being mooted proposing amendments to [section 300, IPC, 1860](#) by way of including what is called 'Honour Killing' as murder and shifting the burden of proof to the accused. But the Commission expressed the view that there is no need for introducing a provision in [section 300, IPC, 1860](#) in order to bring the so called 'honour killings' within the ambit of this provision. According to the report, the existing provisions in [IPC, 1860](#) are adequate enough to take care of the situations leading to overt acts of killing or causing bodily harm to the targeted person who allegedly undermined the honour of the caste or community. The commission suggested a new law (instead of amending [IPC, 1860](#)) to tackle the problem namely "Prohibition of Interference with the Freedom of Matrimonial Alliances Bill 2011".<sup>44</sup>

In *Shakti Vahini v UOI*,<sup>45</sup> the Supreme Court observed that torture or torment or ill-treatment in the name of honour that tantamounts to atrophy of choice of an individual relating to love and marriage by any assembly is illegal and cannot be allowed a moment of existence. In this case, the Supreme Court issued detailed preventive, remedial and punitive directives to prevent honour killings in the country.

#### **[s 300.5] Clause 2.—'With the intention of causing such bodily injury as the offender knows to be likely to cause the death'.—**

This clause applies where the act by which death is caused is done with the intention of causing such bodily injury as the offender *knows to be likely to cause the death of the person* to whom the harm is caused. It applies in special cases where the person injured is in such a condition or state of health that his or her death would be likely to be caused by an injury which would not ordinarily cause the death of a person in sound health and where the person inflicting the injury knows that owing to such condition or state of health it is likely to cause the death of the person injured. In a case involving attack with sulphuric acid causing "grievous injury" where the doctor testified that such an attack may also cause death, the Court said that "the word likely means 'probably' and can easily be distinguished from 'possibly'. When the chances of a thing happening are very high, we say that it will most probably happen".<sup>46</sup>

#### **[s 300.6] Poisoning.—**

In a case of murder by poisoning, the prosecution must establish (1) that death took place by poisoning, (2) that the accused had the poison in his possession, and (3) that the accused had an opportunity to administer poison to the deceased.<sup>47</sup> These propositions were laid down by the Supreme Court in *Dharambir Singh v State of Punjab*, Criminal Appeal No. 98 of 1958, decided, Nov. 4, 1958 SC<sup>48</sup> and were given anxious consideration by Hidayatullah, J, in *Anant Chintaman Lagu v State of Bombay*.<sup>49</sup> The learned judge (afterwards CJ) did not consider them as invariable criteria of proof to be established by the prosecution in every case of murder by poisoning. This is so "because", as the learned judge said:

evidently if after poisoning the victim, the accused destroyed all traces of the body, the first proposition would be incapable of being proved except by circumstantial evidence. Similarly, if the accused gave a victim something to eat and the victim died immediately on the ingestion of that food with symptoms of poisoning and poison, found in the *viscera*, the

requirement of proving that the accused was possessed of the poison would follow the circumstance that the accused gave the victim something to eat and need not be separately proved.

Following this opinion in the case of *Bhupinder Singh v State of Punjab*<sup>50</sup>, and dispensing with the need for proof of possession of poison, the Supreme Court said that:

we do not consider it necessary that there should be acquittal on the failure of the prosecution to prove possession of poison with the accused. Murder by poison is invariably committed under the cover and cloak of secrecy. Nobody will administer poison to another in the presence of others. The person who administers poison..... will not keep a portion of it for the investigating officer to come and collect it.... [He] would naturally take care to eliminate and destroy the evidence against him.... It would be impossible for the prosecution to prove possession of poison with the accused. The prosecution may, however, establish other circumstances consistent only with the hypothesis of the guilt of the accused. The Court then would not be justified in acquitting the accused on the ground that the prosecution has failed to prove possession of poison with the accused.

Continuing further, Shetty, J said:

The poison murder cases are not to be put outside the rule of circumstantial evidence. There may be very many obvious facts and circumstances in which the Court may be justified in drawing permissible inference that the accused was in possession of the poison in question.... The insistence on proof of possession of poison... invariably in every case is neither desirable nor practicable. It would mean to introduce an extraneous ingredient to the offence of murder by poisoning.

Where, therefore, neither motive nor administration of poison nor its possession by the accused could be proved, the accused had to be acquitted.<sup>51</sup> Where it is proved that the accused administered poison, the accused must be presumed to have knowledge that his act was likely to cause death.<sup>52</sup> If the prosecution failed to prove the cause of death, the fact that the accused failed to explain the cause of death cannot be the basis of conviction. Accused was acquitted where neither *post-mortem* report nor FSL report showed the administration of poison.<sup>53</sup> Where the allegation was that the death was caused by poison mixed with alcohol, but no remnants of poisonous substance were found either in the two bottles or in the steel glass but were found only in the earth so collected from the place of occurrence, accused acquitted.<sup>54</sup>

### **[s 300.7] Possibility of survival of deceased.—**

The Supreme Court has observed that a chance of miraculous survival is not contemplated by section 300. The attacker becomes liable if he knew that his victim would die as a result of the injuries caused by him. The doctor's opinion that the victim could have survived if timely and proper medical aid was provided is a hypothetical proposition.<sup>55</sup>

### **[s 300.8] Clause 3.—'With the intention of causing bodily injury to any person ... sufficient in the ordinary course of nature to cause death'.—**

The distinction between this clause and clause 2 of section 299 depends upon the degree of probability of death from the act committed. If from the intentional act of injury committed the probability of death resulting is high, the finding will be that the accused intended to cause death, or injury *sufficient* in the ordinary course of nature to cause death; if there was probability in a less degree of death ensuing from the act committed, the finding will be that the accused intended to cause injury *likely* to cause death.<sup>56</sup> In the case of *Mangesh v State of Maharashtra*,<sup>57</sup> the Supreme Court stated

the circumstances from which it may be gathered as to whether there was intention to cause death. It included circumstances like nature of the weapon; on what part of the body the blow was given; the amount of force; was it a result of a sudden fight or quarrel; whether the incident occurred by chance or was pre-meditated; prior animosity; grave and sudden provocation; heat of passion; did the accused take any undue advantage; did he act cruelly; number of blows given, etc. Even if none of the injuries by itself was sufficient in the ordinary course of nature to cause death, cumulatively such injuries may be sufficient in the ordinary course of nature to cause death.<sup>58</sup>

### **[s 300.9] "Bodily injury".—**

The expression "bodily injury" in clause thirdly includes also its plural, so that the clause would cover a case where all the injuries intentionally caused by the accused are cumulatively sufficient to cause the death in the ordinary course of nature, even if none of those injuries individually measures up to such sufficiency. The sufficiency spoken of in this clause, as already noticed, is the high probability of death in the ordinary course of nature, and if such sufficiency exists and death is caused and the injury causing it is intentional, the case would fall under clause thirdly of section 300. All the conditions which are a prerequisite for the applicability of this clause have been established and the offence committed by the accused, in the instant case was "murder".<sup>59</sup>

What is required for the prosecution to prove to bring the case under clause thirdly to section 300? First, it must be established, quite objectively, that a bodily injury is present; Second, the nature of the injury must be proved and these are purely objective investigations; third, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended; and once these three elements are proved to be present, the enquiry proceeds further; and fourth, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under section 300 "thirdly". Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death.<sup>60</sup> On this particular point, there is the following pertinent observation of the Supreme Court.<sup>61</sup>

The nature of the offence does not depend merely on the location of the injury caused by the accused. The intention of the person causing the injury has to be gathered from a careful examination of the facts and circumstances of each given case....

The Supreme Court also observed that the intention to cause the requisite type of injury is a subjective inquiry, but that once that type of intention is found in the assailant, the further inquiry whether the injury was sufficient in the ordinary course of nature to cause death is of objective nature.<sup>62</sup>

### **[s 300.10] Principle of exclusion.—**

In *Rampal Singh v State of UP*,<sup>63</sup> after referring to the pronouncements in *Rayavarapu Punnayya (supra)*, *Vineet Kumar Chauhan v State of UP*,<sup>64</sup> *Ajit Singh v State of Punjab*,<sup>65</sup> and *Mohinder Pal Jolly v State of Punjab*,<sup>66</sup> the Supreme Court opined thus:

The evidence led by the parties with reference to all these circumstances greatly helps the Court in coming to a final conclusion as to under which penal provision of the Code the accused is liable to be punished. This can also be decided from another point of view i.e. by applying the "principle of exclusion". This principle could be applied while taking recourse to a two- stage process of determination. First, the Court may record a preliminary finding if the accused had committed an offence punishable under the substantive provisions of s. 302 of the Code, that is, "culpable homicide amounting to murder". Then second, it may proceed to examine if the case fell in any of the Exceptions detailed in s. 300 of the Code. This would doubly ensure that the conclusion arrived at by the Court is correct on facts and sustainable in law. We are stating such a proposition to indicate that such a determination would better serve the ends of criminal justice delivery.<sup>67.</sup>

The third clause of section 300 views the matter from a general standpoint. Here, the emphasis is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary way of nature. When this sufficiency exists and death follows and the causing of such injury is intended, the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused and sometimes both are relevant.<sup>68.</sup> In some cases, the sufficiency of injury to cause death in the ordinary course of nature must be proved and cannot be inferred from the fact that death has in fact taken place. In such a case, it may not be open to argue backwards from the death to the blow, to hold that the sufficiency is established because death did result. As death can take place from other causes, the sufficiency is required to be proved by other and separate evidence.<sup>69.</sup>

#### **[s 300.11] Contradiction between ocular and medical evidence.—**

Where there is a contradiction between medical evidence and ocular evidence, the position of law can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value *vis-à-vis* medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.<sup>70.</sup> The opinion given by a medical witness need not be the last word on the subject. Such opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, Court is not obliged to go by that opinion. After all, opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts, it is open to the judge to adopt the view which is more objective or probable. Similarly, if the opinion given by one doctor is not consistent with probability, the Court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject.<sup>71.</sup> Where the testimony of eye-witnesses is totally inconsistent with medical evidence, and suffering from improvements, the rule that ocular evidence has precedence over medical evidence cannot be applied.<sup>72.</sup>

#### **[s 300.12] Discrepancy between the reports of doctor who examined the deceased and the doctor who conducted autopsy.—**

Where the medical certificate showed the age of injuries as 24 hours but in *post-mortem* report it was mentioned as six hours, it was held that in *post-mortem* report, the determination of precise duration of the injuries can be possible due to the internal examination of the injuries whereas no such advantage is available to the doctor when he examines the injuries in the nature of contusions.<sup>73.</sup>

### **[s 300.13] Medical Evidence.—**

Medical evidence that the death was homicidal, cannot alone be made the basis to connect the accused person with crime. The accused persons are entitled to the benefit of doubt.<sup>74.</sup>

### **[s 300.14] "Secondly" and "Thirdly" distinguished.—**

The two clauses are disjunctive and separate. Clause "Secondly" is subjective to the offender. It must, of course, first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on the leg or the arm or the stomach, how deep it penetrated, whether any vital organs were cut and so forth. These are purely objective facts and leave no room for inference or deduction: to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention to cause the bodily injury that is found to be present. First part of clause "Thirdly" envisages infliction of bodily injury with the intention to inflict it, i.e., it must be proved that the injury found to be present was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference or deduction from the proven facts about the nature of the injury and has nothing to do with the question of intention.<sup>75.</sup>

### **[s 300.15] Clause 4.—'Person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death'.—**

Where it is clear that the act by which the death is caused is so imminently dangerous that the accused must be presumed to have known that it would, in all probability, cause death or such bodily injury as is likely to cause death, then unless he can meet this presumption his offence will be culpable homicide, and it would be murder unless he can bring it under one of the Exceptions.<sup>76.</sup> Thus, a man who strikes at the back of another a violent blow with a formidable weapon<sup>77.</sup> or who strikes another in the throat with a knife<sup>78.</sup> must be taken to know that he is doing an act imminently dangerous to the life of the person at whom he strikes and that a probable result of his act will be to cause that person's death.<sup>79.</sup>

This clause also provides for that class of cases where the acts resulting in death are calculated to put the lives of many persons in jeopardy without being aimed at any one in particular, and are perpetrated with a full consciousness of the probable consequences, e.g., where death is caused by firing a loaded gun into a crowd [*vide* Illustration (d)], or by poisoning a well from which people are accustomed to draw water.

The Supreme Court has held that although this clause is usually invoked in those cases where there is no intention to cause the death of any particular person, the clause may on its terms be used in those cases where there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as is likely to cause death.<sup>80.</sup>

Where it was shown that the spurious liquor was sold from the local vends belonging to the accused persons coupled with the fact that after the tragedy struck, the accused persons even tried to destroy remaining bottles, it was held that the accused had full

knowledge of the fact that the bottles contained substance methyl and also about the disastrous consequences thereof, thus bringing their case within the four corners of section 300 fourthly.<sup>81.</sup>

### **[s 300.16] As to dying declarations.—**

In spite of all the importance attached and the sanctity given to the piece of dying declaration, Courts have to be very careful while analysing the truthfulness and, genuineness of the dying declaration and should come to a proper conclusion that the dying declaration is not a product of prompting or tutoring.<sup>82.</sup>

### **[s 300.16.1] Benefit of doubt.—**

An accused person cannot be given the benefit of doubt only on the ground that injuries on his person were not explained particularly when the injuries are of simple and superficial nature.<sup>83.</sup>

### **[s 300.16.2] Death in custody.—**

In *State of TN v Balkrishna*,<sup>84.</sup> it was held that merely because the death of the person occurred in police custody, an immediate inference of murder could not be drawn against the police.

### **[s 300.17] Non-explanation of injuries.—**

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. However, there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, that it outweighs the effect of the omission on the part of the prosecution to explain the injuries.<sup>85.</sup>

### **[s 300.18] Exception 1.—Provocation.—**

Anger is a passion to which good and bad men are both subject, and mere human frailty and infirmity ought not to be punished equally with ferocity or other evil feelings.

The act must be done *whilst the person doing it is deprived of self-control* by grave and sudden provocation. That is, it must be done under the immediate impulse of provocation.<sup>86.</sup>

### **[s 300.19] Meaning of the words "grave" and "sudden".—**



The expression 'grave' indicates that provocation be of such a nature so as to give cause for alarm to the accused. 'Sudden' means an action which must be quick and unexpected so far as to provoke the accused. The question of whether provocation was grave and sudden is a question of fact and not one of law. Each case is to be considered according to its own facts.<sup>87.</sup>

The mode of resentment should bear some proper and reasonable relationship to the sort of provocation that has been given. The test to be applied is that of the effect of the provocation on a reasonable man, so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. It is important to consider whether a sufficient interval has elapsed since the provocation to allow a reasonable person time to cool, and account must be taken of the instrument with which the homicide had been effected.<sup>88.</sup> The mode of resentment must bear a reasonable relationship to the provocation.<sup>89.</sup>

*Principles relating to "grave and sudden provocation" summarised by the Supreme Court*

(1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the First Exception to [section 300 of the Indian Penal Code](#).

(3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

(4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

*KM Nanavati v State of Maharashtra.*<sup>90.</sup>

An offence resulting from grave and sudden provocation would normally mean that a person placed in such circumstances could lose self-control but only temporarily and that too, in proximity to the time of provocation. The provocation could be an act or series of acts done by the deceased to the accused resulting in inflicting of injury.<sup>91.</sup>

The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. Words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the Exception. The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.<sup>92.</sup>

### **[s 300.20] Self-control.—**

This term as it appears in section 300, Exception 1 is a subjective phenomenon and can be inferred from the surrounding circumstances in a given case. In order to find out whether the last act of provocation on which the offender caused the death was

sufficiently grave to deprive the accused of the power of self-control, the previous acts of provocation caused by the person can always be taken into consideration.<sup>93.</sup>

### **[s 300.21] Grave and Sudden: Cases.—**

Where there is sufficient time for cooling down, there would be no sudden provocation and the act of the accused would be a deliberate one. Thus, where the accused after receiving the provocation in a school committee meeting went to his house, brought a gun and thereafter shot chasing fleeing men, his action did not fall within this exception but was an act of murder.<sup>94.</sup>

What is critical for a case to fall under Exception 1 to [section 300, IPC, 1860](#) is that the provocation must not only be grave but sudden as well. It is only where the following ingredients of Exception 1 are satisfied that an accused can claim mitigation of the offence committed by him from murder to culpable homicide not amounting to murder:

- (1) The deceased must have given provocation to the accused.
- (2) The provocation so given must have been grave.
- (3) The provocation given by the deceased must have been sudden.
- (4) The offender by reason of such grave and sudden provocation must have been deprived of his power of self-control; and
- (5) The offender must have killed the deceased or any other person by mistake or accident during the continuance of the deprivation of the power of self-control.<sup>95.</sup>

### **[s 300.22] Doctrine of, and acts amounting to, sustained provocation.—**

What Exception 1 of section 300 contemplates is a grave and sudden provocation whereas the ingredient of sustained provocation is a series of acts more or less grave spread over a certain period of time, the last of which acting as the last straw breaking a camel's back may even be a very trifling one. Where the accused had killed an innocent woman and an infant of a family merely on the suspicion of illicit intimacy between his wife and the father of the deceased infant and his suspicion appeared to be more imaginary than real, it was held that there was practically no ground to invoke this doctrine. Besides, as there was nothing to support his suspicion and there was no enmity between the accused and the deceased either, the plea of sustained provocation was not tenable under section 300, Exception 1.<sup>96.</sup>

### **[s 300.23] Adulterous intercourse.—**

A man in love with a woman who had repulsed his suit might be so angry as to lose control of himself at the sight of her engaged in sexual intercourse with another, but if he kills one or both of them, he cannot plead grave provocation in mitigation of his offence. The law that, when a husband discovers his wife in the act of adultery and thereupon kills her, he is guilty of manslaughter and not murder, has no application where the woman concerned is not the wife of the accused.<sup>97.</sup>

### **[s 300.24] CASES.—**

Adulterous intercourse has been held, in several cases, to give grave and sudden provocation.<sup>98</sup> It is not necessary for the husband to plead seeing of actual intercourse between his wife and the paramour.<sup>99</sup> Where the accused killed the deceased as he saw the deceased committing sodomy on his son, the case undoubtedly fell within this Exception and he was liable to be convicted only under section 304, Part II and not under [section 302, IPC, 1860](#).<sup>100</sup>

However, if the death of the adulterer is caused not in a fit of passion but with subsequent deliberation, this Exception does not apply.

### **[s 300.25] Quarrel.—**

Where two friends happened to quarrel suddenly and one inflicted a single knife injury to the other which was not aimed at any vital part and the doctor verified that the injury should not have ordinarily caused death, he was punished under section 304, Part II.<sup>101</sup>

### **[s 300.26] Exception 2.—Exceeding right of private defence.—**

This Exception provides for the case of a person who exceeds the right of private defence. The authors of the Code observed:

Wherever the limits of the right of private defence may be placed, and with whatever degree of accuracy they may be marked, we are inclined to think that it will always be expedient to make a separation between murder and... voluntary culpable homicide in defence.

The chief reason for making this separation is that the law itself invites men to the very verge of the crime which we have designated as voluntary culpable homicide in defence. It prohibits such homicide indeed; but it authorizes acts which lie very near to such homicide; and this circumstance, we think, greatly mitigates the guilt of such homicide.

That a man who deliberately kills another in order to prevent that other from pulling his nose should be allowed to go absolutely unpunished would be most dangerous. The law punishes and ought to punish such killing; but we cannot think that the law ought to punish such killing as murder; for the law itself has encouraged the slayer to inflict on the assailant any harm short of death which may be necessary for the purpose of repelling the outrage; to give the assailant a cut with a knife across the fingers which may render his right hand useless to him for life, or to hurl him downstairs with such force as to break his leg; and it seems difficult to conceive that circumstances which would be a full justification of any violence short of homicide should not be a mitigation of the guilt of homicide. That a man should be merely exercising a right by fracturing the skull and knocking out the eye of an assailant, and should be guilty of the highest crime in the Code if he kills the same assailant; that there should be only a single step between perfect innocence and murder, between perfect impunity and liability to capital punishment, seems unreasonable. In a case in which the law itself empowers an individual to inflict any harm short of death, it ought hardly, we think, to visit him with the highest punishment if he inflicts death.<sup>102</sup>

### **[s 300.27] When the offender is not entitled to get the benefit of this exception.**

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A fortiori in cases where an accused sets up right of private defence, the first and the foremost question that would fall for determination by the Court would be whether the accused had the right of private defence in the situation in which death or other harm was caused by him. If the answer to that question is in the negative, Exception 2 to section 300 of the Code would be of no assistance. Exception 2 presupposes that the

offender had the right of private defence of person or property but he had exceeded such right by causing death. It is only in case answer to the first question is in the affirmative, viz., that the offender had the right of defence of person or property, that the next question, viz., whether he had exercised that right in good faith and without premeditation and without any intention of doing more harm that was necessary for the purpose of such defence would arise. Should answer to any one of these questions be in the negative, the offender will not be entitled to the benefit of Exception 2 to section 300 of the Code. <sup>103</sup>.

### **[s 300.28] CASES.—No right of private defence.—**

Where both sides can be convicted for their individual acts and normally no right of private defence is available to either party and they will be guilty of their respective acts. <sup>104</sup>. There was no premeditation and the act was committed in a heat of passion and the appellant had not taken any undue advantage or acted in a cruel manner. There was a fight between the parties. The case falls under the fourth exception to [section 300, IPC, 1860](#). <sup>105</sup> The accused were, in fact, aggressors and being members of the aggressors' party none of the accused can claim right of self-defence. <sup>106</sup>. Merely because there was a quarrel and some of the accused persons sustained injuries, that does not confer a right of private defence extending to the extent of causing death. It has to be established that the accused persons were under such grave apprehension about the safety of their life and property that retaliation to the extent done was absolutely necessary. Right of private defence has been rightly discarded. <sup>107</sup>. After an altercation and exchange of abuses, two persons aimed rifles at each other. After one of them had lowered his rifle, the other fired at him killing him. It was held that the accused was not entitled to the right of private defence and was convicted under section 300. <sup>108</sup>.

### **[s 300.29] Exceeding Right of Private Defence.—**

While exercising his right of private defence of property, the accused exceeded his right of private defence and killed a man. It was held that the case fell within Exception 2 of section 300 and as such he was liable to be punished under section 304, Part I and not under [section 302, IPC, 1860](#). <sup>109</sup>. To ward off an attack with a stick, a stab wound puncturing the heart is not justified. It is a clear case of offence under section 304, Part I, [IPC, 1860](#). <sup>110</sup>. So also is the case of killing an unarmed trespasser with *chhura* blows which punctured both the heart and the lung. <sup>111</sup>.

A dispute over lease of agricultural land led to murder. The accused appeared armed with deadly weapons. Two persons were killed in separate incidents. The Court said that this indicated that there was pre-meditation. The acts done showed that there was intention to do more harm than was necessary for the purposes of self-defence. Hence, the offences were not in the category of culpable homicide not amounting to murder. <sup>112</sup>.

The Court found that at some point of time, the accused (appellant) was exercising his right of private defence, but that had ceased to exist long before the time when the deadly blow was administered. His conviction was altered to section 304, Part I. <sup>113</sup>.

### **[s 300.30] Causing injury after private defence ceased to be available.—**

There was a scuffle between the accused persons and the complainant party. One of the accused persons fired a gunshot of which one member of the complainant party died. The injury was caused when members of the complainant party were fleeing away. There was the right of private defence before the retreat. Thus, he exceeded the right of private defence. The Court said that his act was covered by Exception 2 to section 300. He was liable to be punished under section 304, Part II.<sup>114.</sup>

### **[s 300.31] Exception 3.—Public servant exceeding his power.—**

This Exception protects a public servant, or a person aiding a public servant acting for the advancement of public justice, if either of them exceeds the powers given to them by law and causes death. It gives protection so long as the public servant acts in good faith, but if his act is illegal and unauthorised by law, or if he glaringly exceeds the powers entrusted to him by law, the Exception will not protect him. Where death was caused by a constable under orders of a superior, it being found that neither he nor his superior believed that it was necessary for public security to disperse certain reapers by firing on them, it was held that he was guilty of murder since he was "not protected in that he obeyed the orders of his superior officer."<sup>115.</sup> Exception 3 to [section 300, IPC, 1860](#) pre-supposes that a public servant who causes death must do so in good faith and in due discharge of his duty as a public servant and without ill-will towards the person whose death is caused. The positive case set up by the defence that firing was in self-defence has been rejected by the trial court, High Court as well by the Supreme Court, the question of any good faith does not arise. The appellants had fired without provocation at the car killing two innocent persons and injuring one. The obligation to prove an exception is on the preponderance of probabilities but it nevertheless lies on the defence.<sup>116.</sup>

### **[s 300.32] Exception 4.—Death caused in sudden fight.—**

A perusal of the provision would reveal that four conditions must be satisfied to bring the matter within Exception 4:

- (i) it was a sudden fight;
- (ii) there was no premeditation;
- (iii) the act was done in the heat of passion; and that
- (iv) the assailant had not taken any undue advantage or acted in a cruel manner.<sup>117.</sup>

### **[s 300.33] "Fight": meaning of.—**

The 'fight' occurring in Exception 4 to [section 300, IPC, 1860](#) is not defined in [IPC, 1860](#). It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case.<sup>118.</sup>

The language of Exception 4 to section 300 is, thus, clear that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel provided the offender has not taken undue advantage or acted in a cruel or unusual manner. In order to bring a case under Exception (4) to [section 300, IPC, 1860](#), the evidence must show that the accused without any premeditation and in a heat of passion and without having undue advantage had not acted in cruel manner. Every one of these circumstances is required to be proved to attract Exception (4) to [section 300, IPC, 1860](#) and it is not sufficient to prove only some of them. None of the ingredients have been proved in evidence to bring the case under Exception (4) to [section 300, IPC, 1860](#).<sup>119</sup> Case comes under Exception 4 where the prosecution evidence sufficiently suggested that a scuffle had taken place on the dingy where the appellant and his companions were trying to recover the dingy while the deceased was preventing them from doing so, and in the course of this sudden fight and in the heat of passion, the appellant assaulted the deceased and pushed him in the sea eventually resulting in his death.<sup>120</sup> Where there was no pre-meditation and the act was committed in a heat of passion and the appellant had not taken any undue advantage or acted in a cruel manner and there was a fight between the parties, the Supreme Court found that the case falls under the fourth exception to [section 300, IPC, 1860](#) and the conviction altered from [section 302, IPC, 1860](#) to section 304, Part I, [IPC, 1860](#).<sup>121</sup> Heat of passion requires that there must be no time for the passions to cool down and in this case the parties have worked themselves into a fury on account of the verbal altercation in the beginning.<sup>122</sup>

This Exception was held not to apply to a case where two bodies of men, for the most part armed with deadly weapons, deliberately entered into an unlawful fight, each being prepared to cause the death of the other, and aware that his own might follow, but determined to do his best in self-defence, and in the course of the struggle death ensued.<sup>123</sup> An unpremeditated assault (in which death is caused) committed in the heat of passion upon a sudden quarrel comes within the Exception.<sup>124</sup>

Exception 4 is attracted only when there is a fight or quarrel which requires mutual provocation and blows by both sides in which the offender does not take undue advantage.<sup>125</sup>

A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1.<sup>126</sup>

The word 'fight' conveys something more than a verbal quarrel.<sup>127</sup> It takes two to make a fight. It is not necessary that weapons should be used in a fight. In order to constitute fight, it is necessary that blows should be exchanged even if they do not all find their target.<sup>128</sup> The fight must be with the person who is killed and not with another person.<sup>129</sup> The words "undue advantage" in this Exception means "unfair advantage".<sup>130</sup> Where a wordy quarrel had taken place and the quarrel had led to the use of weapons by both the parties against each other, the Supreme Court said that it could not be held to be a kind of case in which the accused had deliberately attacked the deceased with an intention to kill them. It is a case which would fall under the Exception 4 to [section 300, IPC, 1860](#).<sup>131</sup> Where on account of a sudden impulse and without any intention or knowledge of the impending consequences, the accused squeezed the testicles of the other causing shock, cardiac arrest and instant death, the Supreme Court held that the offence in question amounted to grievous hurt punishable under section 325 and not under this section.<sup>132</sup> Where two cultivating parties working in their respective fields picked up a sudden quarrel over the dividing line and death ensued, there was no previous ill-will between them and, therefore, no pre-meditation,

conviction was altered from under section 302 to one under section 304, Part I read with section 34.<sup>133</sup> Where, on the other hand, the incident did take place at the spur of the moment and evidence showed that the accused persons intentionally assaulted the deceased and his family in a brutal manner, their conviction under section 300 was held to be proper.<sup>134</sup> The accused persons cannot argue successfully that the incident occurred at the spur of the moment where they came to the place of occurrence armed with deadly weapons. In this case, the evidence established that it was a pre-meditated act, thus their conviction for the offence punishable under [section 302, IPC, 1860](#) was held proper.<sup>135</sup> In a sudden fight in heat of passion and without pre-meditation the accused armed with deadly weapon inflicted fatal blows on the unarmed deceased even when he fell on the ground. It was held that Exception 4 of section 300 was not attracted and the conviction of the accused for murder was proper.<sup>136</sup>

Where the offender took an undue advantage or acted in a cruel and unusual manner, it was held that the benefit of Exception 4 could not be given to him. The Supreme Court observed that the weapon used or the manner of attack is out of all proportion, that fact must be taken into consideration for deciding whether undue advantage was taken.<sup>137</sup>

A person opened the door on the call of his uncle who was under assault. He was unarmed and came out to see what was happening. He received a gunshot at his chest causing death. The Court said that the appellant had taken undue advantage of his position at the time. He could not claim the benefit of Exception 4.<sup>138</sup>

Where though there was a sudden quarrel between the accused and the deceased, there was absolutely no fight between the two as there was no exchange of blows, nor any attack from the side of the deceased who was totally unarmed but nevertheless the accused attacked the deceased with an axe causing his death, it was held that his case did not fall either within Exception 4 or Exception 2 and he was squarely liable under [section 302, IPC, 1860](#).<sup>139</sup> A sudden fight developed between the accused and the deceased while the former was telling the latter that he should not carry his cattle by the side of the field of the accused. Three brothers of the accused rushed to his rescue and belaboured the deceased with whatever weapons they had in their hands. The deceased died of multiple injuries and broken bones. The ferocious cruelty established intention to cause death and took the case out of the exception.<sup>140</sup>

The accused abused a road sweeper who happened to throw mud on him. The father of the sweeper slapped the accused. The infuriated accused went away and came back with others. He alone, however, inflicted the fatal blow. The occurrence was of sudden origin because the gap between the injury and quarrel was that of only a few minutes. There was no previous enmity and blows were not repeated as the deceased fell down helpless. There was no unusual cruelty. The benefit of Exception 4 was allowed.<sup>141</sup> In a quarrel between the accused and his father, the accused attacked his father with a dagger causing death and also attacked the intervener who were his stepmother and sisters. No injury was caused to the accused because all others were unarmed. The accused took undue advantage of that fact. He acted in a cruel manner. The exception was not attracted. He was guilty of murder.<sup>142</sup> It cannot be said in all cases of a single blow that section 302 would not be attracted. A single blow in some cases may entail conviction under section 302 in some cases or under section 304 and in some cases under section 326. Acting on this principle in a case where the victim was invited to a particular place and there three associates of the accused caught hold of him and the accused delivered a single knife blow on the chest, about which it could not be said that it was not inflicted without premeditation, the Court said that it could not be said that the accused had not taken undue advantage. Exception 4 was not attracted.<sup>143</sup>

Where the accused, who had gone along with the deceased and others, picked up a quarrel with the deceased, entered his house, and came back with a knife and gave blows to the deceased and others who tried to stop them and then ran away, it was held that Exception 4 to section 300 was not applicable. Conviction under section 302 was proper.<sup>144</sup> A quarrel took place between a son and his father just outside the son's house. The son dragged the father into the Courtyard. His other sons came out to his rescue. The son retreated into the room, bolted it from inside and shot at them from the window. One of his brothers received a bullet at his chest and died. The plea of self-defence was not accepted. His father and brothers were the eye-witnesses who were naturally there for saving the skin of their father. The accused shot at them from the bolted security of his room.<sup>145</sup>

A previous quarrel triggered off because of sarcastic remarks made during the occasion of a marriage. Three accused started shooting with their respective guns at unarmed victims from close range on vital parts of their bodies. The victims had merely indulged in verbal duel with them. The accused acted in cruel and unusual manner. Conviction for the offence of murder was held to be proper, Exception 4 being not applicable.<sup>146</sup>

### **[s 300.34] Comparison of Exception 1 (provocation) with Exception 4 (sudden fight).—**

Exception 4 of [section 300, IPC, 1860](#) covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1, there is total deprivation of self-control, in the case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct, it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4, all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to [section 300, IPC, 1860](#) is not defined in the [IPC, 1860](#). It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that



the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.<sup>147</sup> In both cases, there is absence of premeditation. But in Exception 1 there is total deprivation of self-control, in case of Exception there is such heat of passion as clouds sober reason and urges the man to do something which he would not otherwise do. A sudden fight implies mutual provocation and blows on each side. The homicide in such a case is not traceable to unilateral provocation. In such cases, the whole blame cannot be attributed to one side. It may be that a fight was initiated by one side but without aggravating provocation from the other side it might not have taken the serious turn. A situation of mutual provocation and aggravation develops making it difficult to apportion the blame between the two sides.<sup>148</sup>

### **[s 300.35] Exception 5.—Death caused of the person consenting to it.—**

The following reasons are given for not punishing homicide by consent so severely as murder:

In the first place, the motives which prompt men to the commission of this offence are generally far more respectable than those which prompt men to the commission of murder. Sometimes it is the effect of a strong sense of religious duty, sometimes of a strong sense of honour, not unfrequently of humanity. The soldier who, at the entreaty of a wounded comrade, puts that comrade out of pain, the friend who supplies laudanum to a person suffering the torment of a lingering disease, the freed man who in ancient times held out the sword that his master might fall on it, the highborn native of India who stabs the females of his family at their own entreaty in order to save them from the licentiousness of a band of marauders, would, except in Christian societies, scarcely be thought culpable, and even in Christian societies would not be regarded by the public, and ought not to be treated by the law, as assassins.<sup>149</sup>

This exception abrogates the rule of English law that a combatant in a fair duel who kills his opponent is guilty of murder. Under this Exception, the person who is killed in a duel "suffers or takes the risk of death by his own choice." In applying the Exception, it should first be considered with reference to the act consented to or authorised, and next with reference to the person or persons authorised, and as to each of those some degree of particularity at least should appear upon the facts proved before the Exception can be said to apply. It must be found that the person killed with a full knowledge of the facts, determined to suffer death, or take the risk of death; and that this determination continued up to and existed at the moment of his death.<sup>150</sup> The consent must have been given unconditionally and without any pre-reservation.<sup>151</sup>

The case supposed in the illustration to Exception 5 is one of the offences expressly made punishable by section 305.

### **[s 300.36] Death caused by voluntary act of deceased resulting from fear of violence.—**

If a man creates in another man's mind an immediate sense of danger which causes such person to try to escape, and in so doing he injures himself, the person who creates such a state of mind is responsible for the injuries which result.<sup>152</sup> If, for instance, four or five persons were to stand round a man, and so threaten him and frighten him as to make him believe that his life was in danger, and he were to back away from them and tumble over a precipice to avoid them, their act would amount to murder.<sup>153</sup>

**[s 300.37] Discovery of body of murdered person not necessary/Absence of *corpus delicti*.—**

It is well-settled law that in a murder case, to substantiate the case of the prosecution, it is not required that dead bodies must have been made available for the identification and discovery of dead body is not *sine qua non* for applicability of [section 299 of IPC, 1860](#).<sup>154</sup> The mere fact that the body of a murdered person has not been found is not a ground for refusing to convict the accused of murder. But when the body is not forthcoming, the strongest possible evidence as to the fact of the murder should be insisted on before conviction.<sup>155</sup> Such evidence could come from the testimony of eye-witnesses or from circumstantial evidence or from both.<sup>156</sup> If the prosecution is successful in providing cogent and satisfactory proof of the victim having met a homicidal death, absence of *corpus delicti* will not by itself be fatal to a charge of murder.<sup>157</sup>

**[s 300.38] Ascertainment of time of death.—**

Judging the time of death from the contents of the stomach may not always be the determinative test. It will require due corroboration from other evidence.<sup>158</sup>

**[s 300.39] Single eye-witness, corroboration needed.—**

A child witness (aged 13 years at the time of incident) deposed categorically about the gruesome incident he had witnessed. The Supreme Court held that in such situation, it is considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witness in Court, as to the identity of the accused, who are strangers to them, in the form of earlier identification proceeding.<sup>159</sup>

**[s 300.40] Acquittal of co-accused, effect.—**

Allegation was that the accused along with the juvenile attacked the deceased. Eye witness deposed that the juvenile was not involved. Acquittal of the juvenile has no effect on the case of others.<sup>160</sup> Benefit of acquittal of co-accused cannot be given to the main accused.<sup>161</sup>

**[s 300.41] Non-production of FIR book.—**

The incident involved assault on villagers and causing of multiple deaths. The injured witness gave written complaint in the hospital duly signed by him. The complaint was immediately sent to the police station. On its basis, a printed FIR was registered and a copy sent to the magistrate. These circumstances completely ruled out the suggestion that the FIR was bogus or doctored. Non-production of the book was due to non-availability. This cannot by itself, invite suspicious glance from the Court or be a ground for throwing out the prosecution case.<sup>162</sup>

**[s 300.41.1] *Ante timed*.—**

The lodging of a First Information Report within 20 minutes of the incident, on the oral dictation at the police station which was four furlongs from the place of incident creates some doubt about the actual time of lodging of the FIR.<sup>163.</sup>

#### **[s 300.42] Delay in FIR.—**

Whether the delay is so long as to draw a cloud of suspicion on the prosecution case will depend upon a variety of factors, which will vary from case to case.<sup>164.</sup> Where the occurrence took place in the late night in a remote village and the sufferers of the incident were the widow and her two minor children, apart from the fact that the police station was one and a half kilometres away, the delay in registering FIR on the next day is proper.<sup>165.</sup>

#### **[s 300.43] Strange behaviour of the complainant.—**

Where the incident of murder occurred inside the forest, while some friends of the complainant were participating in a party and the informant/eye-witness instead of going to the police station went to the house of an Advocate. The Supreme Court found that it appeared to be a very strange behaviour on the part of the complainant and so many of his friends who were with him to go to an Advocate, that too 15 kms away, rather than approaching the Police Station to report the matter.<sup>166.</sup>

#### **[s 300.44] Motive.—**

It is fairly well settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest entirely on circumstantial evidence.<sup>167.</sup> Where other circumstances lead to the only hypothesis that the accused has committed the offence, the Court cannot acquit the accused of the offence merely because the motive for committing the offence has not been established in the case.<sup>168.</sup> If depositions giving the eye-witness account of incident that led to death of deceased are reliable, absence of a motive would make little difference.<sup>169.</sup> When there is an eye-witness account on record, the absence of motive pales into insignificance.<sup>170.</sup>

#### **[s 300.45] Last seen together.—**

It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased.<sup>171.</sup> There may however be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide.<sup>172.</sup> But in *Arabindra Mukherjee v State of WB*,<sup>173.</sup> <sup>174.</sup> it was held that once the accused was last seen with the deceased, the onus is upon him to show that either he was not involved in the occurrence at all or that he had left the deceased at her home or at any other reasonable place. To rebut the evidence of last seen and its consequences in law, the onus was upon the accused to lead

evidence in order to prove his innocence. In *C Perumal v Rajasekaran*,<sup>175,176</sup> there was a time lag of two days in last seen together of A2– A5 with the deceased and Court found it difficult to connect them with the incident. Where the accused was last seen together with the deceased by his wife, but the prosecution could not establish the cause of death, the accused was not convicted based on the last seen theory.<sup>177</sup>

The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing the connectivity between the accused and the crime. Mere non-explanation on the part of the accused by itself, cannot lead to proof of guilt against the appellant.<sup>178</sup> Where it was found that the deceased was in the company of the accused prior to one week of the *post-mortem* of the deceased and it was also found through the *post-mortem* that the murder was about one week ago, the Court held that the last seen theory applies.<sup>179</sup>

Where there was a clear gap of 51 hours and 45 minutes between the time when the victim was last seen in the company of the accused and the time of his death, it was held that this time gap was too wide to act upon the last seen theory.<sup>180</sup>

#### **[s 300.45.1] Co-accused.—**

Merely because two persons have been acquitted that benefit cannot be extended to others in view of the direct evidence establishing their presence and participation in the crime.<sup>181</sup>

#### **[s 300.46] Plea of *alibi*.—**

While weighing the plea of '*alibi*', the same has to be weighed against the positive evidence led by the prosecution.<sup>182</sup>

31. *Santosh v State*, 1975 Cr LJ 602 : AIR 1975 SC 654 [LNIND 1975 SC 50] ; See also *Sehaj Ram*, 1983 Cr LJ 993 (SC) : AIR 1983 SC 614 [LNIND 1983 SC 90] : (1983) 3 SCC 280 [LNIND 1983 SC 90] . There should be causal connection between death and injury, not proved where death ensued 13 days after the alleged injury by the deceased woman's husband, *Imran Khan v State of MP*, (1995) 1 Cr LJ 17 (MP).

32. *Govinda*, (1876) 1 Bom 342; *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 , **distinguish** between culpable homicide and murder restated, nature of *mens rea* required in two provisions also explained.

33. *State of AP v R Punnayya*, 1977 Cr LJ 1 : AIR 1977 SC 45 [LNIND 1976 SC 331] ; *Kalaguru Padma Rao v State of AP*, (2007) 12 SCC 48 [LNIND 2007 SC 179] : AIR 2007 SC 1299 [LNIND 2007 SC 179] , **distinction** between sections 299 and 300 restated. *Sunder Lal v State of Rajasthan*, (2007) 10 SCC 371 [LNIND 2007 SC 599] ; *Abbas Ali v State of Rajasthan*, (2007) 2 SCC 129 : AIR 2007 SC 1239 [LNIND 2007 SC 165] : 2007 Cr LJ 1667 , **distinction** restated.

34. *Laxminath v State of Chhattisgarh*, AIR 2009 SC 1383 [LNIND 2009 SC 58] : (2009) 3 SCC 519 [LNIND 2009 SC 58] ; *Budhi Lal v State of Uttarakhand*, AIR 2009 SC 87 [LNIND 2008 SC 1928] : (2008) 14 SCC 647 [LNIND 2008 SC 1928] ; *Abdul Waheed Khan Waheed v State of Andhra Pradesh*, JT 2002 (6) SC 274 [LNIND 2002 SC 530] ; *Augustine Saldanha v State of Karnataka*, 2003 (10) SCC 472 [LNIND 2003 SC 709] ; *Thangaiya v State of TN*, 2005 (9) SCC 650 [LNIND 2004 SC 1221] and *Sunder Lal v State of Rajasthan*, 2007 (10) SCC 371 [LNIND 2007 SC 599] .

35. *Ajit Singh v State of Punjab*, (2011) 9 SCC 462 [LNIND 2011 SC 844] .

36. *Rampal Singh v State of UP*, 2012 Cr LJ 3765 : (2012) 8 SCC 289 [LNIND 2012 SC 425] .

37. *State of Orissa v Raja Parida*, 1972 Cr LJ 193 199 (Ori). *Gurmej Singh v State of Punjab*, AIR 1992 SC 214 [LNIND 1991 SC 301] : 1992 Cr LJ 293 : 1991 Supp (2) SCC 75 , discussing how evidence in criminal cases is to be appreciated. Other cases giving guidelines for appreciation of evidence for purposes of section 300 are *State of UP v Ram Chandra*, 1992 Cr LJ 418 All (doubtful evidence); *Anokh Singh v State of Punjab*, AIR 1992 SC 598 : 1992 Cr LJ 525 : 1992 Supp (1) SCC 426 (improbable evidence, delay in lodging FIR); *State of Karnataka v Venkatesh*, AIR 1992 SC 674 : 1992 Cr LJ 707 (prosecution witness not inspiring confidence). See also *Sakharam v State of MP*, AIR 1992 SC 758 [LNIND 1992 SC 157] : 1992 Cr LJ 861 , a boy of 16–17 years of age lived alone with the deceased woman in a single-room house some eight days before the incident, woman killed by gun-shot injuries, the boy acquitted because there was no other evidence than that of living together; *Peddireddy Subbareddi v State of AP*, 1991 Cr LJ 1391 : AIR 1991 SC 1356 , gap of 15 hours in lodging FIR, the sole eye-witness not telling the fact to any of the villagers. Acquittal on benefit of doubt. *Gangotri Singh v State of UP*, AIR 1992 SC 948 : 1992 Cr LJ 1290 , where the dying declaration was clear in reference, but did not even mention the names of the other accused with whom the deceased was on enmity, conviction of the named accused alone was held to be proper.

**Acquittals.**—*Varun Chaudhary v State of Rajasthan*, 2011 Cr LJ 675 : AIR 2011 SC 72 [LNIND 2010 SC 1067] : (2011) 12 SCC 545 [LNIND 2010 SC 1067] ; the recovered knife was never produced before the court and was never shown to the accused; scanty evidence; conviction set aside; *State Through CBI v Mahender Singh Dahiya*, (2011) 3 SCC 109 [LNIND 2011 SC 114] : AIR 2011 SC 1017 [LNIND 2011 SC 114] : 2011 Cr LJ 2177 , circumstances relied on do not connect the accused, accused acquitted. *Allarakha K Mansuri v State of Gujarat*, AIR 2002 SC 1051 [LNIND 2002 SC 119] , defective investigation should not be made a ground of acquittal by itself. The setting aside of acquittal by the High Court was held to be proper. *Chander Pal v State of Haryana*, AIR 2002 SC 989 [LNIND 2002 SC 105] , acquittal because of unsatisfactory evidence, *State of Haryana v Ram Singh*, AIR 2002 SC 620 [LNIND 2002 SC 32] , largely on matters of evidence, such as gap between medical and eye-witness account, relative witness not to be rejected for that reason alone, defence witnesses are entitled to equal treatment with those of the prosecution. *Panchdeo Singh v State of Bihar*, AIR 2002 SC 526 [LNIND 2001 SC 3070] , acquittal because of unreliable dying declaration. *Surendra Singh v State of Bihar*, AIR 2002 SC 260 [LNIND 2001 SC 2701] , firing at the inmates of a car, one killed, one injured. The injured eye-witness identified the assailant at the test identification parade but had stated at the stage of the FIR that could not recognise him. Conviction of the accused was set aside. *Thanedar Singh v State of MP*, AIR 2002 SC 175 [LNIND 2001 SC 2451] , killing at night, no moonlight, no identification of killers, High Court not justified in reversing acquittal. *RV Chacko v State of Kerala*, AIR 2001 SC 537 [LNIND 2000 SC 1797] , acquittal because no proper proof. *Durbal v State of UP*, (2011) 2 SCC 676 [LNIND 2011 SC 100] : AIR 2011 SC 795 [LNIND 2011 SC 100] : 2011 Cr LJ 1106 ; presence of eyewitness doubtful, acquitted; *Prahlad Singh v State of MP*, 2011 (8) Scale 105 [LNIND 2011 SC 1086] : 2011 Cr LJ 4366 , possibility that these three accused

roped in on account of animosity cannot be ruled out and given them the benefit of doubt on that score. *Surendra Pratap Chauhan v Ram Naik*, AIR 2001 SC 164 [LNIND 2000 SC 1521] : 2001 Cr LJ 98 , murder in village groupism real killers could not be identified and other failures of proof, acquittal, *Jagdish v State of MP*, AIR 2000 SC 2059 [LNIND 2000 SC 842] : 2000 Cr LJ 2955 , acquittal of one accused because of uncertainty in technical as well as general evidence, conviction of the other because of the case proved against him.

*Shaikh Umar Ahmed Shaikh v State of Maharashtra*, AIR 1998 SC 1922 [LNIND 1998 SC 498] : 1998 Cr LJ 2534 , strong possibility of the accused being shown to the witnesses before identification in court, conviction set aside because the identification was the basis of the conviction. *Bhola Singh v State of Punjab*, AIR 1999 SC 767 [LNIND 1998 SC 1050] : 1999 Cr LJ 1132 , acquittal because the presence of the witnesses on the spot became doubtful, their testimony seemed to have been tailored in accordance with the *post-mortem* report. Delayed test identification parade. Accused acquitted: *State of Maharashtra v Syed Umar Sayed Abbas*, 2016 Cr LJ 1445 : 2016 (3) SCJ 77 . *Vijayan v State of Kerala*, AIR 1999 SC 1086 [LNIND 1999 SC 159] : 1999 Cr LJ 1638 , acquittal, because photographs were published and, therefore, identification evidence became useless and dying declaration was also unreliable. *Mohd. Zahid v State of TN*, AIR 1999 SC 2416 [LNIND 1999 SC 593] : 1999 Cr LJ 2699 , acquittal because eye-witnesses and the doctor both found to be not reliable. *Hargovandas Devrajbhai Patel v State of Gujarat*, AIR 1998 SC 370 [LNIND 1997 SC 1443] : 1998 Cr LJ 662 (SC), no proof that the police officer caused death of the deceased in police custody. Acquittal *Omwati v Mahendra Singh*, AIR 1998 SC 249 [LNIND 1997 SC 91] , 250 : 1998 Cr LJ 401 , acquittal because no proper investigation and evidence. *Daljit Singh v State of Punjab*, AIR 1999 SC 324 : 1999 Cr LJ 454 , acquittal because of false witnesses. *Din Dayal v Raj Kumar*, AIR 1999 SC 537 : 1999 Cr LJ 487 , accused acquitted because witnesses not truthful. *Tanviben Pankaj Kumar Divetia v State of Gujarat*, AIR 1997 SC 2193 [LNIND 1997 SC 803] : 1997 Cr LJ 2535 , no evidence to lead to irresistible conclusion about complicity of the accused in causing murder, conviction on surmises and conjectures set aside. *Mohd Aman v State of Rajasthan*, AIR 1997 SC 2960 : 1997 Cr LJ 3567 , not proper handling of finger-print evidence, conviction not proper. *Shahbad Pall Reddy v State of AP*, AIR 1997 SC 3087 [LNIND 1997 SC 1096] : 1997 Cr LJ 3753 , murder alleged to be by 26 persons, no proper investigation, acquittal. *Harkirat Singh v State of Punjab*, AIR 1997 SC 3231 [LNIND 1997 SC 988] : 1997 Cr LJ 3954 , material contradictions in statements of witnesses, other irregularities, acquittal. *Sahib Singh v State of Haryana*, AIR 1997 SC 3247 [LNIND 1997 SC 1005] : 1997 Cr LJ 3956 , delayed FIR, highly interested witnesses, confession not truthful, conviction liable to be set aside. *State of UP v Bhagwan*, AIR 1997 SC 3292 : (1997) 11 SCC 19 , acquittal because of unreliable eye-witnesses. *B Subba Rao v Public Prosecutor*, AIR 1997 SC 3427 [LNIND 1997 SC 1065] : 1997 Cr LJ 4072 , because the source of light through which identification was possible not proved *Rambilas v State of MP*, AIR 1997 SC 3954 [LNIND 1997 SC 1302] : 1997 Cr LJ 4649 , a notorious person murdered on the day of a festival and body thrown into a tank, eye-witnesses not likely because of the festival, that is why were not real there could be other possible killers, acquittal. *Paramjit Singh v State of Punjab*, AIR 1997 SC 1614 [LNIND 1996 SC 2101] : (1997) 4 SCC 156 [LNIND 1996 SC 2101] , two types of evidence, last seen together and dying declaration, both found not reliable. Acquittal, *Jaspal Singh v State of Punjab*, AIR 1997 SC 332 [LNIND 1996 SC 1648] : 1997 Cr LJ 370 , confession and identification evidence weak, acquittal. *Devinder v State of Haryana*, AIR 1997 SC 454 [LNIND 1996 SC 1460] : 1996 Cr LJ 4461 , acquittal because of benefit of doubt. *Chander Pal v State of Haryana*, 2002 Cr LJ 1481 (SC), quarrel in the course of playing game of ludo, murder, no proper evidence, acquittal. *Bijoy Singh v State of Bihar*, 2002 Cr LJ 2623 : AIR 2002 SC 1949 [LNIND 2002 SC 300] , prosecution for murder and attempt to murder, 12 persons were convicted, but

there was no proper investigation, acquittal. *State of AP v Kowthalam Chinna Narasimhulu*, 2001 Cr LJ 722 (SC), political rivalry, murder, unreliable witnesses, acquittal. *State of MP v Surpa*, 2001 Cr LJ 3290 (SC), contradictions in evidence, wife of the victim not disclosing the incident to any one till the next day, acquittal.

*Kanhai Mishra v State of Bihar*, 2001 Cr LJ 1258 (SC), rape and murder, acquittal, *Dhanjibhai v State of Gujarat*, 2001 Cr LJ 1587 (Guj), another case of being killed by burns, but no proof of involvement of the accused husband. *Sohan v State of Haryana*, 2001 Cr LJ 1707 (SC), only interested witness examined, no independent witness examined though available, conviction set aside. *State of Rajasthan v Teja Singh*, 2001 Cr LJ 1176 (SC), no corroboration of evidence of interested eye-witness, acquittal proper. *Kalyan v State of UP*, 2001 Cr LJ 4677 (SC), acquittal because of poor state of evidence. *State of Delhi*, 2001 Cr LJ 61 (Del) acquittal from the charge of raping and killing one's daughter poor evidence. *Sudama Pandey v State of Bihar*, 2002 Cr LJ 582 (SC), acquittal because of no proper evidence. *Gurucharan v State of UP*, 2000 Cr LJ 4560 (All), accused persons alleged to have entered a bus, fired at passengers and used knives, death of two caused, acquitted under benefit of doubt. *Ajab Singh v State of UP*, 2000 Cr LJ 1809 : (2000) 3 SCC 521 [LNIND 2000 SC 2011] , order by Supreme Court of investigation by CBI. *Chhannoo Lal v State of UP*, 2000 Cr LJ 2787 (All), killing of wife and children, but prosecution could prove nothing, husband acquitted. *Referring Officer v Tiringhly*, 2000 Cr LJ 2569 (AP), murder of a priest of a temple, and throwing away the body into a pond. The court found it to be a case of no evidence. Conviction of the accused and sentence of death set aside. *State of Punjab v Kulwant Singh*, 2000 Cr LJ 2692 (P&H), triple murder, accused acquitted because of prosecution failures. *Dinesh v State of Haryana*, AIR 2002 SC 3474 : 2002 Cr LJ 2970 (SC), acquittal because of inconsistent evidence and weapons not produced. *Mahabir Singh v State of Haryana*, 2001 Cr LJ 3945 (SC), sole eye-witness contradicting himself acquittal. *State of Rajasthan v Chhote Lal*, 2012 AIR (SCW) 1159 : 2012 Cr LJ 1214 , sole eye witness turned hostile, acquittal confirmed; *Javed Masood v State of Rajasthan*, AIR 2010 SC 979 [LNIND 2010 SC 214] : (2010) 3 SCC 538 [LNIND 2010 SC 214] : (2010) 3 SCR 236 [LNIND 2010 SC 214] : 2010 Cr LJ 2020 , presence of eye witness doubtful, conviction set aside. *Jiten Besra v State of WB*, AIR 2010 SC 1294 [LNIND 2010 SC 224] : (2010) 3 SCC 675 [LNIND 2010 SC 224] : 2010 Cr LJ 2032 , all the alleged incriminating circumstances could not be said to have been established; accused is entitled to benefit of doubt. *Gajula Surya Prakasarao v State of AP*, (2010) 1 SCC 88 [LNIND 2009 SC 1973] : 2010 Cr LJ 2102 : AIR 2010 SC (Supp) 181, eye witness did not name the accused in the statement, accused acquitted; *Jaipal v State*, 1998 Cr LJ 4085 : AIR 1998 SC 2787 [LNIND 1999 PNH 698] , murder, persons accused not shown to be guilty, acquittal. *State of HP v Dhani Ram*, 1997 Cr LJ 214 : 1997 SCC (Cr) 244 (SC), the only proof was that of motive, but there was no other evidence, acquittal. *Gurprit Singh v State of Punjab*, AIR 2002 SC 2390 , TADA offender, murder, charged, not proved, acquittal. *Nasim v State of UP*, 2000 Cr LJ 3329 (All), arsenic poison mixed in pulse drink, six persons lost life, but who mixed not clear, act of persons other than cook not ruled out, acquittal. *Deva v State of Rajasthan*, 1999 Cr LJ 265 : AIR 1999 SC 214 [LNIND 1998 SC 1402] , murder by accused not proved, acquittal. *Surinder Kumar v State of Punjab*, 1999 Cr LJ 267 : AIR 1999 SC 215 [LNIND 2012 SC 879] , veterinary surgeon killed, accused acquitted because his guilt could not be proved. *Bhupinder Singh v State of Punjab*, 1999 Cr LJ 396 (SC), death probably in encounter firing, constable acquitted. *State of HP v Rakesh Kumar*, 1999 Cr LJ 564 (HP), acquittal. *Ashok Kumar v State of Bihar*, 1999 Cr LJ 599 (SC), murder of morning walker, dying declaration, not reliable, no other evidence, acquittal. *Paras Yadav v State of Bihar*, 1999 Cr LJ 1122 : AIR 1999 SC 644 [LNIND 1999 SC 17] , participation of accused in murder not proved, acquittal. *Chandregowda v State of Karnataka*, 1999 Cr LJ 1719 (Kant), child sacrificed to death by throttling for the purpose of learning black

magic, doctor's certificate of schizophrenia, only evidence was admission of guilt under [section 313, Cr PC, 1973](#). Held, conviction not possible on that basis alone. *Ahmed Bin Salam v State of AP*, [1999 Cr LJ 2281 : AIR 1999 SC 1617](#) , conviction set aside because of failure of evidence; *State of UP v Kapildeo Singh*, [1999 Cr LJ 2594 : AIR 1999 SC 1783 \[LNIND 1999 SC 140\]](#) , accused, alleged to have entered *Kutia* of their victim at mid night to settle land dispute and assaulted him with sharp instruments to death, but no proof, acquittal. *Balbir Singh v State of Punjab*, [1999 Cr LJ 4076 : AIR 1999 SC 3227 \[LNIND 1999 SC 718\]](#) , acquittal because of no proof. *Vithal Tukaram More v State of Maharashtra*, [AIR 2002 SC 2715 \[LNIND 2002 SC 449\] : 2002 Cr LJ 3546](#) , acquittal because of unreliable evidence. *Mathura Yadav v State of Bihar*, [AIR 2002 SC 2707 \[LNIND 2002 SC 447\] : 2002 Cr LJ 3538](#) , glaring discrepancies in evidence of eye-witnesses, acquittal; *BL Satish v State of Karnataka*, [2002 Cr LJ 3508 \(SC\)](#), grandson was charged of strangulating his grandmother to death. The only circumstance against him was his statement that ornaments were kept in his maternal grand father's house, acquittal; *Thangavelu v State of TN*, [2002 Cr LJ 3558 \(SC\)](#), false evidence case demolished by medical report as to time of death.

*Pandit Ram Prakash Sharma v Khairati Lal*, [1998 Cr LJ 1410 : AIR 1998 SC 2820](#) , unreliable witnesses, acquittal. *Prem Prakash Mundra v State of Rajasthan*, [1998 Cr LJ 1620 : AIR 1998 SC 1189 \[LNIND 1998 SC 133\]](#) , murder of child, accused could not be connected with it. *State of Rajasthan v Mahaveer*, [1998 Cr LJ 2275 \(SC\)](#), enmity between parties, but nothing could be proved. *Kochu Maitheen Kannu Salim v State of Kerala*, [1998 Cr LJ 2277 \(SC\)](#), conduct of eye-witnesses did not inspire confidence, acquittal. *State of Punjab v Karnail Singh*, [1998 Cr LJ 2556 : AIR 1998 SC 1936 \[LNIND 1998 SC 307\]](#) , death of five persons by gun shots, no evidence as to who caused whose death, defence version that the accused acted in self-defence was supported by evidence, acquittal. *Jaipal v State (UT of Chandigarh)*, [1998 Cr LJ 4085 : AIR 1998 SC 2787 \[LNIND 1999 PNH 698\]](#) , considered acquittal by the trial judge, setting aside by the High Court merely because a different view of the evidence was also possible was not proper; *Kaptan Singh v State of MP*, acquittal solely on the basis of investigation, held patently wrong; *State of HP v Dhani Ram*, [1997 Cr LJ 214 : AIR 1996 SCW 4055](#) , acquittal upheld; *Roshan Singh v State of UP*, [1997 Cr LJ 256 \(All\)](#), acquittal because of benefit of doubt; *Darshan Singh v State of Punjab*, [1997 Cr LJ 370 : AIR 1970 SC 332](#) , accused not properly identified, confession of guilt not found reliable, acquittal.

*Kuldip Singh v State of Punjab*, [2002 Cr LJ 3944 : AIR 2002 SC 3023 \[LNIND 2002 SC 498\]](#) , murder of the wife and daughter of informant, but the accused could not be connected with it, acquittal; *Dhananjay Shanker Shetty v State of Maharashtra*, [2002 Cr LJ 3729 \(SC\)](#), circumstantial evidence of murder by history sheet. But no proof. The accused was arrested in injured condition. No explanation, acquittal. *Toran Singh v State of MP*, [2002 Cr LJ 3732 \(SC\)](#), material contradictions and omissions in statements of witness. *Muthu v State of Karnataka*, [2002 Cr LJ 3782 \(SC\)](#), no evidence to connect the accused with the murder, close scrutiny of evidence disclosed hollowness of prosecution case. Accused entitled to benefit of doubt. *Balu Sonba Shinde v State of Maharashtra*, [AIR 2002 SC 3137 \[LNIND 2002 SC 552\]](#) , deposition of a witness on whom the prosecution story hinged was found partly improbable, the evidence of hostile witness was rather found more normal and natural. Accused entitled to benefit of doubt.

*Ashish Batham v State of MP*, [AIR 2002 SC 3206 \[LNIND 2002 SC 556\]](#) , failure in love affair alleged to be motive for murder, acquitted because of lack of credibility in evidence. *Raghunath v State of Haryana*, [AIR 2003 SC 165 \[LNIND 2002 SC 703\] : 2003 Cr LJ 401](#) , group rivalry, accused persons entered the house of their victim and caused death, but evidence doubtful, the witnesses, while taking the injured to hospital, did not file report even when they crossed two



police stations, acquittal. *Jasbir v State of Haryana*, AIR 2003 SC 554 [LNIND 2002 SC 805] : 2003 Cr LJ 826 , there were lathi injuries on the person of the deceased, lathi wielding accused were acquitted. *State of Karnataka v AB Nagaraj*, AIR 2003 SC 666 [LNIND 2002 SC 783] : 2003 Cr LJ 848 , allegation that the daughter was killed by her father and step-mother. Witnesses who saw them in the national park could not be believed because they were working behind bushes. The theory of the accused parents that they were looking for their daughter seemed to be probable. There was no history of bad treatment, acquittal; *Kantilal v State of Gujarat*, AIR 2003 SC 684 [LNIND 2002 SC 789] : 2003 Cr LJ 850 , prosecution case was that the accused stole gold ornaments of the victim woman and murdered her. The facts that he had given the ornaments and ingot to a jeweller for melting were not established. Link in the chain of circumstances missing, acquittal. *Bhim Singh v State of Haryana*, AIR 2003 SC 693 [LNIND 2002 SC 793] : 2003 Cr LJ 857 , acquittal because of uncorroborated and controverted evidence. *State of UP v Arun Kumar Gupta*, AIR 2003 SC 801 [LNIND 2003 SC 9] : 2003 Cr LJ 894 , except for being indebted to the deceased, other evidence to connect the accused with the murder was nullity, acquittal. *Lallu Manjhi v State of Jharkhand*, AIR 2003 SC 854 [LNIND 2003 SC 3] : 2003 Cr LJ 914 , land dispute, but who was in possession not properly proved, interested eye-witness not corroborated. No conviction on sole testimony. *Zafar v State of UP*, AIR 2003 SC 931 [LNIND 2003 SC 41] : 2003 Cr LJ 1218 , sole child witness, examined after four to five days probably because another eye-witness had backed out. Not reliable. No conviction. *Jai Pal v State of UP*, AIR 2003 SC 1012 [LNIND 2003 SC 134] : 2003 Cr LJ 1243 eye-witness in examination-in-chief did not name the accused, in cross-examination he named him among so many others, but no overt act attributed, delay in examining witnesses not explained, identification of dead body doubtful, acquittal. *Bhagwan Singh v State of MP*, AIR 2003 SC 1088 [LNIND 2003 SC 82] : 2003 Cr LJ 1262 , mother killed by assailants, six-year-old child sleeping with her, testified that after seeing his mother being assaulted, he went to sleep again, no TI parade held, the conduct of the father was also unnatural, he did not enquire anything from the child before lodging the FIR, sending civil disputes between the accused and the deceased was found to be weak cause, acquittal. *Shailendra Pratap v State of UP*, AIR 2003 SC 1104 [LNIND 2003 SC 6] : 2003 Cr LJ 1270 , another case of acquittal because of weak links in evidence. *Kanwarlal v State of MP*, 2003 Cr LJ 82 (SC), the allegation that the victim was assaulted by several accused persons in free fight with axes and spears. But no cut injuries except one on head, conviction of one accused for murder not sustainable. *Mohan Singh v Prem Singh*, 2003 Cr LJ 11 : AIR 2003 SC 3582 , failure of evidence on all points in the trial for murder, defence version more probable, acquittal. *Nabab Khan v State of MP*, 2003 Cr LJ 94 (MP), sole eye-witness, other factors of evidence not reliable, casting doubt upon sole-witness account, acquittal. This was an attack on the whole family. Four members were killed. The sole eye-witness who survived with injuries was not medically examined and false explanations were submitted for the same. *Jai Narain v State of UP*, 2000 Cr LJ 168 (All), evidence of homemates of the deceased contradictory, no independent witness, motive that they were working as police informers not proved, unexplained delay in medical examination of deceased, defence version more probable, acquittal. *Narendra Singh v State of UP*, 2003 Cr LJ 205 (All), killing of man's wife, his son and nephew, proof against the alleged killers not substantiated, acquittal. *Moti v State of UP*, 2003 Cr LJ 1694 : AIR 2003 SC 1897 [LNIND 2003 SC 302] , serious difference in family evidence and medical evidence, uncertainty benefit of doubt. *Suresh Chaudhary v State of Bihar*, 2003 Cr LJ 1717 : AIR 2003 SC 1981 [LNIND 2003 SC 289] , presence of eye-witness at the site of three murders, time of death, time of lodging FIR doubtful, medical evidence showing use of explosive bomb, eye-witness did not mention it, acquittal. *State of Punjab v Sucha Singh*, 2003 Cr LJ 1210 : AIR 2003 SC 1471 [LNIND 2003 SC 177] , murder in revenge, eye-witness father of the deceased, but rendered no help at rescue, his presence at the spot became doubtful, other witnesses also not reliable,

conviction set aside. *Bharat v State of MP*, 2003 Cr LJ 1297 (SC), circumstantial evidence, chain not complete, murder for robbery, recovery of doubtful value, extra-judicial confession, not reliable, acquittal. *State of UP v Dharamraj*, 2003 Cr LJ 1522 : AIR 2003 SC 1589 [LNIND 2003 SC 206] , eye-witnesses gave different version of the weapons used, acquittal. *Rajeevan v State of Kerala*, 2003 Cr LJ 1572 : AIR 2003 SC 1813 , accusation due to political bitterness, acquittal. *Baldev Singh v State of MP*, 2003 Cr LJ 880 : AIR 2003 SC 2098 [LNIND 2003 SC 2] , improbability of murder by accused, acquittal. *Sambhunath v State of WB*, 2003 Cr LJ 975 (Cal), conviction set aside because the chain of circumstances was not complete. *Shankar Singh v State of UP*, 2003 Cr LJ 1095 (All), killed with gunshot injury, delay in lodging FIR, conduct of eye-witnesses unnatural, acquittal. *State of UP v Krishna Pal*, 2003 Cr LJ 1115 (All), a man and his son killed, evidence of his wife and daughter found to be self-contradictory, acquittal. *Suresh B Nair v State of Kerala*, 2003 Cr LJ 1152 (Ker), the accused killed his victim with a piece of stone, the eye-witness did not know him before, identification parade not held, the identification by the witnesses was not corroborated, acquittal. *Raghunath v State of Haryana*, 2003 Cr LJ 401 (SC), failure of the prosecution case. *Ganga Singh v State of UP*, 2003 Cr LJ 653 (All), failure of prosecution to connect points. *Brijpal Singh v State of MP*, AIR 2003 SC 2460 [LNIND 2003 SC 485] , confusion caused by witnesses as to killing by gunshots, ballistic opinion contradicted eye-witnesses, benefit of doubt. *State of UP v Dharamraj*, AIR 2003 SC 1589 [LNIND 2003 SC 206] , witnesses spoke of different instruments of murder, FIR ante-timed, acquittal. *Moti v State of UP*, AIR 2003 SC 1897 [LNIND 2003 SC 302] , time of occurrence of murder, *post-mortem* report as to state of food in the stomach contradicted by the statements of family members as to time of food intake, time of killing became uncertain and resulted in acquittal. *State of MP v Mishrilal*, 2003 Cr LJ 2312 (SC), the prosecution suppressed the true genesis of the incident, in fact the prosecution party were the aggressors, they did not explain anything about injuries received by three accused persons, one of whom was seriously injured, every detail of the prosecution case was found to be doubtful. Acquittal of accused persons. *Khima Vikamshi v State of Gujarat*, 2003 Cr LJ 2025 (SC), allegation that the accused killed the deceased in the presence of his *pardanashin* daughter in law, which was itself a doubtful fact and her statements were also not reliable, there were no blood stains on her clothes, acquittal. *Sadhu Ram v State of Rajasthan*, 2003 Cr LJ 2331 (SC), death of woman alongwith her eight-month-old daughter, two versions possible, accidental burning or intentionally set on fire, witness not clear, no reliance on such witness, acquittal. *State of UP v Bhagwani*, 2003 Cr LJ 2337 (SC), blood-stained earth not collected, independent witnesses not called, doubt about place of happening, acquittal.

**Appeal against acquittal.**—Acquittal on the charge of murder of child because of denial of inheritance, conviction by High Court, upheld by Supreme Court; *Swami Prasad v State of MP*, (2007) 13 SCC 25 [LNIND 2007 SC 293] ; *Shaik China Brahmam v State of AP*, (2007) 14 SCC 457 [LNIND 2007 SC 1388] : AIR 2008 SC 610 [LNIND 2007 SC 1388] , acquittal by the trial court **reversed** by the High Court, conviction by High Court upheld by Supreme Court; *Mallesappa v State of Karnataka*, (2007) 13 SCC 399 [LNIND 2007 SC 1112] : AIR 2008 SC 69 [LNIND 2007 SC 1112] , conviction found to be unsustainable in the circumstances of the case; *Sunny Kapoor v State (UT of Chandigarh)*, 2006 Cr LJ 2920 (SC), circumstantial evidence with glaring discrepancies, conviction not upheld.

**Convictions.**—*State of Punjab v Jugraj Singh*, AIR 2002 SC 1083 [LNIND 2002 SC 118] , acquittal set aside, minor irregularities in evidence not to be over weighed. *Prakash Dhawal Khairnar v State of Maharashtra*, AIR 2002 SC 340 [LNIND 2001 SC 2841] , the accused wiped out his brother with family in order to prevent partition, the confessional statement of his son who had

seen multiple murders, alongwith other circumstances, established guilt, conviction. *Rama Mangaraji Chacherkar v State of Maharashtra*, AIR 2002 SC 283 [LNIND 2001 SC 2771] , dispute between brothers over distribution of agricultural produce, death of the brother caused by hurling a hand grenade at him. The wife of the deceased testified that she did not see throwing of bomb but her evidence showed that she had seen the whole incident. Conviction not interfered with. *Brij Lal v State of Haryana*, (2002) SC 291 : 2002 Cr LJ 581 , minor difference in the eye-witness version and medical evidence as to in which part of the head the bullet struck, conviction maintained. *Meharban Singh v State of MP*, AIR 2002 MP 299 : 2002 Cr LJ 586 (SC) villagers taking injured in bullock cart to hospital, death on the way, the injured person before his death told them about his assailant, reliable, conviction, no interference. *Majid v State of Haryana*, AIR 2002 SC 382 [LNIND 2001 SC 2827] , minor son of the deceased found to be natural and reliable witness, conviction upheld. *Sewaka v State of MP*, AIR 2002 MP 50 : 2002 Cr LJ 205 , murder of husband, wife grappled with killers but they escaped, moonlight identification, conviction maintained. *Majju v State of MP*, AIR 2001 SC 2930 [LNIND 2001 SC 2409] : 2001 Cr LJ 4762 , eye-witness account of the way in which the accused gave *farsa* (axe) blows to the deceased found to be wholly trustworthy, *post-mortem* report that there were no incised wounds was not allowed to overthrow the genuine eye-witness account. Conviction maintained. *Harisingh M Vasava v State of Gujarat*, 2002 Cr LJ 1771 (SC), another case of conviction because of good evidence. *Rajesh v State of Gujarat*, 2002 Cr LJ 1821 (SC), conviction on the strength of technical evidence finger prints expert. *Ram Kumar Laharia v State of MP*, AIR 2001 SC 556 [LNIND 2001 SC 76] : 2001 Cr LJ 712 , 11-year-old boy put into touch with live electric wire and then threw into water alongwith the wire, conviction for murder. *Sambasivan v State of Kerala*, AIR 1998 SC 2107 [LNIND 1998 SC 556] : 1998 Cr LJ 2924 , rival trade unionists, one of them threw bombs on the members of the other, evidence of the members of the victim union acceptable, conviction. *Umesh Singh v State of Bihar*, AIR 2000 SC 2111 [LNIND 2000 SC 871] : 2000 Cr LJ 6167 , the accused tried to take away paddy from the thrashing floor. On resistance, came out with lathi blows and gun shots, killing one person, convicted for murder. *Swaran Singh v State of Punjab*, AIR 2000 SC 2017 [LNIND 2000 SC 734] : 2000 Cr LJ 2780 , enmity between the accused and deceased, eye-witnesses, conviction. *Paramjit v State of Haryana*, AIR 2000 SC 2038 [LNIND 2000 SC 878] : 2000 Cr LJ 2966 , both the accused and deceased were armed with double barrel guns, yet it could not be said that the accused was acting in self-defence, conviction. *Manjeet Singh v State (NCT) of Delhi*, AIR 2000 SC 1062 [LNIND 2000 SC 305] : 2000 Cr LJ 1439 , murder, natural family witnesses, conviction. *SN Dube v NB Bhoir*, AIR 2000 SC 776 [LNIND 2000 SC 73] : 2000 Cr LJ 830 , conviction under section 300 read with sections 120 and 149, eye-witnesses reliable. *State of Karnataka v R Yarappa Reddy*, AIR 2000 SC 185 [LNIND 1999 SC 894] : 2000 Cr LJ 400 , conviction because of clear evidence. In reference to the evidence of eye-witnesses, the court said that criminal courts should not expect set reaction from eye-witnesses who see an incident like murder. *State of Maharashtra v Manohar*, AIR 1998 SC 166 : 1998 Cr LJ 335 , re-appreciation of evidence, acquittal of the accused by the High Court set-aside. *Surendra Narain v State of UP*, AIR 1998 SC 192 [LNIND 1997 SC 1689] : 1998 Cr LJ 359 (SC), a person shot to death while on rickshaw, co-sitter on the rickshaw, witness, reliable, conviction, rickshaw puller not examined, not material, evidence has to be weighed, not counted. Proof of motive is not necessary when the accused being guilty is amply proved by evidence. Another ruling to the same effect, *State of UP v Nahar Singh*, AIR 1998 SC 1328 [LNIND 1998 SC 215] : 1998 Cr LJ 2006 , motive proved in reference to the main accused, also identification evidence and dying declaration, convicted, others acquitted. *Jinnat Mia v State of Assam*, AIR 1998 SC 533 [LNIND 1997 SC 1618] : 1998 Cr LJ 851 , killing a man while in bed, his wife being also injured. Her testimony led to conviction. *Jagdish v State of Haryana*, AIR 1998 Sc 732 : 1998 Cr LJ 1099 , shooting down with gun, conviction, no

interference called for. *Atmendra v State of Karnataka*, AIR 1998 SC 1985 [LNIND 1998 SC 386] : 1998 Cr LJ 2838 , killing by intentional shooting not accidental. *Ram Gopal v State of Rajasthan*, AIR 1998 SC 2598 : 1998 Cr LJ 4066 , death by gunshot injury before home inmates, who being natural witnesses, conviction.

*Ram Khilari v State of Rajasthan*, AIR 1999 SC 1002 [LNIND 1999 SC 1347] : 1999 Cr LJ 1450 , conviction possible on the basis of a confession. *Bhaskaran v State of Kerala*, AIR 1998 SC 476 [LNIND 1997 SC 1562] : 1998 Cr LJ 684 , death caused by stabbing, conviction because of reliable witnesses. *Bharat Singh v State of UP*, AIR 1999 SC 717 [LNIND 1998 SC 1112] : 1999 Cr LJ 829 , accused convicted on the evidence of eye-witnesses, it was immaterial that the personal body guards of the deceased were not examined. *Daleep Singh v State of UP*, AIR 1997 SC 2245 : 1997 Cr LJ 2760 , evidence of eye-witnesses supported by FIR and also by medical evidence, conviction proper, *Baitullah v State of UP*, AIR 1997 SC 3946 [LNIND 1997 SC 1322] : 1997 Cr LJ 4644 , outspoken murder, proof of motive not necessary. *State of Gujarat v Anirudhsingh*, AIR 1997 SC 2780 [LNIND 1997 SCDRCHYD 22] : 1997 Cr LJ 3397 , flag-hoisting ceremony, hitting the deceased from behind with unlicensed firearm, conviction for murder, *Kailash v State of UP*, AIR 1997 SC 2835 [LNIND 1997 SC 1686] : 1997 Cr LJ 3511 , conviction for murder of three members of family, reliable witnesses. *Dalip Singh v State of Punjab*, AIR 1997 SC 2985 [LNIND 1997 SC 882] : 1997 Cr LJ 3647 , presence of eye-witnesses, not doubtful, supported by medical evidence, defence version found false, conviction. *Baleshwar Mandal v State of Bihar*, AIR 1997 SC 3471 [LNIND 1997 SC 1067] : 1997 Cr LJ 4084 , conviction because of reliable eye-witnesses, inspite of irregularities by investigating officer. *Nikka Singh v State of Punjab*, AIR 1997 SC 3676 [LNIND 1996 SC 1644] : 1977 Cr LJ 4651 , conviction confirmed, reliable child eye-witness. *Sanjeev Kumar v State of Punjab*, AIR 1997 SC 3717 [LNIND 1997 SC 811] : 1997 Cr LJ 3178 , reliable prosecution witnesses, conviction. *Shabir Mohmad Syed v State of Maharashtra*, AIR 1997 SC 3808 [LNIND 1997 SC 820] : 1997 Cr LJ 4416 , one of the accused persons could not be identified and, therefore, acquitted, others convicted.

*Murarilal Jivram Sharma v State of Maharashtra*, AIR 1997 SC 1593 : 1997 Cr LJ 782 , death caused with country made pistol, proved by medical, technical and eye-witness account, conviction. *Balbir Singh v State of Rajasthan*, AIR 1997 SC 1704 [LNIND 1997 SC 51] : 1997 Cr LJ 1179 , death caused by inflicting injuries, evidence of approver corroborated by prosecution witnesses, conviction. *Nathuni Yadav v State of Bihar*, AIR 1997 SC 1808 : (1998) 9 SCC 238 , though moonless night, but witnesses identified the assailants because they were known persons, conviction.

*Kanta Ramudu v State of AP*, AIR 1997 SC 2428 [LNINDORD 1997 SC 122] : 1997 SCC (Cr) 573, causing death by piercing sharp-edged weapon into the heart of the deceased, the accused declaring his intention to do away with him. *Rohtas v State of UP*, AIR 1997 SC 2444 [LNIND 1997 SC 772] : 1997 Cr LJ 2981 , accused persons came with a determination to kill their victims and they did kill them with spears, convicted. *Mithilesh Upadhyay v State of Bihar*, AIR 1997 SC 2457 [LNIND 1997 SC 714] : 1997 SCC (Cr) 716, eye-witness account that each of the three accused fired at their victim and each shot hit him, not to be disregarded for the fact that only bullet wounds were found, one shot could have missed the target, conviction. *Manmohan Singh v State of Punjab*, AIR 1997 SC 1773 : 1997 Cr LJ 1632 , concurrent finding of guilt by the trial court and High Court. No interference by the Supreme Court. *Bhartu v State of Haryana*, AIR 1997 SC 281 [LNIND 1996 SC 1727] : 1997 Cr LJ 242 , conviction for murder. *Navakoti Veera Raghavulu v State of AP*, AIR 1997 SC 727 [LNIND 1997 SC 61] : 1997 Cr LJ 841 , disabled son killed by father by setting him on fire, clear dying declaration, motive to grab property gifted to him by grandfather.

*Raghubir Singh v State of Haryana*, AIR 2000 SC 3395 [LNIND 2000 SC 678] : 2000 Cr LJ 2463 , gunshot injury gave risk to complications of intervening discussion, conviction for murder, enhancement of fine from Rs. 2,000 to Rs. 10,000 was set aside because there was no apparent justification for the enhancement. *Geeta v State of Karnataka*, AIR 2000 SC 3475 [LNIND 1999 SC 1091] : 2000 Cr LJ 3187 , killer of a lady guest found guilty of murder and theft of ornaments. *Kothakulava Naga Subba Reddy v Public Prosecutor, AP High Court*, AIR 2000 SC 3480 [LNIND 2000 SC 523] : 2000 Cr LJ 3452 , a relative who had come from another village, testified to the assault on the deceased. His testimony became the basis of conviction. *Lal Ji Singh v State of UP*, AIR 2000 SC 3594 , the accused party indiscriminately fired and assaulted the prosecutor, killing four, dying declaration of woman deceased, relied upon to convict. *Ajay Singh v State of Bihar*, AIR 2000 SC 3538 [LNIND 2000 SC 757] , two motor cycle borne persons shot at the deceased with their respective weapons, testimony of two eye-witnesses which was unimpeachable was relied upon for conviction, irrespective of the fact that one pistol was examined by ballistic expert or that medical evidence was different from the eye-witness account. *Dharmendra Singh v State of Gujarat*, AIR 2002 SC 1937 [LNIND 2002 SC 302] (Supp) : 2002 Cr LJ 2631 (SC), the accused fatally assaulted his two sons after sending his wife away but she returned home and witnessed the incident. Conviction for murder confirmed. *Sukhdev Yadav v State of Bihar*, 2002 Cr LJ 80 (SC), no interference in conviction. *Munna v State of Rajasthan*, 2001 Cr LJ 4127 (Raj), murder by hitting and running over by station wagon. *State of TN v Kutty*, 2001 Cr LJ 4169 (SC), killer of two women for whom he worked, all the details of the incident captured, conviction. *Firozuddin Basheeruddin v State of Kerala*, 2001 Cr LJ 4215 (SC), conspiracy and murder, conviction. *Nelabothu v State of AP*, 2001 Cr LJ 509 , murder by accused proved no interference in conviction. *Gura Singh v State of Rajasthan*, 2001 Cr LJ 487 (SC), the killer of his father, sufficiently connected by evidence, conviction. *State (NCT) of Delhi v Sunil*, 2001 Cr LJ 604 (SC), medical report of death by bruises all over the body, murder, conviction. *Suryanarayana v State of Karnataka*, 2001 Cr LJ 705 (SC), murder witnessed by child, trustworthy, conviction sustained. *Vijay Pal Singh v State (NCT) of Delhi*, 2001 Cr LJ 3294 (SC) murder, eye-witnesses, acquittal not to be set aside. *Gade Lakshmi Mangraju v State of AP*, 2001 Cr LJ 3317 (SC), complete chain of events formed by circumstances, conviction. *Bibhachha v State of Orissa*, 2001 Cr LJ 2895 (SC) : 1998 Cr LJ 1553 (Ori), connection of the accused with murder proved. *Sandeep v State of Haryana*, 2001 Cr LJ 1456 : AIR 2001 SC 1103 [LNIND 2001 SC 552] , recoveries, reports and witnesses showed the accused to be the culprit, conviction.

*Pradeep Kumar v State of HP*, 2001 Cr LJ 1517 (HP), causing death of the victim woman by throwing kerosene and setting her on fire. *Dhananjaya Reddy v State of Karnataka*, 2001 Cr LJ 1712 (SC), killing husband with the help of paramour, wife given benefit of doubt, paramour convicted. *Munshi Prasad v State of Bihar*, 2001 Cr LJ 4708 (SC), the fact of 400 to 500 yards away from the place of occurrence, not a good *alibi*. One could come back after causing death. *Manish Dixit v State of Rajasthan*, 2001 Cr LJ 133 (SC), conviction for abduction and murder of a jeweler. *Surendra Singh Rautela v State of Bihar*, 2002 Cr LJ 555 (SC), firing at inmates of a car, one killed, another injured, identification of the assailants by the injured person could not be discussed only because still another inmate in the car did not support the prosecution case. *Rama Mangaraji v State of Maharashtra*, 2002 Cr LJ 573 (SC), accused threw crude bomb on his brother, murder, and not coming under section 304.

*State of UP v Babu Ram*, 2000 Cr LJ 2457 : AIR 2000 SC 1735 [LNIND 2000 SC 647] , the accused caused death of his father, mother and brother, bodies etc. recovered at his instance, not entitled to acquittal. *Bahadur Naik v State of Bihar*, 2000 Cr LJ 2466 : AIR 2000 SC 1582 [LNIND 2000 SC 884] , meditation can develop on the spot. Two accused caught hold of their victim,

another accused inflicted five to six dagger blows, conviction was not converted from murder to culpable homicide.

*Ammi v State of Kerala*, 1998 Cr LJ 481 (SC), killing a woman and her two children by administering potassium cyanide, conviction. *Darshan v State of Haryana*, AIR 2002 SC 2344 , murderous assault, plea of self-defence found to be false, conviction. *Koli Lakhmanbhai Chanabhai v State of Gujarat*, 2000 Cr LJ 408 : AIR 2000 SC 210 [LNIND 1999 SC 1023] , injuries caused to death, conviction. *Jagdish v State of MP*, 2000 Cr LJ 2955 : AIR 2000 SC 2059 [LNIND 2000 SC 842] , injuries inflicted with intention to cause death, conviction. *Paramjit Singh v State of Haryana*, 2000 Cr LJ 2966 : AIR 2000 Sc 2038 [LNIND 2000 SC 878] , murder with gun shots proved, conviction. *State of WB v Mir Mohd Omar*, 2000 Cr LJ 4047 : AIR 2000 SC 2988 [LNIND 2000 SC 1163] , the victim abducted and killed, conviction for murder. The court said that when abductors are not able to explain anything about the victim, the court could presume that he must have been killed. *Md Mohiruddin v State of Punjab*, 1999 Cr LJ 461 : AIR 1999 Sc 307 [LNIND 1998 SC 645] , incriminatory circumstances proved guilt of accused, rightly convicted. *Amrik Singh v State of Punjab*, 1999 Cr LJ 463 : 1998 SCC (Cr) 944, conviction for murder. *State of Rajasthan v Major Singh*, 1999 Cr LJ 1631 : AIR 1999 SC 1073 [LNIND 1999 SC 168] , conviction for deliberate murder by several persons. *Nirmal Singh v State of Haryana*, 1999 Cr LJ 1836 : AIR 1999 SC 1221 [LNIND 1999 SC 1228] , earlier rape convict, killed five members of the family of victim, conviction for murder, proper. *Siddique v State of UP*, 1999 Cr LJ 2521 : AIR 1999 SC 1690 [LNIND 1999 SC 416] , no interference in conviction of accused because of proper evidence. *Ram Singh v State of UP*, 1999 Cr LJ 2581 : AIR 1999 Sc 1754 [LNIND 1999 SC 1260] , shooting down the victim, conviction despite conflict between ocular and medical evidence. *State of Rajasthan v Teja Ram*, 1999 Cr LJ 2588 : AIR 1999 SC 1776 [LNIND 1999 SC 279] , blows to death caused with axes, which were recovered at the instance of the accused, other evidence, conviction. *Surjit Singh v State of Punjab*, 1999 Cr LJ 3485 : AIR 1999 SC 2855 [LNIND 1999 SC 499] , murder by accused proved, conviction. *State of UP v Hem Raj*, 1999 Cr LJ 3489 : AIR 1999 Sc 2147 [LNIND 1999 SC 1254] , assault by three, eye-witnesses deposed fatal blow only by accused, convicted, rest acquitted. *State of TN v Rajendran*, 1999 Cr LJ 4552 : AIR 1999 SC 3535 [LNIND 1999 SC 857] , burnt two children and their mother alive by putting their hut on fire, conviction. *Ramesh Laxman Gavli v State of MP*, 1999 Cr LJ 4603 : AIR 1999 Sc 3759 [LNIND 1999 SC 825] , conviction not interfered with as the incident was witnessed by reliable persons. *Ramanbhai Naranbhai v State of Gujarat*, 1999 Cr LJ 5013 : (2000) 1 SCC 358 [LNIND 1999 SC 1067] , killing by unlawful assembly, conviction. *Rachpal Singh v State of Punjab*, AIR 2002 Sc 2710 [LNIND 2002 SC 451] : 2000 Cr LJ 2710 , conviction, medical as well as ocular evidence. *Rakesh v State of UP*, AIR 2002 Sc 2721 [LNIND 2002 SC 442] : 2002 Cr LJ 3551 , conviction, findings of Sessions Judge were described as clearly perverse and unreasonable. *Podapati v State of AP*, AIR 2002 SC 2724 [LNIND 2002 SC 869] : 2002 Cr LJ 3555 , killed one's uncle, witnessed by four persons, conviction. *Gajula v State of AP*, 2002 Cr LJ 3565 (SC), faction fights among villagers, murders, conviction.

*Bhupendra Singh v State of Gujarat*, 1998 Cr LJ 57 : AIR 1997 SC 3790 [LNIND 1997 SC 1378] , police constable shooting down head constable, defence of accident not allowed, conviction. For details, see discussion under section 80. *Harcharan Singh v State of Rajasthan*, 1998 Cr LJ 398 : AIR 1998 SC 244 [LNIND 1997 SC 1350] , murder of bus-conductor, witness a bus passenger, his testimony not distrusted for the fact that he named a wrong commodity than that which he had gone to buy. *Saudagar Singh v State of Haryana*, 1998 Cr LJ 62 : AIR 1998 SC 28 [LNIND 1997 SC 890] , a witness about it was proved that he was won over by the accused, no adverse presumption was drawn against the prosecution. Conviction of the accused who fired

the shot, others acquitted. *Pakkirisamy v State of TN*, 1998 Cr LJ 89 : AIR 1998 SC 107 [LNIND 1997 SC 1291] , said person caused death and took away jewellery and other items, confessions, conviction. *Malkhan v State of UP*, 1998 Cr LJ 96 (All), gun-shot injury leading to peritonitis, which became cause of death, the liability of the accused not lessened by reason of intervention of deceased. *Ratnakar Dandasena v State of Orissa*, 1998 Cr LJ 295 (Ori), misunderstanding over partition of land, hitting with axe causing death of victim, conviction.

*Charan Singh v State of Punjab*, 1998 Cr LJ 657 (SC); *Lakha Singh v State of Punjab*, 1998 Cr LJ 657 (SC), death caused by gandasa blows, both accused rightly convicted. *Bhaskaran v State of Kerala*, 1998 Cr LJ 684 : AIR 1998 SC 476 [LNIND 1997 SC 1562] , death by stabbing, reliable eye-witnesses, conviction. *Subhash Bassi v State*, 1998 Cr LJ 719 (Del), single witness reliable, conviction. *Vasant v State of Maharashtra*, 1998 Cr LJ 844 : AIR 1998 SC 699 [LNIND 1997 SC 1599] , running over by jeep, conviction for murder. *Elkur Jameesu v State of AP*, 1998 Cr LJ 846 : AIR 1998 SC 1492 [LNIND 1997 SC 1513] , entry into house and stabbing a person there who died. His son and wife saw the intruder running away, being told by the injured that the person seen running away injured him. Conviction. *Jagdish v State of Haryana*, 1998 Cr LJ 1099 : AIR 1998 SC 732 , murder, accused connected with it by eye-witnesses and medical evidence, conviction not interfered with. *Bhola Turha v State of Bihar*, 1998 Cr LJ 1102 : AIR 1998 SC 1515 [LNIND 1997 SC 1500] , conviction only on the basis of dying declaration, held proper. *Kamlesh Rani v State of Haryana*, 1998 Cr LJ 1251 : AIR 1998 SC 1534 [LNIND 1997 SC 1645] , conviction on the basis of dying declaration of deceased wife. *Rajendra Mahton v State of Bihar*, 1998 Cr LJ 1254 : AIR 1998 SC 1546 [LNIND 1997 SC 1589] , shopkeeper killed at his shop, killers identified by home people, conviction. *Mahipal v State of Rajasthan*, 1998 Cr LJ 1257 : AIR 1998 SC 864 [LNIND 1998 SC 25] , recovery of instrument of murder at the instance of the accused, conviction. *Vinayak Shivajirao Pol v State of Maharashtra*, 1998 Cr LJ 1558 : AIR 1998 SC 1096 [LNIND 1998 SC 96] , extra-judicial confession, recoveries also at the instance of the accused, conviction. *George v State of Kerala*, 1998 Cr LJ 2034 : AIR 1988 1376, main accused convicted, others not identified acquitted. *Dharmendra Singh v State of UP*, 1998 Cr LJ 2064 (SC), conviction for multiple murders. *Mukut Singh v State*, 1998 Cr LJ 2084 (All), murder, two eye-witnesses naturally at the spot, conviction. *Sankara Nagarmalleswara v State of AP*, 1998 Cr LJ 2270 (SC), dying declaration, eye-witnesses to murder reliable, conviction; *GS Walia v State of Punjab*, 1998 Cr LJ 2524 (SC), murder with axes and lathi blows, conviction. *Rewa Ram v Teja*, 1998 Cr LJ 2558 : AIR 1998 SC 2883 [LNIND 1998 SC 283] , accused persons assaulted deceased with a variety of weapons. Accused suffered about 8-10 injuries, whereas the deceased suffered 51 injuries. No evidence to show who caused final fatal injury. Conviction under section 326. *Nachhattar Singh v State of Punjab*, 1998 Cr LJ 2560 : AIR 1998 SC 2884 [LNIND 1998 SC 282] , intentional killing of a woman in her house, conviction. *Velan Kutty v State of Kerala*, 1998 Cr LJ : AIR 1998 SC 2888 [LNIND 1998 SC 250] , assault on victim with chopper, conviction. *State of Rajasthan v Satyanarayan*, 1998 Cr LJ 2911 : AIR 1998 SC 2060 [LNIND 1998 SC 88] , murderous attack, brother of the victim intervened, attack fell on him, death, conviction under section 304, Part I. *Govindsami v State of TN*, 1998 Cr LJ 2913 : AIR 1998 SC 2889 [LNIND 1998 SC 471] , boundary dispute, five murders, recoveries, conviction. *Sambasivan v State of Kerala*, 1998 Cr LJ 2924 : AIR 1998 SC 2017 , trade union rivalry, bombs thrown on rival union members while they were relaxing, conviction. *Rajendra Kumar v State of UP*, 1998 Cr LJ 1293 (SC), no adverse inference against prosecution for failure to examine another witness.

*Gajjan Singh v State of Punjab*, 1998 Cr LJ 3609 : AIR 1998 SC 2417 [LNIND 1998 SC 508] , two accused, both fired, one fire hitting head, the other chest, conviction of both for murder. *Brijlala Pd Sinha v State of Bihar*, 1998 Cr LJ 3611 : AIR 1998 SC 2443 [LNIND 1998 SC 598] , police

party firing at a running car, killing inmates, their defence of counter-fire failed because there were no marks on their vehicle, conviction. Death sentence reduced to life imprisonment because no aggravating circumstances were shown than the mere fact that they were police people. *State of HP v Manohar Singh Thakur*, 1998 Cr LJ 3630 : AIR 1998 SC 2941 [LNIND 1998 SC 660] , killing for greed, wife witness, conviction. *National Commission for Women v State of UP*, 1998 Cr LJ 4044 : AIR 1998 SC 2726 [LNIND 1998 SC 776] , deaths in a hostility between two neighbouring families, conviction. *Adya Singh v State of Bihar*, 1998 Cr LJ 4052 : AIR 1998 SC 3011 [LNIND 1998 SC 667] , evidence of eye-witnesses accepted, it seemed that the doctor was trying to help the accused-compounder. *Dule v State of MP*, 1998 Cr LJ 4073 : AIR 1998 SC 2756 [LNIND 1998 SC 839] , assault on head with sword, conviction for murder. *Jangeer Singh v State of Rajasthan*, 1998 Cr LJ 4087 : AIR 1998 SC 2787 [LNIND 1999 PNH 698] , intentional murder, conviction. *Uday Kumar v State of Karnataka*, 1998 Cr LJ 4622 : AIR 1998 SC 3317 [LNIND 1998 SC 908] , murder of child of four years, complete chain of circumstances, conviction. *Kommu Vinja Rao v State of AP*, 1998 Cr LJ 2523 : AIR 1998 SC 2856 [LNIND 1998 SC 385] , conviction for murder. *Bhagirath v State of Haryana*, AIR 1997 SC 234 [LNIND 1996 SC 1769] : 1997 Cr LJ 81 , statement taken by head constable for filing report, the woman died, the statement regarded as a dying declaration. *Meharban Singh v State of MP*, AIR 1997 SC 1538 : 1997 Cr LJ 766 , dying declaration, recoveries, conviction. *Krishan v State of Haryana*, AIR 1997 SC 2598 [LNIND 1997 SC 770] : 1997 Cr LJ 3180 , killing jail inmate, conviction. *Asha v State of Rajasthan*, AIR 1997 SC 2828 [LNIND 1997 SC 844] : 1997 Cr LJ 3508 , eye-witnesses friends of the victim, could not be discredited for that reason alone. They gave details of the assault and the part played by each of the assailants. *Shyam v State*, 1997 Cr LJ 35 (Del), murder by poisoning, possession of poison need not be proved in all cases. The accused was seen by witnesses administering poison, inference could be drawn that he was in possession of poison. *Ramkishore Patel v State of MP*, 1997 Cr LJ 207 (SC) : 1996 AIR SCW 3939, conviction upheld. *Godaharish Mishra v Kuntalal Mishra*, AIR 1997 SC 286 [LNIND 1996 SC 1719] : 1997 Cr LJ 246 , circumstantial evidence was absolutely clinching in establishing complicity of the accused in murder. Acquittal set aside. *Suba Singh v Harbhej Singh*, 1997 Cr LJ 727 : AIR 1997 SC 1487 [LNIND 1996 SC 1929] , accused formed unlawful assembly and assaulted the victim, the latter's relatives and other eye-witnesses did not intervene to protect him. It could not be a ground for acquittal. Finding of the High Court that because of the dark the accused could not have been identified was held to be totally imaginary. *Naresh Mohanlal Jaiswal v State of Maharashtra*, 1997 Cr LJ 761 : AIR 1997 SC 1523 [LNIND 1996 SC 1658] , witnesses did not disclose for fear, the courts below found that there was sufficient light from the lamp post. *State of AP v Gangula Satya Murthy*, AIR 1997 SC 1588 [LNIND 1996 SC 2665] : 1997 Cr LJ 774 , finding of dead body, showing homicidal death, on a cot in the accused's house. In the absence of any explanation by the accused, an adverse presumption was drawn against him.

*Mavila Thamban Nambiar v State of Kerala*, AIR 1997 SC 687 [LNIND 1997 SC 24] : 1997 Cr LJ 831 , conviction. *Prem v Daula*, AIR 1997 SC 715 [LNIND 1997 SC 64] : 1997 Cr LJ 838 , conviction for murder, two accused held the victim, the third struck him dead. *Lalit Kumar v State*, 1997 Cr LJ 848 (Del), prosecution evidence consistently and conclusively established guilt of the accused. *Nagoor Naifa v State of TN*, 1997 Cr LJ 880 (Mad), sub-tenant set the landlord family on fire in their room, because they had locked his room, conviction. *Rataniya Bhima Bhil v State of Gujarat*, 1997 Cr LJ 891 (Guj), murder, conviction. *Rabloo Das v State of WB*, 1997 Cr LJ 1025 (Cal), conviction for intentional murder. *Sukhadeo v State of Maharashtra*, 1997 Cr LJ 1059 (Bom), prosecution not bound to explain injuries of minor nature on the person of the accused. Conviction proper. *Pyara v State of Rajasthan*, 1997 Cr LJ 1065 (Raj), intentional murder, conviction sustained though recoveries of incriminating articles not proved. *Sunil Kumar v State*



of Rajasthan, [1997 Cr LJ 1081](#) (Raj), conviction for intentional murder properly proved. *State of UP v Dan Singh*, [1997 Cr LJ 1150](#) : [AIR 1997 SC 1654](#) [[LNIND 1997 SC 162](#)] , murder of marriage party of Scheduled Caste, for details see discussion under section 149. *Teja Singh v State Punjab*, [AIR 1997 SC 921](#) : [1997 Cr LJ 1175](#) , conviction, multiple injuries, theory of accident ruled out. *Yashin v State of Rajasthan*, [AIR 1997 SC 869](#) [[LNIND 1997 SC 68](#)] : [1997 Cr LJ 1179](#) , intentional murder, properly proved. *D Venkatasan v State of TN*, [1997 Cr LJ 1287](#) (Mad), conviction for murder. *Subramaniam v State of TN*, [1997 Cr LJ 1359](#) (Mad), conviction for murder of wife. *Shanker v State of Rajasthan*, [1997 Cr LJ 1388](#) (Raj), murder with gunshot, conviction, non-recovery of empty cartridge not material. *Jiya Ram v State of Rajasthan*, [1997 Cr LJ 1423](#) (Raj), connection of accused with murder established. *State of Rajasthan v Ali (Hanif)*, [1997 Cr LJ 1529](#) : [AIR 1997 SC 1023](#) [[LNIND 1997 SC 35](#)] , accused persons, variously armed, killed two and attempted to kill another, conviction proper, two acquitted because eye-witnesses did not say anything against them. *Narain Singh v State of Rajasthan*, [1997 Cr LJ 1562](#) (Raj), main accused persons convicted, others acquitted. *Bajinath v State of UP*, [1997 Cr LJ 1691](#) (All), conviction on the basis of dying declaration. *Bajinath v State of UP*, [1997 Cr LJ 1691](#) (All), non-explanation of injury on deceased, not fatal. *Satnamsingh v State of Rajasthan*, [1997 Cr LJ 1778](#) (Raj), killing by crushing under wheels of truck, conviction. *Mouruddin Choudhury v State of Assam*, [1997 Cr LJ 1801](#) (Gau), conviction for intentional murder, *Laxman v State of Karnataka*, [1997 Cr LJ 1806](#) (Kant), conviction, not mentioning to accused the statement under [section 313, Cr PC, 1973](#) while recording his statement, not material because no prejudice caused. *Gobind Singh v State of Rajasthan*, [1997 Cr LJ 1825](#) (Raj), main accused convicted, co-accused acquitted. *Balachandra v State of Karnataka*, [1997 Cr LJ 1883](#) (Kant), murder of husband witnessed by wife, sole witness, conviction. *Som Nath v State*, [1997 Cr LJ 1897](#) (P&H), murder by accused proved beyond doubt, in view of clear evidence of time of incident, medical evidence of *rigor mortis*, not considered for determining time. *State of Haryana v Mewa Singh*, [1997 Cr LJ 1906](#) : [AIR 1997 SC 1407](#) , murder in protest against love affair, injuries on persons of accused could be self-inflicted, no right of private defence. *Gayadhar Naik v State of Orissa*, [1997 Cr LJ \(Ori\) two-three blows on head, both were in a drunken state, no undue advantage, no cruel manner, conviction altered to section 304. \*Pandappa Hanumappa Hanamar v State of Karnataka\*, \[AIR 1997 SC 3663\]\(#\) \[\[LNIND 1997 SC 363\]\(#\)\] : \[1997 Cr LJ 2493\]\(#\) , ghastly murder, order of acquittal set aside, eye-witnesses, minor discrepancies not damaging their testimony, injuries on person of accused, superficial. \*Jit Singh v State of Punjab\*, \[AIR 1997 SC 3676\]\(#\) \[\[LNIND 1996 SC 1644\]\(#\)\] : \[1997 Cr LJ 2500\]\(#\) , evidence of child witness, conviction.](#)

*Amit v State of UP*, [\(2012\) 4 SCC 107](#) [[LNIND 2012 SC 138](#)] : [AIR 2012 SC 1433](#) [[LNIND 2012 SC 138](#)] and *State of UP v Iqram*, [AIR 2011 SC 2296](#) [[LNIND 2011 SC 556](#)] : [2011 8 SCC 80](#) [[LNIND 2011 SC 556](#)] : [2011 Cr LJ 3931](#) , Non-recovery of weapon insignificant. *Katta Kumudu v State of AP*, [AIR 1997 SC 2428](#) [[LNINDORD 1997 SC 122](#)] : [1997 Cr LJ 2979](#) , soon before the incident, the accused uttered words saying what he would do with him (the deceased). The court said that intention to kill him could be inferred from these words. *Dwarkanath Tiwary v State of Bihar*, [AIR 1997 SC 2457](#) [[LNIND 1997 SC 714](#)] : [1997 Cr LJ 2983](#) , each of the accused persons fired at deceased in quick succession and hit, conviction of all though medical evidence was of only two bullet injuries. *State of UP v Abdul*, [AIR 1997 SC 2512](#) [[LNIND 1997 SC 790](#)] : [1997 Cr LJ 2997](#) (SC), High Court erred in ordering acquittal, set aside. *Razakali Khureshi v State of Gujarat*, [AIR 1999 SC 2538](#) : [1997 Cr LJ 3119](#) , conviction did not suffer from any infirmity. *Pratapaneni Ravi Kumar v State of AP*, [AIR 1997 SC 2810](#) [[LNIND 1997 SC 892](#)] : [1997 Cr LJ 3505](#) , murder caused in furtherance of common object, all members guilty, it being immaterial whether all of them had beaten the deceased. *Asha v State of Rajasthan*, [AIR 1997 SC 2828](#) [[LNIND 1997 SC 844](#)] : [1997 Cr LJ 3508](#) , three motor-cycle borne accused persons, two of them threw acid on

victim, and caused injuries, their conviction proper. *Mangat Rai v State of Punjab*, AIR 1997 SC 2838 : 1997 Cr LJ 3514 , murder of wife, conviction. *Madru Singh v State of MP*, 1997 Cr LJ 4398 : AIR 1997 SC 3527 [LNIND 1997 SC 1182] , presence and evidence of eye-witnesses could not be doubted on the basis of some trivial contradictions. *State of Punjab v Jaswant Singh*, 1997 Cr LJ 4428 : AIR 1997 SC 3821 [LNIND 1997 SC 1200] , private defence not available because simple injuries on the person of the accused found to be self-inflicted, conviction under section 302. *Rukma v Jala*, AIR 1997 SC 3907 [LNIND 1997 SC 1069] : 1997 Cr LJ 4651 , complaint about investigation not sustained, the complainant party suffering greater number of injuries than the accused could not be entitled to private defence. *Baimullah v State of UP*, 1997 Cr LJ 4644 : AIR 1997 SC 3946 [LNIND 1997 SC 1322] , injury caused on vital part of body of an unarmed person, plea of private defence negated. *Gopal Madadeo v State of Maharashtra*, 1997 Cr LJ 2425 (Bom), the fact that the accused was of 76 years of age was no reason for his not serving his term of life imprisonment when he was squarely guilty of the offence. *Amar Malla v State of Tripura*, AIR 2002 SC 3052 [LNIND 2002 SC 517] , armed attack at a meeting by accused persons who were also invited to attend, killings, conviction, non-explanation of injuries on accused persons cannot by itself be a ground for throwing out the prosecution case. *Mohibur Rahman v State of Assam*, AIR 2002 SC 3064 , accused last seen in the company of deceased, he gave false explanations about the whereabouts of the deceased, dead body cut into pieces recovered from different places pointed out by the accused. Conviction of the accused was not interfered with. *Mahadeo Sahni v State of Bihar*, AIR 2002 SC 3032 [LNIND 2002 SC 492] , injuries caused to deceased by sharp-edged and blunt weapons, concurrent finding that the accused persons inflicted injuries in prosecution of their common object of doing away with the lives of the deceased persons. Conviction under section 302 not interfered with.

*Lakshmi v State of UP*, AIR 2002 SC 3119 [LNIND 2002 SC 534] , a charge of murder can be substantiated even in the absence of identification and cause of death. *Bodh Raj v State of J&K*, AIR 2002 SC 3164 [LNIND 2002 SC 539] , conviction for murder, elimination of creditor by person indebted. *Sahadevan v State*, AIR 2003 SC 215 [LNIND 2002 SC 688] : 2003 Cr LJ 424 , conviction for murder under sections 300, 346, 302 read with section 34. *Alamgir v State (NCT, Delhi)*, AIR 2003 SC 282 [LNIND 2002 SC 693] : 2003 Cr LJ 456 , staying with wife in guest house and causing her death, circumstantial evidence been proved the case, conviction. *P Venkateswarlu v State of AP*, 2003 Cr LJ 837 : AIR 2003 SC 574 [LNIND 2002 SC 782] , whole village divided on political lines. Death caused by one faction of a person belonging to the other, conviction because of good evidence. *State of UP v Jagdeo*, AIR 2003 SC 660 [LNIND 2002 SC 781] : 2003 Cr LJ 844 , ghastly crime, all the eight accused persons, armed with deadly weapons, attacked unarmed members of the victim's family sleeping in the open at night. The accused could not be acquitted only because the investigation was faulty. *Suraj Bhan v State of Haryana*, AIR 2003 SC 785 [LNIND 2002 SC 826] , the evidence of the injured eye-witness that the accused administered total blow on head of his victim, it was corroborated by medical evidence, the finding of the High Court that the accused was responsible for the death was held to be proper. *State of Karnataka v Panchakshari Gurupadayya Hiranath*, AIR 2003 SC 825 [LNIND 2002 SC 856] , land dispute leading to attack on deceased with a murderous weapon established by evidence. Conviction. *State of UP v Man Singh*, 2003 Cr LJ 82 , reversal of conviction held improper, good evidence was there. *Amarsingh v Balwinder Singh*, 2003 Cr LJ 1282 (SC), conviction for murder was based upon direct testimony of eye-witnesses under the finding of the trial court that the prosecution case was fully established, the Supreme Court held that acquittal by the High Court by reversing conviction was not proper. *State of UP v Premi*, 2003 Cr LJ 1554 : AIR 2003 SC 1750 [LNIND 2003 SC 232] , the accused persons entered the house of the deceased at midnight armed with country made pistol, inflicted injury on the head

with great force and caused death. The court said that the mere fact that only one injury was caused was not enough to alter the conviction from section 302 to section 304. *Gaya Yadav v State of Bihar*, 2003 Cr LJ 1564 : AIR 2003 SC 1759 [LNIND 2003 SC 215] , proper evidence for conviction. *Kanaksingh v State of Gujarat*, 2003 Cr LJ 855 (SC), killing of wife, conviction.

*Ajitsingh Andubha Parmal v State of Gujarat*, AIR 2002 SC 3469 [LNIND 2002 SC 609] , there was specific and clear evidence that the accused gave the first two knife blows and further serious injuries by chasing him. Concurrent finding of fact as to guilt, no interference. *Mohar v State of UP*, AIR 2003 SC 3279 , conviction because of eye-witnesses. *State of Karnataka v David Razario*, AIR 2002 SC 3272 [LNIND 2002 SC 583] , conviction for robbery and murder. *Shyam Sunder v State of Chhatisgarh*, AIR 2002 SC 3292 [LNIND 2002 SC 1866] , conviction for murder, eye-witnesses. *Dana Yadav v State of Bihar*, AIR 2002 SC 3325 [LNIND 2002 SC 574] , conviction on the basis of eye-witnesses. *Gyasiram v State of MP*, AIR 2003 SC 2097 [LNIND 2003 SC 1] , the accused party waited for their victim, fired at him, killing witnessed, eye-witnesses reliable, conviction. *State of UP v Ram Sewak*, AIR 2003 SC 2141 [LNIND 2002 SC 828] , properly witnessed case, acquittal was held to be not proper. *Rambai v State of Chhatisgarh*, AIR 2002 SC 3492 [LNIND 2002 SC 635] , conviction on the basis of dying declaration. *Shamsher Singh v State of Haryana*, AIR 2002 SC 3480 [LNIND 2002 SC 605] , eye-witnesses, recoveries of weapons, etc, conviction. *Swaran Singh v State of Punjab*, AIR 2002 SC 3652 [LNIND 2002 SC 639] , credit of eye-witnesses could not be shaken, conviction. *G Laxmanna v State of AP*, AIR 2002 SC 3685 , relative witnesses, outstanding enmity, conviction. *Thaman Kumar v State, UT of Chandigarh*, 2003 Cr LJ 3070 (SC), murder charge proved by direct evidence, not allowed to be shaken by hypothetical medical evidence. *State of UP v Rasid*, 2003 Cr LJ 2011 (SC), time of killing, if it were after day-break, identification of the assailants was possible, this was the stand of the eye-witnesses, but the High Court went by the medical evidence of presence of semi-digested food in the stomach of the deceased which showed that the occurrence must belong to the night. The Supreme Court said that medical evidence was not clear and, therefore, the eye-witness account had to be preferred. *Rajendra Prabhu Chikane v State of Maharashtra*, (2007) 13 SCC 511 [LNIND 2007 SC 515] : 2007 Cr LJ 3410 , murder by accused proved beyond reasonable doubt, conviction upheld. *MA Sattar v State of AP*, (2008) 11 SCC 201 [LNIND 2008 SC 754] , clear proof of murder by accused. *Umar Md v State of Rajasthan*, (2007) 14 SCC 711 [LNIND 2007 SC 1459] : 2008 Cr LJ 816 .

38. *Rampal Singh v State of UP*, 2012 Cr LJ 3765 : (2012) 8 SCC 289 [LNIND 2012 SC 425] .

39. *Arjun v State of Rajasthan*, (1995) 1 Cr LJ 410 : AIR 1994 SC 2507 [LNIND 1994 SC 604] , concurrent finding of courts below as to intentional murder, not interfered with in appeal. *Ram Kumar v State of Haryana*, 1995 Supp (1) SCC 248 : 1994 Cr LJ 3836 (SC), conviction on the evidence of injured eye-witness. *Sarbir Singh v State of Punjab*, 1993 AIR SCW 807 : 1993 Cr LJ 1395 (SC), circumstantial evidence, conviction; *Surjit Singh v State of Punjab*, AIR 1992 SC 1389 [LNIND 1992 SC 361] : 1992 Cr LJ 1952 ; *Lakhwinder Singh v State of Punjab*, AIR 1993 SC 87 : 1992 Cr LJ 3958 , testimony of eye-witnesses convincing, conviction upheld. Other such cases are: *Prakash v State of MP*, AIR 1993 SC 70 : 1992 Cr LJ 3703 (SC); *Mafabhai N Raval v State of Gujarat*, AIR 1992 SC 2186 [LNIND 1992 SC 509] : 1992 Cr LJ 3710 and *Bir Singh v State of Haryana*, AIR 1992 SC 2211 : 1992 Cr LJ 3845 : 1993 Supp (1) SCC 334 ; *Ram Kumar v State of UP*, AIR 1992 SC 1602 : 1992 Cr LJ 2421 , acquittal set aside because circumstantial evidence reliable. *Baboo v State of MP*, AIR 1994 SC 1712 : 1994 Cr LJ 2249 , several persons attacked and killed a man in the presence of his wife, whose evidence found support in the testimony of other witnesses, conviction upheld though no FIR lodged. *Ch Madhusudana Reddy v State of AP*, 1994 Cr LJ 2203 : AIR 1994 SCW 1453 , only those convicted who actually participated, others

acquitted. *PP Karpe v State of Maharashtra*, 1993 Cr LJ 2302 (Bom), revengeful killing, conviction for murder. *Balak Ram v State of Rajasthan*, 1994 Cr LJ 2451 (Raj), killer of his two daughters, eye-witnesses, medical evidence, conviction under section 300. *Prem Raj v State of Maharashtra*, 1996 Cr LJ 2876 : AIR 1996 SC 3294 [LNIND 1996 SC 940] , all the accused constituting an unlawful assembly came to the shop of the deceased, assaulted him and continued to do so after dragging him out, conviction under sections 300/149 held proper. *Bhagubhai v State of Gujarat*, AIR 1996 SC 2555 [LNIND 1996 SC 1143] : 1996 Cr LJ 3581 , the deceased forcibly taken from field to Panchayat office and set on fire after pouring kerosene, 75% burns and other injuries sufficient to cause death, conviction for intention to murder proper.

40. *Gunga Singh*, (1873) 5 NWP 44. *Raju Das v State of Rajasthan*, 1995 Cr LJ 25 (Raj), a case of proved intentional murder.

41. *Shakti Vahini v UOI*, AIR 2018 SC 1601 [LNIND 2018 SC 136] : 2018 (7) SCC 192 [LNIND 2018 SC 136] .

42. *Arumugam Servai v State of TN*, (2011) 6 SCC 405 [LNIND 2011 SC 435] . See *Dandu Jaggaraju v State of AP*, AIR 2011 SC 3387 [LNINDORD 2011 SC 217] : 2011 Cr LJ 4956 , honour killing, not proved, acquitted the accused.

43. *Bhagwan Dass v State (NCT) of Delhi*, AIR 2011 SC 1863 [LNIND 2011 SC 502] : 2011 Cr LJ 2903 : (2011) 6 SCC 396 [LNIND 2011 SC 502] . In the 242nd report, the Law Commission of India opined that "we are constrained to say that such a blanket direction given by the Supreme Court making death sentence a rule in 'honour killings' cases, makes a departure from the principles firmly entrenched in our criminal jurisprudence by virtue of a series of Supreme Court Judgments."; In *State of UP v Krishna Master*, AIR 2010 SC 3071 [LNIND 2010 SC 699] : 2010 Cr LJ 3889 : (2010) 12 SCC 324 [LNIND 2010 SC 699] , though the killing of six persons and wiping out almost the whole family on flimsy ground of honour saving of the family would fall within the rarest of rare case, keeping in view that the incident took place 20 years ago and High Court acquitted them in the year 2002 accused sentenced to RI for life.

44. Law of Commission of India, 242nd Report, *Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework*, available at : <http://lawcommissionofindia.nic.in/reports/report242.pdf> (last accessed in July 2019).

45. *Shakti Vahini v UOI*, AIR 2018 SC 1601 [LNIND 2018 SC 136] : 2018 (7) SCC 192 [LNIND 2018 SC 136] .

46. *AG Bhagwat (Dr) v UT Chandigarh*, 1989 Cr LJ 214 (P&H), convicted for grievous hurt. *Jabbar Suleman v State of Gujarat*, 1988 Cr LJ 515 (Guj), knife injury on thigh of deceased, knowledge but not intention to cause death attributed, punishable under section 304 Part II not I. *Sudam Kisan Dhurjad v State of Maharashtra*, 1995 Cr LJ 4029 (Bom), the accused assaulted a bed-ridden aged lady of 65 years with an axe on her forehead causing three injuries resulting in fracture of the frontal bone and she died within a couple of hours, his act was held to fall under section 300, clauses 2, 3 and 4 and not under section 304, Part II. *Patel Hiralal Tottaram v State of Gujarat*, (2002) 1 SCC 22 [LNIND 2001 SC 2382] , the woman was set ablaze after soaking her clothes with an inflammable substance. She died 14 days after the incident. The accused was not heard to say that the death might have been due to some intervening causes. The act of the accused showed his intention to cause death or to cause such bodily injury as was likely to cause death. *Sajjan Singh v State of MP*, 1998 Cr LJ 4073 : AIR 1998 SC 2756 [LNIND 1998 SC 839] , head injury caused, sufficient in the ordinary course of nature. *Ram Bihari Yadav v State of Bihar*, 1998 Cr LJ 2515 : AIR 1999 SC 1850 , the husband set his wife ablaze, conduct showed guilt, no sign of accident, conviction. *Arun Nivalaji More v State of Maharashtra*, (2006) 12 SCC 613 [LNIND 2006 SC 591] : AIR 2006 SC 2886 [LNIND 2006 SC 591] : 2006 Cr LJ 4057 , the

clause imports some kind of certainty and not mere probability, there was no such certain knowledge on the facts of this case.

47. *Anant Chintaman Lagu*, (1959) 62 Bom LR 371 (SC); *Mohan v State*, AIR 1960 SC 659 ; *Kaushalya Devi*, AIR 1965 Ori 38 [LNIND 1964 ORI 72] . *Swinder Singh v State of Punjab*, AIR 1952 SC 669 : 1960 Cr LJ 1011 , proof on these points being not available, acquittal.

48. Also *Chandra Kant Nyalchand v State of Bombay*, Criminal Appeal No 120 of 1957, decided, Feb 19, 1958.

49. *Anant Chintaman Lagu v State of Bombay*, AIR 1960 SC 500 [LNIND 1959 SC 223] : 1960 Cr LJ 682 .

50. *Bhupinder Singh v State of Punjab*, 1988 Cr LJ 1097 : AIR 1988 SC 1011 [LNIND 1988 SC 211] : (1988) 3 SCC 513 [LNIND 1988 SC 211] : 1988 SCC (Cr) 694.

51. *Ramgopal*, 1972 Cr LJ 473 (SC) : AIR 1972 SC 656 . Followed in *Sher Singh v State*, (1995) 2 Cr LJ 2187 (Del), alleged poisoning by mixing in liquor not proved. *Abdul Gani v State of Karnataka*, (1995) 2 Cr LJ 2248 (Kant), presence of the husband in the room where his wife was strangulated not proved, conviction on the basis of suspicion was held to be not proper. *Mal Singh v State of Rajasthan*, (1995) 2 Cr LJ 2279 , acquitted because of no evidence.

52. *Arundhati*, 1968 Cr LJ 848 . Murder by poisoning, the victim found vomiting even two days before the date of purchase of poison and other evidence did not inspire confidence. The accused were given benefit of doubt, acquitted of the charge of murder, *Rattni v State of HP*, 1993 Cr LJ 1811 (SC). *Sanjiv Kumar v State of HP*, AIR 1999 SC 782 [LNIND 1999 SC 55] : 1999 Cr LJ 1138 , intentional killing by poisoning proved by circumstantial evidence. *State of Bihar v Ramnath Prasad*, AIR 1998 SC 466 [LNIND 1997 SC 1581] : 1998 Cr LJ 679 , poison served as prasad, the accused had only knowledge that he was administering a poisonous substance which was likely to cause grievous hurt or even death. Liable to be convicted under section 304, Part II and section 326.

53. *Joydeb Patra v State of WB*, 2013 Cr LJ 2729 (SC) : AIR 2013 SCW 2744 .

54. *Nanhar v State of Haryana*, 2010 Cr LJ 3450 : (2010) 11 SCC 423 [LNINDORD 2010 SC 229] .

55. *State of Rajasthan v Dhool Singh*, (2004) 12 SCC 546 [LNIND 2003 SC 1120] : AIR 2004 SC 1264 [LNIND 2003 SC 1120] : 2004 Cr LJ 931 .

56. *Abbas Ali v State of Rajasthan*, (2007) 9 SCC 129 [LNIND 2007 SC 165] : AIR 2007 SC 1239 [LNIND 2007 SC 165] : 2007 Cr LJ 1667 , the ingredients of clause thirdly restated.

57. *Mangesh v State of Maharashtra*, (2011) 2 SCC 123 [LNIND 2011 SC 20] .

58. *Brij Bhukhan*, AIR 1957 SC 474 : 1957 Cr LJ 591 .

59. *Atmaram v State of MP*, (2012) 5 SCC 738 [LNINDORD 2012 SC 403] : 2012 Cr LJ 2882 : 2012 (5) Scale 300 [LNIND 2012 SC 309] relied on *Anda v State of Rajasthan*, AIR 1996 SC 148 [LNIND 1965 SC 75] ; *State of Andhra Pradesh v Rayavarapu Punnayya*, (1976) 4 SCC 382 [LNIND 1976 SC 331] .

60. *Virsa Singh v State*, AIR 1958 SC 465 [LNIND 1958 SC 19] , (1958) SCR 1495 [LNIND 1958 SC 19] ; *Rajwant Singh*, AIR 1966 SC 1874 [LNIND 1966 SC 125] : 1966 Cr LJ 1509 . *Khachar Dipu v State of Gujarat*, 2013 (4) SCC 322 [LNIND 2013 SC 278] .

61. *Jaspal Singh v State of Punjab*, (1986) 2 SCC 100 at p 103 : AIR 1986 SC 683 : 1986 Cr LJ 488 , per Balakrishna Eradi, J. For an example of circumstantial evidence alone failing to prove an intention, see *Padala Veera Reddy v State of AP*, 1990 Cr LJ 605 : AIR 1990 SC 79 : 1989 Supp (2) SCC 706 . In *Jagtar Singh v State of Punjab*, (1988) 1 SCC 712 [LNIND 1988 SC 65] : AIR 1988 SC 628 [LNIND 1988 SC 65] : 1988 Cr LJ 866 , which was a case of intentional murder, the Supreme Court ignored the fact that FIR did not mention the crucial fact of the accused running away leaving behind his vehicle. In *Narendra Singh v State of UP*, AIR 1987 SC 1268 : 1987 Cr LJ 1070 : (1987) 2 SCC 236 , repeated blows were inflicted on vital parts of the body. This was held

to be intentional murder. *Vinod Kumar v State of UP*, AIR 1991 SC 300 : 1991 Cr LJ 360 , defence of accidental shooting ruled out.

62. *Jai Prakash v State (Delhi Admn)*, (1991) 2 SCC 32 : (1991) 1 Crimes 474 : 1991 SCC (Cri) 299 . **Reiterated** in *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] , it does not matter that there was no intention to cause death, or even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two), or that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury is actually found to be proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. *Namdeo v State of Maharashtra*, (2007) 14 SCC 150 [LNIND 2007 SC 316] : 2007 Cr LJ 1819 , head injury caused with axe sufficient in the ordinary course of nature to cause death, hence intention was to cause death. *Sheikh Rafi v State of AP*, (2007) 13 SCC 76 [LNIND 2007 SC 522] : 2007 Cr LJ 2746 , 19 injuries caused in a quick succession and also in a cruel manner, deceased being unarmed and helpless. Clause (3) applied, punishable under section 302. *Settu v State of TN*, 2006 Cr LJ 3889 , no intention to cause death, but injury caused with a knife on a vital part and which was sufficient to cause death, amounted to murder. One companion was convicted under section 304, Part I and the other under section 326, because minor injuries on non-vital parts.

63. *Rampal Singh v State of UP*, 2012 (8) SCC 289 [LNIND 2012 SC 425] .

64. *Vineet Kumar Chauhan v State of UP*, 2007 (14) SCC 660 [LNIND 2007 SC 1509] .

65. *Ajit Singh v State of Punjab*, 2011 (9) SCC 462 [LNIND 2011 SC 844] .

66. *Mohinder Pal Jolly v State of Punjab*, 1979 (3) SCC 30 [LNIND 1978 SC 389] .

67. *Khachar Dipu v State of Gujarat*, 2013 (4) SCC 322 [LNIND 2013 SC 278] .

68. *Anda*, AIR 1966 SC 148 [LNIND 1965 SC 75] : 1966 Cr LJ 171 .

69. *Rajwant Singh, supra*. Seven-year-old child held by the legs and dashed against the ground three times in quick succession, held covered by this clause. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] , a restatement of the basic approach of the clause. The court also made a comparison between the statement in clause 2 of section 299 "bodily injury likely to cause death" with "bodily injury sufficient in the ordinary course of nature to cause death" in clause 3 in section 300.

70. *Umesh Singh v State of Bihar*, 2013 (4) SCC 360 [LNIND 2013 SC 227] : 2013 Cr LJ 2116 ; AIR 2013 SC 1743 [LNIND 2013 SC 227] ; *Gajoo v State of Uttarakhand*, 2013 Cr LJ 88 ; 2012 (9) SCC; *Kuria v State of Rajasthan*, 2012 Cr LJ 4707 : (2012) 10 SCC 433 [LNIND 2012 SC 678] ; *Darbara Singh v State of Punjab*, 2012 Cr LJ 4757 ; 2012 (8) Scale 649 [LNIND 2012 SC 545] ; (2012) 10 SCC 476 [LNIND 2012 SC 545] .

71. *Abdul Sayeed v State of MP*, (2010) 10 SCC 259 [LNIND 2010 SC 872] : (2010) 3 SCC (Cri) 1262 [LNIND 2010 SC 872] , *Ram Narain Singh v State of Punjab*, AIR 1975 SC 1727 [LNIND 1975 SC 210] ; *State of Haryana v Bhagirath*, (1999) 5 SCC 96 [LNIND 1999 SC 541] ; *Thaman Kumar v State of Union Territory of Chandigarh*, (2003) 6 SCC 380 [LNIND 2003 SC 507] ; and *Krishnan v State*, (2003) 7 SCC 56 [LNIND 2003 SC 587] ; *Solanki Chimanbhai Ukabhai v State of Gujarat*, AIR 1983 SC 484 [LNIND 1983 SC 69] ; *Mani Ram v State of UP*, 1994 Supp (2) SCC 289 ; *Khambam Raja Reddy v Public Prosecutor, High Court of AP*, (2006) 11 SCC 239 [LNIND 2006 SC 753] ; and *State of UP v Dinesh*, (2009) 11 SCC 566 [LNIND 2009 SC 454] . *State of UP v Hari Chand*, (2009) 13 SCC 542 [LNIND 2009 SC 1039] ; In *Sayed Darain Ahsan v State of WB*, (2012) 4 SCC 352 [LNIND 2012 SC 197] : AIR 2012 SC 1286 [LNIND 2012 SC 197] : 2012 Cr LJ 1980 , it is found

that the medical evidence does not go so far as to rule out all possibility of the ocular evidence being true and hence the ocular evidence cannot be disbelieved.

72. *Sunil Kundu v State of Jharkhand*, (2013) 4 SCC 422 [LNIND 2013 SC 1135] : 2013 Cr LJ 2339 (SC) In *Anjani Chaudhary*, (2011) 2 SCC 747 [LNIND 2010 SC 1048] , where the medical evidence did not support the appellant's presence as there was no injury on the deceased which could be caused by a lathi and the appellant was stated to be carrying a lathi. Since the eye-witnesses therein were not found to be reliable, Supreme Court acquitted the appellant therein. In *Kapildeo Mandal*, (2008) 16 SCC 99 [LNIND 2007 SC 1390] , all the eye-witnesses had categorically stated that the deceased was injured by the use of firearm, whereas the medical evidence specifically indicated that no firearm injury was found on the deceased. Court held that, when the evidence of the eye-witnesses is totally inconsistent with the evidence given by the medical experts, then evidence is appreciated in a different perspective by the courts. It was observed that when medical evidence specifically rules out the injury claimed to have been inflicted as per the eye-witnesses' version, then the court can draw adverse inference that the prosecution version is not trustworthy.

73. *Bhagwati Prasad v State of MP*, (2010) 1 SCC 697 [LNIND 2009 SC 2058] : 2009 (14) Scale 314 [LNIND 2009 SC 2058] : AIR 2010 SC 349 [LNIND 2009 SC 2058] : 2010 Cr LJ 528 .

74. *Kuna v State of Odisha*, AIR 2017 SC 5364 [LNIND 2017 SC 2864] .

75. *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] .

76. *Lakshman*, (1888) Unrep Cr C 411.

77. *Nga Maung*, (1907) 13 Burma LR 330.

78. *Judagi Mallah*, (1929) 8 Pat 911.

79. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 , explanation of importance of knowledge in the context of the clause.

80. *Ram Prasad*, AIR 1968 SC 881 [LNIND 1967 SC 358] : 1968 Cr LJ 1025 . See *Dev Raj v State of Punjab*, AIR 1992 SC 950 : 1992 Cr LJ 1292 : 1992 Supp (2) SCC 81 , gun-shot injuries, death occurring one and a half months later, in between surgery and amputation, held accused guilty of grievous hurt. *State of Karnataka v Venkatesh*, AIR 1992 SC 674 : 1992 Cr LJ 707 : 1992 (1) Crimes 625 SC : JT 1992 (1) SC 99 : 1992 (1) Scale 31 : 1992 Supp (1) SCC 539 .

81. *State of Haryana v Krishan*, AIR 2017 SC 3125 [LNIND 2017 SC 294] .

82. *Umakant v State of Chhatisgarh*, 2014 Cr LJ 4078 : 2014 (8) Scale 141 [LNIND 2014 SC 374]

83. *DV Shanmugham v State of AP*, AIR 1997 SC 2583 [LNIND 1997 SC 720] : 1997 Cr LJ 3129 , some of the accused persons were, however, given the benefit of doubt because there was no clear evidence against them. *State of UP v Shri Krishan*, 2005 Cr LJ 892 : AIR 2005 SC 762 [LNIND 2004 SC 1252] : (2005) 10 SCC 399 [LNIND 2004 SC 1252] , the wife was with the man at the time when the husband alone was killed by the assailants. Her FIR was recorded after 13 days, this fact alongwith some other details created a doubt about the prosecution case of which the benefit went to the assailants. *State of AP v Patnam Anandam*, 2005 Cr LJ 894 : AIR 2005 SC 764 [LNIND 2004 SC 1241] : (2005) 9 SCC 237 [LNIND 2004 SC 1241] , another similar case of benefit of doubt. *Jagjit Singh v State of Punjab*, 2005 Cr LJ 955 : AIR 2005 SC 913 : (2005) 3 SCC 689 , accused alleged to have killed three persons at the tubewell sight coming there by motor cycle. A girl child of seven years was supposed to be the eye-witness. She had never seen the accused before, her statement was recorded after three days, not reliable, acquittal on benefit of doubt. *Puran Singh v State of Uttaranchal*, (2008) 3 SCC 725 : 2008 Cr LJ 1058 : (2008) 1 Ker LJ 875 , benefit of doubt allowed on the basis of technical evidence.

84. *State of TN v Balkrishna*, 1992 Cr LJ 1872 (Mad).

85. *Mohammad Khalil Chisti (Dr) v State of Rajasthan*, 2013 Cr LJ 637 (SC), 2013 (1) Mad LJ (Cr) 198, (2013) 2 SCC 541 [LNIND 2012 SC 801] ; *Waman v State of Maharashtra*, 2011 (7) SCC 295 [LNIND 2011 SC 564] : AIR 2011 SC 3327 [LNIND 2011 SC 564] : 2011 Cr LJ 4827 ; *Lakshmi Singh v State of Bihar*, 1976 SCC (Cr) 671 : AIR 1976 SC 2263 : 1976 Cr LJ 1736 , non-explanation of simple injuries of the nature suffered by the accused would not be fatal; *Ram Vishambhar v State of UP*, 2013 Cr LJ 1131 : (2013) 2 SCC 71 [LNINDU 2013 SC 5] ; *Hari v State of Maharashtra*, (2009) 11 SCC 96 [LNIND 2009 SC 642] : (2009) 3 SCC (Cr) 1254.
86. *Nokul Nushyo*, (1867) 7 WR (Cr) 27; *Akhila Parida v State of Orissa*, 1987 Cr LJ 609 (Ori), provocation by cutting the crop of accused. See also *Nagar Prasad v State of UP*, 1998 Cr LJ 1580 (All).
87. *Sukhlal Sarkar v UOI*, (2012) 5 SCC 703 [LNIND 2012 SC 364] : 2012 Cr LJ 3032 .
88. *Laikhan*, (1955) Cut 625.
89. *Kundarapu*, (1962) 1 Cr LJ 261 . *Jagjit Singh v State of HP*, 1994 Cr LJ 233 : 1994 SCC (Cr) 176, the accused inflicted a number of serious injuries on the vital parts of the body of his victim causing his death on the spot, held Exception 1 of section 300 not attracted. *Pappachan v State of Kerala*, 1994 Cr LJ 1765 (Ker), the accused delivered a fatal stab wound to the person who tried to pacify him, no evidence of any sudden and grave provocation or a sudden fight. The offence did not fall under Exception 1 or 2 of section 300.
90. *KM Nanavati v State of Maharashtra*, AIR 1962 SC 605 [LNIND 1961 SC 362] : 1962 Cr LJ 521 (SC).
91. *Budhi Singh v State of HP*, 2013 Cr LJ 962 (SC) : AIR 2013 (SCW) 547 .
92. *KM Nanavati*, (1962) Bom LR 488 : AIR 1962 SC 605 [LNIND 1961 SC 362] : 1962 Cr LJ 521 (SC); *Akhtar v State*, AIR 1964 All 262 [LNIND 1963 ALL 180] . *Girja Devi v State of HP*, 2000 Cr LJ 1528 (HP), the accused wife killed her husband being provoked by his perverse sexual habits, punished under section 304, Part I.
93. *Dhandayuthan v State of TN*, 1994 Cr LJ 1587 (Mad).
94. *Gyanendra Kumar v State*, 1972 Cr LJ 308 : AIR 1972 SC 502 [LNIND 1971 SC 601] ; see also *Panchu Kumar Sardar*, 1984 Cr LJ (NOC) 142 (Cal); *Balerian Minji*, 1985 Cr LJ 1394 (MP). Where the accused on being slapped by the deceased ran to his house which was at considerable distance and brought several deadly weapons and inflicted various injuries on the deceased two of which proved fatal, his action was indicative of his intention to kill the victim, he was held to be rightly punished for murder
95. *BD Khunte v UOI*, 2015 Cr LJ 243 .
96. *Dhandayuthan v State*, 1994 Cr LJ 1587 .
97. *Murgi Munda*, (1938) 18 Pat 101.
98. *Balku*, (1938) All 789 ; Hussain, (1938) 20 Lah 278.
99. *Re V Padayachi*, 1972 Cr LJ 1641 (Mad).
100. *Hansa Singh*, 1977 Cr LJ 1448 (SC).
101. *Ram Prakash Singh v State of Bihar*, AIR 1998 SC 1190 [LNIND 1998 SC 137] : 1998 Cr LJ 1622 , conduct of accused in the jail being good, his sentence was reduced to the period already undergone during trial plus jail term. *Bishek Mohandas v State of Orissa*, 1998 Cr LJ 1489 (Ori), quarrel, one picked up an instrument and struck the other, himself also injured, for the ensuing death, conviction under section 304, Part II.
102. Note M p 147. *Kehar Singh v State*, 1997 Cr LJ 1753 (Raj), water diverted from the accused person's field by the victim to his field without justification, the accused had the right to resort to self-defence of property, but the number of injuries caused was so great as to be sure to cause death, right exceeded, conviction under section 304, Part I.
103. *Raj Singh v State of Haryana*, 2015 Cr LJ 2803 .



104. *Mohammad Khalil Chisti (Dr) v State of Rajasthan*, 2013 Cr LJ637 (SC) : 2013 (1) Mad LJ (Cr) 198, (2013) 2 SCC 541 [LNIND 2012 SC 801] ; *Gopal v State of Rajasthan*, (2013) 2 SCC 188 [LNIND 2013 SC 37] : 2013 Cr LJ 1297 .
105. *Arjun v State of Maharashtra*, JT 2012 (4) SC 447 : 2012 (5) Scale 52 [LNIND 2012 SC 283] : AIR 2012 SC 2181 [LNIND 2012 SC 283] : (2012) 5 SCC 530 [LNIND 2012 SC 283] : 2012 Cr LJ 2641 . See also *Mohammad Iqbal v State of MP*, 2012 Cr LJ 337 (Chh).
106. *Sikandar Singh v State of Bihar*, (2010) 7 SCC 477 [LNIND 2010 SC 603] : (2010) 8 SCR 373 : AIR 2010 SC 44023 : 2010 Cr LJ 3854 : (2010) 3 SCC (Cr) 417.
107. *Raj Pal v State of Haryana*, (2006) 9 SCC 678 [LNIND 2006 SC 282] : JT 2006 (11) SC 124 [LNIND 2006 SC 282] : (2006) 4 Scale 456 [LNIND 2006 SC 282] : (2006) 3 SCC (Cri) 361 [LNIND 2006 SC 282] .
108. *Mohd Yusuf v State of UP*, 1994 Cr LJ 1631 , 2181.
109. *PP Sah*, 1977 Cr LJ 346 : AIR 1977 SC 704 .
110. *Rafiq*, 1979 Cr LJ 706 : AIR 1979 SC 1179 .
111. *Ghansham Dass*, 1979 Cr LJ 28 : AIR 1979 SC 44 .
112. *Jassa Singh v State of Haryana*, AIR 2002 SC 520 [LNIND 2002 SC 13] . *Latel v State of Chhatisgarh*, AIR 2001 SC 3474 , possession of the disputed land was with the accused, but the deceased was ploughing it at the relevant time, the accused and his son attacked him and continued to do so even after he had fallen down, held, right of private defence exceeded, punishment under section 304, Part I. *State of Karnataka v Shivappa*, (1993) Cr LJ 1253 : AIR 1998 SC 1536 [LNIND 1997 SC 1597] , the right of private defence exceeded, conviction.
113. *Katta Surendra v State of AP*, (2008) 11 SCC 360 [LNIND 2008 SC 1294] : 2008 Cr LJ 3196 .
114. See also *Thomas George v State of Kerala*, 2000 Cr LJ 3475 : 1999 SCC (Cr) 1308, exceeding the right of private defence, conviction under section 304, Part II.
115. *Subba Naik*, (1898) 21 Mad 249.
116. *Satyavir Singh Rathi v State Thr CBI*, AIR 2011 SC 1748 [LNIND 2011 SC 475] : (2011) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ 2908 .
117. *Vijender Kumar v State of Delhi*, 2010 Cr LJ 3851 : (2010) 12 SCC 381 [LNIND 2010 SC 413] : (2011) 1 SCC (Cr) 29.
118. *Santokh Singh v State of Punjab*, AIR 2009 SC 1923 [LNIND 2009 SC 328] : (2009) 11 SCC 197 [LNIND 2009 SC 328] ; *Arumugam v State Rep by Inspector of Police TN*, AIR 2009 SC 331 [LNIND 2008 SC 1994] : (2008) 15 SCC 590 [LNIND 2008 SC 1994] .
119. *State of Rajasthan v Islam*, (2011) 6 SCC 343 [LNINDORD 2011 SC 309] : AIR 2011 SC 2317 [LNINDORD 2011 SC 309] : 2011 Cr LJ 3110 , plea that only one injury of small dimension had been caused by appellant to the deceased in the abdomen and he had himself taken the deceased to hospital, an inference be drawn that there was no intention to kill the deceased repelled. The case of the appellant cannot fall within Exception 4 of section 300, IPC, 1860. *Vijender Kumar v State of Delhi*, 2010 Cr LJ 3851 : (2010) 12 SCC 381 [LNIND 2010 SC 413] : (2011) 1 SCC (Cr) 291.
120. *Abdul Nawaz v State of WB*, 2012 Cr LJ 2901 : (2012) 6 SCC 581 [LNIND 2012 SC 307] : 2012 (5) Scale 357 [LNIND 2012 SC 307] ; *Chinnathaman v State*, 2007 (14) SCC 690 [LNIND 2007 SC 1485] , *Muthu v State*, 2009 (17) SCC 433 [LNIND 2007 SC 1303] ; *Arumugam v State*, 2008 (15) SCC 590 [LNIND 2008 SC 1994] ; *Ajit Singh v State of Punjab*, 2011 (9) SCC 462 [LNIND 2011 SC 844] , *Vijay Ramkrishan Gaikwad v State of Maharashtra*, 2012 (2) Scale 631 ; *Sayaji Hanmat Bankar v State of Maharashtra*, 2011 AIR (SCW) 4502 : 2011 (7) Scale 710 [LNIND 2011 SC 653] : 2011 Cr LJ 4338 : (2011) 8 SCR 234 [LNIND 2011 SC 653] ; *State of HP v Ram Pal*, AIR 2005 SC 4058 .

121. *Arjun v State of Maharashtra*, (2012) 5 SCC 530 [LNIND 2012 SC 283] : 2012 Cr LJ 2641 , where the accused appeared and entered the house and had some quarrel with his deceased wife. He threw water pot and thereafter a kerosene lamp. Burning seems to be more because lady was wearing nylon sari. She got burnt to the extent of 70%. The Supreme Court held that it was a case clearly falling under Exception 4 of [section 300 of IPC, 1860](#). *Sayaji Hanmat Bankar v State of Maharashtra*, 2011 (7) Scale 710 [LNIND 2011 SC 653] : 2011 Cr LJ 4338 .

122. *Nanak Ram v State of Rajasthan*, 2014 Cr LJ 1843 : 2014 (I) Supreme 705 .

123. *Nayamuddin*, (1891) 18 Cal 484 (FB). Where there was no evidence of sudden fight or heat of passion and the nature, number and situs of injuries showed that there was cruel manner, conviction for murder, the exception was not attracted, *Malkiat Singh v Punjab*, AIR 1996 SC 2590 [LNIND 1996 SC 1198] : 1996 Cr LJ 3583 .

124. *Zalim Rai*, (1864) 1 WR (Cr) 33; *Ameera v State*, (1866) PR No 12 of 1866. *D Sailu v State of AP*, (2007) 14 SCC 397 [LNIND 2007 SC 1347] : AIR 2008 SC 505 [LNIND 2007 SC 1347] : 2008 Cr LJ 686 , injury to a vital organ in a sudden fight, causing death due to shock and haemorrhage, punishment under section 304, Part I. *Byvarapu Raju v State of AP*, (2007) 11 SCC 218 [LNIND 2007 SC 761] : AIR 2007 SC 1904 [LNIND 2007 SC 761] : 2007 Cr LJ 3204 , the father of the accused came in intoxicated state at night and assaulted the son's wife, a resulting quarrel between father and son in which the son injured his father to death because of the injury to a vital organ, case covered by Exception 4.

125. *State of MP v Shivshankar*, 2015 Cr LJ 155 .

126. *Surain Singh v State of Punjab*, AIR 2017 SC 1904 [LNIND 2017 SC 171] .

127. *Sunnumuduli*, (1946) 25 Pat 335. *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] , it postulates a bilateral transaction in which blows are exchanged even if they all do not find their target. Provocation *per se* is not fight. Asking somebody to do something again may not be a provocation. Expressing a desire to one's neighbour digging foundation that some passage may be left may not be considered to be a demand. In instant case, held, there was no fight, far less sudden fight.

128. *Atma Singh*, AIR 1955 Punj 191 .

129. *Narayanan*, AIR 1956 SC 99 [LNIND 1955 KER 138] : 1956 Cr LJ 278 . *Golla Yelugu Govindu v State of AP*, (2008) 16 SCC 769 [LNIND 2008 SC 751] : AIR 2008 SC 1842 [LNIND 2008 SC 751] : 2008 Cr LJ 2607 : (2008) 2 APLJ 28 , ingredients of the exception restated. *Trimbak v State of Maharashtra*, (2008) 17 SCC 213 [LNIND 2008 SC 571] , ingredients for bringing the exception into operation restated. Similar restatement in *Hawa Singh v State of Haryana*, (2009) 3 SCC 411 [LNIND 2009 SC 77] : (2009) 2 SCC Cri 132 [LNIND 2009 SC 764] : 2009 Cr LJ 1146 . *Imtiaz v State of UP*, (2007) 15 SCC 299 [LNIND 2007 SC 172] , dispute about drainage of latrine, neighbour objected but to no effect, the attackers came fully armed, the court found premeditation, not suddenness. *Iqbal Singh v State of Punjab*, (2008) 11 SCC 698 [LNIND 2008 SC 1671] , sudden fight over access to agricultural land, death caused, 10 years under this exception. *SK Azim v State of Maharashtra*, (2008) 11 SCC 695 [LNIND 2008 SC 1408] , death caused in a sudden fight by a single lathi blow on head, 10 years, section 304, Part I. *Suresh Kumar v State of HP*, (2008) 13 SCC 459 [LNIND 2008 SC 766] : AIR 2008 SC 1973 [LNIND 2008 SC 766] : 2008 Cr LJ 2247 , single knife blow in sudden fight, death, 10 years, section 304, Part I. *Shankar Diwal Wadu v State of Maharashtra*, (2007) 12 SCC 518 [LNIND 2007 SC 363] : AIR 2007 SC 1410 [LNIND 2007 SC 363] : 2007 Cr LJ 1802 , attempt to take away brother's wife by the brother accused to keep her as a mistress, this resulted in killing of the brother in a sudden fit of anger, held appropriate conviction under section 304, Part II and not section 302, the accused was already undergoing imprisonment under sentence for 10 years, sentence reduced to the period already undergone. *Chinnathamam v State*, (2007) 14 SCC 690 [LNIND 2007 SC 1485] :

[AIR 2008 SC 784 \[LNIND 2007 SC 1485\]](#) : [2008 Cr LJ 1372](#) , no premeditation or preplan to cause death, altercation because of entry into the field, injury caused with sickle lying there, punishment under section 304, Part II. *Phulia Tadu v State of Bihar*, [\(2007\) 14 SCC 588 \[LNIND 2007 SC 1071\]](#) : [AIR 2007 SC 3215 \[LNIND 2007 SC 1071\]](#) : [2007 Cr LJ 4690](#) , one blow with a small stick, section 304, Part II attracted.

**130.** *Sarjug Prasad*, [AIR 1959 Pat 66](#) .

**131.** *State of UP v Jodha Singh*, [AIR 1989 SC 1822](#) : [\(1989\) 3 SCC 465](#) : [1989 Cr LJ 2113](#) . See also *Surender Kumar v Union Territory, Chandigarh*, [AIR 1989 SC 1094 \[LNIND 1989 SC 140\]](#) : [1989 Cr LJ 883](#) , where there was no evidence of acting with cruelty following a quarrel, sentence under section 304, Part I was considered appropriate; *V Sreedharan v State of Kerala*, [AIR 1992 SC 754](#) : [1992 Cr LJ 1701](#) , where the sudden impulse was held not to have ended simply because the accused chased the deceased for some distance before giving fatal blow.

**132.** *State of Karnataka v Shivalingaiah*, [AIR 1988 SC 115 \[LNIND 2012 DEL 2078\]](#) : [1988 Cr LJ 394](#) : [1988 SCC \(Cr\) 881](#). *State of Maharashtra v Suresh*, [1989 Cr LJ 1709](#) (Bom), heat and passion on cattle grazing leading to one blow on the head with a light stick, the deceased fell down, blow not repeated, death, punished under section 325 with RI for one year and fine of Rs. 2000. *Vadivelu*, [1989 Cr LJ 2248](#) (Mad), causing injury with wooden frame endangering life and resulting in death, guilty under section 326, not section 302. *Karan Singh v State*, [1988 Cr LJ 315](#) (Del), death caused in sudden quarrel, conviction under section 304, Part II. *Ramanbhai v State of Gujarat*, [1988 Cr LJ 982](#) (Guj), quarrel at a bus-stop for Rs. 5/-, moved towards a bridge where as a result of pushing one fell and died, conviction under section 304, Part II.

**133.** *Pawan Singh v State of Punjab*, [\(1995\) 1 Cr LJ 609](#) (P&H). *Thankachan v State of Kerala*, [\(2007\) 14 SCC 501 \[LNIND 2007 SC 1325\]](#) : [AIR 2008 SC 406 \[LNIND 2007 SC 1325\]](#) , one of the accused dragged the victim out of his home, the latter picked up a soda bottle, the accused also lifted a bottle from a shop and struck him on the head, the victim also hit back with the bottle in his hand, on this the accused exhorted his companions to carry further the attack with the result the victim died with multiple injuries. Ten years' imprisonment awarded under section 304, Part I. *Rakesh v State of MP*, [\(2007\) 14 SCC 504 \[LNIND 2008 SC 298\]](#) : [AIR 2008 SC 1229 \[LNIND 2008 SC 298\]](#) : [2008 Cr LJ 1646](#) , comparison of requirements of sections 1 and 4.

**134.** *Balwant Ram v State of Rajasthan*, [1995 Cr LJ 3856](#) (Raj).

**135.** *Baleshwar Mahto v State of Bihar*, [AIR 2017 SC 873 \[LNINDU 2017 SC 8\]](#) .

**136.** *Kikar Singh v State of Rajasthan*, [1993 Cr LJ 3255](#) : [AIR 1993 SC 2426 \[LNIND 1993 SC 456\]](#) : [\(1993\) 4 SCC 238 \[LNIND 1993 SC 456\]](#) . *Kudesh Mondal v State of WB*, [\(2007\) 8 SCC 578 \[LNIND 2007 SC 1043\]](#) : [AIR 2007 SC 3228 \[LNIND 2007 SC 1043\]](#) , a passerby started inquiring into a killing incident originating over a trivial matter. He was dragged by one and struck a fatal blow by the other. The court applied this exception. Conviction under section 304, Part I. *Salim Sahab v State of MP*, [\(2007\) 1 SCC 699 \[LNIND 2006 SC 1089\]](#) : [\(2007\) 103 Cut LT 531](#), another similar death caused in a quarrel, conviction under section 304, Part II, seven years RI. *Vadla Chandraiah v State of AP*, [\(2006\) 13 SCC 587 \[LNIND 2006 SC 1103\]](#) : [2007 Cr LJ 770](#) , quarrel between fruit vendor and a police constable for not paying for fruits consumed. Constable attacked him with his service weapon to death. Punishment under section 304, Part II. *Pappu v State of MP*, [2006 Cr LJ 3640](#) , murder as a result of a single lathi blow in a sudden quarrel, the accused was not armed with any weapon. Conviction under section 304, Part II, *Pulicheria Nagaraju v State of AP*, [2006 Cr LJ 3899](#) , another similar case with this observation that a single blow injury resulting in death is not a ground in itself for holding that the case would come under section 304 and not under section 302. *Khambam Raja Reddy v Public Prosecutor, HC, Andhra*, [2006 Cr LJ 4652](#) , allegation that on exhortation of the co-accused, the accused picked up a big stone piece and threw it on the head of the deceased. This could not be true because

he was suffering from polio and could not have picked up the stone. His conviction was set aside.

137. *Suresh Kumar v State of HP*, (2008) 13 SCC 459 [LNIND 2008 SC 766] : AIR 2008 SC 1973 [LNIND 2008 SC 766] : 2008 Cr LJ 2247 . *Bengar Venkata Rao v State of AP*, (2008) 9 SCC 707 [LNIND 2008 SC 1585] : 2008 Cr LJ 4353 .

138. *Anil v State of Haryana*, (2007) 10 SCC 274 [LNIND 2007 SC 629] : 2007 Cr LJ 4294 .

139. *Bhagwan Munjaji*, 1979 Cr LJ 49 (SC).

140. *Prabhu v State of UP*, AIR 1991 SC 1069 : 1991 Cr LJ 1373 . Single assault attributed to each of the accused in the course of sudden quarrel in heat of passion, Exception 4 to section 300 attracted, conviction altered from section 300 to section 304, Part II, *Subodh Behera v State of Orissa*, 1996 Cr LJ 168 (Ori). The accused, seeing his father being beaten by the deceased, caused death of the assailant by inflicting injuries on his head in a heat of passion but the accused did not act in a cruel or unreasonable manner, held Exception 4 to section 300 attracted, the offence covered under section 304, Part I, *State of MP v Mohandas*, 1992 Cr LJ 101 (MP). The accused brother caused a single injury without pre-meditation in a sudden fight and in heat of passion to his brother which proved fatal, he neither took undue advantage nor acted in a cruel manner, held Exception 4 to section 300 attracted, liable to be punished under section 304, Part I and not under section 302. *Suraj Mal v State of Punjab*, AIR 1992 SC 559 : 1992 Cr LJ 520 : 1993 Supp (1) SCC 639 . The accused, over a trivial matter of the next day of Holi festival and without any pre-meditation or any enmity with the victim, suddenly inflicted a single knife blow on his chest which proved fatal, held, the offence fell within Exception 4 of section 300, punishable under section 304, Part I, not under section 302. *Prakash v State of Rajasthan*, 1994 Cr LJ 3019 (Raj). See also *Pitchaimani v State of T.N.*, 1994 Cr LJ 2606 (Mad), wordy duel, sudden quarrel, no pre-meditation, culpable homicide not amounting to murder.

141. *Sukhbir Singh v State of Haryana*, AIR 2002 SC 1168 [LNIND 2002 SC 134] ; *Bajjappa v State of Karnataka*, 1999 Cr LJ 958 (Kant), altercation resulting in violent assault at the spur of moment. The accused was an agriculturist with clean record, had three children, in custody for considerable period, sentence reduced to five years RI, fine Rs. 1000. *Lakhwinder Singh v State of Punjab*, AIR 2003 SC 2577 [LNIND 2002 SC 820] , the accused suffered 19 injuries, two of them grievous, the prosecution could not say that they did not know such extensive injuries or that they were self-inflicted, explanation by the prosecution was necessary, failure led to the inference that the true genesis and manner of the incident was not disclosed. *Ramesh Krishna Madhusudan Nayar v State of Maharashtra*, (2008) 14 SCC 491 [LNIND 2008 SC 18] : (2009) 2 SCC Cri 759 : AIR 2008 SC 927 [LNIND 2008 SC 18] : 2008 Cr LJ 1023 , two blows with a piece of wood inflicted after quarrel for several hours about putting off the light of the staff room at night. Exception 4 attracted. *Arumugan v State*, (2008) 115 SCC 490 : AIR 2009 SC 331 [LNIND 2008 SC 1994] , fight over panchayat election, the victim dragged out from his home, exchange of hot words, blows inflicted by the accused and his companions. Exception attracted. *Raghubir Singh v State of Haryana*, (2008) 16 SCC 33 [LNIND 2008 SC 2228] : AIR 2009 SC 223 : (2009) 73 AIC 93 , lathi blows in the course of a sudden quarrel, exception applied. *Parkash Chand v State of HP*, (2004) 11 SCC 381 [LNIND 2004 SC 759] : AIR 2004 SC 4496 [LNIND 2004 SC 759] , one brother's dogs entered the kitchen of the other, the latter protested, heated altercation ensued, one went into his room, came out with a gun, shot at the other from a distance of 35 feet, death ensued. Exception applied. *Preetam Singh v State of Rajasthan*, (2003) 12 SCC 594 , there being a background to the struggle, the court did not regard the fight to be sudden. Hence, the exception not attracted. *State of Maharashtra v Manjurrya*, (2003) 12 SCC 787 , the attacking party came fully prepared and caused death as in an organised manner, no feature of a sudden fight. *Sachchey Lal Tiwari v State of UP*, (2004) 11 SCC 410 [LNIND 2004 SC 1041] : AIR 2004 SC

5039 [LNIND 2004 SC 1041] , dividing line between two fields dismissed by the attacking party, fired pistol shots at the opponent killing his two sons. The exception not applicable. *Umesh Jha v State of Bihar*, (2004) 12 SCC 329 , genesis in lands dispute, but murder pre-meditated, Exception 4 not applicable.

142. *Sikandar v State (Delhi) Admn*, AIR 1999 SC 1406 [LNIND 1999 SC 351] : 1999 Cr LJ 2098 . *Hari Shankar v State of Rajasthan*, AIR 1999 SC 2629 : 1999 Cr LJ 2902 , exchange of hard words, burning kerosene stove wick thrown, knowledge of likely death, conviction under section 304.

143. *Mahesh Balmiki v State of MP*, 1999 Cr LJ 4310 : AIR 1999 SC 3338 [LNIND 1999 SC 755] ; *Rameshraya v State of MP*, AIR 2001 SC 1229 : 2001 Cr LJ 1452 (SC). Sudden fight, but murder committed in most brutal manner conviction under section 302. *Abdul Kader v State of Gujarat*, 1999 Cr LJ 5027 (Guj), police on duty during Muslim festivities tried to prevent gambling, the accused, who was friendly with gamblers, gave one knife injury to a police constable resulting in death. The court noted that there was no premeditation, the act was the result of heat of passion, no undue advantage, Exception 4 attracted, conviction under section 304, Part II, seven years' imprisonment. *Resham Singh v State of Punjab*, AIR 2002 SC 2625 : 2002 Cr LJ 3506 , fight from both sides, Exception 4 attracted, conviction under section 304, Part II. *Naresh Janimal Lohana v State*, 1998 Cr LJ 3574 (Guj), domestic quarrel between parties on question of throwing away some mango waste, male members came out and started taking part in the sudden fight, the accused gave one blow in the scuffle by wielding a knife in the sudden heat of passion. No premeditation. Exception 4 attracted. *Pawan Kumar v State*, 1997 Cr LJ 3631 (P&H), sudden quarrel over snatching of newspaper, single knife blow, acting at the spur of moment without premeditation, Exception 4 attracted, conviction under section 304, Part II. *Lekh Raj v State*, 1997 Cr LJ 3663 (HP), accused entered into victim's house and inflicted knife blows on vital parts, conviction under section 302, Exception 4 not attracted. *Surinder Kumar v State*, 1997 Cr LJ 2872 (P&H), during an altercation, the accused pushed the victim, whose head dashed against the wall causing death. The accused given benefit of the exception, conviction under section 304, Part I. *Uday Singh v State of UP*, AIR 2002 SC 3143 [LNIND 2002 SC 545] , sudden fight between the accused persons and their victim, both unarmed, both accused held their victim by his neck with pressure that he died, neither knew about the pressure being put by the other, no common intention to cause death, only knowledge, conviction under section 304, Part II. *Bala Baine Linga Raju v State of AP*, (2009) 6 SCC 706 [LNIND 2009 SC 1104] : (2009) 3 SCC Cr 13 : 2009 Cr LJ 3426 , in the absence of appeal by state, the Supreme Court did not enhance the sentence to that for murder despite the fact that the case was that of murder and not coming under the exception.

144. *Sukhdev v State of Punjab*, (2007) 16 SCC 364 . The court considered cases relating to importance of premeditation and undue or unfair advantage. *Rakesh v State of MP*, (2007) 14 SCC 504 [LNIND 2008 SC 298] : AIR 2008 SC 1229 [LNIND 2008 SC 298] : 2008 Cr LJ 646 , one of them assaulted their victim with knife, three others gave him kicks and fists blows. The trial court convicted the main accused under section 302 and also others under sections 302/34. The High Court maintained the conviction of main accused under section 302 and convicted others under sections 326/34. The Supreme Court convicted and punished all of them under sections 304/34, Part I, 10 years. *Gurdev Raj v State of Punjab*, (2007) 13 SCC 380 [LNIND 2007 SC 1180] : 2008 Cr LJ 382 , conviction altered from section 302 to section 304, Part I. *Shambhao Singh v State of Rajasthan*, (2008) 11 SCC 637 [LNIND 2008 SC 1492] : AIR 2008 SC 3200 [LNIND 2008 SC 1492] , quarrel in land dispute, stabbing, one died, other family members injured, conviction under section 304, Part 1, 10 years, would meet the ends of justice. *Baij Nath v State of UP*, (2008) 11 SCC 738 [LNIND 2008 SC 1374] , one lathi blow on head, causing, fracture and death, seven years under section 304, Part I.

145. *Sada Ram v State of Haryana*, (2006) 13 SCC 528 . *Sandhya Jadhav v State of Maharashtra*, 2006 Cr LJ 2111 SC, landlord demanded rent, the tenant (accused) assaulted him, nephew of landlord, who tried to intervene was given a knife blow causing death, conviction altered to section 304, Part II from section 302.
146. *Suresh Chandra v State of UP*, 2005 Cr LJ 3449 : AIR 2005 SC 9 [LNIND 2004 SC 1110] : (2005) 1 SCC 122 [LNIND 2004 SC 1110] .
147. *Santokh Singh v State of Punjab*, AIR 2009 SC 1923 [LNIND 2009 SC 328] : (2009) 11 SCC 197 [LNIND 2009 SC 328] ; *Arumugam v State Rep by Inspector of Police TN*, AIR 2009 SC 331 [LNIND 2008 SC 1994] : (2008) 15 SCC 590 [LNIND 2008 SC 1994] ; *D Sailu v State of AP*, AIR 2008 SC 505 [LNIND 2007 SC 1347] : (2007) 14 SCC 397 [LNIND 2007 SC 1347] .
148. *Sridhar Bhuyan v State of Orissa*, (2004) 11 SCC 395 [LNIND 2004 SC 758] : AIR 2004 SC 4100 [LNIND 2004 SC 758] : 2004 Cr LJ 3875 .
149. Note M, p 145.
150. *Nayamuddin*, (1891) 18 Cal 484 (FB).
151. *Ambalathil*, AIR 1956 Mad 97 .
152. *Halliday*, (1889) 61 LT 701 , 702.
153. *Towers*, (1874) 12 Cox 530, 533.
154. *Lal Bahadur v State (NCT of Delhi)*, (2013) 4 SCC 557 [LNIND 2014 SC 553] ; 2013 Cr LJ 2205 : 2013 (2) SCC (Cr) 516.
155. *Adu Shikdar*, (1885) 11Cal 635; *Bhairon Lal*, (1952) 2 Raj 669 ; *Ram Chandra v State*, AIR 1957 SC 381 : 1957 Cr LJ 559 .
156. *Rama Nand*, 1981 Cr LJ 298 : AIR 1981 SC 738 [LNIND 1981 SC 5] . See further *Manguli Devi v State of Orissa*, AIR 1989 SC 483 : 1989 Cr LJ 823 : 1989 Supp (1) SCC 161 , where dead body was discovered in decomposed state and no wounds were visible yet the conviction of the widow of the deceased on the basis of her confession was sustained; *Rama Nand v State of UP*, AIR 1981 SC 738 [LNIND 1981 SC 5] : (1981) 2 SCR 444 [LNIND 1981 SC 5] : 1981 Cr LJ 298 : 1981 Mad LJ (Cr) 241. *Amar Layek v State of WB*, 1988 Cr LJ 1293 (Cal), only skeleton of bones and other personal articles recovered on lead given by accused, held guilty of murder. *Hari Kishan v State of Haryana*, 1990 Cr LJ 385 (P&H), good evidence, though corpus delicti not traceable. But see *Bhupendra Singh v State of UP*, AIR 1991 SC 1083 [LNIND 1991 SC 151] : 1991 Cr LJ 1337 : (1991) 2 SCC 750 [LNIND 1991 SC 151] , where the body of the deceased was burnt and pieces of bones which were recovered were not sufficient to establish the age, sex or identity. Conviction even under section 201 was set aside. *Sevaka Perumal v State of TN*, AIR 1991 SC 1463 [LNIND 1991 SC 269] : 1991 Cr LJ 1845 , murder charge can be established by evidence, though dead body may not be traceable. *Arun Kumar v State of UP*, 1989 Cr LJ 1460 : AIR 1989 SC 1445 : 1989 Supp (2) 332 , dead body of victim of rape not traceable, conviction under section 366 justified.
157. *Rishipal v State of Uttarakhand*, 2013 Cr LJ 1534 (SC) : 2013 AIR (SCW) 1167; *Lakshmi v State of UP*, 2002 (7) SCC 198 [LNIND 2002 SC 534] ; *State of Karnataka v MV Mahesh*, 2003 (3) SCC 353 [LNIND 2003 SC 270] .
158. *Jitender Kumar v State of Haryana*, 2012 Cr LJ 3085 : AIR 2012 SC 2488 [LNIND 2012 SC 331] : (2012) 6 SCC 204 [LNINDORD 2012 SC 412] ; The state of the contents of the stomach found at the time of medical examination is not a safe guide for determining the time of the occurrence because that would be a matter of speculation, in the absence of reliable evidence on the question as to when the deceased had his last meal and what that meal consisted of. *Masjit Tato Rawool v State of Maharashtra*, (1971) SCC (Cr) 732; *Gopal Singh v State of UP*, AIR 1979 SC 1932 ; *Sheo Darshan v State of UP*, (1972) SCC (Cr) 394. [The presence of faecal matter in the intestines is not conclusive, as the deceased might be suffering from constipation. Where

there is positive direct evidence about the time of occurrence, it is not open to the court to speculate about the time of occurrence by the presence of faecal matter in the intestines; *Sheo Dershan v State of UP*, (1972) SCC (Cr) 394. The question of time of death of the victim should not be decided only by taking into consideration the state of food in the stomach. That may be a factor which should be considered along with other evidence, but that fact alone cannot be decisive; *R Prakash v State of UP*, (1969) 1 SCC 48 . Also see *Shivappa v State of Karnataka*, (1995) 2 SCC 76 [LNIND 1994 SC 1111] ; *Jabbar Singh v State of Rajasthan*, (1994) SCC (Cr) 1745. *Bijendra Bhagat v State of Uttarakhand*, 2015 Cr LJ 3150 , the injuries suffered by the deceased are incised wounds and one fire arm injury. However, none of the injuries on the person of the deceased could be attributed to the lathi which was supposedly in the hands of the appellant. Benefit of doubt given.

159. *Raju v State of Chhatisgarh*, 2014 Cr LJ 4425 : 2014 (9) SCJ 453 [LNINDORD 2014 SC 19031] .

160. *Deepa v State of Haryana*, 2015 Cr LJ 2508 .

161. *Jagtar Singh v State of Haryana*, 2015 Cr LJ 3418 .

162. *Alagarsamy v State by DSP*, 2010 Cr LJ 29 : AIR 2010 SC 849 [LNIND 2009 SC 1914] . See also *Arun Kumar Sharma v State of Bihar*, (2010) 1 SCC 108 [LNIND 2009 SC 1866] : 2010 Cr LJ 428 , where FIR was sent to the Magistrate after five days.

163. *Awadesh Kumar Shukla v State of UP*, 2015 (7) ADJ 530 [LNIND 2015 ALL 190] : 2015 (6) ALJ 665 (All).

164. *Dilawar Singh v State of Haryana*, 2014 Cr LJ 4844 : (2015) 1 SCC 737 [LNIND 2014 SC 823]

165. *State of Rajasthan v Chandgi Ram*, 2014 Cr LJ 4571 : 2014 (10) Scale 352 [LNIND 2014 SC 811] .

166. *Sudarshan v State of Maharashtra*, 2014 Cr LJ 3232 : 2015 (5) SCJ 358 . See also *State of Karnataka v Sateesh*, 2015 Cr LJ 3427 .

167. *Rishipal v State of Uttarakhand*, 2013 Cr LJ 1534 (SC) : 2013 AIR (SCW) 1167; *Sukhram v State of Maharashtra*, 2007 (7) SCC 502 [LNIND 2007 SC 969] ; *Sunil Clifford Daniel (Dr) v State of Punjab*, 2012 (8) Scale 670 [LNIND 2012 SC 551] , *Pannayar v State of TN by Inspector of Police*, 2009 (9) SCC 152 [LNIND 2009 SC 1687] .

168. *Sanaulla Khan v State of Bihar*, (2013) 3 SCC 52 [LNIND 2013 SC 120] : 2013 Cr LJ 1527 ; *Ujjagar Singh v State of Punjab*, 2007 (13) SCC 90 [LNIND 2007 SC 1486] .

169. *Gosu Jairami Reddy v State of AP*, AIR 2011 SC 3147 [LNIND 2011 SC 2666] : 2011 Cr LJ 4387 : (2011) 11 SCC 766 [LNIND 2011 SC 2666] ; *Abu Thakir v State*, (2010) 5 SCC 91 [LNIND 2010 SC 366] : AIR 2010 SC 2119 [LNIND 2010 SC 366] : 2010 Cr LJ 2840 .

170. *Ashok Rai v State of UP*, 2014 Cr LJ 3085 : 2014 (10) SCJ 729 [LNINDU 2014 SC 21] .

171. *Rambraksh v State of Chhattisgarh*, 2016 Cr LJ 2939 : 2016 (5) SCJ 600 ; *Dharam Deo Yadav v State of UP*, 2014 Cr LJ 2371 : 2014 (2) ALT (Cr) 322 (SC).

172. *Rishipal v State of Uttarakhand*, 2013 Cr LJ 1534 (SC) : 2013 AIR (SCW) 1167; *Mohibur Rahman v State of Assam*, 2002 (6) SCC 715 ; in *Arjun Marik v State of Bihar*, 1994 Supp (2) SCC 372 , Supreme Court reiterated that the solitary circumstance of the accused and victim being last seen will not complete the chain of circumstances for the Court to record a finding that it is consistent only with the hypothesis of the guilt of the accused. No conviction on that basis alone can, therefore, be founded. So also in *Godabarish Mishra v Kuntala Mishra*, 1996 (11) SCC 264 [LNIND 1996 SC 1719] , the Supreme Court declared that the theory of last seen together is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances; *State of Goa v Sanjay Thakran*, 2007 (3) SCC 755 [LNIND 2007 SC 274] ; *Bodh Raj @ Bodha v State of Jammu and Kashmir*, 2002 (8) SCC

45 [LNIND 2002 SC 539] ; *Jaswant Gir v State of Punjab*, 2005 (12) SCC 438 ; see *Manthuri Laxmi Narasaiah v State of AP*, 2012 Cr LJ 2172 : AIR 2011 SC (Supp) 73, in which the evidence of last seen rejected by the Supreme Court.

173. Also see *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] ; *Inspector of Police TN v John David*, (2011) 5 SCC 509 [LNIND 2011 SC 441] : 2011 Cr LJ 3366 : (2011) 2 SCC (Cri) 647 , 'last seen alive theory accepted'. See also *Mannan v State of Bihar*, (2011) 5 SCC 317 [LNIND 2011 SC 440] : 2011 Cr LJ 3380 : (2011) 2 SCC (Cri) 626 .

174. *Arabindra Mukherjee v State of WB*, 2012 AIR (SCW) 1032 : 2012 Cr LJ 1207 .

175. *State Through CBI v Mahender Singh Dahiya*, (2011) 3 SCC 109 [LNIND 2011 SC 114] : AIR 2011 SC 1017 [LNIND 2011 SC 114] : 2011 Cr LJ 2177 , last seen evidence would not always mean that the accused had killed the deceased.

176. *C Perumal v Rajasekaran*, 2012 AIR (SCW) 3641 : 2012 Cr LJ 3491 .

177. *Rambraksh v State of Chhattisgarh*, 2016 Cr LJ 2939 : 2016 (5) SCJ 600 .

178. *Kanhaiya Lal v State of Rajasthan*, 2014 Cr LJ 1950 : 2014 (4) WLN 299 (SC).

179. *Mahavir Singh v State of Haryana*, 2014 Cr LJ 3228 : 2014 (7) Scale 477 .

180. *Surender Prashad v State*, (2014) 209 DLT 461 : 2014 VI AD (Del) 234.

181. *Bikau Pandey v State of Bihar*, AIR 2004 SC 997 [LNIND 2003 SC 1027] : (2003) 12 SCC 616 [LNIND 2003 SC 1027] ; *Dalbir Singh v State of Haryana*, AIR 2008 SC 2389 [LNIND 2008 SC 1218] : (2008) 11 SCC 425 [LNIND 2008 SC 1218] ; *Nishan Singh v State of Punjab*, AIR 2008 SC 1661 [LNIND 2008 SC 2718] : (2008) 17 SCC 505 [LNIND 2008 SC 2718] . See also *Balraje v State of Maharashtra*, (2010) 6 SCC 673 [LNIND 2010 SC 487] : 2010 Cr LJ 3443 ; *Satvir v State of UP*, AIR 2009 SC 1741 [LNIND 2009 SC 124] : 2009 Cr LJ 1586 : (2009) 4 SCC 289 [LNIND 2009 SC 124] .

182. *Mukesh v State for NCT of Delhi*, 2017 (5) Scale 506 .



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

**[s 301] Culpable homicide by causing death of person other than person whose death was intended.**

**If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.**

#### COMMENT.—

**Doctrine of transferred malice.**—Section 301 of IPC, 1860 specifies that if a person by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing death of any person whose death he neither intends, nor knows himself to be likely to cause, culpable homicide committed by the offender is of the description of which it would have been, if he had caused the death of the person, whose death he intended or knew himself to be likely to cause.<sup>183</sup> Blow aimed at the intended victim, if alights on another, offence is the same as it would have been if the blow had struck the intended victim.<sup>184</sup> This section lays down that culpable homicide may be committed by causing the death of a person whom the offender neither intended, nor knew himself to be likely, to kill. This section embodies what the English authors describe as the doctrine of transfer of malice or the transmigration of motive. Under this section, if A intends to kill B but kills C whose death he neither intends nor knows himself to be likely to cause, the intention to kill C is, by law attributed to him.<sup>185</sup>

If the killing takes place in the course of doing an act which a person intends or knows to be likely to cause death, it ought to be treated as if the real intention of the killer had been actually carried out.

Where a mistake is made in respect of the person, as where the offender shoots at A supposing that he is shooting at B, it is clear that the difference of person can make none in the offence or its consequences; the crime consists in the wilful doing of a prohibited act; the act of shooting at A was wilful, although the offender mistook him for another.

Where the accused was deliberately trying to shoot at a fleeing man who had criticised his father in a School Committee Meeting but unfortunately his own maternal uncle came in between him and the intended victim and thus got killed, it was held that the act of the accused was nothing but murder under section 302 read with section 301, IPC, 1860.<sup>186</sup> In an altercation between parties, the accused persons fired indiscriminately upon the fleeing party, one shot hit a person and second caused the death of the complainant's 10-year-old son. The episode took place in a commercial locality. The death was held to be intentional murder punishable under sections

300/301.<sup>187</sup> The accused reached his intended victim's house. The latter hid himself somewhere else. The accused chased him there and standing before that house fired into it. The housewife became prey and fell dead. It was held that under the doctrine of transfer of malice, the accused must be convicted under sections 302 and 307 and sentenced to life imprisonment.<sup>188</sup> Where the accused intended to kill a particular person by his lorry but another person chanced to come before the lorry and happened to be killed, an offence under this section was committed and the accused was convicted under section 302.<sup>189</sup>

Similarly, there will be no difference where the injury intended for one falls on another by accident. If A makes a thrust at B, meaning to kill, and C throwing himself between, receives the thrust and dies, A will answer for it as if his mortal purpose had taken place on B.

The same principle is applicable where, through accident or the mistake of a party not privy to the criminal design, the mischief falls either on a person not intended, or on the party intended but in a different manner from that intended.<sup>190</sup> Accused had entered the house of witness to kill him but due to non-availability of electricity and under the wrong impression he killed the deceased. Death of deceased can be said to be accidental due to mistaken identity rather than any intentional act of accused. Order of conviction of accused under [section 302, IPC, 1860](#) is modified to one under section 304, Part II, [IPC, 1860](#).<sup>191</sup>

In a scuffle between accused persons and the complainant's party, one member on the accused's side fired a shot at a particular member on the complainant's side but the shot actually hit another person who died. The Court held that the doctrine of transferred malice was attracted. The act of the accused would be covered by section 304 and he was liable to be convicted under Part II of that section, though the deceased was neither aimed at nor intended to be harmed by the accused.<sup>192</sup>

It is not a disputed fact as to whose fire shot resulted in the death of the deceased. The only question which is to be examined here is whether the offence committed by the respondent is culpable homicide amounting to murder, punishable under section 302 or culpable homicide not amounting to murder, punishable under section 304, Part I. Here, the intention on the part of the respondent-accused in causing bodily injury as is likely to cause death is also not a disputed fact. The only thing which is to be tested is whether the bodily injury is covered under either of the clauses of [section 300 of IPC, 1860](#) (*transfer of malice doctrine applied*).<sup>193</sup>

### **[s 301.1] Transfer of malice.—**

The accused intended to cause death of his victim. But the stab aimed at him fell on the chest of the deceased resulting in his death. It was held that as per the doctrine of transfer of malice, it must be presumed that the accused intended to cause death of the deceased alone. His act attracted the offence under section 301 read with section 302.<sup>194</sup>

### **[s 301.2] CASES.—**

Four persons were shooting at R in furtherance of their common intention to kill M, in the *bona fide* belief that R was M. R died as a result of the gunshot wounds. It was held by the Supreme Court that the accuseds were guilty under section 302 read with section 34 and that section 301 had no application.<sup>195</sup>

183. *Dan Behari v State of UP*, 2003 Cr LJ 4959 .
184. *Viswanath Pillai v State of Kerala*, 1994 Cr LJ 1037 , the court **referred** *Ballan v The State*, AIR 1955 All 626 [LNIND 1955 ALL 71] , wherein the scope of section 301 was discussed and *Suba v Emperor*, AIR 1928 Lah 344 : 1928 (29) Cr LJ 280 .
185. *Shankarlal*, AIR 1965 SC 1260 [LNIND 1964 SC 230] : (1965) 2 Cr LJ 266 .
186. *Gyanendra Kumar v State*, 1972 Cr LJ 308 : AIR 1972 SC 502 [LNIND 1971 SC 601] .
187. *Abdul v State of Gujarat*, (1995) 1 Cr LJ 464 : AIR 1994 SC 1910 [LNIND 1994 SC 209] .
188. *Jagpal Singh v State of Punjab*, AIR 1991 SC 982 : 1991 Cr LJ 597 : 1991 Supp (1) SCC 549 .
189. *Padmanabhan v State of Kerala*, 1988 Cr LJ 591 (Ker).
190. 7th Parl Rep 26; *Jeoli*, (1916) 39 All 161 .
191. *Geja Sabar v State of Orissa*, 2009 Cr LJ 4685 .
192. *Kashi Ram v State of MP*, AIR 2001 SC 2902 [LNIND 2001 SC 2369] . *Rameshwar v State of UP*, 1997 Cr LJ 2677 (All), a minor killed by gunshot injury, the accused wanted to kill the victim's father. Conviction under section 304, Part I.
193. *State of Rajasthan v Ram Kailash*, AIR 2016 SC 634 [LNIND 2016 SC 41] : (2016) 4 SCC 590 [LNIND 2016 SC 41] .
194. *Nagaraj v State*, 2006 Cr LJ 3724 (Mad—DB).
195. *Shankarlal*, AIR 1965 SC 1260 [LNIND 1964 SC 230] . See also *Balwinder v State of Punjab*, (1987) 1 SCC 1 [LNIND 1986 SC 482] : 1987 Cr LJ 330 : AIR 1987 SC 350 [LNIND 1986 SC 482] where a conviction was upheld on the basis of circumstantial evidence only, such as, last seen together, abscondence, recovery of dead body at his instance, and false pleas. But no such conviction was upheld in *Kansa Bahera v State of Orissa*, 1987 Cr LJ 1857 : (1987) 1 SCC 480 : AIR 1987 SC 1507 [LNIND 1987 SC 383] , because the circumstances were not capable of leading to the single point conclusion of the guilt of the accused person. The Supreme Court has **reiterated** that a High Court should not grant anticipatory bail to a person against whom a report of dowry death is under investigation. *Samunder Singh v State of Rajasthan*, (1987) 1 SCC 466 [LNIND 1987 SC 38] : AIR 1987 SC 737 [LNIND 1987 SC 38] . For an example of conviction under the section for bride-burning see *Surinder Kumar v State (Delhi Administration, Delhi)*, (1987) 1 SCC 467 [LNIND 1987 SC 38] : AIR 1987 SC 692 : 1987 Cr LJ 537 . For burning a mistress and conviction on the basis of her dying declaration, see, *Suresh v State of MP*, (1987) 2 SCC 32 : 1987 Cr LJ 775 : AIR 1987 SC 860 . Unless there is infirmity, illegality, failure of justice or question of principle, the court does not interfere in a concurrent sentence and conviction by trial and High Court. *Gopal v State of Tamil Nadu*, (1986) 2 SCC 93 [LNIND 1986 SC 26] : AIR 1986 SC 702 [LNIND 1986 SC 26] . *Ashok Kumar Chatterjee v State of M.P.*, AIR 1989 SC 1890 : 1989 Cr LJ 2124 : 1989 Supp (1) SCC 560 ; Death caused by gunshot injuries, remarkable eye-witness account, conviction, *Bikkar Singh v State of Punjab*, AIR 1989 SC 1440 : 1989 Cr LJ 1457 , but acquittal where eye-witness's account was doubtful, prosecution version different from dying declaration and no explanation of injuries on the person of the accused; *State of U.P. v Madan Mohan*, AIR 1989 SC 1519 : 1989 Cr LJ 1485 : (1989) 3 SCC 390 ; charges of abduction, murder and rape, trial court acquitting because body was not traceable, High Court convicting for abduction, conviction sustained, *Arun Kumar v State of U.P.*, AIR 1989 SC 1445 : 1989 Cr LJ

1460 : 1989 Supp (2) SCC 322 . Re-appreciation of evidence in the absence of the counsel, conviction found justified, *Daya Ram v State (Delhi) Admn*, (1988) 1 SCC 615 [LNIND 1988 SC 41] : AIR 1988 SC 613 : 1988 Cr LJ 865 .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### [s 302] Punishment for murder.

Whoever commits murder shall be punished with death, or <sup>196</sup>[imprisonment for life], and shall also be liable to fine.

#### COMMENT.—

Section 302 provides the punishment for murder. It stipulates a punishment of death or imprisonment for life and fine. Once an offender is found by the Court to be guilty of the offence of murder under section 302, then it has to sentence the offender to either death or for imprisonment for life. The Court has no power to impose any lesser sentence.

#### [s 302.1] Punishment for murder.—Evolution.—

Cr PC, 1898 had section 376(5) which required that if an accused is convicted of an offence punishable with death and the Court sentences him with any punishment other than death, the Court shall, in its judgment, give reasons why death sentence was not passed. The provision of section 367(5) of the 1898 Code reads as follows:

*(5) If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed.*

In 1955, Cr PC (Amendment) Act, 1955 deleted the aforesaid section 367(5) of the 1898 Code. As a result of this amendment, which came into effect from 1 January 1956, it was no longer necessary for a Court to record in its judgment, in case of conviction in connection with an offence punishable with death, any reason for not imposing the death sentence. Thus, in the new Code, the discretion of the judge to impose death sentence has been narrowed, for the Court has to provide special reasons for imposing a sentence of death. It has made imprisonment for life the rule and death sentence an exception, in the matter of awarding punishment for murder.<sup>197</sup> Reference to extenuating or mitigating circumstances in a case of death penalty was made possibly for the first time by Supreme Court in the case of *Nawab Singh v State of UP*.<sup>198</sup> The Court held that in the facts of that case, murder was a cruel and deliberate one and there were no extenuating circumstances. After the amendment of 1898 Code, in the year 1955, the first case relating to death sentence, which came before Supreme Court was that of *Vadivelu Thevar v State of Madras*,<sup>199</sup> in which it was held that the question of sentence has to be determined, not with reference to the volume or character of the evidence adduced by the prosecution in support of the prosecution case, but with reference to the fact whether there are any extenuating circumstances which can be said to mitigate the enormity of the crime. If the Court is satisfied that there are such mitigating circumstances, only then, it would be justified in imposing the lesser of the two sentences provided by law.

## [s 302.2] Constitutionality of Death penalty.—

The constitutionality of death sentence was challenged in the case of *Jagmohan Singh v State of UP*.<sup>200</sup> The **Constitution** Bench while upholding the constitutionality of death penalty examined whether total discretion can be conferred on the judges in awarding death sentence, when the statute does not provide any guidelines on how to exercise the same. The decision in *Jagmohan Singh (supra)* was rendered when **Cr PC, 1973** was not in existence. However, the aforesaid position substantially changed with the introduction of a changed sentencing structure under **Cr PC, 1973**. In *Rajendra Prasad v State of UP*,<sup>201</sup> it was held that the special reasons necessary for imposing a death penalty must relate not to the crime but to the criminal. It could be awarded only if the security of the state and society, public order in the interest of the general public compelled that course.

### **Proposition laid down by the **Constitution** Bench in *Jagmohan Singh's Case***

- (i) The general legislative policy that underlines the structure of our criminal law, principally contained in the **IPC, 1860** and **Cr PC, 1973**, is to define an offence with sufficient clarity and to prescribe only the maximum punishment therefore, and to allow a very wide discretion to the Judge in the matter of fixing the degree of punishment.

With the solitary exception of section 303, the same policy permeates section 302 and some other sections of **IPC, 1860**, where the maximum punishment is the death penalty.

- (ii) (a) No exhaustive enumeration of aggravating or mitigating circumstances which should be considered when sentencing an offender, is possible. "The infinite variety of cases and facets to each case would make general standards either meaningless 'boiler plate' or a statement of the obvious that no Jury (Judge) would need." (referred to *McGoutha v California*.<sup>202</sup>)
  - (b) The impossibility of laying down standards is at the very core of the criminal law as administered in India which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment.
- (iii) The view taken by the plurality in *Furman v Georgia*,<sup>203</sup> decided by the Supreme Court of the United States, to the effect, that a law which gives uncontrolled and unguided discretion to the Jury (or the Judge) to choose arbitrarily between a sentence of death and imprisonment for a capital offence, violates the Eighth Amendment, is not applicable in India. We do not have in our **Constitution** any provision like the Eighth Amendment, nor are we at liberty to apply the test of reasonableness with the freedom with which the Judges of the Supreme Court of America are accustomed to apply "the due process" clause. There are grave doubts about the expediency of transplanting western experience in our country. Social conditions are different and so also the general intellectual level. Arguments which would be valid in respect of one area of the world may not hold good in respect of another area.
- (iv) (a) This discretion in the matter of sentence is to be exercised by the Judge judicially, after balancing all the aggravating and mitigating circumstances of the crime.
  - (b) The discretion is liable to be corrected by Superior Courts. The exercise of judicial discretion on well-recognised principles is, in the final analysis, the safest possible safeguard for the accused. In view of the above, it will be impossible to say that there would be at all any discrimination, since crime as crime may appear to be superficially

the same, but the facts and circumstances of a crime are widely different. Thus considered, the provision in [section 302, IPC, 1860](#) is not violative of [Article 14 of the Constitution](#) on the ground that it confers on the Judges an unguided and uncontrolled discretion in the matter of awarding capital punishment or imprisonment for life.

(v) (a) Relevant facts and circumstances impinging on the nature and circumstances of the crime can be brought before the Court at the preconviction stage, notwithstanding the fact that no formal procedure for producing evidence regarding such facts and circumstances had been specifically provided. Where counsel addresses the Court with regard to the character and standing of the accused, they are duly considered by the Court unless there is something in the evidence itself which belies him or the Public Prosecutor challenges the facts.

(b) It is to be emphasised that in exercising its discretion to choose either of the two alternative sentences provided in [section 302, IPC, 1860](#):

the Court is principally concerned with the facts and circumstances whether aggravating or mitigating, which are connected with the particular crime under inquiry. All such facts and circumstances are capable of being proved in accordance with the provisions of the [Indian Evidence Act](#) in a trial regulated by the [CrPC](#). The trial does not come to an end until all the relevant facts are proved and the counsel on both sides have an opportunity to address the Court. The only thing that remains is for the Judge to decide on the guilt and punishment and that is what s. 306(2) and s. 309(2), [CrPC](#) purport to provide for. These provisions are part of the procedure established by law and unless it is shown that they are invalid for any other reasons they must be regarded as valid. No reasons are offered to show that they are constitutionally invalid and hence the death sentence imposed after trial in accordance with the procedure established by law is not unconstitutional under [Art. 21](#).

[*Jagmohan Singh v State of UP.*]<sup>204</sup>.

### [s 302.3] Evolution of Sentencing Policy

Capital punishment has been a subject matter of great social and judicial discussion and catechism. From whatever point of view it is examined, one undisputable statement of law follows that it is neither possible nor prudent to state any universal formula which would be applicable to all the cases of criminology where capital punishment has been prescribed. It shall always depend upon the facts and circumstances of a given case.<sup>205</sup>

### [s 302.4] Phase-I (Focus on Crime).—

*Jagmohan Singh's Case (supra)* laid down that discretion in the matter of sentencing is to be exercised by the judge after balancing all the aggravating and mitigating circumstances "of the crime". *Jagmohan Singh* also laid down in proposition that while choosing between the two alternative sentences provided in [section 302 of IPC, 1860](#) (sentence of death and sentence of life imprisonment), the Court is principally concerned with the aggravating or mitigating circumstances connected with the "particular crime under inquiry".

### [s 302.5] Legislative Change.—

The 41st Law Commission Report proposed extensive changes in the 1898 Code. In paragraph 23.2 of the said report, the Law Commission recommended a set of new provisions for governing "trials before a Court of sessions". With regard to section 309 of the 1898 Code, the Law Commission recommended that hearing of the accused was most desirable before passing any sentence against him. This recommendation was accepted and incorporated while enacting [section 235, Cr PC](#) in 1973 Code within Chapter XVIII of the same under the heading "Trial before a Court of Sessions". The most significant change brought about by the incorporation of the recommendation of the Law Commission, is the giving of an opportunity of hearing to the accused on the question of sentence. This opportunity of hearing at the post-conviction stage gives the accused an opportunity to raise fundamental issues for adjudication and effective determination by Court of its sentencing discretion in a fair and reasonable manner. In *Santa Singh v State of Punjab*,<sup>206</sup> the Supreme Court held that this provision is in consonance with the modern trends in penology and sentencing procedures. It was further held that proper exercise of sentencing discretion calls for consideration of various factors like the nature of offence, the circumstances—both extenuating or aggravating, the prior criminal record, if any, of the offender, the age of the offender, his background, his education, his personal life, his social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of his rehabilitation in the life of community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others.

### [s 302.6] Phase-II Doctrine of "Rarest of rare" (Shifting the focus from crime to criminal).—

In *Bachan Singh v State of Punjab*,<sup>207</sup> another [Constitution Bench](#), while upholding the constitutional validity of death sentence observed that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. The principal questions considered in this case were:

- (i) Whether death penalty provided for the offence of murder in [Section 302, Penal Code](#) is unconstitutional.
- (ii) If the answer to the foregoing question be in the negative, whether the sentencing procedure provided in [Section 354\(3\) of the CrPC, 1973](#) (Act 2 of 1974) is unconstitutional on the ground that it invests the Court with unguided and untrammelled discretion and allows death sentence to be arbitrarily or freakishly imposed on a person found guilty of murder or any other capital offence punishable under the [Indian Penal Code](#) with death or, in the alternative, with imprisonment for life.

The conclusion of the [Constitution Bench](#) was that the sentence of death ought to be given only in the '**rarest of rare cases**' [See the Box with '*Supreme Court Guidelines in Bachan Singh*'] and it should be given only when the option of awarding the sentence of life imprisonment is "unquestionably foreclosed". It laid down the framework law on this point. Bachan Singh effectively opened up Phase II of a sentencing policy by shifting the focus from the crime to the crime and the criminal.

#### **Supreme Court Guidelines in Bachan Singh**

- (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;
- (ii) Before opting for the death penalty, the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the



'crime';

- (iii) Life imprisonment is the rule and death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;
- (iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

[*Bachan Singh v State of Punjab*.<sup>208.</sup>]

The judgment in *Machhi Singh v State of Rajasthan*,<sup>209.</sup> did not only state the above guidelines in some elaboration, but also specified the mitigating circumstances which could be considered by the Court while determining such serious issues.<sup>210.</sup> Despite the legislative change and *Bachan Singh* discarding proposition (iv)(a) of *Jagmohan Singh*, Supreme Court in *Machhi Singh* revived the "balancing" of aggravating and mitigating circumstances through a balance sheet theory. In doing so, it sought to compare aggravating circumstances pertaining to a crime with the mitigating circumstances pertaining to a criminal. It hardly need be stated, with respect, that these are completely distinct and different elements and cannot be compared with one another. A balance sheet cannot be drawn up of two distinct and different constituents of an incident. Nevertheless, the balance sheet theory held the field post *Machhi Singh*.<sup>211.</sup>

#### *Supreme Court Guidelines in Machhi Singh*

Factors to be considered while determining the "rarest of rare" case

##### I. Manner of commission of murder

33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. For instance.

- (i) When the house of the victim is set aflame with the end in view to roast him alive in the house,
- (ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.
- (iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

##### II. Motive for commission of murder

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance, when (a) a hired assassin commits murder for the sake of money or reward; (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust; (c) a murder is committed in the course for betrayal of the motherland.

##### III. Anti-social or socially abhorrent nature of the crime

(a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance, when such a crime is committed in order to terrorise such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry-deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

#### IV. Magnitude of crime

35. When the crime is enormous in proportion. For instance, when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

#### V. Personality of victim of murder

36. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder, (b) a helpless woman or a person rendered helpless by old age or infirmity, (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust, (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

[*Machhi Singh v State of Punjab*.<sup>212.</sup>]

It is always preferred not to fetter the judicial discretion by attempting to make excessive enumeration, in one way or another; and that both aspects namely aggravating and mitigating circumstances have to be given their respective weightage and that the Court has to strike the balance between the two and see towards which side the scale/balance of justice tilts.<sup>213.</sup>

***The aggravating and mitigating circumstances required to be taken into consideration while applying the doctrine of "rarest of rare" crime***

#### **39. Aggravating circumstances:**

1. The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, etc. by the accused with a prior record of conviction for capital felony.
2. The offence was committed while the offender was committing another serious offence.
3. The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.
4. The offence of murder was committed for ransom or like offences to receive money or monetary benefits.
5. Hired killings.
6. The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.
7. The offence was committed by a person while in lawful custody.

8. The offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under [section 43, Cr PC, 1973](#).
9. When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.
10. When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.
11. When murder is committed for a motive which evidences total depravity and meanness.
12. When there is a cold-blooded murder without provocation.
13. The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

**Mitigating circumstances:**

1. The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.
  2. The age of the accused is a relevant consideration but not a determinative factor by itself.
  3. The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.
  4. The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.
  5. The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.
  6. Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a pre-ordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.
  7. Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.
40. While determining the questions relating to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

**Principles:**

- (1) The Court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.

(2) In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

*Ramnaresh v State of Chhattisgarh*,<sup>214</sup> *Brajendra Singh v State of MP*.<sup>215</sup>

### **[s 302.7] Considerations for or against death sentence.—Balance sheet of aggravating and mitigating factors.—**

Both in *Bachan Singh and Machhi Singh's* cases, guidelines have been indicated by the Supreme Court as to when this extreme sentence should be awarded and when not. In fine, a balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating circumstances before the option is exercised to award one sentence or the other.

The cardinal questions to be asked and answered are:—

- (a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?
- (b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

If after taking into consideration all these circumstances, it is felt that death sentence is warranted, the Court would proceed to do so.<sup>216</sup> Thus, where murder is premeditated<sup>217</sup> or is committed in an organised manner,<sup>218</sup> or by a hired assassin<sup>219</sup> or by a lawyer<sup>220</sup> or where it is gruesome<sup>221</sup> or is committed with utmost depravity,<sup>222</sup> death sentence seems to be the proper sentence in all such cases.

### **[s 302.8] Need for flexibility.—**

The Supreme Court has re-examined the categories after a gap of 25 years in *Swami Shraddananda v State of Karnataka*.<sup>223</sup> The circumstances and conditions of life have very seriously changed since then and, therefore, even if those categories are to be observed, some scope for flexibility should always be maintained. Giving a brief view of the changed scenario, the Supreme Court noted that a careful reading of the *Machhi Singh* categories makes it clear that the classification was made looking at murder mainly as an act of maladjusted individual criminal(s). In 1983, the country was relatively free from organised and professional crime. Abduction for ransom and gang rape and murders committed in course of those offences were yet to become a menace for the society compelling the legislature to create special slots for those offences in [IPC, 1860](#). At the time of *Machhi Singh*, Delhi had not witnessed the

infamous Sikh carnage. There had been no attack on the country's Parliament. There were no bombs planted by terrorists killing completely innocent people, men, women and children in dozens with sickening frequency. There were no private armies, no mafia cornering huge Government contracts purely by muscle power, no reports of killings of social activists and "whistle-blowers", no reports of custodial deaths and rape and fake encounters by police or even by armed forces. These developments would unquestionably find a more pronounced reflection in any classification if one were to be made today. Relying upon the observations in *Bachan Singh*, therefore, even though the categories framed in *Machhi Singh* provide very useful guidelines, nonetheless those cannot be taken as inflexible, absolute or immutable. Further, even in those categories, there would be scope for flexibility as observed in *Bachan Singh* itself.

### [s 302.9] Santosh Bariyar—A landmark.—

In *Santosh Kumar Satishbhushan Bariyar v State of Maharashtra*,<sup>224</sup> while sharing Supreme Court's "unease and sense of disquiet" it was observed that:

the balance sheet of aggravating and mitigating circumstances approach invoked on a case by case basis has not worked sufficiently well so as to remove the vice of arbitrariness from our capital sentencing system. It can be safely said that the *Bachan Singh* threshold of "the rarest of rare cases" has been most variedly and inconsistently applied by the various High Courts as also this Court.

The Judgments which are held to be *per incuriam* in *Santhosh Bariyar*:

- (1) *Shivaji @ Dadya Shankar Alhat v State of Maharashtra*,<sup>225</sup>
- (2) *Mohan Anna Chavan v State of Maharashtra*,<sup>226</sup>
- (3) *Bantu v State of UP*,<sup>227</sup>
- (4) *Surja Ram v State of Rajasthan*,<sup>228</sup>
- (5) *Dayanidhi Bisoi v State of Orissa*,<sup>229</sup> and
- (6) *State of UP v Sattan @ Satyendra*.<sup>230</sup>

In *Sangeet v State of Haryana*,<sup>231</sup> in an unprecedented Judgment, a two-judge bench of the Supreme Court held that the Court has not endorsed the approach of aggravating and mitigating circumstances in the [Constitution Bench Judgment in \*Bachan Singh\*](#) and observed that it needs a fresh look. [See the Box with '*Principles summarised in Sangeet's Case by Supreme Court*'.] The bench observed that even though *Bachan Singh* intended "principled sentencing", sentencing has now really become judge-centric as highlighted in *Swamy Shraddananda* and *Bariyar*. This aspect of the sentencing policy in Phase II as introduced by the [Constitution Bench in \*Bachan Singh\*](#) seems to have been lost in transition.

#### *Principles summarised in Sangeet's Case by Supreme Court*

80. 1. This Court has not endorsed the approach of aggravating and mitigating circumstances in *Bachan Singh*. However, this approach has been adopted in several decisions. This needs a fresh look. In any event, there is little or no uniformity in the application of this approach.

2. Aggravating circumstances relate to the crime while mitigating circumstances relate to the criminal. A balance sheet cannot be drawn up for comparing the two. The considerations for both are distinct and unrelated. The use of the mantra of aggravating and mitigating circumstances needs a review.

3. In the sentencing process, both the crime and the criminal are equally important. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing.

4. The [Constitution](#) Bench of this Court has not encouraged standardization and categorization of crimes and even otherwise it is not possible to standardize and categorize all crimes.

5. The grant of remissions is statutory. However, to prevent its arbitrary exercise, the legislature has built in some procedural and substantive checks in the statute. These need to be faithfully enforced.

6. Remission can be granted under [Section 432 of the CrPC](#) in the case of a definite term of sentence. The power under this Section is available only for granting "additional" remission, that is, for a period over and above the remission granted or awarded to a convict under the Jail Manual or other statutory rules. If the term of sentence is indefinite (as in life imprisonment), the power under [Section 432 of the CrPC](#) can certainly be exercised but not on the basis that life imprisonment is an arbitrary or notional figure of twenty years of imprisonment.

7. Before actually exercising the power of remission under [Section 432 of the CrPC](#) the appropriate Government must obtain the opinion (with reasons) of the presiding judge of the convicting or confirming Court. Remissions can, therefore, be given only on a case-by-case basis and not in a wholesale manner.

[*Sangeet v State of Haryana*.]<sup>232</sup>.

In *Mohinder Singh v State of Punjab*,<sup>233</sup> another two-Judge Bench analysed the various principles laid down in decisions reported in *Swamy Shraddananda @ Murali Manohar Mishra v State of Karnataka*,<sup>234</sup> *Santosh Kumar Satishbhushan Bariyar v State of Maharashtra*,<sup>235</sup> *Mohd Farooq Abdul Gafur v State of Maharashtra*,<sup>236</sup> *Haresh Mohandas Rajput v State of Maharashtra*,<sup>237</sup> *State of Maharashtra v Goraksha Ambaji Adsl*,<sup>238</sup> and the Supreme Court's decision reported in *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid v State of Maharashtra*,<sup>239</sup> and held that a conclusion as to the 'rarest of rare' aspect with respect to a matter shall entail identification of aggravating and mitigating circumstances relating both to the crime and the criminal and the expression 'special reasons' obviously means ('exceptional reasons') founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal.<sup>240</sup>

*Principles summarised in Mohinder Singh's Case by Supreme Court*

(i) A conclusion as to the 'rarest of rare' aspect with respect to a matter shall entail identification of aggravating and mitigating circumstances relating both to the crime and the criminal.

(ii) The expression 'special reasons' obviously means ('exceptional reasons') founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal.

(iii) The decision in *Ravji @ Ram Chandra v State of Rajasthan*,<sup>241</sup> which was subsequently followed in six other cases, namely, *Shivaji @ Dadya Shankar Alhat v State of Maharashtra*,<sup>242</sup> *Mohan Anna Chavan v State of Maharashtra*,<sup>243</sup> *Bantu v State of UP*,<sup>244</sup> *Surja Ram v State of Rajasthan*,<sup>245</sup> *Dayanidhi Bisoi v State of Orissa*,<sup>246</sup> and *State of UP v Sattan @ Satyendra and Others*,<sup>247</sup> wherein it was held that it is only characteristics relating to crime, to the exclusion of the ones relating to criminal, which are relevant to sentencing in criminal trial, was rendered *per incuriam qua* Bachan Singh (*supra*) in the decision reported in *Santosh Kumar Satishbhushan Bariyar (supra)* at 529.

(iv) Public opinion is difficult to fit in the 'rarest of rare' matrix. People's perception of crime is neither an objective circumstance relating to crime nor to the criminal.

Perception of public is extraneous to conviction as also sentencing, at least in capital sentencing according to the mandate of *Bachan Singh (supra)*. [2009 (6) SCC 498 [LNIND 2009 SC 1278] at p 535.]

(v) Capital sentencing is one such field where the safeguards continuously take strength from the *Constitution*. [(2009) 6 SCC 498 [LNIND 2009 SC 1278] at 539.]

(vi) The Apex Court as the final reviewing authority has a far more serious and intensive duty to discharge and the Court not only has to ensure that award of death penalty does not become a perfunctory exercise of discretion under section 302 after an ostensible consideration of 'rarest of rare' doctrine, but also that the decision-making process survives the special rigours of procedural justice applicable in this regard.<sup>248.</sup>

(vii) The 'rarest of rare' case comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of "the rarest of the rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society.<sup>249.</sup>

(viii) Life sentence is the rule and the death penalty is the exception. The condition of providing special reasons for awarding death penalty is not to be construed linguistically but it is to satisfy the basic features of a reasoning supporting and making award of death penalty unquestionable.

(ix) The circumstances and the manner of committing the crime should be such that it pricks the judicial conscience of the Court to the extent that the only and inevitable conclusion should be awarding of death penalty.

*State of Maharashtra v Goraksha Ambaji Adsul*<sup>250.</sup> and *Mohinder Singh v State of Punjab*.<sup>251.</sup>

### **[s 302.10] Crime Test, Criminal Test and RR Test.—**

The tests that we have to apply, while awarding death sentence, are "crime test", "criminal test" and the RR Test and not "balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is 100% and "criminal test" 0%, that is no Mitigating Circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc., the "criminal test" may favour the accused to avoid the capital punishment. Even if both the tests are satisfied, that is the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the Rarest of Rare Case test (RR Test). RR Test depends upon the perception of the society that is "society centric" and not "Judge centric", that is, whether the society will approve the awarding of death sentence to certainty types of crimes or not. While applying that test, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of minor girls intellectually challenged, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. Courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the judges.<sup>252.</sup>

Some Cases where the Court applied the Criminal test to avoid Death Penalty:

- (1) *Kumudi Lal v State of UP*,<sup>253</sup>.
- (2) *Raju v State of Haryana*,<sup>254</sup>.
- (3) *Bantu @ Naresh Giri v State of MP*,<sup>255</sup>.
- (4) *State of Maharashtra v Suresh*,<sup>256</sup>.
- (5) *Amrit Singh v State of Punjab*,<sup>257</sup>.
- (6) *Rameshbhai Chandubhai Rathod v State of Gujarat*,<sup>258</sup>.
- (7) *Surendra Pal Shivbalak v State of Gujarat*,<sup>259</sup>.
- (8) *Amit v State of Maharashtra*.<sup>260</sup>.

### [s 302.11] *Via media* between Death Sentence and Life Imprisonment.—

It was in *Swamy Shraddananda (2) v State of Karnataka*,<sup>261</sup> that a three-Judge Bench of the Supreme Court concluded that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of 14 years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be. But a two-Judge Bench in *Sangeet v State of Haryana*,<sup>262</sup> in which it was held that:

a reading of some recent decisions delivered by this Court seems to suggest that the remission power of the appropriate Government has effectively been nullified by awarding sentences of 20 years, 25 years and in some cases without any remission. Is this permissible? Can this Court (or any Court for that matter) restrain the appropriate Government from granting remission of a sentence to a convict? What this Court has done in *Swamy Shraddananda* and several other cases, by giving a sentence in a capital offence of 20 years or 30 years imprisonment without remission, is to effectively injunct the appropriate Government from exercising its power of remission for the specified period. In our opinion, this issue needs further and greater discussion, but as at present advised, we are of the opinion that this is not permissible. The appropriate Government cannot be told that it is prohibited from granting remission of a sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever the reason. In this case, though the Division Bench raised a doubt about the decision of a three-Judge Bench in *Swamy Shraddananda (supra)*, yet the same has not been referred to a larger Bench.

In *Sahib Hussain @ Sahib Jan v State of Rajasthan*,<sup>263</sup> another two-Judge Bench reiterated the position held in *Swamy Shraddananda (supra)* by holding that the observations in *Sangeet (supra)* are not warranted. In *Gurvail Singh @ Gala v State of Punjab*,<sup>264</sup> other two-Judge bench also termed the remarks in *Sangeet (supra)* as 'unwarranted' and opined that if the two-judge bench was of the opinion that earlier judgments, even of a larger Bench were not justified, the Bench ought to have referred the matter to the larger Bench. However, in some cases, the Court had also been voicing concern about the statutory basis of such orders.<sup>265</sup> In a judgment,<sup>266</sup> Supreme Court opined that:

We are of the view that it will do well in case a proper amendment u/s. 53 of IPC is provided, introducing one more category of punishment—life imprisonment without commutation or remission. Dr. Justice V. S. Malimath in the Report on "Committee of Reforms of Criminal Justice System", submitted in 2003, had made such a suggestion but so far no serious steps have been taken in that regard. There could be a provision for imprisonment till death without remission or commutation.

### [s 302.12] Sessions' Court's power.—



The Session Judges do not have the power to impose the harsher variety of life sentence which is recognised by *Swamy Shraddananda (2) v State of Karnataka*<sup>267</sup>. as an option available in law for the Courts to avoid the harshest, irreversible and *incorrectable* sentence of death. That sentencing option is available only to Constitutional Courts –the High Courts and the Supreme Court.<sup>268</sup>.

### [s 302.13] Delay in execution of death sentence.—

It is well-established that exercising of power under [Article 72/161](#) by the President or the Governor is a Constitutional obligation and not a mere prerogative.<sup>269</sup> Time taken in Court proceedings cannot be taken into account to say that there is a delay which would convert a death sentence into one for life.<sup>270</sup> In *TV Vatheeswaran*,<sup>271</sup> **overruled** in *Triveni Ben v State of Gujarat*,<sup>272</sup> a two-Judge Bench of Supreme Court considered whether the accused, who was convicted for an offence of murder and sentenced to death, kept in solitary confinement for about eight years was entitled to commutation of death sentence. It was held that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke [Article 21](#) and demand the quashing of the sentence of death.<sup>273</sup> But a three-Judge bench in *Sher Singh v State of Punjab*,<sup>274</sup> held that though prolonged delay in the execution of a death sentence is unquestionably an important consideration for determining whether the sentence should be allowed to be executed, no hard and fast rule that "delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke [Art. 21](#) and demand the quashing of the sentence of death" can be laid down as has been done in *Vatheeswaran (supra)*. *Javed Ahmed v State of Maharashtra*,<sup>275</sup> reiterated the proposition laid down in *Vatheeswaran (supra)* case and doubted the competence of the three-judge bench to overrule the *Vatheeswaran* case. The conflicting views are finally settled by the [Constitution](#) Bench in *Triveni Ben v State of Gujarat*.<sup>276</sup> It **overruled** *Vatheeswaran (supra)* holding that undue long delay in execution of the sentence of death will entitle the condemned person to approach the Supreme Court under [Article 32](#) but the Court will only examine the nature of delay caused and circumstances that ensued after sentence will finally be confirmed by the judicial process and will have no jurisdiction to reopen the conclusions reached by the Court while finally maintaining the sentence of death. Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable and to this extent the decision in *Vatheeswaran's* case cannot be said to lay down the correct law. In *Madhu Mehta v UOI*,<sup>277</sup> Supreme Court commuted the death sentence on the ground that the mercy petition was pending for eight years after disposal of the criminal appeal by Supreme Court.

It is well established that exercising of power under [Article 72/161](#) by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitutional framers did not stipulate any outer time limit for disposing the mercy petitions under the said Articles, which means it should be decided within reasonable time. However, when the delay caused in disposing the mercy petitions is seen to be unreasonable, unexplained and exorbitant, it is the duty of the Supreme Court to step in and consider this aspect.<sup>278</sup>.

### [s 302.13.1] *Nirbhaya Case*<sup>279</sup>.—

In this case, the Supreme Court analysed all the decisions, where the question of imposing the death penalty was discussed and examined the aggravating and mitigating circumstances and opined that the appetite for sex, the hunger for violence, the position of the empowered and the attitude of perversity of the accused, to say the least, are bound to shock the collective conscience which knows not what to do.

The Supreme Court observed that:

the casual manner with which she was treated and devilish manner in which they played with her identity and dignity is humanly inconceivable. It sounds like a story from different world where humanity has been treated with irreverence. Aggravating circumstances outweigh mitigating circumstances.

The Supreme Court held the accused persons guilty of offences which are brutal, diabolic and barbaric in nature and fall within category of rarest of rare cases. The Supreme Court held that the sentence of death penalty was proper; there was no reason to differ with same.<sup>280.</sup>

### **[s 302.14] Mitigating factors.**

At the material time, the accused was under influence of alcohol and the fact that his mental faculty was not in order, was considered as a relevant mitigating circumstance. It was accordingly held that it was not a fit case for extreme penalty. The sentence for life imprisonment was confirmed.<sup>281.</sup>

There was a conspiracy in the wake of a property dispute in which contract killers were hired and death was caused. Sethi, J, of the Supreme Court said that this was not the rarest of rare case. The accused was a misled youth. He was liable to be sentenced to life imprisonment for the major offence of murder.<sup>282.</sup> In a case arising out of partition between two brothers, one of them (the accused) killed his brother, his wife and children. He was frustrated over his failure to resist partition of joint property. The Court agreed that it was a heinous and brutal crime, but was not in the category of rarest of rare cases. The accused did not have any criminal tendency. He was a State Government employee and not a menace to the society. The Court directed his death sentence to be reduced to 20 years actual imprisonment including the period already undergone.<sup>283.</sup>

In a rape and murder case of an 11-year-old child, there was extra judicial confession made to a senior person to seek his help. He indicated the place where the body of the girl was lying. He struck her in the head twice over with a brick and then in the mouth only when she threatened to disclose. This showed that he had no intention to commit murder and injuries were inflicted only at the spur of the moment. He had no criminal record nor he was in any way a danger to the society. Death sentence was commuted to life imprisonment.<sup>284.</sup>

The Court has to draw a balance between the aggravating and mitigating factors. The accused in this case was the member of a para-military force. He killed seven members of a family in a pre-planned manner. He was 23 at the time and had no criminal record. He and his family members were suffering agony at the hands of the victim family. He had a cause to feel aggrieved for the injustice meted out to his family members. The Court said that it was not the rarest of rare cases. His death sentence was reduced to life imprisonment.<sup>285.</sup>

### **[s 302.14.1] Where attribution of exact role not possible. –**

One of the accused persons was the relative of the deceased family. They not only merely robbed the family of valuables but also killed three members of the family who were present at the time. They also raped the only female member in the house. The mitigating factors which the judge took into account in commuting death sentence into life imprisonment were that they were neither too old nor too young to be beyond reformation and rehabilitation. It was difficult also to judge as to what part was played by one or the other and, therefore, who among them would come in the "rarest" category.<sup>286.</sup>

#### **[s 302.14.2] Killing of wife and children in frustration.—**

Though the accused had some suspicion about the character of his wife, the facts showed that he killed his wife and children because of unhappiness and frustration and not because of any criminal tendency. The penalty of death was set aside and he was sentenced to life imprisonment.<sup>287.</sup> The accused requested his wife to accompany him to his house. She turned it down. This created frustration and anger in his mind. He picked up a sharp-edged weapon and mercilessly struck her and also his mother-in-law repeatedly. Both of them fell dead. The Court said that the case was not of the rarest category. Death sentence was commuted to life imprisonment.<sup>288.</sup>

#### **[s 302.14.3] Death in custody.—**

The Supreme Court observed as follows:

There is a rise in incidents of custodial deaths but accused cannot be convicted completely *de hors* the evidence and its admissibility according to law. Court cannot act on presumption merely on a strong suspicion or assumption and presumption. A presumption can only be drawn when it is permissible under the law. Rushing into conclusions without there being any proper link with commission of crime is improper. The view taken by the trial Court was just and proper in the given facts and circumstances of the case and it was not proper for the High Court to reverse the finding. Reasons given by the High Court in reversing the order of acquittal of accused persons were not cogent and did not appeal to reason so as to justify conviction of the appellants. Hence, impugned judgment of the High Court was set aside.<sup>289.</sup>

#### **[s 302.14.4] Restoration of death penalty after acquittal.—**

The trial Court awarded death sentence. The High Court acquitted the accused in 1982. The Supreme Court said that the accused having enjoyed acquittal, death sentence could not be restored even if the case merited the imposition of death penalty.<sup>290.</sup>

#### **[s 302.15] Delay.—**

No hard-and-fast rules can be laid down with respect to the delay which could result as a mitigating circumstance, and each case must depend on its own facts. In the present case, there was no delay whatsoever that the circumstances necessitated imposition of life sentence instead of death sentence.<sup>291.</sup>

### [s 302.16] Capital (Death) sentence.—

The doctrine of rarest of rare case was enunciated by the Supreme Court in *Bachan Singh v State of Punjab*.<sup>292</sup> The trial Court, High Courts and even the Supreme Court are duty bound to follow it.<sup>293</sup> The Court explained in this case some of the relevant factors as follows:

Not only the doctrine of proportionality but also doctrine of rehabilitation should be taken into consideration, particularly in view of [section 354\(3\), Cr PC, 1973](#), which must be read with [Article 21 of the Constitution](#). Where there was nothing to show that the appellant-accused could not be reformed and rehabilitated, the mere manner of disposal of the dead body, howsoever abhorrent, should not by itself be regarded sufficient to bring the case in the rarest of rare category. In the present case, all the accused including the appellant were unemployed young men in search of job. They were not criminals. In exception of a plan proposed by the appellant and accepted by them, they kidnapped a friend of theirs with the motive of procuring ransom from his family but later murdered him, and after cutting his body into pieces, disposed of the same at different places. One of the accused turned approver and prosecution case was based exclusively on his evidence. Appellant-accused contradicted the approver's version in respect of his role. In such a case, statement of approver regarding manner of murder and role of accused and that of approver himself, should be tested on the basis of prudence doctrine taking into consideration *inter alia*, evidence produced by the accused for imposition of lesser punishment. Hence, death penalty awarded by the Courts below, in the absence of any special reasons to support the same was substituted by penalty of rigorous imprisonment for life.

Death punishment stands on a very different footing from other types of punishments. It is unique in its total irrevocability. Incarceration, life or otherwise, potentially serves more than one sentencing aims. Deterrence, incapacitation, rehabilitation and retribution all ends are capable to be furthered in different degrees, by calibrating this punishment in light of the overarching penal policy. But the same does not hold true of death penalty.<sup>294</sup>

One has to observe the global move away from the death penalty. Latest statistics show that 138 nations have abolished death penalty in either law or practice (no executions for 10 years).

Further, on 18 December 2007, the UN General Assembly adopted Resolution 62/149 calling upon countries that retain death penalty to establish a worldwide moratorium on executions with a view to abolishing the death penalty. India is, however, one of the 59 nations that retain the death penalty.<sup>295</sup>

The Law Commission of India in its Report No. 262 titled "The Death Penalty" has recommended the abolition of death penalty for all the crimes other than terrorism related offences and waging war (offences affecting National Security).

Where the question of whether death penalty could be imposed in a case which depended upon circumstantial evidence, the Supreme Court said:

If the circumstantial evidence is found to be of unimpeachable character in establishing the guilt of the accused, that form the foundation for conviction and that has nothing to do with the question of sentence. Mitigating circumstances and the aggravating circumstances have to be balanced and in the balance sheet of such circumstances. The fact that the case rests on circumstantial evidence has no role to play. In fact, in most of the cases where death sentences are awarded for rape and murder and the like, there is practically no scope for getting an eyewitness. Such offences are not committed in public view. Only available evidence in such cases is

circumstantial. If such evidence is found to be credible, cogent and trustworthy for the purpose of recording conviction, to treat such evidence as a mitigating circumstance, would amount to consideration of an irrelevant aspect. Hence, such plea is unsustainable. Instant case fell in category of the rarest of rare cases. Circumstances proved established the depraved acts of the accused, and they called for only one sentence, that is, death sentence. Judgment of the High Court, confirming the conviction and sentence imposed by the trial Court, does not warrant any interference.<sup>296.</sup>

#### **[s 302.16.1] Punishment of terrorists.—**

The prosecution case was that the accused persons came running to a police picket and hurled bombs at security personnel. There was good identification evidence. Injuries on the persons of the accused were scabbed burn injuries caused by handling of explosive substance. The medical evidence showed that abrasions on the body of the deceased could have been caused by splinters from bomb explosions. The case being proved beyond any reasonable doubt, the conviction for murder was fully justified.<sup>297.</sup>

#### **[s 302.16.2] Hearing before awarding death sentence.—**

The matter was remitted where death sentence was awarded without hearing the accused.<sup>298.</sup> It is necessary to afford opportunity of hearing to the accused on the question of sentence, where life imprisonment or death sentence is awarded.<sup>299.</sup>

#### **[s 302.17] Fine.—**

It has been held that the words "shall also be liable to fine" are not to be understood as a legislative mandate that the Court must invariably impose fine also as a part of the punishment.<sup>300.</sup>

#### **[s 302.18] Appeal against acquittal.—**

Where the prosecution case of homicide and the defence version of suicide were both found to be equally probable, the accused was held to be entitled to the benefit of doubt.<sup>301.</sup> Where there was a gross enmity between the parties and the medical evidence did not support the ocular version, accused was given benefit of doubt.<sup>302.</sup>

#### **[s 302.19] Presumption of murder.—**

Where the question was whether the death in question was homicidal or suicidal, and the expert who examined the body was not sure either way, the presumption as to murder was held to be something doubtful.<sup>303.</sup> Where a person is not proved to be guilty, the presumption of innocence prevails in reference to him.<sup>304.</sup>

#### **[s 302.20] As to the application of [section 106 of the Evidence Act, 1872.](#)—**

In cases where mere circumstantial evidence exists, the burden of proof as envisaged under [section 106 of the Evidence Act, 1872](#), i.e., the burden of proving the fact, which is especially within the knowledge of a person, plays an important role in several cases.

Where the dead body of the deceased was found in the river, the knowledge about that incident was within the special knowledge of the accused. As the deceased was in the custody of the accused and disappeared from their house, the accused did not reveal what happened to the deceased. The Supreme Court held that the accused failed to discharge their duty under [section 106 of the Evidence Act, 1872](#). The prosecution is not expected to give the exact manner in which the deceased was killed. Adverse inference needs to be drawn against the accused, as they failed to explain how the deceased was found dead in the river in one-foot deep water.

Referring to [section 106 of the Evidence Act, 1872](#), it was propounded that the said section was not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but would apply to cases where prosecution had succeeded in proving facts from which a reasonable inference could be drawn regarding the existence of certain other facts, unless the accused, by virtue of his special knowledge regarding such facts, succeeds in offering any explanation, to drive the Court to draw a different inference.<sup>305.</sup>

In *Gajanan Dashrath Kharate v State of Maharashtra*,<sup>306.</sup> the deceased was found within the company of the accused and on the next day was found dead. Blood stained dress of the accused with the blood of the deceased was recovered. The Supreme Court held that when an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of [section 106 of the Evidence Act, 1872](#), there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed.

When the deceased is shown to be abducted, it is for the abductors to explain how they dealt with the abducted victim. In the absence of an explanation, the Court is to draw inference that the abductors are the murderers.<sup>307.</sup>

In the examination under [section 313, Cr PC, 1973](#), the accused denied any knowledge of the crime and alleged false implication. [Section 106 of the Evidence Act, 1872](#) imposes an obligation on the accused to explain as to what happened after they were last seen together.<sup>308.</sup>

The mere circumstance that the accused was last seen with the deceased is an unsafe hypothesis to find a conviction on a charge of murder. The lapse of time between the point when the accused was last seen with the deceased and the time of death has to be minimal.<sup>309.</sup> When the prosecution mainly relies on [section 106 of the Evidence Act, 1872](#), the Supreme Court held, in a case where murder took place in a hotel room, that to invoke that section, the main point to be established by the prosecution is that the accused persons were present in the hotel room at the relevant time. In this case, the prosecution failed to produce the CCTV footages available at the hotel where the murder took place, the Court further observed that the CCTV footage being a crucial piece of evidence, it is for the prosecution to have produced the best evidence, which was missing.<sup>310.</sup>

In the absence of any persuasive evidence to hold that at the relevant time the appellant was present in the house, it would also be impermissible to cast any burden on him as contemplated under [section 106 of the Evidence Act, 1872](#).<sup>311.</sup>

Merely because no expert opinion was obtained to prove as to whether bones recovered were human or animal bones, it would not weaken the case of prosecution in the light of the overwhelming evidence available on record to prove the complicity of the appellants.<sup>312.</sup>

### **[s 302.22] Circumstantial evidence.—**

The circumstance (*that the accused persons were seen in the vicinity of the neighbourhood of the crime little before the same was committed*), if coupled with the recovery of the ornaments of the deceased from the possession of the accused, at best, create a highly suspicious situation; but beyond a strong suspicion nothing else would follow in the absence of any other circumstance(s) which could suggest the involvement of the accused in the offence/offences alleged. Even with the aid of the presumption under [section 114 of the Evidence Act, 1872](#), the charge of murder cannot be brought home unless there is some evidence to show that the robbery and murder occurred at the same time, i.e., in the course of the same transaction.<sup>313.</sup>

### **[s 302.23] Section 302 and section 396.—**

The law clearly marks a distinction between culpable homicide amounting to murder and culpable homicide not amounting to murder. Another distinction between sections 302 and 396 is that under the latter, wide discretion is vested in the Courts in relation to awarding of punishment. The Court, in exercise of its jurisdiction and judicial discretion in consonance with the established principles of law can award sentence of 10 years with fine or even award sentence of life imprisonment or sentence of death, as the case may be. While under section 302, the Court cannot, in its discretion, award sentence lesser than life imprisonment. The ingredients of both these offences, to some extent, are also different inasmuch as to complete an offence of 'dacoity'. Under [section 396, IPC, 1860](#), five or more persons must conjointly commit the robbery while under [section 302 of the IPC, 1860](#) even one person by himself can commit the offence of murder. But, as already noticed, to attract the provisions of section 396, the offence of 'dacoity' must be coupled with murder. In other words, the ingredients of section 302 becomes an integral part of the offences punishable under [section 396 of the IPC, 1860](#).<sup>314.</sup>

### **[s 302.24] Additional/alternate charge under section 302, prejudice caused.—**

Charges were framed under sections 306 and 364. After examination of all the witnesses (26) except the investigating officer, an alternate charge was framed under section 302 and the accused convicted thereunder. The witnesses were cross-examined as to the allegations related to the offences under sections 306 and 364. Conviction under section 302 set aside as prejudiced.<sup>315.</sup>

<sup>196.</sup> Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

197. *Ajitsingh Harnamsingh Gujral v State of Maharashtra*, 2011 (10) Scale 394 [LNIND 2011 SC 902] : 2011 AIR (SCW) 5448 : AIR 2011 SC 3690 [LNIND 2011 SC 902] ; *Rajesh Kumar v State*, 2011 (11) Scale 182 [LNIND 2011 SC 2734] : 2011 AIR (SCW) 5997 : (2011) 13 SCC 706 [LNIND 2011 SC 2734] .
198. *Nawab Singh v State of UP*, AIR 1954 SC 278 .
199. *Vadivelu Thevar v State of Madras*, AIR 1957 SC 614 [LNIND 1957 SC 41] .
200. *Jagmohan Singh v State of UP*, (1973) 1 SCC 20 [LNIND 1972 SC 477] .
201. *Rajendra Prasad v State of UP*, (1979) 3 SCR 646 .
202. *McGoutha v California*, (1971) 402 US 183.
203. *Furman v Georgia* (1972) 408 US 238.
204. *Jagmohan Singh v State of UP*, (1973) 1 SCC 20 [LNIND 1972 SC 477] .
205. *Sunder v State*, AIR 2013 SC 777 [LNIND 2013 SC 91] : 2013 (3) SCC 215 [LNIND 2013 SC 91] .
206. *Santa Singh v State of Punjab*, (1976) 4 SCC 190 [LNIND 1976 SC 268] .
207. *Bachan Singh v State of Punjab*, AIR 1980 SC 898 [LNIND 1980 SC 260] : (1980) 2 SCC 684 [LNIND 1980 SC 261] .
208. *Bachan Singh v State of Punjab*, (1980) 2 SCC 684 [LNIND 1980 SC 261] : AIR 1980 SC 898 [LNIND 1980 SC 260] .
209. *Machhi Singh v State of Rajasthan*, 1983 (3) SCC 470 [LNIND 1983 SC 170] : AIR 1983 SC 957 [LNIND 1983 SC 170] .
210. See the Box with 'Supreme Court Guidelines in Machi Singh'.
211. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] .
212. *Machhi Singh v State of Punjab*, AIR 1983 SC 957 [LNIND 1983 SC 170] : 1983 (3) SCC 470 [LNIND 1983 SC 170] .
213. *Vasanta Sampat Dupare v State of Maharashtra*, AIR 2017 SC 2530 [LNIND 2017 SC 248] .
214. *Ramnaresh v State of Chhattisgarh*, AIR 2012 SC 1357 [LNINDORD 2012 SC 404] .
215. *Brajendra Singh v State of MP*, AIR 2012 SC 1552 [LNIND 2012 SC 159] .
216. *Machhi Singh v State of Punjab*, (1983) 3 SCC 470 [LNIND 1983 SC 170] : AIR 1983 SC 957 [LNIND 1983 SC 170] : 1983 Cr LJ 1457 . See also *State of Punjab v Garmej Shing*, 2002 Cr LJ 3741 (SC), where also the court counted the factors and gave some illustrations. The accused killed his brother and two members of his family. The incident was the result of a mistrust created by a payment made by accused to his brother. The court was of the view that it was not a rarest case and death penalty was improper. The court also said that the likelihood of the accused being released prematurely was not a ground for imposing death penalty. The amount of compensation to the victim should not exceed the fine imposed. The only surviving member was the daughter of the deceased. The amount of fine was enhanced from Rs. 5000 to Rs. 20,000.
217. *Jagmohan Singh*, 1973 Cr LJ 370 : AIR 1973 SC 947 [LNIND 1972 SC 477] ; *Mohinder Singh*, 1973 Cr LJ 610 : AIR 1973 SC 697 ; *Maghar Singh v State*, 1975 Cr LJ 1102 : AIR 1975 SC 1320 .
218. *Gopal Chand Srivastava v State of UP*, 1994 Cr LJ 2863 (All), all the inmates were told to stay away and the victims were then hit by two assailants whom the court awarded death sentence but the confirming court reduced the sentence to life imprisonment in view of their young years.
219. *Ramesh*, 1979 Cr LJ 902 : AIR 1979 SC 871 .
220. *State of UP v Paras Nath*, 1973 Cr LJ 850 : AIR 1973 SC 1073 [LNIND 1973 SC 14] .



221. *Munawar Harun Shah*, 1983 Cr LJ 971 : AIR 1983 SC 585 [LNIND 1983 SC 113] : (1983) 3 SCC 254 . **Followed** in *State v Ashok Kumar*, (1995) 2 Cr LJ 1789 (Del), where the accused killed the husband of the woman with whom he was in love; the killing was done when he was taken away with the help of his wife and was struck while asleep, both convicted and sentenced to death; fine of one lakh rupees imposed on the lady accused for expenses of prosecution she had gained anything from the offence nor had any means. *Suresh Kumar v State of Rajasthan*, 1995 Cr LJ 1853 (Raj), a boy of 20 years old, caused death of his wife and daughter, faced prosecution for seven years, life imprisonment not enhanced to death sentence. *James v State of Kerala*, (1995) 1 Cr LJ 55 (Ker), money-lender entered the home of the borrower and killed him, his wife and his mother, entry could have been for the lawful purpose of seeking repayment, death sentence reduced to life imprisonment, not rarest of rare case.
222. *Shankaria*, 1978 Cr LJ 1251 : AIR 1978 SC 1248 [LNIND 1978 SC 138] . *Raghunathan v State of Kerala*, (1995) 2 Cr LJ 1880 (Ker), death of old woman caused by strangulation and robbed of ornaments, life imprisonment upheld. *Sheikh Ayyub v State of Maharashtra*, (1995) 1 Cr LJ 420 : (1994) 2 Supp SCC 269 , accused killed two police officers while they were arresting him, he snatched police pistol and handled it in confused manner, injuring his companion co-accused also, death sentence reduced to life imprisonment. *Deoraj Deju Suvarna v State of Maharashtra*, 1994 Cr LJ 3602 (Bom), it would be most shocking for a judge to hear the accused on the quantum of sentence after awarding him death sentence.
223. (2008) 13 SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 . The Court also observed that decision would go by comparison of one case with the other, comparison both quantitative and qualitative. The application of the sentencing policy through aggravating and mitigating circumstances came up for consideration in *Swamy Shraddananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 . On a review, it was concluded in paragraph 48 of the Report that there is a lack of evenness in the sentencing process. The rarest of rare principle has not been followed uniformly or consistently. **Reference** in this context was made to *Aloke Nath Dutta v State of WB*, 2007 (12) SCC 230 [LNIND 2006 SC 1131] : 2007 (51) AIC 429 (SC) : 2008 (2) SCC (Cri) 264 [LNIND 2006 SC 1131] , which in turn referred to several earlier decisions to bring home the point.
224. *Santosh Kumar Satishbhushan Bariyar v State of Maharashtra*, 2009 (6) SCC 498 [LNIND 2009 SC 1278] : 2009 (2) SCC (Cr) 1149 : 2009 (79) AIC 26 : 2009 (7) Scale 341 [LNIND 2009 SC 1278] .
225. *Shivaji @ Dadya Shankar Alhat v State of Maharashtra*, 2008 (15) SCC 269 [LNIND 2008 SC 1785] .
226. *Mohan Anna Chavan v State of Maharashtra*, 2008 (7) SCC 561 [LNIND 2008 SC 1265] .
227. *Bantu v State of UP*, 2008 (11) SCC 113 [LNIND 2008 SC 1496] .
228. *Surja Ram v State of Rajasthan*, 1996 (6) SCC 271 [LNIND 1996 SC 1548] .
229. *Dayanidhi Bisoi v State of Orissa*, 2003 (9) SCC 310 [LNIND 2003 SC 571] .
230. *State of UP v Sattan @ Satyendra*, 2009 (4) SCC 736 [LNIND 2009 SC 485] .
231. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] .
232. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] .
233. *Mohinder Singh v State of Punjab*, (2013) 3 SCC 294 [LNIND 2013 SC 71] : 2013 Cr LJ 1559 (SC).
234. *Swamy Shraddananda @ Murali Manohar Mishra v State of Karnataka*, (2008) 13 SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 .

235. *Santosh Kumar Satishbhusan Bariyar v State of Maharashtra*, 2009 (6) SCC 498 [LNIND 2009 SC 1278] : 2009 (2) SCC (Cr) 1149 : 2009 (79) AIC 26 : 2009 (7) Scale 341 [LNIND 2009 SC 1278].
236. *Mohd Farooq Abdul Gafur v State of Maharashtra*, 2010 (14) SCC 641 [LNIND 2009 SC 1641].
237. *Haresh Mohandas Rajput v State of Maharashtra*, 2011 (12) SCC 56 [LNIND 2011 SC 928].
238. *State of Maharashtra v Goraksha Ambaji Adsul*, AIR 2011 SC 2689 [LNIND 2011 SC 627].
239. *Mohammed Ajmal Mohammadamir Kasab @ Abu Mujahid v State of Maharashtra*, JT 2012 (8) SC 4 [LNIND 2012 SC 1215].
240. See the Box with 'Principles summarised in Mohinder Singh's Case by Supreme Court'.
241. *Ravji @ Ram Chandra v State of Rajasthan*, 1996 (2) SCC 175 [LNIND 1995 SC 1247].
242. *Shivaji @ Dadya Shankar Alhat v State of Maharashtra*, 2008 (15) SCC 269 [LNIND 2008 SC 1785].
243. *Mohan Anna Chavan v State of Maharashtra*, 2008 (7) SCC 561 [LNIND 2008 SC 1265].
244. *Bantu v State of UP*, 2008 (11) SCC 113 [LNIND 2008 SC 1496].
245. *Surja Ram v State of Rajasthan*, 1996 (6) SCC 271 [LNIND 1996 SC 1548].
246. *Dayanidhi Bisoi v State of Orissa*, 2003 (9) SCC 310 [LNIND 2003 SC 571].
247. *State of UP v Sattan @ Satyendra and Others*, 2009 (4) SCC 736 [LNIND 2009 SC 485].
248. *Mohd Farooq Abdul Gafur v State of Maharashtra*, 2010 (14) SCC 641 [LNIND 2009 SC 1641], 692.
249. *Haresh Mohandas Rajput v State of Maharashtra*, 2011 (12) SCC 56 [LNIND 2011 SC 928] at p 63, para 20.
250. *State of Maharashtra v Goraksha Ambaji Adsul*, AIR 2011 SC 2689 [LNIND 2011 SC 627].
251. *Mohinder Singh v State of Punjab*, (2013) 3 SCC 294 [LNIND 2013 SC 71] : 2013 Cr LJ 1559 (SC).
252. *Shankar Kisanrao Khade v State of Maharashtra*, 2013 Cr LJ 2595 (SC) : (2013) 5 SCC 546 [LNIND 2013 SC 429]. *Gurvail Singh @ Gala v State of Punjab*, AIR 2013 SC 1177 [LNIND 2013 SC 94].
253. *Kumudi Lal v State of UP*, (1994) 4 SCC 108.
254. *Raju v State of Haryana*, (2001) 9 SCC 50 [LNIND 2001 SC 1147].
255. *Bantu @ Naresh Giri v State of MP*, (2001) 9 SCC 615 [LNIND 2001 SC 2372].
256. *State of Maharashtra v Suresh*, (2000) 1 SCC 471 [LNIND 1999 SC 1126].
257. *Amrit Singh v State of Punjab*, AIR 2007 SC 132 [LNIND 2006 SC 944].
258. *Rameshbhai Chandubhai Rathod v State of Gujarat*, (2011) 2 SCC 764 [LNIND 2011 SC 96].
259. *Surendra Pal Shivbalak v State of Gujarat*, (2005) 3 SCC 127.
260. *Amit v State of Maharashtra*, (2003) 8 SCC 93 [LNIND 2003 SC 642].
261. *Swamy Shraddananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 ; also see *State of UP v Sanjay Kumar*, (2012) 8 SCC 537 [LNIND 2012 SC 416].
262. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] : 2013 Cr LJ 425.
263. *Sahib Hussain @ Sahib Jan v State of Rajasthan*, 2013 Cr LJ 2359 : 2013 (6) Scale 219 [LNIND 2013 SC 474].
264. *Gurvail Singh @ Gala v State of Punjab*, 2013 (10) Scale 671 [LNIND 2013 SC 1147].
265. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] : 2013 Cr LJ 425.
266. *State of Rajasthan v Jamil Khan*, 2013 (12) Scale 200 [LNIND 2013 SC 883].

267. *Swamy Shraddananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 .
268. *Unni v State of Kerala*, 2013 Cr LJ 2819 (SC).
269. *Shatrughan Chauhan v UOI*, 2014 Cr LJ 1327 : [2014] 1 SCR 609 [LNIND 2014 SC 40] .
270. *Mohd Arif v The Registrar, Supreme Court of India*, 2014 Cr LJ 4598 : 2014 (87) All CC 939.
271. *TV Vatheeswaran*, AIR 1983 SC 361 [LNIND 1983 SC 43] , 1983 SCR (2) 348 .
272. *Triveni Ben v State of Gujarat*, AIR 1989 SC 1335 [LNIND 1989 SC 885] : (1989) 1 SCC 678 [LNIND 1989 SC 885] .
273. In *Ediga Annamma's case* (1974 (3) SCR 329) [LNIND 1974 SC 34] , two years was considered sufficient to justify interference with the sentence of death. In *Bhagwan Baux's case* (AIR 1978 SC 34) , two and a half years and in *Sadhu Singh's case* ( AIR 1978 SC 1506 ) , three and a half years were taken as sufficient to justify altering the sentence of death into one of imprisonment for life; see also *KP Mohammed v State of Kerala*, (1985) 1 SCC (Cr) 142 : 1984 Supp SCC 684.
274. *Sher Singh v State of Punjab*, AIR 1983 SC 465 [LNIND 1983 SC 89] : (1983) 2 SCC 344 [LNIND 1983 SC 89] .
275. *Javed Ahmed v State of Maharashtra*, AIR 1985 SC 231 [LNIND 1984 SC 310] : (1985) 1 SCC 275 [LNIND 1984 SC 310] .
276. *Triveni Ben v State of Gujarat*, AIR 1989 SC 1335 [LNIND 1989 SC 885] : (1989) 1 SCC 678 [LNIND 1989 SC 885] .
277. *Madhu Mehta v UOI*, (1989) 3 SCR 775 [LNIND 1989 SC 390] .
278. *Shatrughan Chauhan v UOI*, 2014 Cr LJ 1327 : [2014] 1 SCR 609 [LNIND 2014 SC 40] .
279. *Mukesh v State for NCT of Delhi*, 2017 (5) Scale 506 .
280. *Mukesh v State for NCT of Delhi*, AIR 2017 SC 2161 [LNIND 2017 SC 252] .
281. *Siraj Khan v State of Gujarat*, 1994 Cr LJ 1502 (Guj). *Kurale Pullaiah v State*, 2003 Cr LJ 1060 (AP), the accused stabbed the victim with knife, snatching the knife from the victim himself, inflicted only one stab injury, not a cold-blooded or heartless homicide, death sentence converted into life imprisonment.
282. *State of Maharashtra v Bharat Chaganlal Raghani*, AIR 2002 SC 409 [LNIND 2001 SC 1312] at 432.
283. *Prakash Dhawal Khairnar v State of Maharashtra*, AIR 2002 SC 340 [LNIND 2001 SC 2841] at 350, **relying** on *Bhagwan v State of Rajasthan*, 2001 AIR SCW 2189 : AIR 2001 SC 2342 [LNIND 2001 SC 1234] : (2001) Cr LJ 2925 : (2001) 6 SCC 2961 , wherein while reducing the death sentence to imprisonment for life, the court considered **section 57, IPC, 1860** and referred to the following observation in *Dalbir Singh v State of Punjab*, (1979) 3 SCC 745 [LNIND 1979 SC 281] : AIR 1979 SC 1384 [LNIND 1979 SC 281] : 1979 Cr LJ 1058 .

"The sentences of death in the present appeal are liable to be reduced to life imprisonment. We may add a footnote to the ruling in *Rajendra Prasad v. State of U.P.*, (1979) 3 SCC 646 [LNIND 1979 SC 107] . Taking the clue from the English Legislation on abolition, we may suggest that life imprisonment which strictly means imprisonment for the whole of the man's life, but in practice amounts to incarceration for a period between 10 and 14 years may, at the option of the convicting Court, be subject to the conditions that the sentence of imprisonment shall last as long as life lasts where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large. This takes care of judicial apprehensions that unless physically liquidated the culprit may at some remote time repeat murder." This should be contrasted with *Surja Ram v State of Rajasthan*, AIR 1997 SC 18 [LNIND 1996 SC 1548] : 1997 Cr LJ 51 , the accused killed his real brother, his two minor sons, and aunt

while asleep, also attempted to murder the brother's wife and daughter, deaths caused in cool and calculated manner, rarest, death sentence justified. *Bantu v State of MP*, AIR 2002 SC 70 [LNIND 2001 SC 2372] : 2002 Cr LJ 211 , the accused was sentenced to death for rape and murder of six-year-old child. He was of 22 years. There was no criminal record. He was not likely to be a grave danger to the society. His act, though heinous and condemnable, did not come in the category of rarest of rare cases. Death sentence was commuted to imprisonment for life. This should be contrasted with *Jai Kumar v State of MP*, AIR 1999 SC 1860 [LNIND 1999 SC 524] : 1999 Cr LJ 2569 . The accused committed a cold-blooded and gruesome and brutal murder of his sister-in-law and her eight-year-old daughter without any provocation. The Court did not regard his age of 22 years as any relevant factor. Death penalty was confirmed. *Deepak Kumar v Ravi Virmani*, 2002 Cr LJ 1781 (SC) : AIR 2002 SC 1320 [LNIND 2002 SC 1] , death sentence reduced to life imprisonment in a case in which there was heinous killing of four family members. The accused spared a child which showed humane conduct.

284. *Raju v State of Haryana*, AIR 2001 SC 2043 [LNIND 2001 SC 1147] .

285. *Om Prakash v State of Haryana*, AIR 1999 SC 1332 [LNIND 1999 SC 1282] : 1999 Cr LJ 2044 . Another case stressing the need for balancing process is *Anil v State of UP*, 2002 Cr LJ 2694 (All), the accused had his shop opposite a house. The house owner had the shop closed because of customer nuisance. The accused in revenge got him killed. Taking all the factors into account, the court said that he would not pose any danger to the society if his life was spared. The death sentence awarded to him was reduced to life imprisonment.

286. *Ronny v State of Maharashtra*, AIR 1998 SC 1251 [LNIND 1998 SC 302] : 1998 Cr LJ 1638 . *State of UP v Mutahir Mian*, (2008) 10 SCC 223 [LNIND 2008 SC 1922] : AIR 2009 SC 839 [LNIND 2008 SC 1922] , acquittal because of irreconcilable facts. *State of MP v Chamru*, (2007) 12 SCC 423 [LNIND 2007 SC 802] : AIR 2007 SC 2400 [LNIND 2007 SC 802] : 2007 Cr LJ 3509 , four murders, nobody could be punished because witnesses not natural. *State of MP v Basodi*, (2007) 14 SCC 548 [LNIND 2007 SC 919] , killing alleged by uncle by gunshot, extra-judicial confession found to be myth, acquittal. *Ramappa Halappa Pujar v State of Karnataka*, (2007) 13 SCC 31 [LNIND 2007 SC 561] , High Court reversed acquittal, Supreme Court upheld conviction. *State of UP v Atar Singh*, (2007) 14 SCC 193 [LNIND 2007 SC 1316] : AIR 2008 SC 411 [LNIND 2007 SC 1316] : (2008) 1 All LJ 227, acquittal justified because of weakness of circumstantial evidence. *Jagdish v State of MP*, (2007) 13 SCC 12 [LNIND 2007 SC 1091] : 2008 Cr LJ 350 , acquittal justified on appreciation of evidence. *Bhagga v State of MP*, (2007) 13 SCC 442 [LNIND 2007 SC 1208] : AIR 2008 SC 175 [LNIND 2007 SC 1208] , accused to whom no overt act could be attributed, acquitted, no common object. *Ajay Singh v State of Maharashtra*, (2007) 12 SCC 341 [LNIND 2007 SC 438] : AIR 2007 SC 2188 [LNIND 2007 SC 438] , bride burning, prosecution failed to establish charge.

287. *Shaikh Ayub v State of Maharashtra*, AIR 1999 SC 1285 : 1998 Cr LJ 1656 ; *Heera Lal (Dr) v State of UP*, 2001 Cr LJ 2849 (All), killed wife and three children because of debt burden and attempted suicide. He was in great stress, frustration and mentally disturbed. Death sentence reduced to life imprisonment.

288. *Mani Ram v State of Uttaranchal*, 2001 Cr LJ 3403 (Uttaranchal).

289. *Sadashio Mundaji Bhalerao v State of Maharashtra*, (2007) 15 SCC 421 [LNIND 2006 SC 1047] .

290. *State of MP v Dharendra Kumar*, AIR 1997 SC 318 [LNIND 1996 SC 1830] : (1997) 1 SCC 93 [LNIND 1996 SC 1830] ; *Subhash Chander v Krishanlal*, 2001 Cr LJ 1825 (SC), refusal to interfere in the commutation of death sentence into life imprisonment by High Court.

291. *Jagdish v State of MP*, (2009) 9 SCC 495 [LNINDORD 2009 SC 210] : (2009) 4 AP LJ 1 .

292. *Bachan Singh v State of Punjab*, AIR 1980 SC 898 [LNIND 1980 SC 260] : (1980) 2 SCC 684 [LNIND 1980 SC 261] .
293. *Santosh Kumar SatishBhushan Bariyar v State of Maharashtra*, (2009) 6 SCC 498 [LNIND 2009 SC 1278] : (2009) 2 SCC (Cr) 1149.
294. *Ibid.*
295. *Ibid.*
296. *Shivaji v State of Maharashtra*, (2008) 15 SCC 269 [LNIND 2008 SC 1785] : AIR 2009 SC 56 [LNIND 2008 SC 1785] .
297. *Ayyub v State of UP*, AIR 2002 SC 1192 [LNIND 2002 SC 156] ; *MA Antony v State of Kerala*, (2009) 6 SCC 220 [LNIND 2009 SC 961] : AIR 2009 SC 2549 [LNIND 2009 SC 961] : (2009) 2 SCC (Cr) 959, murder of all the six members of a family at their residence at night, motive of money was proved, accused present in the house during the night till next morning and his absence from his home established, important recoveries, judicial and extra-judicial confession, complete chain of circumstances, death sentence confirmed.
298. *Sattan v State of UP*, 2001 Cr LJ 676 (All).
299. *Ram Deo Chauhan v Raj Nath Chauhan*, 2001 Cr LJ 2902 (SC).
300. *Bidhan Nagh v State of Assam*, 2000 Cr LJ 1144 (Gau).
301. *State of Maharashtra v Sanjay*, 2003 SCC (Cr) 231. *State of Punjab v Ajaib Singh*, AIR 2004 SC 2466 [LNIND 2004 SC 478] : 2004 Cr LJ 2547 .
302. *State of UP v Garibuddi*, 2012 AIR (SCW) 92 : 2012 Cr LJ 772 ; *Kailash Gour v State of Assam*, (2012) 2 SCC 34 : AIR 2012 SC 786 : 2012 Cr LJ 1050 .
303. *Dinesh Borthakar v State of Assam*, (2008) 3 SCC 6967 : AIR 2008 SC 2205 [LNIND 2008 SC 675] .
304. *Ghurey Lal v State of UP*, (2008) 10 SCC 450 [LNIND 2008 SC 1535] .
305. *Chaman v State of Uttarakhand*, AIR 2016 SC 1912 [LNIND 2016 SC 167] : 2016 Cr LJ 2330 .
306. *Gajanan Dashrath Kharate v State of Maharashtra*, 2016 Cr LJ 1900 : 2016 (3) SCJ 176 .
307. *Paramsivam v State through Inspector of Police*, 2014 Cr LJ 4085 : AIR 2014 SC 2936 [LNIND 2014 SC 617] .
308. *Dilip Mallick v State of WB*, 2017 (1) Crimes 328 (SC) : 2017 (3) Scale 71 [LNINDU 2017 SC 56] .
309. *Ganpat Singh v State of MP*, AIR 2017 SC 4839 [LNIND 2017 SC 2956] .
310. *Tomaso Bruno v State of UP*, (2015) 7 SCC 178 [LNIND 2015 SC 40] : 2015 Cr LJ 1690 .
311. *Jose v The Sub-Inspector of Police, Koyilandy*, (2016) 10 SCC 519 [LNIND 2016 SC 403] : AIR 2016 SC 4581 [LNIND 2016 SC 403] .
312. *Ram Chander v State of Haryana*, 2017 (1) Scale 73 [LNIND 2017 SC 7] : (2017) 2 SCC 321 [LNIND 2017 SC 7] .
313. *Raj Kumar v State (NCT of Delhi)*, AIR 2017 SC 614 [LNIND 2017 SC 30] : (2017) 237 DLT 173 .
314. *Rafiq Ahmed v State of UP*, (2011) 8 SCC 300 [LNIND 2011 SC 726] : AIR 2011 SC 3114 [LNIND 2011 SC 726] : 2011 Cr LJ 4399 .
315. *R Rachaiah v Home Secretary, Bangalore*, AIR 2016 SC 2447 [LNIND 2016 SC 203] : 2016 Cr LJ 2943 .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### [s 303] Punishment for murder by life convict.

Whoever, being under sentence of <sup>316</sup>[imprisonment for life], commits murder, shall be punished with death.

#### COMMENT.—

This section has been struck down by the Supreme Court as void and unconstitutional being violative of both [Articles 14](#) and [21](#) of the [Constitution](#). It regards life convict to be a dangerous class without any scientific basis and, thus, violates [Article 14](#) and similarly by completely cutting out judicial discretion it becomes a law which is not just, fair and reasonable within the meaning of [Article 21](#).<sup>317</sup> So all murders are punishable under [section 302, IPC, 1860](#). For the same reasons, Supreme Court declared [section 27\(3\) of Arms Act 1959](#), *ultra vires* the [Constitution](#). It was held that by imposing mandatory death penalty, [section 27\(3\) of the Arms Act, 1959](#) runs contrary to those statutory safeguards which give judiciary the discretion in the matter imposing death penalty. Section 27(3) of the Act is thus *ultra vires* the concept of judicial review which is one of the basic features of our [Constitution](#).<sup>318</sup>

<sup>316</sup>. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1-1-1956).

<sup>317</sup>. *Mithu*, [1983 Cr LJ 811](#) (SC) : [AIR 1983 SC 473](#) [[LNIND 1983 SC 105](#)] : 1983 Mad LJ (Cr) 485 : [\(1983\) 2 SCC 277](#) [[LNIND 1983 SC 105](#)] : 1983 SCC (Cr) 405 : [\(1983\) 1 SCJ 327](#) [[LNIND 1983 SC 105](#)] . See *Balkar Singh v State of Punjab*, [AIR 1991 SC 1225](#) : [1991 Cr LJ 1712](#) , sentence of participating co-accused found guilty by virtue of section 34 converted into life imprisonment. A prosecution under section 302 for causing death by a motor vehicle is not a bar to a civil claim arising out of the same accident. The civil proceeding is not likely to prejudice the position of the accused in the criminal proceeding. *Raja Ram Garg v Chhanga Singh*, [AIR 1992 All 28](#) [[LNIND 1991 ALL 397](#)] . See also *Bhagwan Bax Singh*, [1984 Cr LJ 928](#) (SC) : [AIR 1984 SC 1120](#) : [\(1984\) 1 SCC 278](#) .

<sup>318</sup>. *State of Punjab v Dalbir Singh*, [AIR 2012 SC 1040](#) [[LNIND 2012 SC 93](#)] : [2012 \(3\) SCC 346](#) [[LNIND 2012 SC 93](#)] . See also *State of Rajasthan v Manoj Yadav*, [2012 Cr LJ 456](#) (Raj).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### [s 304] Punishment for culpable homicide not amounting to murder.

Whoever commits culpable homicide not amounting to murder shall be punished with <sup>319</sup>[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

#### COMMENT.—

This section provides punishment for culpable homicide not amounting to murder. Under it, there are two kinds of punishments applying to two different circumstances:

(1) If the act by which death is caused is done with *intention* of causing death or such bodily injury as is likely to cause death, the punishment is imprisonment for life, or imprisonment of either description for a term which may extend to 10 years and fine.

(2) If the act is done with *knowledge* that it is likely to cause death but *without any intention* to cause death or such bodily injury as is likely to cause death, the punishment is imprisonment of either description for a term which may extend to 10 years, or with fine, or with both.

A conviction under Part II of this section read with section 34 is legal and valid. Part II of this section can be read together with section 34, notwithstanding that Part II speaks only of knowledge while section 34 deals with intention.<sup>320</sup>

Commission of the offence of culpable homicide would require some positive act on the part of the accused as distinguished from silence, inaction or a mere lapse. Allegations of not carrying out a prompt search of the missing children; of delay in the lodging of formal complaint with the police and failure to take adequate measures to guard the access from the ashram to the river, which are the principal allegations made in the FIR, cannot make out a case of culpable homicide not amounting to murder punishable under [section 304, IPC, 1860](#).<sup>321</sup>

#### [s 304.1] Distinction between the provisions of section 304, Part I and Part II.—

Linguistic distinction between the two Parts of section 304 is evident from the very language of this section. There are two apparent distinctions, one in relation to the punishment while other is founded on the intention of causing that act, without any intention but with the knowledge that the act is likely to cause death. It is neither advisable nor possible to state any straight-jacket formula that would be universally

applicable to all cases for such determination. Every case essentially must be decided on its own merits. The Court has to perform the very delicate function of applying the provisions of the Code to the facts of the case with a clear demarcation as to under what category of cases, the case at hand falls and accordingly punish the accused.<sup>322.</sup>

### **[s 304.2] Is section 304, Part II applicable only when exceptions to section 300 cover a case?.—**

The plea that section 304, Part II applies only when exceptions to section 300 cover a case is misconceived. The decision in *Harendra Mandal's case*,<sup>323.</sup> was rendered in a different context and observations in the same case cannot be read out of context. That was a case where death itself had not been caused and therefore, question of applying [section 304, IPC, 1860](#) did not arise.<sup>324.</sup> Section 304, Part II comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.<sup>325.</sup>

### **[s 304.3] Section 302 or section 304.—Judicial dilemma.—**

The [Indian Penal Code](#) was enacted in the year 1860 under which the offences within the territory of India have been tried ever since it was enacted dealing with countless number of cases leading either to acquittal or conviction. Yet, the task of the decision-making authorities/Courts of whether an offence of culpable homicide is murder or culpable homicide does not amount to murder in the prevailing facts and circumstances of the case is a perennial question with which the Courts are often confronted. When the evidence discloses a clear case of murder or makes out a finding of culpable homicide not amounting to murder, the task of the Courts to record conviction or acquittal is generally an easy one. But this task surely becomes an undaunted one when the accused commits culpable homicide/murder but the circumstances disclose many a times that it is done without premeditation or pre-planning, may be to cause grievous hurt, yet it is so grave in nature that it results into death and the role of the *factum* causing death without premeditation becomes a secondary consideration due to which the decision of the Courts in such cases often hinges on discretion while considering whether the case would fall under [section 302, IPC, 1860](#) or it would be under section 304, Part I or even Part II, [IPC, 1860](#). On a plain reading of section 299, section 300, [section 302](#) and [section 304](#) of [IPC, 1860](#), it appears that given cases can be conveniently classified into two categories, viz., culpable homicide amounting to murder which is [section 302, IPC, 1860](#) or culpable homicide not amounting to murder which is [section 304 IPC, 1860](#). But when it comes to the actual application of these two sections in a given case, the Courts are often confronted with a dilemma as to whether a case would fall under [section 302, IPC, 1860](#) or would fall under [section 304, IPC, 1860](#). Many a time, this gives rise to conflicting decisions of one Court or the other giving rise to the popular perception among litigants and members of the Bar that a particular Court is an acquitting Court or is a convicting one. This confusion or dilemma often emerges in a case when the question for consideration is whether a given case would fall under [section 302, IPC, 1860](#) or [section 304, IPC, 1860](#) when it is difficult to decipher from the evidence whether the intention was to cause merely bodily injury which would not make out an offence of murder or there was clear intention to kill the victim making out a clear case of an offence of murder.<sup>326.</sup> Section 300 states both, what is murder and what is not. First finds place in section 300 in its four stated categories, while the second finds detailed mention in the stated five exceptions to section 300. The legislature in its



wisdom, thus, covered the entire gamut of culpable homicide that 'amounting to murder' as well as that 'not amounting to murder' in a composite manner in section 300 of the Code. It is neither advisable nor possible to state any straightjacket formula that would be universally applicable to all cases for such determination. Every case essentially must be decided on its own merits. The Court has to perform the very delicate function of applying the provisions of the Code to the facts of the case with a clear demarcation as to under what category of cases, the case at hand falls and accordingly punish the accused.<sup>327</sup> It has been held that unless the case falls under one of the specified exception in section 300, it cannot be brought under Part I or Part II of [section 304 of IPC, 1860](#).<sup>328</sup>

#### [s 304.4] CASES.—

Where the accused husband suspecting the fidelity of his wife quarrelled with her, poured kerosene on her body and set her on fire and subsequently, when she screamed for help, tried to extinguish fire by pouring water, the Supreme Court held that he was having full knowledge that his act would cause her death and the attempt of extinguishing the fire will not mitigate the offence, hence he was liable under [section 302, IPC, 1860](#) and not under [section 304, IPC, 1860](#).<sup>329</sup> The accused followed his daughter into the women's public toilet of the village and assaulted her. The fatal injuries resulted in her instant death. None of the exceptions in [section 300 of IPC, 1860](#) was attracted. It would necessarily follow that the accused committed murder of his daughter. He was liable to be punished with either imprisonment for life or death under [section 302, IPC, 1860](#) alone.<sup>330</sup> The accused killed his stepfather, who was an infirm old man and an invalid, with the latter's consent, his motive being to get three innocent men (his enemies) hanged. It was held that the offence was covered by Exception 5 to section 300 and was punishable under the first Part of this section.<sup>331</sup> Where the deceased, an old man with an enlarged and flabby heart, was lifted by the accused during a quarrel and thrown on the ground from some distance with sufficient force and the deceased got his ribs fractured and died of a rupture of the heart, it was held that the offence fell under section 325 and not under Part II of this section, as the accused had no intention or knowledge to cause death.<sup>332</sup> Accused stabbed the deceased in a sudden incident during an election fever which resulted in his death four days later in hospital where he had been operated upon in a bid to save his life. There was no evidence that the accused intended to cause death or cause such bodily injury as was sufficient in ordinary course of nature to cause death. In the circumstances, it was held that the case fell within clause (b) of section 299 but did not fall within clause 3 of [section 300, IPC, 1860](#), and as such his conviction under section 302 was set aside and he was convicted under section 304, Part I of the Code.<sup>333</sup> Similarly, where a young lad of 18½ years old gave only one *kassi* blow to the deceased following an altercation between his father and the deceased, which resulted in latter's death six days after, it could not be said that he had intended to cause an injury which was sufficient in ordinary course of nature to cause death within the meaning of clause 3 of [section 300, IPC, 1860](#). He could be at best saddled with knowledge that his act might result in death. His conviction was, therefore, changed from section 302 to section 304, Part II, [IPC, 1860](#).<sup>334</sup> Accused, in a sudden quarrel gave a blow on the head of his friend with a stick weighing only 210 grams which caused his death. It was held that his conviction under section 304, Part II, [IPC, 1860](#), was improper as it could not be said that he had knowledge that such a blow would cause death. His conviction was, therefore, changed to one under [section 323, IPC, 1860](#).<sup>335</sup> In a dispute regarding the right of way, the accused gave a single fist blow on the head of the deceased which resulted into his death. No weapon was used, nor was there any past enmity between them. The accused was not held to be responsible for the death of the deceased and

was sentenced under [section 323, IPC, 1860](#).<sup>336</sup> Where a man lifted a four-year-old child and threw him on the ground and thus caused his death, it was held that knowledge of death under [section 299, IPC, 1860](#), could be safely attributed to him and he was therefore liable under section 304, Part-II, [IPC, 1860](#).<sup>337</sup> In a sudden quarrel, the accused, a young man, administered a single knife blow on the chest of the deceased causing his death, it was held that the case did not fall under clauses 1 and 2 of section 300 but since he had knowledge that death might follow, he was guilty under section 304, Part II, [IPC, 1860](#).<sup>338</sup> A police officer was punished under Part II of this section with seven-year RI for causing death in custody by resorting to third-degree methods.<sup>339</sup> A woman deserted her husband and started living with her paramour six months before the incident. Her fisherman husband, on way back from his work, spotted her sitting among women at outside of a neighbouring house. He approached towards her. On seeing him, she ran inside. He chased and stabbed her to death. His conviction under Part II and sentence of five-year rigorous imprisonment was held to be not excessive.<sup>340</sup> A group of persons called out the deceased from his home with a view to lodging a protest but suddenly one of them inflicted a knife wound which falling on the chest killed the deceased. The Supreme Court convicted the single wound-causing accused under this section saying that the heat of passion generated at the spur of the moment and not any intention to cause death was responsible for the incident.<sup>341</sup> In another case of the same kind before the Supreme Court, the finding was that the wrestler-accused had an altercation with the deceased two or three days before the incident. The prosecution showed that the accused came to the house of the deceased, but suppressed further knowledge about the incident. Drops of blood in the house showed that the deceased was injured there, ran out and fell dead. There was only one major injury. Conviction under Part I of this section was considered to be appropriate.<sup>342</sup> Annoyance was caused by the deceased singing a vulgar song. Quarrel and beating in consequence continued for some time. Accused started beating the deceased with a stick not thick enough to cause rupture of the spleen. He might not have had the intention to cause death but had knowledge that death might result. His conviction under section 300 (second) was converted into one under section 304, Part II.<sup>343</sup> Where the victim was dragged for about 120 feet and then struck with a crowbar not using much force, the accused knowing that the assault might cause death but not intending it. Part II was held to be attracted and not Part I.<sup>344</sup> A person reaching home in a drunken state started beating his wife. Their son intervened and the accused hurled stones on him twice. The boy succumbed to the head injury then and there. Conviction was shifted from under section 302 to 304, Part II, knowledge that death might be caused.<sup>345</sup>

Persons exceeding the right of private defence are punished under section 304, Part I and not under section 302.<sup>346</sup> Where the deceased died due to the negligent firing by a person, who came for celebrating a marriage function with a gun, it was held that though it is not possible to attribute intention, it is equally not possible to hold that the act was done without the knowledge that it is likely to cause death. Everybody, who carries a gun with live cartridges and even others know that firing a gun and that too in the presence of several people is an act, which is likely to cause death. Hence, the liability under section 304, Part II. The appellant caused the death of his wife by beating her with a wooden stick. No intention to cause death was proved. He was convicted under section 304, Part II.<sup>347</sup>

Where the death of a player was caused by blowing a cricket stump on him in a friendly cricket match and it was found that the accused player did not know that his act would cause an injury which would cause death or which was likely to cause death, it was held that a conviction under section 304, Part II was not proper, but that an offence under section 325 was made out as the injury was caused by a stump which is a blunt weapon.<sup>348</sup>

A married woman (25 years) met a sudden death in her matrimonial home. Her letters and complaints spoke of harassment. The medical report put the cause of death as rupture of spleen and pancreas caused by external pressure. Her husband, who was attempting to escape by resorting to the theory of death by poisoning, was found guilty and his conviction under Part II of this section and sentence of five years of RI was upheld by the Supreme Court. Though he might not have intended to cause death, he did cause an injury about which he must have known that it might cause death.<sup>349</sup> Where one of the accused came forward and delivered a blow on the head of a man which proved fatal, the Apex Court was of the view that his act did not attract clause (1) or (3) of section 300 because the accused was armed with no deadly weapon and the head injury was caused by a farmer with an agricultural instrument which he happened to carry with him. Conviction of the accused causing head injury under section 300 was altered to one under section 304, Part II.<sup>350</sup> Several persons surrounded a man. Firstly, he was pushed down on the ground and then two injuries were caused to him one each by two assailants one of whom was acquitted. Opinion of the doctor was that the victim died due to shock and haemorrhage resulting from both the injuries. The one injury alone caused by the accused was not individually sufficient to cause death. His conviction was altered from section 300 to that under section 304, Part II.<sup>351</sup> Where the accused inflicted a single knife wound in the abdomen of a man which proved fatal and the opinion of the doctor was that, but for complications, the injury was not sufficient to cause death, it was held that the offence did not attract clause (3) of section 300. He was convicted under section 304, Part II.<sup>352</sup> A husband, without any history of ill-feeling with his wife, attacked her with the blunt side of an axe and caused a head injury after she fell down of which she died, his conviction under Part I of this section was held to be proper.<sup>353</sup> Where a person killed his wife under grave and sudden provocation, a lenient punishment of two years' imprisonment was awarded to him taking into consideration the welfare of his children.<sup>354</sup> Where the accused delivered a single stab blow on the chest of his wife out of sheer frustration, momentary impulse and anger, on her refusal to oblige him with sex without any intention to cause her death, his act was held to be culpable homicide not amounting to murder and his conviction was altered from section 302 to section 304, Part I.<sup>355</sup>

A pregnant woman went to draw water from a well but she was stopped from doing so by several persons armed with 'lathis' and started abusing her and one of them dealt a 'lathi' blow on her head and another kicked her abdomen, as a result she died on the spot and her son who tried to rescue her was also injured. Looking at the conduct of the accused, it could not be said that they had common object to kill the woman or cause injury to her son. Both the assailants were convicted under section 304, Part II and others were acquitted.<sup>356</sup>

The death of a young boy was caused in a brutal and cruel manner. The trial Court convicted under sections 302/304. The High Court converted it to section 304 without specifying whether the case fell within Part I or II. Sentence of seven years' imprisonment was imposed. The Supreme Court did not interfere.<sup>357</sup>

#### **[s 304.5] CASES under Part I.—**

Where the accused with the intention of obstructing the marriage of his sister with the deceased, gave only one blow which proved fatal and the accused did not repeat the blow though there was nothing to stop him, conviction and sentence of the accused under section 302 was altered to one under section 304, Part I.<sup>358</sup> Where the accused under misapprehension that the deceased came to abduct his daughter attacked the deceased with a sharp-edged weapon, without pre-meditation, causing only one injury and he died after three days, conviction of the accused was altered from under section

300 to one under section 304, Part I.<sup>359</sup> Where three accused persons assaulted the deceased, one of the accused gave the fatal blow on the victim's head, the second accused caused simple injuries on the knee and arm with spear, and the third gave simple blows, it was held that the first accused was liable to be convicted under section 304, Part I, and as section 34 was not applicable, the second was convicted under section 324 and the conviction of the third accused under section 323 was upheld.<sup>360</sup>

Where most of the injuries found on the body of the deceased were external and on lower legs and on arms, it was held that intention of the accused was to cause grievous hurt and not murder. Conviction of the accused was altered from sections 304/34, Part I to sections 325/34.<sup>361</sup>

#### **[s 304.5.1] Death essential to attract section 304.—**

In *Harendra Nath Mandal v State of Bihar* the accused caused injury on the head of a man with back portion of his weapon. The injured survived the injury. Still the accused was convicted under section 304, Part I. It was held by the Supreme Court that the accused could not be convicted under section 304 because for the application of section 304, death must have been caused under any of the circumstances mentioned in five Exceptions of section 300.<sup>362</sup>

#### **[s 304.5.2] Exceeding right of private defence.—**

Whenever accused sustains injuries in the same occurrence and when the injuries are grievous in nature, it is incumbent upon the prosecution to explain the injuries on the person of the accused. The non-explanation of injuries sustained by the accused may give rise to a possibility that the accused has acted in self-defence.<sup>363</sup> In a murder case, both the parties sustained injuries in a free fight. The accused received a stab wound on his right shoulder. No explanation of this injury was given by the prosecution. It was held that the accused had caused injuries to the deceased in right of private defence, but that he exceeded his right. He was punished under section 304, Part I and not under section 302.<sup>364</sup> In a dispute over possession of land, persons belong to both the sides were injured. The accused were in actual possession at the relevant time. Two of the accused received gunshot injuries. They were held to be entitled to the right of private defence but they exceeded their right. Conviction of the accused under sections 302/149 was altered to one under section 304 Part I.<sup>365</sup> In a fight between two groups, the accused fired from a distance killing one person of the other group. Fighting groups were not close enough so as to apprehend immediate danger to anybody's life, when the firing took place. It was held that the accused had exceeded the right of private defence. He was convicted under section 304, Part I.<sup>366</sup> Where the accused received injuries at the hands of the deceased and his party, it was held that the accused were entitled to the right of private defence but by using heavy cutting weapons like 'gandasas' and causing serious injuries to the deceased, they had exceeded the right of private defence and were liable to be punished under section 304, Part I but not for murder.<sup>367</sup>

#### **[s 304.5.3] Sudden quarrel.—**

Where as a result of provocation caused in a heat of passion upon a sudden quarrel, the accused chased the deceased to some distance and then gave the single fatal blow, it was held that the whole incident was a continuous sequence. Hence, the

conviction of the accused was shifted from under section 300 to under section 304, Part I.<sup>368</sup> Where the accused came to the house at midnight, went to sleep with the deceased but suddenly a quarrel took place and the death occurred on account of asphyxia, the incident occurred all of a sudden, without any premeditation, the accused had not taken undue advantage or acted in a cruel or unusual manner; therefore, his conviction under section 304, Part I of IPC, 1860 was held proper.<sup>369</sup>

#### **[s 304.6] Single blow.—**

Where a solitary blow was given with a small wooden yoke on the head of the deceased, conviction under section 300 was altered to one under section 304, Part I.<sup>370</sup>

#### **[s 304.6.1] Provocation.—**

The accused suspected the fidelity of his wife who in turn labelled him as impotent. In the resulting quarrel, the husband picked up a sharp weapon and struck on her vital parts causing death. It was held that Exception I to section 300 was attracted and the accused was punishable under section 304, Part I.<sup>371</sup>

#### **[s 304.7] Death after discharging from the hospital.—**

The victim received gunshot injury on head. On the condition of the victim becoming better, he was discharged from the hospital. After two months of the incident, he died due to septicaemia. It was held that having regard to the fact that the victim survived for 62 days and that his condition was stable when he was discharged from the hospital, the Court cannot draw an inference that the intended injury caused was sufficient in the ordinary course of nature to cause death so as to attract clause (3) of section 300 of IPC, 1860. But as the accused used firearms and fired at the victim on his head and he had the intention of causing such bodily injury as is likely to cause death, the conviction was altered to section 304, Part I.<sup>372</sup>

#### **[s 304.8] Suicide pact.—**

The death of the deceased was not premeditated and the act of the accused causing death of his wife appeared to be in furtherance of the understanding between them to commit suicide and the consent of the deceased and the act of the accused falls under Exception 5 of section 300, IPC, 1860.<sup>373</sup>

#### **[s 304.9] Civil Disputes.—**

In view of the civil disputes between the families, there was a sudden minor verbal exchange bloated into a sudden physical attack. Several persons of the accused group wielding weapons attacked the deceased and inflicted two simple injuries; one such simple injury turned out to be fatal sometime later. There was no intention to cause death, though the accused had knowledge that the weapon used by him to inflict injury on the scalp of the deceased might cause death. As there was absence of intention to cause death or to cause such bodily injury as was likely to cause death, the accused

persons were held guilty for an offence punishable under section 304, Part II, [IPC, 1860](#) and not for the offence under [section 300, IPC, 1860](#).<sup>374.</sup>

#### **[s 304.10] Maximum punishment.—**

The maximum punishment that is awardable in case of offence under section 304, Part II, [IPC, 1860](#) is 10 years. In a case, the accused persons were Police Personnel whose duty was to act in accordance with law and caused death when the deceased was in police custody. The accused fudged the General Diary Register of the Police Station to put up their defence and put up a false *plea of alibi*. The accused-in-charge of police station prepared a false memo sending the deceased to the hospital when he was already dead. The accused persons were found guilty of commission of the offence under section 304, Part II read with [section 34, IPC, 1860](#) and were convicted under section 304, Part II read with [section 34, IPC, 1860](#) and were sentenced to suffer RI for a period of 10 years.<sup>375.</sup>

#### **[s 304.11] Probation.—**

Accused was convicted under sections 304(II)/149, [IPC, 1860](#) and sentenced to three years' RI. He secured a Doctorate and got employed as Senior Assistant Professor in the Department of Strategic and Regional Studies, University of Jammu. Keeping in view his conduct and attainments after his involvement in the matter, justified his release on probation.<sup>376.</sup>

#### **[s 304.12] Section 304, Part II when attracted in cases of death caused by driving.—**

In a case where negligence or rashness is the cause of death and nothing more, section 304A may be attracted, but where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, section 304, Part II, [IPC, 1860](#) may be attracted and if such a rash and negligent act is preceded by real intention on the part of the wrong doer to cause death, offence may be punishable under [section 302, IPC, 1860](#).<sup>377.</sup> If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When intent or knowledge is the direct motivating force of the act, section 304A has to make room for the graver and more serious charge of culpable homicide.<sup>378.</sup>

#### **[s 304.13] BMW CASE.—**

The accused in an inebriated state, after consuming excessive alcohol, was driving the vehicle without license, in a rash and negligent manner in a high speed which resulted in the death of six persons. Trial Court convicted the accused under section 304, Part II, but High Court altered the conviction to section 304A. The Supreme Court held that the accused had sufficient knowledge that his action was likely to cause death and such action would, in the facts and circumstances of the case fall under section 304, Part II,

IPC, 1860 and the trial Court has rightly held so.<sup>379</sup> In another hit and run case,<sup>380</sup> which killed seven persons and caused injuries to eight persons, the Court held that the case falls under section 304, Part II and not under section 304A by holding that the person must be presumed to have had the knowledge that, his act of driving the vehicle without a licence in a high speed after consuming liquor beyond the permissible limit, is likely or sufficient in the ordinary course of nature to cause death of the pedestrians on the road.

#### **[s 304.14] Alteration of Charge from section 304A to section 304, Part II.— Permissibility.—**

Neither of the sides would have been in any manner prejudiced in the trial by framing of a charge either under section 304A or section 304, Part II, IPC, 1860 except for the fact that the forum trying the charge might have been different, which by itself, in our opinion, would not cause any prejudice. This is because at any stage of the trial, it would have been open to the concerned Court to have altered the charge appropriately depending on the material that is brought before it in the form of evidence.<sup>381</sup>

Permissibility to try and convict a person for the offence punishable under section 304, Part II, IPC, 1860 and the offence punishable under section 338, IPC, 1860 for a single act of the same transaction. There is no incongruity, if simultaneous with the offence under section 304, Part II, a person who has done an act so rashly or negligently endangering human life or the personal safety of the others and causes grievous hurt to any person is tried for the offence under section 338, IPC, 1860. In view of the above, the Court opined that, there is no impediment in law for an offender being charged for the offence under section 304, Part II IPC, 1860 and also under sections 337 and 338, IPC, 1860. The two charges under section 304, Part II, IPC, 1860 and section 338, IPC, 1860 can legally co-exist in a case of single rash or negligent act where a rash or negligent act is done with the knowledge of likelihood of its dangerous consequences.<sup>382</sup>

<sup>319</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for transportation for life (w.e.f. 1-1-1956).

<sup>320</sup>. *Afrhim Sheikh*, AIR 1964 SC 1263 [LNIND 1964 SC 1] : (1964) 2 Cr LJ 350 .

<sup>321</sup>. *SJ Vaghela v State of Gujarat*, AIR 2013 SC 571 [LNIND 2012 SC 1562] : 2013 Cr LJ 390 (SC).

<sup>322</sup>. *Rampal Singh v State of UP*, 2012 Cr LJ 3765 : (2012) 8 SCC 289 [LNIND 2012 SC 425] relied on *Mohinder Pal Jolly v State of Punjab*, 1979 AIR SC 577.

<sup>323</sup>. *Harendra Mandal's case*, JT 1993 (3) SC 650 [LNIND 1993 SC 177] : 1993 (1) Crimes 984 [LNIND 1993 SC 177] .

<sup>324</sup>. *Ruli Ram v State of Haryana*, AIR 2002 SC 3360 [LNIND 2002 SC 585] : (2002) 7 SCC 691 [LNIND 2002 SC 585] .

<sup>325</sup>. *Jagriti Devi v State of HP*, (2009) 14 SCC 771 [LNIND 2009 SC 1376] ; *Surajit Sarkar v State of WB*, AIR 2013 SC 807 [LNIND 2012 SC 361] : 2013 (2) Cr LJ 1137 , when the accused had knowledge that hitting with iron rod is likely to cause death, he is liable to be convicted under

section 304, Part II; *Ranjitham v Basavaraj*, (2012) 1 SCC 414 [LNIND 2011 SC 1185] : 2012 Cr LJ 2135 : AIR 2012 SC 1856 [LNIND 2011 SC 1185] .

326. *Ajit Singh v State of Punjab*, 2011 (10) Scale 127 [LNIND 2011 SC 844] : (2011) 9 SCC 462 [LNIND 2011 SC 844] : (2011) 3 SCC (Cr) 712; on facts, when Justice Gyan Sudha Mishra concluded that the case falls under section 304, Part II, Justice Bedi held it as a clear case of murder punishable under section 302. The question referred to the larger bench.

327. *Rampal Singh v State of UP*, 2012 AIR (SCW) 4211 : 2012 Cr LJ 3765 : (2012) 8 SCC 289 [LNIND 2012 SC 425] .

328. *Gandi Doddabasappa v State of Karnataka*, AIR 2017 SC 1208 [LNIND 2017 SC 103] .

329. *Santosh v State of Maharashtra*, 2015 Cr LJ 4880 : (2015) 7 SCC 641 [LNIND 2015 SC 275] .

330. *Gandi Doddabasappa v State of Karnataka*, AIR 2017 SC 1208 [LNIND 2017 SC 103] .

331. *Ujagar Singh*, (1917) PR No 45 of 1917.

332. *Putti Lal*, 1969 Cr LJ 531 . Death by single hammer blow falling on head, knowledge but no intention, conviction under Part II, *Swarup Singh v State of Haryana*, AIR 1995 SC 2452 : 1995 Cr LJ 4168 . Injury inflicted by the accused was sufficient in the ordinary course of nature to cause death but he had no intention to cause such injury to the victim who came in between, it was held that section 300, Thirdly, could not be invoked and conviction of the accused was converted to one under section 304, Part II, *Sebastian v State of Kerala*, 1992 Cr LJ 3642 (Ker).

333. *Jayaraj*, 1976 Cr LJ 1186 : AIR 1976 SC 1519 . *Public v State of AP*, (1995) 2 Cr LJ 1738 (AP), murder without motive, conviction based on appreciation of evidence, punished under Part I. *Bhua Singh v State of Punjab*, (1995) 2 Cr LJ 1531 , 1531 (P&H), in a sudden occurrence and without pre-meditation, the accused gave a single blow with a blunt weapon which fell upon head causing death, the accused was held to be punishable under Part I. His sentence of eight-year term was reduced to four years. *Pandurang v State of Maharashtra*, (1995) 1 Cr LJ 762 (Bom), in an altercation and fight, one taking out pen-knife from his pocket and inflicting a chest blow, punished under Part I, section 304. *Karnail Singh v State of Punjab*, AIR 1995 SC 1972 : 1995 Cr LJ 3625 : 1997 SCC (Cri) 749 , the accused causing a number of injuries to the deceased, his conviction under Part I not disturbed. *State of Punjab v Karnail Singh*, AIR 1995 SC 1970 : 1995 Cr LJ 3624 , unarmed victims, fired at, one fired at while running away, no danger from them, conviction under section 300 and section 304, Part I. *Devku Bhika v State of Gujarat*, AIR 1995 SC 2171 : 1995 Cr LJ 3975 (SC). Where the accused infuriated by the refusal of the deceased to send his daughter to spend one night with him, picked up a stick lying nearby and assaulted him with it without any prior enmity causing injuries on the vital parts of the body but simple in nature, it was held he could be convicted under section 304, Part II and not under section 302. In the case of *Bonda Devesu v State of AP*, 1996 (7) SCC 115 , the accused belonged to a tribal community and the deceased had behaved in an obscene way with wife of the accused. Having regard to the socio-economic background of the accused, the Court held it to be an offence punishable under section 304, Part I and not section 302, IPC, 1860.

334. *Randhir Singh*, 1982 Cr LJ 195 (SC) : AIR 1982 SC 55 : (1981) 4 SCC 484 . See also *Gurdip Singh v State of Punjab*, AIR 1987 SC 1151 : 1987 Cr LJ 987 : (1987) 2 SCC 14 , where there was no intention to cause death, but death nevertheless resulted, conviction under section 302 was converted to one under this section with seven-year RI; *Ramesh Laxman Pardesi v State of Maharashtra*, 1987 SCC (Cr) 615 : 1987 Supp SCC 1 , single blow under heated exchange of words resulting in death, seven-year RI already undergone, held sufficient.

335. *Dhyaneshwar*, 1982 Cr LJ 1870 (SC).

336. *Rupinder Singh Sandhu v State of Punjab*, AIR 2018 SC 2395 [LNIND 2018 SC 276] .

337. *Sarabjeet*, 1983 Cr LJ 961 (SC) : AIR 1983 SC 529 [LNIND 1982 SC 173] : (1984) 1 SCC 673 [LNIND 1982 SC 173] . Assault by several persons, injuries, none sufficient to cause death



individually, conviction under sections 326/34 and not 302/34, *Ram Meru v State of Gujarat*, [AIR 1992 SC 969](#) : [1992 Cr LJ 1265](#) . A woman protested against construction on the adjoining land. The accused abused her, snatched her six-year-old daughter from her hand and threw her away in order to give a good thrashing to the woman. The baby died, held, no intention, nor knowledge, punishable under section 325 and not 299, *Ram Pal Singh v State of UP*, [1993 Cr LJ 2715](#) (All). *Shankar Kondiba Gore v State of Maharashtra*, [\(1995\) 1 Cr LJ 93](#) (Bom), single stab injury on abdomen puncturing artery at ilium, death, knowledge attributed, conviction under Part II. *NK Khakre v State of Maharashtra*, [1996 Cr LJ 562](#) (Bom), striking at the head of eight-year-old child resulting in death, knowledge but not intention, conviction under Part II. *Balaur Singh v State of Punjab*, [AIR 1995 SC 1956](#) : [1995 Cr LJ 3611](#) , in a free-fight between two parties, the accused caused a single injury by means of a gandasa on the head of the deceased and he died after six days because of complications of coma and asphyxia, caused by the injury, the dimension of the injury or situs thereof was not found to be calculated or targeted intentionally, besides the blow was not repeated, conviction of the accused was altered from section 302 to section 304, Part II.

**338.** *Jagtar Singh*, [1983 Cr LJ 852](#) (SC) : [AIR 1983 SC 463](#) [[LNIND 1996 SC 826](#)] : [\(1983\) 2 SCC 342](#) ; see also *Hari Ram*, [1983 Cr LJ 346](#) (SC) : [AIR 1983 SC 185](#) ; *Jawaharlal*, [1983 Cr LJ 429](#) (SC) : [AIR 1983 SC 284](#) ; *Tholan*, [1984 Cr LJ 478](#) : [AIR 1984 SC 759](#) : [\(1984\) 2 SCC 133](#) ; *Bhabagrahi*, [1985 Cr LJ 1847](#) (Ori). The conviction of an accused who did not come under section 302 and who had no intention to kill converted by the Supreme Court in *Gurdip Singh v State of Punjab*, [\(1987\) 2 SCC 14](#) : [AIR 1987 SC 1151](#) : [1987 Cr LJ 987](#) into one under section 304, Part I; *State of UP v Ram Swarup*, 1988 SCC (Cr) 552 : [AIR 1988 SC 1028](#) : 1988 All LJ 555 : 1988 Supp SCC 262 ; *Manibhai Vithalbai v State of Gujarat*, [1988 BLJR 464](#) : (1988) 25 All CC 223 : 1988 Supp SCC 791; *Babu Khan v State of MP*, [1988 Cr LJ 1441](#) MP, single blow falling on heart, conviction under section 304 II, setting aside under section 302; *State of UP v Jodha Singh*, [1989 Cr LJ 2113](#) : [AIR 1989 SC 1822](#) : [\(1989\) 3 SCC 465](#) : 1989 SCC (Cr) 591, punishment for death caused in sudden fight restricted to the period already spent in jail. Sudden heated exchange of words between two fellow-hunters resulting in death of one by gun fire, held punishable under Part I; *Radha Kishan v State of Haryana*, [AIR 1987 SC 768](#) : [1987 Cr LJ 713](#) : [\(1987\) 2 SCC 652](#) ; another case of single blow in a state of drunkenness, *Tarsen Singh v State of Punjab*, 1987 Supp. SCC 600 : [AIR 1987 SC 806](#) [[LNIND 1987 SC 112](#)] ; *Kartar Singh v State of Punjab*, [\(1988\) 1 SCC 690](#) : [AIR 1988 SC 2122](#) , accused contended that he acted in self-defence, prosecution case weak, held punishable under Part II. *Kailash Kaur v State of Punjab*, [AIR 1987 SC 1368](#) [[LNIND 1987 SC 434](#)] : [1987 Cr LJ 1127](#) : [\(1987\) 2 SCC 631](#) [[LNIND 1987 SC 434](#)] , life term for wife burning : *Ram Lal v State of Punjab*, 1989 Supp (1) SCC 21 : 1989 SCC (Cr) 123 : [AIR 1989 SC 1985](#) [[LNIND 1989 SC 471](#)] , conviction for death caused in a sudden fight by one coming to a shop bare-handed for collection of dues, and sentence under section 302 converted to one under section 304, Part I, i.e., eight years' RI; *Dharam Pal Singh v State (Delhi Administration)*, 1989 Supp (1) SCC 165 : 1989 SCC (Cr) 319, a matter of the same kind and Supreme Court holding that death sentence was not called for and also *RN Agarwal v Dharam Pal*, 1989 Supp (1) SCC 386 : 1988 SCC (Cr) 451.

**339.** *Gauri Shanker Sharma v State of UP*, [AIR 1990 SC 709](#) [[LNIND 1990 SC 8](#)] : 1990 Supp SCC 182 .

**340.** *Shanmugham v IP Marina Police*, [1996 Cr LJ 3702](#) (Mad).

**341.** *Hem Raj v State (Delhi Admn)*, [AIR 1990 SC 2252](#) : 1990 Supp SCC 291 : [1990 Cr LJ 2655](#) . *Anil Ruidas v State*, [1988 Cr LJ 1610](#) , son-in-law struck father-in-law in quarrel, conviction under section 304, Part II.

342. *State of Karnataka v Siddappa B Patil*, AIR 1990 SC 1047 : 1990 Cr LJ 1116 : 1990 Supp SCC 257 . See *Jayaram Shiva Tagore v State of Maharashtra*, AIR 1991 SC 1735 : 1991 Cr LJ 2192 , a plea of earlier release can be considered only when more than 14 years already served. See further, *Abdul Hamid v State of UP*, AIR 1991 SC 339 [LNIND 1990 SC 637] : 1991 Cr LJ 431 , where there was no proof who out of the four who were present administered lathi blow, acquittal of all under this section as well as section 149. The court **relied** upon its own earlier decision in *Gajanand v State of UP*, AIR 1954 SC 695 : 1954 Cr LJ 1746 . For another case of acquittal by the Supreme Court on reappraisal of evidence, see *Nain Singh v State of UP*, (1991) 2 SCC 432 [LNIND 1991 SC 119] ; *State of UP v Suresh Chand Shukla*, AIR 1991 SC 968 : 1991 Cr LJ 604 . Another similar conviction on direct evidence, *Munir Ahmed v State of Rajasthan*, 1989 Cr LJ 845 : AIR 1989 SC 705 : 1989 Supp (1) SCC 377 .
343. *Tota v State of MP*, (1995) 2 Cr LJ 1515 (MP), sentence was reduced to that already undergone, **following** *Karam Singh v State of Punjab*, 1993 Cr LJ 3673 : (1994) SCC (Cr) 64. Where the accused continued to inflict injuries even after the deceased fell down, he exceeded private defence, conviction under this section.
344. *Krupasindhu v State of Orissa*, (1995) 2 Cr LJ 1488 (Ori).
345. *Lalya Dharma v State of Maharashtra*, (1995) 1 Cr LJ 556 (Bom), conviction on the basis of the sole evidence of the wife. *Sukhram v State of MP*, (1995) 1 Cr LJ 595 (MP), a child of tender years testifying that her father struck her mother's head by a grinding stone, not relied upon, *alibi* also proved. *Phani Bhushan v State of WB*, AIR 1991 SC 317 : 1991 Cr LJ 551 , death by blunt weapon, conviction for dowry death quashed which was 21 years ago.
346. *Sundaramurthy v State of TN*, 1990 Cr LJ 2198 : AIR 1990 SC 2007 : 1990 Supp SCC 267 ; *BV Danny Mao v State of Nagaland*, 1989 Cr LJ 226 (Gau), scuffle. *Hanumantappa v State of Karnataka*, AIR 1992 SC 599 : 1992 Cr LJ 405 , the owner of a crop tried to prevent a person who came there with his son to cut his crop and bit at his finger. This provoked his son who struck with the back side of the axe which he was carrying, convicted under this Part. *State v Harisingh*, 1998 Cr LJ 2815 (MP), dispute as to right to cultivable land, right of private defence exceeded, punishment under Part I. *Baburam v State*, 1998 Cr LJ 3212 (Raj), single blow on head causing death, conviction under Part I. *Harahari Naik v State of Orissa*, 1998 Cr LJ 3948 (Ori), no previous meeting between accused persons, each responsible for his own act under section 304, Part I. See also *Vijai Bahadur Singh v State of UP*, 1998 Cr LJ 2358 (All); *Jaya Madhavan v State of Kerala*, 1998 Cr LJ 2666 (Ker); *Ramanna Ku v State of AP*, 1998 Cr LJ 2716 (AP); *Sukhlal v State of MP*, 1998 Cr LJ 3187 (MP); *Malkiat Singh v State*, 1998 Cr LJ 4724 (P&H).
347. *Kusha Laxman Waghmare v State of Maharashtra*, 2014 Cr LJ 4394 : 2014 (10) Scale 49 [LNIND 2014 SC 777] .
348. *Shailesh v State of Maharashtra*, (1995) 1 Cr LJ 914 (Bom).
349. *SD Soni v State of Gujarat*, AIR 1991 SC 917 [LNIND 1990 SC 807] : 1991 Cr LJ 330 . Another case which had resulted in five years RI, the Supreme Court reduced the sentence to one year which was already undergone and maintained the sentence of fine, *Kuldeep Singh v State of Haryana*, 1996 Cr LJ 1884 : AIR 1996 SC 2988 [LNIND 1996 SC 317] . The accused religious teacher killed one of his woman disciples with his trishul, held, ought to be punished under section 302 and not under Part I of this section. *State of Maharashtra v Vishwas Baburao Desai*, 1989 Cr LJ 677 (Bom). Bride died of burns in matrimonial home within seven years of marriage, there was evidence of cruelty and harassment for dowry, husband convicted under Part II, *Prakash Chander v State*, (1995) 1 Cr LJ 368 (Del). A man struck his mother with the blunt side of an axe all of a sudden because she hurled abuses on him, resulting in death, punishment under Part I to be proper, *Malkami v State of Orissa*, 1995 Cr LJ 1484 (Ori). Two persons armed with sharp weapons assaulted a man with the blunt side of their weapons till he fell down, they

were held liable to be convicted under Part II, *Barkau v State of UP*, 1993 Cr LJ 2954 (All). The accused more than once pounced on a lonesome person hitting him with kicks and fist blows intending to assault him severely but not intending to cause death, their conviction under section 302 reduced to one under section 304, Part II, *Ramesh Kumar v State of Bihar*, AIR 1993 SC 2317 [LNIND 1994 SC 1303] : 1993 Cr LJ 3137 .

350. *Pularu v State of MP*, AIR 1993 SC 1375 : 1993 Cr LJ 1809 . *Bilai v Orissa*, 1996 Cr LJ 3171 (Ori), accused persons attacked the deceased with deadly weapons, no injuries caused after the deceased fell down, conviction under section 304, Part II.

351. *Bawa Singh v State of Punjab*, 1993 Cr LJ 49 .

352. *Ramaswamy v State of TN*, 1993 AIR SCW 2683 : 1993 Cr LJ 3253 .

353. *Brushava Bartha v State of Orissa*, 1988 Cr LJ 1916 (Ori); *Jagbar Singh v State of Punjab*, AIR 1983 SC 463 [LNIND 1996 SC 826] : 1983 Cr LJ 852 , a person passing across the house of the accused was injured by a projecting 'parnala' (drain pipe), he protested resulting in scuffle between the young house inmate (the accused) and him whereupon the accused stabbed with knife causing death because the stab cut the chest, held guilty under section 304, Part II and not section 302. See also *Kulwant Rai v State of Punjab*, AIR 1982 SC 126 and *Re Sundarpandian*, 1988 LW (Cr) 64. *Babrubahan Jal v State of Assam*, 1991 Cr LJ 279 . *Ram Kumar v State of UP*, 1990 Cr LJ 1973 (All). Accused's wife went away with a friend. Her father brought her from the friend and deposited her for a short while at a relative's. The accused, a boy of 16–17 years of age came there to persuade her for family life and on her point-blank refusal, he lost himself, pulled out knife from his pocket, attempted one blow which the relative warded off but succeeded in piercing the stomach in second blow. This injury proved fatal in course of time. Held guilty under section 304, Part II. *State v Sunil Biswas*, 1990 Cr LJ 2093 (Cal), punished under this section the police who arrested and subsequently beat the prisoner to death. Two friends bathing in river water, one putting the other as a matter of sport into fast flowing water. Thereafter, they tried to save but failed. Sentence of five years' RI was reduced to three months' RI and a fine of Rs. 5,000. *Benny Francis v State of Kerala*, 1991 Cr LJ 2411 (Ker). *Bishwanath Dusadh v State of Bihar*, 1991 Cr LJ 108 , Sudden quarrel, *Maniyan v State of Kerala*, 1990 Cr LJ 2515 , poison in toddy mixed on the tree itself. Deceased stealthily consumed from pot, section 304, Part II, not section 304A. *Santa Singh v State*, 1987 Cr LJ 342 (Del), the accused living in Gurudwara with his son and daughter, his wife had deserted him and was living with her paramour, he all of a sudden killed his daughter, convicted under section 304, Part I and not section 302. *Chanda Lal v State of Rajasthan*, AIR 1992 SC 597 : 1992 Cr LJ 523 , 20-year long history of conviction, acquittal and appeal arising out of an episode involving injuries to both sides but two deaths on one side only, punished under section 304, Part II, sentence reduced to that already undergone. *Sukhdev Singh v State of Punjab*, AIR 1992 SC 755 : 1992 Cr LJ 700 , where several attacked, the accused-appellant gave blows even after the victim fell, but it could not be said to be the fatal blow, conviction under Part II of section 304. *Murugan v State of TN*, 1992 Cr LJ 930 (Mad), accused ran away after causing single knife wound, no enmity, conviction under this Part.

354. *State of Karnataka v R Varadraj*, (1995) 2 Cr LJ 1429 (Kant). But see *T Anjanamma v State of AP*, AIR 1995 SC 946 : (1995) 2 Cr LJ 1462 , here wife killed her husband by burning him down. The same was fully proved. The Supreme Court felt that scaling down conviction for murder to Part I of section 304 was not proper but it was not disturbed because there was no appeal against it by the State. *Vedpal v State of Haryana*, 1995 Cr LJ 3556 (P&H), single blow on head with 'Kassi' (spade) without any prior enmity, death caused, knowledge that the act was likely to cause death, conviction under Part I. *State of Punjab v Tejinder Singh*, AIR 1995 SC 2466

[LNIND 1995 SC 808] : 1995 Cr LJ 4169 , all the injuries caused with a 'gandasa' were on non-vital part, except one head-injury, conviction under Part I.

355. *Ghansham v State of Maharashtra*, 1996 Cr LJ 27 (Bom).

356. *Roop Ram v State of UP*, 1995 Cr LJ 3499 (All).

357. *Naval Kishore Singh v State of Bihar*, (2004) 7 SCC 502 . *Ramu v State of UP*, (2004) 12 SCC 250 [LNIND 2004 SC 146] : AIR 2004 SC 1605 [LNIND 2004 SC 146] : 2004 Cr LJ 1407 , fatal injury by spear, no motive, six persons took part in the melee, conviction under section 326, three years' RI considered appropriate. *Madan v State of Rajasthan*, (2003) 11 SCC 756 , right of private defence exceeded, defence of property, the accused being a sick person, sentence of seven years' imprisonment was considered appropriate. *Bagdi Ram v State of MP*, (2004) 12 SCC 302 [LNIND 2003 SC 1047] : AIR 2004 SC 387 [LNIND 2003 SC 1047] : (2004) 98 Cut LT 225 : 2004 Cr LJ 632, one blow with *gainti* lying nearby in a heat of passion caused by quarrel, no second attack showed no intention to cause death, conviction under section 304, Part I proper. *Bishan Kumar v State of Delhi*, (2003) 12 SCC 771 , one holding the victim, the other stabbing in the abdomen resulting in death, 10 years' RI reduced to seven years' RI, fine of 1000 rupees maintained, *Chanakya Dhibar v State of WB*, (2004) 12 SCC 398 [LNIND 2003 SC 1146] , unlawful assembly, common object, surrounded the victim, assaulted him, acquittal by the High Court set aside, conviction by the trial judge restored. *State of Rajasthan v Maharaj Singh*, AIR 2004 SC 4205 [LNIND 2004 SC 1662] : (2004) 98 Cut LT 686 : 2004 Cr LJ 4195, conviction justified because of overwhelming evidence, sentence reduced from 10 years' RI to five years' RI. *N Somashekar v State of Karnataka*, (2004) 11 SCC 334 [LNIND 2004 SC 625] , police officer at a swimming pool with wife, the victim sniggered at her, the officer administered him three blows on the mouth, neck and shoulder, he fell dead into the swimming pool, the officer tried to cover it up as drowning, but found guilty, convicted by the High Court as upheld by the Supreme Court.

358. *Gulzar Hussain v State of UP*, AIR 1992 SC 2027 : 1992 Cr LJ 3659 .

359. *Uttam Singh v State of UP*, 1992 Cr LJ 708 (All). *Pirthi v State of Haryana*, 1993 Cr LJ 3517 (P&H).

360. *Kedar Prasad v State of MP*, AIR 1992 SC 1629 : 1992 Cr LJ 2520 .

361. *Parasuraman v State of TN*, AIR 1993 SC 141 [LNIND 1991 SC 447] : 1992 Cr LJ 3939 . *Madhusudan Satpathy v State of Orissa*, AIR 1994 SC 474 : 1994 Cr LJ 144 , the sentence of a convict under Part I was reduced because death resulted from a single blow caused with non-deadly weapon, *Mohammed Salam v State of MP*, 1992 Cr LJ 1612 (MP), blow with dagger, but not with much force, conviction under Part I.

*State of Punjab v Gurcharan Singh*, 1998 Cr LJ 4560 : AIR 1998 SC 3115 [LNIND 1998 SC 842] , incident at the spur of moment, no intention, only one blow in sudden quarrel. Order of High Court convicting accused under section 304, Part I was held to be proper. *Malkiat Singh v State of Bihar*, 1998 Cr LJ 4712 (Pat), accused and his victim were under influence of drink, injuries caused at the spur of moment without any previous enmity, no undue advantage was taken. Conviction under section 304, Part I. Another similar ruling is in *Jaya Madhavan v State of Kerala*, 1998 Cr LJ 2666 (Ker). See also *Sita Ram v State of Rajasthan*, 1998 Cr LJ 287 (Raj). *Kasam Abdulla Hafiz v State of Maharashtra*, 1998 Cr LJ 1422 : AIR 1998 SC 1451 [LNIND 1997 SC 1558] , stabbing moved inside intestines, conviction under Part I. *Rameshwar v State of UP*, 1997 Cr LJ 2677 (All), attack in connection with land dispute, unintentional killing, conviction under section 304, Part I. *Gopal v State of TN*, 1997 Cr LJ 105 (Mad), killing wife by inflicting indiscriminate cuts on her neck. His surrender supported the inference of his being the killer, conviction. *Paramasivam v State of TN*, 1997 Cr LJ 165 (Mad), one accused committed the offence and the

others, in order only to save him, gave out a false statement before the Village Administrative Officer, conviction under sections 304, Part I and 201.

**362.** *Harendra Nath Mandal v State of Bihar*, AIR 1993 SC 1977 [LNIND 1993 SC 177] : 1993 Cr LJ 2830 : (1993) 2 SCC 435 [LNIND 1993 SC 177] .

**363.** *Manphool Singh v State of Haryana*, AIR 2018 SC 3995 .

**364.** *Bachan Singh v State of Punjab*, AIR 1993 SC 305 : 1993 Cr LJ 66 : 1993 Supp (2) SCC 490 ; *Trilok Singh v State (Delhi Admn.)*, 1994 Cr LJ 639 : 1995 SCC (Cri) 158 : AIR 1994 SC 654 , the accused apprehended danger, seeing two enemies approaching him with arms, he went inside, came back with knife and without move inflicted knife blows on them, one died, the right of private defence exceeded, conviction under Part I. *Savita Kumari v UOI*, 1993 AIR SCW 1174 : 1993 Cr LJ 1590 : (1993) 2 SCC 357 [LNIND 1993 SC 87] , clash between two groups, one causing more than one firearm injuries, right of private defence exceeded, punishable under Part I. *Ranveer Singh v State of MP*, (2009) 3 SCC 384 [LNIND 2009 SC 123] : AIR 2009 SC 1658 [LNIND 2009 SC 123] : (2009) Cr LJ 1534 , exceeding the right of private defence, the High Court rightly punished under Part I.

**365.** *Khuddu v State of UP*, AIR 1993 SC 1538 : 1993 Cr LJ 2008 : 1993 Supp (3) SCC 15 .

**366.** *Hari Ram v State of Rajasthan*, 1992 Cr LJ 3168 (Raj).

**367.** *Bahadur Singh v State of Punjab*, AIR 1993 SC 70 : 1992 Cr LJ 3709 : (1992) 4 SCC 503 . *Pramod v State of UP*, 2001 Cr LJ 925 (All), enmity on account of evidence against the accused, the latter entered the house, the victim lady told him to go away and turned back, the accused struck her at the back with a knife. The court felt that there was no intention to cause death. He was young boy of 17 years old, no criminal record. Life imprisonment was reduced to five years' RI. *Sekar v State of TN*, 2003 Cr LJ 53 (SC), altercation over grazing sheep, owner of sheep struck the other and struck him in the neck again even after he had fallen down. Private defence exceeded conviction under section 302 shifted to section 304, Part I, 10 years' imprisonment instead of life imprisonment.

**368.** *V Sreedharan v State of Kerala*, AIR 1992 SC 754 : 1992 Cr LJ 701 : 1992 Supp (3) SCC 21 . *Subramaniam v State of Kerala*, 1993 Cr LJ 1387 : 1993 AIR SCW 1014, minor injuries, none on vital part, conviction under Part I. *RC Atodaria v State of Gujarat*, AIR 1994 SC 1060 : 1994 Cr LJ 1425 , sudden quarrel, one stab injury, punished under Part I. *State of Rajasthan v Satyanarayanan*, AIR 1998 SC 2060 [LNIND 1998 SC 88] : 1998 Cr LJ 2911 , sudden quarrel between two neighbours over boundary dispute. One came out with a knife. Other's brother intervened who chanced to receive the knife wound to death. Punishment under Part I.

**369.** *State of MP v Abdul Latif*, AIR 2018 SC 1409 [LNINDU 2018 SC 19] .

**370.** *V Subramani v State of TN*, 2005 Cr LJ 1727 : AIR 2005 SC 1983 [LNIND 2005 SC 224] : (2005) 10 SCC 358 [LNIND 2005 SC 224] .

**371.** *Changdeo v State of Maharashtra*, 1992 Cr LJ 1240 (Bom). See also *Avula Venkateswarlu v State of AP*, 1994 Cr LJ 2232 (AP), quarrel between husband and wife over a petty matter, the husband caused multiple injuries resulting in death, conviction under Part I; *Madaiah v State of Karnataka*, 1992 Cr LJ 502 (Kant).

**372.** *Sanjay v State of UP*, 2016 Cr LJ 1117 : AIR 2016 SC 282 [LNINDU 2016 SC 8] .

**373.** *Narendra v State of Rajasthan*, 2014 Cr LJ 4396 : 2014 All MR (Cr) 3760.

**374.** *Manoj Kumar v State of Himachal Pradesh*, AIR 2018 SC 2693 [LNIND 2018 SC 274] .

**375.** *State through CBI, v Sanvlo Naik*, AIR 2017 SC 4976 .

**376.** *Monir Alam v State of Bihar*, AIR 2010 SC 698 [LNIND 2009 SC 2013] : 2010 Cr LJ 1418 : (2010) 12 SCC 26 [LNIND 2009 SC 2013] .

377. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15].
378. *Naresh Giri v State of MP*, (2008) 1 SCC 791 [LNIND 2007 SC 1313] : 2007 (13) Scale 7 [LNIND 2007 SC 1313].
379. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [LNIND 2012 SC 459] : 2012 Cr LJ 4174 : AIR 2012 SC 3104 [LNIND 2012 SC 459].
380. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15].
381. *State of Maharashtra v Salman Salim Khan*, AIR 2004 SC 1189 [LNIND 2003 SC 1122] : (2004) 1 SCC 525 [LNIND 2003 SC 1122].
382. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15].

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### 383. [s 304A] Causing death by negligence

Whoever causes the death of any person by doing any rash or negligent act <sup>1</sup> not amounting to culpable homicide, <sup>2</sup> shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

#### COMMENT.—

Section 304A was inserted in IPC, 1860 by IPC (Amendment) Act, 1870 (27 of 1870) to cover those cases wherein a person caused the death of another by such acts as are rash or negligent but there is no intention to cause death and no knowledge that the act will cause death. The case should not be covered by sections 299 and 300 only then it will come under this section. The section provides punishment of either description for a term which may extend to two years or fine or both in case of homicide by rash or negligent act.<sup>384.</sup>

Essential ingredients of section 304A are the following:

- (i) Death of a person
- (ii) Death was caused by accused during any rash or negligence act.
- (iii) Act does not amount to culpable homicide.

And to prove negligence under Criminal Law, the prosecution must prove:

- (i) The existence of duty.
- (ii) A breach of the duty causing death.
- (iii) The breach of the duty must be characterised as gross negligence.<sup>385.</sup>

#### [s 304A.1] Scope.—

In order that a person may be guilty under this section, the rash or negligent act must be the direct or proximate cause of the death.<sup>386.</sup> The section deals with homicide by negligence.

#### [s 304A.2] Concept of Negligence in Civil law and Criminal Law.—

The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be of a much higher degree. A negligence which is not of such a high degree may provide a ground for action in civil law but cannot form the basis for prosecution. To prosecute a

medical professional for negligence under criminal law, it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do.<sup>387</sup> For an act of negligence to be culpable in criminal law, the degree of such negligence must be higher than what is sufficient to prove a case of negligence in a civil action. Judicial pronouncements have repeatedly declared that in order to constitute an offence, negligence must be gross in nature.<sup>388</sup>

**1. 'Rash or negligent act'.—**The term negligence is not defined in the Code. As per Straight, J, the criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative, duty of the accused person to have adopted.<sup>389</sup> It may be stated that negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a reasonable and prudent man would not do.<sup>390</sup> The distinction between the "rashness" and "negligence" is that while in the former, the doer knows about the consequences, but in the latter, the doer is unaware of the consequences. A rash act is a negligent act done precipitately. Negligence is the genus, (sic) of which rashness is the species. It has sometimes been observed that in rashness the action is done precipitately that the mischievous or illegal consequences may fall, but with a hope that they will not.<sup>391</sup> The section explicitly lays down that only that 'act' which is "*so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished...*". Thus, the section itself carves out the standard of criminal negligence intended to distinguish between those whose failure is culpable and those whose conduct, although not up to standard, is not deserving of punishment.<sup>392</sup>

Negligence signifies the breach of a duty to do something which a reasonably prudent man would under the circumstances have done or doing something which when judged from reasonably prudent standards should not have been done. The essence of negligence whether arising from an act of commission or omission lies in neglect of care towards a person to whom the Defendant or the accused as the case may be owes a duty of care to prevent damage or injury to the property or the person of the victim. The existence of a duty to care is, thus, the first and most fundamental of ingredients in any civil or criminal action brought on the basis of negligence, breach of such duty and consequences flowing from the same being the other two. It follows that in any forensic exercise aimed at finding out whether there was any negligence on the part of the Defendant/accused, the Courts will have to address the above three aspects to find a correct answer to the charge.<sup>393</sup>

Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happening. The imputability arises from acting despite the consciousness (*luxuria*). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that, if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection. It is manifest that personal injury, consciously and intentionally caused, cannot fall within either of these categories, which are wholly inapplicable to the case of an act or series of acts, themselves intended, which are the direct producers of death. To say that because, in the opinion of the operator, the sufferer could have borne a little more without death following, the act amounts merely to rashness because he has carried



the experiment too far results from an obvious and dangerous misconception...It is clear, however, that if the words, 'not amounting to culpable homicide,' are a part of the definition, the offence defined by this section consists of the rash or negligent act not falling under that category, as much as of its fulfilling the positive requirement of being the cause of death.<sup>394.</sup>

A rash act is primarily an overhasty act and is opposed to a deliberate act; even if it is partly deliberate, it is done without due thought and caution.<sup>395.</sup> Illegal omission is "act" under this section and may constitute an offence if it is negligent.<sup>396.</sup> In this connection, see also sub-para entitled "Rash or Negligent" under [section 279, IPC, 1860](#), *ante*.

Death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*, it is not enough that it may have been the *causa sine qua non*.<sup>397.</sup> This view has been approved by the Supreme Court.<sup>398.</sup> The Bombay High Court has said that in cases falling under this section, it is dangerous to attempt to distinguish between the approximate and ultimate cause of death.<sup>399.</sup> Where the accused, a motor driver, ran over and killed a woman, but there was no rashness or negligence on the part of the driver so far as his use of the road or manner of driving was concerned, it was held that the accused could not be convicted under this section on the ground that the brakes of the lorry were not in perfect order and that the lorry carried no horn. The "rash or negligent act" referred to in the section means the act which is the immediate cause of death and not any act or omission, which can at most be said to be a remote cause of death.<sup>400.</sup> Negligence on the part of a motorist cannot be presumed under this section by the mere fact that a man is knocked down and killed by him.<sup>401.</sup> To render a person liable for neglect of duty, there must be such a degree of culpability as to amount to *gross* negligence on his part. It is not every little slip or mistake that will make a man so liable.<sup>402.</sup> A passenger was standing on the footboard of a bus to the knowledge of the driver and even so the driver negotiated a sharp turn without slowing down. The passenger fell off to his death. The driver was held to be guilty under the section.<sup>403.</sup> A woman was boarding the bus from the front entrance. The conductor whistled and the driver took off speedily. Either of them could have known whether she had come in or not, but neither cared to do so. She fell off and was crushed by the rear wheel. No doubt remained in the mind that the driver and the conductor were guilty of a rash and negligent act.<sup>404.</sup> Intentional shooting at a fleeing person and hitting someone else to death would come under section 300 read with section 301. It is not a negligent act so as to come under section 304A.<sup>405.</sup>

## **2. 'Not amounting to culpable homicide'.—**

Section 304A is directed at offences outside the range of ss. 299 and 300, and obviously contemplates those cases into which neither intention nor knowledge enters. For the rash or negligent act which is declared to be a crime is one 'not amounting to culpable homicide', and it must therefore be taken that intentionally or knowingly inflicted violence, directly and wilfully caused, is excluded. Section 304A does not say that every unjustifiable or inexcusable act of killing not hereinbefore mentioned shall be punishable under the provisions of this section, but it specifically and in terms limits itself to those rash or negligent acts which cause death but fall short of culpable homicide of either description.<sup>406.</sup>

### **[s 304A.3] Doctrine of reasonable care.—**

The Court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when pedestrians happen

to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, maybe either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others. 'Negligence' means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence *per se* or the course of conduct amounts to negligence, will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.<sup>407.</sup>

[s 304A.4] **Contributory negligence.—**

The doctrine of contributory negligence does not apply to criminal liability, that is, where the death of a person is caused partly by the negligence of the accused and partly by his own negligence. If the accused is charged with contributing to the death of the deceased by his negligence, it matters not whether the deceased was deaf, or drunk, or negligent, or in part contributed to his own death.<sup>408.</sup> In this connection, see also sub-para entitled "Contributory negligence" under [section 279, IPC, 1860](#), *ante*.

[s 304A.5] **Laying trap by live wire.—**

The accused had connected live wire with his bicycle with a view to ward off mischief making children. A child touched the bicycle and got shock and ultimately died. It was held that the act of the accused amounted to negligence as he placed no sign board, caution or warning for not touching the bicycle and was liable to be punished under section 304A and under section 304, Part II.<sup>409.</sup>

[s 304A.6] **Degree and nature of care expected of an occupier of a cinema building.—**

The Supreme Court, in *Sushil Ansal v State Through CBI*,<sup>410.</sup> (Uphaar Cinema building tragedy case) opined that:

Reverting back to the degree and nature of care expected of an occupier of a cinema hall, we must at the outset say that the nature and degree of care is expected to be such as would ensure the safety of the visitors against all foreseeable dangers and harm. That is the essence of the duty which an occupier owes to the invitees whether contractual or otherwise. The nature of care that the occupier must, therefore, take would depend upon the fact situation in which duty to care arises. For instance, in the case of a hotel which offers to its clients the facility of a swimming pool, the nature of the care that the occupier of the hotel would be expected to take would be different from what is expected of an occupier of a cinema hall.

An occupier of a cinema would be expected to take all those steps which are a part of his duty to care for the safety and security of all those visiting the cinema for watching a cinematograph exhibition. What is important is that the duty to care is not a onetime affair. It is a continuing obligation which the occupier owes towards every invitee contractual or otherwise every time an exhibition of the cinematograph takes place. What is equally important is that not only under the common law but even under the statutory regimen, the obligation to ensure safety of the invitees is undeniable, and any neglect of the duty is actionable both as a civil and criminal wrong, depending upon whether the negligence is simple or gross.

[s 304A.6.1] **Mens rea.—**

The essential ingredient of *mens rea* cannot be excluded from consideration when the charge in a criminal Court consists of criminal negligence.<sup>411.</sup>

This doctrine serves two purposes—one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is *prima facie* evidence of such negligence. Second, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The Courts have also applied the principle of *res ipsa loquitur* in cases where no direct evidence was brought on record. Elements of this doctrine may be stated as:

(a) The event would not have occurred but for someone's negligence.

(b) The evidence on record rules out the possibility that actions of the victim or some third party could be the reason behind the event.

(c) Accused was negligent and owed a duty of care towards the victim.<sup>412</sup> In our current conditions, the law under [section 304A, IPC, 1860](#) and under the rubric of negligence, must have due regard to the fatal frequency of rash driving of heavy duty vehicles and of speeding menaces. Thus viewed, it is fair to apply the rule of *res ipsa loquitur*, of course, with care. Conventional defences, except under compelling evidence, must break down before the pragmatic Court and must be given short shrift. Looked at from this angle, the Court held that the present case deserved no consideration on the question of conviction.<sup>413</sup> The principle of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer.<sup>414</sup> *Res ipsa loquitur* is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining *per se* the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence.<sup>415</sup> Where a vehicle was being driven on a wrong side and an accident took place resulting in the death of two persons, the principle of *res ipsa loquitur* should have been applied.<sup>416</sup> In the case of *Thakur Singh v State of Punjab*,<sup>417</sup> the accused drove a bus rashly and negligently with 41 passengers and while crossing a bridge, the bus fell into the nearby canal resulting in death of all the passengers. The Court applied the doctrine of *res ipsa loquitur* since admittedly the petitioner was driving the bus at the relevant time and it was going over the bridge when it fell down. Evidence on record discloses that the bus had gone and dashed into a standing tree situated on the right side of the road. Unless, the vehicle had been driven rashly and/or negligently, the vehicle which had no mechanical defect would not have dashed to a standing tree, that too, on the right side of the road. The factum of accident having been admitted in [section 313, Cr PC, 1973](#) statement, the legal doctrine *res ipsa loquitur* gets attracted.<sup>418</sup>

Where a vehicle driven at a high speed knocked down the deceased who was walking on the left side of the road and breaking the roadside fencing got stuck up in a ditch, it was held that the maxim *res ipsa loquitur* was applicable and the accused driver could be held guilty of rash and negligent driving.<sup>419</sup>

The Supreme Court explained the principle in the following words.<sup>420</sup>

The principle of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence. The principle has application only when the nature of the accident and attending circumstances would reasonably lead to the belief that in the

absence of negligence the accident would not have occurred and the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer.

The maxim, however, was not applicable to the present case. The bus moved away while a passenger was trying to board it. He fell down to his injuries. There could be no presumption of negligence. It had to be further shown that the driver moved away the bus suddenly or before getting signal from the conductor where a car hit a tree resulting in the death of one of the passengers and injuries to others and though the road was of sufficient width and no obstruction was present and the report of the motor vehicles inspector was that there was no mechanical defect in the car, it was held that a presumption as to negligence could be drawn and the burden was on the driver to show that there was no negligence on his part.<sup>421</sup>.

#### [s 304A.7] **Accidents.—Defence of mechanical failure.—**

According to the defence, the vehicle turned turtle due to mechanical failure, i.e., non-functioning of the hydraulic system in a proper manner. The manner in which the accident occurred due to detachment of the trailer from the tractor and the distance to which the tractor moved vividly reveals that the vehicle in question was driven recklessly at a high speed. The plea of mechanical failure as put forth by the accused was not even suggested to the Inspector. Plea rejected.<sup>422</sup>. Accused took the plea that accident happened due to bursting of tyre of scooter. Bursting of tyre may happen only when the tube and tyre have already spent their lives or in the event of poor maintenance of same. Mechanical failure of a vehicle contributing to cause of an accident is also a factor coming under "poor maintenance". Rejecting the plea, the Orissa High Court held that poor maintenance of vehicle is itself a negligent act.<sup>423</sup>.

#### [s 304A.8] **High Speed.—**

Driving at a high speed is not in itself a negligent act.<sup>424</sup>. In the case of *Ravi Kapur v State of Rajasthan*,<sup>425</sup> the Apex Court has observed that, a person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result and that it may not always be possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently and that even when one is driving a vehicle at slow speed, but, recklessly and negligently, it would amount to rash and negligent driving within the meaning of the language of [section 279, IPC, 1860](#). Mere driving of a vehicle at a high speed or slow speed does not lead to an inference that negligent or rash driving had caused the accident resulting in injuries to the complainant. In fact, the speed is no criteria to establish the fact of rash and negligent driving of a vehicle.<sup>426</sup>. Absence of rash speed itself cannot absolve the petitioner.<sup>427</sup>. Where the accused came driving canter at a very fast speed in rash and negligent manner and dashed against victim girls resulting into death of one and injuries to another, relying on the testimony of complainant, Court convicted the accused under section 304A.<sup>428</sup>. In a case, the accused drove the vehicle ignoring the signal given to stop the bus by a police officer in uniform. There was absolutely no turn or bend on the road which could have prevented the accused from noticing the victim in uniform on road. Accident occurred on account of rash and negligent act of applicant/accused and led to death of victim. Conviction of accused was held proper by the Bombay High Court.<sup>429</sup>.

#### [s 304A.9] **Medical negligence.—**

In *PB Desai (Dr) v State of Maharashtra*,<sup>430, 431</sup>. the Supreme Court held that due to the very nature of the medical profession, the degree of responsibility on the practitioner is higher than that of any other service provider. To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law. The essential ingredient of *mens rea* cannot be excluded from

consideration when the charge in a criminal Court consists of criminal negligence. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

[s 304A.9.1] **Bolam Test.**—

The test for determining medical negligence as laid down in *Bolam v Friern Hospital Management Committee*,<sup>432</sup> holds good in its applicability in India.<sup>433</sup> In the *Bolam* case, it was held that:

Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill... A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.

In many cases, the Supreme Court approved and applied this test for determining the negligence. In *Jacob Mathew v State of Punjab*,<sup>434</sup> the Supreme Court observed:

The water of Bolam test has ever since flown and passed under several bridges, having been cited and dealt with in several judicial pronouncements, one after the other and has continued to be well received by every shore it has touched as neat, clean and well-condensed one.

When a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as 'criminal.' It can be termed 'criminal' only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.<sup>435</sup> Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.<sup>436</sup> In *Suresh Gupta (Dr) v Govt of NCT of Delhi*,<sup>437</sup> the Apex Court held that where the medical practitioner failed to take appropriate steps, viz., "not putting a cuffed endotracheal tube of proper size" so as to prevent aspiration of blood blocking respiratory passage, the act attributed to him may be described as negligent act but not so reckless as to make him criminally liable.

[s 304A.10] **Duty of the Investigating Officer.**—

A doctor accused of rashness or negligence may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.<sup>438</sup>

[s 304A.11] **Private Complaint.**—

A private complaint may not be entertained unless the complainant has produced *prima facie* evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.<sup>439</sup> Complaint alleging Medical Negligence in treatment of husband of

complainant. In absence of any expert opinion regarding negligence of doctor, criminal prosecution against him is not maintainable.<sup>440.</sup>

[s 304A.12] **Burden of proof.**—

In a case involving medical negligence, once the initial burden has been discharged by the complainant by making out a case of negligence on the part of the hospital or the doctor concerned, the onus then shifts on to the hospital or to the attending doctors and it is for the hospital to satisfy the Court that there was no lack of care or diligence.<sup>441.</sup>

[s 304A.13] **Individual liability of Doctors.**—

For establishing medical negligence or deficiency in service, the Courts would determine the following:

- (i) No guarantee is given by any doctor or surgeon that the patient would be cured.
- (ii) The doctor, however, must undertake a fair, reasonable and competent degree of skill, which may not be the highest skill.
- (iii) Adoption of one of the modes of treatment, if there are many, and treating the patient with due care and caution would not constitute any negligence.
- (iv) Failure to act in accordance with the standard, reasonable, competent medical means at the time would not constitute a negligence. However, a medical practitioner must exercise the reasonable degree of care and skill and knowledge which he possesses. Failure to use due skill in diagnosis with the result that wrong treatment is given would be negligence.
- (v) In a complicated case, the Court would be slow in contributing negligence on the part of the doctor, if he is performing his duties to the best of his ability.<sup>442.</sup>

**Law relating to medical negligence laid down by the Supreme Court in Jacob Mathew Case**

(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Ratanlal Ranchhoddas, and Dhirajlal Keshavlal Thakore, *The Law of Torts*, 26th Edn, Bombay law reporter Office, 2013 (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'.

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions

which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in *Bolam v Friern Hospital Management Committee*,<sup>443</sup> holds good in its applicability in India.

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher, i.e., gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word 'gross' has not been used in [section 304A of IPC, 1860](#), yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in [section 304A of the IPC, 1860](#) has to be read as qualified by the word 'grossly'.

(7) To prosecute a medical professional for negligence under criminal law, it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

(8) *Res ipsa loquitur* is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining *per se* the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence.

[*Jacob Mathew v State of Punjab*.<sup>444</sup> See also *PB Desai (Dr) v State of Maharashtra*.<sup>445</sup>]

A person sustained fracture injuries in an accident. He died while he was under operation. The cause of death was found to be administration of spinal anaesthesia which was injected through spinal cord without checking the bearing capacity of the patient. It amounted to criminal negligence. The failure of the surgeons to check the state of the patient after anaesthesia might also amount to negligence, the Court said. Conviction under the section would have been proper. This would also attract civil liability. The quashing of the criminal proceedings was not a bar to institution of a civil suit.<sup>446</sup>

The accused was not a qualified doctor. He administered an injection to a patient who died because the possible reaction was not tested beforehand. The Court said that the accused was guilty of causing death by rash and negligent act.<sup>447</sup>

The degree of negligence sufficient to fasten liability under section 304A is higher than that required to fasten liability in civil proceedings. Non-exercise of reasonable care on the part of the doctor may suffice to fasten on him civil liability but in order to fasten criminal liability, gross negligence on his part amounting to recklessness has to be proved.<sup>448</sup>

### ***Supreme Court Guidelines in Medical Negligence Cases***

On scrutiny of the leading cases of medical negligence both in our country and other countries, specially United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence, following well-known principles must be kept in view:

(I) Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

(II) Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

(III) The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

(IV) A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

(V) In the realm of diagnosis and treatment, there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of another professional doctor.

(VI) The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient, rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

(VII) Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

(VIII) It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.

(IX) It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.

(X) The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurising the medical



professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

(XI) The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

[*Kusum Sharma v Batra Hospital and Medical Research Centre*.<sup>449</sup>.]

[s 304A.14] **CASES.—Medical Negligence.—**

Non-providing of ambulance when attendants were shifting the patient to Trauma Centre, even if it was not asked for by them, may be an instance where there is no negligence in the treatment but may be deficiency in service or civil negligence as was held in similar circumstances in the case of *Pravat Kumar Mukherjee v Ruby General Hospital*.<sup>450</sup> In a case, a Cardiac surgeon was indicted in a prosecution under section 304A on the grounds that he chose to conduct the angioplasty without having a surgical standby unit and such failure resulted in delay of five hours in conducting by-pass after the angioplasty failed; and he did not consult a cardio anaesthetist before conducting an angioplasty. According to the High Court, both the above-mentioned 'lapses' on the part of the appellant "clearly show the negligence" of the accused-surgeon. While quashing the proceedings, the Supreme Court held that the prosecution of the accused is uncalled for as pointed out by the Court in *Jacob Mathew's case (supra)* that the negligence, if any, on the part of the accused cannot be said to be "gross".<sup>451</sup>

[s 304A.15] **Delegation of responsibility.—**

Even delegation of responsibility to another may amount to negligence in certain circumstances. A consultant could be negligent where he delegates the responsibility to his junior with the knowledge that the junior was incapable of performing his duties properly.<sup>452</sup>

[s 304A.16] **Negligence of nurse.—**

Where the allegation that the accused nurse told the doctor that the vaccine for snake bite was not available, when it was actually available, considering the delay of two and half hours in bringing the patient to the hospital, it was held that there was no direct nexus between the rash and negligent act and death of deceased.<sup>453</sup>

The accused, a Homeopathic practitioner, administered to a patient suffering from guinea worm, 24 drops of stramonium and a leaf of *dhatura* without studying its effect; the patient died of poisoning. The accused was held guilty under this section.<sup>454</sup>

[s 304A.17] **Negligence on the part of the bus driver when a passenger fell down from a bus.—**

A passenger might fall down from a moving vehicle due to one of the following causes: it could be accidental; it could be due to the negligence of the passenger himself; it could be due to the negligent taking off the bus by the driver. However, to fasten the liability with the driver for negligent driving in such a situation, there should be the evidence that he moved the bus suddenly before the passenger could get into the vehicle or that the driver moved the vehicle even before getting any signal from the rear side. Merely because a passenger fell down from the bus while boarding the bus, no presumption of negligence can be drawn against the driver of the bus.<sup>455</sup> When

deceased was alighting from the bus, the accused driver suddenly started the bus, as a result of which, he fell down and sustained injuries. It cannot be said that driver had not seen the deceased alighting from bus—negligence and rashness is writ large. It does not require any imagination to hold that it was basic duty of driver to ascertain as to whether any passenger was boarding or alighting from bus—Conviction was held proper.<sup>456</sup> Prosecution case is that when deceased, a girl studying in the 8th standard was about to board the offending bus driven by accused/ driver, he took the bus speedily and made her fall down whereby she sustained injuries and ultimately died. Conviction of both the accused driver and conductor is held proper.<sup>457</sup> In another case, one person had gone on the roof top of the bus and driver started the vehicle while he was there and by falling from bus, passenger sustained injuries and succumbed in hospital. There was no evidence to show that the driver had knowledge that any passenger was on the rooftop of the bus. Supreme Court acquitted the accused.<sup>458</sup>

[s 304A.18] **CASES.—Act not rash or negligent.—**

If the driver of a motor vehicle does not blow the horn because the prevailing traffic rules prohibit him from doing so, it cannot be said that he has failed to exercise reasonable and proper care, nor can it be said that duty to blow the horn was imperative upon him, so as to hold him guilty of negligence under this section.<sup>459</sup> If a pedestrian suddenly crosses a road without taking note of an approaching bus, and, thus, gets killed by dashing against the bus, the driver cannot be held responsible for any rash or negligent act.<sup>460</sup> Where a bus driver finding a level crossing gate open at a time when there was no train scheduled to pass, tried to cross the railway line and the rear portion of the bus collided with an oncoming goods train resulting in the death of four passengers, the driver cannot be held responsible for an offence under this section.<sup>461</sup> A bus with some corrugated sheets on the roof was being driven by the accused. On the way, due to jolting, these sheets got loose and fell down on the heads of passersby, one of which later died. The investigating officer did not care to seize either those sheets and even ascertain who the owner of the bus was who actually loaded those sheets without tying them properly. It was held that the bus driver could not be held liable under this section.<sup>462</sup> The accused was driving a passenger bus at moderate speed along a narrow 12' road which had deep ditches on either side of the road. When the bus reached a place where a *kaccha* road bifurcated for a nearby village, a girl of four years old suddenly ran across the road from left to right. The accused in order to save the girl swerved the bus to the right to the extent possible but still the left wheel hit the girl and she died on the spot. In setting aside his conviction under this section, the Supreme Court held that it was a case of pure error of judgment and not a rash or negligent act. It further held that the doctrine of *res ipsa loquitur* (i.e., let thing speak for itself) had no application in a criminal case.<sup>463</sup>

Where the bus conductor whistled the bus to start only after he had seen each and every passenger had got out of the bus, but a passenger was injured because he had slipped and not because the bus suddenly started moving, the conductor was given the benefit of doubt.<sup>464</sup> Where the charge that the driver started the bus without waiting for signal from the conductor and as a result a passenger who was still at the roof of the bus for bringing down his luggage fell down to death, the Court was of the opinion that because the conductor was not examined as a witness and without his evidence, the case was nothing but a version of the prosecution and, therefore, the conviction of the driver was set aside.<sup>465</sup> Accused who was trying to overtake other vehicles and in that process took his vehicle completely on the wrong side of the road, giving a dash to a scooterist resulting in his death. Conviction of appellant under [section 304A of IPC, 1860](#) was held proper.<sup>466</sup>

[s 304A.19] **Accidents in Construction sites.**

Where the Deceased, a labourer sustained injuries at construction site of petitioner during the course of demolition of house and succumbed to his death, Evidence showing that in spite of repeated warnings and caution notes, petitioner did not pay any heed and continued the work without care and caution which ought to have been exercised by a reasonable and a prudent person. The Delhi High Court confirmed the conviction under section 304A.<sup>467.</sup>

[s 304A.20] **Accidental fire from rifle.—**

Fire occurred from rifle of the accused when he was about to take metal powder kept under cot. Deceased sustained bleeding injuries on his head and fell down on the cot and the accused being unconscious was lying on his cot. Two versions were given by the witnesses. The High Court took the view favouring the acquittal.<sup>468.</sup>

[s 304A.21] **Death of caddie by player's stroke.—**

A golf-player missed the ball and instead struck the caddie to his death. Two other caddies, who were not around, expressed the opinion that there was negligence in the stroke. This opinion was not accepted because neither they were experts nor they were around. The Court felt that the incident must have been due to accidental omission to hit the ball. The charge under section 304A was not likely to succeed and, therefore, it was quashed.<sup>469.</sup>

[s 304A.22] **Death of child by slipping on school stairs.—**

A child slipped on school stairs and sustained head injury. He was taken to the school dispensary where the pharmacist applied ice and ointment and instructed that the child be taken home. The Court said it was the duty of the pharmacist to either make proper diagnosis or advice for medical check-up by an expert doctor. The child died. The head master or class teacher were held not liable for causing death by negligence.<sup>470.</sup>

Where a Maruti van carrying number of children was driven by accused/owner, lid of dicky was open and fire crackers were stored in dicky. Fire crackers stored in dicky caught fire resulting to death of children. It was held that the incident took place purely by accident. Accused were liable to be charged only under [sections 304A](#) and [435](#) of [IPC, 1860](#).<sup>471.</sup>

[s 304A.23] **Death of a child in swimming pool.—**

Complainant's son drowned in swimming pool and died due to negligent attitude of owner, supervisor and observer of swimming pool. In the FIR, it was specifically mentioned that proposed accused is owner of Resorts. Accused was present in resort at time of admission of deceased boy and on date of incident too. Plea that the accused had already leased out the resort is of no consequence. High Court directed the magistrate to proceed against accused under [section 319, Cr PC, 1973](#).<sup>472.</sup> A boy entered into the swimming pool of a club surreptitiously and without notice of the *chowkidar*. He was lost in drowning. The secretary of the club and *chowkidar* were prosecuted under this section. It was alleged that the club had no caution board and no life-saving guard. The Court dismissed the case. If the entry of the boy could be due to want of these precautions, only then there could have been a finding of negligence. The negligence, if at all, was of civil nature.<sup>473.</sup> In another case, where death of deceased boy was due to drowning in swimming pool, the evidence showed that the deceased boy himself had unauthorisedly and surreptitiously entered in pool which was meant for adult trained swimmers and drowned. There was no nexus between the death of boy with only rash and negligent act of accused. Accused acquitted.<sup>474.</sup>

[s 304A.24] **Distinction between sections 304 and 304A.—**

The Supreme Court stated as follows: There is distinction between sections 304 and 304A. Section 304A deals with homicidal death by rash or negligent act. It does not create a new offence. It is directed against the offences outside the range of sections 299 and 300 and covers those cases where death has been caused without *intention* or *knowledge*. Section 304A carves out cases where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of section 299 or culpable homicide amounting to murder under section 300. In other words, section 304A excludes all the ingredients of section 299 as also of section 300. Where intention or knowledge is the "motivating force" of the act complained of, section 304A will have to make room for the graver and more serious charge of culpable homicide not amounting to murder or amounting to murder as the facts disclose. The words "not amounting to culpable homicide" in section 304A are significant and clearly convey that the section seeks to embrace those cases where there is neither intention to cause death nor knowledge that the act done will in all probability result into death. It applies to acts which are rash or negligent and are directly the cause of death of another person.<sup>475</sup> Undoubtedly, "rashness" does contain an element of knowledge. But a distinction has to be made between [section 304, IPC, 1860](#), requiring knowledge, with regard to the consequences of the act and [section 304A, IPC, 1860](#), "rashness", having an element of knowledge about the consequences, but with the hope that the consequences would not follow. Furthermore, in order to understand the distinction between [sections 304 and 304A, IPC, 1860](#), it is pertinent to note that while the former section deals with an act 'amounting to culpable homicide', the latter section deals with an act 'not amounting to culpable homicide'. Although "rashness" does contain an element of "knowledge", even then the case would not fall within the ambit of [section 304, IPC, 1860](#). For, in [section 304, IPC, 1860](#), the knowledge is about the consequences as the consequences would naturally and obviously follow from the nature of the act. But in "rashness", although there is a knowledge that the consequences may follow or are likely to follow, the doer hopes that the consequences would not follow. Thus, even if the element of knowledge is common in [sections 304 and 304A, IPC, 1860](#), the extent and ambit of "knowledge" defers in its nature. Therefore, the element of "knowledge" should not lead to any confusion between the scope of [section 304, IPC, 1860](#) and scope of [section 304A, IPC, 1860](#).<sup>476</sup> If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When intent or knowledge is the direct motivating force of the act, section 304A, has to make room for the graver and more serious charge of culpable homicide.<sup>477</sup>

#### [s 304A.25] **Bhopal Gas Tragedy Case.—**

On the night of 2 December 1984, there was a massive escape of lethal gas from the MIC storage tank at the Bhopal plant of the Union Carbide (I) Ltd. (UCIL) into the atmosphere causing the death of 5,295 people, leaving 5,68,292 people suffering from different kinds of injuries ranging from permanent total disablement to less serious injuries. CBI filed the charge for offences under [sections 304, 324, 326, 429](#) read with [section 35](#) of [IPC, 1860](#). Additional Sessions Judge, Bhopal passed an order framing charges against the accused Nos. 5–9 under sections 304 (Part II), 324, 326 and 429 of [IPC, 1860](#) and against accused Nos. 2, 3, 4 and 12 under the very same sections but with the aid of [section 35 of IPC, 1860](#). But the Supreme Court in *Keshub Mahindra v State of MP*.<sup>478</sup> held that on the material led by the prosecution, appropriate charges which are required to be framed against the concerned accused are under [section 304A, IPC, 1860](#) so far as the accused Nos. 5, 6, 7, 8 and 9 are concerned while so far as accused Nos. 2, 6, 4 and 12 are concerned, charges under [section 304A](#) read with [section 35, IPC, 1860](#) will have to be framed. Ultimately on 7 June 2010, the CJM vide his judgment convicted accused Nos. 2 to 5, 7 to 9 and 12 under [sections 304A, 336, 337, 338](#) read with [section 35, IPC, 1860](#) and sentenced them to two years'

imprisonment. On 29 June 2010, Criminal Appeal No. 369 of 2010 was filed by State of Madhya Pradesh before the Court of Sessions with a prayer for enhancement of sentences under the existing charges. On the same day, the State of Madhya Pradesh also filed Criminal Revision Application No. 330 of 2010 before the Court of Sessions under [section 397, Cr PC, 1973](#), challenging the alleged failure of the CJM to enhance the charges to section 304 (Part II) in exercise of his jurisdiction under [section 216, Cr PC, 1973](#), and to commit the trial of the case to Sessions under [section 323, Cr PC, 1973](#) and *inter alia* praying for a direction to enhance charges and commit. Meanwhile, CBI filed a curative petition against judgment *Keshub Mahindra v State of MP (supra)* quashing of charges under sections 304, Part II, 324 and 429, [IPC, 1860](#) and direction to the trial Court to frame charges under [section 304A, IPC, 1860](#). Dismissing the curative petition which was filed after 14 years of the judgment impugned held that if according to the curative petitioner, the learned Magistrate failed to appreciate the correct legal position and misread the decision dated 13 September 1996 as tying his hands from exercising the power under section 323 or under section 216 of the Code, it can certainly be corrected by the appellate/revisional Court.<sup>479</sup>

**[s 304A.26] Three cases.—Death due to drunken driving.—offence under section 304A or section 304, Part II.—**

In *State of Maharashtra v Salman Salim Khan*,<sup>480</sup> the allegation was that the accused drove his car under the influence of alcohol, in a rash manner and caused the death of one person and caused grievous injuries to four others who happened to be sleeping on the footpath. A few days later, the charge-sheet filed came to be modified based on the additional statement of the complainant, and instead of [section 304A, IPC, 1860](#), section 304, Part II, [IPC, 1860](#) was substituted. The Sessions Court framed charges under section 304, Part II. The High Court quashed the order framing charge under section 304, Part II, [IPC, 1860](#) and directed the appropriate Magistrate's Court to frame de novo charges under various sections mentioned in the said impugned order of the High Court including one under [section 304A, IPC, 1860](#). In the appeal filed by the State, the Supreme Court held that neither of the sides would have been in any manner prejudiced in the trial by framing of a charge either under section 304A or section 304, Part II, [IPC, 1860](#) except for the fact that the forum trying the charge might have been different, which by itself, being open to the concerned Court to have altered the charge appropriately depending on the material that is brought before it in the form of evidence.

**[s 304A.27] BMW Case.—**

The accused in an inebriated state, after consuming excessive alcohol, was driving the vehicle without licence, in a rash and negligent manner in a high speed which resulted in the death of six persons. Trial Court convicted the accused under section 304, Part II, but High Court altered the conviction to section 304A. The Supreme Court held that the accused had sufficient knowledge that his action was likely to cause death and such action would, in the facts and circumstances of the case, fall under section 304, Part II, [IPC, 1860](#) and the trial Court has rightly held so.<sup>481</sup>

**[s 304A.28] Alister Anthony Pareira's case.—**

In *Alister Anthony Pareira's case*,<sup>482</sup> in which seven persons were killed and injuries were caused to eight persons, the Court held that the case falls under section 304, Part II and not under section 304A by holding that the person must be presumed to have had the knowledge that his act of driving the vehicle without a licence in a high speed after consuming liquor beyond the permissible limit is likely or sufficient in the ordinary course of nature to cause death of the pedestrians on the road.

**[s 304A.29] Uphaar Cinema Hall Tragedy.—**

Answering the question of whether the negligence of Ansal brothers—the occupiers of the cinema was so gross so as to be culpable under section 304A, of [IPC, 1860](#), the Supreme Court held that its answer to that question was in the affirmative. The reasons were not far to seek. In the first place, the degree of care expected from an occupier of a place which is frequented everyday by hundreds and if not thousands is very high in comparison to any other place that is less frequented or more sparingly used for public functions. The higher the number of visitors to a place and the greater the frequency of such visits, the higher would be the degree of care required to be observed for their safety. The duty is continuing which starts with every exhibition of cinematograph and continues till the patrons safely exit from the cinema complex. That the patrons are admitted to the cinema for a price, makes them contractual invitees or visitors qua whom the duty to care is even higher than others. The need for high degree of care for the safety of the visitors to such public places offering entertainment is evident from the fact that the Parliament has enacted the [Cinematograph Act, 1952](#) and the Cinematograph Rules, 1983, which cast specific obligations upon the owners/occupiers/licensees with a view to ensuring the safety of those frequenting such places.<sup>483.</sup>

The Supreme Court observed that in cases of negligence leading to public disaster, imposition of expiatory fine in addition to incarceration serve the penological purpose of deterrence as also public purpose. Under [section 304A of IPC, 1860](#), either imprisonment only or with fine or fine alone, is the prescribed punishment. The punishment by both imprisonment and exemplary fine would be an appropriate punishment in a case like this. The licensee and the person actually running the Uphaar cinema are equally responsible for the tragedy. Taking note of the licensee's age-related complications, sentence was reduced to the period already undergone, in case he pays Rs. 30 crores. The court held that on principle of parity, the same benefit cannot be extended to the person actually running the cinema as he never had a case of any age-related complications. Thus, his sentence of one-year imprisonment was maintained and he was also held liable to a fine of Rs. 30 crores.<sup>484.</sup>

#### [s 304A.30] **Sentencing.**—

The Apex Court in the case of *State of Karnataka v Krishna @ Raju*,<sup>485.</sup> while dealing with the concept of adequate punishment in relation to an offence under [section 304A of the IPC, 1860](#), has held that considerations of undue sympathy in such cases will not only lead to miscarriage of justice but will also undermine the confidence of the public in the efficacy of the criminal justice dispensation system. If the accuseds are found guilty of rash and negligent driving, Courts have to be on guard to ensure that they do not escape the clutches of law very lightly. The sentence imposed by the Courts should have deterrent effect on potential wrong-doers and it should be commensurate with the seriousness of the offence.<sup>486.</sup>

The Supreme Court relied upon cases emphasising deterrent effect of punishment on lax and inattentive drivers. A seven-year-old child was killed due to rash and negligent driving. Simple imprisonment for six months plus one month and fine of Rs. 1000 plus Rs. 500 was held to be proper.<sup>487.</sup>

#### [s 304A.31] **New approach in Sentencing.—Community Service and Contribution to the relief fund for victims.**—

In the *BMW Case*,<sup>488.</sup> the Supreme Court issued the following directions instead of enhancing the jail term (1) Accused has to pay an amount of Rs. 50 lakh to the Union of India within six months, which will be utilised for providing compensation to the victim of motor accidents, where the vehicle owner, driver etc. could not be traced, like victims of hit and run cases. On default, he will have to undergo simple imprisonment for one year. This amount be kept in a different head to be used for the aforesaid purpose only.

(2) The accused would do community service for two years which will be arranged by the Ministry of Social Justice and Empowerment within two months. On default, he will have to undergo simple imprisonment for two years. But it was held that grant of compensation under section 357(3) with a direction that the same should be paid to person who has suffered any loss or injury by reason of the act for which the accused has been sentenced has a different contour and the same is not to be regarded as a substitute in all circumstances for adequate sentence.<sup>489.</sup>

[s 304A.32] **Probation of Offenders Act, 1958, when to be extended.—**

Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal Courts cannot treat the nature of the offence under [section 304A, IPC, 1860](#) as attracting the benevolent provisions of [section 4 of the Probation of Offenders Act, 1958](#). While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. This is the role which the Courts can play, particularly at the level of trial Courts, for lessening the high rate of motor accidents due to callous driving of automobiles.<sup>490.</sup> It is settled law that sentencing must have a policy of correction. If anyone has to become a good driver, he must have a better training in traffic laws and moral responsibility with special reference to the potential injury to human life and limb. Considering the increased number of road accidents, the Court, on several occasions, has reminded the criminal Courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under [section 304A, IPC, 1860](#) as attracting the benevolent provisions of [section 4 of the Probation of Offenders Act, 1958](#).<sup>491.</sup>

383. Ins. by Act 27 of 1870, section 12.

384. *State of Punjab v Balwinder Singh*, 2012 (2) SCC 182 [LNIND 2012 SC 8] : AIR 2012 SC 861 [LNIND 2012 SC 8] .

385. *Malay Kumar Ganguly v Sukumar Mukherjee*, (2009) 9 SCC 221 [LNIND 2009 SC 1647] : AIR 2010 SC 1162 [LNIND 2009 SC 1647].

386. *Kurban Hussain*, (1964) 67 Bom LR 447 (SC).

387. *Malay Kumar Ganguly v Sukumar Mukherjee*, (2009) 9 SCC 221 [LNIND 2009 SC 1647] : AIR 2010 SC 1162 [LNIND 2009 SC 1647] .

388. *Sushil Ansal v State Through CBI*, (2014) 6 SCC 173 [LNIND 2014 SC 527] .

389. *Empress of India v Idu Beg*, (1881) 1 LR 3 All 776.

390. *Mahadev Prasad Kaushik v State of UP*, (2008) 14 SCC 479 [LNIND 2008 SC 2043] : AIR 2009 SC 125 [LNIND 2008 SC 2043] : (2009) 1 All LJ 96.

391. *Abdul Kalam Musalman v State of Rajasthan*, 2011 Cr LJ 2507 (Raj); *Prabhakaran v State of Kerala*, (2007) 14 SCC 269 [LNIND 2007 SC 824] : AIR 2007 SC 2376 [LNIND 2007 SC 824] .

392. *PB Desai (Dr) v State of Maharashtra*, 2013 (11) Scale 429 [LNIND 2013 SC 815] .

393. *Sushil Ansal v State through CBI*, (2014) 6 SCC 173 [LNIND 2014 SC 527] .

394. *Nidamarti Nagabhushanam*, (1872) 7 Mad HCR 119 , 120; *Smith v State*, (1925) 53 Cal 333 ; *Rangaswamy*, (1952) Nag 93.

395. *Gaya Prasad*, (1928) 51 All 465 .

396. *Captain D'Souza v Pashupati Nath Sarkar*, 1968 Cr LJ 405 . *Raj Karan Singh v State of UP*, 2000 Cr LJ 555 (All), the gun of a police constable went off while he was loading it and killed a person, trigger went off because of positive act of moving belt of the gun. His failure to keep the safety catch in back position was an illegal omission within the meaning of section 22 conviction. *Sita Ram v State of Rajasthan*, 1998 Cr LJ 287 (Raj), the accused labourer was digging earth by spade, another worker was taking away the soil and was hit by the spade in that process to his death. Criminal negligence. Sentence imposed on him was reduced to the period already undergone.
397. *Omkar*, (1902) 4 Bom LR 679 , followed in *Akbar Ali*, (1936) 12 Luck 336 ; *Chinubhai Haridas*, (1959) 61 Bom LR 1309 . *Jaunath Sahu v Sasibhusan Rath*, 1995 Cr LJ 4070 (Ori).
398. *Kurban Hussein*, (1965) 2 SCR 622 [LNIND 1964 SC 355] : 67 Bom LR 447; See also *AD Bhatt*, 1972 Cr LJ 727 (SC).
399. *Khanmahomed*, (1936) 38 Bom LR 1111 .
400. *Akbar Ali v State*, (1936) 12 Luck 336 .
401. *Tukaram Sitaram*, (1970) 72 Bom LR 492 .
402. *Finney*, (1874) 12 Cox 625; *Sat Narain Pandey*, (1932) 55 All 263 . For an example of unconscionably lenient sentence, i.e., for two months only of simple imprisonment for causing death by rash and negligent driving, see *State of Karnataka v Krishna*, (1987) 1 SCC 538 [LNIND 1987 SC 701] : AIR 1987 SC 861 [LNIND 1987 SC 701] : 1987 Cr LJ 776 , the Supreme Court increased it to six months' RI. *Indramani Jena v State of Orissa*, 1992 Cr LJ 72 (Ori), rash and negligent driving of a bullock cart, an old man killed by a young man of 30, jail term knocked out, only fine of Rs. 5,000 imposed. *Madhab Bagh v State of Orissa*, 1992 Cr LJ 116 , speed of the vehicle is not always an important consideration.
403. *Shivder Singh v State*, (1995) 2 Cr LJ 2142 (Del), sentence of one year was reduced to that already undergone in view of the fact that the occurrence was 23 years old, a fine of Rs. 5000.
404. *Kaliaperumal v State of TN*, 1996 Cr LJ 3658 (Mad).
405. *Abdul Ise Suleman v State of Gujarat*, (1995) 1 Cr LJ 464 (SC).
406. *Idu Beg v State*, (1881) 3 All 776 , 778, 779. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 , no knowledge or intention should be there, in this case a gun was unlocked, loaded and fired to cause death from close range, intention or knowledge could not be denied, section not attracted.
407. *Ravi Kapur v State of Rajasthan*, 2012 AIR SCW 4659 : AIR 2012 SC 2986 [LNIND 2012 SC 474] ; relied in *Shivappa v State*, 2013 Cr LJ 1680 (Kant).
408. *Swindall*, (1846) 2 C & K 230.
409. *Kalaji v State of Gujarat*, 1992 Cr LJ 2397 (Guj).
410. *Sushil Ansal v State through CBI*, (2014) 6 SCC 173 [LNIND 2014 SC 527]
411. *PB Desai (Dr) v State of Maharashtra*, 2013 (11) Scale 429 [LNIND 2013 SC 815] .
412. *Ravi Kapur v State of Rajasthan*, AIR 2012 SC 2986 [LNIND 2012 SC 474] : (2012) 9 SCC 284 [LNIND 2012 SC 474] : 2012 Cr LJ 4403 ; *Syed Akbar v State of Karnataka*, 1980 SCC (Cr) 59 : AIR 1979 SC 1848 [LNIND 1979 SC 297] ; *B Nagabhushanam v State of Karnataka*, 2008 (5) SCC 730 [LNIND 2008 SC 1172] : AIR 2008 SC 2557 [LNIND 2008 SC 1172] .
413. *Rattan Singh v State of Punjab*, 1980 SCC (Cr) 17 : AIR 1980 SC 84 [LNIND 1979 SC 388] .
414. *Mohd Aynuddin @ Miyam v State of AP*, 2000 (7) SCC 72 [LNIND 2000 SC 1014] : AIR 2000 SC 2511 [LNIND 2000 SC 1014] : 2000 SCC (Cr) 1281 : 2000 Cr LJ 3508 .
415. *Jacob Mathew v State of Punjab*, 2005 AIR SCW 3685 : AIR 2005 SC 3180 [LNIND 2005 SC 587] .



416. *Francis Xavier Rodriguez v State of Maharashtra*, 1997 Cr LJ 1374 (Bom). The plea of compassion was not taken before the lower court. Confining punishment to fine only was not accepted. *Dwarka Das v State of Rajasthan*, 1997 Cr LJ 4601 (Raj), bus driven in a wavering manner and at high speed killing a person, the case being 16 years old, fine was enhanced instead of maintaining the sentence of imprisonment.
417. *Thakur Singh v State of Punjab*, 2003 (9) SCC 208 .
418. *Shivappa v State*, 2013 Cr LJ 1680 (Kant).
419. *State of MP v Jagdish*, 1992 Cr LJ 746 (MP). *Rajpal v State*, 1992 Cr LJ 1470 (Del), wrong side, high speed, ramming into autorickshaw claiming two lives and injuring a third, convicted, it was immaterial that he would be losing his service.
420. *Mohammed Aynuddin v State of AP*, AIR 2002 SC 2511 at p 2512 : 2000 Cr LJ 3508 .
421. *Keshavamurthy v State of Karnataka*, 2002 Cr LJ 103 (Kant), the court also said that the report of the motor vehicle inspector is no evidence unless he is examined. *Suyambhu v State of TN*, 2001 Cr LJ 1577 (Mad), high speed bus, driver losing control, hitting a jeep and killing all the passengers in it, res ipsa loquitur applied to hold the bus driver liable. *Chunnilal v State of Rajasthan*, 2000 Cr LJ 2499 (Raj), rash driving, accident, persons in the truck, some killed, some injured, no probation, one year RI & Rs. 250 fine. *Manjit Singh v State*, 1997 Cr LJ 331 (P&H), truck hitting rickshaw from behind, conviction.
422. *Guru Basavaraj v State of Karnataka*, 2012 Cr LJ 4474 : JT 2012 (8) SC 246 [LNIND 2012 SC 1561] : 2012 (8) Scale 47 [LNIND 2012 SC 1561] : 2012 AIR (SCW) 4822 : (2012) 8 SCC 734 [LNIND 2012 SC 1561] . See also *Haradhan Gope v State of Tripura*, 2012 Cr LJ 3232 (Gau); *State of HP v Manohar Singh*, 2011 Cr LJ 3402 (HP).
423. *Binoda Bihari Sharma v State of Orissa*, 2011 Cr LJ 1989 (Ori).
424. *Pradeep Kumar v State of Haryana*, 2000 Cr LJ 2394 (P&H). *K Srinivas v State of Karnataka*, 2002 Cr LJ 3865 (Kant), bus involved in accident, evidence was inconsistent. The court said that the speed of the bus could not be the sole factor for attribution of rashness or negligence.
425. *Ravi Kapur v State of Rajasthan*, 2012 AIR SCW 4659 : AIR 2012 SC 2986 [LNIND 2012 SC 474] .
426. *State v Parmodh Singh*, 2009 Cr LJ (NOC) 277 .
427. *Mehnga Singh v State*, 2012 Cr LJ 4930 (Del).
428. *Kewal Singh v State of Punjab*, 2011 Cr LJ 3004 (P&H).
429. *Sanjay Rambhau Patil v State of Maharashtra*, 2010 Cr LJ 1407 (Bom).
430. *PB Desai (Dr) v State of Maharashtra*, 2013 (11) Scale 429 [LNIND 2013 SC 815] .
431. See also *Kusum Sharma v Batra Hospital and Medical Research Centre*, (2010) 3 SCC 480 [LNIND 2010 SC 164] ; *Suresh Gupta (Dr) v Govt of NCT of Delhi*, (2004) 6 SCC 422 [LNIND 2004 SC 744] : AIR 2004 SC 4091 [LNIND 2004 SC 744] .
432. *Bolam v Friern Hospital Management Committee*, (1957) 1 WLR 582 .
433. *Shivanand Doddamani (Dr) v State of Karnataka*, 2011 Cr LJ 230 (Kant).
434. *Jacob Mathew v State of Punjab*, 2005 AIR SCW 3685 : AIR 2005 SC 3180 [LNIND 2005 SC 587] .
435. *Suresh Gupta (Dr) v Govt of NCT of Delhi*, (2004) 6 SCC 422 [LNIND 2004 SC 744] : AIR 2004 SC 4091 [LNIND 2004 SC 744] .
436. *Kusum Sharma v Batra Hospital and Medical Research Centre*, (2010) 3 SCC 480 [LNIND 2010 SC 164] .
437. *Suresh Gupta (Dr) v Govt of NCT of Delhi*, (2004) 6 SCC 422 [LNIND 2004 SC 744] : AIR 2004 SC 4091 [LNIND 2004 SC 744] .

438. *Jacob Mathew v State of Punjab*, (2005) 6 SCC 1 [LNIND 2005 SC 587] : AIR 2005 SC 3180 [LNIND 2005 SC 587] ; *ASV Narayanan Rao v Ratnamala*, 2013 (4) Mad LJ (Cr) 67 : 2013 (11) Scale 390 [LNINDORD 2013 SC 19863] .
439. *Jacob Mathew v State of Punjab*, (2005) 6 SCC 1 [LNIND 2005 SC 587] : AIR 2005 SC 3180 [LNIND 2005 SC 587] ; *ASV Narayanan Rao v Ratnamala*, 2013 (4) Mad LJ (Cr) 67 : 2013 (11) Scale 390 [LNINDORD 2013 SC 19863] .
440. *Sudesh v State of UP*, 2012 Cr LJ 1460 (All).
441. *Nizam's Institute of Medical Sciences v Prasanth S Dhananka*, (2009) 6 SCC 1 [LNIND 2009 SC 1292] : 2009 Cr LJ 3012 .
442. *Malay Kumar Ganguly v Sukumar Mukherjee*, (2009) 9 SCC 221 [LNIND 2009 SC 1647] : AIR 2010 SC 1162 [LNIND 2009 SC 1647] .
443. *Bolam v Friern Hospital Management Committee*, (1957) 1 WLR 582 , 586.
444. *Jacob Mathew v State of Punjab*, (2005) 6 SCC 1 [LNIND 2005 SC 587] : AIR 2005 SC 3180 [LNIND 2005 SC 587] .
445. *PB Desai (Dr) v State of Maharashtra*, 2013 (11) Scale 429 [LNIND 2013 SC 815] .
446. *Lakshmanan Prakash (Dr) v State of TN*, 1999 Cr LJ 2348 (Mad).
447. *Ram Niwas v State of UP*, 1998 Cr LJ 615 (All).
448. *Martin F D'Souza v Mohd Ishfaq*, (2009) 3 SCC 1 [LNIND 2009 SC 375] : AIR 2009 SC 2049 [LNIND 2009 SC 375] : (2009) 3 All LJ 165 : (2009) 1 CPJ 32 [LNIND 2009 SC 375] . The court cited the concept of gross negligence as stated in *Jacob Mathew* case, (2005) 6 SCC 1 [LNIND 2005 SC 587] : AIR 2005 SC 3180 [LNIND 2005 SC 587] .
449. *Kusum Sharma v Batra Hospital and Medical Research Centre*, (2010) 3 SCC 480 [LNIND 2010 SC 164] .
450. *Pravat Kumar Mukherjee v Ruby General Hospital*, II 2005 CPJ 35 (NC).
451. *ASV Narayanan Rao v Ratnamala*, 2013 (4) MLJ (Cr) 67 : 2013 (11) Scale 390 [LNINDORD 2013 SC 19863] . Other cases relating to medical negligence—*Marwari Maternity Hospital v Praveen Jain*, 2013 Cr LJ 307 (Gau); *M K Rai (Dr) v State of Chhattisgarh*, 2012 Cr LJ 4384 (Chh); *Saroja Dharmapal Patil v State of Maharashtra*, 2011 Cr LJ 1060 (Bom); *A R Srivastava (Dr) v State of Jharkhand*, 2010 Cr LJ 1539 (Jha); *Dashavatar Gopalkrishna Bade v State of Maharashtra*, 2010 Cr LJ 4056 (Bom).
452. *Spring Meadows Hospital v Harjol Ahluwalia*, 1998 (4) SCC 39 [LNIND 1998 SC 357] : AIR 1998 SC 1801 [LNIND 1998 SC 357] .
453. *V Marie v State of AP*, 2011 Cr LJ 3985 (AP).
454. *Juggankhan*, AIR 1965 SC 831 [LNIND 1964 SC 195] .
455. *Mohammed Aynuddin @ Miyam v State of AP*, (2000) 7 SCC 72 [LNIND 2000 SC 1014] : AIR 2000 SC 2511 [LNIND 2000 SC 1014] .
456. *Ram Asra v State of HP*, 2011 Cr LJ 1038 (HP).
457. *Rajaram v State*, 2010 Cr LJ 1644 (Mad).
458. *Braham Dass v State of HP*, AIR 2009 SC 3181 [LNIND 2009 SC 1130] : (2009) 7 SCC 353 [LNIND 2009 SC 1130] .
459. *Tukaram Sitaram*, (1970) 72 Bom LR 492 .
460. *MH Lokre*, 1972 Cr LJ 49 : AIR 1972 SC 214 [LNIND 1971 SC 662] . *State of Rajasthan v Jolta*, 2002 Cr LJ 3514 (Raj), a person sitting on the mudguard of a tractor fell off to death, persons sitting on trolley did not speak of negligence on driver's part. Acquittal.
461. *SN Hussain*, 1972 Cr LJ 496 : AIR 1972 SC 700 . See also *Renu Kunta Mallaiah v State of AP*, AIR 2009 SC 133 [LNIND 2008 SC 2037] : (2008) 10 SCC 220 [LNIND 2008 SC 2037] .
462. *Bajinath Singh*, 1972 Cr LJ 919 : AIR 1972 SC 1485 .

463. *Syed Akbar*, 1979 Cr LJ 1374 : AIR 1979 SC 1848 [LNIND 1979 SC 297] . Trial on a charge of rash and negligent driving was held to be vitiated by delay of 9½ years in taking cognizance. *Srinivas Pal v UT Arunachal Pradesh*, 1988 Cr LJ 1803 : AIR 1988 SC 1729 [LNIND 1988 SC 327] , reversing (1988) 1 Crimes 383 [LNIND 1987 GAU 49] (Gau).
464. *Altyarkunju & Shahajahan v State of Kerala*, 2002 Cr LJ 1981 (Ker). *State of Karnataka v Sharanappa Basnagouda*, AIR 2002 SC 1529 [LNIND 2002 SC 234] : 2002 Cr LJ 2020 , no interference in the matter of punishment awarded by the revisional court. The accused was sentenced to undergo simple imprisonment for six months for offence under section 304A (dashing against car by mini-lorry). *Niranjan Singh v State*, 1997 Cr LJ 336 (Del), a bus passenger fell to death but cause of fall, could not be proved, driver acquitted. *Sudalaimuthu v State of TN*, 1997 Cr LJ 1038 (Mad), there must be direct nexus between death and rash and negligent act. A passenger died because he tried to get down after conductor's whistle and the driver's starting of the bus. Negligence not proved.
465. *Braham Das v State of HP*, (2009) 7 SCC 353 [LNIND 2009 SC 1130] : (2009) 3 SCC (Cr) 406 : (2009) 81 AIC 265 . *State of Haryana v Sher Singh*, (2008) 15 SCC 571 [LNIND 2008 SC 2028] : AIR 2009 SC 823 [LNIND 2008 SC 2028] , another case of failure of evidence, dying declaration of a passenger did not talk of driver's negligence, nor was there any proof who the driver was.
466. *Zamir Khan v State*, 2011 Cr LJ 4044 (Bom).
467. *Ram Karan v State (Delhi Admn)*, 2010 Cr LJ 966 (Del). See also *Kumar v State of Kerala*, 2012 Cr LJ 3193 (Ker); *Geetha Ramesh v Sub-Inspector of Police, Udagamandalam*, 2010 Cr LJ 762 (Mad).
468. *Krushna Mohan Samal v State of Orissa*, 2012 Cr LJ 180 (Ori).
469. *M Shafi Goroo v State*, 2000 Cr LJ 2172 (Del).
470. *Ramesh Chandra Mohapatra v State of Orissa*, 2002 Cr LJ 3453 (Ori).
471. *Suresh Narvekar v State of Goa*, 2010 Cr LJ 2007 (Bom).
472. *Kolishetty Venkateswarlu v Bandaru Venkat Reddy*, 2010 Cr LJ 712 (AP).
473. *BP Ram v State of MP*, 1991 Cr LJ 473 , considering *Suleman Rahiman v State of Maharashtra*, AIR 1968 SC 829 [LNIND 1967 SC 354] : 1968 Cr LJ 1013 . *Joseph v State of Kerala*, 1990 Cr LJ 56 (Ker). There was the allegation that the accused carried excess passengers than capacity in his boat. The boat capsized and some passengers were lost. There was no proof that the accused was present in the boat at the time of sailing or that mere overloading was the cause of capsization. Mere negligence not sufficient for conviction.
474. *State of Maharashtra v Dhananjay Laxmanrao Bhagat*, 2010 Cr LJ 1987 (Bom).
475. *Mahadev Prasad Kaushik v State of UP*, (2008) 14 SCC 479 [LNIND 2008 SC 2043] : AIR 2009 SC 125 [LNIND 2008 SC 2043] . See also *Madhusudan v State of Karnataka*, 2011 Cr LJ 215 (Kant) for difference between sections 304 and 304A.
476. *Abdul Kalam Musalman v State of Rajasthan*, 2011 Cr LJ 2507 (Raj); *Prabhakaran v State of Kerala*, JT 2007 (9) SC 346 [LNIND 2007 SC 824] : AIR 2007 SC 2376 [LNIND 2007 SC 824] .
477. *Naresh Giri v State of MP*, (2008) 1 SCC 791 [LNIND 2007 SC 1313] : 2007 (13) Scale 7 [LNIND 2007 SC 1313] .
478. *Keshub Mahindra v State of MP*, (1996) 6 SCC 129 [LNIND 1996 SC 2462] : 1999 SCC (Cr) 1124.
479. *CBI v Keshub Mahindra*, (2011) 6 SCC 216 [LNIND 2011 SC 514] : AIR 2011 SC 2037 [LNINDORD 2011 SC 209] .
480. *State of Maharashtra v Salman Salim Khan*, AIR 2004 SC 1189 [LNIND 2003 SC 1122] : (2004) 1 SCC 525 [LNIND 2003 SC 1122] ,
481. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [LNIND 2012 SC 459] : 2012 Cr LJ 4174 : AIR 2012 SC 3104 [LNIND 2012 SC 459] .

482. *Alister Anthony Pereira's case*, 2012 CLJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15] .
483. *Sushil Ansal v State through CBI*, (2014) 6 SCC 173 [LNIND 2014 SC 527] .
484. *Association of Victims of Uphaar Tragedy v Sushil Ansal*, AIR 2017 SC 976 .
485. *State of Karnataka v Krishna @ Raju*, 1987 (1) SCC 538 [LNIND 1987 SC 701] : AIR 1987 SC 861 [LNIND 1987 SC 701] .
486. *State of Karnataka v Sharanappa Basanagouda Aregoudar*, 2002 (3) SCC 738 [LNIND 2002 SC 234] : AIR 2002 SC 1529 [LNIND 2002 SC 234] .
487. *B Nagabhushanam v State of Karnataka*, (2008) 5 SCC 730 [LNIND 2008 SC 1172] : AIR 2008 SC 2557 [LNIND 2008 SC 1172] .
488. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [LNIND 2012 SC 459] : 2012 Cr LJ 4174 : AIR 2012 SC 3104 [LNIND 2012 SC 459] .
489. *Guru Basavaraj v State of Karnataka*, (2012) 8 SCC 734 [LNIND 2012 SC 1561] : 2012 Cr LJ 4474 .
490. *B Nagabhushanam v State of Karnataka*, 2008 (5) SCC 730 [LNIND 2008 SC 1172] : AIR 2008 SC 2557 [LNIND 2008 SC 1172] ; *Dalbir Singh v State of Haryana*, (2000) 5 SCC 82 [LNIND 2000 SC 810] .
491. *State of Punjab v Balwinder Singh*, 2012 (2) SCC 182 [LNIND 2012 SC 8] : AIR 2012 SC 86 [LNIND 2011 SC 1146] ; *Sanjay Rambhau Patil v State of Maharashtra*, 2010 Cr LJ 1407 (Bom); *Zamir Khan v State*, 2011 Cr LJ 4044 (Bom).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### 492. ~~[s 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.]**

#### COMMENT.—

The above provision was inserted by Dowry Prohibition (Amendment) Act 1986, (Act 43 of 1986) and came into force with effect from 19 November 1986. The necessity for insertion of the provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10 August 1988 on 'Dowry Deaths and Law Reform.' Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, legislature thought it's wise to insert a provision relating to presumption of dowry death ([section 113B, Evidence Act, 1872](#)) on proof of certain essentials.<sup>493.</sup>

#### [s 304B.1] **Object.**—

Both [section 304B, IPC, 1860](#) and [section 113B, Evidence Act, 1872](#), were inserted by the Dowry Prohibition (Amendment) Act, 1986, for combating the menace of dowry killings. The attempt was to encounter difficulties of proof by creating a presumption.<sup>494.</sup>

#### [s 304B.2] **Ingredients.**—

The Supreme Court took occasion in *Shanti v State of Haryana*, [AIR 1991 SC 1226 \[LNIND 1990 SC 696\]](#) : [1991 Cr LJ 1713](#), <sup>495, 496.</sup> to explain the ingredients of section 304B. K Jayachandra Reddy, J, said,<sup>497.</sup>

A careful analysis of s. 304B shows that this section has the following essentials : (1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances,<sup>498.</sup> (2) Such death should have occurred within seven years of her marriage,<sup>499.</sup> (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband soon before her death; (4) Such cruelty or harassment should be for or in connection with demand for dowry.<sup>500.</sup> This section will apply whenever the occurrence of death is preceded by cruelty or harassment by husband or in - laws for dowry

and death occurs in unnatural circumstances. The intention behind the section is to fasten guilt on the husband or in-laws though they did not in fact caused the death.<sup>501.</sup>

To establish the offence of dowry death under [section 304B, IPC, 1860](#), the prosecution has to prove beyond reasonable doubt that the husband or his relative had subjected the deceased to cruelty or harassment in connection with demand of dowry soon before her death.<sup>502.</sup>

#### [s 304B.3] **Dowry—meaning of.—**

For the purposes of the section, "dowry" shall have the same meaning as in [section 2 of the Dowry Prohibition Act, 1961](#). "Dowry" means any property or valuable security given or agreed to be given either directly or indirectly— (a) by one party to a marriage to the other party to the marriage; or (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before<sup>503.</sup> [or any time after the marriage]<sup>504.</sup> [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.<sup>505.</sup> From the above definition it is clear that, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly by one party to another, by parents of either party to each other or any other person at, before, or at any time after the marriage and in connection with the marriage of the said parties but does not include dower or mahr under the [Muslim Personal Law \(Shariat\) Application Act, 1937](#). All the expressions used under this section are of a very wide magnitude. The expressions 'or any time after marriage' and 'in connection with the marriage of the said parties' were introduced by amending Dowry Prohibition (Amendment) Act 1984, (Act 63 of 1984) and Dowry Prohibition (Amendment) Act 1986, (Act 43 of 1986) with effect from 2 October 1985 and 19 November 1986, respectively. These amendments appear to have been made with the intention to cover all demands at the time, before and even after the marriage so far they were in connection with the marriage of the said parties. This clearly shows the intent of the legislature that these expressions are of wide meaning and scope. The expression 'in connection with the marriage' cannot be given a restricted or a narrower meaning. The expression 'in connection with the marriage' even in common parlance and in its plain language has to be understood generally. The object being that everything which is offending at any time, i.e. at, before or after the marriage, would be covered under this definition, but the demand of dowry has to be 'in connection with the marriage' and not so customary that it would not attract, on the face of it, the provisions of this section.<sup>506.</sup> The payments which are customary payments, for example, given at the time of birth of a child or other ceremonies as are prevalent in the society or families to the marriage, would not be covered under the expression 'dowry'.<sup>507.</sup> Furnishing of a list of ornaments and other household articles, such as refrigerator, furniture and electrical appliances etc., to the parents or guardians of the bride, at the time of settlement of the marriage, *prima facie* amounts to demand of dowry within the meaning of section 2 of the Act.<sup>508.</sup> The definition of 'dowry' is not restricted to agreement or demand for payment of dowry before and at the time of marriage but even include subsequent demands.<sup>509.</sup> It is not necessary for the purposes of the offence under the section to show that there was an agreement for payment of dowry.<sup>510.</sup>

The in-laws of the deceased woman could not be roped in only because they were close relatives. The *overt-acts* which are attributed to them would require to be proved beyond reasonable doubt.<sup>511.</sup>

#### [s 304B.4] **"Husband"—meaning of.—**

It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned

status of husband and subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions—sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of sections 498A and 304B, IPC, 1860. Such an interpretation, known and recognised as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who enter into contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of sections 304B or 498A, IPC, 1860, viewed in the context of the very object and aim of the legislations introducing those provisions.<sup>512.</sup>

**[s 304B.5] Relative of the husband.—**

The word "relative of the husband" in section 304B of IPC, 1860 would mean such persons, who are related by blood, marriage or adoption. The brother of the aunt of the husband is not a relative.<sup>513.</sup>

**[s 304B.6] "Soon before death".—**

To attract the provisions of section 304B, IPC, 1860, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand for dowry".<sup>514.</sup> The provision does not employ the term "at any time before" or "immediately before" and must be construed according to its true import.<sup>515.</sup> The expression "soon before her death" cannot be given a restricted or a narrower meaning. They must be understood in their plain language and with reference to their meaning in common parlance. These are the provisions relating to human behaviour and, therefore, cannot be given such a narrower meaning, which would defeat the very purpose of the provisions of the Act. Of course, these are penal provisions and must receive strict construction. But, even the rule of strict construction requires that the provisions have to be read in conjunction with other relevant provisions and scheme of the Act. Further, the interpretation given should be one which would avoid absurd results on the one hand and would further the object and cause of the law so enacted on the other.<sup>516.</sup> The legislative object in providing such a radius of time by employing the words 'soon before her death' is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a reasonable, if not direct, nexus between her death and the dowry-related cruelty or harassment inflicted on her.<sup>517.</sup> There was a demand of Maruti Car being pressed by the two accused persons after about six months of the marriage of the deceased (which took place about three years before the incident) and of her being pestered, nagged, tortured and maltreated on non-fulfilment of the said demand which was conveyed by her to her parents from time to time on her visits to her parental home and on telephone. She might have thought that things would improve with the passage of time, but it seemed that that did not happen. It, however, cannot be taken to mean that the demand made by the two accused persons had subsided or was given up by them. The test of 'soon before' was held satisfied in the facts, evidence and circumstances of the present case.<sup>518.</sup> Evidence that the deceased told her mother one month prior to her unnatural death, that the accused husband used to subject her to cruelty, was held to be not within the four corners of time frame.<sup>519.</sup> Where the death occurred after five days of the demand of dowry, it was considered to be soon before death.<sup>520.</sup>

The expression "soon before" is a relative term. It has to be construed in the context of specific circumstances of each case. No hard and fast rule of a universal application can be laid down by prescribing a time-limit.<sup>521.</sup> These words are to be understood in a relative and flexible sense. There can be no fixed period of time in this regard.<sup>522.</sup> If the incident alleged of cruelty is remote in time and has become ineffective, so as not to

disturb the mental equilibrium of the victim concerned, it would be of no consequence.<sup>523.</sup>

Where the death was due to electrocution and there is evidence that the victim was subjected to cruelty demanding a motor bike, it was held that the harassment made 15–20 days before her death was considered to be soon before her death.<sup>524.</sup> Cruelty caused to her (*the deceased*) on any day from the date of her marriage, i.e., 20 April 1994 till the date of her death, i.e., 22 July 1994 could be cruelty caused 'soon before' her death.<sup>525.</sup>

[s 304B.7] **Proximity Test.**—

The expression "soon before her death" used in [section 304B, IPC, 1860](#) and [section 113B of the Evidence Act, 1872](#) is present with the idea of proximity test. Though the language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term "soon before her death" is to be determined by the Courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.<sup>526.</sup> The section was not attracted where there had been no harassment for about 15 months prior to the occurrence.<sup>527.</sup> Where the wife was persistently subjected to cruelty and harassment by the husband and other in-laws for gold ornaments and the last such torture was practiced 15 days before the occurrence, the Court said that the requirement of "soon before" was very well satisfied.<sup>528.</sup> The import of this expression was examined by the Orissa High Court<sup>529.</sup> in a case in which there was a history of beating the wife up for dowry. But the couple reconciled and resumed joint life. The wife joined her husband after a long stay with her parents. The husband left her back with her parents and after a fortnight took her away. Within two days thereafter her parents were informed of her death. During the fortnight, she had not made any complaint to her parents about dowry or torture. The Court held that the section was not attracted because there was no cruelty or harassment soon before her death. The Court compared section 304B with [section 113B of the Evidence Act, 1872](#) where also the words "soon before" occur and said:<sup>530.</sup> A conjoint reading of section 113B of the Act and [section 304B, IPC, 1860](#) shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances." The determination of the period which can come within the term "soon before" is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence. Thus, the cruelty, harassment and demand of dowry should not be so ancient whereafter, the couple and the family members have lived happily and that it would result in abuse of the said protection. Such demand or harassment may not strictly and squarely fall within the scope of these provisions unless definite evidence was led to show to the contrary. These matters, of course, will have to be examined on the facts and circumstances of a given case.<sup>531.</sup>



**Principles relating to [section 304B IPC, 1860](#) and [113B Evidence Act](#) summarised by Supreme Court**

(a) To attract the provisions of [section 304B, IPC, 1860](#), the main ingredient of the offence to be established is that soon before the death of the deceased, she was subjected to cruelty and harassment in connection with the demand of dowry.

(b) The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.

(c) Such death occurs within seven years from the date of her marriage.

(d) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.

(e) Such cruelty or harassment should be for or in connection with demand of dowry.

(f) It should be established that such cruelty and harassment was made soon before her death.

(g) The expression (soon before) is a relative term and it would depend upon circumstances of each case and no straightjacket formula can be laid down as to what would constitute a period of soon before the occurrence.

(h) It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under [section 113B of the Evidence Act, 1872](#).

(i) Therefore, the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate or life link between the effect of cruelty based on dowry demand and the concerned death. In other words, it should not be remote in point of time and thereby make it a stale one.

(j) However, the expression "soon before" should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions of the Act and should not lead to absurd results.

(k) Section 304B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian Law is entitled to the protection of [Article 20 of the Constitution](#), as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of section 304B.

(l) Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of section 304B were not satisfied.

(m) The specific significance to be attached is to the time of the alleged cruelty and harassment to which the victim was subjected to, the time of her death and whether the alleged demand of dowry was in connection with the marriage. Once the said ingredients were satisfied, it will be called dowry death and by deemed fiction of law, the husband or the relatives will be deemed to have committed that offence.

*Kashmir Kaur v State of Punjab*.<sup>532</sup>.

[s 304B.8] **Comparison between section 304B and section 498A.—**

Cruelty has been defined in the explanation for the purpose of section 498A. Substantive [section 498A, IPC, 1860](#) and presumptive [section 113A of the Evidence Act, 1872](#) have been inserted in the respective statutes by [Criminal Law \(Second Amendment\) Act, 1983](#). It is to be noted that [sections 304B and 498A, IPC, 1860](#) cannot be held to be mutually exclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to section 498A gives the meaning of "cruelty". In section 304B, there is no such Explanation about the meaning of "cruelty". But having regard to common background to these offences, it has to be taken that the meaning of "cruelty or harassment" is the same as prescribed in the Explanation to section 498A under which "cruelty" by itself amounts to an offence. Under section 304B, it is "dowry death" that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in section 498A. A person charged and acquitted under section 304B can be convicted under section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections.<sup>533</sup> [Section 498A, IPC, 1860](#) and [section 113A of the Evidence Act, 1872](#) include in their amplitude past event of cruelty. Period of operation of [section 113A of the Evidence Act, 1872](#) is seven years. Presumption arises when a woman committed suicide within a period of seven years from the date of marriage.<sup>534</sup>

**Following** this in *Nand Kishore v State of Maharashtra*,<sup>535, 536</sup> it was held that all the ingredients of this section must exist conjunctively. There must be nexus between cruelty and harassment to raise the presumption of dowry death under [section 113B of the Evidence Act, 1872](#).

The Supreme Court again explained the expression "soon before death" in *Hans Raj v State of Punjab*.<sup>537, 538</sup> There should have been continuous cruelty connected with demand of dowry and the same should have been shown to be in existence till date when the deceased met her parents two days before her death. In this case, there was no intervening circumstance on record showing settlement regarding demand of dowry. The existence of harassment for dowry would be deemed to be there right up to the point of death. The accused was liable to be convicted. The meaning of the expression is to be decided by the Court after analysing facts and circumstances leading to the victim's death to see whether there is any proximate connection between the cruelty or harassment for dowry demand and the death.<sup>539</sup>

The Supreme Court held under [section 2 of the Dowry Prohibition Act, 1961](#) that an agreement for dowry is not always necessary. There was in this case a persistent demand for a TV set and a scooter. The demand was related with marriage. It fell within the meaning of the word dowry under section 304B.<sup>540</sup> The woman died of self-poisoning. The evidence of her sister revealed that she had informed her about the harassment about one and a half years before death. The Court said that such harassment could not come within the words "soon before death". There was no convincing evidence to prove the grave charge of "dowry death". The accused persons were acquitted.<sup>541</sup> A harassment shown to have taken place eight months before the suicide was held to be not coming within the scope of the words "soon before". The conviction under section 304B was set aside. The evidence showed that cruelty was there. The accused persons were not able to explain why the deceased wife committed suicide. The conviction and sentence under section 306 (abetment of suicide), [section 498A](#) and [section 4 of the Dowry Prohibition Act, 1961](#) was maintained.<sup>542</sup>

#### [s 304B.9] **Presumption of guilt and Doctrine of reverse burden.—**

The rule of law requires a person to be innocent till proved guilty. The concept of deeming fiction is hardly applicable to the criminal jurisprudence. In contradiction to

this aspect, the legislature has applied the concept of deemed fiction to the provisions of section 304B. Where other ingredients of section 304B are satisfied, in that event, the husband or all relatives shall be deemed to have caused her death. In other words, the offence shall be deemed to have been committed by fiction of law. Once the prosecution proves its case with regard to the basic ingredients of section 304B, the Court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death. Such a presumption can be drawn by the Court keeping in view the evidence produced by the prosecution in support of the substantive charge under section 304B of the Code. Of course, deemed fiction would introduce a rebuttable presumption and the husband and his relatives may, by leading their defence and proving that the ingredients of section 304B were not satisfied, rebut the same.<sup>543</sup> By a deemed fiction in law, the onus shifts on to the accused to prove as to how the deceased died. It is for the accused to show that the death of the deceased did not result from any cruelty or demand of dowry by the accused persons.<sup>544</sup> The Court has to presume that the appellant has committed the offence under [section 304B, IPC, 1860](#). The prosecution had led sufficient evidence before the Court to raise a presumption that the appellant had caused the dowry death of the deceased and it was, therefore, for the appellant to rebut this presumption. The appellant has chosen not to examine any defence witness to rebut this presumption of dowry death against him under [section 113B of Evidence Act, 1872](#). The Courts below were, thus, right in holding that the appellant was guilty of the offence under [section 304B, IPC, 1860](#).<sup>545</sup>

As the financial status of both the families seems to be very very poor, the demand of dowry and meeting out such demand seems to be highly improbable.

[s 304B.10] [Section 113B of Evidence Act, 1872](#).—

Alongside insertion of section 304B in [IPC, 1860](#), the legislature also introduced [section 113B of the Evidence Act, 1872](#), which lays down *when the question as to whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death*. If [section 304B, IPC, 1860](#) is read together with [section 113B of the Evidence Act, 1872](#), a comprehensive picture emerges that if a married woman dies in unnatural circumstances at her matrimonial home within seven years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under "dowry death" and there shall be a presumption against the husband and the relatives.<sup>546</sup> When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.<sup>547</sup> The Court shall not presume the same unless it is established that soon before her death, a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry.<sup>548</sup> For the purposes of this section, "dowry death" shall have the same meaning as in [section 304B of IPC, 1860](#) (45 of 1860).<sup>549</sup> As per the definition of "dowry death" in [section 304B, IPC, 1860](#) and the wording in the presumptive [section 113B of the Evidence Act, 1872](#), one of the essential ingredients amongst others, in both the provisions is that the woman concerned must have been 'soon before her death' subjected to cruelty or harassment "for or in connection with the demand for dowry".<sup>550</sup> But the prosecution under [section 304B of IPC, 1860](#) cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and such was caused "soon before her death".<sup>551</sup>

The presumption shall be raised only on proof of the following essentials:

(1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under [section 304B, IPC, 1860](#).)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with, any demand for dowry.

(4) Such cruelty or harassment was soon before her death<sup>552</sup>.

**[s 304B.11] Injuries insufficient to cause death.—**

Where injuries as found on the person of the deceased could not have caused her death, the offence would not attract the mischief of the section 304B, though there might have been history of torture for dowry.<sup>553</sup>

Asphyxia only means that the death took place due to lack of air going to the lungs. The Doctor had to clearly opine whether this was due to strangulation or hanging and if it was due to hanging, whether the hanging was suicidal or homicidal.<sup>554</sup>

**[s 304B.12] Normal circumstances.—**

These words apparently carry the meaning of natural death. The expression "otherwise than under normal circumstances" means a death not taking place in the course of nature and apparently under suspicious circumstances if not caused by burns or bodily injury.<sup>555</sup>

**[s 304B.13] Nexus between suicide and harassment.—**

The prosecution has to show nexus between suicide and harassment in the sense that the victim was induced by the cruelty to take the extreme step. In this case, the accused was not able to point out any other cause. Evidence showed that she was driven away from the matrimonial home and came back because of the intervention of *Panchayat*. Within a period of two months thereafter, there was the suicide. The Court said that the cruelty and suicide were inter-related. Presumption under [section 113B of the Evidence Act, 1872](#) became applicable. The accused was convicted under the section.<sup>556</sup>

**[s 304B.14] Presumption.—**

Where there was sufficient evidence to prove dowry demand and death had also taken place within seven years, the Supreme Court held that the presumption arising under the section did not become automatically rebutted by the fact that the accused persons had been acquitted under section 302. There were 15 injuries on her person which were not self-inflicted. Thus, they were homicidal.<sup>557</sup>

**[s 304B.15] Section attracted whether death homicidal or suicidal.—**

Where the suicide is due to demand of dowry soon before bride's death, section 304B would apply. The section applies irrespective of the fact whether there is homicide or suicide.<sup>558</sup>

**[s 304B.16] Comparison with [section 498A, IPC, 1860](#).—**

Where two women were acquitted of charges under section 498A which deals with cruelty by husband or relatives of husband. Disapproving the High Court view, K Jayachandra Reddy, J, observed<sup>559</sup> that sections 304B and 498A cannot be held to be mutually exclusive.

These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to s. 498A gives the meaning of "cruelty". In s. 304B there is no such Explanation about the meaning of "cruelty". But having regard to the common background to these offences we have to take that the meaning of "cruelty or harassment" be the same as we find in the Explanation to s. 498A under which "cruelty" by itself amounts to an offence. Under s. 304B it is "dowry death" that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in s. 498A.... Further it must also be borne in mind that a person charged and acquitted u/s. 304B can be convicted u/s. 498A without that charge being there, if such a case is made out...

If the case is established, there can be a conviction under both the sections but no separate sentence would be necessary under section 498A in view of the substantive sentence being awarded for the major offence under section 304B.<sup>560.</sup>

#### [s 304B.17] Comparison with Dowry Prohibition Act, 1961.—

The Supreme Court stated this comparison in the following words:

The object of s. 4, Dowry Prohibition Act 1961 is to discourage the very demand for property or valuable security as consideration for a marriage between the parties thereto. Section 4 prohibits the demand for "giving" property or valuable security which demand, if satisfied, would constitute an offence u/s. 3 read with s. 2 of the Act. Thus, the ambit and scope of ss. 3 and 4 of the 1961 Act are different from the ambit and scope of s. 304-B IPC. Hence the ingredients of s. 498-A IPC and ss. 3 and 4, Dowry Prohibition Act, are different from the ingredients of s. 304-B IPC. The High Court gravely erred in coming to the finding that once the charge u/s. 304-B IPC could not be proved, then conviction u/s. 498-A IPC and ss. 3 and 4 of the 1961 Act also could not be recorded.<sup>561.</sup> Section 4 of the Act is the penal section and demanding a "dowry", as defined u/s. 2 of the Act, is punishable under this section.<sup>562.</sup>

#### [s 304B.18] New offence.—

*Retrospective operation.*—The section creates a new offence. An act committed prior to its enactment and enforcement cannot be tried under this section.<sup>563.</sup> The Allahabad High Court proceeded somewhat differently. In reference to the offence of bride burning for dowry which occurred before coming into force of section 304B, it cannot be said that section 304B is an *ex post facto* law and it cannot apply in connection with an occurrence which took place prior to its enactment. The new offence of 'bride burning' was unknown on the date of occurrence in this case. Section 304B does not create a new offence, rather it reiterates in substance the offence under section 302 under which such offences were punished. So, doctrine of *ex post facto* would not apply.<sup>564.</sup>

#### [s 304B.19] Inclusion of section 302 in all Dowry death Cases.—

In *Rajibir v State of Haryana*,<sup>565.</sup> a two-Judge Bench of the Supreme Court directed all trial Court to ordinarily add section 302 to the charge of section 304B, so that death sentences can be imposed in such heinous and barbaric crimes against women. The Supreme Court has clarified the direction in *Rajibir* by observing that:

Be that as it may the common thread running through both the orders is that this Court had in *Rajibir's* case<sup>566.</sup> directed the addition of a charge u/s. 302 IPC to every case in which the accused are charged with s. 304-B. That was not, in our opinion, the true purport of the order passed by this Court. The direction was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. All that this Court meant to say was that in a case where a charge alleging dowry death is framed, a charge u/s. 302 can also be framed if the evidence otherwise permits.

#### [s 304B.20] Charge under section 304B.—Conviction under section 306.—

An offence of abetment of suicide punishable under section 306 of IPC, 1860 is much broader in scope than an offence punishable under section 304B of IPC, 1860.<sup>567.</sup> Plea that only charge under section 304B, IPC, 1860 framed and no charge under section 306, IPC, 1860 framed the appellant could not be convicted for offence punishable

under [section 306, IPC, 1860](#) repealed.<sup>568</sup> Accused originally charged and convicted under [section 304B of IPC, 1860](#). The Court found Conviction for dowry death unsustainable. Prosecution adduced evidence on the issue of cruelty to deceased not only on ground of alleged demand of dowry but also on ground of her having no issue. Court held that mere failure to mention section 306 in charge cannot adversely prejudice the defence of accused. Held while acquitting accused for offence punishable under [section 304B of IPC, 1860](#), conviction can be recorded under [section 306 of IPC, 1860](#).<sup>569</sup> In *K Prema S Rao v Yadla Srinivasa Rao*,<sup>570</sup> the Court, analysing the evidence, ruled thus:

The same facts found in evidence, which justify conviction of the appellant u/s. 498A for cruel treatment of his wife, make out a case against him u/s. 306 IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing "dowry death" u/s. 304B which is punishable with minimum sentence of seven years' rigorous imprisonment and maximum for life. Presumption u/s. 113A of the [Evidence Act](#) could also be raised against him on same facts constituting offence of cruelty u/s. 498A IPC. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity to meet the charge u/s. 498A IPC.

In a case, the Supreme Court said:

the basic ingredients of the offence u/s. 306 IPC have been established by the prosecution inasmuch as the death has occurred within seven years in an abnormal circumstance and the deceased was meted out with mental cruelty. Thus, we convert the conviction from one u/s. 304B IPC to that u/s. 306 IPC.<sup>571</sup>

#### [s 304B.21] **Sections 304B and 306 together–**

The Supreme Court, in *Bhupendra v State of MP*,<sup>572</sup> examined that whether an offence under sections 304B and 306 together would be attracted in a case and was of the opinion that [section 306 of IPC, 1860](#) is much broader in its application and takes within its fold one aspect of [section 304B of the IPC, 1860](#). These two sections are not mutually exclusive. If a conviction for causing a suicide is based on [section 304B of IPC, 1860](#), it will necessarily attract [section 306 of IPC, 1860](#). However, the converse is not true.

#### [s 304B.22] **Evidence of date of marriage.–**

The presumption starts running from the date of marriage. The prosecution has therefore to prove the date of marriage. The prosecution failed to do so. It was held that the Courts below erred in shifting the burden of showing the date of marriage to the defence and then the presumption on the basis of their statement about the fact of marriage.<sup>573</sup> Where the marriage had taken place more than seven years before the incident, the husband was acquitted under the section.<sup>574</sup>

<sup>492</sup>. Ins. by Act 43 of 1986, section 10 (w.e.f. 19-11-1986).

<sup>493</sup>. *Dhan Singh v State of UP*, 2012 Cr LJ 3156 (All).

<sup>494</sup>. *Kunhiabdulla v State of Kerala*, (2004) 4 SCC 13 [LNIND 2004 SC 291] : AIR 2004 SC 1731 [LNIND 2004 SC 291] : (2004) 2 KLT 152 . *State of AP v Raj Gopal Asawa*, (2004) 9 SCC 157 [LNIND 2003 SC 715] : 2003 Cr LJ 157 .

<sup>495</sup>. *State of HP v Jagroop Singh*, 1993 Cr LJ 2766 (HP), though there was proof of harassment, but near about the period of the incident, cordial relations prevailed, no presumption, *Ratan Lal v State of MP*, 1993 Cr LJ 3723 (MP), no presumption because, no proof of marriage beyond

reasonable doubt, nor of harassment, nor of death within the statutory period. *Sankara Suri Babu v State of AP*, 1991 Cr LJ 1480 (AP), proof of demand of dowry four years after marriage, hence no presumption. *Nunna Venkateswarlu v State of AP*, 1996 Cr LJ 108 (AP), no agreement for dowry at the time of marriage; about the subsequent demands, the court said, they would not create the presumption. *Rajinder Kumar v State of Haryana*, 1996 Cr LJ 3742 (P&H), there was no evidence showing demand, the husband made desperate attempt to save the deceased and himself got severely burnt, acquittal. *Anil Kumar Jain v State of MP*, (1996) Cr LJ 3191 (MP), evidence of dowry demand which was fulfilled, no evidence of harassment either then or subsequently, the wife was depressed by reason of her illness also, no mention of harassment in dying declaration, section not attracted.

496. *Shanti v State of Haryana*, AIR 1991 SC 1226 [LNIND 1990 SC 696] : 1991 Cr LJ 1713 .

497. *Shanti v State of Haryana*, AIR 1991 SC 1226 [LNIND 1990 SC 696] at p 1229 : 1991 Cr LJ 1713 .

498. As to this see *Akula Ravinder v State of AP*, AIR 1991 SC 1142 : 1991 SCC (Cr) 990, where it is emphasised that death must be proved to be one out of the course of nature and the mere fact that the deceased was young and death was not accidental is not sufficient to establish that death must have occurred otherwise than under normal circumstances. *Ashok Kumar v State of Punjab*, 1987 Cr LJ 1412 (P&H), where the wife died of self-poisoning within the statutory period, but there was no proof of cruelty by the husband or others. *Mohan Lal v State of Punjab*, (1984) 1 Chand L Rep 647, suicide by married woman by burning herself and the evidence only showed some maltreatment on some earlier occasions for inadequate dowry, not sufficient for conviction. *Gurditta Singh v State of Rajasthan*, 1992 Cr LJ 309 (DB), single judge session, 1991 Cr LJ 303 (Raj), where the court said that simply because a young wife had brought her life to a tragic end by committing suicide by consuming insecticide, it could not be said that she had embraced death on account of any demand of dowry by her husband or mother-in-law.

499. For the effect of not being able to show the date of marriage, see *Arbind kumar Ambasta v State of Jharkhand*, 2002 Cr LJ 3973 (Jhar), the effect being that the charge would have to be an ordinary one of murder and the benefit of the special provision would not be available.

500. *Kashmir Kaur v State of Punjab*, AIR 2013 SC 1039 [LNIND 2012 SC 802] : 2013 Cr LJ 689 ; *GA Mohd Moideen v State of TN*, 2000 Cr LJ 4355 (Mad), a mere demand of money made by accused husband for the purpose of taking a shop on lease and refusal or delay in meeting the demand would not be sufficient to infer compulsion for suicide. *Bajrang v State of Rajasthan*, 1998 Cr LJ 134 (Raj), cruelty soon before death for demand for dowry are necessary constituents without which the offence is not complete. *Satvir Singh v State*, 1998 Cr LJ 405 (P&H), the married woman failed in her attempt at suicide, the offence under the section could not arise. *Nilamani Nath v State of Orissa*, 1998 Cr LJ 962 (Ori), dowry demand could not be proved nor the fact who caused death, mere production of a stick with which death was supposed to have been caused was not sufficient. Another case in which demand for dowry and ill-treatment could not be proved and was before the Supreme Court was *Ramaswamy v Dasari Mohan*, 1998 Cr LJ 1105 : AIR 1998 SC 774 [LNIND 1998 SC 17] . *Gurnam Singh v State*, 1998 Cr LJ 3694 (P&H), the husband could not be shown to be guilty, rather he took his wife to the hospital and in the process was himself partly burnt, acquittal. *Bhagwandas v Sham Lal*, AIR 1997 SC 1873 [LNIND 1997 SC 304] : 1997 Cr LJ 1927 , the victim wife had left home and was residing with her parents. She was taken back after an amicable settlement. There was no cruelty thereafter. Thus, no presumption of dowry death. Conviction under section 498A and not under section 304B. *State of HP v Jog Raj*, 1997 Cr LJ 2033 (HP), no conviction because the alleged demand of Rs. 15,000 was not proved and was also not in itself a dowry demand.

*Balasaheb v State of Maharashtra*, 1997 Cr LJ 3476 (Bom), demands made for celebration of seventh month of wife's pregnancy. It could not be interpreted as a demand in connection with marriage under the [Dowry Prohibition Act, 1961](#). Conviction set aside. *Gati Bahera v State of Orissa*, 1997 Cr LJ 4331 (Ori), death due to diarrhoea, in village areas it cannot be said to be unnatural. It is not uncommon for ailing persons to remain without medical care. *Kishan Singh v State of Punjab*, (2007) 14 SCC 204 [LNIND 2007 SC 1218] : AIR 2008 SC 233 [LNIND 2007 SC 1218] , Supreme Court restated ingredients. *Biswajit Halder v State of WB*, (2008) 1 SCC 202 [LNIND 2007 SC 344] : 2007 Cr LJ 2300 , dowry demand was there but there was no proof of any cruelty or harassment being practiced, bride's suicide followed in about four months after marriage. *Nallam Veera Satyanarayanadam v PP High Court of AP*, (2004) 10 SCC 769 [LNIND 2004 SC 250] : AIR 2004 SC 1708 [LNIND 2004 SC 250] , all ingredients of the defence satisfied. *Balwant Singh v State of Punjab*, (2004) 7 SCC 724 , no proof against mother-in-law, she could not be punished only for the fact of being mother-in-law. *Surinder Kaur v State of Haryana*, (2004) 4 SCC 109 [LNIND 2004 SC 256] : AIR 2004 SC 1747 [LNIND 2004 SC 256] : 2004 Cr LJ 1765 . Conviction of two sister-in-laws was wrongful there being no evidence against them. *Arun Garg v State of Punjab*, (2004) 8 SCC 251 [LNIND 2004 SC 1012] , dowry demand proved because twice over she rang to her father stating that she was being threatened with death for dowry, she died of poisoning, husband convicted.

501. *Bakshish Ram v State of Punjab*, AIR 2013 SC 1484 [LNIND 2013 SC 1157] : (2013) 4 SCC 131 [LNIND 2013 SC 1157] .

502. *Indrajit Sureshprasad Bind v State of Gujarat*, (2013) 14 SCC 678 [LNIND 2013 SC 219] : (2013) 2 SCR 931 [LNIND 2013 SC 219] .

503. Subs. by Act 43 of 1986, section 2, for "or after the marriage" (w.e.f. 19-11-1986).

504. Subs. by Act 63 of 1984, section 2, for certain words (w.e.f. 2-10-1985).

505. Section 2 of the Dowry Prohibition Act, 1961.

506. *Ashok Kumar v State of Haryana*, 2010 (12) SCC 350 [LNIND 2010 SC 582] : AIR 2010 SC 2839 [LNIND 2010 SC 582] : 2010 Cr LJ 4402 .

507. *Ram Singh v State of Haryana*, (2008) 4 SCC 70 [LNIND 2008 SC 204] ; *Satbir Singh v State of Punjab*, AIR 2001 SC 2828 [LNIND 2001 SC 2168] .

508. *Madhu Sudan Malhotra v KC Bhandari*, (1988) Supp 1 SCC 424.

509. *State of Andhra Pradesh v Raj Gopal Asawa*, (2004) 4 SCC 470 [LNIND 2004 SC 347] .

510. *Vidhya Devi v State of Haryana*, (2004) 9 SCC 476 [LNIND 2004 SC 78] : AIR 2004 SC 1757 [LNIND 2004 SC 78] , there was additional demand for dowry after marriage. *State of AP v Raj Gopal Asawa*, (2004) 4 SCC 470 [LNIND 2004 SC 347] : AIR 2004 SC 1933 [LNIND 2004 SC 347] , mere demand for dowry is enough.

511. *Kans Raj v State of Punjab*, 2000 Cr LJ 2993 : AIR 2000 SC 2324 [LNIND 2000 SC 735] .

512. *Koppiseti Subbharao v State of AP*, AIR 2009 SC 2684 [LNIND 2009 SC 1038] : (2009) 12 SCC 331 [LNIND 2009 SC 1038] ; *Reema Aggarwal v Anupam*, (2004) 3 SCC 199 [LNIND 2004 SC 1499] : AIR 2004 SC 1418 [LNIND 2004 SC 1499] .

513. *State of Punjab v Gurmit Singh*, 2014 Cr LJ 3586 : AIR 2014 SC 2561 [LNIND 2014 SC 518] .

514. *K Prema S Rao v Yadla Srinivasa Rao*, 2003 (1) SCC 217 [LNIND 2002 SC 662] : AIR 2003 SC 11 [LNIND 2002 SC 662] : 2003 SCC (Cr) 271 : 2003 Cr LJ 69 .

515. *Tummala Venkateswar Rao v State of Andhra Pradesh*, 2014 Cr LJ 1641 : 2014 (4) SCJ 322 [LNIND 2013 SC 1090] .

516. *Ashok Kumar v State of Haryana*, 2010 (12) SCC 350 [LNIND 2010 SC 582] : AIR 2010 SC 2839 [LNIND 2010 SC 582] : 2010 Cr LJ 4402 .

517. *Tarsem Singh v State of Punjab*, AIR 2009 SC 1454 [LNIND 2008 SC 2415] , *Yashoda v State of MP*, (2004) 3 SCC 98 [LNIND 2004 SC 155] .



518. *Satya Narayan Tiwari v State of UP*, 2011 Cr LJ 445 : (2010) 13 SCC 689 [LNINDORD 2010 SC 188] : (2011) 2 SCC (Cr) 393.
519. *State of Rajasthan v Girdhari Lal*, 2014 Cr LJ 41 : 2014 (3) SCJ 584 [LNIND 2013 SC 908] .
520. *Sukhwinder Singh v State of Punjab*, 2014 Cr LJ 446 : 2014 (2) SCJ 629 .
521. *Vidhya Devi v State of Haryana*, (2004) 9 SCC 476 [LNIND 2004 SC 78] : AIR 2004 SC 476 .
522. *Deen Dayal v State of UP*, (2009) 11 SCC 157 [LNIND 2009 SC 19] : AIR 2009 SC 1238 [LNIND 2009 SC 19] : 2009 Cr LJ 1119 : (2009) 2 All LJ 169. On facts, the offence was established. *Narayanamurthy v State of Karnataka*, (2008) 16 SCC 512 [LNIND 2008 SC 1179] : AIR 2008 SC 2377 [LNIND 2008 SC 1179] , mere cruelty is not sufficient, it has to be in connection with dowry and continue up to a period soon before death. *Govindaraju v State of Karnataka*, (2009) 14 SCC 236 [LNIND 2009 SC 1362] : 2009 Cr LJ 3457 : (2009) 2 APLJ 203 , mental torture proved by the fact that she had not taken any food for two days before her death, her death in her own bed room, in the early hours of morning by burns not explained by the accused, conviction under section 304B justified. *Raja Lal Singh v State of Jharkhand*, (2007) 15 SCC 415 [LNIND 2007 SC 609] : [2007] 6 SCR 105 [LNIND 2007 SC 609] , death within seven months of marriage, ingredients of the offence established. *Tarsem Singh v State of Punjab*, (2008) 16 SCC 155 [LNIND 2008 SC 2415] : AIR 2009 SC 1454 [LNIND 2008 SC 2415] , ingredients restated, meaning of dowry explained, object of provision explained, offence not covered because ultimately inability to bear a child was the cause for harassment. *Dharam Chand v State of Punjab*, (2008) 15 SCC 513 [LNIND 2008 SC 2160] : AIR 2009 SC 1304 [LNIND 2008 SC 2160] , remission of sentence not applicable to the offence under the section, government order of 14 August 2002. Under section 433, Cr PC, 1973. *Prem Kumar v State of Rajasthan*, (2009) 3 SCC 726 [LNIND 2009 SC 23] : AIR 2009 SC 1242 [LNIND 2009 SC 23] : 2009 Cr LJ 1123 , death by burn injuries and head-bone fracture proved, taunting and harassment for insufficient dowry also proved, the High Court set aside the acquittal by the trial Court and convicted under the section, upheld by the Supreme Court.
523. *Pradipsinh Nanubha Zala v State of Gujarat*, 2016 Cr LJ 4779 (Guj).
524. *Suresh Kumar v State of Haryana*, 2014 Cr LJ 551 : 2013 (14) Scale 90 .
525. *Surinder Singh v State of Haryana*, 2014 Cr LJ 561 : AIR 2014 SC 817 [LNIND 2013 SC 1006] .
526. *Mustafa Shahadal Shaikh v State of Maharashtra*, 2012 AIR (SCW) 5308 : 2012 Cr LJ 4763 : 2012 (8) Scale 692 [LNIND 2012 SC 590] ; *Kaliyaperumal v State of TN*, JT 2003 (7) SC 392 [LNIND 2003 SC 715] : AIR 2003 SC 3828 [LNIND 2003 SC 715] ; *Yashoda v State of MP*, JT 2004 (2) SC 318 [LNIND 2004 SC 155] : 2004 (3) SCC 98 [LNIND 2004 SC 155] ; *Uday Chakraborty v State of WB*, AIR 2010 SC 3506 [LNIND 2010 SC 593] ; *State of Andhra Pradesh v Raj Gopal Asawa*, AIR 2004 SC 1933 [LNIND 2004 SC 347] : (2004) 4 SCC 470 [LNIND 2004 SC 347] .
527. *Balwant Singh v State of Punjab*, (2004) 7 SCC 724 : AIR 2004 SC 4368 [LNIND 2004 SC 796] .
528. *Yashoda v State of MP*, (2004) 3 SCC 98 [LNIND 2004 SC 155] : AIR 2005 SC 1411 [LNIND 2004 SC 155] .
529. *Keshab Chandra Panda v State of Orissa*, (1995) 1 Cr LJ 174 (Ori). Another case on dowry theme, *Gordhan Ram v State of Rajasthan*, 1995 Cr LJ 273 (Raj), the husband was convicted under sections 304B and 498A because there was evidence to show harassment and cruelty and the wife had taken spray poison within seven years of marriage. *Sant Gopal v State of UP*, (1995) 1 Cr LJ 312 (All), there was no evidence of dowry torture, but the offence of murder simpliciter under section 300 was made out. *Babaji Charan Barik v State*, 1994 Cr LJ 1684 (Ori), no proof of harassment. About the expression "soon before", the court said that it is a relative

term and it would depend upon the circumstances of each case and no fixed period can be indicated in that regard.

530. *Keshab Chandra Panda v State of Orissa*, (1995) 1 Cr LJ 174 (Ori) at p. 178.

531. *Ashok Kumar v State of Haryana*, 2010 (12) SCC 350 [LNIND 2010 SC 582] : AIR 2010 SC 2839 [LNIND 2010 SC 582] : 2010 Cr LJ 4402 ; *Pathan Hussain Basha v State of AP*, JT 2012 (7) SC 432 [LNIND 2012 SC 473] .

532. *Kashmir Kaur v State of Punjab*, AIR 2013 SC 1039 [LNIND 2012 SC 802] : 2013 689.

533. See *Akula Ravinder v State of Andhra Pradesh*, AIR 1991 SC 1142 .

534. Where there was no proof of harassment soon before death, conviction under section 304B was set aside, and was converted to one under section 498A. See also *Dilip v State of Orissa*, 2002 Cr LJ 1613 (Ori), only the father-in-law was convicted to 10-year imprisonment and fine of Rs. 1,000 under this section read with section 498A, husband and mother-in-law were acquitted. *Venugopal v State of Karnataka*, AIR 1999 SC 146 [LNIND 1998 SC 1339] : 1999 Cr LJ 29 , there was unnatural death of wife within two years of marriage. Evidence showed that she was ill-treated, harassed and beaten by the accused husband many a time for dowry. Evidence also showed that she was ill-treated by her husband before her death. Plea of suicide was not acceptable. Conviction for murder under the section. *Prem Singh v State of Haryana*, AIR 1998 SC 2628 [LNIND 1998 SC 721] : 1998 Cr LJ 4019 , wife died in the husband's house of burn injuries. He was not able to explain the happening. There was evidence of dowry harassment conviction for murder upheld. *Satpal v State of Haryana*, AIR 1999 SC 1476 : 1999 Cr LJ 594 , harassment on account of dowry demand was not proved, but there was direct and convincing evidence to show that the wife had been humiliated and treated with cruelty on some occasions by the accused husband. His conviction under section 498A was maintained. *Bhuneshwar Pd Chaurasia v Bhuneshwar Chaurasia*, 2001 Cr LJ 3541 (Pat), death by poisoning, the body was cremated hurriedly on the same night without informing police or relatives. There was evidence of dowry demand soon before death. The husband convicted but his father acquitted, there being no evidence against him. *Budhi Singh v State of HP*, 2000 Cr LJ 4879 , no evidence to show that soon before death, the housewife who committed suicide was subjected to harassment or cruelty. She became compelled for suicide because of other quarrels with her husband. The accused could be convicted only under section 498A. *Surveshwar Singh v State of Rajasthan*, 1999 Cr LJ 2179 (Raj), no evidence of cruelty soon before death, that is to say, in the immediate past, acquittal. *State of Karnataka v MV Manjunathogowda*, AIR 2003 SC 809 [LNIND 2003 SC 5] , death of wife within six months, the testimony of her father and brother established that soon before her death she was being subjected to cruelty in connection with demand for dowry. The accused husband was sentenced to RI for 10 years.

535. The Court **referred** to *Shanti v State of Haryana*, AIR 1991 SC 1226 [LNIND 1990 SC 696] : 1991 Cr LJ 1713 . Also **followed** in *Keshab Chandra Panda v State of Orissa*, 1995 Cr LJ 174 (Ori), recounting the ingredients into five points. *Pramila Patnaik v State of Orissa*, 1992 Cr LJ 2385 (Ori), no proof of harassment etc. *PP Rao v State of AP*, 1994 Cr LJ 2632 (AP), offence proved, conviction.

536. *Nand Kishore v State of Maharashtra*, 1995 Cr LJ 3706 (Bom).

537. There were details in the statements of the witnesses of the items already given and the fact of withdrawal by the husband of the whole amount from the wife's account which was opened by her father.

538. *Hans Raj v State of Punjab*, AIR 2000 SC 2324 [LNIND 2000 SC 735] : 2000 Cr LJ 2993 .

539. *State of Rajasthan v Jaggu Ram*, (2008) 12 SCC 51 [LNIND 2007 SC 1514] : AIR 2008 SC 982 [LNIND 2007 SC 1514] : 2008 Cr LJ 1039 , death within 1½ years of marriage, cruel treatment and harassment started immediately after marriage and continued till death. High

Court erred in acquitting by giving undue weightage of some discrepancies, ignoring the fact that she suffered head injuries at her in-laws' place and died of them, her parents not informed, cremation in hush-hush manner.

540. *Pawan Kumar v State of Haryana*, AIR 1998 SC 958 [LNIND 1998 SC 176] : 1998 Cr LJ 1144 . *Meka Ramaswamy v Dasari Mohan*, AIR 1998 SC 774 [LNIND 1998 SC 17] : 1998 Cr LJ 1105 , there was no proof of any demand. The mere fact that death took place within four months was not sufficient to convict. *Mahesh Kumar v State*, 2001 Cr LJ 4417 (All), death caused within 11 months of marriage by throttling and body burnt to give it the touch of suicide. Her statement to her brother two to three days before death that she would not be permitted to leave till the demand for scooter was met. The statement was held to be made soon before her death. The Orissa High Court has expressed the opinion that the proximity of time between ill-treatment and time of death is not a highly relevant factor and not an essential item to prove by evidence. See *Niranjan v State*, 1998 Cr LJ 630 (Ori). *State v Srikanth*, 2002 Cr LJ 3605 (Kant), allegation that the wife was driven to suicide by cruelty, the court found that the harassment had ceased three to four years before the suicide, there was no nexus between the cruelty and suicide. The fact of husband contemplating remarriage which could have become the cause of suicide was also not evident. The court also said that grandparents should not be charged without something specific against them. Cases in which charge not proved: *Mangal Ram v State of MP*, 1999 Cr LJ 4342 (MP), death within seven years, there was harassment for four tolas of gold. She was beaten and turned out. But it seemed that the cause of suicide was quarrel with some persons and not dowry demand. Hence offence under section 498A made out but not under section 304B. *T Raghunatha Reddy v State of AP*, 1999 Cr LJ 4857 (AP), death of wife and child due to drowning, evidence not clear, possibility of accident not ruled out, acquittal.

541. *Public Prosecutor, HC of AP v Appireddy Madhavan Reddy*, 2003 Cr LJ NOC 28 (AP) : (2002) 2 Andh LT (Cri) 590 .

542. *Savalram v State of Maharashtra*, 2003 Cr LJ 2831 (Bom).

543. *Ashok Kumar v State of Haryana*, 2010 (12) SCC 350 [LNIND 2010 SC 582] : AIR 2010 SC 2839 [LNIND 2010 SC 582] : 2010 Cr LJ 4402 ; *GV Siddaramesh v State of Karnataka*, 2010) 3 SCC 152 [LNIND 2010 SC 145] : 2010 Cr LJ 1649, accused has not rebutted or discharged the presumption. Conviction upheld.

544. *Pathan Hussain Basha v State of AP*, 2012 Cr LJ 4230 : (2012) 8 SCC 594 [LNIND 2012 SC 473] : AIR 2012 SC 3205 [LNIND 2012 SC 473] .

545. *Amar Singh v State of Rajasthan*, AIR 2010 SC 3391 [LNIND 2010 SC 701] : (2010) 3 SCC (Cr) 1130.

546. *Pathan Hussain Basha v State of AP*, 2012 Cr LJ 4230 : (2012) 8 SCC 594 [LNIND 2012 SC 473] : AIR 2012 SC 3205 [LNIND 2012 SC 473] ; *Biswajit Halder @ Babu Halder v State of WB*, (2008) 1 SCC 202 [LNIND 2007 SC 344] .

547. Section 113B of Evidence Act, 1872.

548. *Jagjit Singh v State of Punjab*, AIR 2018 SC 5719 [LNIND 2018 SC 498] .

549. Section 113B of Evidence Act, 1872.

550. *Bakshish Ram v State of Punjab*, AIR 2013 SC 1484 [LNIND 2013 SC 1157] : (2013) 4 SCC 131 [LNIND 2013 SC 1157] .

551. *Mustafa Shahadal Shaikh v State of Maharashtra*, 2012 AIR (SCW) 5308 : 2012 Cr LJ 4763 : 2012 (8) Scale 692 [LNIND 2012 SC 590] .

552. *M Srinivasulu v State of AP*, 2007 (12) SCC 443 [LNIND 2007 SC 1047] : AIR 2007 SC 3146 [LNIND 2007 SC 1047] ; *Kulwant Singh v State of Punjab*, AIR 2013 SC 1567 [LNIND 2013 SC 205] : (2013) 4 SCC 177 [LNIND 2013 SC 271] : 2013 Cr LJ 2199 (SC); *Tarsem Singh v State of Punjab*, (2008) 16 SCC 155 [LNIND 2008 SC 2415] .

553. *State of HP v Nikku Ram*, 1995 Cr LJ 4184 . *Bhaskar Ramappa Madar v State of Karnataka*, (2009) 11 SCC 690 [LNIND 2009 SC 723] : 2009 Cr LJ 2422 , no proof of dowry demand, hence no abetment by such demand. *State of Rajasthan v Teg Bahadur*, 2005 SCC (Cr) 218, no proof of dowry demand.

554. *Krishna Punitram Dhobi v State of Chhattisgarh*, 2016 Cr LJ 4800 (Chh).

555. *Kailash v State of MP*, (2006) 12 SCC 667 [LNIND 2006 SC 803] : AIR 2007 SC 107 [LNIND 2006 SC 803] .

556. *Dhian Singh v State of Punjab*, (2004) 7 SCC 759 : AIR 2005 SC 1450 .

557. *Rameshwar Das v State of Punjab*, (2007) 14 SCC 696 [LNIND 2007 SC 1474] : AIR 2008 SC 890 [LNIND 2007 SC 1474] : 2008 Cr LJ 1400 , part of dowry demands fulfilled and also proved, death by suicide within seven years, the very fact that a pregnant woman should commit suicide speaks of unbearable harassment. Conviction under section 304B not interfered with.

558. *Bhagwan Das v Kartar Singh*, (2007) 11 SCC 205 [LNIND 2007 SC 650] : AIR 2007 SC 2045 [LNIND 2007 SC 650] , in this case, no charge under the section had been framed, the accused could not be convicted under this section.

559. *Shanti v State of Haryana*, AIR 1991 SC 1226 [LNIND 1990 SC 696] at p 1230 : 1991 Cr LJ 1713 . *Noorjahan v State*, (2008) 11 SCC 55 [LNIND 2008 SC 950] : AIR 2008 SC 2131 [LNIND 2008 SC 950] , cruelty is a common essential to both the sections and has to be proved. But otherwise these provisions have created distinct offences.

560. See also *Padmaben Shambalbhai Patel v State of Gujarat*, (1991) 1 SCC 744 : (1991) 1 GLH 125 , where the conviction of the sister of the deceased woman's husband was sustained on the basis of the dying declaration ignoring hypertechnicalities about the mode of recording a dying declaration. For another case of the conviction of the husband for burning his wife which conviction was founded on dying declaration, see *Ved Prakash v State (Delhi Admn)*, 1991 Supp 1 SCC 296. See also *Ashok Kumar v State of Rajasthan*, AIR 1990 SC 2134 [LNIND 1990 SC 515] : 1990 Cr LJ 2276 : (1991) 1 SCC 166 [LNIND 1990 SC 515] , where the social background of the provisions for protection of the person of married women is explained. *Ravi Kumar v State*, 1991 Cr LJ 2579 (Del), applicant losing his wife leaving 20 months old baby, his parents infirm, bail allowed. *State of Kerala v Rajayyan*, (1995) 1 Cr LJ 989 (Ker) here death within seven years was caused by drowning in a well, all the ingredients of section 304B were made out, hence conviction. *Prakash Chander v State*, (1995) 1 Cr LJ 368 (Del), husband convicted under section 304B for burning off his wife because all the ingredients were proved. His mother was convicted under section 498A which only meant her acquittal under section 304B. In an appeal against this acquittal, it was held that the High Court had no power to convict her under section 304B. *D Jayana v State of Karnataka*, (2009) 6 SCC 575 [LNIND 2009 SC 1188] : (2009) 3 SCC (Cr) 75, there was sufficient evidence relating to demand of dowry to attract section 498A but the same was not sufficient for the purposes of section 304B, conviction under section 304B, was set aside and that under section 498A, was maintained. Custodial sentence of 3½ years already served was held to be sufficient. *Jagjit Singh v State of Punjab*, (2009) 4 SCC 759 [LNIND 2009 SC 544] : AIR 2009 SC 2133 [LNIND 2009 SC 544] : 2009 Cr LJ 2440 , facts established, since the minimum sentence imposed, no interference in appeal. *Anand Kumar v State of MP*, (2009) 3 SCC 799 [LNIND 2009 SC 404] : AIR 2009 SC 2155 [LNIND 2009 SC 404] , onus on the accused under section 306 is not as heavy as in the case of a dowry death under section 304B. *State of UP v Santosh Kumar*, (2009) 9 SCC 626 [LNIND 2009 SC 1770] , comparison with section 498A restated. *Kanti Lal v State of Rajasthan*, (2009) 12 SCC 498 [LNIND 2009 SC 902] : AIR 2009 SC 2703 [LNIND 2009 SC 902] : (2009) 9 AP LJ 95 , charge proved through witnesses. *Madan Lal v State of UP*, (2009) 11 SCC 527 [LNIND 2009 SC 540] : AIR 2009 SC 2175 [LNIND 2009 SC 540] : (2009) 3 All LJ 806, two injuries on neck, wind pipe and sound box fractured, medical opinion

that it could be due to epileptic fit was unfounded, even Modi's Medical Jurisprudence did not say so, offence proved.

561. *State of UP v Santosh Kumar*, (2009) 9 SCC 626 [LNIND 2009 SC 1770] .

562. *Pathan Hussain Basha v State of AP*, (2012) 8 SCC 594 [LNIND 2012 SC 473] : AIR 2012 SC 3205 [LNIND 2012 SC 473] .

563. *Soni Devrajbhai Babubhai v State of Gujarat*, 1991 Cr LJ 3135 (SC), in view of the protection under [Article 20\(1\) of the Constitution](#). See also *Praveen Malhotra v State*, 1990 Cr LJ 2184 (Del), where the husband's bail application was not allowed to be opposed as of right by the father of the deceased bride or by a women's organisation. *Amarnath Gupta v State of MP*, 1991 Cr LJ 2163 (MP), neither suicide note nor the fact that the accused was lawyer by profession was considered enough by itself for grant of bail. *Premwati v State of MP*, 1991 Cr LJ 268 , treatment by in-laws such that the bride was left with no choice but to end her life.

564. *Bhoora Singh v State of UP*, 1992 Cr LJ 2294 (All).

565. *Rajibir v State of Haryana*, AIR 2011 SC 568 [LNIND 2009 SC 1352] .

566. *Rajibir v State of Haryana*, AIR 2011 SC 568 [LNIND 2009 SC 1352] .

567. *Karan Singh v State of Haryana*, 2014 Cr LJ 2708 : (2014) 5 SCC 738 [LNINDU 2014 SC 38] .

568. *Narwinder Singh v State of Punjab*, (2011) 2 SCC 47 [LNIND 2011 SC 25] : AIR 2011 SC 686 [LNIND 2011 SC 25] .

569. *Ashaben v State of Gujarat*, 2011 Cr LJ 854 (Guj).

570. *K Prema S Rao v Yadla Srinivasa Rao*, 2003 (1) SCC 217 [LNIND 2002 SC 662] : AIR 2003 SC.

571. *Gurnaib Singh v State of Punjab*, (2013) 7 SCC 108 [LNIND 2013 SC 1343] : 2013 (7) Scale 89 [LNIND 2013 SC 1343] .

572. *Bhupendra v State of MP*, 2014 Cr LJ 546 : 2014 (1) SCJ 627 .

573. *Baljeet Singh v State of Haryana*, (2004) 3 SCC 122 [LNIND 2004 SC 249] : AIR 2004 SC 1714 [LNIND 2004 SC 249] .

574. *Dalbir Singh v State of UP*, (2004) 5 SCC 334 [LNIND 2004 SC 455] : AIR 2004 SC 1990 [LNIND 2004 SC 455] : 2004 All LJ 1448 : 2004 Cr LJ 2025 .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### [s 305] Abetment of suicide of child or insane person.

If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or <sup>575</sup>[imprisonment for life], or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

#### COMMENT.—

This and the following section have been inserted because the ordinary law of abetment is inapplicable. They apply when suicide is in fact committed. In order to frame charge under [section 305 of IPC, 1860](#) the material placed by the prosecution before the trial judge must be such that if it is accepted at its face value, it would establish that the commission of suicide by the girl below 18 years of age was the direct and proximate cause of the abetment or instigation offered by the applicant.<sup>576</sup>

<sup>575</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>576</sup>. *Chandan Soni v State*, [2006 Cr LJ 3528](#) (Chh).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### [s 306] Abetment of suicide.

**If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

#### COMMENT.—

Abetment of suicide is punishable under this section and attempt to commit suicide, under section 309.

#### [s 306.1] Ingredients.—

The ingredients of abetment of suicide are as follows:

The prosecution has to prove—

- (i) the deceased committed suicide;
- (ii) the accused instigated or abetted the commission of suicide;
- (iii) direct involvement by the accused in such abetment or instigation is necessary.<sup>577</sup> In *Ramesh Kumar v State of Chhattisgarh*,<sup>578</sup> the Supreme Court held that where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option but to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that
  - (a) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction, and
  - (b) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of *mens rea* is the necessary concomitant of instigation.

Relevantly, it may be mentioned that there is a marked difference between "intimidatory" statement and "instigatory" statement. "Intimidatory" statements may give rise to two types of consequences, (a) either the person to whom such statements are made may be frightened and may be on receiving end or he may be angry enough to retaliate, whereas (b) instigatory statements falls within the category of goading, provoking, etc.<sup>579</sup> Abetment involves a mental process of instigating a person or

intentionally aiding a person in doing a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.<sup>580.</sup>

### **[s 306.2] The scope and ambit of section 107 IPC, 1860 and its co-relation with section 306 IPC, 1860.—**

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.<sup>581.</sup> The intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of this constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualise the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of [section 306, IPC, 1860](#). Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. [Section 306 IPC](#), thus criminalises the sustained incitement for suicide.<sup>582.</sup> In the case of *M Mohan v State*,<sup>583.</sup> the Apex Court held that there should be some live link, or a proximate link between the act of the accused and the act of committing of suicide. If the live link is missing, it cannot be said that the accused has instigated, or intentionally aided the commission of suicide. Mere threats of involving the family in a false and frivolous cases cannot be tantamount to instigation.<sup>584.</sup>

Words uttered in a fit of anger or emotion without any intention could not be regarded as an instigation.<sup>585.</sup> A type of active role which can be described as amounting to instigation or aiding for doing something is requisite before a person can be said to have committed the offence under the section.<sup>586.</sup>

### **[s 306.3] What, if the abetted survives.—**

The Supreme Court in *Satvir Singh v State of Punjab*,<sup>587.</sup> explained this particular situation and held that a person can be convicted only when the abetted person commits suicide. If it ends in an attempt, the abetter cannot be convicted. It is possible to abet the commission of suicide. But nobody would abet a mere attempt to commit suicide. It is also inconceivable to have abetment of an abetment. Hence, there cannot be an offence under [section 116](#) read with [section 306, IPC, 1860](#).

### **[s 306.4] Maltreatment of wife.—**

Mere stray instances of quarrel between husband and wife or the evidence that at times the appellant used to consume liquor cannot be termed as abetment as defined under [section 107 IPC, 1860](#). In these circumstances, it cannot be said that the accused/appellant instigated or abetted the deceased to end her life and that being the position his conviction under [section 306 IPC, 1860](#) is not justified, and therefore, liable to be set aside.<sup>588.</sup> Where husband maltreating and beating wife for not conceiving and wife committed suicide, husband is liable to be convicted under section 306.<sup>589.</sup> The accused husband, a drunkard, always ill-treated his wife, beat her and imputed unchastity. The wife in a quarrel set herself ablaze and died. The husband along with others attempted to stamp out flames. The conviction of the accused for murder was set aside and he was convicted under section 306.<sup>590.</sup>



### **[s 306.5] Vicious habits like drinking and gambling and beating wife.—**

The wife of the accused poured kerosene oil on herself and set herself ablaze. In her dying declaration she said that her husband used to take liquor after borrowing money from villagers and beat her after taking liquor. The Court said that this in itself did not amount to abetment.<sup>591</sup> The statement in the dying declaration was that the husband used to get drunk, beat her and consistently abuse her. He also told her that he did not bother if she lived or died and asked her to die. The Court held that this did not mean that the accused intended to lead her to commit suicide. The offence of abetment was not made out.<sup>592</sup>

### **[s 306.6] Extra-marital relationship.—**

Extra-marital relationship as such is not defined in the [IPC, 1860](#). The mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to [section 498A, IPC, 1860](#). Court, on facts, found that the alleged extra-marital relationship was not of such a nature as to drive the wife to commit suicide.<sup>593</sup>

It has been held that the creation of circumstances for the victim to commit suicide amounts to abetment. In this case, the deceased husband felt humiliated at the activities of indulgence of his wife with the accused. The accused openly spoke of his relationship with the wife of the deceased. The outrageous acts of the accused drove the deceased to suicide. The accused was held to be guilty of abetting suicide.<sup>594</sup>

### **[s 306.7] Failure to appear at arranged marriage, no abetment.—**

The accused settled marriage ceremony date with the girl with whom he was in love affair but did not turn up. The girl committed suicide. It was not proved that the accused intended to lead her to suicide by not marrying or knew that suicide was a likely consequence. It being an independent act of the victim girl, the accused was acquitted.<sup>595</sup>

### **[s 306.8] Pressure for repayment of loan.—**

Where the accused had lent a certain amount to a lady and he was persistently demanding repayment from her, which was no offence, the accused did not know that she had purchased poisonous tablets and might commit suicide, he was held not liable for abetment of suicide.<sup>596</sup>

### **[s 306.9] Pressure for accounting proceeds—importance of suicide note.—**

The deceased was the owner of a finance firm. The accused joined as a partner of the group of persons who owned land. The deceased sold the plots and handed over proceeds to the accused who neither handed over the money to the group nor effected

transfer in favour of purchasers. The latter pressurised the deceased as a result of which he committed suicide.

This fact figured in the suicide note. The Court attached importance to this fact and held the accused guilty of causing abetment.<sup>597.</sup>

### **[s 306.10] Pressure for parting with *streedhan*.—**

The accused was forcing his wife to transfer the land to his name which she had received as a part of her *streedhan* from her father. He concealed her letters. These facts drove her to suicide. He was convicted under section 498A for the offence of cruelty. On the same evidence he was convicted under [section 306](#) read with [section 221, Cr PC, 1973](#).<sup>598.</sup>

### **[s 306.11] Demand for recruitment money.—**

A demand for a sum of money for recruitment in a job does not amount to instigating suicide.<sup>599.</sup>

### **[s 306.12] Advice.—**

Instigation necessarily indicates some active suggestion or support or stimulation to the commission of the act itself, and advice can become an instigation only if it is found that it was an advice which was meant actively to suggest or stimulate the commission of an offence.<sup>600.</sup> Following this, it was held that where two persons were in love with a married woman and quarrelled over her and one of them (the accused) along with the lady taunted the other to commit suicide. The frustration thus caused led him to suicide. It was held that no fault could be found with cognizance of the offence under section 306.<sup>601.</sup>

### **[s 306.13] Abetment by defamation.—**

The publication of a defamatory article against the victim was held to be not sufficient abetment for leading the victim to suicide.<sup>602.</sup>

### **[s 306.14] Abetment by rape.—**

The Supreme Court examined the possibility of such an abetment, but there was no punishment because the incident of rape itself could not be proved. The suicide was committed by the woman more than five and a half months after the incident. Her statements could not be regarded as dying declaration because there were no circumstances at the time which were related with her death. There was delay in lodging FIR and also in conducting medical examination. There was no evidence to connect the accused with the crime. The cause for commission of suicide was not legally proved.<sup>603.</sup> Where the suicide was allegedly committed because of rape, if the rape is not proved, conviction of accused for abetment to suicide is not proper.<sup>604.</sup>

### **[s 306.15] Instigation from Superior officers.—**

In *Madan Mohan Singh v State of Gujarat*,<sup>605</sup> the deceased was a driver in the Microwave Project Department. He had undergone a bypass surgery for his heart, just before the occurrence of such incident and his doctor had advised him against performing any stressful duties. The accused was a superior officer to the deceased. When the deceased failed to comply with the orders of the accused, the accused became very angry and threatened to suspend the deceased, rebuking him very harshly for not listening to him. The accused also asked the deceased how he still found the will to live, despite being insulted so the driver committed suicide. For the purpose of bringing home any charge, *vis-à-vis* [section 306/107 IPC, 1860](#) against the accused, Supreme Court stated that there must be allegations to the effect that the accused had either instigated the deceased in some way, to commit suicide or had engaged with some other persons in a conspiracy to do so, or that the accused had in some way aided any act or illegal omission to cause the said suicide. If the making of observations by a superior officer, regarding the work of his subordinate, is termed as abetment to suicide, it would become almost impossible, for superior officers to discharge their duties as senior employees. In *Vajinath Kondiba Khandke v State of Maharashtra*,<sup>606</sup> action was taken against the deceased and his salary was stopped for a month. The Supreme Court held that merely on that count it cannot be said that there was guilty mind or criminal intent to drive a person to commit suicide. That action simplicitor cannot be considered to be pointer against such superior officer for attracting [section 306 IPC, 1860](#), unless the situation is created deliberately so as to drive a person to commit suicide.

### **[s 306.16] Instigation by principal/Teachers.—**

Student committed suicide, because the Principal scolded, hit and asked him to apologise before students in the assembly, when *gutka* pouches were recovered from his bag. Even if these allegations are taken as unrebutted facts even then there is no evidence to show that the petitioner had instigated or intentionally aided the commission of suicide.<sup>607</sup> Accused, supervisor of school gave beatings to deceased student for sitting on his scooter. The deceased on account of the above incident had committed suicide. Even if it is true that accused had beaten the deceased, it could not be said that it was an act of attempt to commit suicide or instigating the commission of suicide by deceased.<sup>608</sup>

### **[s 306.17] Failure to provide plot after taking money.—**

The allegation against the accused was that he had taken money from the deceased for providing him a plot of land but refused to do so and that led to the commission of suicide. There was no evidence to the effect that the accused goaded or urged, or provoked or incited or even encouraged the commission of suicide. The Court said that the mere failure to fulfil the promise concerning a plot of land was not sufficient for satisfying the ingredients of section 306.<sup>609</sup>

### **[s 306.18] 304B and 306 IPC, 1860.—Difference.—**

It has been held that cruelty or harassment sans demand of dowry which drives the wife to commit suicide attracts the offence of abetment of suicide under [section 306](#)

### [s 306.19] Sentence under sections 306 and 498A.—

The Calcutta High Court observed that composite sentence for conviction under both the sections should not be passed.<sup>611.</sup>

### [s 306.20] Proof.—

Instigation has to be gathered from the circumstances of the case. All cases may not be of direct evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence.<sup>612.</sup> In *Chitresh Kumar Chopra v State (Govt of NCT of Delhi)*,<sup>613.</sup> the Supreme Court **reiterated** the legal position laid down in its earlier three Judges Bench judgment in the case of *Ramesh Kumar v State of Chhattisgarh*,<sup>614.</sup> and held that where the accused by his acts or continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an instigation may be inferred. In order to prove that the accused abetted commission of suicide by a person, it has to be established that:—

- (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted; or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and
- (ii) that the accused had the intention to provoke urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of *mens rea* is the necessary concomitant of instigation.<sup>615.</sup>

### [s 306.21] Burden of Proof.—

The effect of these new provisions on the matter of burden of proof is amply demonstrated by the decision of the Supreme Court in *Gurbachan Singh v Satpal Singh*.<sup>616.</sup> The bride died in her in-laws' home within seven months of her marriage. Evidence ruled out accidental death thus confirming the prosecution version of suicide. As to the question of instigation, Ray J, proceeded as follows:<sup>617.</sup>

The prosecution witnesses clearly testified to the greedy and lustful nature of the husband and others in that they persistently taunted the deceased and tortured her for not having brought sufficient dowry from her father. It is also in evidence that they taunted her for carrying an illegitimate child. All this ... caused depression in her mind and drove her to take the extreme step of putting an end to her life by sprinkling kerosene oil on person and setting it afire. Circumstantial evidence (unaccounted delay in providing treatment and informing her parents living not far away) and the evidence of prosecution witnesses clearly proves beyond reasonable doubt that the accused persons instigated and abetted Ravinder Kaur. The findings arrived at by the High Court without considering the circumstantial evidence as well as the evidence of prosecution witnesses cannot be sustained. As such the findings of the High Court are liable to be reversed and set aside.

The Supreme Court has reiterated in *Wazir Chand v State of Haryana*<sup>618</sup>. that before section 306 can be acted upon, there must be clear proof of the fact that the death in question was a suicidal death. In this case the evidence adduced was not able to justify a finding of suicide. The only other possibility was accidental burning of the newly-married woman though she was being victimised for insufficient dowry and there is no chance of an accident being abetted. The husband and in-laws were, however, found guilty under section 498A for causing harassment for dowry.

### **[s 306.22] Section 113A of Indian Evidence Act, 1872.—**

Section 113A was inserted by the [Criminal Law \(Second Amendment\) Act, 1983](#), w.e.f. 26 December 1983. When death takes place within seven years of her marriage, presumption under [section 113A of the Indian Evidence Act, 1872](#) springs into action. When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.<sup>619</sup> Section 113A only deals with a presumption which the Court may draw in a particular fact situation which may arise when necessary ingredients in order to attract that provision are established. Criminal law amendment and the rule of procedure was necessitated so as to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his relatives, demanding dowry. Legislative mandate of the section is that when a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as per the terms defined in [section 498A IPC, 1860](#), the Court may presume having regard to all other circumstances of the case that such suicide has been abetted by the husband or such person. Though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under [section 498A, IPC, 1860](#) is on the prosecution.<sup>620</sup>

Once the prosecution succeeds in establishing the component of cruelty leading to a conviction under section 498A, in our view only in a rare case, the Court can refuse to invoke the presumption of abetment, if other requirements of [section 113A of the Indian Evidence Act, 1872](#) stand satisfied.<sup>621</sup>

### **[s 306.23] Constitutional validity.—**

The scope of the pronouncement of the Apex Court that attempt to commit suicide is *ultra vires* the [Constitution](#) does not make the offence of abetment to commit suicide *ultra vires* the [Constitution](#) because the former is volitional and well-planned act of the person concerned whereas the latter is on the different footing as therein a third person forces the other person to take his life by committing suicide.<sup>622</sup> The Constitutional validity of section 306 (abetment of suicide) has been upheld in a decision of the Bombay High Court also.<sup>623</sup> Section 306 constitutes an entirely independent offence. It is based on this principle of public policy that nobody should involve himself in, or instigate or aid, the commission of a crime. It is not violative of [Article 14](#) or [21](#) of the [Constitution](#).

### [s 306.24] Abetment of attempt to commit Suicide.—

Section 306 prescribes punishment for abetment of suicide while section 309 punishes attempt to commit suicide. Abetment of attempt to commit suicide is outside the purview of section 306 and it is punishable only under section 309 and read with [section 107 IPC, 1860](#).<sup>624</sup> A conviction in terms of [section 107 IPC, 1860](#) is not sustainable on mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit suicide. A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview of instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action that creates a situation for the victim to put an end to life.<sup>625</sup>

### [s 306.25] Euthanasia.—

Assisted suicide and assisted attempt to commit suicide are made punishable for cogent reasons in the interest of society. Such a provision is considered desirable to also prevent the danger inherent in the absence of such a penal provision. The [Constitution Bench](#) in *Gian Kaur v State of Punjab*,<sup>626</sup> held that both euthanasia and assisted suicide are not lawful in India which overruled the two Judge Bench decision of the Supreme Court in *P Rathinam v UOI*.<sup>627</sup> The Court held that the right to life under [Article 21 of the Constitution](#) does not include the right to die. But in *Aruna Ramchandra Shanbaug v UOI*,<sup>628</sup> the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court.<sup>629</sup>

<sup>577</sup>. *Jagannath Mondal v State of WB*, 2013 Cr LJ 1994 (Cal).

<sup>578</sup>. *Ramesh Kumar v State of Chhattisgarh*, 2001 (9) SCC 618 [LNIND 2001 SC 2368] : 2001 Cr LJ 4724 .

<sup>579</sup>. *Jagannath Mondal v State of WB*, 2013 Cr LJ 1994 (Cal).

<sup>580</sup>. *M Mohan v State, Represented by the Deputy Superintendent of Police*, (2011) 3 SCC 626 [LNIND 2011 SC 246] : 2011 (3) Scale 78 [LNIND 2011 SC 246] : AIR 2011 SC 1238 [LNIND 2011 SC 246] : 2011 Cr LJ 1900 ; *Amalendu Pal v State of WB*, (2010) 1 SCC 707 [LNIND 2009 SC 1978] ; *Rakesh Kumar v State of Chhattisgarh*, (2001) 9 SCC 618 [LNIND 2001 SC 2368] ; *Gangula Mohan Reddy v State of AP*, (2010) 1 SCC 750 [LNIND 2010 SC 3] ; *Thanu Ram v State of MP*, 2010 (10) Scale 557 [LNIND 2010 SC 962] : (2010) 10 SCC 353 [LNIND 2010 SC 962] : (2010) 3 SCC (Cr) 1502; *SS Chheena v Vijay Kumar Mahajan*, (2010) 12 SCC 190 [LNIND 2010 SC 746] : 2010 AIR SCW 4938; *Sohan Raj Sharma v State of Haryana*, AIR 2008 SC 2108 [LNIND 2008 SC 845] : (2008) 11 SCC 215 [LNIND 2008 SC 845] .

<sup>581</sup>. *S S Chheena v Vijay Kumar Mahajan*, 2010 (12) SCC 190 [LNIND 2010 SC 746] : 2010 AIR SCW 4938.

<sup>582</sup>. *Gurcharan Singh v State of Punjab*, AIR 2017 SC 74 [LNIND 2016 SC 582] .

<sup>583</sup>. *M Mohan v State*, AIR 2011 SC 1238 [LNIND 2011 SC 246] : 2011 (3) SCC 626 [LNIND 2011 SC 246] .

584. *Vijay Kumar Rastogi v State of Rajasthan*, 2012 (2) Crimes 628 (Raj).
585. *Sonti Rama Krishna v Sonti Shanti Sree*, (2009) 1 SCC 554 [LNIND 2008 SC 2319] : AIR 2009 SC 923 [LNIND 2008 SC 2319] .
586. *Randhir Singh v State of Punjab*, AIR 2005 SC 5097 . *Darbar Singh v State of Chhattisgarh*, 2013 Cr LJ 1612 (Chh).
587. *Satvir Singh v State of Punjab*, AIR 2001 SC 2826 [LNIND 2001 SC 2200] : 2001 Cr LJ 4625 .
588. *Sanjay Jain v State of MP*, 2013 Cr LJ 668 (Chh).
589. *Sudarshan Kumar v State of Haryana*, AIR 2011 SC 3024 [LNIND 2011 SC 699] : 2011 Cr LJ 4364 .
590. *Jeevan Babu Desai v State of Maharashtra*, 1992 Cr LJ 2996 (Bom). *Surender v State of Haryana*, (2006) 12 SCC 375 [LNIND 2006 SC 1015] : 2007 Cr LJ 375 , the husband subjected her to cruelty, inference drawn from facts and circumstances of the case that there was intention to abet and to instigate her to suicide. Conviction under this section and not under section 302.
591. *Pachipala Laxmaiah v State of MP*, 2001 Cr LJ 4063 (AP). *State of Gujarat v Jivabhai*, 2001 Cr LJ 1343 (Guj) suicide by married woman by pouring kerosene and setting herself on fire. No evidence of abetment by the husband or anybody else.
592. *Bammidi Rajamallu v State of AP*, 2001 Cr LJ 1319 (AP).
593. *Pinakin Mahipatray Rawal v State of Gujarat*, 2013 (3) Mad LJ (Crl) 700 : 2013 (II) Ori LR 867 : 2013 (4) RCR (Criminal) 271 : 2013 (11) Scale 198 [LNIND 2013 SC 803] .
594. *Dammu Sreenu v State of AP*, 2003 Cr LJ 2185 (AP).
595. *Satish v State of Maharashtra*, 1997 Cr LJ 935 (Bom).
596. *Manish Kumar Sharma v State of Rajasthan*, 1995 Cr LJ 3066 (Raj).
597. *Didigam Bhikshapathi v State of AP*, AIR 2008 SC 527 [LNIND 2007 SC 1386] : (2008) 2 SCC 403 [LNIND 2007 SC 1386] : 2008 Cr LJ 724 : (2008) 106 Cut LT 313.
598. *K Prema S Rao v Yadla Srinivasa Rao*, AIR 2003 SC 11 [LNIND 2002 SC 662] , sentenced to five years imprisonment and fine of Rs. 20,000.
599. *JS Ghura v State of Rajasthan*, 1996 Cr LJ 2158 (Raj).
600. *Raghunath Dass v Emperor*, AIR 1920 Pat 502 : (1920) 21 Cr LJ 213 .
601. *Prahlad Das Chela v State of MP*, 1996 Cr LJ 3659 (MP).
602. *State of Gujarat v Pradyman*, 1999 Cr LJ 736 (Guj).
603. *Sudhakar v State of Maharashtra*, AIR 2000 SC 2602 [LNIND 2000 SC 920] : 2000 Cr LJ 3490 .
604. *Partha Dey v State of Tripura*, 2013 Cr LJ 2101 (Gau).
605. *Madan Mohan Singh v State of Gujarat*, (2010) 8 SCC 628 [LNIND 2010 SC 763] . See also *Praveen Pradhan v State of Uttaranchal*, (2012) 9 SCC 734 [LNIND 2012 SC 612] : 2012 (9) Scale 745 : 2012 Cr LJ 4925 .
606. *Vajinath Kondiba Khandke v State of Maharashtra*, AIR 2018 SC 2659 .
607. *Aroma Philemon v State*, 2013 Cr LJ 1933 (Raj).
608. *Hasmukhbhai Gokaldas Shah v State of Gujarat*, 2009 Cr LJ 2919 (Guj).
609. *Mahesh v State of MP*, 2003 Cr LJ (NOC) 50 (MP).
610. *Narwinder Singh v State of Punjab*, 2011 (2) SCC 47 [LNIND 2011 SC 25] : AIR 2011 SC 686 [LNIND 2011 SC 25] .
611. *Samir Samanta v State of WB*, 1993 Cr LJ 134 (Cal).
612. *Amit Kapoor v Ramesh Chander*, JT 2012 (9) SC 312 [LNIND 2012 SC 564] : 2012 (9) Scale 58 [LNIND 2012 SC 564] : (2012) 9 SCC 460 [LNIND 2012 SC 564] .
613. *Chitresh Kumar Chopra v State (Govt of NCT of Delhi)*, 2009 (16) SCC 605 [LNIND 2009 SC 1663] : AIR 2010 SC 1446 [LNIND 2009 SC 1663] .

614. *Ramesh Kumar v State of Chhattisgarh*, AIR 2001 SC 3837 [LNIND 2001 SC 2368] : ( 2001 Cr LJ 4724 .
615. *State of MP v Shrideen Chhatri Prasad Suryawanshi*, 2012 Cr LJ 2106 (MP); *Jetha Ram v State of Rajasthan*, 2012 Cr LJ 2459 (Raj); *Kailash Baburao Pandit v State of Maharashtra*, 2011 Cr LJ 4044 (Bom).
616. *Gurbachan Singh v Satpal Singh*, (1990) 1 SCC 445 [LNIND 1989 SC 475] at p 458 : AIR 1990 SC 209 [LNIND 1989 SC 475] : 1990 Cr LJ 562 . See also *Wazir Chand v State of Haryana*, (1990) 1 SCC 445 [LNIND 1989 SC 475] : AIR 1990 SC 209 [LNIND 1989 SC 475] : 1990 Cr LJ 562 .
617. *Gurbachan Singh v Satpal Singh*, (1990) 1 SCC 445 [LNIND 1989 SC 475] at p 458 : AIR 1990 SC 209 [LNIND 1989 SC 475] : 1990 Cr LJ 562 .
618. *Wazir Chand v State of Haryana*, AIR 1989 SC 378 [LNIND 1988 SC 569] : 1989 Cr LJ 809 : (1989) 1 SCC 244 [LNIND 1988 SC 569] . Another case of acquittal on charge of abetment for suicide is *Chanchal Kumari v Union Territory of Chandigarh*, AIR 1986 SC 752 : 1986 Cr LJ 816 . *Dalip Singh v State of Punjab*, 1988 (1) Crimes 211 [LNIND 1953 SC 61] , wife died of hanging within one year, the prosecution case well established, conviction not to be struck out only because there were only two witnesses and those too the father and brother of deceased wife. *Shyama Devi v State of WB*, 1987 Cr LJ 1163 where also the evidence of relatives was considered to be sufficient without any corroboration from outside evidence. *PB Bikshdhapathi v State of AP*, 1989 Cr LJ 1186 , drinking and coming late of the husband coupled with beating and demanding dowry was taken to amount to cruelty as defined in section 498A, IPC, 1860. *Khemraj Hiralal Agarwal v State of Maharashtra*, 1995 Cr LJ 2271 (Bom), an attempt to abuse the section by proceeding against a husband who, far from demanding anything, was helping the family members of his wife, was frustrated by the court. *Gajanan Singh v Maharashtra*, 1996 Cr LJ 2921 (Bom), evidence not clear to show that the death of the married woman was immolation or murder, the section not attracted.
619. Section 113A of the Indian Evidence Act, 1872.
620. *Pinakin Mahipatray Rawal v State of Gujarat*, 2013 (3) Mad LJ (Cr) 700 : 2013 (II) Ori LR 867 : 2013 (4) RCR (Criminal) 271 : 2013 (11) Scale 198 [LNIND 2013 SC 803] .
621. *Satish Shetty v State of Karnataka*, 2016 Cr LJ 3147 : AIR 2016 SC 2689 [LNIND 2016 SC 245] .
622. *Krishan Lal v UOI*, 1994 Cr LJ 3472 (P&H); *Gian Kaur v State of Punjab*, 1996 Cr LJ 1660 : AIR 1996 SC 946 [LNIND 1996 SC 653] , provision for penalising attempt to commit suicide and abetment of suicide, held constitutional; **overruling** *P Rathinam v UOI*, 1994 AIR SCW 1764 : 1994 Cr LJ 1605 : AIR 1994 SC 1844 [LNIND 1994 SC 1533] : (1994) 3 SCC 394 [LNIND 1994 SC 1533] .
623. *Naresh Morotrao v UOI*, (1995) 1 Cr LJ 96 (Bom).
624. *Gian Kaur v State of Punjab*, AIR 1996 SC 946 [LNIND 1996 SC 653] : (1996) 2 SCC 648 [LNIND 1996 SC 653] .
625. *Pawan Kumar v State of HP*, AIR 2017 SC 2459 [LNIND 2017 SC 241] .
626. *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] .
627. *P Rathinam v UOI*, AIR 1994 SC 1844 [LNIND 1994 SC 1533] : 1994 (3) SCC 394 [LNIND 1994 SC 1533] .
628. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .
629. In March 2018, a five-judge Constitution Bench gave legal sanction to passive euthanasia, permitting 'living will' by patients on withdrawing medical support if they slip into irreversible



coma. The SC held that the right to die with dignity is a fundamental right; see *Common Cause (A Regd. Society) v UOI*, [LNIND 2018 SC 87](#) .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### [s 307] Attempt to murder.

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and if hurt is caused to any person by such act, the offender shall be liable either to <sup>630.</sup>[imprisonment for life], or to such punishment as is hereinbefore mentioned.

#### Attempts by life convicts.

<sup>631.</sup>[When any person offending under this section is under sentence of <sup>632.</sup>[imprisonment for life], he may, if hurt is caused, be punished with death.]

#### ILLUSTRATIONS

- (a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.
- (b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.
- (c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of <sup>633.</sup>[the first paragraph of] this section.
- (d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence 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.

#### COMMENT.—

**Attempt to murder.**—This and the following section seem to apply to attempts to murder, in which there has been not merely a commencement of an execution of the purpose, but something little short of a complete execution, the consummation being hindered by circumstances independent of the will of the author. The act or omission, although it does not cause death, is carried to such a length as, at the time of carrying it to that length, the offender considers sufficient to cause death. <sup>634.</sup>

The essential ingredients required to be proved in the case of an offence under section 307 are:

- (i) that the death of a human being was attempted;
- (ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and
- (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as:
  - (a) the accused knew to be likely to cause death; or
  - (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.<sup>635</sup>

To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some over act in execution thereof.<sup>636</sup> To bring a case within the ambit of section 307, the prosecution has to make out the facts and circumstances envisaged by section 300. If the ingredients of section 300 are wholly lacking, there can be no conviction under section 307.<sup>637</sup> The ingredients of the section are (1) intention or knowledge relating to commission of murder; and (2) the doing of an act towards it.<sup>638</sup> The Supreme Court held in *Pulicherla Nagaraju v State of AP* that:

The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.<sup>639</sup>

In a group clash, one person died and several others were injured, some of them seriously. The accused also received injuries. Two of the accused were convicted under section 307 and others under section 324. The Supreme Court held that, though the injuries caused by the two accused were somewhat serious, the offence for attempt to murder was not made out as their case stood on the same footing as that of others and altered their conviction to one under section 324.<sup>640</sup>

### [s 307.1] Attempt.—

Attempt is an intentional preparatory action which fails in its object—which so fails through circumstances independent of the person who seeks its accomplishment.<sup>641</sup> The mere use of lethal weapons is sufficient to invoke the provisions of section 307.<sup>642</sup> There was evidence that the accused dealt with not only one blow but two blows successively with an axe on the head of the victim. It was held that the intention to cause death could be gathered from the circumstances.<sup>643</sup> It is not necessary to constitute the offence that the attack should result in an injury. An attempt is itself sufficient if there is requisite intention. An intention to murder can be gathered from circumstances other than the existence or nature of the injury.<sup>644</sup>

To attract the offence the injury need not be caused to vital parts.<sup>645</sup>

### **[s 307.2] Whether act committed must be capable of causing death.—**

The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under [section 307 IPC, 1860](#) cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.<sup>646</sup> It is not essential that bodily injury capable of causing death should have been inflicted in order that the charge under section 307 be made out. It is enough if there is an intention coupled with some common act in execution thereof.<sup>647</sup> In *Hari Singh*,<sup>648</sup> the Supreme Court added that:

the intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established there can be no offence of attempt to murder ... The intention is to be gathered from all the circumstances, and not merely from the consequences that ensue.

The nature of the weapon used, the manner in which it is used, motive for the crime, severity of the blow, and the part of the body where the injury is inflicted, are some of the factors that may be taken into consideration to determine the intention.

### **[s 307.3] Acting in self-defence.—**

The accused alleged that he was attacked by the assailant party. The plea seemed to the Court to be true because there was no explanation from the prosecution side about injuries sustained by the accused. The medical papers of the complainant did not mention the name of the assailant though it was a medico-legal case. The conviction of the accused for attempt to murder was held liable to be set aside.<sup>649</sup>

### **[s 307.4] Rape on young girl.—**

Where the accused took away a girl of four years to a lonely place near a canal, sexually assaulted her and threw her in the canal, but was saved by a passer-by, his sentence of three years RI with fine of Rs. 500 under section 307 was raised to seven years RI and fine of Rs. 1,000.<sup>650</sup>

### **[s 307.5] Simple hurt.—**

Intention is an essential ingredient of the offence of attempt to murder. Where the injuries caused were simple in nature and also not on vital parts of the body, the Court said that the intention for attempt to murder could not be inferred. The Court held that no offence under section 324 was made out because injuries were caused with a sharp-cutting weapon.<sup>651</sup> Where the accused persons had no common intention to kill or have knowledge that death was likely to ensue but only intended to vent their ire against their neighbour for having assaulted their bullocks, when the injuries sustained by the injured persons were simple in nature, the Supreme Court held the accused persons cannot be convicted under section 307 r/w 34.<sup>652</sup>

### **[s 307.6] Nature of injuries is not determinative.—**

The nature of injuries has been held by the Supreme Court to be not a determinative factor. The framing of charge was challenged in this case on the ground that the injuries inflicted on the victim were simple in nature and no injury was found on any vital part of the body. The determinative factor is intention or knowledge and not the nature of injury.<sup>653</sup> The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of [section 307, IPC, 1860](#). The determinative question is the intention or knowledge, as the case may be, and not nature of the injury.<sup>654</sup>

### **[s 307.7] Section 307 and Section 326.—**

A bare perusal of these two provisions clearly reveals that while [section 307 IPC, 1860](#) uses the words "under such circumstances", these words are conspicuously missing from [section 326 IPC, 1860](#). Therefore, while deciding whether the case falls under [section 307 IPC, 1860](#) or under [section 326 IPC, 1860](#) the Court must necessarily examine the circumstances in which the assault was made. Considering the fact that the assault was made after some premeditation and pre-planning, considering the fact that assault was carried out in the dead of the night, considering the nature of the weapon, used, nature of the injuries caused, obviously, the present case falls under the ambit of [section 307 IPC, 1860](#) and not under [section 326 IPC, 1860](#). Therefore, the learned trial Court was certainly justified in acquitting the appellant for offence under [section 326 IPC, 1860](#) and in convicting him for offence under [section 307 IPC, 1860](#).<sup>655</sup>

<sup>630</sup>. Subs. by Act 26 of 1955, section 117 and Sch., for transportation for life (w.e.f. 1-1-1956).

<sup>631</sup>. Ins. by Act 27 of 1870, section 11.

<sup>632</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

<sup>633</sup>. Ins. by Act 12 of 1891, section 2 and Sch II.

<sup>634</sup>. M&M 274; *Rawal Arab*, (1898) Unrep Cr C 964. *Lugga Singh v State of Punjab*, (2008) Cr LJ 90 (P&H), two accused had altercation with a worker because of offering his labour at low wage, one of them struck the victim with *gandasi* at head, there being no such common intention, the

non-attacking accused was acquitted. *Asharam v State of MP*, (2007) 11 SCC 164 [LNIND 2007 SC 534] : AIR 2007 SC 2594 [LNIND 2007 SC 534] , accused fled from the scene taking the victim to be dead, testimony of injured witness corroborated by medical evidence, conviction upheld.

635. *Chimanbhai Jagabhai Patel v State of Gujarat*, AIR 2009 SC 3223 [LNIND 2009 SC 568] : (2009) 11 SCC 273 [LNIND 2009 SC 568] .

636. *State of MP v Kedar Yadav*, 2011 (1) SCC (Cr) 1008.

637. *Arjun Thakur v State of Orissa*, 1994 Cr LJ 3526 (Ori). *Hemant Kumar Mondal v State of WB*, 1993 Cr LJ 82 (Cal), the accused instigated three persons for committing the offence of murder; he was guilty of abetment, convicted under sections 307/109. Cr LJ 1340 (Gau), militants, engaged police in an encounter, presumption of intention to kill. *Chhota Master v State of Orissa*, 1998 Cr LJ 3185 (Ori), accused persons stabbed the victim in the stomach, intestines came out, threw him into river from bridge and pelted stones, conviction under sections 307/34 not interfered with. *Balakrishna Tripathy v State of Orissa*, 1998 Cr LJ 3591 (Ori), only one accused allowed to be charged, there was no evidence against others; *Hingu v State of UP*, 1998 Cr LJ 365 : AIR 1998 SC 198 [LNIND 1997 SC 1528] . *Santosh Kumar v State of UP*, 1997 under section 307 was held to be made out. *Raja v State*, 1997 Cr LJ 1863 (Del), injuries with dagger, serologist's report on blood on dagger not necessary where there was sufficient evidence otherwise to connect the accused with the attempt.; *Achhaibar Pd v State of UP*, 1997 Cr LJ 2666 : 1997 All LJ 705, the accused fired at police constable at close range, the bullet pierced the chest through and through, dying declaration, section 307 attracted. Another ruling on the same facts, *Ranveer Singh v State of UP*, 1997 Cr LJ 2266 (All), no leniency in punishment. *Pulkit Purbey v State of Bihar*, 1997 Cr LJ 2371 (Pat), several injuries of simple nature on non-vital parts, only one on head, no intention to cause death, conviction under section 326. *Sirish Chandra Paul v State of Assam*, 1997 Cr LJ 2617 (Gau), injury on vital part, intention to cause death, conviction under section 307.

638. *Sumersimbh Umedsinh Rajput v State of Gujarat*, (2007) 13 SCC 83 [LNIND 2007 SC 1450] : AIR 2008 SC 904 [LNIND 2007 SC 1450] : 2008 Cr LJ 1388 .

639. *Pulicherla Nagaraju v State of AP*, (2006) 11 SCC 444 [LNIND 2006 SC 621] : AIR 2006 SC 3010 [LNIND 2006 SC 621] : 2006 Cr LJ 3899 ; *Mangesh v State of Maharashtra*, (2011) 2 SCC 123 [LNIND 2011 SC 20] : AIR 2011 SC 637 [LNIND 2011 SC 20] : 2011 Cr LJ 1166 .

640. *Dharam Pal v State of Punjab*, AIR 1993 SC 2484 : 1993 Cr LJ 2856 (SC). *Parsuram Pandey v State of Bihar*, AIR 2004 SC 5068 [LNIND 2004 SC 1075] : (2004) 13 SCC 189 [LNIND 2004 SC 1075] , the Supreme Court explained the ingredients of the offence. *State of UP v Virendra Prasad*, (2004) 9 SCC 37 [LNIND 2004 SC 138] : AIR 2004 SC 1517 [LNIND 2004 SC 138] , firing at police from close range, intention clear conviction.

641. *Luxman*, (1899) 2 Bom LR 286 . *Sagayam v State of Karnataka*, AIR 2000 SC 2161 [LNIND 2000 SC 740] : 2000 Cr LJ 3182 , police search of the house of the accused. The latter tried to assault the police officer and his staff but they escaped. The accused threatened that he would kill them. The court said that it was only a threat. The overt act attributed to him did not amount to attempt to murder. *Parveen v State of Haryana*, AIR 1997 SC 310 [LNIND 1996 SC 1723] : 1997 Cr LJ 252 , the victim of attack testified that the accused on being refused glasses for taking liquor, went to his tractor and came to the hotel with a gun, fired at him, but he was saved as he stretched to the ground, convicted. *Pratap Singh v State*, 2001 Cr LJ 3154 (Uttaranchal), conviction for attempt to murder, injury caused on death with sharp-edged weapon, injury grievous but short of death. *Shankar Lal v State of Haryana*, 1998 Cr LJ 4595 : AIR 1998 SC 3271 [LNIND 1998 SC 632] , evidence of victim alone is sufficient. *Parveen v State of Haryana*, AIR 1997 SC 310 [LNIND 1996 SC 1723] : 1997 Cr LJ 252 , offence proved.

642. *Narayan v State of Karnataka*, 1998 Cr LJ 1549 (Kant). The accused was also held guilty of murder because his attack on the son succeeding in killing him, the mother survived in injured state and became witness. *Prakash Chandra Yadav v State of Bihar*, (2007) 13 SCC 134 [LNIND 2007 SC 1232] : 2008 Cr LJ 438 , doing of an act with intention or knowledge to cause death is a necessary ingredient. Receipt of injury by the victim is not a prerequisite for conviction under the first part. The second part is attracted when the victim receives an injury. In a rivalry between tenderers, two bombs were hurled on the rival, one did not explode, the other exploded, but victim escaped unhurt. Trial Court convicted the accused. High Court acquitted him because of no injury. Validity of the judgment on evidence was not considered. Case relegated to HC for reconsideration. *Balmiki Singh v Ramchandra Singh*, (2008) 10 SCC 218 [LNIND 2008 SC 1866] : AIR 2009 SC 377 [LNIND 2008 SC 1866] , Supreme Court did not interfere in the order of acquittal by the HC because of discrepancies in evidence. *Jagdish Murar v State of UP*, (2006) 12 SCC 626 [LNIND 2006 SC 648] , allegation of firing a shot not properly investigated, benefit of doubt given to accused.

643. *Bansidhar Mallick v State of Orissa*, 1998 Cr LJ 897 (Ori).

644. *Manik Bandu Gawali v State of Maharashtra*, 1998 Cr LJ 2246 (Bom). In *Joginder Singh v State of Punjab*, 1998 Cr LJ 2255 (SC), the Supreme Court set aside a conviction which did not seem to have been based upon a fair investigation. *Bir Singh v State of HP*, 2006 Cr LJ 2456 : AIR 2006 SC 1944 [LNIND 2006 SC 305] : (2006) 9 SCC 579 [LNIND 2006 SC 305] , incident of attempted murder took place in police post, information given immediately, injuries corroborated medical evidence and constable on duty, could not be disbelieved only because the village Pradhan had turned hostile. *Jagdish v State of Haryana*, 2005 Cr LJ 3073 : AIR 2005 SC 2576 [LNIND 2005 SC 507] , land dispute, attack on victim with *lathi* and *gandasa*, amputation of arms, conviction under section 307, reducing sentence from 10 years to eight years RI and fine of Rs. 1 lac.

645. *Anjani Kumar Chaudhary v State of Bihar*, 2014 Cr LJ 3798 : 2014 (3) AJR 628 .

646. *State of MP v Kedar Yadav*, 2011 (1) SCC (Cri) 1008 [LNIND 2006 SC 1061] ; *Ajay v State of Chattisgarh*, 2013 Cr LJ 13409 (Chh); *State of MP v Kashiram*, (2009) 4 SCC 26 [LNIND 2009 SC 215] : AIR 2009 SC 1642 [LNIND 2009 SC 215] ; *Manoj Kumar Mishra v State of Chhattisgarh*, 2013 Cr LJ 1487 (Chh); *State of Maharashtra v Balram Bama Patil*, 1983 (2) SCC 28 [LNIND 1983 SC 40]; *Girija Shanker v State of UP*, 2004 (3) SCC 793 [LNIND 2004 SC 154] , *R Parkash v State of Karnataka*, JT 2004 (2) SC 348 [LNIND 2004 SC 189] and *State of MP v Saleem @ Chamaru*, 2005 (5) SCC 554 [LNIND 2005 SC 1070] .

647. *Chhanga v State of MP*, AIR 2017 SC 1415 [LNIND 2017 SC 97] .

648. *Hari Singh*, (1988) 4 SCC 551 [LNIND 1988 SC 411] : AIR 1988 SC 2127 [LNIND 1988 SC 411] . See also *AG Bhagwat v UT Chandigarh*, 1989 Cr LJ 214 (P&H), acid thrown on lady colleague for disfiguring her, not liable under this section. *Ram Kumar v State (NCT) of Delhi*, AIR 1999 SC 2259 [LNIND 1999 SC 1277] : 1999 Cr LJ 3522 , accused fired a shot from country-made pistol. The victim, a near relative, was injured. The act showed the intention of the accused. Hence, convicted. The sentence was reduced from 10 years RI to seven years RI. *Rajan v State of MP*, 2000 Cr LJ 2423 (MP), allegation that accused fired at police party which had gone into jungle to catch him, nobody was aimed at in the group or individually, firing struck no body, acquittal. *Dnyaneshwar v State of Maharashtra*, 2013 Cr LJ 2152 (Bom)— Benefit of doubt given to the accused.

649. *Rehmat v State of Haryana*, AIR 1997 SC 1526 [LNIND 1996 SC 1386] : 1997 Cr LJ 764 . *Nasir Sikander Shaikh v State of Maharashtra*, 2005 Cr LJ 2621 : AIR 2005 SC 2533 [LNIND 2005 SC 474] , burden is heavy on the prosecution to prove every ingredient of the offence, the defence has only to probabalise the material which is there in support of the defence plea. *Karan*

*Singh v State of MP*, (2003) 12 SCC 587 [LNIND 2003 SC 840] , the plea of self-defence found to be not real.

650. *State of Maharashtra v Umesh Krishna Pawar*, 1994 Cr LJ 774 (Bom).

651. *Sarjug Turi v State of Bihar*, 2003 Cr LJ 2864 (Jhar), conviction was shifted to u/s. 324, the offence and prosecution being of 17 years long standing, the accused was released on probation.

652. *Lakshmi Chand v State of UP*, AIR 2018 SC 3961 .

653. *Ratan Singh v State of MP*, (2009) 12 SCC 585 [LNIND 2009 SC 984] : AIR 2010 SC 597 [LNIND 2009 SC 984] .

654. *State of MP v Kashiram*, AIR 2009 SC 1642 [LNIND 2009 SC 215] . Therefore, whether the injury is simple or grievous in nature hardly matters to invoke the provisions of section 307. *Sk Khaja Sk Dawood v State of Maharashtra*, 2011 Cr LJ 1150 (Bom).

655. *Pooran Singh Seera Alias Pooran Meena v State of Rajasthan*, 2011 Cr LJ 2100 (Raj); *Raghunath v State By Police of Vijayapura Police Station*, 2011 Cr LJ 549 (Kar); *Neelam Bahal v State of Uttarakhand*, AIR 2010 SC 428 [LNIND 2009 SC 2056] : (2010) 2 SCC 229 [LNIND 2009 SC 2056] .



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### [s 308] Attempt to commit culpable homicide.

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

#### ILLUSTRATION

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

#### COMMENT.—

The wording of this section is the same as that of the preceding one except that it deals with an attempt to commit culpable homicide. The punishment provided is, therefore, not so severe. Before an accused can be held to be guilty under [section 308 IPC, 1860](#) it was necessary to arrive at a finding that the ingredients thereof, namely, requisite intention or knowledge was existing.<sup>656</sup> When the accused can be attributed only knowledge that by inflicting such injuries he was likely to cause death and an attempt to commit such an offence would be one punishable under [section 308 IPC, 1860](#).<sup>657</sup>

#### [s 308.1] Nature of injury.—

Whether the injury was grievous or simple deserved a back seat in face of the charge under [section 308/34 IPC, 1860](#). Offence punishable under [section 308 IPC, 1860](#) postulates doing of an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt or may not. It is the attempt to commit culpable homicide which is punishable under [section 308 IPC, 1860](#) whereas punishment for simple hurts can be meted out under sections 323 and 324 and for grievous hurts under [sections 325 and 326 IPC, 1860](#). Qualitatively, these offences are different.<sup>658</sup>

#### [s 308.2] Self-defence.—

Merely because the prosecution witnesses had suffered more injuries than the respondents, would not be sufficient to hold that the respondents were the aggressor party. In other words, the defence version cannot be discarded only on the basis of

lesser number of injuries having been suffered by them. Appeal against acquittal dismissed.<sup>659</sup> On the facts and in the circumstances of the case, the Supreme Court found that plea of self-defence was not made out by the appellant and, therefore, contention that the finding recorded by the High Court that he was guilty under [section 304, Part-I IPC, 1860](#) for causing death of the deceased and under [section 308, IPC, 1860](#) for causing injuries to Rahmat should be sustained cannot be accepted.<sup>660</sup>

### **[s 308.3] Sentence.—**

Trial Court convicted accused under section 308 r/w 149 and sentenced them to three years RI and fine of Rs. 500 each. The High Court confirmed the conviction and sentence. The Supreme Court modified the sentence by reducing the imprisonment to one year and increased the fine amount to Rs. 25,000.<sup>661</sup> Accused was convicted under [section 308, IPC, 1860](#). Offence was committed when the accused was 17 years old. High Court released him under [section 4 of Probation of Offenders Act, 1958](#).<sup>662</sup>

<sup>656</sup>. *Bishan Singh v State*, [AIR 2008 SC 131](#) [[LNIND 2007 SC 1178](#)] : (2007) 13 SCC 65 [[LNIND 2007 SC 1178](#)] ; *Sheetala Prasad v Sri Kant*, (2010) 2 SCC 190 [[LNIND 2009 SC 2121](#)] : [AIR 2010 SC 1140](#) [[LNIND 2009 SC 2121](#)] .

<sup>657</sup>. *Tukaram Gundu Naik v State of Maharashtra*, (1994) 1 SCC 465 [[LNIND 1993 SC 820](#)] : 1994 Cr LJ 224 .

<sup>658</sup>. *Sunil Kumar v NCT Delhi*, (1998) 8 SCC 557 : 1998 SCC (Cr) 1522.

<sup>659</sup>. *State of UP v Munni Ram*, (2011) 3 SCC (Cr) 745 : [AIR 2011 SC \(Supp\) 573](#).

<sup>660</sup>. *Shaukat v State of Uttaranchal*, (2010) 5 SCC 68 [[LNIND 2010 SC 387](#)] : 2010 Cr LJ 4310 : (2010) 2 SCC (Cr) 1238.

<sup>661</sup>. *Lakhan v State of MP*, (2013) 1 SCC 363 [[LNIND 2012 SC 796](#)] .

<sup>662</sup>. *State v Ravindra Singh*, 2013 Cr LJ 2874 (Utt). See also *Jameel v State of UP*, (2010) 12 SCC 532 [[LNIND 2009 SC 1960](#)] : [AIR 2010 SC \(Supp\) 303](#).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### [s 309] Attempt to commit suicide.

**Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year <sup>663</sup>. [or with fine, or with both].**

#### COMMENT.—

Suicide by itself is not an offence under either English or Indian Criminal Law, though at one time it was a felony in England.<sup>664</sup> It is a unique legal phenomenon in the [IPC, 1860](#) that the only act, the attempt of which alone will become an offence. The person who attempts to commit suicide is guilty of the offence under [section 309 IPC, 1860](#) whereas the person who committed suicide cannot be reached at all. Section 306 renders the person who abets the commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed.<sup>665</sup>

The act done must be in the course of the attempt, otherwise no offence is committed. Where a woman with the intention of committing suicide by throwing herself in a well, actually ran towards it, when she was seized by a person, it was held that she might have changed her mind, and she was caught before she did anything which might have been regarded as the commencement of the offence.<sup>666</sup> Her act simply amounted to *preparation*. The pounding of oleander roots with an intention to poison oneself with the same was held not to constitute this offence.<sup>667</sup> Where the accused jumped into a well to avoid and escape from police, and when rescued he came out of the well of his own accord, it was held that, in the absence of evidence that he jumped into the well to commit suicide, he could not be convicted of this offence.<sup>668</sup> A village woman of 20 years old was ill-treated by her husband. There was a quarrel between the two, and the husband threatened that he would beat her. Late that night the woman, taking her six months' old baby in her arms, slipped away from the house. After she had gone some distance she heard somebody coming up behind her, and when she turned round and saw her husband pursuing her, she got into a panic and jumped down a well nearby with the baby in her arms. The result was that the baby died but the woman recovered. One of the charges against her was attempt to commit suicide. It was held that she should not be convicted under this section of an attempt to commit suicide, for the word "attempt" connotes some conscious endeavour to accomplish the act, and the accused in jumping down the well was not thinking at all of taking her own life but only of escaping from her husband.<sup>669</sup> If a person openly declares that he will fast to death and then proceeds to refuse all nourishment until the stage is reached when there is imminent danger of death ensuing, he can be held guilty under this section but when the evidence falls short of this, it cannot be said to be sufficient to sustain the charge.<sup>670</sup> A woman who had been suffering from chronic incurable disease retired to bed with her one and a half-year-old child but was found with the child inside a well about 200 feet away from her house in the early morning of the next day when they were both taken out of the well, it was found that though the woman was alive the child had died. On being prosecuted under [sections 302 and 309 IPC, 1860](#), she denied

having jumped into the well. She further pleaded that she was too ill and there was something wrong with her brain. The trial Judge did not give her the benefit of [section 84 IPC, 1860](#) and convicted her of both the offences charged. In acquitting her the High Court of Bombay held that in the absence of any evidence that she deliberately jumped into the well along with the child, she could not be convicted merely on the basis of imagination or denied the benefit of [section 84 IPC, 1860](#). In any case, the Judge should have given her the benefit of doubt.<sup>671</sup> Moreover, suspicion however strong is not proof.<sup>672</sup> Where a desolate woman jumped into a well with her two children and was released with admonition for the offence under section 309 but was sentenced to imprisonment for three months for the offence under [section 307 IPC, 1860](#), the Supreme Court directed that she should also be released with admonition for the offence under [section 307 IPC, 1860](#).<sup>673</sup> Witness clearly stated that deceased was shouting, pleading with the accused to not kill her, when accused gave sword blows to her. There is no material available to establish that deceased volunteered herself for death – Exception 5 to section 300 could not be invoked. Conviction and sentence, as recorded by trial Court under [sections 302 and 309 of IPC, 1860](#) against appellant was held proper.<sup>674</sup>

### **[s 309.1] Voluntary termination of life.—**

A person cannot claim his own life by saying that he had led a successful life and the mission of his life was fulfilled. It would amount to suicide as it would attract the provisions of sections 306 and 309. The Court said that no distinction could be made between suicide as ordinarily understood and the right to voluntarily put an end to one's life.<sup>675</sup>

### **[s 309.2] Fast-unto-death.—**

Where a person commenced fast-unto-death for certain demands but even before his demands were conceded, he chose to get himself treated medically without protest, it was held that the *mens rea* to destroy himself was absent and it could not be said that he attempted to commit suicide.<sup>676</sup>

### **[s 309.3] Constitutional validity of section 309.—**

In *P Rathinam v UOI*,<sup>677, 678</sup> the constitutional validity of section 309 was challenged and the Supreme Court observed that the provision punishing attempt to commit suicide is cruel and irrational and is violative of [Article 21 of the Constitution](#) and it deserves to be effaced from the statute book to humanalise penal laws. It added that the act of attempted suicide has no baneful effect on society and it is also not against religion, morality or public policy, besides suicide or attempt to commit it causes no harm to others.

This decision was subsequently reversed and it has been held again that the provision for penalising attempt to commit suicide and abetment of suicide is not unconstitutional.<sup>679</sup>

The [Constitution](#) Bench in a subsequent decision in *Gian Kaur v State of Punjab*<sup>680</sup> and other connected matters has overruled the view taken in the case of *P Rathinam*<sup>681</sup> that [section 309 IPC, 1860](#) is constitutionally invalid. It was held that, on the facts which are not only proved but are also admitted by A1 the acquittal of A1 under [section](#)

[309, IPC, 1860](#) has to be set aside and he will have to be convicted under that section.<sup>682.</sup>

#### **[s 309.4] The Mental Healthcare Act, 2017**

Parliament has now enacted the [Mental Healthcare Act, 2017](#) which *vide* section 115 lays down that:

(1) Notwithstanding anything contained in [section 309 of the Indian Penal Code](#) any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.

(2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.

In view of the above provisions, if a person attempts to commit suicide, it shall be presumed, unless proved otherwise, that he has severe stress and he shall not be tried and punished under [section 309 of the IPC, 1860](#). By inverting the presumption against guilt but retaining the provision in the statute book, attempt to suicide is still a criminal offence. In order to render conviction, prosecution will be required to lead evidence and prove that the survivor did not have severe stress and did not suffer any issue of mental health.

#### **[s 309.5] Euthanasia.—**

In India active euthanasia is illegal and a crime under section 302 or at least [section 304 IPC, 1860](#). Physician assisted suicide is a crime under [section 306 IPC, 1860](#) (abetment to suicide). The [Constitution](#) Bench in *Gian Kaur v State of Punjab*,<sup>683.</sup> held that both euthanasia and assisted suicide are not lawful in India which **overruled** the two Judge Bench decision of the Supreme Court in *P Rathinam v UOI*.<sup>684.</sup> The Court held that the right to life under [Article 21 of the Constitution](#) does not include the right to die. But in *Aruna Ramchandra Shanbaug v UOI*,<sup>685.</sup> the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court. The difference between 'active' and passive' euthanasia is that in active euthanasia something is done to end the patient's life while in passive euthanasia, something is not done that would have preserved the patient's life. It is usually defined as withdrawing medical treatment with a deliberate intention to causing the patient's death. In *Common Cause (A Regd. Society) v UOI*,<sup>686.</sup> a five-judge [Constitution](#) Bench gave legal sanction to passive euthanasia, permitting 'living will' by patients on withdrawing medical support if they slip into irreversible coma. The Supreme Court held that the right to die with dignity is a fundamental right.

#### **[s 309.6] Procedure for passive euthanasia.—**

[Article 226](#) gives abundant power to the High Court to pass suitable orders on the application filed by the near relatives or next friend or the doctors/hospital staff praying for permission to withdraw the life support to an incompetent person of the kind above mentioned. When such an application is filed the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. Before doing so the Bench should seek the opinion of a committee of

three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Preferably one of the three doctors should be a neurologist, one should be a psychiatrist, and the third a physician. For this purpose a panel of doctors in every city may be prepared by the High Court in consultation with the State Government/Union Territory and their fees for this purpose may be fixed. The committee of three doctors nominated by the Bench should carefully examine the patient and also consult the record of the patient as well as taking the views of the hospital staff and submit its report to the High Court Bench. Simultaneously with appointing the committee of doctors, the High Court Bench shall also issue notice to the State and close relatives, e.g., parents, spouse, brothers/sisters, etc., of the patient, and in their absence his/her next friend, and supply a copy of the report of the doctor's committee to them as soon as it is available. After hearing them, the High Court bench should give its verdict. The above procedure should be followed all over India until Parliament makes legislation on this subject.<sup>687</sup>.

### [s 309.7] Abetment of attempt to commit Suicide.—

Section 306 prescribes punishment for abetment of suicide while section 309 punishes attempt to commit suicide. The history of use of the provisions of section 309 shows that the section has been pressed into service primarily in the case of *Sati*, where the widow commits suicide and others have various reasons – economic and social, to abet such hapless woman to commit suicide. If a hapless *Sati* victim is goaded to commit suicide and the abettors abet her to jump into the funeral pyre of her husband, it would be preposterous for law to hold the abettors not guilty of any offence merely because she escapes or is saved from death later.<sup>688</sup>.

663. Subs. by Act 8 of 1882, section 7, for "and shall also be liable to fine".

664. *Gangula Mohan Reddy v State of AP*, AIR 2010 SC 327 [LNIND 2010 SC 3] : (2010) 1 SCC 327 ; *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] : AIR 1996 SC 946 [LNIND 1996 SC 653] .

665. *Satvir Singh v State of Punjab*, (2001) 8 SCC 633 [LNIND 2001 SC 2168] : 2001 Cr LJ 4625 .

666. *Ramakka*, (1884) 8 Mad 5.

667. *Tayee*, (1883) Unrep Cr C 188.

668. *Dwarka Poonja*, (1912) 14 Bom LR 146 [LNIND 1912 BOM 6] .

669. *Dhirajia*, (1940) All 647 .

670. *Ram Sunder*, AIR 1962 All 262 [LNIND 1961 ALL 65] .

671. *Phulabai*, 1976 Cr LJ 1519 (Bom).

672. *Brij Bhusan Singh*, AIR 1946 PC 38 .

673. *Radharani*, 1981 Cr LJ 1705 (SC) : AIR 1981 SC 1776 (2) : 1981 (Supp) SCC 84. *Rukhmina Devi v State of UP*, 1989 Cr LJ 548 (All), mother locked herself up with her son after altercation with family. She killed the child and then attempted suicide. Convicted under this section and section 300 with a remark that because her husband had also rejected her and she was the victim of rage, her sentence might be remitted by the State. For a case in which the circumstances ruled out the possibility of suicide, see *Subedar Tewari v State of UP*, AIR 1989 SC

733 : 1989 Cr LJ 923 : 1989 (Supp) SCC 91. *Kavita v State of TN*, AIR 1998 SC 2473 [LNIND 1998 SC 642] : 1998 Cr LJ 3624 no proof that the woman threw her children into the well and then herself jumped into it to commit suicide. Conviction set aside. *Ram Kumar v State of Gujarat*, AIR 1998 SC 2732 [LNIND 1998 SC 772] : 1998 Cr LJ 4048 the deceased-woman and her accused husband were alone in the house. There was ligature mark on her neck. Her body was on a cot and not hanging. The court said that the theory of suicide became demolished and that of murder could be inferred. *State of Maharashtra v Maruti*; *State of UP v Sikandar Ali*, 1998 Cr LJ 2520 : AIR 1998 SC 1862 [LNIND 1998 SC 1231] double murder, conviction. Death penalty not warranted, life imprisonment. *State of HP v Jeet Singh*, AIR 1999 SC 1293 : 1999 Cr LJ 2025 , whether death was homicidal or suicidal, injuries found on both leg of the dead body on the basis of which the doctor stated that death might have been due to smothering. This opinion was formed without chemical examiner's report. The finding of the High Court that the deceased might have committed suicide was held liable to be set aside.

674. *Narendra v State of Rajasthan*, 2012 Cr LJ 723 (Raj); *Ujwala Sonyabapu Bhujade v State of Maharashtra*, 2011 Cr LJ 1791 (Bom)— offences under sections 302 and 309 IPC, 1860 not proved.

675. *CA Thomas Master v UOI*, 2000 Cr LJ 3729 (Ker).

676. *Ramamoorthy v State of TN*, 1992 Cr LJ 2074 (Mad). *Banwarilal Sharma v State of UP*, (1998) 3 SCC 604 : JT 1998 (4) SC 466 ; *Balamani v State*, 2010 (4)Ker LT 329 .

677. *Jagadeeswar v State of AP*, 1988 Cr LJ 549 approved and *Dubal v State of Maharashtra*, 1987 Cr LJ 743 overruled. The court also noted the distinction between suicide and euthanasia and section 306 and section 309.

678. *P Rathinam v UOI*, 1994 Cr LJ 1605 .

679. *Gian Kaur v State of Punjab*, 1994 Cr LJ 1660 (SC), the decision of Division Bench in *P Rathinam v UOI*, 1994 AIR SCW 1764 : (1994) 3 SCC 394 [LNIND 1994 SC 1533] : 1994 Cr LJ 1605 : AIR 1994 SC 1844 [LNIND 1994 SC 1533] overruled by Constitution Bench.

680. *Supra*.

681. *Supra*.

682. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .

683. *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] .

684. *P Rathinam v UOI*, AIR 1994 SC 1844 [LNIND 1994 SC 1533] : 1994 (3) SCC 394 [LNIND 1994 SC 1533] .

685. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .

686. *Common Cause (A Regd. Society) v UOI*, LNIND 2018 SC 87 .

687. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .

688. *Berin P Varghese v State of Kerala*, 2008 Cr LJ 1759 .

## **THE INDIAN PENAL CODE**

### **CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE**

**[s 310] Thug.**

**Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.**

#### **COMMENT.—**

This and the following section incorporate the provisions of the Thuggee Act of 1836.



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### [s 311] Punishment.

Whoever is a thug shall be punished with **689** [imprisonment for life], and shall also be liable to fine.

#### COMMENT.—

Gangs of persons habitually associated for the purpose of inveigling and murdering travellers or others in order to take their property, etc., are called thugs. Thugs are robbers and dacoits, but all robbers and dacoits are not thugs. Thugs committed robbery or dacoity or kidnapping are always accompanied with murder. Killing of the victim was the essential thing (still in MP & UP ravines).

**689.** Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 312] Causing miscarriage.

Whoever voluntarily causes a woman with child<sup>1</sup> to miscarry, shall, if such miscarriage<sup>2</sup> be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child,<sup>3</sup> shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Explanation.*—A woman who causes herself to miscarry, is within the meaning of this section.

#### COMMENT.—

This section deals with the causing of miscarriage with the consent of the woman, while the next section deals with the causing of miscarriage without such consent.

The [Medical Termination of Pregnancy Act, 1971](#) (34 of 1971) provides for the termination of pregnancy by registered medical practitioners where its continuance would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health or where there is a substantial risk that if the child was born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. Where the pregnancy is alleged to have been caused by rape or as a result of failure of a contraceptive used by a married woman or her husband, it would be presumed to constitute a grave injury to the mental health of the pregnant woman. The termination of a pregnancy by a person who is not a registered medical practitioner will be an offence under the [IPC, 1860](#), which to that extent is modified. It is high time that this section too was suitably amended in terms of [Medical Termination of Pregnancy Act, 1971](#) (34 of 1971) to include the various other grounds on account of which a pregnancy can now be terminated by registered medical practitioner. In this connection see also comment under section 91 *ante*. The [Medical Termination of Pregnancy Act, 1971](#) does not empower the husband, far less his relations, to prevent the concerned woman from causing abortion if her case is covered under section 3 of that Act. Under [section 312 of the IPC, 1860](#) causing miscarriage is a penal offence. Relevant civil law has since been embodied in the Act legalising termination of pregnancy under certain circumstances. Since law is liberal for effecting such termination, the Act does not lay down any provision on husband's consent in any situation.<sup>690</sup>

1. 'With child' means pregnant, and it is not necessary to show that 'quickening', that is, perception by the mother of the movements of the foetus, has taken place or that the embryo has assumed a foetal form, the stage to which pregnancy has advanced and the form which the ovum or embryo may have assumed are immaterial. Where a

woman was acquitted on a charge of causing herself to miscarry, on the ground that she had only been pregnant for one month and that there was nothing which could be called foetus or child, it was held that the acquittal was bad in law.<sup>691</sup>.

A woman quick with a child simply means a particular stage of pregnancy at which quickening takes place. It is a perception of the woman of the movement of foetus. Section 312 can even apply to a pregnant woman herself who causes her own miscarriage. Good faith by itself is not enough. It has to be good faith for the purpose of saving the life of the mother or the child and not otherwise. This observation of the High Court of Delhi occurs in a case<sup>692</sup>. in which the doctor was found to be negligent and careless in injecting needles twice for performing abdominocentesis. The result was that the patient had to undergo forced abortion because septic developed. There was consent only for one insertion and that was not at all applicable to second insertion.

**2. 'Miscarriage'** is the premature expulsion of the child or foetus from the mother's womb at any period of pregnancy before the term of gestation is completed.

### **[s 312.1] Death in attempt to terminate pregnancy.—**

A woman had pregnancy of 24 weeks out of illicit relations and a doctor administered an injection for termination of the pregnancy but the woman died the next day without miscarriage. It was held that the act of the doctor amounted to 'voluntarily causing miscarriage' within the meaning of section 312 read with section 511, as the doctor was presumed to know the possible effects of the medicine.<sup>693</sup>. Deceased, an unmarried girl was pregnant from accused, she died while causing miscarriage due to perforation of uterus following abortion. It is a clear case that accused was instrumental in causing the woman to miscarry and obviously it was not done in good faith for purpose of saving life of deceased. Miscarriage was with a view to wipe out evidence of deceased being pregnant. Accused liable to be convicted under [sections 312, 315, 316 and 201 of IPC, 1860](#).<sup>694</sup>.

**3. 'Quick with child'**.—Quickening is the name applied to peculiar sensations experienced by a woman about the fourth or fifth month of pregnancy.

<sup>690</sup>. *Dr Mangla Dogra v AK Malhotra*, AIR 2012 CC 1401 : 2012 (3) Ker LT (SN) 124 (P&H).

<sup>691</sup>. *Ademma*, (1886) 9 Mad 369.

<sup>692</sup>. *Meeru Bhatia Prasad v State*, 2002 Cr LJ 1674 (Del).

<sup>693</sup>. *Akhil Kumar v State of MP*, 1992 Cr LJ 2029 (MP). *Mohamed Sharif v State of Orissa*, 1996 Cr LJ 2826 (Ori) termination under medical advice, death not caused, the accused not liable.

<sup>694</sup>. *State of Maharashtra v Flora Santuno Kutino*, 2007 Cr LJ 2233 (Bom).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 313] Causing miscarriage without woman's consent.

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with <sup>695</sup>[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.

##### COMMENT.—

Under this section the act should have been done without the consent of the woman. Under it the person procuring the abortion is alone punished; under section 312 such person as well as the woman who causes herself to miscarry are both punished. Where the accused woman kicked a pregnant woman in her abdomen resulting in miscarriage, her conviction under section 313 was sustained.<sup>696</sup>

##### [s 313.1] CASES.—

Section 313 would be attracted only if it is established that the pregnancy is terminated without the consent of the prosecutrix.<sup>697</sup>

<sup>695</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

<sup>696</sup>. *Tulsi Devi v State of UP*, [1996 Cr LJ 940](#) (All).

<sup>697</sup>. *Shantaram Krishna Karkhandis v State of Maharashtra*, [2007 Cr LJ 149](#) (Bom). See also *Pranab Kanti Sen v State of WB*, [2010 Cr LJ 162](#) (Cal).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 314] Death caused by act done with intent to cause miscarriage—.

Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine,

if act done without woman's consent.

And if the act is done without the consent of the woman, shall be punished either with <sup>698</sup>[imprisonment for life], or with the punishment above mentioned.

*Explanation.*— It is not essential to this offence that the offender should know that the act is likely to cause death.

##### COMMENT.—

This section provides for the case where death occurs in causing miscarriage. The act of the accused must have been done with intent to cause the miscarriage of a woman with child.

##### [s 314.1] CASES.—

The son-in-law of a pregnant woman left her at the house of the accused doctor. Her dead body was recovered from the place where it was buried in the accused's house. It was in a decomposed state. The accused made extra-judicial confessions to three different persons to the effect that the death took place during abortion. Circumstantial evidence also proved this fact beyond reasonable doubt. His conviction under the section was confirmed as also the five-year RI sentence, but fine was set aside.<sup>699</sup> A homeopath operated upon a pregnant woman to cause abortion but she died a few hours after operation because her uterus got perforated. His conviction under section 314 was upheld.<sup>700</sup> A nurse attempted to cause miscarriage of a pregnant girl but was unsuccessful. On the third day another person, the accused, an attendant, made an attempt and succeeded but the condition of the girl became serious after five days. She was hospitalised and died of septicaemia which had developed from ruptures and tears in the internal parts of vagina. There was no evidence to show that ruptures and tears had occurred at the hands of the accused. It was held that his conviction under section 314 was not proper.<sup>701</sup>

A person, named, C, was alleged to have had illicit relations with the deceased woman. He took her to a doctor for the purpose of aborting her pregnancy. The doctor caused

her death in that process. The doctor was not qualified for the purpose, nor his clinic was approved by the Government under the [Medical Termination of Pregnancy Act, 1971](#) and was also not having the basic facilities for abortion. There was a concurrent finding that the act was done by the doctor in furtherance of the common intention with C. It was held that the conviction of C under this section read with section 34 was proper.<sup>702.</sup>

### **[s 314.2] Section 313 and Section 314.—**

Ingredients for both these offences are contra-indicative and cannot go together. When conviction is recorded under section 304-A, it pre-supposes a negligent act, which would rule out any intentional act; whereas the conviction for offences under sections 313 and 314 can be founded only on intentional act of the accused and not negligence. Presence of *mens rea* would be sine qua non in such a situation. The trial Court, therefore, apparently erred in recording conviction of the appellants for offences punishable under sections 304-A and 313 and 314 of [IPC, 1860](#).<sup>703.</sup>

<sup>698.</sup> Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

<sup>699.</sup> *Moideen Sab v State of Karnataka*, [1993 Cr LJ 1430](#) (Kant).

<sup>700.</sup> *Jacob George v State of Kerala*, [1994 Cr LJ 3851](#) : (1994) 3 SCC 430 [[LNIND 1994 SC 417](#)] .

<sup>701.</sup> *Vatchhalabai Maruti Kshirsagar v State of Maharashtra*, [1993 Cr LJ 702](#) (Bom).

<sup>702.</sup> *Surendra Chauhan v State of MP*, [AIR 2000 SC 1436](#) [[LNIND 2000 SC 515](#)] : [2000 Cr LJ 1789](#) ; *Telenga Munda v State of Bihar*, [2001 Cr LJ 3094](#) (Pat), the pregnant girl was taken to a doctor who operated crudely causing rupture of big vessels resulting in death, abortion stick was also found in her internal part, the doctor did not inform police, direct nexus between his act and death, conviction of the doctor proper.

<sup>703.</sup> *Mahesh Govindbhai Barot v State of Gujarat*, [2009 Cr LJ 3535](#) (Guj).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

**[s 315] Act done with intent to prevent child being born alive or to cause it to die after birth.**

**Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.**

#### COMMENT.—

Any act done with the intention here mentioned which results in the destruction of the child's life, whether before or after its birth, is made punishable. So far as offence punishable under [section 315 of the IPC, 1860](#) is concerned, the offence is committed by a person who before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, if such act be not caused in good faith for the purpose of saving the life of the mother.<sup>704</sup> Cognizance taken of the offence under [section 315 of IPC, 1860](#) and the charge framed therein against the petitioner are also not maintainable in view of the fact that no documentary evidence could be collected in course of investigation in support of the allegation that the pregnancy of the prosecutrix was terminated at the instance of the petitioner. She was even not medically examined by the Doctor or the Board of Doctors and there is no medical report in support of the allegation that her pregnancy was ever terminated at any earlier point of time. As the alleged offence under [section 315 of the IPC, 1860](#) relates to termination of pregnancy, such offence may be supported through the medical opinion of the registered practitioner and for want of such *prima facie* material charge cannot be framed in such section, accordingly the cognizance cannot be taken for the offence under [section 315 of the IPC, 1860](#).<sup>705</sup> Intention is one of the major ingredients of sections 315. Wording of [section 315 of the IPC, 1860](#) itself shows that whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother be punished with imprisonment. In this case the patient was admitted for delivery. During course of delivery there was rupture of uterus which led to bleeding and subsequent death of the patient and the child. So, it is not case of any prosecution witness that the respondent deliberately committed offence punishable under [section 315 of the IPC, 1860](#).<sup>706</sup>

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704. *State of Maharashtra v Rajendra Ramkisan Jaiswal*, [2010 Cr LJ 3603](#) (Bom).
705. *Girish Kumar Sharan v State of Jharkhand*, AIR [2010 Cr LJ 4215](#) (Jhar).
706. *State of Maharashtra v Rajendra Ramkisan Jaiswal*, [2010 Cr LJ 3603](#) (Bom)



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

**[s 316] Causing death of quick unborn child by act amounting to culpable homicide.**

**Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

#### ILLUSTRATION

A, knowing that he is likely to cause the death of a pregnant woman does an act which, if it caused the death of the woman would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

#### COMMENT.—

This section punishes offences against children in the womb where the pregnancy has advanced beyond the stage of quickening and where the death is caused after the quickening and before the birth of the child. Any act or omission of such a nature and done under such circumstances as would amount to the offence of culpable homicide, if the sufferer were a living person, will, if done to a quick unborn child whose death is caused by it, constitute the offence here punished.

Unless the act is done against the mother with an intention or with a knowledge which brings it within the purview of section 299, it cannot constitute an offence under this section merely because the death of a quick unborn child has resulted from an act against the mother.<sup>707</sup> A husband striking his wife dead was held guilty of the offence under this section. The medical evidence showed that she was carrying a male child of 20 weeks. A foetus gets life after 12 weeks of conception.<sup>708</sup>

The principle laid down in section 301 is again applied here.

#### [s 316.1] Charge.—

The trial Court did not frame charge against accused no. 3 for the offence under [section 312 of the IPC, 1860](#) but that will not come in the way in convicting him for the offence under [section 312, IPC, 1860](#). Because the offences from sections 312 to 318 are of similar nature, type and category, they are all relating to miscarriage. Secondly, the punishment prescribed under section 312 is not higher than the maximum punishment prescribed under section 316. Because the punishment prescribed is up to

10 years if the act causes death of quick unborn child. The maximum punishment prescribed under section 312 is seven years if the woman be quick with child.<sup>709</sup>.

707. *Jabbar*, AIR 1966 All 590 [LNIND 1980 MAD 327].

708. *Murugan v State of TN*, 1991 Cr LJ 1680 (Mad).

709. *State of Maharashtra v Flora Santuno Kutino*, 2007 Cr LJ 2233 (Bom).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

**[s 317] Exposure and abandonment of child under 12 years of age, by parent or person having care of it.**

Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

*Explanation.*—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child dies in consequence of the exposure.

#### COMMENT.—

This section is intended to prevent the abandonment or desertion by a parent of his or her children of tender years, in such a manner that the children, not being able to take care of themselves, may run the risk of dying or being injured. It does not apply when children are left under the care of others.<sup>710</sup> It applies where a child is exposed and no death supervenes; if, however, death follows, the conviction must be under section 304.<sup>711</sup> The offence is complete notwithstanding that no actual danger or risk of danger arises to the child's life.

#### [s 317.1] Ingredients.—

The section requires three essentials—

- (1) The person coming within its purview must be father or mother or must have the care of the child.
- (2) Such child must be under the age of 12 years.
- (3) The child must have been exposed or left in any place with the intention of wholly abandoning it.

710. *Felani Hariani*, (1871) 16 WR (Cr) 12; *Mussumat Khairo*, (1872) PR No. 33 of 1872;  
*Mussamat Bhagan*, (1878) PR No. 4 of 1879.

711. *Banni*, (1879) 2 All 349 .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 318] Concealment of birth by secret disposal of dead body.

Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### COMMENT.—

This section is intended to prevent infanticide. It is directed against concealment of birth of a child by secretly disposing of its body.

#### [s 318.1] Ingredients.—

The section requires—

- (1) Secret burying or otherwise disposing of the dead body of a child.
- (2) It is immaterial whether such child dies before or after or during its birth.
- (3) Intention to conceal the birth of such child by such secret burying or disposal.

#### Simple

#### Hurt

#### Grievous

#### Aggravated forms

#### Of Hurt

1. By dangerous weapons.
2. To extort property or to constrain to do illegal act.
3. By means of poison to commit offence.
4. To extort confession, or to compel restoration of property.
5. To deter public servant from his duty.



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 319] Hurt.

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

##### COMMENT.—

The authors of the Code say:

Many of the offences which fall under the head of hurt will also fall under the head of assault. A stab, a blow which fractures a limb, the flinging of boiling water over a person, are assaults, and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious potion, and places it on the table of another; a person who conceals a scythe in the grass on which another is in the habit of walking; a person who digs a pit in a public path, intending that another may fall into it, may cause serious hurt, and may be justly punished for causing such hurt; but they cannot, without extreme violence to language, be said to have committed assaults. We propose to designate all pain, disease and infirmity by the name of hurt.<sup>712.</sup>

The definition of hurt appears to contemplate the causing of pain, etc., by one person to another. Pulling a woman by the hair was held to be this offence.<sup>713.</sup>

##### [s 319.1] Act neither intended nor likely to cause death is hurt even though death is caused.—

Where there is no intention to cause death nor knowledge that death is likely to be caused from the harm inflicted, and death is caused, the accused would be guilty of hurt only if the injury caused was not serious. Where the accused with a view to chastising her daughter, eight or 10 years old, for impertinence, gave her a kick on the back and two slaps on the face, the result of which was death, it was held that she was guilty of voluntarily causing hurt.<sup>714.</sup> Where in course of a sudden quarrel the accused hit his friend on his head with a stick weighing only 210 grams which unfortunately proved fatal, it was held that no knowledge of death could be ascribed to him. His conviction was accordingly changed to one under [section 323, IPC, 1860](#).<sup>715.</sup>

##### [s 319.2] Poisoned sweetmeats.—

A boy of about 16 years of age, being in love with a girl some three or four years younger, and apparently intending to administer to her something in the nature of a love philtre, induced another boy younger than himself to give the girl some sweetmeats. The girl and some of the other members of her family ate the sweetmeats and all the persons who partook of them were seized with more or less violent symptoms of

*dhatura* poisoning, though none of them died. It was held that the boy was guilty of causing hurt.<sup>716</sup>

712. Note M, p 151.

713. (1883) Weir, 3rd Edn, p 196. It is the duty of the court to pass a judgment of its own whether the hurt in question is of one category or the other. The medical evidence is only an opinion to help the court to formulate its own opinion. *Hadia Mia v State of Assam*, [1988 Cr LJ 1459](#) (Gau). See *Ashok v Prahlad*, [1988 Cr LJ 78](#) (Bom), where the report of the medical officer was ignored. The injuries caused to the victim by the constable's beating were not visible. *Sailendra Nath Hati v Aswini*, [1988 Cr LJ 343](#) (Cal), woman slapped and kicked on waist after she fell, accused guilty of causing hurt.

714. *Beshor Bewa*, (1872) 18 WR (Cr) 29.

715. *Dhyaneshwar*, [1982 Cr LJ 1870](#) (Bom).

716. *Anis Beg v State*, [\(1923\) 46 All 77](#) .



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 320] Grievous hurt.

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

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear,

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

#### COMMENT.—

Grievous hurt is hurt of a more serious kind. This section merely gives the description of grievous hurt.

The authors of the Code observe:

We have found it very difficult to draw a line between those bodily hurts which are serious and those which are slight. To draw such a line with perfect accuracy is, indeed, absolutely impossible; but it is far better that such a line should be drawn, though rudely, than that offences some of which approach in enormity to murder, while others are little more than frolics which a good-natured man would hardly resent, would be classed together.<sup>717</sup>

To make out the offence of voluntarily causing grievous hurt, there must be some specific hurt, voluntarily inflicted, and coming within any of the eight kinds enumerated in this section. Where the injury was caused on the abdomen with a sharp-edged weapon and the doctor stated that the injury was penetrating into the abdominal cavity touching the interior surface of the stomach, not involving any important structure or organ involving danger to life, it was held that the accused had caused simple hurt and not grievous hurt.<sup>718</sup> A person cannot be said to have caused grievous hurt unless the hurt caused is one of the kinds of hurt specified under [section 320, IPC, 1860](#). Therefore, it is the duty of the Court to give a finding on its own whether the hurt was simple or grievous. The Court is not concerned with the classification made by a doctor

as to whether the hurt was simple or grievous. A doctor is to describe the facts in respect of the nature of injury and the Court is to decide whether the nature of the injury described by the doctor comes within any of the clauses of [section 320, IPC, 1860](#).<sup>719</sup>.

#### **[s 320.1] Clause 1.—**

'Emasculation' means depriving a male of masculine vigour.

#### **[s 320.2] Clause 6.—Disfigurement of head or face.—**

Disfiguration means doing a man some external injury which detracts from his personal appearance but does not weaken him, as the cutting of a man's nose or ears. Where a girl's cheeks were branded with a red-hot iron which left scars of a permanent character, it was held that the disfigurement contemplated by this section was caused.<sup>720</sup>.

#### **[s 320.3] Clause 7.—Fracture, dislocation bone, tooth.—**

For the application of this clause it is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. If there is a break by cutting or splintering of the bone or there is a rupture or fissure in it, it would amount to a fracture within the meaning of this clause.<sup>721</sup> It has been held that a mere partial cut of the bone amounts to fracture and is, therefore, a grievous injury within the meaning of section 320 (Seventhly).<sup>722</sup>.

#### **[s 320.4] Clause 8.—Endangering life, severe bodily pain, etc.—**

This clause speaks of two things: (1) any hurt which endangers life, and (2) any hurt which causes the sufferer to be during the space of 20 days (a) in severe bodily pain, or (b) unable to follow his ordinary pursuits. Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus, a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly.<sup>723</sup>.

The line between culpable homicide not amounting to murder and grievous hurt is a very thin line. In the one case the injuries must be such as are likely to cause death; in the other, the injuries must be such as to endanger life.<sup>724</sup>.

An injury can be said to endanger life if it is in itself that it may put the life of the injured in danger.<sup>725</sup>.

The mere fact that a man has been in hospital for 20 days is not sufficient; it must be proved that during that time he was unable to follow his ordinary pursuits.<sup>726</sup> Where the accused caused hurt to a woman who remained in hospital only for 17 days, out of

which she was in danger for three days, it was held that he had caused grievous hurt.<sup>727</sup> A disability for 20 days constitutes grievous hurt: if it continues for a smaller period, then the offence is hurt.<sup>728</sup> The two accused persons tied their victim to an electric pole and assaulted him only to teach him a lesson for spreading scandalous information about the alleged love affair of the accused. Their victim died. There was no evidence to attribute any particular overt act to any of them, nor of the intention of any of them to cause death or that any of them was armed with a deadly weapon. It was held that their offence fell within this clause because they endangered the life of their victim and not under section 300 (murder).<sup>729</sup> Where the accused persons, after raping a girl of 11 years, thrust a stick into her private part and she died of injuries thereby caused, it was held that while the accused could be convicted under this clause, in the absence of evidence that the injury was sufficient in the ordinary course of nature to cause death, they could not be convicted under section 302.<sup>730</sup>

**[s 320.5] Acts neither intended nor likely to cause death may amount to grievous hurt even though death is caused.—**

Where there is no intention to cause death or no knowledge that death is likely to be caused from the harm inflicted, and death is caused, the accused would be guilty of grievous hurt if the injury caused was of a serious nature, but not of culpable homicide. Where the only intention of the accused who was convicted for the offence of murder was to steal the jewels of the deceased and the only violence which he committed, viz., cutting the nostrils of the deceased, was necessary in order to facilitate the theft and the death of the deceased was entirely unexpected, it was held that the accused was not guilty of murder but of causing grievous hurt under section 325.<sup>731</sup> Where the medical evidence showed that the injury on the forehead which caused death was by a *lathi* and not by an iron rod as deposed to by witnesses and the internal injury could not be correlated to the external injury caused by the accused, it was held to be a fit case where the accused should be convicted only under [section 325 IPC, 1860](#).<sup>732</sup> Where the accused acting on a sudden spur of the moment squeezed the testicles of the deceased as a result of which he had a shock resulting in cardiac arrest and sudden death, the Supreme Court came to the conclusion that it was a case falling under the eighth clause of the section, i.e., causing hurt which endangers life. It was a case of grievous hurt punishable under section 325 and not that of simple hurt punishable under section 323.<sup>733</sup> See also discussion and cases under sub-head "Act neither intended nor likely to cause death is hurt even though death is caused" under section 319, *ante*.

**[s 320.6] Spleen.—**

Where the accused, pulling the deceased out of a cot, kicked him, and struck him on the side or on the ribs with a stick, whereby the deceased, whose spleen was diseased, died, it was held that he was guilty of voluntarily causing grievous hurt.<sup>734</sup>

**[s 320.7] Blow aimed at a person falling upon another.—**

The accused struck a woman, carrying an infant in her arms, violently over her head and shoulders. One of the blows fell on the child's head causing death. It was held that the accused had committed hurt on the infant under circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt.<sup>735</sup> In the course

of an altercation between the accused and the complainant on a dark night, the former aimed a blow with his stick at the head of the latter. To ward off the blow, the complainant's wife, who had a child on her arm, intervened between them. The blow missed its aim, but fell on the head of the child causing severe injuries, from the effects of which it died. It was held that the accused was guilty of simple hurt only.<sup>736</sup> The accused had the intention of causing hurt to a person but not grievous hurt and the nature of the blow, taken with reference to the person against whom it was aimed, cannot be taken to indicate the necessary intention or knowledge as to causing grievous hurt.

### **[s 320.8] Use of weapon.—**

To cause "grievous hurt" it is not necessary that any weapon of offence must be used. Even without any weapon, an injury of the nature mentioned in section 320 could be caused. The offence under section 325 is voluntarily causing grievous hurt. It does not speak of use of any weapon of offence.<sup>737</sup>

### **[s 320.9] Supply of arrack mixed with dangerous substance.—**

The arrack supplied was mixed with methyl alcohol resulting in many deaths. The Court concluded that the person responsible for the mixing had knowledge that the consumption of such substance was likely to cause serious adverse effects. Some of the victims lost eyesight. The Court said that the maximum sentence under the section was properly awarded.<sup>738</sup>

717. Note M, p 151.

718. *Jagdish Chand v State of HP*, 1992 Cr LJ 3076 (HP).

719. *Hadis Mia v State of Assam*, 1987 Cr LJ 1459 (Gau).

720. *Anta Dadoba*, (1863) 1 BHC 101.

721. *Hori Lal*, AIR 1970 SC 1969 [LNIND 1969 SC 314] : 1970 Cr LJ 1665 .

722. *Narinder Singh v Sukhbir Singh*, 1992 Cr LJ 2616 (P&H).

723. *State of Karnataka v Parashram Kallappa Ghevade*, 2007 Cr LJ 479 (Kar); *Mathai v State of Kerala*, 2005 SCC (Cr) 695 : AIR 2005 SC 710 [LNIND 2005 SC 37] .

724. *Abdul Wahab*, (1945) 47 Bom LR 998 , FB.

725. *Ramla*, (1963) 1 Cr LJ 387 . See further; *AG Bhagwat v UT Chandigarh*, 1989 Cr LJ 214 at p 223 where holding that by causing hurt by sulphuric acid, the accused was guilty of offence punishable under section 326, causing hurt by dangerous means, cited *Queen Empress v Vasta Chela*, (1895) ILR 19 Bom 247 to the effect that staying on in hospital at public expense for 20 or more days is not the last word. Also to the same effect *Khair Din v Emperor*, AIR 1931 Lah 280 : 1931-32 Cr LJ 1254 , *Mathu Paily v State of Kerala*, 1962 (1) Cr LJ 652 Ker; and *State (Delhi Admn) v Mewa Singh*, (1969) 71 Punj LR (D) 290 , *Tuna v State of Orissa*, 1988 Cr LJ 524 Orissa, mere stay in hospital for 20 days.

726. *Vasta Chela*, (1894) 19 Bom 247. The accused in a quarrel inflicted an injury on the victim by the blade of a scissors and there was no evidence that the victim was in severe bodily pain or was unable to follow his ordinary pursuits for 20 days, clause (8) of section 320 was not attracted; *Pritam Singh v State*, 1996 Cr LJ 7 (Del), in the instant case, the injury was of simple nature and the victim remained hospitalised for 20 days. The injured person was neither hospitalised for 20 days nor was unable to follow his ordinary pursuit, section 320, 'Eighthly' was not attracted, *Babloo v State of MP*, 1995 Cr LJ 3534 (MP).
727. *Bassoo Rannah*, (1865) 2 WR (Cr) 29.
728. *Bishnooram Surma*, (1864) 1 WR (Cr) 9.
729. *Formina Sebastio Azardeo v State of Goa*, 1992 Cr LJ 107 SC : AIR 1992 SC 133 . See also *Dau Dayal v State of Rajasthan*, 1991 Cr LJ 2321 , where injuries were not dangerous to life and hospitalisation was also for 13 days and were given in response to an attack on the accused by a chain and, therefore, conviction under section 320/326 was set aside.
730. *Ghuraiyaa v State of MP*, 1990 Cr LJ 1129 .
731. *Guruvulu*, (1945) Mad 73.
732. *Mohinder Singh*, 1985 Cr LJ 1903 : AIR 1986 SC 309 . *Formina Sebastio Azardeo v State of Goa*, AIR 1992 SC 133 : 1992 Cr LJ 107 tying a person to an electric pole apparently with a view to teaching him a lesson for giving publicity to the love affair involving two of the three accused and beating him, but he died, the three accused being related to each other husband and wife and their nephew and the alleged love affair was between the wife and the nephew, no evidence of the respective role played by them. The husband was acquitted and the remaining two were convicted for causing grievous hurt.
733. *State of Karnataka v Shivlingaiah*, AIR 1988 SC 115 [LNIND 2012 DEL 2078] : 1988 Cr LJ 394 : 1988 SCC (Cr) 881. See also *Madhusudan Sahu v State of Orissa*, 1987 Cr LR (SC) 623 : 1987 (Supp) SCC 80, injury caused in a moment of aberration due to loss of self-control.
734. *O'Brien*, (1880) 2 All 766 ; *Idu Beg*, (1881) 3 All 776 .
735. *Sahae Rae v State*, (1873) 3 Cal 623 .
736. *Chatur Natha*, (1919) 21 Bom LR 1101 [LNIND 1919 BOM 89] .
737. *Sreekumar v State of Kerala*, 2009 Cr LJ 3862 (Ker).
738. *EK Chandrasenan v State of Kerala*, AIR 1995 SC 1066 [LNIND 1995 SC 88] : (1995) 2 Cr LJ 1445 . The fact that the prime mover was 72 years old was held to be not an attenuating circumstance because of the magnitude of misery caused.

## **THE INDIAN PENAL CODE**

### **CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE**

**Of the Causing of Miscarriage, of Injuries to unborn Children, of the  
Exposure of Infants, and of the Concealment of Births.**

**[s 321] Voluntarily causing hurt.**

**Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".**

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 322] Voluntarily causing grievous hurt.

Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

*Explanation.*—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

##### ILLUSTRATION

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which cause Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

##### COMMENT.—

Section 321 and the Explanation to this section make it clear that either the ingredient of intention or of knowledge must be essentially present in order to constitute the offence of hurt.<sup>739</sup> Where the accused caught hold of a man, sat on his chest, gave fist blows and hit his head on the wall but the injuries caused were not so grievous as to pointedly show that the accused had knowledge that his act was likely to cause death, his conviction under section 304, Part II was altered to one under section 321.<sup>740</sup>

<sup>739</sup>. *Devasahayam*, (1962) 1 Mad LJ 161.

<sup>740</sup>. *K Swaminatha Reddy v State of AP*, 1996 Cr LJ 1387 (AP). *Rajendran v State of TN*, 1997 Cr LJ 171 (Mad), the accused attacked his sister-in-law with iron rod in a fit of anger, statements of the injured and of witnesses and medical evidence, conviction of accused proper.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 323] Punishment for voluntarily causing hurt.

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

##### COMMENT.—

This is a general section for the punishment of voluntarily causing hurt. Sections 324, 327, 328, 329 and 330 deal with the same offence committed under certain aggravating circumstances: and sections 334, 336 and 337 provide for punishment when there are certain mitigating circumstances.

A prosecution under this section does not abate by reason of the death of the person injured.<sup>741.</sup>

##### [s 323.1] CASES.—

Allegation that accused/superintendent of police arrested the younger brother of complainant and got him mercilessly beaten by his personal guards. Injuries on different parts of body clearly rules out the theory of sustaining it while falling down on ground. Besides the testimony of injured, the prosecution case has further been corroborated by medical evidence. Record and evidence proved that conspiracy was hatched by accused to apprehend the detenu and others who were demanding his transfer. Accused liable to be convicted under [section 323 of IPC, 1860](#).<sup>742.</sup> First accused picked up a wooden piece (*Pacher*) with both the hands and hit on the head of the deceased. On receiving injury, he fell unconscious on the spot. Thereafter, the other accused came running and dealt a blow on the head of PW3. Conviction of first accused under section 304 Part II and co-accused under [section 323 IPC, 1860](#) was held proper.<sup>743.</sup> Where accused having sticks in their hands entered the house of complainant and assaulted him, the overt act attributed to accused by witnesses is specific, medical evidence fully supports the case of prosecution and accused/respondent is liable to be convicted under [section 323 of IPC, 1860](#).<sup>744.</sup> The accused, a shopkeeper, in a sudden quarrel hit his wife on the head with an iron weight of 200 grams which resulted in her death. The medical evidence showed that the injury was of a simple nature and there was no evidence that the deceased died of shock caused by the injury. He was held liable only under [section 323 IPC, 1860](#) and not under [section 304 IPC, 1860](#).<sup>745.</sup> So also where the wife attacked the husband with a brick causing multiple injuries resulting in his death but according to medical evidence the injuries were of a simple nature and were not sufficient in ordinary course of nature to cause death, it was held that the accused wife could not be convicted under [section](#)



302 IPC, 1860. Her conviction was accordingly changed to one under section 323 IPC, 1860.<sup>746</sup>

The accused pushed the victim. She fell down and sustained injuries of simple nature. This act of the accused was held to fall under section 323.<sup>747</sup> Where the accused gave a push on the chest of the deceased and the victim fell on a stone resulting in death, conviction was recorded under section 323.<sup>748</sup> The accused husband returned home at midnight in a drunken state. He beat his wife and threw a piece of stone on her head and she died. The *post-mortem* report revealed three simple injuries on her head and exact cause of death could not be ascertained. Relations between the accused and the deceased were found to be cordial. Intention to cause the victim's death was not proved. Conviction of the accused under section 300 was set aside and he was convicted under section 323.<sup>749</sup> Several persons attacked and caused the death of their victim. All, including the present appellant, were holding the deceased and one of them *K* dealt fatal blows. *K* was convicted of murder under section 302. All his fellows were convicted under this section read with section 149 except the present appellant who was convicted under section 302 read with section 34. The Supreme Court held that the appellant should also have been convicted under this section read with section 149.<sup>750</sup> *Thomas v State of Kerala*,<sup>751</sup> the fist blow caused by the accused resulted in subdural haematoma which led to the death of the victim, but it could not be said that the accused could be attributed with the knowledge that by such act he was likely to cause death, nor could it be said that the accused intended to cause that particular injury which he actually caused, it was held that accused could be convicted only under section 323 and not section 300. In *Mohan Singh v State of Rajasthan*,<sup>752</sup> the accused attacked his victim and caused voluntary hurt to him by inflicting fist blows and causing nose injury. His guilt was established by the evidence of the witnesses. The plea of *alibi* raised by the accused was not tenable. His conviction under section 323 was upheld.

Where the offence was punishable under this section and also under sections 304, Part II/34, and was covered by the Uttar Pradesh Children Act, 1951, the Court did not consider it proper to subject children to imprisonment but, looking at the brutal nature of the offence, imposed a sentence of fine.<sup>753</sup>

Where the accused brothers chanced to converge, having not met before, at their sister's place avowedly to teach her a lesson for having instituted proceedings against them and one of them who, not known to others was carrying a knife, inflicted a knife blow which, landing on a vital part, caused death, they were convicted under this section and the knife wielding brother under section 304 Part-II.<sup>754</sup> In a case of attempt to murder, one of the accused gave only one blow with a 'lathi' on the shoulder of the injured without sharing the common intention of the other accused. Injury was simple and caused only swelling. He was convicted for his individual act under section 323 and was released on probation.<sup>755</sup>

### [s 323.2] Conviction altered to 323.—

Where the Doctor had clearly established that the injuries sustained by the deceased were all simple in nature inflicted upon non-vital parts of the body. The injuries in question were sufficient in the ordinary course of nature to cause death. The High Court justified in allowing the appeal of the respondents in part and acquitting them of the charge of murder while maintaining their conviction for the remaining offences with which they were charged.<sup>756</sup>

Where in a quarrel the accused kicked the deceased on his testicles but as no medical treatment was given for two days, the injured died due to *Toxaemia* caused by gangrene. The injury to the testicles was not the direct cause of his death. The Supreme Court set aside his conviction under section 304 Part II and convicted him under section 323 instead.<sup>757</sup> In a dispute over land the defence of accused regarding exercising of private defence was not accepted. Sentence of accused under section 304, Part II was maintained. Other accused were convicted under [section 323 IPC, 1860](#).<sup>758</sup>

The accused, a police constable, beat up a frail old man of 60 years weighing only 38 Kg. His ribs were broken and that resulted in his death. The Court said that the accused must have intended the consequences of his act. His conviction was altered from under section 323 to section 304, Part II. The incident had become 15 years old. He had already served some portion of his punishment. He was allowed to surrender to serve the remaining portion.<sup>759</sup>

### **[s 323.3] Acquittal.—**

Allegation that accused/respondents gave beatings to complainant and one of them caused incised wound on her right forearm with sickle. Prosecution did not explain as to how the respondents had sustained injuries in said incident. Acquittal of respondents was held proper.<sup>760</sup> Where there is no corroborative evidence that injuries found on person of informant was caused none other than by the appellant, the offence under [section 323 of IPC, 1860](#) could not be proved beyond doubt. Conviction recorded against appellant was held improper and liable to be set aside.<sup>761</sup>

### **[s 323.4] Punishment.—**

Where there was no pre-planned intention to cause death and the incident was the result of a heated moment caused by exchange of abuses, the sentence of six months RI was modified to the period already undergone.<sup>762</sup> In an incident of hurt and kidnapping, both the accused persons were married and had children. Their previous conduct was not bad. The victim girl was not physically harmed and become married subsequently. Sentence of six years RI under section 366 for kidnapping was reduced to two years but the sentence of six months under section 323 was not reduced.<sup>763</sup>

### **[s 323.5] Probation.—**

In view of the fact that incident occurred on spur of moment and was traverse in nature and accused did not have any previous conviction, accused was allowed to release on probation.<sup>764</sup>

741. *Muhammad Ibrahim v Shaik Davood*, (1920) 44 Mad 417.
742. *Mandira Nandi v Dilip Kumar Baruah*, 2012 Cr LJ 2567 (Gau); *Bandela Daveedu v State of AP*, 2011 Cr LJ 4257 (AP)—Where accused caused simple injuries to victim and not grievous injuries. Accused are guilty for offence under section 323 read with 34 IPC, 1860 and 324 read with 34 IPC, 1860 instead of section 325 read with 34 IPC, 1860 and section 326 read with 34 IPC, 1860.
743. *Angrej Singh @ Kaka v State of HP*, 2012 Cr LJ 3335 (HP). *Ayoub Dedar v State of J&K*, 2010 Cr LJ 2497 (JK). Allegation that appellant caught hold of victim, 10/12 years old girl in jungle, committed an indecent assault on her and also made an attempt to commit rape on her. Conviction of appellant under section 376/511 and 323 of IPC, 1860 was held proper.
744. *State of Maharashtra v Tatyaba Bajirao Jadhav*, 2011 Cr LJ 2717 (Bom).
745. *PP v NS Murthy*, 1973 Cr LJ 1238 (AP). *Sri Prakash v State*, 1990 Cr LJ 486 : 1989 All LJ 117, beating child with no injuries, death followed because of enlarged spleen, conviction under sections 323 and 326 and not section 304. The accused caused two injuries on the victim, one by sharp-edged weapon and the other by blunt weapon but only the blunt weapon was recovered from the accused. It was held that the injury caused by the sharp-edged weapon could not be assigned to the accused. His conviction under section 326 was converted to section 323; *Jam v State of Rajasthan*, 1993 Cr LJ 2572 (Raj).
746. *Sridevi*, 1974 Cr LJ 126 (All). *Darshan Singh v State of Punjab*, AIR 1991 SC 66 : 1990 Cr LJ 2684 ; prosecution case not proved. *Purandar Bhukta v State of Orissa*, 1991 Cr LJ 1388 , allegation that the accused slapped the informant on his face causing bleeding injury but the fact not mentioned in FIR, benefit of doubt. *Munshilal v State of UP*, 1990 Cr LJ 984 , no explanation of multiple injuries on accused persons, fatal to prosecution.
747. *Sellamuthu v State of TN*, (1995) 2 Cr LJ 2143 (Mad). Where the wife of the accused gave only a single blow to the head of the victim and thereafter remained a silent witness to things happening, she was convicted only under this section and not for causing death under the doctrine of common intention under section 34, *Darshan Singh v State of Rajasthan*, (1995) 2 Cr LJ 2138 (Raj). The accused inflicted single lathi blow on the head of the deceased, injury simple, but death due to haemorrhage, conviction under section 323, *Dunga Ram v State of Rajasthan*, 1996 Cr LJ 3672 (Raj).
748. *Pichapillai v State of TN*, 1996 Cr LJ 3634 (Mad).
749. *Shyamji v State of Rajasthan*, 1993 Cr LJ 2458 (Raj).
750. *Shri Jawahar v State of UP*, 1991 Cr LJ 376 : AIR 1991 SC 273 . *Pandu v State of MP*, (1995) 1 Cr LJ 226 (MP), sentence for grievous hurt reduced to the period already undergone where the accused belonged to backward class and had no antecedent record of crime.
751. *Thomas v State of Kerala*, 1992 Cr LJ 581 (Ker).
752. *Mohan Singh v State of Rajasthan*, 1994 Cr LJ 2229 (Raj).
753. *State of UP v Akhtar Khan*, 1991 Cr LJ 1779 (All). Another case of punishment for three months already undergone and a fine of Rs. 1000; *Raghuvir Singh v State of MP*, 1991 Cr LJ 48 . *Prafulla Bora v State of Assam*, 1988 Cr LJ 428 (Gau), the accused, a boy of 18–19 years old at the time of occurrence, 11 years passed since then, imprisonment for two years considered sufficient but released on probation.
754. *Om Prakash v State*, 1990 Cr LJ 2373 (Del).
755. *Kuldeep Singh v State of Punjab*, 1994 Cr LJ 2201 : 1994 AIR SCW 1451.
756. *State of Rajasthan v Mohan Lal*, (2012) 4 SCC 564 [LNIND 2012 SC 199] : AIR 2012 SC 1595 [LNIND 2012 SC 199] ; *Puran v State of MP*, 2012 Cr LJ 3704 (MP); *Haripada Rajak v State of Jharkhand*, 2011 Cr LJ 3636 (Jha); *Gharbharan v State of Chhattisgarh*, 2010 Cr LJ 471 (Chh).
757. *Pirithi v State of Haryana*, AIR 1994 SC 1582 : 1994 Cr LJ 2187 : 1994 Supp (1) SCC 498 .

758. *Nasiruddin Khan v State of Bihar*, AIR 2008 SC 3198 [LNIND 2008 SC 1528] : (2008) 12 SCC 129 [LNIND 2008 SC 1528] ; *Abani K Debnath v State of Tripura*, AIR 2006 SC 518 : (2005) 13 SCC 422 .
759. *State of Kerala v Balakrishnan*, 1999 Cr LJ 5038 (Ker). *Bhoora Ram v State of Rajasthan*, 1998 Cr LJ 3440 (Raj), free fight, two of them had not caused any fatal injury, who caused the fatal injury, conviction of all under section 323, it being a free fight the right of private defence was not available. *Raghunath Sahu v State of Orissa*, 1998 Cr LJ 2760 (Ori), free fight, no recoveries, conviction improper. *Upendra Singh Solanki v State of Rajasthan*, 1997 Cr LJ 1850 (Raj), attack on public servant but not for the purpose of preventing him from doing his official duty, conviction under sections 323 and 324. *Habil Mia v State of Assam*, 1997 Cr LJ 1866 (Gau), conviction for hurt and kidnapping.
760. *State of HP v Sarla Devi*, 2011 Cr LJ 2505 (HP).
761. *Gunadhar Majhi v State of Jharkhand*, 2011 Cr LJ 2536 (Jhar).
762. *Rati Ram v State of UP*, 1997 Cr LJ 1525 (All).
763. *Habil Mia v State of Assam*, 1997 Cr LJ 1866 (Gau).
764. *Chandrakant Kashinath Somware v State of Maharashtra*, 2011 Cr LJ 4916 (Bom); *Sitaram Paswan v State of Bihar*, AIR 2005 SC 3534 [LNIND 2005 SC 703] : (2005) 13 SCC 110 [LNIND 2005 SC 703] .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 324] Voluntarily causing hurt by dangerous weapons or means.

Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

##### COMMENT.—

This section makes simple hurt more grave, and liable to more severe punishment where it has the differentia of one of the modes of infliction described in the section.<sup>765.</sup>

##### [s 324.1] CASES.—

Where the accused gave a blow on the left side of the head of the victim with a *Farsha*, a sharp-cutting weapon, causing a simple scalp-deep injury and there was the possibility that the sharp edge of the weapon was not used, it was held that his conviction should be changed from [section 307](#) to one under [section 324 IPC, 1860](#) since *Farsha* is a weapon which if used as a weapon of offence is likely to cause death.<sup>766.</sup> Where a head injury was caused with a deadly weapon and the injured was discharged from the hospital after 15 days, but six months thereafter he had to be hospitalised again for brain operation and he did not recover, the death being not solely due to the injury, the accused persons convicted under this section and their conviction under section 304 was set aside.<sup>767.</sup> Tooth is an instrument of cutting and as such biting off the tip of the nose would be an offence under this section or [section 326 IPC, 1860](#) depending on the nature of the injury, simple or grievous.<sup>768.</sup> Where there is no serious injury on any vital part of the body of the victim, the offender should be convicted under section 324 and not under [section 326 IPC, 1860](#).<sup>769.</sup> Thus, where the accused inflicted an injury on the right shoulder of the deceased with a broken soda water bottle with sharp edges without knowing that the deceased was suffering from haemophilia (tendency of excessive bleeding), it was held that the accused was liable only under section 324 and not under [section 302 IPC, 1860](#).<sup>770.</sup> Where simple injuries not likely to cause death were inflicted with a sword, the Supreme Court transferred the conviction from under section 307 to one under this section and allowed the offences to be compounded on payment to the victim a sum of Rs. 3,000.<sup>771.</sup> Where in a case of a dowry death, the evidence showed that the accused, mother-in-law caused injuries on

the person of the daughter-in-law. She committed suicide. The accused was punished under section 324 but on consideration of circumstances and facts that she was 80, only a sentence of fine of Rs. 3,000 was imposed. Offence under section 306 was not made out.<sup>772</sup> Where the accused, a boy of 18 years of age at the time of incident having no criminal history, in a sudden scuffle gave a blow on the chest of the deceased with an ordinary knife resulting in his death and thereafter, mutely allowed to take the knife from his hand and went to the hospital along with the deceased, it was held that he had no intention to cause death or grievous hurt to the deceased, and was guilty under section 324 and not under section 304, Part II.<sup>773</sup> Where the accused assaulted his victim by 'Katti' blow causing grievous hurt and the co-accused assaulted the victim only by *lathis* and hands causing minor injuries and no pre-concert between the accused and the co-accused regarding the assault by the 'Katti' was established, it was held that the co-accused could not be vicariously held liable for the acts of the accused and be convicted under section 324.<sup>774</sup> Where a blow was inflicted with the blunt side of the axe on the thigh of the victim, the Supreme Court reduced the sentence to four months' RI and increased the fine to Rs. 3,000.<sup>775</sup> Where the accused deliberately attacked and killed a person with a deadly weapon and was held to be rightly convicted for murder under section 300, he was convicted under this section and sentenced to pay a fine for causing hurt on the hand of the intervening wife of the deceased with a rice pounder.<sup>776</sup>

In a free fight between two groups resulting in death of one person and injuries to several others, fatal injury could not be attributed to any one of the accused who also received a number of injuries. It was held that the accused were properly convicted under sections 324 and 325.<sup>777</sup> Where one of the accused caused two gunshot injuries to a man which proved fatal, the other accused caused him only an incised injury. The accused causing fatal injuries was sentenced under section 302 and the other accused only under section 324.<sup>778</sup> In an altercation the accused dealt a blow with spade lying on the spot on the head of a 70-year-old man who became unconscious, was hospitalised and died after three weeks. The blow caused only linear fracture of left frontal bone. It was found that essential element of voluntarily causing grievous hurt was wanting. It was held that his offence fell under section 324 and not under section 326.<sup>779</sup> Allegation that accused resorted to repeated firings at two persons on two occasions at two different times and place. On first occasion accused fired in air and pellets after being ricocheted from ceiling caused simple injuries to three persons. On second occasion also appellant had not caused any injury to anybody. In view of dearth of convincing evidence on record, it cannot be concluded with any degree of certainty that appellant had an intention to commit murder of anybody. Only conclusion could be drawn is that appellant wanted to cause hurt for dispersing crowd. Appellant can only be convicted under [section 324 of IPC, 1860](#) and not under [section 307 IPC, 1860](#).<sup>780</sup> Medical evidence that injuries, however, serious in nature but not grievous in nature. Skin grafting has been done and victim is fit for discharge – Accused is guilty of offence under [section 324 IPC, 1860](#) and not under [section 307 IPC, 1860](#).<sup>781</sup> The accused struck his wife once only on the neck causing simple injury. She fell down and was further injured and died. The instrument (wooden reaper) was dangerous. The conviction was altered from under section 304, Part II to section 324.<sup>782</sup>

### **[s 324.2] Sections 324/149.—**

Prosecution failed to prove that appellants had made unlawful assembly and caused incised wound to complainant in furtherance of common object. Accused who

assaulted the complainant liable to be convicted under [section 324 IPC, 1860](#) and other accused persons liable to be convicted under [section 323 of IPC, 1860](#).<sup>783.</sup>

### **[s 324.3] Acquittal.—**

The essential ingredients to make out an offence under [section 324 IPC, 1860](#) should be that there must be voluntarily causing hurt and also the required intention. In other words, to constitute an offence of voluntarily causing hurt, there must be complete correspondence between the result and the intention or the knowledge of the person who causes the said hurt.<sup>784.</sup> Where the injured witness himself attributed the injury on him to the deceased, instead of the accused, the conviction of the accused on the charge of section 324 cannot be sustained under law.<sup>785.</sup> Where no explanation by prosecution as to how the injuries were caused to deceased and the role attributed to appellants by prosecution is fully covered by their right of private defence, conviction and sentence is liable to be set aside.<sup>786.</sup> In a case, the allegation was that the accused petitioner inflicted simple and grievous injuries with sharp-edged weapon on person of victim. The Injury Report was not proved and the doctor who signed it was not called for examination. The Petitioner was held entitled to acquittal.<sup>787.</sup>

### **[s 324.4] Punishment.—**

Where injuries were caused on account of quarrel over land and the incident was already 17 years old, the accused was sentenced to two years RI and fine.<sup>788.</sup> Incident had occurred more than 35 years ago. There was no complaint against appellant during pendency of appeal of indulging into any criminal activities. Period of imprisonment already undergone by appellant with fine of Rs. 10,000 and in default thereof to undergo six months simple imprisonment would meet ends of justice.<sup>789.</sup>

### **[s 324.5] Non-Compoundable.—**

Before the Code of the Criminal Procedure (Amendment Act) 2005 came into force, offence under [section 324 of IPC, 1860](#) was compoundable with the permission of the Court as prescribed in the table, under sub-section (2) of [section 320 of Cr PC, 1973](#). The [Code of Criminal Procedure](#) (Amendment Act) 2005 (Act 25 of 2005) has taken out [section 324 of IPC, 1860](#) from the sphere of compounding and thereby made it non-compoundable. Since the offence committed under [section 324 of IPC, 1860](#) before Amendment Act came into force, was compoundable with the permission of the Court pursuant to the provisions prescribed under sub-section (2) of [section 320 of Cr PC, 1973](#)—as was in force before the [Code of Criminal Procedure](#) Amendment Act 2005 came into effect.<sup>790.</sup> After coming into force of the [Code of Criminal Procedure](#) (Amendment) Act 2005 the offence under [section 324, IPC](#) is made non-compoundable. However, in this case the offence under [section 324, IPC](#) was committed on 23 July 1986 on which date it was compoundable with the permission of the Court. As the [Code of Criminal Procedure](#) (Amendment Act) 2005 is not applicable to the facts of the case, the offence under [section 324, IPC, 1860](#) would be compoundable with the permission of the Court.<sup>791.</sup>

### **[s 324.6] Probation.—**

Accused is convicted under [section 324 IPC, 1860](#). Taking into consideration the 20 years age of one of the appellants on date of incident, benefit of [Probation of Offenders Act, 1958](#), is extended to him.<sup>792</sup>.

**765.** See *Madhab Digai v State of Orissa*, (1995) 1 Cr LJ 1206 (Ori) conviction for injuries caused by knife.

**766.** *Jai Narain*, 1972 Cr LJ 469 : AIR 1972 SC 1764 . *Anwarul Haq v State of UP*, 2005 Cr LJ 2602 : AIR 2005 SC 2382 [LNIND 2005 SC 425] : (2005) 10 SCC 581 [LNIND 2005 SC 425] , assault and injury with knife, though not recovered, conviction on the basis of evidence of eyewitnesses.

**767.** *State of Orissa v Rabu Naik*, 1990 Cr LJ 2777 (Ori). See also *State of Gujarat v Bharwad Jakshibhai Naeq bhai*, 1990 Cr LJ 2531 (Guj), where the common object of an unlawful assembly was only to belabour the members of a particular community, and they were striking with iron-rimmed sticks, one blow proving fatal, conviction under this section and section 326 and not for murder.

**768.** *Jamil*, 1974 Cr LJ 867 (All); See also *Jagat Singh*, 1984 Cr LJ 1551 (Del); *Chaurasi Manjhi*, AIR 1970 Pat 322 .

**769.** *Kailash Prasad*, 1980 Cr LJ 190 : AIR 1980 SC 106 .

**770.** *Anbumani v State*, 1981 Cr LJ (NOC) 115 (Mad).

**771.** *Narendra Kumar v State of Rajasthan*, (1987) 24 All CC 516 : 1988 SCC (Cr) 884 : 1988 Supp SCC 536 ; *Madan Lal v State of HP*, 1990 Cr LJ 310 , simple injuries. *Ramesh v State of UP*, AIR 1992 SC 664 : 1992 Cr LJ 669 , a single injury at back of neck, conviction shifted to under this section from under section 307.

**772.** *State of HP v Nikku Ram*, 1995 Cr LJ 4184 : AIR 1996 SC 67 [LNIND 1995 SC 851] .

**773.** *Shrirang Kisan Kurade v State of Maharashtra*, 1992 Cr LJ 1362 (Bom).

**774.** *Mohan Tripathy v State of Orissa*, 1994 Cr LJ 1188 (Ori). *Chand Mohammed v State of Bihar*, 2013 Cr LJ 542 (Pat); *Sheikh Ahmad v State*, 2013 Cr LJ 267 (Pat); *Deepak v State*, 2013 Cr LJ 2801 (Utt); *Madan Lal v State*, 2013 Cr LJ 2885 (Utt); *Chagalamari Subbaiah v State of AP*, 2010 Cr LJ 655 (AP)

**775.** *Bishna v State of Haryana*, 1988 SCC (Cr) 48 : 1987 Supp SCC 184 . Another case of simultaneous assault by several persons which was held to fall under this section is *Vithal Bhimashah Koli v State of Maharashtra*, AIR 1983 SC 179 [LNIND 1982 BOM 340] : 1983 Cr LJ 340 : (1983) 1 SCC 431 . See also *Sheopoojan Chamar v State of Bihar*, AIR 1991 SC 1462 , in addition to the principal offender, whose sentence was not modified, that of his two associates who caused minor injuries, reduced to the period already undergone.

**776.** *Re Thunicharam*, 1991 Cr LJ 1318 (Mad). *Pushap Raj v State of Rajasthan*, (1995) 2 Cr LJ 1776 (Raj) conviction under the section of those members who caused only simple injuries as distinguished from those who caused death. *Bhola Singh v State of Punjab*, (1995) 2 Cr LJ 1830 (P&H) causing injuries to eyewitness, conviction under the section.

**777.** *Amrik Singh v State of Punjab*, 1993 AIR SCW 2482 : 1993 Cr LJ 2857 : 1994 Supp (1) SCC 320 . the court reduced the sentence to the period already undergone. *Shyama Pradhan v State of Orissa*, 1996 Cr LJ 2936 (Ori), deliberate attack on the victim, probation not allowed, sentence reduced to the period already undergone.



778. *State of UP v Jamshed*, 1994 Supp (1) SCC 610 : [1994 Cr LJ 635](#) ; *Para Seenaiah v State of AP*, (2012) 6 SCC 800 [LNIND 2012 SC 314] : [AIR 2012 SC 2875](#) [LNIND 2012 SC 314] .

779. *Golak Chandra Nayak v State of Orissa*, [1993 Cr LJ 274](#) .

780. *Kamla v State of UP*, [2012 Cr LJ 2659](#) (All); *Krishna Babu Bhoir v State of Maharashtra*, [2011 Cr LJ 1813](#) (Bom).

781. *Smt. Shakunthamma v State*, [2012 Cr LJ 801](#) (Kar); *Ram Nath Deepak v State NCT of Delhi*, [2011 Cr LJ 14059](#) (Del). Plea on the part of petitioners that Sessions Court erred in framing charge against petitioners under [section 308 IPC, 1860](#) instead of [section 324 IPC](#) – Liable to be rejected.

782. *Munusamy v State of TN*, [1996 Cr LJ 3161](#) (Mad). *Ram Singh v State of Haryana*, [AIR 1998 SC 1759](#) [LNIND 1998 SC 414] : [1998 Cr LJ 2279](#) (SC), assault on victims causing grievous hurt. There was no explanation for the injuries suffered by the accused persons, who gave an explanation which seemed to be more probable, acquittal. *Mobin v State of UP*, [2000 Cr LJ 2098](#) (All), in the absence of evidence regarding internal damage underneath the injury, the injury could not be said to be grievous. Conviction under section 307 altered to one under section 324. *Ram Kumar Goutam v State of MP*, [2001 Cr LJ 1604](#) (MP), medical evidence showed that an incised wound over abdomen and two contusions on legs, wounds simple and not grievous, conviction under section 324. *Nabin Chandra Saikia v State of Assam*, [2000 Cr LJ 3824](#) (Gau), conviction for acid attack. *Ramharakh v State of UP*, [1999 Cr LJ 3001](#) (All), injuries caused were of simple nature, death because of enlarged spleen which became ruptured, which fact not known to assailants, offence under section 324 made out. *P Johnson v State of Kerala*, [1998 Cr LJ 3651](#) (Ker) injured persons admitted to hospital soon after the incident, but thereafter laxity in all respects. No case against accused persons made out. *Peedikandi Abdulla v State of Kerala*, [1998 Cr LJ 2758](#) (Ker) no offence of hurt under section 323 or of outraging modesty under section 354 made out. *Shankar Lal v State of Haryana*, [1998 Cr LJ 4595](#) : [AIR 1998 SC 3271](#) [LNIND 1998 SC 632] , the victim was assaulted with knife. As soon as he recovered consciousness, he named the accused person as the assailant. Evidence of the victim alone was held to be sufficient for conviction. *Sheo Dularey v State of UP*, [1997 Cr LJ 269](#) (All), injury with axe but simple conviction under section 324. *Dabhugotto Ithaiah v State of AP*, [1997 Cr LJ 3651](#) (AP), hurt caused with dangerous weapons in a group rivalry between political parties. Oral and documentary evidence. Conviction proper. *Kothandapani v State of TN*, [2003 Cr LJ 151](#) (Mad), the accused persons attacked with casuarina sticks and caused simple injuries on his legs, imposition of fine of Rs. 500 was considered to be enough. *Muni Lal Paswan v State of Bihar*, [2003 Cr LJ 1625](#) (Pat), allegation that the accused person assembled together and attempted to kill, but the evidence showed that only the main accused dealt blows with spade on the head of the injured victim. The conviction of the main accused was altered from section 307 to section 324 and his sentence reduced to the period already undergone. Others discharged. *Karunamoy Sarmah v State of Assam*, [2003 Cr LJ 1968](#) (Gau), simple injuries caused, scuffling over stengun. Conviction under section 324 and not section 307. *State of Karnataka v Jagadisha*, [2003 Cr LJ 2141](#) (Kant) different versions of the place of the incident and that of recovery of weapons. It was not possible to ascertain whether the incident took place inside or outside the house, this should not discredit the prosecution case, nor some irregularities and omissions in the investigation. *Mukati Pd Rai v State of Bihar*, 2005 SCC Cr LJ 681 : [AIR 2005 SC 1271](#) : [\(2004\) 13 SCC 144](#) , accused wielding *lathis* trespassed into the house of the victim, and instigated others to beat them up. They received *lathi* injuries. Accused convicted under section 324/114, (offence committed in the presence of abettor).

783. *Brijesh Roopsingh Baghel v State of MP*, [2011 Cr LJ 2273](#) (MP).

784. *Pitchavadhmtiilu v State of AP*, [2011 Cr LJ 469](#) (AP).

785. *Kumar v State represented by Inspector of Police*, AIR 2018 SC 2386 [LNIND 2018 SC 262] .
786. *Haren Das v State of Assam*, 2012 Cr LJ 1467 (Gau).
787. *Suraj Mal v State*, 2010 Cr LJ 1583 (Raj).
788. *Nathu v State of UP*, 1998 Cr LJ 2382 (All).
789. *Kamla v State of UP*, 2012 Cr LJ 2659 (All); *Amruta Shankarrao Deshmukh v State of Maharashtra*, 2011 Cr LJ 1147 (Bom).
790. *Prabhat Das v State of Tripura*, 2013 Cr LJ 1712 (Gau); *Naresh Kumar v State of Haryana*, (2012) 9 SCC 330 [LNIND 2012 SC 478] : 2012 (3) SCC (Cr) 1137; *Bineesh v State of Kerala*, 2012 Cr LJ 4128 .
791. *Hirabhai Jhaverbhai v the State of Gujarat*, 2010 (6) SCC 688 [LNIND 2010 SC 335] : AIR 2010 SC 2321 [LNIND 2010 SC 335] ; *Code of Criminal Procedure* (Amendment) Act, 2008 [came into force on 31 December 2009] replaced the list of compoundable offences under section 320 of Cr PC, 1973 which finally resolved the confusion whether section 324 etc., are compoundable or not. See the **conflicting** views of the Supreme Court in *Manoj v State of MP*, (AIR 2009 SC 22 [LNIND 2008 SC 1920] ) and in *Md Abdul Sufan Laskar v State of Assam*, 2008 (9) SCC 333 .
792. *Chandrabhan v State of MP*, 2011 Cr LJ 4667 (MP). *Madan Lal v State*, 2013 Cr LJ 2885 (Utt).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 325] Punishment for voluntarily causing grievous hurt.

**Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

#### COMMENT.—

This section prescribes the punishment for voluntarily causing grievous hurt except in cases provided for by section 335. The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in the case section 325 or section 326 would be applicable. Considering the size of the stone which was used, as revealed by material on record, it cannot be said that a dangerous weapon was used. Therefore, the conviction was altered to [section 325 IPC, 1860](#).<sup>793</sup> Where a player in a friendly cricket match blew a stump against another player which hit his head and caused death, it was held that the intention to cause death or likelihood of it being not proved, an offence under section 325 was made out, injury having been caused by a blunt weapon.<sup>794</sup> Where medical evidence showed that attack on the forehead of the deceased was by a *lathi* and the internal injury could not be correlated to the external injury caused by the accused, it was held that the accused was liable under [section 325 IPC, 1860](#) and not under section 304, Part II, [IPC, 1860](#).<sup>795</sup> Where two injuries were caused in a quarrel by the two accused persons each of whom inflicted one stick blow one of which proved fatal but it could not be known who had inflicted that blow and since intention to cause death was not established, conviction was altered from under section 302 to section 325 read with section 34.<sup>796</sup> In a fight between two groups, one person received one stick blow on the head and died a week after treatment and operation. It could not be said that the accused had knowledge that blow would cause death of that person. Conviction of the accused under section 304 Part II/34 was altered to one under sections 325 and 34.<sup>797</sup> In an altercation between father and the son, the son gave a blow on the head of his father with a heavy stick and ran away. The victim died after one week in the hospital. It was held that the attack was not pre-meditated and the offence fell under section 325 and not under section 302.<sup>798</sup> In a case the victim had sustained a grievous injury on a vital portion of the body and the injury was life threatening, imposition of sentence of six days only, which was the period already undergone by the accused in confinement was held too lenient. However, as the parties had forgotten their differences and were living peacefully for 25 years, the Court taking into consideration the aggravating as well as mitigating factors under the facts of this case, imposed a sentence of six months' rigorous imprisonment and a fine of Rs. 25,000/- against the accused.<sup>799</sup> In a clash over property dispute the accused party caused grievous injuries to two persons and simple injuries to some

others. The occurrence took place 17 years before and some of the accused were more than 76 years of age and one of them had died. Their conviction under section 325 was affirmed but the sentence was reduced to the period already undergone as the Court did not think it fit to send them back to jail. However, a fine of Rs. 200 was imposed on each one of them.<sup>800</sup> In this connection, see also discussion and cases under sub-heads "Death caused without requisite 'intention or knowledge' not culpable homicide" and "single blow or *lathi* blow" under section 299, *ante*.<sup>801</sup>

### **[s 325.1] Sentence.—**

Once the accused is held guilty of commission of offence punishable under [section 325 IPC, 1860](#) then imposition of jail sentence and fine on the accused is mandatory. So far as jail sentence is concerned, it may extend up to 7 years as per court's discretion whereas so far as fine amount is concerned, its quantum would also depend upon the Court's discretion.<sup>802</sup> Where the victim sustained a grievous injury on a vital portion of the body, i.e., the head, which was fractured and the injury was life threatening, imposition of the sentence of six days only which was the period already undergone by the accused in confinement was held too lenient. The Supreme Court considering the aggravating as well as mitigating factors under the facts that the parties have forgotten their differences and are living peacefully imposed a sentence of 6 months' RI and a fine of Rs. 25,000/- against the accused.<sup>803</sup>

### **[s 325.2] Compounding of offence under sections 323 and 325.—**

During the pendency of proceedings under these sections, the parties effected a compromise at the instance of their elders. Parties belonged to the same family and there was no previous enmity. Permission to compound the offence under section 325 was granted by the High Court.<sup>804</sup>

<sup>793</sup>. *Mathai v State of Kerala*, AIR 2005 SC 710 [LNIND 2005 SC 37] : (2005) 3 SCC 260 [LNIND 2005 SC 37] .

<sup>794</sup>. *Shailesh v State of Maharashtra*, 1995 Cr LJ 914 (Bom).

<sup>795</sup>. *Mohinder Singh*, 1985 Cr LJ 1903 (SC) : AIR 1986 SC 309 . See *Maiku v State of UP*, 1989 Cr LJ 860 : AIR 1989 SC 67 : 1989 Supp (1) SCC 25 , where a police party could not be convicted under this section when a lathi blow was given to an escaping witness in the course of an investigation and he died, it being not explained which of the party had played what role. *Bibhisan Barik v State of Orissa*, (1995) 1 Cr LJ 390 (Ori) where while sentencing for grievous hurt caused six years ago, the social status of the parties, genesis of the dispute were taken into account for holding that custody already undergone was sufficient punishment. *Wachittar Singh v State of Punjab*, (1995) 2 Cr LJ 1614 (P&H), grievous injuries caused by attacking the party by reason of a land dispute, those accused who caused injuries on legs with a blunt weapon were released on bail under the [Probation of Offenders Act, 1958](#). The benefit of probation was extended to other accused also. *State of Karnataka v Sririyappa*, (1995) 2 Cr LJ 2304 (Kant), here

the offence was punishable with life imprisonment, benefit of probation under [section 4 of the Probation of Offenders Act, 1958](#) was held to be improper.

**796.** *Siddapuram Siva Reddy v State of AP*, (1995) 1 Cr LJ 701 (AP).

**797.** *Halke v State of MP*, AIR 1994 SC 951 : 1994 Cr LJ 1220 . *Takhaji Hiraji v Thakore Kubersing Chammansing*, AIR 2001 SC 2328 [LNIND 2001 SC 1150] : 2001 Cr LJ 2602 , in a fight between two village communities, the accused gave blows to the victim with a stick causing fracture in his hand, conviction under the section proper. Rs. 500 was recovered as a fine for compensating the victim and a bond for keeping peace was taken from the accused with sureties. *Nathu v State of UP*, 1999 Cr LJ 2382 (All), land dispute, *lathi* blows, unintended death of one victim, accused persons held guilty of causing grievous hurt with common intention. Conviction of all under section 34/326. *Ajay Sharma v State of Rajasthan*, 1998 Cr LJ 4590 : AIR 1998 SC 2798 [LNIND 1998 SC 879] , no finding of common intention to kill, conviction recorded under section 324. *ABC Imports & Exports v Asst. Director, Enforcement*, a mob of 200 came to the field to prevent transplantation by the prosecution party, one caused death at the spur of moment, others inflicted minor injuries. One was held liable to be convicted for murder, other only for hurt under section 325/34. *State of Karnataka v Dwaraka Bhat*, 1997 Cr LJ 226 : AIR 1996 SCW 4132 , accused pushed victim with great force, he fell down and sustained head injury and became unconscious. Conviction. *State of Karnataka v Basavegowda*, 1997 Cr LJ 4386 (Kant), the accused husband took his wife to forest, assaulted her with a stone and extorted her ornaments. One serious injury and other simple injuries were caused. She was the sole witness but found reliable. The fact that the divorced had remarried was not in itself an expression of hostility towards the accused. Conviction was under section 325 and not section 307. The accused was a young rustic villager, uneducated but no criminal background, nine years had lapsed since the incident. Sentence of two years for grievous hurt and two years for extortion were reduced to the period already undergone.

**798.** *Bellana Kannam Naidu v State of AP*, 1994 Cr LJ 1146 (AP).

**799.** *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .

**800.** *Ayub v State of UP*, AIR 1994 SC 1064 : 1994 Cr LJ 1219 .

**801.** See also *Rattan Singh v State of Punjab*, AIR 1988 SC 2417 : 1988 BLJR 459 : 1988 SCC (Cr) 708 : 1988 Supp SCC 456 , death caused by *lathi* blow; *Ganga Prasad v State of UP*, 1987 SCC (Cr) 345 : (1987) 2 SCC 232 , lacerated injury caused with a spade which was allowed to be compounded.

**802.** *State of UP v Tribhuwan*, AIR 2017 SC 5249 [LNIND 2017 SC 2876] .

**803.** *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 . See also *Subhash Chander Bansal v Gian Chand*, AIR 2018 SC 655 [LNIND 2018 SC 19] .

**804.** *Mohinder Singh v State of Haryana*, 1993 Cr LJ 85 (P&H). *Pappu v State of Punjab*, AIR 2000 SC 3633 , the accused and prosecution witnesses injured in the incident were close relatives. They settled their dispute as between themselves. The sentence of the accused was reduced to the period already undergone.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 326] Voluntarily causing grievous hurt by dangerous weapons or means.

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with <sup>805.</sup>[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.

##### COMMENT.—

The relationship between this section and the preceding one is the same as that between sections 324 and 323. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly. The expression "any instrument which, used as a weapon of offence, is likely to cause death" has to be gauged taking note of the heading of the section.

The essential ingredients to attract section 326 are:

- (1) voluntarily causing a hurt;
- (2) hurt caused must be a grievous hurt; and
- (3) the grievous hurt must have been caused by dangerous weapons or means.<sup>806.</sup>

##### [s 326.1] Dangerous weapon.—

What would constitute a 'dangerous weapon' would depend upon the facts of each case and no generalisation can be made. The heading of the section provides some insight into the factors to be considered. As was noted by the Supreme Court in *State of UP v Indrajeet alias Sukhatha*,<sup>807.</sup> there is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a particular article can *per se* cause any serious wound or grievous hurt or injury has to be determined factually. At this juncture, it would be relevant to note that in some provisions, e.g., sections 324 and 326 expression "dangerous weapon" is used. In some other more serious offences the expression used is "deadly weapon" (e.g., sections 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or

deadly weapon or not. That would determine whether in the case section 325 or section 326 would be applicable.<sup>808.</sup>

In the absence of any evidence that the stick which was used as a weapon of offence was of lethal type and something like sharp blade or sharp point, etc., was attached to it, the stick was held to be not an instrument within the meaning of this section.<sup>809.</sup> Where the accused-teacher assaulted the child-student with a wooden stick that caused injury to the eye of the child but there was no material to show that the stick that was wielded by the accused was a dangerous weapon, the conviction of the accused under section 326 may not be warranted; but the offence would fall under [section 325 IPC, 1860.](#)<sup>810.</sup>

### **[s 326.2] Injuries not serious enough to endanger life.—**

It was proved that the accused persons caused injuries which led to the victim's death. He did not receive any medical assistance for full four hours. He lost a lot of blood which became the cause of death. None of the injuries were on the vital parts of the body. They were not serious enough to endanger life by themselves. The Court said that at the highest, the accused persons could be said to be guilty under sections 326/34 for causing grievous hurt.<sup>811.</sup> In an altercation the accused persons beat the injured with fist and leg blows on stomach and waist. An attempt was made to help him out of the injury by fomenting at home. But he had to be shifted to hospital and operated upon. It was held that the accused was guilty of attempt to cause grievous hurt and not attempt to murder.<sup>812.</sup> The accused persons armed with *lathis* and a *tangi* went to the field of the victims and picked up a fight while they were ploughing their field. Looking at the attack they ran away. On their way back they met the uncle of their victims who happened to ask them about the matter. They being annoyed by the question, hit him on the head with a *lathi*. He died. The Court viewed the act as only one intended to cause grievous hurt. Sentence of five years RI was awarded.<sup>813.</sup>

### **[s 326.3] Internal injuries.—**

On account of a quarrel, the husband kicked his wife in the abdomen and chest. Liver injuries were caused of which she died. Conviction was recorded under section 326. There was no appeal by the State for any higher punishment. There was no evidence to suggest any dowry demand. Hence, there could be no conviction under section 498A.<sup>814.</sup>

### **[s 326.4] Disfiguration.—**

The wife of the accused was being taken to a Police Station in execution of search warrant accompanied by a police constable. The accused assaulted his wife and caused injuries resulting in amputation of her limbs. The whole nose was also cut, which itself was held to be sufficient to attract permanent disfiguration. Conviction of the accused under section 326 was not interfered with.<sup>815.</sup>

### **[s 326.5] Burn Injuries.—**

Incident of throwing burning Kerosene Lamp by accused on complainant and the complainant sustained 25–30 per cent burn injuries on chest, abdomen and hands. Doctor clarified that burn injuries are fatal and dangerous to life in case the injuries get infected and develop into septicaemia. Therefore, injuries cannot be said to be fatal. Accused was liable to be convicted only under [section 326 of IPC, 1860](#) not under section 307.<sup>816.</sup>

#### **[s 326.6] Acid attack.—**

The accused threw acid on the faces of their victims. Medical evidence showed that the injuries caused on the faces and eyes were not sufficient to cause death, conviction of the accused under section 307 was altered to one under section 326. The Court observed that unless it can be shown that the intention or knowledge of the accused was to cause such bodily injury as would come within one of the four clauses of section 300, he cannot be held guilty of an offence under section 307.<sup>817.</sup>

#### **[s 326.7] Attack with axe.—**

Protest against cutting of trees became the cause for assault. The accused and his companions started assaulting. The victim received a head injury with an axe. The blow caused fracture because of its force. The accused persons were not entitled to the benefit of private defence, they being the aggressors.<sup>818.</sup>

#### **[s 326.8] Attack with piece of stone.—**

The weapon of assault was a piece of stone. As per the evidence of the doctor, the injury caused was grievous one. But considering the size of the stone used for the purpose, it could not be said that a dangerous weapon was used. The conviction was altered to section 325 from section 326.<sup>819.</sup>

#### **[s 326.9] Counter case.—**

In a case the accused inflicted a knife blow to a man and the accused was also injured during the same incident and filed a counter case but took no steps to bring his case to trial. It was held that filing of the counter case was not fatal to the prosecution case though both the cases should have been clubbed together. Conviction of the accused under section 326 was upheld.<sup>820.</sup> The eye-witnesses who deny the presence of injuries on the person of the accused are lying on the most material point, and therefore, their evidence is unreliable.<sup>821.</sup>

#### **[s 326.10] Feeding *prasad* containing poison.—**

The accused distributed *prasad* to persons on relay fast. It contained poison. One person died, others affected. The Court was of the view that it could not be said that there was intention to kill a particular person, distribution being made openly. But because the accused must have had knowledge that a poisonous substance may



cause grievous hurt or even death. In respect of the death he was convicted under section 304, Part I and in respect of others affected under section 326.<sup>822.</sup>

#### **[s 326.11] Protest against eve-teasing.—**

The accused were friends of the victim who had objected to eve-teasing by one of them. The victim-protestor was assaulted. It was held that they could be convicted individually for their role in the assault under section 326 but not for the murder. There was no common intention of going to that extent.<sup>823.</sup>

#### **[s 326.12] Uncertainty as to cause of death.—**

The first doctor who examined the injured person in the hospital stated that none of the injuries either individually or collectively appeared to be dangerous to life. The doctor who last examined the patient stated that 'A' group blood having been exhausted, 'O' group blood was given and death might have been due to blood reaction. The *post-mortem* doctor stated that death was due to rupture of liver. The conviction was shifted from under sections 302/34 to that under sections 325–326/34.<sup>824.</sup>

#### **[s 326.13] Torture in police custody.—**

Victim was arrested and kept in police station for three days and was not produced before a Magistrate within 24 hours. Third degree methods adopted on him and his penis was also chopped off with a barber's razor. It was a barbaric act on the part of the accused, who deserve no leniency. Both accused persons are held guilty under [section 326 IPC, 1860](#).<sup>825.</sup>

#### **[s 326.14] Section 307 vis-a-vis Section 326.—**

In some cases offence under [section 326 IPC, 1860](#) may be acutely more serious than another falling under [section 307 IPC, 1860](#). For instance, acid thrown on the face of young, unmarried girl would come under [section 326 IPC, 1860](#) but it would be far more serious than a firearm shot missing the victim that would fall under [section 307 IPC, 1860](#).<sup>826.</sup> A bare perusal of these two provisions clearly reveals that while [section 307 IPC, 1860](#) uses the words "under such circumstances", these words are conspicuously missing from [section 326 IPC, 1860](#). Therefore, while deciding whether the case falls under [section 307 IPC, 1860](#) or under [section 326 IPC, 1860](#) the Court must necessarily examine the circumstances in which the assault was made.<sup>827.</sup> Doctor categorically stated that injury could have caused death. Radiologist also stated that chopping of the leg was grievous act in nature. The Supreme Court held that High Court was not justified in altering conviction from section 307 read with section 149 to 326 read with [section 149 IPC, 1860](#).<sup>828.</sup> Number of injuries were quite grievous but accused were careful not to give any blow on any vital part of body. Doctor did not say that injuries were sufficient in the course of nature to cause death. Therefore, accused was convicted under [section 326 IPC, 1860](#) instead of [section 307 IPC, 1860](#).<sup>829.</sup>

### [s 326.15] Punishment.—

Imposing only fine while convicting the accused under section 326 and not imposing punishment of imprisonment, was held to be a non-compliance of the provisions of the code.<sup>830</sup> Accused poured acid on the head of victim with the result that face, neck, eyes, chest, etc., were seriously burnt. High Court reduced sentence from three years to already undergone (35 days). For such a heinous crime accused deserves no leniency.<sup>831</sup>

In a case,<sup>832</sup> the Supreme Court held the imposition of three months' imprisonment to be proper but pointed out that the Courts below should have taken notice of the provisions of the [Probation of Offenders Act, 1958](#) or of [section 360 Cr PC, 1973](#). While upholding the sentence, the Court directed the prisoner to be released on probation.

Often in Court at the sentencing stage the spotlight fell almost entirely upon the offender and the circumstances of the offender, and there was seldom reference to the suffering of the victim of violence.<sup>833</sup>

### [s 326.16] Offence not compoundable.—

In *Suresh Babu v State of AP*,<sup>834</sup> Supreme Court allowed the compounding of an offence under [section 326 IPC, 1860](#) even though such compounding was not permitted by section 320 of the Code. However, in *Surendra Nath Mohanty v State of Orissa*,<sup>835</sup> and in *Ramlal v State of Jammu and Kashmir*,<sup>836</sup> it was held that an offence which law declares to be non-compoundable cannot be compounded at all even with the permission of the Court and held *Suresh Babu*,<sup>837</sup> *per incuriam*. In *Jalaluddin v State of UP*,<sup>838</sup> and in *Bankat v State*,<sup>839</sup> the Apex Court reiterated that as the offence under [section 326, IPC, 1860](#) is not compoundable, even if the parties settled the matter. In *Ramgopal v State of MP*,<sup>840</sup> Supreme Court held as follows:

There are several offences under the [IPC](#) that are currently non - compoundable. These include offences punishable u/s. 498-A, s. 326, etc. of the [IPC](#). Some of such offence can be made compoundable by introducing a suitable amendment in the statute. We are of the opinion that the Law Commission of India could examine whether a suitable proposal can be sent to the Union Government in this regard. Any such step would not only relieve the Courts of the burden of deciding cases in which the aggrieved parties have themselves arrived at a settlement, but may also encourage the process of reconciliation between them. We, accordingly, request the Law Commission and the Government of India to examine all these aspects and take such steps as may be considered feasible.

The Law Commission of India examined the issue in view of the direction in *Ramgopal's* Case and submitted its 237th Report suggesting to make section 498A and section 324 compoundable: no changes were suggested regarding section 326. In *Gian Singh v State of Punjab*,<sup>841</sup> a three-Judge Bench held that sub-section (9) of section 320 mandates that no offence shall be compounded except as provided by this section. Obviously, in view thereof the composition of an offence has to be in accord with section 320 and in no other manner. But the power of compounding of offences given to a Court under section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal Court is circumscribed by the provisions contained in section 320 and the Court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment. The result is, though [section 326 IPC, 1860](#) is a non-compoundable offence, the High Court can quash the

proceedings by using its inherent power under [section 482 Cr PC, 1973](#) in case of settlement between the parties.

805. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).
806. *Prabhu v State of MP*, [AIR 2009 SC 745 \[LNIND 2008 SC 2354\]](#) : (2008) 17 SCC 381 [[LNIND 2008 SC 2354](#)].
807. *State of UP v Indrajeet alias Sukhatha*, (2000) 7 SCC 249 [[LNIND 2000 SC 1148](#)] .
808. *Prabhu v State of MP*, [AIR 2009 SC 745 \[LNIND 2008 SC 2354\]](#) : (2008) 17 SCC 381 [[LNIND 2008 SC 2354](#)]; *Mathai v State of Kerala*, 2005 (2) JT 365 .
809. *Jagannath v State of Maharashtra*, (1995) 1 Cr LJ 795 (Bom).
810. *C R Kariyappa v State of Karnataka*, [AIR 2018 SC 4312](#) .
811. *State of Karnataka v Shivaraj*, [2002 Cr LJ 2493](#) (Kant), the accused persons were all agriculturists and not seasoned or regular criminals, there was neither brutality nor premeditation, they had served considerable period of time in custody during the trial. Their imprisonment was reduced to the period already undergone and fine of Rs. 2000 each.
812. *Rajesh Kumar v State of Haryana*, [2002 Cr LJ 756](#) (P&H), the accused were less than 21 years of age, first offenders, faced proceedings for 10 years, released on probation on furnishing bond of Rs. 10,000 each and with surety bond of like amount for three years. *State v Abdul Rashid*, [2002 Cr LJ 3118](#) (J&K), three accused persons assaulted the victim who died and his brother received injuries with a sharp weapon, but injury was not sufficient to cause death. Perforation of wound became the cause of death. The accused also caused grievous hurt with dangerous weapon. Convicted under sections 326/34. *GS Walia v State of Punjab*, [1998 Cr LJ 2524](#) (SC) attack with iron rods and axe resulting in death. Medical report did not show injury as sufficient to cause death. Inference that attack was only to cause injuries. Liability for conviction only under section 325. *State of Karnataka v Lokesh*, [2002 Cr LJ 3795](#) (Kant) all the accused convicted under the section read with section 34.
813. *Chowa Mandal v State of Bihar*, [AIR 2004 SC 1603 \[LNIND 2004 SC 147\]](#) : [2004 Cr LJ 1405](#) .
814. *Arjuna Das v State of Orissa*, [2000 Cr LJ 3601](#) (Ori).
815. *Devisingh v State of MP*, [1993 Cr LJ 1301](#) (MP).
816. *Anant Nathu Mankar v State of Maharashtra*, [2011 Cr LJ 2713](#) (Bom).
817. *Kulamani Sahu v State of Orissa*, [1994 Cr LJ 2245](#) (Ori). *Sangeeta Kumari v State of Jharkhand*, [2003 Cr LJ 1734](#) (Jha); *Vishwambhar Narayan Jadhav v Mallappa Sangramappa Mallipatil*, [AIR 2009 SC 854 \[LNIND 2008 SC 2349\]](#) : (2007) 15 SCC 600. See section 326A and section 326B.
818. *AC Gangadhar v State of Karnataka*, [AIR 1998 SC 2381 \[LNIND 1998 SC 506\]](#) : [1998 Cr LJ 3602](#) the sentence of imprisonment for one year was not excessive in view of the injury caused. *Melampati v GM Prasad*, [2000 Cr LJ 3449](#) : [AIR 2000 SC 2195 \[LNIND 2000 SC 745\]](#) accused persons caused too many injuries with axe, knife and other sharp weapons, the victim died on the spot. Some of them acquitted by the High Court. In reference to the remaining two, the Supreme Court found failure of prosecution to prove anything against them.

819. *Mathai v State of Kerala*, 2005 Cr LJ 898 : AIR 2005 SC 710 [LNIND 2005 SC 37] : (2005) 3 SCC 260 [LNIND 2005 SC 37] , no hard and fast rule can be applied for assessing proper sentence. Also a long passage of time cannot always be determinative factor. Major portion of the sentence awarded was already suffered, it was reduced to the period undergone.

820. *Mohd Ibrahim v State of AP*, 1993 Cr LJ 2489 (AP).

821. *Ganesh Datt v State of Uttarakhand*, 2014 Cr LJ 3128 : AIR 2014 SC 2521 [LNIND 2014 SC 186] .

822. *State of Bihar v Ram Nath Pd*, 1998 Cr LJ 679 : AIR 1998 SC 466 [LNIND 1997 SC 1581] .

823. *Heeralal Ramlal Parmar v State*, 1998 Cr LJ 574 (Bom). The court said that ends of justice would be served if the jail sentence was reduced to the period already undergone and accused persons directed to pay fine of Rs. 15,000 each.

824. *State of Haryana v Mange Ram*, AIR 2002 SC 558 : 2003 Cr LJ 830 .

825. *Central Bureau of Investigation v Kishore Singh*, (2011) 6 SCC 369 [LNIND 2010 SC 1033] : (2011) 2 SCC (Cr) 970 : AIR 2011 SC (Supp) 584.

826. *Mangal Singh v Kishan Singh*, AIR 2009 SC 1535 [LNIND 2008 SC 2280] : (2009) 17 SCC 303 [LNIND 2008 SC 2280] .

827. *Pooran Singh Seera Alias Pooran Meena v State of Rajasthan*, 2011 Cr LJ 2100 (Raj); *Neelam Bahal v State of Uttarakhand*, AIR 2010 SC 428 [LNIND 2009 SC 2056] : (2010) 2 SCC 229 [LNIND 2009 SC 2056] .

828. *State of MP v Kashiram*, (2009) 4 SCC 26 [LNIND 2009 SC 215] : AIR 2009 SC 1642 [LNIND 2009 SC 215] .

829. *Mangal Singh v Kishan Singh*, AIR 2009 SC 1535 [LNIND 2008 SC 2280] : (2009) 17 SCC 303 [LNIND 2008 SC 2280] .

830. *Dhandapani v Dhandapani*, 1995 Cr LJ 3099 (Mad), **relying** on *State of UP v Manbodhan Lal*, AIR 1957 SC 912 [LNIND 1957 SC 93] : 1958 SCJ 150 [LNIND 1957 SC 93] and *Re Rayar*, 1982 Mad LW (Cr) 47 : 1982 Cr LJ (NOC) 122 . *Mangal Singh v Kishan Singh*, AIR 2009 SC 1535 [LNIND 2008 SC 2280] : (2009) 17 SCC 303 [LNIND 2008 SC 2280] .

831. *Vishwambhar Narayan Jadhav v Mallappa Sangramappa Mallipatil*, AIR 2009 SC 854 [LNIND 2008 SC 2349] : (2007) 15 SCC 600 [LNIND 2008 SC 2349] .

832. *Jagat Pal Singh v State of Haryana*, AIR 2000 SC 3622 ; *Santokh Singh v State of Rajasthan*, 2000 Cr LJ 1410 (Raj), the accused inflicted solitary sword blow on the head of the victim, convicted under section 326, the incident took place 16 years ago, the accused had remained in jail for two months, sentence of three years RI reduced to one year RI. *Bhanwar Lal v State of Rajasthan*, 2000 Cr LJ 1472 (Raj), another case in which sentence of two years RI was reduced to one year RI. *Syed Shafiq Ahmed v State of Maharashtra*, 2002 Cr LJ 1403 (Bom) conviction for throwing acid on his estranged wife and her relatives and disfiguring them. *Hari Ram v State of Rajasthan*, 2000 Cr LJ 1027 (Raj), the accused caused grievous hurt with a sharp weapon on the neck of the victim. Other accused persons were released on probation. He had remained in jail for two months and 18 days. Sentence reduced to the period already undergone. *Sat Narain v State*, 2000 Cr LJ 1018 (Del), the accused had undergone some part of the sentence. He had faced the trauma of criminal proceedings for 23 years. His sentence was reduced to the period already undergone. *State of Maharashtra v Harishchandra Tukaram*, 1997 Cr LJ 612 (Bom), each of the four accused persons were in jail for a period of 10 months. Instead of sending them to jail, the court directed them to pay a fine of Rs. 10,000 to be paid to the victim by way of compensation. *State of Maharashtra v Hindurao Daulu*, 1997 Cr LJ 1649 (Bom), accused was of 27 years. He could not be said to be a young person for showing any leniency. *State of Gujarat v Sivapan Day*, 1997 Cr LJ 2032 (Gau), the accused was a young man, 17 years had elapsed since the offence. He got married and had two kids. Taking into view the manner of killing and making

a woman husbandless, the accused was sentenced to 3½ years RI and a fine of Rs. 1,000. *Tamilselvan v Union Territory of Pondicherry*, [1997 Cr LJ 2094](#) (Mad), the complainant, a personnel officer, had initiated disciplinary proceedings against the accused, who attacked him and caused grievous hurt. This was viewed as a heinous crime. Punishment of fine was imposed.

**833.** *R v Williams*, (2000) 2 Cr App R (S) 380 [CA (Crim Div)]. *R v Hennessey*, (2000) 2 Cr App R (S) 480 [CA (Crim Div)], attack on wife, following arguments, causing 16 wounds, including two stab wounds, six years' imprisonment. *R v Hyles*, (2001) 1 Cr App R (S) 26 [CA (Crim Div)], the accused came to his woman friend. He believed that she had with the help of two men sold his car. He asked for the price. He came back after some time with a kettle of hot water and poured it on her injuring her, five years' imprisonment. *R v Bishop*, (2000) 2 Cr App R (S) 416 [CA (Crim Div)], causing severe injuries to a woman in a club by thrusting a beer bottle against her face; four years' imprisonment. *R v Jones*, (2001) 1 Cr App R (3) 116 [CA (Crim Div)], attack on police man by chasing him with a vehicle. The fact that the victims were police officers increased the gravity of the offence, sentence of five years' imprisonment.

**834.** *Suresh Babu v State of AP*, (1987) 2 JT 361 .

**835.** *Surendra Nath Mohanty v State of Orissa*, [AIR 1999 SC 2181](#) [[LNIND 1999 SC 482](#)] .

**836.** *Ramlal v State of Jammu and Kashmir*, [AIR 1999 SC 895](#) [[LNIND 1999 SC 60](#)] .

**837.** *Supra*.

**838.** *Jalaluddin v State of UP*, 2001 AIR SCW 2266.

**839.** *Bankat v State*, [AIR 2005 SC 368](#) [[LNIND 2004 SC 1183](#)] .

**840.** *Ramgopal v State of MP*, 2010 (7) Scale 711 [[LNIND 2010 SC 690](#)] .

**841.** *Gian Singh v State of Punjab*, (2012) 10 SCC 303 [[LNIND 2010 SC 1128](#)] : 2012 (9) Scale 257 .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### **Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.**

##### **[s 326A] Voluntarily causing grievous hurt by use of acid, etc.**

Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

*Provided* that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

*Provided* further that any fine imposed under this section shall be paid to the victim.]<sup>842.</sup>

## COMMENTS

The section is introduced on the basis of the recommendations of Justice JS Verma Committee.<sup>843.</sup>

### **[s 326A.1] Gravity of injury not necessary.—**

Merely because the title to section 326A speaks about grievous hurt by use of acid, it is not a requirement under the section that the injuries caused should be invariably grievous. Even if the injuries are simple, the mere act of throwing or attempt would attract the offence under sections 326A and 326B.<sup>844.</sup>

### **[s 326A.2] Fine mandatory and reasonable.—**

The fine is mandatory and the quantum should be just and reasonable in the sense that it should be sufficient to meet the medical expenses for the treatment of the victim. Therefore, the second proviso under section 326A requires that the fine imposed should be paid to the litigant.<sup>845.</sup>

842. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 5 (w.e.f. 3-2-2013).
843. Report of Justice JS Verma Committee – in Paras 4 to 9 of Chapter 5, at pp 146 to 148, wherein references were also made to the decision of *Sachin Jana v State of WB*, [\(2008\) 3 SCC 390](#) [[LNIND 2008 SC 167](#)] : [2008 \(2\) Scale 2](#) [[LNIND 2008 SC 167](#)] : [2008 Cr LJ 1596](#) and the 226th Report of Law Commission of India, July 2008 at Para 3.
844. *Maqbool v State of UP*, [AIR 2018 SC 5101](#) .
845. *Maqbool v State of UP*, [AIR 2018 SC 5101](#) .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### **[s 326B] Voluntarily throwing or attempting to throw acid.**

Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

*Explanation 1.*—For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

*Explanation 2.*—For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.]<sup>846.</sup>

#### COMMENTS.—

While section 326-A focuses more on the grievous hurt resulting from the use of acid, in section 326-B the legislative focus is more on the act of throwing or attempting to throw acid with the intention of causing grievous hurt of the nature.

##### **[s 326B.1] Guidelines.—**

The Supreme Court in *Laxmi v UOI*,<sup>847.</sup> directed the state to consider (i) Enactment of appropriate provision for effective regulation of sale of acid in the States/Union Territories. (ii) Measures for the proper treatment, after care and rehabilitation of the victims of acid attack and needs of acid attack victims. (iii) Compensation payable to acid victims by the State/or creation of some separate fund for payment of compensation to the acid attack victims. In a subsequent order in the same case the Supreme Court issued many directions to curb the menace of acid attacks. [See the Box with 'Supreme Court Guidelines to prevent Acid Attacks'.]

##### *Supreme Court Guidelines to prevent Acid Attacks*

7.(i) Over the counter, sale of acid is completely prohibited unless the seller maintains a log/register recording the sale of acid which will contain the details of the person(s) to whom acid(s) is/are sold and the quantity sold. The log/register shall contain the address of the person to whom it is sold.

(ii) All sellers shall sell acid only after the buyer has shown:



- (a) a photo ID issued by the Government which also has the address of the person.
  - (b) specifies the reason/purpose for procuring acid.
- (iii) All stocks of acid must be declared by the seller with the concerned Sub-Divisional Magistrate (SDM) within 15 days.
- (iv) No acid shall be sold to any person who is below 18 years of age.
- (v) In case of undeclared stock of acid, it will be open to the concerned SDM to confiscate the stock and suitably impose fine on such seller up to 50,000/-
- (vi) The concerned SDM may impose fine up to 50,000/- on any person who commits breach of any of the above directions.
8. The educational institutions, research laboratories, hospitals, Government Departments and the departments of Public Sector Undertakings, who are required to keep and store acid, shall follow the following guidelines:
- (i) A register of usage of acid shall be maintained and the same shall be filed with the concerned SDM.
  - (ii) A person shall be made accountable for possession and safe keeping of acid in their premises.
  - (iii) The acid shall be stored under the supervision of this person and there shall be compulsory checking of the students/personnel leaving the laboratories/place of storage where acid is used.

[*Laxmi v UOI*.<sup>848</sup>.]

<sup>846</sup>. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 5 (w.e.f. 3-2-2013).

<sup>847</sup>. *Laxmi v UOI*, 2013 (9) Scale 291 .

<sup>848</sup>. *Laxmi v UOI*, 2013 (9) Scale 291 .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

**[s 327] Voluntarily causing hurt to extort property, or to constrain to an illegal act.**

Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### COMMENT.—

This is an aggravated form of the offence of hurt and is severely punishable, because the object of causing it is to extort property from the sufferer. Where one of the five persons accused of murder was armed with a sharp-edged weapon but inflicted only one injury by the blunt side of his weapon, he could only be said to have shared the common intention of causing simple injury and was liable under section 327 and not under section 300.<sup>849</sup>

<sup>849</sup>. *Dhin Singh v State of Punjab*, 1995 Cr LJ 4167 : AIR 1995 SC 2451 .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

**[s 328] Causing hurt by means of poison, etc., with intent to commit an offence.**

Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### COMMENT.—

The offence under this section is complete even if no hurt is caused to the person to whom the poison or any other stupefying, intoxicating, or unwholesome drug is administered. This section is merely an extension of the provisions of section 324. Under section 324 actual causing of hurt is essential: under this section mere administration of poison is sufficient to bring the offender to justice. In order to prove an offence under section 328 the prosecution is required to prove that the substance in question was a poison, or any stupefying, intoxicating or unwholesome drug, etc., and that the accused administered the substance to the complainant or caused the complainant to take such substance and further that he did so with intent to cause hurt or knowing it to be likely that he would thereby cause hurt, or with the intention to commit or facilitate the commission of an offence. It is, therefore, essential for the prosecution to prove that the accused was directly responsible for administering poison, etc., or causing it to be taken by any person, through another. In other words, the accused may accomplish the act by himself or by means of another. In either situation direct, reliable and cogent evidence is necessary.<sup>850.</sup>

#### **[s 328.1] Section 328 and section 376.—**

Accused offered the complainant/prosecutrix a cold drink (Pepsi) allegedly containing a poisonous/intoxicating substance. According to the complainant/prosecutrix she felt inebriated after taking the cold drink. In her aforesaid state, the appellant-accused started misbehaving with her. There were no scientific materials to prove the allegations and hence the proceedings were held liable to be quashed.<sup>851.</sup>

#### **[s 328.2] Causing unwholesome thing to be taken.—**

Where the accused mixed milk-bush juice in his toddy pots, knowing that if drunk by a person it would cause injury, with the intention of detecting an unknown thief who was always in the habit of stealing his toddy, and the toddy was drunk by some soldiers who purchased it from an unknown vendor, it was held that he was guilty under this section.<sup>852.</sup>

### **[s 328.3] Hooch tragedies. –**

Prosecution case is that 70 persons died after having consumed liquor from the shops and sub-shops which were catered by the firm named "Bee Vee Liquors" and 24 lost eyesights permanently, not to speak of many others who became prey of lesser injuries. It was the liquor supplied by the firm to the shops and sub-shops which was consumed; and so, it has to be held that the consumers were made to take the liquor supplied by the firm. On facts, the requirements of section 328 being present, the conviction under section 328 was held rightful.<sup>853.</sup>

### **[s 328.4] Charge under section 304, Conviction under section 328. –**

The charge under section 304 framed against the appellant was with definite allegation of culpable homicide not amounting to murder by reason of administration of drug without taking precaution for reaction there from. This is totally different from causing hurt by means of administration of unwholesome drug. On no count a definite charge of culpable homicide can be an error for causing hurt. Going by [section 214 Cr PC, 1973](#) in every charge words used in describing an offence shall be deemed to have been used in the sense attached to them by law under which such offence is punishable. Therefore, to construe the section relating to culpable homicide as only an error for causing hurt by unwholesome drug will lead to be misleading so far as the accused is concerned resulting in failure of justice so far as his opportunity to defend is concerned.<sup>854.</sup>

<sup>850.</sup> *Joseph Kurian v State of Kerala*, [AIR 1995 SC 4 \[LNIND 1994 SC 927\]](#) : (1995) 1 Cr LJ 502 : (1994) 6 SCC 535 [LNIND 1994 SC 927] .

<sup>851.</sup> *Prashant Baharti v State of NCT Delhi*, [2013 \(1\) Scale 652 \[LNIND 2013 SC 78\]](#) .

<sup>852.</sup> *Dhanial Daji*, (1868) 5 BHC (Cr C) 59. Where a person mixed 2.64% methyl in arrack not knowing that such a small quantity is likely to cause death, having been acquitted under section 304, was also acquitted under this section; *Joseph Kurian v State of Kerala*, [AIR 1995 SC 4 \[LNIND 1994 SC 927\]](#) : (1995) 1 Cr LJ 502 : (1994) 6 SCC 535 [LNIND 1994 SC 927] .

<sup>853.</sup> *EK Chandrasenan v State of Kerala*, [AIR 1995 SC 1066 \[LNIND 1995 SC 88\]](#) : (1995) 2 SCC 99 [LNIND 1995 SC 88] ; *Ravinder Singh v State of Gujarat*, [2013 Cr LJ 1832 \(SC\) : AIR 2013 SC 1915 \[LNIND 2013 SC 151\]](#) ; *Chandran @ Manichan v State*, [AIR 2011 SC 1594 \[LNIND 2011 SC 358\]](#) : (2011) 5 SCC 161 [LNIND 2011 SC 358] ; See *Joseph Kurian v State of Kerala*, [AIR 1995 SC 4 \[LNIND 1994 SC 927\]](#) : (1995) 1 Cr LJ 502 : (1994) 6 SCC 535 [LNIND 1994 SC 927] in which accused are acquitted under section 328 on facts.

854. *Radha Sasidharan v State of Kerala*, 2006 Cr LJ 4702 (Ker).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

**[s 329] Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.**

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with <sup>855</sup>[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### COMMENT.—

This section is similar to section 327, the only difference being that the hurt caused under it is grievous.<sup>856</sup> Where a grievous hurt was caused to obstruct the person from deposing in Court, the Court said that it amounted to forcing him to commit an act which was illegal. Framing of charge under the section was not improper.<sup>857</sup> In this provision the words "for the purposes of extorting" are most important to meet the argument of learned counsel for appellant. This will include an attempt to extort also. This provision would be attracted even if extortion is not complete. [Section 329, IPC, 1860](#) deals with grievous hurt caused for the particular purpose that is extortion or other purposes mentioned in the section. The offence of extortion may or may not have been completed. Two appellants along with others attacked the complainant with knives. Two appellants with one more, each stabbed the complainant. They were held liable for each other's acts because they acted in concert to extort money.<sup>858</sup>

<sup>855</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

<sup>856</sup>. *Phani Bhusban Das v State of WB*, [AIR 1995 SC 70](#) : (1995) 1 Cr LJ 551 , 21-year old incident, injuries by *lathi* blows, conviction under this section maintained.

<sup>857</sup>. *Ameen v State of MP*, [2001 Cr LJ 1947](#) (MP).

<sup>858</sup>. *Virendra Kumar v State of MP*, [1998 Cr LJ 2170](#) (MP).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### **Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.**

**[s 330] Voluntarily causing hurt to extort confession, or to compel restoration of property.**

**Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

#### ILLUSTRATIONS

- (a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.
- (b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited.
- A is guilty of an offence under this section.
- (c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z.
- A is guilty of an offence under this section.
- (d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

#### **COMMENT.—**

This section is similar to section 327 which deals with causing of hurt for the purpose of extorting property or valuable security. It punishes the inducing of a person by causing hurt to make a statement, or a confession, having reference to an offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial.<sup>859</sup> An offence under this section is made out if it is proved that the accused caused hurt to extort confession or any information. If the victim dies later it is not necessary to prove that death was a result of the hurt caused.<sup>860</sup> The offence is complete as soon as the hurt is caused to extort confession or any information.

### **[s 330.1] Custodial Torture.—**

Though [sections 330 and 331](#) of the [IPC, 1860](#) make punishable those persons who cause hurt for the purpose of extorting the confession by making the offence punishable with sentence up to 10 years of imprisonment, but the convictions, as experience shows from track record have been very few compared to the considerable increase of such onslaught because the atrocities within the precincts of the police station are often left without much traces or any ocular or other direct evidence to prove as to who the offenders are. Disturbed by this situation the Law Commission in its 113th Report recommended amendments to the [Indian Evidence Act, 1872](#) so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the Court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. Keeping in view the dehumanising aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, the Government and the legislature must give serious thought to the recommendation of the Law Commission and bring about the appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The Courts are also required to have a change in their outlook approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the truth is found and guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed. <sup>861.</sup>

Where daughter of accused and son of complainant married each other. Complainant and his family members were brutally tortured by police officials it was held that order framing charge against petitioner was proper. <sup>862.</sup>

Where the accused, the investigating officer and his assistant, entertained suspicion about two persons in a case of theft and subjected the suspects to ill-treatment to extort confession or information leading to detection of stolen properties, the accused were held guilty of offence under section 330. <sup>863.</sup>

### **[s 330.2] Conviction under sections 302, 330 and 34 based on an unsigned**

dying declaration.—Death caused by police officers to extract confession based on dying declaration. Guidelines issued by the Delhi High Court that the declaration should carry the signature of the declarant not observed. Held that the issuance of the guidelines is for ensuring and for testing the genuineness of the dying declaration of person, who is in the last moment of his life. Merely because there was a defect in following the said guideline, which, as is now pointed out, is of a trivial nature and if the dying declaration recorded is otherwise proved by ample evidence, both oral as well as documentary, on the ground of such trivial defects, the whole of the dying declaration cannot be thrown out by the reason of such trivial defects. <sup>864.</sup>

### **[s 330.3] As to the mind of the declarant.—**



It is true that when a person is on his or her deathbed, there is no reason to state a falsehood but it is equally true that it is not possible to delve into the mind of a person who is facing death.<sup>865</sup>

#### **[s 330.4] Abetment.—**

Where the accused stood by and acquiesced in an assault on a prisoner committed by another policeman for the purpose of extorting a confession, it was held that he abetted the offence under this section.<sup>866</sup>

<sup>859</sup>. *Nim Chand Mookerjee*, (1873) 20 WR (Cr) 41.

<sup>860</sup>. *State of HP v Ranjit Singh*, 1979 Cr LJ (NOC) 210 (HP).

<sup>861</sup>. *Shakila Abdul Gafar Khan v Vasant Raghunath Dhoble*, AIR 2003 SC 4567 [LNIND 2003 SC 653] : 2003 Cr LJ 4548 ; *State of MP v Shyamsunder Trivedi*, (1995) 4 SCC 262 [LNIND 1995 SC 644] : (1995) 1 SCC (Cr) 715.

<sup>862</sup>. *Ajay Kumar Singh v State (Nct of Delhi)*, 2007 Cr LJ 3545 (Del). *Sham Kant v State*, AIR 1992 SC 1879 : 1992 Cr LJ 3243 (SC).

<sup>863</sup>. *Sham Kant v State of Maharashtra*, AIR 1992 SC 1879 : 1992 Cr LJ 3243 . *Ashok K John v State of UP*, AIR 1997 SC 610 [LNIND 1996 SC 2177] : 1997 Cr LJ 743 , an arrestee was tortured. This was an infringement of fundamental rights of a citizen. He was held to be entitled to receive compensation from the State the amount of which would vary according to the proved facts of each case. Punishment under section 330 was not an adequate remedy. *Jaffar Khan v State of Rajasthan*, 1997 Cr LJ 1571 (Raj), offence not proved. *Indu Jain v State of MP*, (2008) 15 SCC 341 [LNINDORD 2008 SC 299] : AIR 2009 SC 976 [LNIND 2008 SC 2115] : 2009 Cr LJ 951 , the case of custodial death, framing of charge under the section was dropped by the trial court and High Court but the Supreme Court allowed it.

<sup>864</sup>. *Narender Kumar v State of NCT of Delhi*, AIR 2016 SC 150 [LNIND 2015 SC 711] : 2015 (13) Scale 821 [LNIND 2015 SC 711] .

<sup>865</sup>. *Jumni v State of Haryana*, 2014 Cr LJ 1936 : 2014 (4) SCJ 36 [LNIND 2014 SC 222] .

<sup>866</sup>. *Latifkhan v State*, (1895) 20 Bom 394; *Dinanath*, (1940) Nag 232.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

[s 331] Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### COMMENT.—

This section is similar to the preceding section except that the hurt caused under it should be 'grievous'. Sections 330 and 331 of the IPC, 1860 provide punishment to one who voluntarily causes hurt or grievous hurt as the case may be to extort the confession or any information which may lead to the detection of an offence or misconduct, thus, the Constitution as well as the statutory procedural law and law of Evidence condemn the conduct of any official in extorting a confession or information under compulsion by using any third degree methods.<sup>867</sup> The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because guardians of law destroy the human rights by custodial violence and torture and invariably resulting in death. The vulnerability of human rights assumes a significance when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality, such functionaries perpetrate them.<sup>868</sup>

<sup>867</sup>. *Kartar Singh v State of Punjab*, (1994) 3 SCC 569 : 1994 Cr LJ 3139 .

<sup>868</sup>. *Dalbir Singh v State of UP*, AIR 2009 SC 1674 [LNIND 2009 SC 220] : (2009) 11 SCC 376 [LNIND 2009 SC 220] . The anguish expressed in *Gauri Shanker Sharma v State of UP*, AIR 1990 SC 709 [LNIND 1990 SC 8] ; *Bhagwan Singh v State of Punjab*, 1992 (3) SCC 249 [LNIND 1992 SC 396] ; *Smt. Nilabati Behera @ Lalita Behera v State of Orissa*, AIR 1993 SC 1960 [LNIND 1993 SC 1167] ; *Pratul Kumar Sinha v State of Bihar*, 1994 Supp (3) SCC 100 ; *Kewal Pati v State of UP*, 1995 (3) SCC 600 ; *Inder Singh v State of Punjab*, 1995 (3) SCC 702 [LNIND 1995 SC 1381] ; *State*

of *MP v Shyamsunder Trivedi*, [1995 \(4\) SCC 262 \[LNIND 1995 SC 644\]](#) and by now celebrated decision in *Shri DK Basu v State of WB*, [JT 1997 \(1\) SC 1 \[LNIND 1996 SC 2177\]](#) seems to have caused not even softening of police's attitude towards the inhuman approach in dealing with persons in custody.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 332] Voluntarily causing hurt to deter public servant from his duty.

Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### COMMENT.—

This section resembles section 353. Under it there is causing of hurt to the public servant, under section 353 there is assault or criminal force for the same purpose.

Ingredients of an offence under [section 332 of IPC, 1860](#) are:

- (1) hurt must have been caused to a public servant and
- (2) it must have been caused—
  - (a) while such public servant was acting in the discharge of his duty as such, or
  - (b) in order to prevent or deter him from discharging his duty as a public servant or
  - (c) in consequence of his having done or attempted to do anything in the lawful discharge of his duty as such a public servant.

Evidence necessary to establish an offence under [section 332 of IPC, 1860](#) are:

- (a) the accused voluntarily caused bodily pain, disease or infirmity to the victim (as provided under [section 321 of IPC, 1860](#)),
- (b) the victim of the hurt is a public servant, and
- (c) at the time of causing of hurt, the public servant concerned was discharging his duties *qua* public servant. An offence under [section 332 of IPC, 1860](#) is attracted if the accused voluntarily caused hurt to any person being a public servant in the discharge of his duty. It is not necessary to establish further that hurt was voluntarily caused to prevent or deter that person from discharging his duty as a public servant. On the other hand, if hurt was voluntarily caused to a public

servant, while not discharging his duty as a public servant, it is necessary to prove that hurt was caused with intent to prevent or deter that person or any other public servant from discharging his duty. Alternatively, if hurt was voluntarily caused to a public servant, while he was discharging his official duty as such public servant, it is not necessary to establish further that it was so caused with the intention to prevent or deter that person from discharging his duty as such public servant. On the other hand, even if hurt was caused voluntarily to a public servant, if he was not discharging his duty as a public servant at that time, it is necessary to prove additionally that hurt was caused to prevent or deter that person from discharging his duty as a public servant.<sup>869.</sup>

Where a public servant was assaulted due to an earlier private quarrel, the assault having no causal connection with the duty of the public servant, the accused could not be held liable under [section 332 IPC, 1860](#). His conviction was, therefore, changed to one under [section 323 IPC, 1860](#).<sup>870.</sup>

Accused/appellant cut the hose pipe from the train and assaulted the complainant/constable when he questioned the act. According to them, the accused/appellant and other accused persons had gone to the extent of pulling down the complainant from the train and when he was taken to the guardroom, they were shouting at him threatening to throw him on the railway track. Offence was clearly made out.<sup>871.</sup>

Where the accused persons entered the premises of a government school and abused, humiliated and voluntarily caused hurt to deter the Head Master of the school from his duty and they abused the other teachers also, the Court did not interfere with their conviction under section 332.<sup>872.</sup>

### **[s 332.1] Sentence.—**

Accused, an under trial prisoner gave beatings to jail warden with a wooden plank on head. He was a habitual offender and also involved in other cases. Injuries caused to victim were grievous in nature. He also attacked other warden with sole object of fleeing from prison. Trial Court exercised its judicial discretion to award maximum punishment taking into consideration all relevant factors. Sentence imposed upon appellant was held proper by the High Court.<sup>873.</sup>

<sup>869.</sup> *Rajan v State*, 2011 (4) Ker LJ 157 .

<sup>870.</sup> *D Chattaiah*, 1978 Cr LJ 1473 : AIR 1978 SC 1441 . *Jhamman v State of UP*, 1991 Cr LJ 2970 , refusal to give sample to a food Inspector.

<sup>871.</sup> *Gyan Bahadur v State of MP*, 2013 Cr LJ 1729 (MP).

<sup>872.</sup> *Madhudas v State of Rajasthan*, 1994 Cr LJ 3595 (Raj).

<sup>873.</sup> *Rakesh Rai v State of Sikkim*, 2012 Cr LJ 4033 (SIK).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 333] Voluntarily causing grievous hurt to deter public servant from his duty.

Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### COMMENT.—

This section provides for the aggravated form of the offence dealt with in the last section. The hurt caused under it must be grievous. Where the accused gave fist blow on the face of the victim which caused loosening of one tooth, but the victim was discharged from the hospital on the same day, moved about throughout the day and attended his duties the next day, it was held that the injury could not be regarded as grave and serious. It was a case of simple hurt.<sup>874</sup> The basic differences between [sections 333](#) and [325 IPC, 1860](#) are that section 325 gets attracted where grievous hurt is caused, whereas section 333 gets attracted if such hurt is caused to a public servant.<sup>875</sup>

Complainant had sustained grievous hurt while he was on patrolling duty. He was questioning the unauthorised parking of a pickup van. He was taken inside the van then kicked and punched. Witnesses corroborated each other on material particulars. Conviction was upheld.<sup>876</sup> Where a police constable was assaulted by unknown persons and no identification parade was conducted, it was held that accused cannot be convicted unless it is proved that the injury was inflicted by the accused.<sup>877</sup>

The accused was working as a watchman in an office of FCI and misbehaved twice with members of the staff in respect of which complaints were made to the District Manager who procured suspension order of the accused from the higher official and served it on him. The accused attacked and beat the Manager. It was held that it amounted to preventing and deterring a public servant, from acting in lawful discharge of his duty and the accused was liable to be convicted under section 333.<sup>878</sup>

##### [s 333.1] Irrationality in sentence.—

It is to be noted that there is terrible irrationality in the sentence prescribed for committing offences under [section 333, IPC, 1860](#). The said offence is in combination of offence – defined under section 320 and the offence of assault on a public servant

punishable under [section 333, IPC, 1860](#). The offence of grievous hurt is punishable under [section 326, IPC, 1860](#) with life imprisonment or with the imprisonment of either description for a term, which may extend to 10 years and shall also be liable to fine. Whereas a higher form of manifested offence under section 333 is made punishable only with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine. The different types of injuries enumerated under section 320 do not ensue same amount of harm, pain and disability. Therefore, proportionate to the nature of grievous injuries and its consequences, the punishment should be redefined. So also the punishment for an offence under section 333 should be redefined.<sup>879</sup>.

**874.** *VB Murthy v State of WB*, [1995 Cr LJ 1819](#) (Cal). The accused was required to pay a fine of Rs. 2000 and released on probation. He was an unemployed young graduate with no criminal record or leaning. *Siyasaran v State of MP*, [1995 Cr LJ 2126](#) (SC), here a fist blow was given to a surgeon in a Government hospital, benefit of probation was not given because violence against hospital doctors was not tolerable. The sentence was reduced to the period already undergone and a fine of Rs. 50,000 was imposed in lieu of compensation. *State of MP v Saleem*, [2005 Cr LJ 3435](#) : [AIR 2005 SC 3996](#) [[LNIND 2005 SC 1070](#)] : (2005) 5 SCC 554 [[LNIND 2005 SC 1070](#)] , knife injury to deter a public servant.

**875.** *State of MP v Imrat*, [AIR 2008 SC 2967](#) [[LNIND 2008 SC 1391](#)] : (2008) 11 SCC 523 [[LNIND 2008 SC 1391](#)] .

**876.** *Chand Ram v State of HP*, [2013 Cr LJ 1415](#) (HP).

**877.** *State v Tidda alias Sonu*, [2008 \(4\) Crimes 623](#) (MP). See also *State v Mohammed Sadiq*, [2006 Cr LJ 3391](#) (Kar).

**878.** *Lam Jaya Rao v State of AP*, [1992 Cr LJ 2127](#) (AP).

**879.** *State of Karnataka v Mohammed Sadiq*, [2006 Cr LJ 3391](#) (Kar).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 334] Voluntarily causing hurt on provocation.

Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

##### COMMENT.—

This section serves as a proviso to sections 323 and 324. See Comment on Exception 1 to section 300.<sup>880</sup>

##### [s 334.1] Sentence.—

High Court imposed a sentence of one year for offence under [section 334 IPC, 1860](#) whereas the maximum sentence for offence under [section 334 IPC, 1860](#) is one month. The sentence reduced to one month.<sup>881</sup>

<sup>880</sup>. See also *Bosco Lawrence Fernandes v State of Maharashtra*, (1995) 2 Cr LJ 2007 (Bom), covered under section 34.

<sup>881</sup>. *Ahmed Ali v State of Tripura*, (2009) 6 SCC 704 [LNIND 2009 SC 1043] : (2009) 3 SCC (Cr) 12.



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 335] Voluntarily causing grievous hurt on provocation.

Whoever <sup>882.</sup>[voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

**Explanation.**—The last two sections are subject to the same provisos as Exception 1, section 300.

#### COMMENT.—

This section serves as a proviso to sections 325 and 326. However, in the absence of the exact words being recorded, the abuses even involving mother and sister which are commonly indulged in by rustic villagers like the accused, could not be regarded as grave and sudden within the meaning of this section.<sup>883.</sup> Unless there is sudden and grave provocation, section 335 will not be attracted.<sup>884.</sup>

<sup>882.</sup> Ins. by Act 8 of 1882, section 8.

<sup>883.</sup> *State of Maharashtra v BR Patil*, 1978 Cr LJ 411 (Bom). *Arjunan v State of TN*, 1997 Cr LJ 2327 (Mad), in a dispute over cutting of tree, the accused pelted stones and caused injuries to the victim who died and witnesses were injured. The deceased had caused the provocation. Accused was liable to be convicted under section 335 and not section 325. *State of MP v Rajesh*, 1997 Cr LJ 2466 (MP), objection of accused to construction of a urinal which caused ugly sight to the accused. This caused provocation. For injuries caused under such provocation, the accused was held to be entitled to the benefit of section 335. Another accused who was not provoked was convicted under section 324. *Ahmed Ali v State of Tripura*, (2009) 6 SCC 704 [LNIND 2009 SC 1043] : (2009) 3 SCC (Cr) 12, the maximum term under the section being four years, the accused was sentenced to two years with a fine of Rs. 1,000. He being a person of tender years, the period was reduced to three months maintaining the fine amount.

<sup>884.</sup> *CBI v Kishore Singh*, (2011) 6 SCC 369 [LNIND 2010 SC 1033] : (2011) 2 SCC (Cr) 970 : AIR 2011 SC (Supp) 584; *Upparapalli Tirumala Rao v State of AP*, 2004 Cr LJ 4514 (AP).



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### **Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.**

##### **[s 336] Act endangering life or personal safety of others.**

**Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.**

#### **COMMENT.—**

Rash and negligent acts which endanger human life, or the personal safety of others, are punishable under this section even though no harm follows, and are additionally punishable under sections 337 and 338 if they cause hurt, or grievous hurt. The word "rashly" means something more than mere inadvertence or inattentiveness or want of ordinary care; it implies an indifference to obvious consequences and to the rights of others.<sup>885</sup> An intentional act done with consideration cannot be a rash and negligent act.<sup>886</sup>

Many specific acts of rashness or negligence likely to endanger life or to cause hurt or injury are made punishable by Chapter XIV.

Section 279 punishes rash driving or riding; section 280, rash navigation of a vessel; section 284, rash or negligent conduct with respect to poisonous substance; section 285, rash or negligent conduct with respect to any fire or combustible matter; section 286, rash or negligent conduct with respect to any explosive substance; section 287, negligent conduct with respect to any machinery in the possession of the accused; section 288, negligence with respect to pulling down or repairing buildings; section 289, negligence with respect to animals; section 304A, rash or negligent act causing death; section 336, any rash or negligent act endangering life or personal safety of others; section 337, rash or negligent act causing hurt; and section 338, rash or negligent act causing grievous hurt. Like section 304A, [sections 279, 336, 337 and 338 IPC, 1860](#) are attracted for only the negligent or rash act. The scheme of sections 279, 304A, 336, 337 and 338 leaves no manner of doubt that these offences are punished because of the inherent danger of the acts specified therein irrespective of knowledge or intention to produce the result and irrespective of the result. These sections make punishable the acts themselves which are likely to cause death or injury to human life.

885. *Remal Dass*, (1963) 2 Cr LJ 718 .

886. *Kala Bhika*, (1964) 67 Bom LR 223 .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

##### [s 337] Causing hurt by act endangering life or personal safety of others.

Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

##### COMMENT.—

Section 304A deals with those cases where death is caused by a rash or negligent act; this section, where hurt is caused. The essential ingredients of [section 337, IPC, 1860](#) are that whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished. So, one of the essential ingredients of this section must be that hurt must be caused to someone in doing an act and the person bearing to take reasonable care is said to be negligent of his act.<sup>887</sup> This section applies only to acts done rashly or negligently but without any criminal intent. But such negligence or rashness must be proved as would necessarily carry with it criminal liability.<sup>888</sup> Where the victim suffered only simple injuries, section 337 is to be applied.<sup>889</sup>

##### [s 337.1] CASES.—

The allegation was that the accused, car driver, drove car in a rash and negligent manner and caused injury to a child who was playing on side of road. Evidence showed that the vehicle was going in middle of road and child was also playing in the middle. Brake skid marks on road were duly depicted in site plan. Rash or negligent act of driving by respondent was not proved beyond doubt. Acquittal of accused was held proper.<sup>890</sup> Injured was occupant of the truck along with the petitioner and had received the injuries on account of the incident/accident where the truck after hitting the Motor Cycle, had gone and struck against the pole. No allegation of any intention or knowledge on the part of the petitioner can be made to attract the offence under [section 325, IPC, 1860](#).

##### [s 337.2] Section 324 vis-a-vis section 337.—

Essential ingredients to make out an offence under [section 324 IPC, 1860](#) should be that there must be voluntarily causing hurt and also required intention. But evidence showed that there was no intention of petitioner/ accused to attack victim and his intention was only to attack, witness because of some altercation or dispute between

them. Petitioner/accused cannot be said to have committed the offence punishable under [section 324 IPC, 1860](#). At the same time evidence showed that victim received simple injuries. Petitioner liable to be convicted under [section 337 of IPC, 1860](#) and not under section 324.<sup>891.</sup>

### **[s 337.3] Negligence with reference to gun.—**

The causing of hurt by negligence in the use of a gun was held to fall within the purview of this section rather than of section 286. But where all the evidence against the accused was that he went out shooting when people were likely to be in fields and that a single pellet from his gun struck a man who was sitting in a field, it was held that this was not sufficient evidence of rashness or negligence to support a conviction under this section.<sup>892.</sup>

### **[s 337.4] Negligent operation.—**

The accused removed intra-uterine device during the fourth month of pregnancy of the complainant. The latter had a premature delivery. The child died after 22 days of delivery. The Court said that the incident was not the direct result of the act of the accused. The complaint was quashed.<sup>893.</sup>

### **[s 337.5] Conviction under section 279 and section 337.—**

Whether a Court can convict a person under [sections 279 and 337, IPC, 1860](#) for commission of the same act of offence and accordingly pass sentence under both the sections. As the offence having been outcome of the same act, the Court should punish the accused for one offence and at the same time, while passing the order of sentence, the Court should also consider that when the sentence prescribed under [section 279, IPC, 1860](#) being higher it is a grave offence than the offence prescribed under [section 337, IPC, 1860](#) the accused could be punished under [section 279, IPC, 1860](#) only.<sup>894.</sup>

### **[s 337.6] Factories Act, 1948.—**

[Section 92 of the Factories Act, 1948](#) will come into play even if nobody sustains any injury or even if the accident does not result in death of any person. But [sections 337 and 338, IPC, 1860](#) will apply where a negligent act results in causing injuries to any person.<sup>895.</sup>

### **[s 337.7] Moral turpitude.—**

Offence punishable under [section 337 IPC, 1860](#) would not involve moral turpitude so as to remove the **petitioner**—accused from service.<sup>896.</sup>

### [s 337.8] Sentence.—

Where the accused was convicted under section 337 for an incident of accident occurring 20 years before and he had already served a part of sentence and had children of tender age, his sentence was reduced to the period already undergone.<sup>897.</sup>

### [s 337.9] Pleading guilty.—

Pleading guilty is not a ground for the Magistrate to let off the accused with sentence of fine only.<sup>898.</sup>

<sup>887.</sup> *Ashok Chandak v State of AP*, 2011 Cr LJ 638 (AP).

<sup>888.</sup> *Arumugham v Gnanasoundar*, AIR 1962 Mad 362 [LNIND 1961 MAD 133] . See also *Swaran Singh v State*, 1991 Cr LJ 1867 (Del), conviction shifted from section 338 to section 337 because the injury actually proved was of very simple nature. *Annasaheb Bandu Patil v State of Maharashtra*, 1991 Cr LJ 814 , no injury was caused to anybody by bus driver's negligence in suddenly braking the bus though it dashed against a pole, conviction set aside.

<sup>889.</sup> *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15] .

<sup>890.</sup> *State of HP v Jawahar Lal Jindal*, 2011 Cr LJ 3827 (HP); *State of HP v Niti Raj alias Gogi*, 2009 Cr LJ 1922 (HP) order of acquittal reversed; for the same effect see *State of HP v Varinder Kumar*, 2008 Cr LJ 41759 (HP).

<sup>891.</sup> *Ch Pitchavadhmtiilu v State of AP*, 2011 Cr LJ 469 (AP).

<sup>892.</sup> *Abdus Sattar v State*, (1906) 28 All 464 . *State of Karnataka v Krishna*, (1987) 1 SCC 538 [LNIND 1987 SC 701] : AIR 1987 SC 861 [LNIND 1987 SC 701] : 1987 Cr LJ 776 death caused by rash and negligent driving, the Supreme Court enhanced the sentence to six months' RI from two months simple imprisonment, being unconscionably lenient.

<sup>893.</sup> *Shaheed K (Dr) v PK Shahida*, 1998 Cr LJ 4638 (Ker).

<sup>894.</sup> *Md Hiran Mia v State of Tripura*, 2010 Cr LJ 189 (Gau)

<sup>895.</sup> *Ashok Chandak v State of AP*, 2011 Cr LJ 638 (AP); *Ejaj Ahmad v State of Jharkhand*, 2010 Cr LJ 1953 (Jha).

<sup>896.</sup> *Ch Pitchavadhmtiilu v State of AP*, 2011 Cr LJ 469 (AP).

<sup>897.</sup> *Hari Ram v State*, 1995 Cr LJ 3152 (Del). *Vasi v State of Gujarat*, 2010 (15) SCC 247 [LNIND 2010 SC 342] .

<sup>898.</sup> *Thomas v State*, 2013 Cr LJ 825 (Ker).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

**[s 338] Causing grievous hurt by act endangering life or personal safety of others.**

Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

#### COMMENT.—

The last section provided for 'hurt', this section provides for 'grievous hurt' caused under similar circumstances. [Section 338, IPC, 1860](#) is applicable when the other ingredients of [section 337, IPC, 1860](#) are complied with and in addition to that, if a grievous hurt is caused to someone.<sup>899.</sup>

#### **[s 338.1] CASES.—Sexual intercourse causing injury.—**

A husband has not the absolute right to enjoy the person of his wife without regard to the question of safety to her. Hence, where a husband had sexual intercourse with his wife, aged 11 years, and she died from the injuries thereof, it was held that he was guilty of causing grievous hurt by doing a rash act under this section.<sup>900.</sup> Clause (6) of section 375 will now make the husband guilty of rape also. Where a driver of a motor bus, by reason of his inattention and failure to apply brakes, pressed a person against a wall, he was held to have committed an offence under this section as well as under section 279.<sup>901.</sup>

#### **[s 338.2] Running over by cart.—**

Where a person, by allowing his cart to proceed unattended along a road, ran over a boy who was sleeping on the road, it was held that he had committed an offence under section 337 or section 338.<sup>902.</sup>

#### **[s 338.3] Section 304 Part II and section 338.—**

The scheme of sections 279, 304A, 336, 337 and 338 leaves no manner of doubt that these offences are punished because of the inherent danger of the acts specified therein irrespective of knowledge or intention to produce the result and irrespective of



the result. These sections make punishable the acts themselves which are likely to cause death or injury to human life. The question is whether indictment of an accused under section 304 Part II and [section 338 IPC, 1860](#) can co-exist in a case of single rash or negligent act. It can, two charges are not mutually destructive. If the act is done with the knowledge of the dangerous consequences which are likely to follow and if death is caused then not only that the punishment is for the act but also for the resulting homicide and a case may fall within section 299 or section 300 depending upon the mental state of the accused viz., as to whether the act was done with one kind of knowledge or the other or the intention. Knowledge is awareness on the part of the person concerned of the consequences of his act of omission or commission indicating his state of mind. There may be knowledge of likely consequences without any intention. Criminal culpability is determined by referring to what a person with reasonable prudence would have known.<sup>903.</sup>

#### **[s 338.4] Medical negligence, criminal liability.—**

The only state of mind which is deserving of punishment is that, which demonstrates an intention to cause harm to others, or where there is a deliberate willingness to subject others to the risk of harm. Negligent conduct does not entail an intention to cause harm, but only involves a deliberate act subjecting another to the risk of harm, where the actor is aware of the existence of the risk and, nonetheless, proceeds in the face of the risk.<sup>904.</sup>

#### **[s 338.5] Offences under [Factories Act, 1948](#).—**

The ingredients of [section 337](#) and [section 338, IPC, 1860](#) and the provisions of the Andhra Pradesh Fire Services Act, 1999 and the [Factories Act, 1948](#) cannot be said to be one and the same. They apply to different situations for different purposes and for different measures to be taken by the owner or occupier of the factories. Even the steps to be taken under both the enactments are different as discussed above, and even if no fire accident had taken place, the provisions of [Factories Act, 1948](#) and the Fire Services Act will apply. But when there is no accident, [section 337](#) and [section 338, IPC, 1860](#) do not apply. [Sections 337](#) and [338, IPC, 1860](#) are applicable where the owner or occupier, knowing very well that no preventive steps were taken and it will be dangerous for the workers to work in such a situation and without any due regard to the consequences which a man would think and for the safety of the workers, extract work from them and wherein from the circumstances it appears that such an act of extracting work from workers amount to acting in rash and negligent manner. Therefore, to attract [section 337](#) and [section 338, IPC, 1860](#) something more, i.e., careless and negligent act is required to be proved, even after proving of violation of provisions of Fire Services Act and the [Factories Act, 1948](#). Thus, it is clear that [section 337](#) and [section 338, IPC, 1860](#) are applicable only in aggravated situations besides violation of the provisions of the Fire Services Act and the [Factories Act, 1948](#).<sup>905.</sup> The expression act includes omission.<sup>906.</sup>

899. *Ashok Chandak v State of AP*, 2011 Cr LJ 638 (AP).
900. *Hurree Mohun Mythee*, (1890) 18 Cal 49 .
901. *State of HP v Man Singh*, 1995 Cr LJ 299 (HP). *SD Khetani (Dr) v State*, 1998 Cr LJ 2493 .
902. *Malkaji*, (1884) Unrep Cr C 198; See the Comments under sections 279 and 304A.
903. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15] .
904. *Dr PB Desai v State of Maharashtra*, 2014 Cr LJ 385 : 2013 (11 ) Scale 429 [LNIND 2013 SC 815] .
905. *Ashok Chandak v State of AP*, 2011 Cr LJ 638 (AP).
906. *Dr PB Desai v State of Maharashtra*, 2014 Cr LJ 385 : 2013 (11 ) Scale 429 [LNIND 2013 SC 815] .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Wrongful Restraint and Wrongful Confinement

##### [s 339] Wrongful restraint.

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

**Exception.**—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

##### ILLUSTRATION

A obstructs a path along which Z has a right to pass. A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

##### COMMENT.—

Wrongful restraint means the keeping a man out of a place where he wishes to be, and has a right to be.<sup>907</sup> The slightest unlawful obstruction to the liberty of the subject to go, when and where he likes to go, provided he does so in a lawful manner, cannot be justified, and is punishable under this section.<sup>908</sup>

##### [s 339.1] Ingredients.—

The section requires—

- (1) Voluntary obstruction of a person.
- (2) The obstruction must be such as to prevent that person from proceeding in any direction in which he has a right to proceed. The word 'voluntary' is significant. It connotes that obstruction should be direct. The obstructions must be a restriction on the normal movement of a person. It should be a physical one. They should have common intention to cause obstruction.<sup>909</sup>

The following illustrations, given in the original Draft Code,<sup>910</sup> further elucidate the meaning of this section:—

- (a) A builds a wall across a path along which Z has a right to pass. Z is thereby prevented from passing. A wrongfully restrains Z.
- (b) A illegally omits to take proper order with a furious buffalo which is in his possession and thus voluntarily deters Z from passing along a road along which

Z has a right to pass. A wrongfully restrains Z.

- (c) A threatens to set a savage dog at Z, if Z goes along a path along which Z has a right to go. Z is thus prevented from going along that path. A wrongfully restrains Z.
- (d) In the last illustration, if the dog is not really savage, but if A voluntarily causes Z to think that it is savage, and thereby prevents Z from going along the path, A wrongfully restrains Z.

From these illustrations it will appear that a person may obstruct another by causing it to appear to that other that it is impossible, difficult or dangerous to proceed, as well as by causing it actually to be impossible, difficult or dangerous for that other to proceed. For the offence of wrongful restraint, the necessary pre-condition is that the person concerned must have a right to proceed.<sup>911</sup> It is an inevitable factor under [section 339 of the IPC, 1860](#) which defines wrongful restraint that the person, who is obstructed, has the right to proceed in a particular direction. If section 339 and section 31 are read together, it will be clear that if the accused voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has right to proceed, he is said to have wrongfully restrained that person. [Section 339 of the IPC, 1860](#) requires that the accused should have obstructed a person from proceeding in any direction in which he has the right to proceed and when he obstructs any person and restrains him from proceeding in any direction he commits the offence of wrongful restraint punishable under [section 341 of the IPC, 1860](#).<sup>912</sup> Whoever obstructs a person from proceeding to a direction to which that person has a right to proceed, commits an offence of wrongful restraint. While dealing with the offence which is punishable under [section 341 of IPC, 1860](#) and which has been defined by [section 339 of IPC, 1860](#) the Court is obliged to see following ingredients:

- (1) Whether the person so obstructed had a lawful right to proceed to a direction to which he has been obstructed;
- (2) Whether such obstruction was for enforcement of a legal right of the obstructer.
- (3) Whether such obstructer obstructed such person in good faith. It has to be kept in mind that nothing can be said to be done in good faith which is not done with due care and caution. If these ingredients are indicated by the complaint, the Magistrate is obliged to take the cognizance of the complaint so presented before him unless there are the other grounds for acting otherwise which has to be justified by reasons recorded in writing.<sup>913</sup>

Where the tenant and his family members were prevented by some other tenants in league with the landlord from using the main gate by force and abuses, the Court observed that it was utterly wrong to have dismissed the complaint as a matter of civil nature.<sup>914</sup>

Obstruction contemplated by this section, though physical, may be caused not only by physical force but also by menaces and threats, the criterion of the offence thereunder or under section 341 being more the effect than the method.<sup>915</sup> The fact of physical obstruction even by mere words would fall within the ambit of this section.<sup>916</sup>

### **[s 339.2] CASES.—Wrongful restraint.—**

Where the accused, a boy of 15 years, caught hold of a man from the back to enable the main accused, his brother, to attack, it was held that common intention of murder

could not be inferred. Accordingly, his conviction from under sections 302/34 was converted to one under section 340.<sup>917</sup> The driver of a bus purposely made his bus stand across the road in such a manner as to prevent another bus, which was coming from behind, to proceed further. It was held that the driver of the first bus was guilty of wrongful restraint.<sup>918</sup> Where the tenants of a housing society converted an open space within the compound into a garden and cordoned it, this offence was held to have been committed and though the accused were companies, they could be prosecuted under this section and section 447.<sup>919</sup> Their conduct caused obstruction to the free movement of other members.

### **[s 339.3] No wrongful restraint.—**

Where a person obstructs a private pathway claimed by way of a right of easement over his land and which right was not admitted, he does not commit the offence of wrongful restraint.<sup>920</sup> The obstruction under this section has to be to a person and not to an empty car.<sup>921</sup> Where at the behest of a constable the accused stopped some carts in which rice was being carried by some persons in the *bona fide* belief that the rice was being smuggled out, they could not be held liable under [section 341, IPC, 1860](#) even if suspicion ultimately proved to be incorrect, for they would still get the protection of [section 79, IPC, 1860](#) that is, mistake of fact.<sup>922</sup> Where a tenant was partially obstructed from entering the premises by the closure of one of the door leaves, it was held that it did not amount to wrongful restraint as he was still free to enter the premises.<sup>923</sup> The wife of the complainant was working as a teacher in a school. The complainant, a judicial officer, was staying in the quarter allotted to her in the school compound till he was posted to some other place. Thereafter, he used to visit his family and was permitted to park his car at a particular place but he was prevented from using the main gates of the school. He was not restrained from using the passage leading to the school premises where his wife was allotted residential quarter. It was held that criminal restraint to a 'person' is punishable but not any obstruction for plying/parking of a vehicle at a particular place.<sup>924</sup> Where the *Sarvodaya* workers prevented visitors from entering a liquor shop, it cannot be held an offence under [section 339 IPC, 1860](#).<sup>925</sup>

The word "voluntarily" connotes direct physical restraint. There should be restriction on the normal movement of a person. In this case, the accused person had decided on behalf of a limited company to get a road repaired and the repair, if carried out, might have caused some inconvenience to the complainant, it was held that there was no offence under sections 339 and 341.<sup>926</sup>

### **[s 339.4] Matter of civil nature.—**

The right of a co-sharer to enjoy the joint family property is a civil right. Where such right is denied by other co-shares for one reason or another, the Court said that it should be enforced by taking recourse to remedies available under the civil laws, criminal proceedings cannot be resorted to for such purposes.<sup>927</sup>

907. Note M, p 154.
908. *Saminada Pillai*, (1882) 1 Weir 339.
909. *Keki Hormusji Gharda v Mehervan Rustom Irani*, (2009) 6 SCC 475 [LNIND 2009 SC 1276] : AIR 2009 SC 2594 [LNIND 2009 SC 1276] .
910. P 59.
911. *Vijay Kumari v SM Rao*, AIR 1996 SC 1058 : 1996 Cr LJ 1371 . In the instant case after termination of the licence, the teacher had lost her right to enter the room of the hostel.
912. *Bharat Kishormal Shah v State of Maharashtra*, 2010 Cr LJ 4088 (Bom).
913. *Noor Mohamed Alias Mohd v Nadirshah Ismailshah Patel*, 2004 Cr LJ 985 (Bom).
914. *Paritosh Chowdhury v Sipra Banerjee*, 1988 Cr LJ 1299 (Cal).
915. *Nripendra Nath Basu v Kisen Bahadur*, (1952) 1 Cal 251 .
916. *Re Shanmugham*, 1971 Cr LJ 182 .
917. *Har Vansh Singh v State of UP*, 1993 Cr LJ 3059 (All).
918. *Abraham v Abraham*, (1950) Mad 858.
919. *Sanghi Motors (Bom) Ltd v MT Shinde*, 1989 Cr LJ 684 Bom. Section 447 punishes criminal trespass.
920. *Basam Bhowmick*, AIR 1963 Cal 3 [LNIND 1962 CAL 48] .
921. *Shankarlal*, 1975 Cr LJ 1077 (Gau).
922. *Keso Sahu*, 1977 Cr LJ 1725 (Ori).
923. *Sankar Chandra Ghose*, 1981 Cr LJ 1002 (Cal).
924. *Rita Wilson v State of HP*, 1992 Cr LJ 2400 (HP).
925. *Narayanan v State*, 1986 Ker LT 1265 .
926. *Keki Hormusji Gharda v Mehervan Rustom Irani*, (2009) 6 SCC 475 [LNIND 2009 SC 1276] : 2009 Cr LJ 3733 .
927. *Rajinder Singh Katoch v Chandigarh Admn*, (2007) 10 SCC 69 [LNIND 2007 SC 1233] : AIR 2008 SC 178 [LNIND 2007 SC 1233] .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Wrongful Restraint and Wrongful Confinement

##### [s 340] Wrongful confinement.

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding<sup>1</sup> beyond certain circumscribing limits,<sup>2</sup> is said "wrongfully to confine" that person.

##### ILLUSTRATIONS

- (a) A causes Z to go within a walled space, and locks Z in. A is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.
- (b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

##### COMMENT.—

Wrongful confinement, which is a form of wrongful restraint, is keeping a man within limits out of which he wishes to go, and has a right to go.<sup>928</sup>

##### [s 340.1] Ingredients.—

The section requires—

- (1) Wrongful restraint of a person.
- (2) Such restraint must prevent that person from proceeding beyond certain circumscribing limits. The offence of wrongful confinement as defined under section 340 of the Code occurs when individual is wrongfully restrained in such a manner as to prevent him/her from proceeding beyond certain circumscribing limits.<sup>929</sup>

##### [s 340.2] Wrongful confinement and wrongful restraint.—

From the definition, it is evident that 'wrongful confinement' is a species of 'wrongful restraint' as defined in [section 339 IPC, 1860](#). While, in 'wrongful restraint', there is only a partial suspension of one's liberty, 'wrongful confinement' reflects total suspension of liberty beyond certain prescribed limits. The period of suspension is immaterial for constituting an offence of 'wrongful confinement' or 'wrongful restraint'. When a person is restrained and is prevented from going, where he has a right to go, the restraint

becomes wrongful if such restraint is not in exercise of any right, power or authority under any law.<sup>930.</sup>

**1. 'Prevent that person from proceedings'.—**The restraining of a person in a particular place or compelling him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action is an imprisonment on the part of him who exercises that exterior will.<sup>931.</sup> There can be no wrongful confinement when a desire to proceed has never existed, nor can a confinement be wrongful if it was consented to by the person affected.<sup>932.</sup> Mere insistence by words of mouth or mere sitting around a person would not satisfy the requirements of the offence of wrongful confinement which requires that there must be voluntary obstruction to that person so as to prevent that person from proceeding in any direction in which that person has a right to proceed.<sup>933.</sup> To support a charge of wrongful confinement proof of actual physical restriction is not essential. It is sufficient if such evidence shows that such an impression was produced on the mind of the victim as to create a reasonable apprehension in his or her mind that he or she was not free to depart and that he or she would be forthwith seized or restrained if he or she attempted to do so.<sup>934.</sup>

**2. 'Certain circumscribing limits'.—**

A prison may have its boundary, large or narrow, visible and tangible, or, though real still in the conception only; it may itself be moveable or fixed: but a boundary it must have; and that boundary the party imprisoned must be prevented from passing; he must be prevented from leaving that place, within the ambit of which the party imprisoning would confine him, except by prison-breach. Some confusion seems to me to arise from confounding imprisonment of the body with mere loss of freedom: it is one part of the definition of freedom to be able to go whithersoever one pleases; but imprisonment is something more than the mere loss of this power; it includes the notion of restraint within some limits defined by a will or power exterior to our own.<sup>935.</sup>

**[s 340.3] Forced to walk.—**

Where a person was forced to walk under duress to a particular direction, it amounted to an offence of wrongful confinement. An act by which a person is prevented from proceeding towards a particular direction is an offence under the section.<sup>936.</sup>

**[s 340.4] Moral force.—**

Detention through the exercise of moral force, without the accompaniment of physical force or actual conflict, is sufficient to constitute this offence.<sup>937.</sup>

**[s 340.5] Period of confinement.—**

The time during which a person is kept in wrongful confinement is immaterial, except with reference to the extent of punishment.<sup>938.</sup>

**[s 340.6] Remedy of compensation under writ of *habeas corpus*.—**



Freedom from detention and compensation for wrongful detention, it has been held, can be ordered under writ of *habeas corpus*; however, the Court added that the remedy under [section 340 IPC, 1860](#) cannot be treated as an alternative or substitute for remedy of *habeas corpus*. It is only an additional remedy.<sup>939.</sup>

### **[s 340.7] Compensation for unauthorised detention.—**

The petitioner was detained by an order passed by the Judicial Magistrate, First Class whereas the authority for order of detention vested with the State or Central Government. It was held that the said detention, being without authority of law, amounted to wrongful confinement. The detention was quashed and the detenu was granted a compensation of Rs. 3,000.<sup>940.</sup>

### **[s 340.8] CASES.—Wrongful confinement.—**

Where two police-officers arrested without warrant a person who was drunk and creating disturbance in a public street, and confined him in the police-station though one of them knew his name and address and it was not found to what extent he was a danger to others or their property, it was held that the arrest having been made by the police-officers without warrant, for a non-cognizable offence, their action amounted to wrongful confinement unless it was justified on the ground of right of private defence or under section 81 as was, in fact, held by the Court.<sup>941.</sup> Though an illegal search in violation of the provisions of [section 165 Cr PC, 1973](#) can be resisted, there is no justification for bodily lifting and bringing back the Investigating Officer after he has left the house and to confine and threaten him till he gives a written statement that he has searched the house of the appellant. It was held that by such acts the accused had committed offences of wrongful confinement and assaulting a public servant within the meaning of [sections 342 and 353, IPC, 1860](#).<sup>942.</sup> A police officer arrested and detained a person in the *thana* lock-up despite production of a bail order from the Court. It was held that the officer was clearly guilty of an offence under [section 342 IPC, 1860](#).<sup>943.</sup>

### **[s 340.9] Custody of child.—**

It is an incorrect proposition of law that a father would never be held liable for offence of wrongful 'confinement' if he detains the child by having snatched her away from the mother, who, under some authority of law, had, at the time of snatching, the custody of the child and is entitled to have custody of the child. When a minor is kept against the will of the person, who has the custody of such a child and/or who is entitled to take the custody of the child, such detention would amount to 'wrongful confinement'. In such a case, it is the will of the person, who is entitled to have custody of such a child, which will be the will of the child, for, the child's willingness or 'consent' would be immaterial unless the welfare of the child, in a given case, demands removal of the child from the custody of the person, who is, otherwise, entitled to keep the custody of the child. Guardian and custodian are not synonymous with each other. Thus, even when a parent, who, with impunity, snatches away a child from the lawful custody of the other parent, who held such custody and who is entitled to have the custody of the child under the law—personal, statutory or otherwise—such snatching away of the child and his detention against the will of the parent in whose custody the child was, would amount to an offence of 'wrongful confinement'.<sup>944.</sup>

**[s 340.10] No wrongful confinement.—**

Where the wife who has attained the age of 21 stated before the Court that she was not detained by her parents against her will, there was no wrongful confinement and as such the *habeas corpus* petition by the husband could not succeed.<sup>945.</sup>

928. Note M, p 154.

929. *Subhash Krishnan v State of Goa*, (2012) 8 SCC 365 [LNIND 2012 SC 480] : AIR 2012 SC 3003 [LNIND 2012 SC 480].

930. *Piyush Chamaria v Hemanta Jitani*, 2012 Cr LJ 2306 (Gau).

931. *Parankusam v Stuart*, (1865) 2 MHC 396 ; *SA Hamid v Sudhirmohan Ghosh*, (1929) 57 Cal 102 .

932. *Muthammad Din*, (1893) PR No. 36 of 1894.

933. *Lilabati Kanjilal*, 1966 Cr LJ 838 .

934. *Bhagwat v State*, 1971 Cr LJ 1222 . See further, *Rabinarayan Das v State of Orissa*, 1992 Cr LJ 269 (Ori), where the court added that an essential ingredient of the offence is that the accused should have wrongfully restrained the complainant and such restraint was to prevent the complainant from proceeding beyond certain circumscribing limits.

935. *Per Coleridge, J, in Birid v Jones*, (1845), QB 742, 744.

936. *Nania Nanuram v State of MP*, 1995 Cr LJ 1870 (MP). The court also said that a person charged with murder can be convicted under section 341 or 342.

937. *Venkatachala Mudali*, (1881) 1 Weir 341.

938. *Suprosunno Ghosaul*, (1866) 6 WR (Cr) 88. Taking away a girl for rape was held to be a confinement of this kind and punished as such, sentence of three years RI was held to be not excessive, *Periyasami Re*, 1995 Cr LJ 1203 (Mad).

939. *Poovan v SI of Police*, 1993 Cr LJ 2183 (Ker).

940. *Paothing Tangkhul v State of Nagaland*, 1993 Cr LJ 2514 .

941. *Gopal Naidu*, (1922) 46 Mad 605 (FB).

942. *Shyamlal*, 1972 Cr LJ 638 : AIR 1972 SC 886 [LNIND 1972 SC 100] . *Shamshuddeen v State of Kerala*, 1989 Cr LJ 2068 , the accused confining the two police officers who rescued a person from his confinement, no leniency shown in sentencing. *D Ramalinga Reddy v D Babu*, 1999 Cr LJ 2918 (AP), wrongful restraint. *Samir Saha v State of Assam*, 1998 Cr LJ 1360 (Gau) proof of actual physical restriction is not necessary; *Sanji Ladha v State of Gujarat*, 1998 Cr LJ 2746 (Guj).

943. *Dharmu*, 1978 Cr LJ 864 (Ori).

944. *Piyush Chamaria v Hemanta Jitani*, 2012 Cr LJ 2306 (Gau).

945. *Madhu Bala*, 1982 Cr LJ 555 (SC) : AIR 1982 SC 938 .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Wrongful Restraint and Wrongful Confinement

[s 341] Punishment for wrongful restraint.

**Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.**

#### COMMENTS.—

The only allegation relating to section 341 was that accused stood in front of victim in such a manner that she had to move backward. From such act alone it cannot be said that he "wrongfully restrained" her within the meaning of [section 339, IPC, 1860](#) to make him liable under [section 341, IPC, 1860](#).<sup>946</sup> Accused, appellant caught the victim from behind, pushed her on ground, removed her panty and made an attempt to rape. Evidence of victim was found consistent. She specifically stated that upon getting opportunity she kicked in testicles of accused and escaped from place of occurrence. Conviction under section 341 and section 511 of 376 was upheld.<sup>947</sup> Accused with 2–3 other persons restricted the deceased on way and an axe blow was given by first accused on the head of the deceased and that was resisted by patting hands ahead. Consequent to the blow aforesaid he received an injury near his ear. A *lathi* blow then was given by second accused on the head of the deceased, consequent to which he fell down and then he was severely beaten by the accused. Deceased succumbed to the injuries sustained. Conviction under sections 302 and 341 was upheld.<sup>948</sup>

<sup>946</sup>. *Rupan Deol Bajaj v Kanwar Pal Singh Gill*, AIR 1996 SC 309 [LNIND 1995 SC 981] : (1995) 6 SCC 194 [LNIND 1995 SC 981] .

<sup>947</sup>. *Rajesh Vishwakarma v State of Jharkhand*, 2011 Cr LJ 2753 (Jha); *Amar Soni v State of Jharkhand*, 2010 Cr LJ 4003 (Jha)—Acid attack.

<sup>948</sup>. *Natha v State of Rajasthan*, 2013 Cr LJ 1905 (Raj).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Wrongful Restraint and Wrongful Confinement

##### [s 342] Punishment for wrongful confinement.

**Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.**

#### COMMENT.—

Section 342, IPC, 1860 is not confined to offences against public servants but is a general section and makes a person who wrongfully restrains another, guilty of the offence under that section. A wrongful confinement is a wrongful restraint in such a manner as to prevent that person from proceeding beyond a certain circumscribed limits. This offence has nothing to do with the investigation or search.<sup>949</sup> The essential ingredients of the offence "wrongful confinement" are that the accused should have wrongfully confined the complainant and such restraint was to prevent the complainant from proceeding beyond certain circumscribed limits beyond which he/she has a right to proceed. The factual scenario clearly establishes commission by the appellant as well of the offence punishable under section 342 IPC, 1860.<sup>950</sup> Confinement need not necessarily be a confinement where the person is physically held within a certain circumscribed limit. To support the charge of wrongful confinement, proof of actual physical obstruction is not essential. It is the condition of the mind of the person confined, having regard to the circumstances that leads him to reasonably believe that he was not free to move and that he would be forthwith restrained if he attempted to do so.<sup>951</sup>

Where a man, illegally taken into police custody was beaten by the police and he committed suicide, the accused police officials were punished under section 342. Case under sections 352 and 302 was not made out.<sup>952</sup> Wife suffered a blow of hammer on left side below ear and immediately died on spot. Accused husband convicted under section 342 and 302 IPC, 1860.<sup>953</sup> Victim after being arrested was kept in police station for three days and was not produced before a Magistrate within 24 hours. SHO cannot be absolved from the charges under section 342.<sup>954</sup> In *Vadamalai v Syed Thastha Keer*,<sup>955</sup> the complainant was allegedly detained and beaten by appellant/police officials in Police Station but the evidence does not show that he was kept in police station for four days. Conviction of the appellant by High Court under sections 323, 342 held not sustainable and liable to be set aside.

The officers who visited the house of the accused for making inquiry under Money Lenders Act, were not allowed to go out of the house for some time. It was found that there was no apprehension in their mind about use of force in case they tried to move out. It was held that no offence under section 342 was made out.<sup>956</sup>

949. *Shyam Lal Sharma v State of MP*, AIR 1972 SC 886 [LNIND 1972 SC 100] : (1972) 1 SCC 764 [LNIND 1972 SC 100] .
950. *Raju Pandurang Mahale v State of Maharashtra*, AIR 2004 SC 1677 [LNIND 2004 SC 194] : (2004) 4 SCC 371 [LNIND 2004 SC 194] .
951. *Mrityunjay Kumar v State*, 2010 Cr LJ 44 (Sik).
952. *State v Balkrishna*, 1992 Cr LJ 1872 (Mad).
953. *Daulat Singh v State of Rajasthan*, 2013 Cr LJ 1797 (Raj); *Subhash Krishnan v State*, (2012) 8 SCC 365 [LNIND 2012 SC 480] : AIR 2012 SC 3003 [LNIND 2012 SC 480] – Every ingredients of section 342 and section 364 is clearly made out; *Baby v State*, (2012) 11 SCC 362 [LNINDU 2012 SC 11] –The sentences imposed under section 376, section 506 (ii) and 342 IPC, 1860 were maintained; *Elavarasan v State*, AIR 2011 SC 2816 [LNIND 2011 SC 604] : (2011) 7 SCC 110 [LNIND 2011 SC 604] – Conviction under section 304–Part II and 342.
954. *Central Bureau of Investigation v Kishore Singh*, (2011) 6 SCC 369 [LNIND 2010 SC 1033] : (2011) 2 SCC (Cr) 970 : AIR 2011 SC (Supp) 584.
955. *Vadamalai v Syed Thastha Keer*, (2009) 3 SCC 454 [LNIND 2009 SC 304] : AIR 2009 SC 1956 [LNIND 2009 SC 304] .
956. *State of Gujarat v Keshavlal Maganbhai Jogani*, 1993 Cr LJ 248 (Guj). *Veena Rangnekar v State of Maharashtra*, 2000 Cr LJ 2443 , death by electrocution in the house let to the tenant. Police team came in with permission to check new wiring. They were obstructed in their work of taking photographs and not allowed to leave the house for sometime. Guilty under the section. *Suresh N Bhusare v State of Maharashtra*, 1998 Cr LJ 4559 (SC) conviction set aside because the victim girl had gone voluntarily and not lifted and confined. Also see *Suresh Balkrishna Nakhava v State of Maharashtra*, 1998 Cr LJ 284 (Bom); *Shivraj Chandrappa Yadav v State of Maharashtra*, 1998 Cr LJ 3168 (Bom). *Raju Pandurang Mahale v State of Maharashtra*, (2004) 4 SCC 371 [LNIND 2004 SC 194] : AIR 2004 SC 1677 [LNIND 2004 SC 194] : 2004 Cr LJ 1441 , brought into a house under a false pretence, locked from outside, the victim could go out only next day, offence under the section made out.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Wrongful Restraint and Wrongful Confinement

##### [s 343] Wrongful confinement for three or more days.

**Whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### COMMENT.—

Whoever wrongfully confines any person for three days or more shall be punished under this section. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribed limits is said to 'wrongfully confine' that person, as defined under [section 340, IPC, 1860](#). Use of physical force is not necessary for the offence of wrongful confinement. A mere detention of a person against law would attract [section 343, IPC, 1860](#).<sup>957</sup>.

#### [s 343.1] Sanction.—

Since illegal detention and the assault made against the first respondent by the petitioner did not form part of the official duty of the petitioner and, therefore, there was no necessity to obtain prior sanction under [section 197, Cr PC, 1973](#).<sup>958</sup>.

<sup>957</sup>. *A Azeez v Pasam Hari Babu*, 2003 Cr LJ 2462 (AP).

<sup>958</sup>. *A Azeez v Pasam Hari Babu*, 2003 Cr LJ 2462 (AP).

## **THE INDIAN PENAL CODE**

### **CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE**

#### **Of Wrongful Restraint and Wrongful Confinement**

**[s 344] Wrongful confinement for ten or more days.**

**Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.**

## **THE INDIAN PENAL CODE**

### **CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE**

#### **Of Wrongful Restraint and Wrongful Confinement**

**[s 345] Wrongful confinement of person for whose liberation writ has been issued.**

**Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.**



## **THE INDIAN PENAL CODE**

### **CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE**

#### **Of Wrongful Restraint and Wrongful Confinement**

**[s 346] Wrongful confinement in secret.**

**Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.**

## **THE INDIAN PENAL CODE**

### **CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE**

#### **Of Wrongful Restraint and Wrongful Confinement**

**[s 347] Wrongful confinement to extort property or constrain to illegal act.**

**Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.**

#### **COMMENT.—**

This and the next section may be compared with sections 329 and 330, as the aggravating circumstances mentioned in the former are the same as those in the latter.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Wrongful Restraint and Wrongful Confinement

**[s 348] Wrongful confinement to extort confession, or compel restoration of property.**

**Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.**

#### COMMENT.—

This section may be compared with section 330. In the former case confession is extorted by wrongful confinement; in the latter, by causing hurt. To prove an offence under this section it is not necessary to show that a formal arrest was made. It is enough if it is shown that the person was prevented from proceeding beyond certain circumscribed limits.<sup>959</sup> Evidence showed that deceased died of multiple injuries and such injuries were caused when deceased was in illegal custody of accused. Accused was held liable to be convicted under sections 348 and 304 Part II of [IPC, 1860](#).<sup>960</sup>

<sup>959</sup>. *State of HP v Ranjit Singh*, 1979 Cr LJ (NOC) 210 (HP).

<sup>960</sup>. *State of AP v G Veereshalinga*, 2011 Cr LJ 1991 (AP); *Anup Singh v State of HP*, AIR 1995 SC 1941 : 1995 Cr LJ 3223 ; *Ajay Kumar Singh v State (NCT of Delhi)*, 2007 Cr LJ 3545 (Del). Order framing charge against the accused was held proper.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Criminal Force and Assault

##### [s 349] Force.

A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

#### COMMENT.—

'Force' as defined in clause (1) contemplates the presence of the person to whom it is used, that is to say, it contemplates the presence of the person using the force and of the person to whom the force is used.<sup>961.</sup>

<sup>961.</sup> *Bihari Lal*, (1934) 15 Lah 786, 789.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Criminal Force and Assault

##### [s 350] Criminal force.

**Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.**

##### ILLUSTRATIONS

- (a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.
- (b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here Z has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.
- (c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z.
- (d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.
- (e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes. A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

- (f) A intentionally pulls up a woman's veil. Here, A intentionally uses force to her, and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.
- (g) Z is bathing, A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling; A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.
- (h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

### **COMMENT.—**

The preceding section defines 'force'. This section says that 'force' becomes criminal (1) when it is used without consent and in order to the committing of an offence, or (2) when it is intentionally used to cause injury, fear or annoyance to another to whom the force is used. To attract the definition of 'criminal force' under [section 350 IPC, 1860](#), there must be intentional use of force on any person, without that person's consent. Such force must have been used for committing an offence, or intending to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person on whom the force is used. In other words, the criminal force contemplated under this section is intended to mean criminal force as applied to a person and not as applied to an inanimate object or substance.<sup>962</sup> A person is said to use force when he causes motion or change of motion or cessation of motion to another person or the above in substance, which brings it into contact with any part of the other person's body or with anything that the other is wearing or carrying, or with anything so situated that such contact affects other's sense of feeling. This should be done by his own bodily power or by use of some substance or by inducing any animal to change this motion. The use of force will become criminal when it is done against the consent of any person with the intention of committing an offence or to cause injury, fear or annoyance to any person. In this case admittedly no assault was resorted to.<sup>963</sup>

The term 'criminal force' includes what in English law is called 'battery'. It will, however, be remembered that 'criminal force' may be so slight as not to amount to an offence (section 95), and it will be observed that 'criminal force' does not include anything that the doer does by means of another person. The definition of 'criminal force' is so wide as to include force of almost every description of which a person is the ultimate object.

### **[s 350.1] Ingredients.—**

The section requires—

- (1) The intentional use of force to any person.
- (2) Such force must have been used without the person's consent.
- (3) The force must have been used—

- (a) in order to the committing of an offence; or
- (b) with the intention to cause, or knowing it to be likely that he will cause, injury, fear or annoyance to the person to whom it is used.

**[s 350.2] Illustrations.—**

The various illustrations exemplify the different ingredients of the definition of 'force' given in section 349. Illustration (a) exemplifies 'motion'; ill. (b), 'change of motion'; ill. (c), 'cessation of motion'; ills. (d), (e), (g) and (h), 'bring that substance into contact with any part of that other's body'; ills. (j) and (g) 'other's sense of feeling'. Clause 1 of section 349 is illustrated by ills. (c), (d), (e), (f) and (g); clause 2 by ill. (a); and clause 3, by ills. (b) and (h).

The petitioners had picked up or snatched the ballot papers from the custody and possession of the public servants. They had even torn the same in this process. It was held that they used criminal force.<sup>964</sup>

<sup>962</sup>. *Devaki Amma v State*, 1981 Ker LT 475 .

<sup>963</sup>. *S P Mallik v State of Orissa*, 1982 Cr LJ 19 (Pat)

<sup>964</sup>. *Bhupinder Singh v State of Punjab*, 1997 Cr LJ 3416 (PH).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Criminal Force and Assault

##### [s 351] Assault.

Whoever makes any gesture, or any preparation<sup>1</sup> intending or knowing it<sup>2</sup> to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

*Explanation.*—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

##### ILLUSTRATIONS

- (a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that

A is about to strike Z, A has committed an assault.

- (b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

- (c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

##### COMMENT.—

It is not every threat, when there is no actual personal violence that constitutes an assault; there must, in all cases, be the means of carrying the threat into effect. If a person is advancing in a threatening attitude, with an intention to strike another so that his blow will almost immediately reach the other, if he is not stopped, then this is an assault in point of law, though at the particular moment when he is stopped, he is not near enough for his blow to take effect.<sup>965</sup> In order to constitute assault it is not necessary that there should be some actual hurt caused. A threat constitutes assault.<sup>966</sup> Pointing a loaded pistol at another is undoubtedly an assault within the meaning of this section and as such punishable under [section 352 IPC, 1860](#) though not under [section 307 IPC, 1860](#).<sup>967</sup> In this connection see also sub-para entitled, "attempt to discharge loaded firearm" under section 307 *ante*.

##### [s 351.1] Ingredients.—



The section requires two things—

- (1) Making of any gesture or preparation by a person in the presence of another.
- (2) Intention or knowledge of likelihood that such gesture or preparation will cause the person present to apprehend that the person making it is about to use criminal force to him.

**1. 'Makes any gesture, or any preparation'.—**Illustration (a) illustrates that gestures which cause a person to apprehend that the person making them is about to use criminal force amount to an assault. As seen from the definition of "assault", a gesture or even a preparation on the part of accused would be sufficient to constitute "assault" and accused need not have even attacked the deceased.

The apprehension of the use of criminal force must be from the person making the gesture or preparation, and if that apprehension arises not from that person but from somebody else, it does not amount to assault on the part of that person. Further, criminal force cannot be said to be used by one person to another by causing change in the position of another human being. Where, therefore, the accused himself did nothing which could come under the definition of assault but simply made a gesture at which his followers advanced a little forward towards the complainant in a threatening manner, it was held that he was not guilty of the offence of assault under section 353.<sup>968</sup> Where the accused, armed with a sharp-edged weapon, went to the shop of a man and hurled a challenge to him from some distance asking him to come out and threatening him that he would not go back without killing him, it was held that the manner in which the accused hurled the challenge, he committed an assault within the meaning of section 351 and the retaliation by that man was in self-defence.<sup>969</sup>

Though mere preparation to commit a crime is not punishable (see section 511), yet preparation with the intention specified in this section amounts to an assault: see ill. (b).

**2. 'Intending or knowing it to be likely'.—**Intention or knowledge is the gist of the offence. Inadvertent recklessness, i.e., a failure to give thought to the possibility of risk involved in pursuing a course of action, is insufficient to amount to *mens rea* requisite for a conviction for assault.<sup>970</sup>

### **[s 351.2] Explanation.—**

Mere words do not amount to an assault, but the words which the party threatening uses at the time either give his gestures such a meaning as may make them amount to an assault, or, on the other hand, may prevent them from being held to amount to an assault. In the latter case, the effect of the words must be such as clearly to show the party threatened that the party threatening has no present intention to use immediate criminal force.<sup>971</sup> A preparation taken with words which would cause a person to apprehend that criminal force would be used to him, if he persisted in a particular course of conduct, does not amount to an assault, if there is no evidence to show that the accused was about to use criminal force to him then and there.<sup>972</sup>

### **[s 351.3] Blood transfusion without consent.—**

A person, aged 57, and a *Jehovah's* witness was seriously injured. He carried a card stating that no blood was to be administered under any circumstances. The doctor

administered blood transfusions which he considered necessary to preserve the victim's life. The doctor was held liable in battery for treating the adult patient in a manner to which he did not consent.<sup>973</sup>.

965. *Stephens v Myers*, (1830) 4 C&P 349.

966. *Rupabati v Shyama*, (1958) Cut 710.

967. *Swadesh Mahato*, [1979 Cr LJ 1275](#) (Pat); See also *James*, (1844) 1 C&K 530; *Vijaidutta Jha*, (1947) Nag 237.

968. *Muneshwar Bux Singh*, [\(1938\) 14 Luck 409](#) .

969. *Mathew v State of Kerala*, [1993 Cr LJ 213](#) (Ker). *R v Chan-Fook*, [\(1994\) 2 All ER 552](#) , the complainant suffered no physical injury as a result of the assault, he felt abused, humiliated and frightened.

970. *R v Nash*, [\(1991\) Cr LR 768](#) (CA), Offences Against the Person Act, 1861, section 47 (English).

971. *AC Cama v HF Morgan*, (1864) 1 BHC 205.

972. *Birbal Khalifa*, [\(1902\) 30 Cal 97](#) .

973. *Macette v Shulman*, (1991) 2 Mad LR 162 (CA).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Criminal Force and Assault

**[s 352] Punishment for assault or criminal force otherwise than on grave provocation.**

Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

*Explanation.*—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

#### COMMENT.—

This section provides punishment for assault or use of criminal force when there are no aggravating circumstances.<sup>974</sup> Section 352 constitutes a minor offence in relation to [section 354 IPC, 1860](#). The offence under [section 354 IPC, 1860](#) includes the ingredients of the former.<sup>975</sup> See section 300, Exception 1, which is identical with the explanation to this section.

#### [s 352.1] CASE.—

Where the accused persons formed an unlawful assembly with a common object, act of unlawful assembly cannot be attributable with the subsequent change in the common object of some of the other members of the assembly, it was held that members who did not share common intention and stood outside were liable to be convicted under section 352 read with 149 and not under section 326 r/w. 149.<sup>976</sup>

974. *Nagar Prasad v State of UP*, 1998 Cr LJ 1580 (All); *R v Onabanjo*, (2001) 2 Cr App R (S) 7 [CA (Crim Div)], The accused appealed against a total sentence of 15 months' imprisonment, having been convicted of common assault against his former girlfriend and of putting her in fear of violence contrary to the Protection from Harassment Act, 1997 section 4 after she had ended their relationship. The accused contended that the offences had been committed whilst he was under the influence of alcohol and in response to his inability to cope with the breakdown of the relationship.

It was held that repeated threats by the accused to kill justified the sentence imposed, notwithstanding the presence of several mitigating factors including his attempts to seek help for his alcohol addiction and depression. *R v Tucknott*, (2001) 1 Cr App R (S) 93 [CA (Crim Div)], the accused was convicted for threatening to kill his ex-girlfriend and her new partner. The threats were issued in prison to prison officers, stating intentions on release. The sentence was imposed as it was deemed necessary in order to protect the public from a man who the court held and shown himself to be capable of extreme violence against previous partners and who, the medical experts and probation service agreed, was likely to re-offend.

It was held that given his early guilty plea and the fact that he could not realistically have carried out the threats as he had been in prison at the time, the sentence was reduced to five years to bring it in the sentencing in comparable cases.

975. *RD Bajaj v KPS Gill*, AIR 1996 SC 309 [LNIND 1995 SC 981] : (1995) 6 SCC 194 [LNIND 1995 SC 981] .

976. *Bhimrao v State of Maharashtra*, AIR 2003 SC 1493 [LNIND 2003 SC 167] : (2003) 3 SCC 37 [LNIND 2003 SC 167] . See also *Ashok Chintawar v State of Maharashtra*, 2006 Cr LJ 2234 (Bom); *Hanuman v State of Haryana*, AIR 1977 SC 1614 : (1977) 4 SCC 599 .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Criminal Force and Assault

**[s 353] Assault or criminal force to deter public servant from discharge of his duty.**

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

#### COMMENT.—

The public servant must be acting in the discharge of a duty imposed by law on him in the particular case, and the section will not protect him for an act done in good faith under colour of his office.<sup>977</sup> If hurt is caused under the circumstances mentioned in the section then either section 332 or section 333 will apply.

#### **[s 353.1] CASES.—Defect in warrant.—**

It is made clear in the illustrations that the words alone will not amount to assault. So also, the mere gesture of picking up a stick alone will not constitute assault unless accompanied by other circumstances. The gesture explained by the words alone amounts to assault. Therefore, mere preparation of carrying a weapon and standing before the victim without making any gesture which will disclose the intention or knowledge will not constitute assault. As seen from Illustration (c), mere carrying a stick without being accompanied by a statement which will disclose the intention or knowledge will not constitute assault. But there is nothing in evidence to reveal commission of any of the overt acts to constitute offence under [section 353 IPC, 1860](#). The prosecution has failed to prove any of the offences alleged against appellants.<sup>978</sup> Resistance to an illegal order of attachment is not an offence under [section 353, IPC, 1860](#).<sup>979</sup> Where the accused allegedly assaulted the District Revenue Officer who distributing flood relief in village and made an attempt to snatch the cash and evidence of witnesses was found cogent, convincing and credit worthy, conviction was upheld.<sup>980</sup> Accused allegedly snatched the service revolver of complainant police officer and fired at him. All the witnesses who were independent witnesses, turned hostile. Offence under sections 307 and 353 was held not proved.<sup>981</sup>

#### **[s 353.2] Search without proper order or warrant.—**

Where the accused resisted a public officer who attempted to search a house, in the absence of a proper written order authorizing him to do so, he was held to have

committed no offence under this section.<sup>982</sup> But the Madras High Court has held that a search without a search warrant does not justify an obstruction or resistance to an officer, if he was acting in good faith and without malice.<sup>983</sup> Even though an illegal search under [section 165, Cr PC, 1973](#) can be resisted, yet there is no justification to assault an officer after he has finished the search and left the house. Such an act amounts to an offence under [section 353 IPC, 1860](#).<sup>984</sup> In this connection see also sub-head "Cases" under section 340 *ante*.

### **[s 353.3] Public servant must be acting in execution of duty.—**

Where the accused created hindrance in the discharge of duties of police in order to avoid arrest, it was held that conviction under section 353 was justified.<sup>985</sup> Where a cart owner refused to give his cart for the use of a Forest Settlement Officer who required it as per executive orders of Government, and assaulted the peon in preventing him from seizing his cart, it was held that he could not be convicted of an offence under this section, because the rules aforesaid had not the force of law, and a public servant acting under them was not acting in the execution of his duty.<sup>986</sup> Similarly, where a forest officer who was authorised to arrest a person only when the offence was committed within five miles of the border arrested the accused when there was no evidence that the offence was committed within the five mile belt, it was held that the arrest not being justified, the accused did not commit any offence under this section by inflicting some injuries on the officer during a scuffle.<sup>987</sup> Legality of the execution of duty is the *sine qua non* for the application of [section 353 IPC, 1860](#).<sup>988</sup> Where a Headmaster of a school was assaulted with a ruler by a fellow teacher out of previous personal grudge and not due to any performance of public duty, it was held that the accused could not be convicted under section 353 though his conviction under [section 325, IPC, 1860](#) was legal as the Headmaster suffered a dislocation of the right shoulder joint.<sup>989</sup> In this connection see also comments under section 332 *ante*. Where the Assistant Superintendent of Commercial Taxes paid a surprise visit to the shop of the accused and took up some books of account maintained by the shop for inspection, as he was empowered to do under the State's Sales Tax Law, and the accused snatched away the books from him, it was held by the Supreme Court that the act of the accused amounted to use of criminal force and he could be convicted under this section. It was observed that to feel annoyed at this action of the accused would be the natural reaction of the Assistant Superintendent.<sup>990</sup> Where the driver of the Transport Department prevented a Deputy *Sarpanch* from entering the bus through driver's cabin and was kicked by the latter and thus suffered a grievous injury, it was held while driving or standing by the bus the driver was on public duty and by stopping a trespass into driver's cabin he was undoubtedly acting in the discharge of his duty as public servant. The Deputy *Sarpanch* was, therefore, clearly liable under [section 353, IPC, 1860](#).<sup>991</sup>

Petitioner used vulgar and fitting language against complainant when he went to petitioner's office to ask reason for not permitting him to mark his presence in Attendance Register. It was held that act of petitioner cannot be defined to be an act in discharge of official duty. There was no need of previous sanction to prosecute him.<sup>992</sup>

### **[s 353.4] Posting adverse comments of social media site.—**

The appellant posted adverse comments against the police officer on Facebook. The threat must be with intention to cause alarm to the complainant to cause that person to

do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. Offence not made out.<sup>993.</sup>

### **[s 353.5] To deter public servant from discharging duty.—**

Where the accused was asked by a sub-inspector to stop his car and he while pretending to stop sped away and in this process hit the mudguard of the motor-cycle on which the Sub-Inspector was sitting, it was held that the facts of the case did not make out an offence of assault on a public servant or using criminal force so as to deter him from discharging his duties as public servant.<sup>994.</sup> The accused suspected that the complainant public servant was instrumental in his transfer. The complainant was proceeding to his office to resume his duty. On the way he was assaulted by the accused. It was held that no offence was committed under section 353 because the public servant was not assaulted to deter him from discharge of his duty.<sup>995.</sup> The wife of the accused was being taken to Police Station in execution of search warrant accompanied by a police constable. The accused attacked his wife and also the police constable. Conviction of the accused under section 353 was held to be proper, though no injury as such was caused to the constable. The Court observed that actual causing of injury is not necessary for conviction under section 353.<sup>996.</sup> In a complaint under sections 323 and 329 the investigating Head Constable demanded bribe for arresting some persons and was caught red-handed in a trap but on his call the villagers attacked the raiding party and snatched away their belongings and currency notes used in the trap, thus deterring the public servants from discharging their duties and rescuing the accused from the lawful custody of the Inspector of the raiding party. Conviction of the Head Constable under section 395 read with section 109, sections 353/109 and 224, the constable whom the head constable handed over the money under section 395 and the villagers under sections 353, 149, 226 and 147 was upheld.<sup>997.</sup> Four persons brought a woman to a room of a circuit house for the purpose of prostitution. When one of them was busy in sexual intercourse and others were busy in drinking, the police reached there and as they were about to arrest the accused, one of the accused obstructed the police officers in discharge of their duties. The conviction of that accused under section 353 was upheld.<sup>998.</sup>

### **[s 353.6] Section 353 vis-a-vis Section 186 IPC, 1860.—**

There is an essential distinction between the offences punishable under [sections 353 and 186 IPC, 1860](#). The ingredients of the two offences are distinct and different. While the former is a cognizable offence, the latter is not. A mere obstruction or resistance unaccompanied by criminal force or assault will not constitute an offence under [section 353 IPC, 1860](#). Where an accused voluntarily obstructs a public servant in the discharge of his duties, [section 186 IPC, 1860](#) is attracted. But under section 353, there must be in addition to the obstruction use of criminal force or assault to the public servant while he was discharging his duty. It may also be noted that the quality of the two offences is also different. While section 186 occurs in Chapter X dealing with contempt of the lawful authority of public servants, section 353 appears in Chapter XVI which deals with offences affecting the human body. This is also a clear indication that use of criminal force contemplated under [section 353 IPC, 1860](#) is against a person and not against any inanimate object.<sup>999.</sup>

977. *Dalip*, (1896) 18 All 246 ; *Raman Singh v State*, (1900) 28 Cal 411 , 414; *Bolai De*, (1907) 35 Cal 361 ; *Provincial Government, Central Provinces and Berar v Nonelal*, (1946) Nag 395. See, however, *Yamanappa Limbaji*, (1955) 58 Bom LR 551 .
978. *Prasad v State*, 2013 (1) KLD 714; *State of HP v Dinesh Chander Sharma*, 2011 Cr LJ 2418 (HP).
979. *State of HP v Durga*, 1980 Cr LJ (NOC) 10 (HP).
980. *Raj Singh v State of Haryana*, 2008 Cr LJ 3205 (PH).
981. *Sumersinbh Umedsinh Rajput v State of Gujarat*, AIR 2008 SC 904 [LNIND 2007 SC 1450] : (2007) 13 SCC 83 [LNIND 2007 SC 1450] .
982. *Narain*, (1875) 7 NWP 209.
983. *Pukot Kotu*, (1896) 19 Mad 349.
984. *Shyam Lal*, 1972 Cr LJ 638 : AIR 1972 SC 886 [LNIND 1972 SC 100] ; See also *State of UP v Sant Prakash*, 1976 Cr LJ 274 (All—FB).
985. *Bhairon Singh v State of Rajasthan*, 2010 Cr LJ 1177 (Raj).
986. *Rakhmaji*, (1885) 9 Bom 558. A teacher, against whom an inquiry had been conducted by a constable, abused a constable who was waiting for a bus to the police station, thinking that he was the same constable, was let off with admonition. *State of Karnataka v M Chandrappa*, 1987 Cr LJ 950 (Kant).
987. *State of Tripura v Sashimohan*, 1977 Cr LJ 1663 (Gau).
988. *Poulose*, 1985 Cr LJ 222 (Ker).
989. *SN Roy*, 1978 Cr LJ 1514 (Gau). See also *Sagwan Passi*, 1978 Cr LJ 1062 (Pat).
990. *Chandrika Sao*, AIR 1967 SC 170 [LNIND 1962 SC 316] : 1967 Cr LJ 261 .
991. *Manumiya*, 1979 Cr LJ 1384 : AIR 1979 SC 1706 [LNIND 1979 SC 93] .
992. *Prakash Chandra Bafna v Oba Ram*, 2011 Cr LJ 416 (Raj).
993. *Manik Taneja v State of Karnataka*, 2015 Cr LJ 1483 .
994. *P Rama Rao*, 1984 Cr LJ 27 (AP). See *BS Narayanan v State of AP*, 1987 SCC (Cr) 791 : 1987 Supp SCC 172 , where the offender was released under the [Probation of Offenders Act, 1958](#). There was a long lapse of time and also the chance of the offender losing his job. *Shaik Ayyub v State of Maharashtra*, (1995) 1 Cr LJ 420 : (1994) Supp 2 SCC 269. Killing police officers to resist arrest, punished under the section.
995. *Rajendra Datt v State of Haryana*, 1993 Cr LJ 1025 (P&H).
996. *Devisingh v State of MP*, 1993 Cr LJ 1301 (MP).
997. *Ami Lal v State of Rajasthan*, 1996 Cr LJ 1585 (Raj).
998. *Kalyanasundaram v State of TN*, 1994 Cr LJ 2487 (Mad).
999. *Devaki Amma v State*, 1981 Ker LT 475 .



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Criminal Force and Assault

##### [s 354] Assault or criminal force to woman with intent to outrage her modesty.

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, <sup>1000</sup>. [shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.]

#### State Amendments

**Andhra Pradesh.**—*The following amendments were made by Act No. 6 of 1991.*

In its application to the State of Andhra Pradesh, for [section 354 of the Indian Penal Code, 1860](#), the following section shall be substituted namely—

**354. Assault or criminal force to woman with intent to outrage her modesty.**—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years and shall also be liable to fine:

*Provided* that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term which may be less than five years, but which shall not be less than two years.

[*Vide* Andhra Pradesh Act 6 of 1991].

Chattisgarh—In section 354, insert the following proviso, namely:

"Provided that where offence is committed, under this section by a relative, guardian or teacher or a person in a position of trust or authority towards the person assaulted, he shall be punishable with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years and shall also be liable to fine."

[*Vide* Chattisgarh Act 25 of 2015, sec. 3 (w.e.f. 21-7-2015).]

**Madhya Pradesh.**—*The following amendments were made by Act No. 14 of 2004.*

In its application to the State of Madhya Pradesh, after [section 354 of the Indian Penal Code, 1860](#), the following section shall be inserted namely—

**"354A. Assault or use of Criminal force to woman with intent to disrobe her.**—Whoever assaults or uses criminal force to any woman or abets or conspires to assault or uses such criminal force to any woman intending to outrage or knowing it to be likely that by such assault, he will thereby outrage or causes to be outraged the modesty of the woman by disrobing or compel her to be naked on any public place, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extent to ten years and shall also be liable to fine."

[Vide Madhya Pradesh Act 14 of 2004, sec. 3 (w.e.f. 2-12-2004)].

**Orissa.**—In the First Schedule to the [Code of Criminal Procedure, 1973](#) in the entry under column 5 relating to [section 354 of the Indian Penal Code \(45 of 1860\)](#) for the word 'Bailable', the word 'non-bailable' shall be substituted (*vide* Orissa Act 6 of 1995, section 3, w.e.f. 10-3-1995).

## COMMENT.—

The provisions of [section 354 IPC, 1860](#) has been enacted to safeguard public morality and decent behaviour. Therefore, if any person uses criminal force upon any woman with the intention or knowledge that the woman's modesty will be outraged, he is to be punished. In *Vishaka v State of Rajasthan*,<sup>1001</sup> and *Apparel Export Promotion Council v AK Chopra*,<sup>1002</sup> the Supreme Court held that the offence relating to modesty of woman cannot be treated as trivial. In order to constitute the offence under [section 354, IPC, 1860](#) mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. A careful approach has to be adopted by the Court while dealing with a case alleging outrage of modesty.

The essential ingredients of the offence under [section 354, IPC, 1860](#) are as under:

- (1) That the person assaulted must be a woman.
- (2) Accused must have used criminal force on her intending thereby to outrage her modesty.
- (3) What constitutes an outrage to female modesty is nowhere defined—The essence of a woman's modesty is her sex.
- (4) Act of pulling a woman, removing her dress coupled with a request for sexual intercourse, as such would be an outrage to the modesty of a woman.
- (5) Knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention of having such outrage alone for its object.<sup>1003</sup>

Intention is not the sole criterion of the offence punishable under [section 354, IPC, 1860](#) and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed.<sup>1004</sup> Even though it is true that assault or criminal force to woman is one of the essential pre-conditions for applicability of [section 354 IPC, 1860](#) but the same has to be with an intent to outrage her modesty or knowing it to be likely that he will thereby outrage her modesty. Neither the use of criminal force alone nor act of outraging the modesty alone is sufficient to attract an offence under [section 354 IPC, 1860](#).<sup>1005</sup>

## [s 354.1] Modesty.—Meaning.—

The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty is an attribute associated with female human beings as a

class. It is virtue which attaches to a family owing to her sex. The ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman. A person slapping on the posterior of a woman in full public glare would amount to outraging her modesty for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady. The word "modesty" is not to be interpreted with reference to the particular victim of the act, but as an attribute associated with female human beings as a class. It is a virtue which attaches to a female on account of her sex.<sup>1006</sup>. In *State of Punjab v Major Singh*,<sup>1007</sup>, a three-Judge Bench of the Supreme Court considered the question – Whether modesty of a female child of seven and half months can also be outraged. The majority view was in the affirmative. Bachawat, J, on behalf of majority, opined as:

The offence punishable u/s. 354 is an assault on or use of criminal force to a woman with the intention of outraging her modesty or with the knowledge of the likelihood of doing so. The Code does not define 'modesty'. What then is a woman's modesty? ... The essence of a woman's modesty is her sex. The modesty of an adult female is written large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable u/s. 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as, for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act; nevertheless, the offender is punishable under the section.<sup>1008</sup>.

An indecent assault upon a woman is punished under this section. Rape is punished under section 376; but the offence under this section is of less gravity than rape.<sup>1009</sup>. Knowledge that modesty is likely to be outraged has been held to be sufficient to constitute the offence without any deliberate intention to outrage modesty. In this case the victim woman was brought into a room under false pretexts, the room was locked from outside, inside she was forced to drink, photographs taken in naked state and raped. All the participants were held to be guilty of outraging her modesty.<sup>1010</sup>. A person who is guilty of attempting rape cannot be allowed to escape with the lesser penalty of this section. Where the accused walked into the room where a female child of seven and a half months was sleeping and committed an indecent assault on the child, he was held to have committed an offence under this section as he had outraged and intended to outrage whatever modesty the little victim was capable of.<sup>1011</sup>. Their Lordships of the House of Lords have pointed out that a person is guilty of indecent assault if he intentionally assaults the victim and intends to commit not just an assault but an indecent assault, i.e., an assault which right-minded persons would think is indecent. Accordingly, any evidence explaining the defendant's conduct, whether an admission by him or otherwise, is admissible to establish whether he intended to commit an indecent assault. In this case,<sup>1012</sup> a 26-year-old shop assistant pulled a 12-year-old girl visitor to the shop across his knees and smacked her with his hand 12 times on her bottom outside her shorts for no apparent reason. On being asked he explained his weakness as "buttock fetish". But for this admission there was nothing to convert the assault (to which he confessed) into an indecent one. His explanation to his secret motive was held to be relevant to hold him guilty of indecent assault. Moreover, according to [section 10, IPC, 1860](#) a woman denotes a female human being of any age. Where the woman is a consenting party there cannot be any outraging of modesty.<sup>1013</sup>. Unless culpable intention is proved mere touching the belly of a female in a public bus cannot be called a deliberate act of outraging the modesty of a female within the meaning of this section. In the circumstances of the case the act of the accused was held to be accidental and not intentional.<sup>1014</sup>. Where the accused caught hold of a married woman and tried to open the string of her *salwar* with a view to committing rape on her but being hit by the woman with a *kulhari* fled away, it was held that he could not be convicted under [section 376](#) read with [section 511 IPC, 1860](#) as

his action did not show a determination to have sexual intercourse at all events and in spite of resistance. The conviction of the accused was accordingly changed to one under [section 354, IPC, 1860](#).<sup>1015</sup>.

Where the allegation was, while the victim was returning from home, the accused came from behind and pressed her breast, the Court convicted him under [section 354 IPC, 1860](#).<sup>1016</sup>. The accused came from behind her and caught hold of her and laid her down on the cot and sat on her chest. She shouted and after that the accused left her house. After hearing her shouts, her cousin mother-in-law came there. High Court rejected the defence of false implication and convicted the accused under [section 354, IPC, 1860](#).<sup>1017</sup>. Where a married woman alleged that the two accused persons had dragged her in her own home and raped her one after the other and the medical evidence showed that though there were traces of semen on her clothes, there were none on the clothes of the accused persons, the Court opined that the case was not made out; the presence of semen on the clothes of a married woman is not unusual and therefore, the accused could have been prosecuted only for outraging the modesty of a woman.<sup>1018</sup>.

Some labourers, including a woman, were taken to a police station for some work. When they demanded wages, they were beaten up. The woman was stripped bare and thrashed. The matter came before the Supreme Court in a writ petition under [Article 32 of the Constitution](#). The Supreme Court held that the offence under [section 354, IPC, 1860](#) was established in reference to the woman and awarded compensation to be recovered from the salary of the guilty officers.<sup>1019</sup>. The offence was held to have been made out where a senior police officer slapped the posterior of the prosecutrix in the midst of guests in a party. The accused must have been fully aware that such an act would embarrass her and outrage her modesty. She made hue and cry immediately. Her conduct did not suggest that she was stage-managing things to malign the accused. The Court observed such behaviour was not expected from a high-ranked police officer. His conviction for the offence under the section was maintained by the Supreme Court.<sup>1020</sup>.

### **[s 354.2] Parading a naked tribal woman.—**

In a case of parading of a naked tribal woman after disrobing her on the village road in broad daylight by appellants, the Supreme Court held that the dishonour of the victim called for harsher punishment.<sup>1021</sup>.

### **[s 354.3] Outraging modesty or Rape.—**

Dividing line between attempt to commit rape and indecent assault is not only thin but also is practically invisible. Evidence of informant that when she went to the house of accused, she found that the victim was sleeping on the floor and accused was lying on her. Accused removed her nicker with a view to commit sexual intercourse. Medical evidence does not indicate as to whether accused has tried to force his penis inside the private part of girl but could not succeed. Offence committed by accused did not amount to attempt to commit rape punishable under [section 376](#) read with [section 511](#) of [IPC, 1860](#) but was one under section 354.<sup>1022</sup>. Though there was ample evidence that the victim was disrobed by the accused and thus the accused, outraged her modesty there was no evidence of rape. Conviction under section 376 was altered to section 354.<sup>1023</sup>. But in *State of UP v Rajit Ram*<sup>1024</sup>, the Supreme Court set aside a judgment by which a conviction under section 376 was altered to section 354 and

remitted the case back to trial court. The accused in another case had forcibly laid the prosecutrix on the bed and broken her *pyjama's* string but made no attempt to undress himself and when the prosecutrix pushed him away, he did not make efforts to grab her again. It was held that it was not an attempt to rape but only outraging of the modesty of a woman and conviction under section 354 was proper.<sup>1025</sup> But in *Ram Mehar v State of Haryana*,<sup>1026</sup> the accused caught hold of the prosecutrix, lifted her and then took her to a *bajra* field where, he pinned her down and tried to open her *salwar* but could not do so as the prosecutrix had injured him by giving a sickle blow. The accused failed to give his blood sample with the result it could be presumed that his innocence was doubtful. Ocular evidence of the prosecutrix was also corroborated by other evidence. It was held that conviction of the accused under sections 354, 376/511 was proper. The accused caught the victim from behind, pushed her on ground, removed her panty and attempted rape. Upon getting opportunity she kicked him in testicles and escaped from place of occurrence. The accused was convicted under section 511 read with section 376.<sup>1027</sup>

#### **[s 354.4] Punishment enhanced by Criminal Law (Amendment) Act, 2013 (Act 13 of 2013).—**

By the [Criminal Law \(Amendment\) Act, 2013](#) while no change has been made in the definition of the offence, the punishment for the offence prescribed in this section has been changed by providing a minimum sentence of one year and a maximum sentence of five years.

#### **[s 354.5] CASES.—**

Where the allegation was that the Principal of a school misbehaved with the girl student, the High Court declined to quash the FIR, though he was exonerated in Departmental proceedings.<sup>1028</sup> Where the prosecutrix did not state specifically about the act, but has loosely described as "fondling", the Supreme Court altered the conviction from section 376 to section 354.<sup>1029</sup> Victim, a deaf and dumb girl aged 13 years was lured by the accused from her house to a distant place. When family of victim reached place, the accused fled away leaving victim who was weeping. Her clothes were soiled with mud and accused concealed it. Accused was liable to be convicted under section 354.<sup>1030</sup> Where the accused touched the hand of the blind prosecutrix, removed the quilt with which she was covering herself and put his hand in her 'midi', conviction of the accused for attempt to commit rape was set aside but conviction under sections 354, 457 and 506 was confirmed.<sup>1031</sup>

Where the accused forcibly laid the prosecutrix on bed and cut the string of her *pyjama* and tore her underwear but did not undress himself, the offence fell under section 354 and the offence of attempt to commit rape was not made out.<sup>1032</sup>

Where the accused persons caught hold of a woman and removed the 'saree' from her person but ran away on seeing someone approaching, their act attracted section 354 and not sections 375/511. Their conviction under sections 376/511 read with section 34 was altered to one under sections 354/34.<sup>1033</sup>

Sexual harassment and punishment for sexual harassment.

### **[s 354.6] Compounding.—**

Where the accused and respondent No. 2 had entered into a compromise and, accordingly, she had filed an affidavit before the Supreme Court during the pendency of appeal. Supreme Court allowed to compound the offences under [sections 354](#) and [506 IPC, 1860](#).<sup>1034.</sup>

### **[s 354.7] Jurisdiction.—**

The petitioners were charged with the offence of kidnapping and outraging the modesty of the victim girl. She was taken to different places by train. In the course of the journeys she was subjected to outraging. It was held that the Courts of the other place would have jurisdiction to try the offender for both the offences.<sup>1035.</sup> The accused held the arms of the prosecutrix with one hand and put the other hand on her breasts. This was held to be an offence under section 354.<sup>1036.</sup>

### **[s 354.8] Sentencing.—**

The Court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of an appropriate punishment.<sup>1037.</sup>

### **[s 354.9] Benefit of Probation.—**

As the appellant has committed a heinous crime and with the social condition prevailing in the society, the modesty of a woman has to be strongly guarded and as the appellant behaved like a roadside *romeo*, the Supreme Court held that it is not a fit case where the benefit of the [Probation of Offenders Act, 1958](#) should be given to the appellant.<sup>1038.</sup>

<sup>1000.</sup> Subs. by Act 13 of 2013, section 6, for "shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both" (w.r.e.f. 3-2-2013).

<sup>1001.</sup> *Vishaka v State of Rajasthan*, AIR 1997 SC 3011 [LNIND 1997 SC 1081] .

<sup>1002.</sup> *Apparel Export Promotion Council v AK Chopra*, AIR 1999 SC 625 [LNIND 1999 SC 33] .

<sup>1003.</sup> *Aman Kumar v State of Haryana*, AIR 2004 SC 1497 [LNIND 2004 SC 184] : (2004) 4 SCC 379 [LNIND 2004 SC 184] .

<sup>1004.</sup> *Namdeo Dnyanaba Agarkar v State of Maharashtra*, 2013 Cr LJ 3946 (Bom); *Vidyadharan v State of Kerala*, AIR 2004 SC 536 [LNIND 2003 SC 985] : (2004) 1 SCC 215 [LNIND 2003 SC 985] ; *State of Punjab v Major Singh*, AIR 1967 SC 63 [LNIND 1966 SC 130] .

<sup>1005.</sup> *Gigi v State*, 2013 Cr LJ (NOC) 228 .

1006. *Tarkeshwar Sahu v State of Bihar*, (2006) 8 SCC 560 [LNIND 2006 SC 795] : 2006 (3) SCC (Cr) 556; *Aman Kumar v State of Haryana*, AIR 2004 SC 1497 [LNIND 2004 SC 184] ; *Raju Pandurang Mahale v State of Maharashtra*, AIR 2004 SC 1677 [LNIND 2004 SC 194] .
1007. *State of Punjab v Major Singh*, AIR 1967 SC 63 [LNIND 1966 SC 130] : 1967 Cr LJ 1 .
1008. Also see *Sanjay Das v The State of MP*, 2011 Cr LJ 2095 (Chh).
1009. *Madan Lal v State of Rajasthan*, 1987 Cr LJ 257 (Raj). *Man Singh v State of Rajasthan*, (1995) 2 Cr LJ 2050 (Raj), no proof of either alleged rape or of outraging modesty. *State of TN v P Balan*, 1996 Cr LJ 3705 (Mad), girl forcibly laid up, seminal stains were absent from the body or clothes, held offence not proved, punishment under sections 341/354.
1010. *Raju Pandurang Mohale v State of Maharashtra*, (2004) 4 SCC 371 [LNIND 2004 SC 194] : AIR 2004 SC 1677 [LNIND 2004 SC 194] .
1011. *Major Singh*, AIR 1967 SC 63 [LNIND 1966 SC 130] : 1967 Cr LJ 6 .
1012. *R v Court*, (1988) 2 All ER 221 (HL).
1013. *Sadananda*, 1972 Cr LJ 658 (Assam).
1014. *SP Mallik*, 1982 Cr LJ 19 (Pat). *Divender Singh v Hari Ram*, 1990 Cr LJ 1845 HP, pushing and beating a girl, intention to outrage modesty not established. **Citing**, *Ram Das v State of WB*, AIR 1954 SC 711 : 1954 Cr LJ 793 . Assault by one public servant upon another public servant would be covered by section 355 and not by this section. *Santanu Kumar Sadangi v State of Orissa*, 1989 Cr LJ 2353 (Ori).
1015. *Rameshwar*, 1984 Cr LJ 786 (P&H). *Ram Asrey v State of UP*, 1990 Cr LJ 405 : 1989 All LJ 165, High Court can allow compounding of this offence.
1016. *Asharaf Khan v State of MP*, 2013 Cr LJ 1286 (MP)
1017. *Namdeo Dnyanaba Agarkar v State of Maharashtra*, 2013 Cr LJ 3946 (Bom). *Pritam Singh v State of HP*, 2012 Cr LJ 468 (HP); *Dhannula Govindaraju v State of AP*, 2011 Cr LJ 395 (AP).
1018. *State of Orissa v Musa*, 1991 Cr LJ 2168 (Ori). For another case of dragging a woman and making her forcibly naked and committing some acts, but no proof of rape and therefore, the court opining conviction under this section, see *Basudev Naik v State of Orissa*, 1991 Cr LJ 1594 (Ori). The accused loosening the cord of the petticoat of the prosecutrix and about to sit on her waist when she cried out for help. Conviction under this section and not for rape. It was not even attempt to rape, but only a preparation for it. *Ankariya v State of MP*, 1991 Cr LJ 751 .
1019. *Peoples' Union for Democratic Rights v Police Commissioner, Delhi Police Headquarter*, (1989) 4 SCC 730 : 1990 SCC (Cr) 75. See also *Chander Kala v Ram Kishan*, AIR 1985 SC 1268 [LNIND 1985 SC 166] : 1985 Cr LJ 1490 : (1985) 4 SCC 212 [LNIND 1985 SC 166] , charge under the section was fully established; *Rafi Uddin Khan v State of Orissa*, 1992 Cr LJ 874 (Ori), essentials of rape not made, but those of outraging modesty established.
1020. *Kanwar Pal S Gill v State (Admn. of UT, Chandigarh)*, 2005 Cr LJ 3443 : AIR 2005 SC 3104 [LNIND 2005 SC 558] : (2005) 6 SCC 161 [LNIND 2005 SC 558] , delay in filing complaint was due to the fact that she first struggled for administrative action and having failed, filed a complaint.
1021. *Kailas v State of Maharashtra*, (2011) 1 SCC 793 [LNIND 2011 SC 22] : AIR 2011 SC 598 [LNIND 2011 SC 22] .
1022. *Tukaram Govind Yadav v State of Maharashtra*, 2011 Cr LJ 1501 (Bom).
1023. *Jeet Singh v State*, 2013 Cr LJ (NOC) 365 ; *Aman Kumar v State of Haryana*, AIR 2004 SC 1497 [LNIND 2004 SC 184] : (2004) 4 SCC 379 [LNIND 2004 SC 184] .
1024. *State of UP v Rajit Ram*, 2011 (6) Scale 477 : (2011) 14 SCC 463 .
1025. *Jai Chand v State*, 1996 Cr LJ 2039 (Del); *Bisheshwar Murmu v State of Bihar*, 2004 Cr LJ 326 (Jhar).

1026. *Ram Mehar v State of Haryana*, 1998 Cr LJ 1999 (P&H).
1027. *Rajesh Vishwakarma v State of Jharkhand*, 2011 Cr LJ 2753 (Jha).
1028. *KP Sharma v State*, 2013 Cr LJ (NOC) 367 (Raj); *Amit Kumar Alias Mittal v State of UP*, 2011 Cr LJ 3710 (All).
1029. *Premiya v State of Rajasthan*, AIR 2009 SC 351 [LNIND 2008 SC 1889] : (2008) 10 SCC 81 [LNIND 2008 SC 1889] .
1030. *State v Sangay Sherpa*, 2013 Cr LJ 2266 (Sik).
1031. *Keshav Baliram Naik v State of Maharashtra*, 1996 Cr LJ 1111 (Bom). *Sanjay Das v The State of MP*, 2011 Cr LJ 2095 (Chh)—Allegation was that accused/appellants caught hold of prosecutrix's hand and tried to pull her to do bad work with her. There is no cogent evidence in respect of section 506 Part II of IPC, 1860. However, act done by accused is liable to be punished under section 354 of IPC, 1860.
1032. *Jai Chand v State*, 1996 Cr LJ 2039 (Del).
1033. *Damodar Behera v State of Orissa*, 1996 Cr LJ 346 (Ori). Another similar case is *State of Karnataka v Shivaputrappa*, 2002 Cr LJ 1686 (Kant), it was a murder taking place in the process of attempted rape. The accused was seen running away from the place of the incident. Medical evidence was not able to establish the precise cause of death. Medical evidence also showed that there was no sexual assault, but there were minor injuries on the lower part of the body from which the offence of outraging her body was made out. Conviction under section 376/511 was altered to one under section 354. *Shiv Shankar v State of UP*, 2002 Cr LJ 2673 (All), the accused caught hold of the victim and then made her fall to the ground. This was held to be not an attempt to rape but an outrage to the modesty of a woman. *Shoukat v State of Rajasthan*, 2002 Cr LJ 364 (Raj), taking away a nursing woman from her home under false pretences and then molesting and beating her on the way, held, outraging the modesty of a woman made out. *Bali v State of Rajasthan*, 2001 Cr LJ 909 (Raj), allegation of forcible rape not proved but application of force to outrage the modesty of women proved, punishment under section 354. *Tarachand v State of Rajasthan*, 2001 Cr LJ (Raj), victims primary school students of tender age, the sexual assailant was their head master, conviction. *Madan Lal v State of J&K*, 1998 Cr LJ 667 (SC), evidence showed that the accused had gone beyond the stage of preparation, mere non-penetration was not sufficient to absolve him of the offence of attempt to commit rape. It was not a case of mere assault under section 354. *Kuthu v State of MP*, 1998 Cr LJ 960 (MP), the accused took the prosecutrix by deception to a lonely place and cruelly pushed a bunch of leaves into her mouth. They untied her undergarments to satisfy their lust. Conviction proper, four months RI not interfered with. *Shivraj Chandrappa Yadav v State*, 1998 Cr LJ 3168 , the accused attempted to commit rape on a 10 year old girl. Sentence of two years RI and fine of Rs. 500 under section 354 and six months imprisonment and fine of Rs. 100 under section 342 was not interfered with. See also *Raja v State of Rajasthan*, 1998 Cr LJ 1608 (Raj); *Ram Mehar v State*, 1998 Cr LJ 1999 (P&H); *Peedikandi Abdulla v State of Kerala*, 1998 Cr LJ 2758 (Ker); *Shakuntala Devi v Suneet Kumar*, 1997 Cr LJ 335 (Del), accused entered house of complainant, dragged her out, tore her clothes and improperly behaved with her, *prima facie*, the offence made out. Refusal by court to frame charge was improper. *Raja Giri v State of Bihar*, 2003 Cr LJ 2347 (Pat), the victim woman intercepted and laid down on the ground with the intent of raping her, witnesses reached on her cries and they could not go further, guilty of outraging modesty.
1034. *Surat Singh v State*, (2012) 12 SCC 772 [LNIND 2012 SC 837] : 2013 (1) Scale 1 [LNIND 2012 SC 837] .
1035. *Devalla Venkateswarlu v State of AP*, 2000 Cr LJ 798 (AP).
1036. *State of HP v Ram Das*, 1999 Cr LJ 2802 (HP), her public image and position in family was damaged, even the accused was directed to pay a fine of Rs. 1000 only because of the fact that



the incident was fairly old.

1037. *State of MP v Bablu*, 2014 Cr LJ 4565 : 2014 (9) Scale 678 [LNIND 2014 SC 948] .

1038. *Ajaha Ali v State of WB*, 2013 (12) Scale 410 [LNIND 2013 SC 924] ; *Pritam Singh v State of HP*, 2012 Cr LJ 468 (HP)– Petitioner, aged about 28 years, agriculturist by profession, belonged to a respectable and peace-loving family – He would be stigmatised and in case he was sentenced his life would be ruined– Benefits of section 4 of Act was granted to petitioner.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Criminal Force and Assault

**1039.**[[s 354-A] Sexual harassment and punishment for sexual harassment.

(1) A man committing any of the following acts—

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

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

(iii) showing pornography against the will of a woman; or (iv) making sexually coloured remarks;

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.]

#### COMMENTS.—

This new provision has its origin in the judgment of Supreme Court<sup>1040</sup>. dealing with the issue of sexual harassment in workplaces. The suggestions given by Supreme Court got statutory recognition by the enactment of [Sexual Harassment of Women at Workplace \(Prevention, Prohibition and Redressal\) Act, 2013](#).<sup>1041</sup>.

<sup>1039</sup>. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 7 (w.e.f. 3-2-2013).

<sup>1040</sup>. *Vishakha v State of Rajasthan*, AIR 1997 SC 3011 [LNIND 1997 SC 1081] : (1997) 6 SCC 241 [LNIND 1997 SC 1081].

<sup>1041</sup>. Act 14 of 2013 (w.e.f 9 December 2013).



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Criminal Force and Assault

**1042.**[s 354-B] Assault or use of criminal force to woman with intent to disrobe.

**Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished 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.]**

#### COMMENTS.—

This new provision has not been based on any recommendation, but is an incorporation of the State Amendment made by Madhya Pradesh into the original section 354 which was numbered as a separate section 354A.

**1042.** Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 7 (w.e.f. 3-2-2013).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Criminal Force and Assault

##### **1043.**[s 354-C] Voyeurism.

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be 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.

*Explanation 1.*—For the purposes of this section, "private act" 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, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

*Explanation 2.*—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.]

#### COMMENTS.—

This is a new provision prescribing an offence based on the suggestions of the Justice JS Verma Committee, constituted in the aftermath of the December 2012 Nirbhaya rape incident. During the deliberations, the Committee was surprised to find out that offences such as stalking, voyeurism, 'eve-teasing', etc., are perceived as 'minor' offences, even though they are capable of depriving not only a girl child but frail children of their right to education and their freedom of expression and movement. The Committee was of the view that it is not sufficient for the State to legislate and establish machinery of prosecution, but conscious and well-thought-out attempts are required to be made to ensure the culture of mutual respect is fostered in India's children. Preventive measures for the initial minor aberrations were deemed necessary to check their escalation into major sexual aberrations.

The definition of this offence has the following ingredients:

(I) If a person—

- (i) either watches,
- (ii) or captures the image.

(II) of, a woman engaging in a private act.

(III) in circumstances where she would usually have the expectation of—

- (i) either not being observed by the perpetrator
- (ii) or not being observed by any other person at the behest of the perpetrator.

**1043.** Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section. 7 (w.e.f. 3-2-2013).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Criminal Force and Assault

#### 1044.[s 354-D] Stalking.

(1) Any man who—

- (i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- (ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

*Provided* that such conduct shall not amount to stalking if the man who pursued it proves that—

- (i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- (ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- (iii) in the particular circumstances such conduct was reasonable and justified.

- (2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term 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 may extend to five years, and shall also be liable to fine.]

#### COMMENTS.—

The definition of this offence has the following ingredients:

(I) If a man—

- (i) follows a woman and contacts or attempts to contact such woman,
- (ii) monitors the use by a woman of the internet, e-mail or any other form of electronic communication,
- (iii) or watches or spies on a person

(II) to foster personal interaction repeatedly

(III) despite a clear indication of disinterest by such woman

So, when despite a clear indication of disinterest by woman, if she is followed by a man either in person or through the electronic medium then he is guilty of the offence of stalking as defined in this section

[s 354-D.1]Eve-teasing.—

The Indian Journal of Criminology and Criminalistics (January–June 1995 Edn) has categorised eve-teasing into five heads, viz., (1) verbal eve-teasing; (2) physical eve-teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects. In *Vishaka v State of Rajasthan*,<sup>1045</sup> the Supreme Court has laid down certain guidelines on sexual harassments. In *Rupan Deol Bajaj v KPS Gill*,<sup>1046</sup> the Supreme Court has explained the meaning of 'modesty' in relation to women.<sup>1047</sup>

### **Supreme Court Guidelines on Eve-teasing**

Before undertaking suitable legislation to curb eve-teasing, it is necessary to take at least some urgent measures so that it can be curtailed to some extent. In public interest, we are therefore inclined to give the following directions:

1. All the State Governments and Union Territories are directed to depute plain clothed female police officers in the precincts of bus-stands and stops, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship, etc., so as to monitor and supervise incidents of eve-teasing.
2. There will be a further direction to the State Government and Union Territories to install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught.
3. Persons in-charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre.
4. Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.
5. State Governments and Union Territories are directed to establish Women' Helpline in various cities and towns, so as to curb eve-teasing within three months.
6. Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus stands, railway stations, cinema theatres, parties, beaches, public service vehicles, places of worship, etc.
7. Responsibility is also on the passers-by and on noticing such incident, they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes.
8. The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the concerned authorities



including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing.

[*Deputy Inspector General of Police v S Samuthiram*.<sup>1048</sup>.]

**1044.** Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 7 (w.e.f. 3 February 2013)

**1045.** *Vishaka v State of Rajasthan*, (1977) 6 SCC 241 .

**1046.** *Rupan Deol Bajaj v KPS Gill*, (1995) 6 SCC 194 [LNIND 1995 SC 981] .

**1047.** *Deputy Inspector General of Police v S Samuthiram*, (2013) 1 SCC 598 [LNIND 2012 SC 755] : AIR 2013 SC 14 [LNIND 2012 SC 755] . See the Box with 'Supreme Court Guidelines on Eve-teasing'.

**1048.** *Deputy Inspector General of Police v S Samuthiram*, (2013) 1 SCC 598 [LNIND 2012 SC 755] : AIR 2013 SC 14 [LNIND 2012 SC 755]

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Criminal Force and Assault

**[s 355] Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.**

**Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### State Amendment

**Andhra Pradesh.**—*The offence under section 55 is non-cognizable, bailable and triable by any Magistrate vide A.P. Act No. 3 of 1992 section 2 (w.e.f. 15-2-1992).*

#### COMMENT.—

The intention to dishonour may be supposed to exist when the assault or criminal force is by means of gross insults. An accused person while under trial struck a Sub-Inspector of Police who was in the witness-box giving evidence against him. It was held that he was guilty of this offence.<sup>1049.</sup>

<sup>1049.</sup> *Altaf Mian*, (1907) 27 AWN 186.

## **THE INDIAN PENAL CODE**

### **CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE**

#### **Of Criminal Force and Assault**

**[s 356] Assault or criminal force in attempt to commit theft of property carried by a person.**

**Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

## **THE INDIAN PENAL CODE**

### **CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE**

#### **Of Criminal Force and Assault**

**[s 357] Assault or criminal force in attempt wrongfully to confine a person.**

**Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.**

## **THE INDIAN PENAL CODE**

### **CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE**

#### **Of Criminal Force and Assault**

**[s 358] Assault or criminal force on grave provocation.**

**Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.**

***Explanation.*—The last section is subject to the same Explanation as section 352.**

#### **COMMENT.—**

This section provides for mild punishment if the assault or criminal force is the result of grave and sudden provocation.

The word "last" in the Explanation is inaccurate. Instead of the words "the last" the word "this" only should have been used.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

##### [s 359] Kidnapping.

Kidnapping is of two kinds: kidnapping from <sup>1050</sup>[India], and kidnapping from lawful guardianship.

#### COMMENT.—

The literal meaning of 'kidnapping' is child stealing.

Kidnapping is of two kinds. But there may be cases in which the two kinds overlap each other. For instance, a minor may be kidnapped from India as well as lawful guardianship. A bare perusal of the provisions clearly shows that the legislature did not confine to constitute the offence only if a minor girl is taken away from the place where she used to reside but the emphasis is upon taking away the girl from the "lawful guardianship". Sections 359 and 361, IPC, 1860 do not spell-out any territorial jurisdiction for committing the offence. In my view the rigour of the law travels with the ward/subject and any person involving himself or herself in the offence of kidnapping or procuring a minor girl at any point of time would also come within the purview of sections 359 and 361, IPC, 1860.<sup>1051</sup>.

<sup>1050</sup>. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951), to read as above.

<sup>1051</sup>. *Taru Das v State of Tripura*, 2008 Cr LJ 3143 (Gau).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

##### [s 360] Kidnapping from India.

Whoever conveys any person beyond the limits of <sup>1052.</sup>[India] without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from <sup>1053.</sup>[India].

##### COMMENT.—

The offence under this section may be committed on a grown-up person or a minor by conveying him or her beyond the limits of India. If the person kidnapped is above 12 years of age and has given consent to his or her being conveyed beyond the limits of India, no offence is committed. <sup>1054.</sup> Now, the age limit for boys is 16 and for girls 18 under Act XLII of 1949.

##### [s 360.1] Ingredients.—

This section requires two things:—

- (1) Conveying of any person beyond the limits of India.
- (2) Such conveying must be without the consent of that person.

<sup>1052.</sup> The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1 April 1951), to read as above.

<sup>1053.</sup> The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1 April 1951), to read as above.

<sup>1054.</sup> *Haribhai v State*, (1918) 20 Bom LR 372 : 42 Bom 391.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

##### [s 361] Kidnapping from lawful guardianship.

Whoever takes or entices any minor under <sup>1055</sup>[sixteen] years of age if a male, or under <sup>1056</sup>[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

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

*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.

##### State Amendment

**Manipur.**—*The following amendments were made by Act No. 80 of 1950, s. 3(2) (w.e.f. 16-4-1950) read with Act 81 of 1971, s. 3 (w.e.f. 25-1-1972).*

*In its application to the State of Manipur, in Section 361 for the word "eighteen" substituted the word "fifteen".*

##### COMMENT.—

The offence under this section may be committed in respect of either a minor or a person of unsound mind. To kidnap a grown-up person of sound mind, therefore, would not amount to an offence under it.

##### [s 361.1] Object.—

The object of this section is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the protection of the rights of parents and guardians having the lawful charge or custody of minors or insane persons.

##### [s 361.2] Ingredients.—

This section has four essentials <sup>1057</sup>.—



- (1) Taking or enticing away a minor or a person of unsound mind.
- (2) Such minor must be under 16 years of age, if a male, or under 18 years of age, if a female.
- (3) The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.
- (4) Such taking or enticing must be without the consent of such guardian.

### **[s 361.3] 'Takes or entices any minor'. –**

The Supreme Court considered the interpretation of expression 'takes or entices' in *S Varadarajan v State of Madras*,<sup>1058</sup> and *State of Haryana v Rajaram*.<sup>1059</sup> The purpose and object of [section 361 IPC, 1860](#) appears to be in dispute. In *Varadarajan*, the Supreme Court had occasion to consider this. In [section 498 IPC, 1860](#) we find identical expression 'takes or entices' employed by the legislature. That was of course for a totally different offence. While considering the object of [section 361 IPC, 1860](#), the Supreme Court in *Varadarajan*, took the view that the interpretation of the expression 'takes or entices' in [section 498 IPC, 1860](#) cannot be blindly and mechanically imported while considering the interpretation of the same expression in [section 361 IPC, 1860](#). It took the view that [section 498 IPC, 1860](#) is meant essentially for protection of the rights of the husband, whereas [section 361 IPC, 1860](#) and other cognate sections of the [IPC, 1860](#) are intended more for the protection of minors and persons of unsound mind than the rights of the guardians of such persons. But in *Rajaram*, the Supreme Court held that:

The object of this section seems as much to protect the minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards. The gravamen of this offence lies in the taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian. The words 'takes or entices any minor ... out of the keeping of the lawful guardian of such minor' in S. 361, are significant. The use of the word 'keeping' in the context connotes the idea of charge, protection, maintenance and control: further the guardian's charge and control appears to be compatible with the independence of action and movement in the minor, the guardian's protection and control of the minor being available, whenever necessity arises. On plain reading of this section the consent of the minor who is taken or enticed is wholly immaterial: it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section.

A person who allows such a minor who is already out of the keeping of the guardian to accompany him commits no offence under [section 361 IPC, 1860](#). That alone is the dictum in *Varadarajan*. It is no authority on the question whether consent of a minor (even a knowledgeable minor close to 18 years) is relevant or crucial in a prosecution under [section 361 IPC, 1860](#). Later a two-Judge Bench in *T D Vadgama v State of Gujarat*,<sup>1060</sup> ascertained the precise distinction in the dictum between the three-Judge Benches in *Varadarajan* and *Rajaram*. The dictum in *Varadarajan* turned on its own peculiar facts. It was held:

it would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion, if evidence to establish one of those things is lacking, it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl. That part, in our

opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to 'taking'.

The intention with which kidnapping is effected can be ascertained from the circumstances of the offence at the time of occurrence or prior or subsequent to it. A kidnapping does not *per se* lead to any inference of intent or purpose of kidnapping.<sup>1061</sup> Persuasion by the accused which created willingness on the part of the minor to be taken out of the keeping of the lawful guardian was held by the Supreme Court to be enough to attract section 361. The Supreme Court also restated the ingredients.<sup>1062</sup>

Promise of marriage made to the minor girl for leaving the house of the lawful guardian was held to be an enticement.<sup>1063</sup>

The word 'take' means 'to cause to go' to escort or to get into possession. It implies want of wish and absence of desire of the person taken. There is a distinction between taking and allowing a minor to accompany a person.<sup>1064</sup>

#### **[s 361.4] When 'taking' is complete.—**

The offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful guardianship; it is not an offence continuing so long as the minor is kept out of such guardianship. In determining whether a person takes a minor out of the lawful keeping of its guardian, the distance to which the minor is taken away is immaterial.<sup>1065</sup>

#### **[s 361.5] 'Enticing'**

is an act of the accused by which the person kidnapped is induced of his own accord to go to the kidnapper. The word 'entice' involves an idea of inducement or allurement by exciting hope or desire in the other. It may take many forms difficult to visualise. It is not necessary that 'taking' or 'enticing' should be by means of force or fraud. The word 'entice' involves the idea of inducement or allurement.<sup>1066</sup>

#### **[s 361.6] 'Under sixteen years of age if a male, or under eighteen years of age, if a female'.—**

In the case of a boy the age limit is fixed at 16 years; in the case of a girl at 18 by Act XLII of 1949. Before this amendment the age limit was 14 and 16 respectively. Where a girl under that age is kidnapped, it is no defence that the accused did not know the girl to be under that age, or that from her appearance he might have thought that she was of a greater age.<sup>1067</sup> Anyone dealing with such a girl does so at his peril, and if she turns out to be under 18 he must take the consequences,<sup>1068</sup> even though he *bona fide* believed and had reasonable ground for believing that she was over eighteen.<sup>1069</sup>

#### **[s 361.7] 'Any person of unsound mind'.—**

If the person kidnapped is normally of sound mind but is made unconscious from poisoning, such a person cannot be said to be of unsound mind. For example, a person

under an anaesthetic for an operation can hardly be said to be of unsound mind. Where a girl aged 20 years had been made unconscious from *dhatara* poisoning when she was taken away, it was held that she could not be said to be a person of unsound mind, and the person taking her away could not be guilty of kidnapping.<sup>1070.</sup>

### **[s 361.8] 'Out of the keeping of the lawful guardian'.—**

The Legislature has advisedly preferred the expression 'the keeping of the lawful guardian' to the word 'possession'. The word 'keeping' is compatible with the independence of action and movement in the object kept.<sup>1071.</sup>

Persuasion by the accused is sufficient to constitute 'taking' within the meaning of this section. Consent of the minor is wholly immaterial. It is only the guardian's consent that takes the case out of the purview of this section.<sup>1072.</sup>

In *Vipin Menon v State of Karnataka*,<sup>1073.</sup> it was held that the father, in the absence of divestment of right of guardianship, cannot be guilty of kidnapping his minor child.

### **[s 361.9] Explanation.—'Lawful guardian'.—**

The Explanation is intended to extend the protection given to parents to any person lawfully entrusted with the care or custody of the minor.<sup>1074.</sup>

Where the order in favour of the mother was passed by the lower Court but it was stayed by the High Court, it was held that the father who had custody of the minor child would continue to be in lawful custody until further orders. The Supreme Court clarified that the law in India is to be governed by the provisions of [IPC, 1860](#) and not the US International Parental Kidnapping Crime Act, 1993.<sup>1075.</sup>

### **[s 361.10] 'Entrustment'.—**

Entrustment, which this section requires, may be inferred from a well-defined and consistent course of conduct governing the relations of the minor and the person alleged to be the lawful guardian.<sup>1076.</sup>

<sup>1055.</sup> Subs. by Act 42 of 1949, sec. 2, for "fourteen".

<sup>1056.</sup> Subs. by Act 42 of 1949, sec. 2, for "sixteen".

<sup>1057.</sup> Restated in *Biswanath Mallick v State of Orissa*, [1995 Cr LJ 1416](#) (Ori).

<sup>1058.</sup> *S Varadarajan v State of Madras*, [AIR 1965 SC 942](#) [[LNIND 1964 SC 223](#)] : [1965 \(2\) Cr LJ 33](#).

1059. *State of Haryana v Rajaram*, AIR 1973 SC 819 [LNIND 1972 SC 508] : 1973 (1) SCC 544 [LNIND 1972 SC 508] : 1973 Cr LJ 651 .
1060. *T D Vadgama v State of Gujarat*, AIR 1973 SC 2313 [LNIND 1973 SC 187] : 1973 (2) SCC 413 [LNIND 1973 SC 187] .
1061. *Badshah v State of UP*, (2008) 3 SCC 681 [LNIND 2008 SC 310] : 2008 Cr LJ 1950 : (2008) 3 All LJ 524.
1062. *Prakash v State of Haryana*, (2004) 1 SCC 339 [LNIND 2003 SC 1045] : AIR 2004 SC 227 [LNIND 2003 SC 1045] : 2004 Cr LJ 595 .
1063. *Moniram Hazarika v State of Assam*, (2004) 5 SCC 120 [LNIND 2004 SC 476] : AIR 2004 SC 2472 [LNIND 2004 SC 476] : 2004 Cr LJ 2553 .
1064. *Biswanath Mallick v State of Orissa*, 1995 Cr LJ 1416 (Ori).
1065. *Chhajju Ram*, AIR 1968 P&H 439 .
1066. *Biswanath Mallick v State of Orissa*, 1995 Cr LJ 1416 (Ori).
1067. *Robins*, (1844) 1 C&K 456; *Krishna Maharana*, (1929) 9 Pat 647. *Biswanath Mallick v State of Orissa*, 1995 Cr LJ 1416 (Ori).
1068. *Christian Olifier*, (1866) 10 Cox 402.
1069. *Prince*, (1875) LR 2 CC R 154; *Krishna Maharana, sup.* Where the prosecution produced the school leaving certificate for proof of age and not the horoscope though available and two doctors testified on behalf of the accused that the girl was major, the accused acquitted under benefit of doubt, *Pravakar v Ajaya Kumar Das*, 1996 Cr LJ 2626 (Ori). *Vishnu v State of Maharashtra*, 1997 Cr LJ 1724 (Bom), evidence of mother of prosecutrix and that of her school head master showed her to be below 16. This was also corroborated by medical evidence. This fact was not challenged by the defence. Finding as to her age as below 16 was held to be proper. *Mohan v State of Rajasthan*, 2003 Cr LJ 1891 (Raj), failure of the prosecution to prove that the prosecutrix was under 18 years of age at the relevant time, offence under the section not made out.
1070. *Din Mohammad*, 1939 20 Lah 517.
1071. *Lakshmidhar Misra*, (1956) Cut 546. *Biswanath Mallick v State of Orissa*, (1995) 2 Cr LJ 1416 (Ori), kidnapping from custody of guardian without the intention of forced marriage, offence under section 361, not under section 366.
1072. *State of Haryana v Raja Ram*, 1973 Cr LJ 651 (SC); See also *Rasool v State*, 1976 Cr LJ 363 (All).
1073. *Vipin Menon v State of Karnataka*, 1992 Cr LJ 3737 (Kant).
1074. *Jagannadha Rao v Kamaraju*, (1900) 24 Mad 284, 291; *Baz v State*, (1922) 3 Lah 213. A girl living in a rented room for the purpose of an examination where her father visited her once is in the custody of the guardian. *Bhagban Panigrahi v State of Orissa*, 1989 Cr LJ (NOC) 103 (Ori).
1075. *Bhavesh Jayanti Lakhani v State of Maharashtra*, (2009) 9 SCC 551 [LNIND 2009 SC 1646] .
1076. *Nageshwar*, AIR 1962 Pat 121 .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

##### [s 362] Abduction.

**Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.**

##### COMMENT.—

This section merely gives a definition of the word "abduction" which occurs in some of the penal provisions which follow. There is no such offence as abduction under the Code, but abduction with certain intent is an offence. Force or fraud is essential.

##### [s 362.1] Ingredients.—

The section requires two things:—

- (1) Forceful compulsion or inducement by deceitful means.<sup>1077.</sup>
- (2) The object of such compulsion or inducement must be the going of a person from any place.

"The expression "deceitful means" includes a misleading statement. It is, really speaking, a matter of intention. The intention of the accused is the basis and gravamen of the charge. The volition, the intention and conduct of the woman do not determine the offence.<sup>1078.</sup> The offence of abduction under section 362 of the Code involves use of force or deceit to compel or induce any person to go from any place.<sup>1079.</sup>

##### [s 362.2] Abduction and kidnapping.—

- (1) 'Kidnapping' is committed only in respect of a minor under 16 years of age if a male, and under 18 years if a female or a person of unsound mind; 'abduction', in respect of a person of any age.
- (2) In 'kidnapping', the person kidnapped is removed out of lawful guardianship. A child without a guardian cannot be kidnapped. 'Abduction' has reference exclusively to the person abducted.
- (3) In 'kidnapping', the minor is simply taken away. The means used may be innocent. In 'abduction', force, compulsion, or deceitful means are used.
- (4) In kidnapping, consent of the person taken or enticed is immaterial; in abduction, consent of the person moved, if freely and voluntarily given, condones abduction.

(5) In kidnapping, the intent of the offender is a wholly irrelevant consideration: in abduction, it is the all-important factor.

(6) Kidnapping from guardianship is a substantive offence under the Code; but abduction is an auxiliary act, not punishable by itself, but made criminal only when it is done with one or other of the intents specified in section 364, *et seq.*<sup>1080</sup>.

<sup>1077</sup>. *Suresh Babu v State of Kerala*, [2001 Cr LJ 1483](#) (Ker), where a girl of about 16 years old was in love with the accused and the evidence showed that she left her home on her own accord and joined the accused for getting their marriage registered and lived as husband and wife thereafter. Conviction of the accused was set aside because it could not be said that he kidnapped her. *Ram Chandra Singh v Nabrang Rai Burma*, [1998 Cr LJ 2156](#) (Ori), on the same point.

<sup>1078</sup>. A Pasayat, J in *Rabinarayan Das v State of Orissa*, [1992 Cr LJ 269](#), 273 (Ori), **citing** *Re Khalandar Sahab*, [AIR 1955 SC 39](#), Edn (Sic) "or AIR 1955 59 (AP)".

<sup>1079</sup>. *Subhash Krishnan v State of Goa*, [\(2012\) 8 SCC 365 \[LNIND 2012 SC 480\]](#) : [AIR 2012 SC 3003 \[LNIND 2012 SC 480\]](#).

<sup>1080</sup>. Restated in *Biswanath Mallick v State of Orissa*, [1995 Cr LJ 1416](#) (Ori).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

##### [s 363] Punishment for kidnapping.

Whoever kidnaps any person from <sup>1081</sup>[India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

##### State Amendment

Uttar Pradesh.—The offence *u/s. 363 IPC* is non-bailable, vide U.P. Act, No. 1 of 1984.

#### COMMENT.—

This section must be read with section 361. The offence of kidnapping from lawful guardianship penalised by this section is the offence which is defined by section 361. The person against whom the offence is committed must be under the age of sixteen, if a male, and under the age of eighteen, if a female.<sup>1082</sup>

##### [s 363.1] Tribal Custom.—

Where a married girl of 17 years of age was forcibly carried away by the accused and his companions from a jungle where she had gone with others to collect mohua flowers with a view to marrying her according to their tribal custom, it was held that such a custom, if any, could apply only to the cases of young unmarried men and women and had no application to legalise the kidnapping of a married minor girl out of the keeping of her lawful guardian.<sup>1083</sup>

##### [s 363.2] Section 363 IPC is not a minor offence of Section 376 IPC, 1860.—

Offence of kidnapping under [section 363 IPC, 1860](#) and of rape under [section 376 IPC, 1860](#) cannot be held to be cognate offences. Therefore, accused cannot be convicted for offence of kidnapping in absence of charge framed against him for the said offence.<sup>1084</sup>

##### [s 363.3] Extradition offence.—

Offence under [section 363 of the IPC, 1860](#) is an extraditable offence, provided it is not a pure matrimonial dispute.<sup>1085</sup>

1081. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1 April 1951), to read as above.

1082. *Ismail Sayadsaheb*, (1933) 35 Bom LR 886 : 57 Bom 537 FB. *Anandham v State of TN*, (1995) 1 Cr LJ 632 (Mad), here the accused was acquitted under section 376 (rape) and section 366 (kidnapping for marriage), he was convicted under this section for simple kidnapping. *Omi v State of UP*, 1994 Cr LJ 155 (All), acquittal from charges of kidnapping and rape, story of the victim not reliable, medical evidence also not proving rape. *Kuldeep K Mahato v State of Bihar*, AIR 1998 SC 2694 [LNIND 1998 SC 714] : 1998 Cr LJ 1597 (Raj), the prosecutrix was below 18 years of age. She was taken away by the accused person to a particular place by means of a tempo. The court said that the offence of kidnapping from lawful guardianship was made out. But ingredients of the offence of rape not proved. Hence, no conviction for rape. *Bagula Naik v State of Orissa*, 1999 Cr LJ 2077 (Ori), a girl left home of her own, met by chance a person on the road who took her to his home and detained her for several days. The version given by the girl was truthful. The fact that there was no *mens rea* and he appeared before the police along with the girl was not sufficient to prove his innocence. His conviction was maintained. *Sumitra Bai v State of MP*, 1999 Cr LJ 2541 (MP), taken away by one person and deposited in the house of another, both liable. *Mahesh Kumar v State of Rajasthan*, 1998 Cr LJ 597 (Raj), gang rape after kidnapping, both accused helped each other in the satisfaction of their lust, either liable for act of the other. *Akeel v State of MP*, 1998 Cr LJ 4530 (MP) consenting party to sex, accused not liable for rape, but she being below 18 years, he was guilty of kidnapping. *Jitmohan Lohar v State of Orissa*, 1997 Cr LJ 2842 (Ori), the girl of consenting age going away voluntarily, conviction for kidnapping not proper.

1083. *Dutta Pradhan*, 1985 Cr LJ 1842 (Ori). See also *Tannu Lal v State of UP*, 1981 SCC (Cr) 675 : 1981 Supp SCC 47, conviction of the main accused along with his two companions who either stood by or helped him. *Prem Chand v State*, 1987 Cr LJ 910 (Del) no proof of allegations.

1084. *F Nataraja v State*, 2010 Cr LJ 2180 (Kar).

1085. *Bhavesh Jayanti Lakhani v State of Maharashtra*, (2009) 9 SCC 551 [LNIND 2009 SC 1646] : (2010) 1 SCC (Cr) 47.



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

[s 1086.[363A] Kidnapping or maiming a minor for purposes of begging.

- (1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- (2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.
- (3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purpose of begging.
- (4) In this section,—
  - (a) 'begging' means—
    - (i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;
    - (ii) entering on any private premises for the purpose of soliciting or receiving alms;
    - (iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;
    - (iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;
  - (b) "minor" means—
    - (i) in the case of a male, a person under sixteen years of age; and
    - (ii) in the case of a female, a person under eighteen years of age.]

COMMENT.—

This section was inserted by Act LII of 1959. In the Statement of Objects and Reasons it is stated:

To put down effectively the evil of kidnapping of children for exploiting them for begging, the provisions existing in the [Indian Penal Code](#) are not quite adequate. There is also no special provision for deterrent punishment for the greater evil of maiming of children so as to make them objects of pity.

This section makes kidnapping or obtaining custody of a minor, and the maiming of a minor for employing him for begging, specific offences and provides for deterrent punishment.

**1086.** Ins. by Act 52 of 1959, section 2 (w.e.f. 15 January 1960).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

##### [s 364] Kidnapping or abducting in order to murder.

Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with <sup>1087</sup>[imprisonment for life] or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

##### ILLUSTRATIONS

- (a) A kidnaps Z from <sup>1088</sup>[India], intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.
- (b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

##### COMMENT.—

To establish an offence under this section it must be proved that the person charged with the offence had the intention at the time of the kidnapping or abduction that the person kidnapped or abducted will be murdered or so disposed of as to be put in danger of being murdered.<sup>1089</sup> The Supreme Court stated the ingredients to be: (1) kidnapping by the accused must be proved; (2) it must also be proved that the person in question was kidnapped in order, (a) that he may be murdered, or (b) that he might be disposed of in such manner as to be put in danger of being murdered.<sup>1090</sup>

When it was not proved that kidnapping was with intention to commit murder of victim boy, it was held that conviction of appellant under [section 363 of IPC, 1860](#) is proper though charge against accused was framed under [section 364 IPC, 1860](#).<sup>1091</sup>

##### [s 364.1] Presumption of killing by abductors.—

An abducted victim was murdered later on. It was held that the Court can, depending on the factual situation, draw the presumption that the abductors are responsible for the murder. It is their responsibility to explain to the Court what they had done with the victim.<sup>1092</sup> The facts of the case showed that the parties were inimically disposed against each other. The presence of the accused at the place of occurrence was also established. They picked up the person and bodily lifted him away. They fired in the air to ward off resistance. The abducted person was not seen or heard of since 27 years. [Section 108 of the Indian Evidence Act, 1872](#) applied to create presumption of death. In the face of such death, whether actual or presumptive, the inference of murder by abductors arises. The Court said that it would not be necessary to prove *corpus delicti*.

The offence under the section was made out.<sup>1093</sup> Where abduction of the victim was proved and the victim was found murdered soon after abduction, the Supreme Court said that it was for the accused to satisfy the Court as to how the abducted victim was dealt with. In the absence of any such explanation, the Court may draw the presumption that the abductor was murderer also.<sup>1094</sup>

**1087.** Subs. by Act 26 of 1955, sec. 117 and Sch., for "transportation for life" (w.e.f. 1-1-1956).

**1088.** The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

**1089.** *Tondi v State*, 1975 Cr LJ 950 (All) : AIR 1940 Cal 561 followed; *Sardar Hussain v State of UP*, 1988 Cr LJ 1807 : AIR 1988 SC 1766 [LNIND 1988 SC 366] : 1988 Supp SCC 623 . *State of MP v Mahesh Mohan Lal Mali*, 1990 Cr LJ 2483 , of the two accused, evidence that child kidnapped and killed was last seen with one of them and this fact along with his extra-judicial confession, was sufficient for conviction, but the bare confession of the other accused not sufficient. *State of MP v Amar Singh*, AIR 1994 SC 650 : 1994 Cr LJ 619 , witnesses not implicating the accused of abduction or murder, evidence not sufficient to prove the guilt of the accused, acquittal affirmed. *Pankaj Naik v State of Orissa*, 1994 Cr LJ 829 (Ori), kidnapped child deposing the story, admits tutoring, his evidence not trustworthy, medical evidence contradictory, conviction not sustainable. *Arumugham v State of TN*, 1994 Cr LJ 520 (Mad), where the accused was prosecuted for abducting a girl and killing her and the extra-judicial confession of the accused and the alleged cause of death by throttling were not proved by the oral and medical evidence, it was held that accused was entitled to acquittal.

**1090.** *Badshah v State of UP*, (2008) 3 SCC 681 [LNIND 2008 SC 310] : 2008 Cr LJ 1950 : (2008) 3 All LJ 524.

**1091.** *Vinod Hembrum v State of Jharkhand*, 2011 Cr LJ 2763 (Jha).

**1092.** *Sucha Singh v State of Punjab*, 2001 Cr LJ 1734 (SC). *Kalpna Mazumdar v State of Orissa*, 2002 Cr LJ 3756 (SC), accused was seen throwing the dead body of the abducted person into water; he was not able to explain how the dead body came into his possession. Presumption against the abductor of the child of killing him. *Murlidhar v State of Rajasthan*, 2005 Cr LJ 2608 : AIR 2005 SC 2345 [LNIND 2005 SC 486] : (2005) 11 SCC 133 [LNIND 2005 SC 486] , prosecution proceeded on footing that there eyewitnesses to the fact of murder, hence section 106, Indian Evidence Act, 1872 (burden on the abductor to show what happened to the abducted person) did not apply. Conviction under section 364 maintained but that under sections 302/34 set aside.

**1093.** *Badshah v State of UP*, (2008) 3 SCC 681 [LNIND 2008 SC 310] : (2008) 2 SCC (Cr) 712 : 2008 Cr LJ 1950 : (2008) 3 All LJ 524. *Rangnath Sharma v Satendra Sharma*, (2008) 12 SCC 259 [LNIND 2008 SC 1659] , another well-proved case of kidnapping and murder.

**1094.** *State of MP v Lattora*, (2003) 11 SCC 761 : 2004 SCC (Cr) 1195.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

**1095.**[s 364-A] Kidnapping for ransom, etc.

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or **1096.**[any foreign State or international inter-governmental organisation or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.]

#### COMMENT.—

It is relevant to point out that section 364A had been introduced in the [IPC, 1860](#) by virtue of Amendment Act 42 of 1993. The statement of objects and reasons are as follows:

*Statement of Objects and Reasons. - Kidnappings by terrorists for ransom, for creating panic amongst the people and for securing release of arrested associates and cadres have assumed serious dimensions. The existing provisions of law have proved to be inadequate as deterrence. The Law Commission in its 42nd Report has also recommended a specific provision to deal with this menace. It [was] necessary to amend the [Indian Penal Code](#) to provide for deterrent punishment to persons committing such acts and to make consequential amendments to the [Code of Criminal Procedure, 1973](#).*

It is clear from the above the concern of Parliament in dealing with cases relating to kidnapping for ransom, a crime which called for a deterrent punishment, irrespective of the fact that kidnapping had not resulted in death of the victim. Considering the alarming rise in kidnapping young children for ransom, the legislature in its wisdom provided for stringent sentence. **1097.**

[s 364-A.1]Ingredients.—

Before section 364-A is attracted and a person is convicted, the prosecution must prove the following ingredients:

- (1) the accused must have kidnapped, abducted or detained any person;
- (2) he must have kept such person under custody or detention; and
- (3) kidnapping, abduction or detention must have been for ransom. To pay a ransom, in the ordinary sense means to pay the price or demand for ransom. This would show that the demand has to be communicated. **1098.**

The term "ransom" has not been defined in the Code. Stated simply, "ransom" is a sum of money to be demanded to be paid for releasing a captive, prisoner or detenu.

Kidnapping for ransom is an offence of unlawfully seizing a person and then confining the person usually in a secret place, while attempting to extort ransom. This grave crime is sometimes made a capital offence. In addition to the abductor a person who acts as a go-between to collect the ransom is generally considered guilty of the crime.<sup>1099.</sup>

In a case, where a male child was kidnapped for ransom and murdered, the Supreme Court refused to interfere with the death penalty awarded by the Courts below. The Supreme Court held that the offence of kidnapping for ransom accompanied by a threat to cause death contemplates punishment with death. Therefore, even without an accused actually having murdered the individual kidnapped for ransom, the provision contemplates the death penalty. [Section 302 of the IPC, 1860](#) also contemplates the punishment of death for the offence of murder. It is, therefore apparent, that the accused was guilty of two heinous offences, which independently of one another, provide for the death penalty.<sup>1100.</sup>

[s 364-A.2]Letters of demanding ransom.—

Letter demanding ransom written by the accused. Plea of the accused that the letters were written under the pressure of the police was rejected as there was no cross-examination on this point.<sup>1101.</sup>

[s 364-A.3]Provision not unconstitutional.—

Given the background in which the law was enacted and the concern shown by the Parliament for the safety and security of the citizens and the unity, sovereignty and integrity of the country, the punishment prescribed for those committing any act contrary to section 364A cannot be dubbed as so outrageously disproportionate to the nature of the offence as to call for the same being declared unconstitutional.<sup>1102.</sup>

[s 364-A.4]Sentencing.—

The Supreme Court observed that keeping in mind the alarming rise in kidnapping of young children for ransom, the legislature has in its wisdom provided stringent sentence. The Supreme Court said that the High Court rightly refused to interfere. The judgment of the High Court did not suffer from any infirmity to warrant interference. The sentence of life imprisonment was awarded and a fine of Rs. 1000 with default stipulation.<sup>1103.</sup>

[Section 364A IPC, 1860](#) was not on the statute book at the time of commission of the offence. Unfortunately, a charge under section 363 was also not framed by the Trial Court. It would not be appropriate to remand the case for framing fresh charge against the appellants after a lapse of more than 20 years. His conviction and sentence for the offence punishable under [section 384](#) read with [section 34 IPC, 1860](#) was maintained.<sup>1104.</sup>

[s 364-A.5]Continuing offence.—

If [section 364A IPC, 1860](#) and [section 472 Cr PC, 1973](#) are to be read together, it has to be held that even after the death of the victim every time a ransom call was made a fresh period of limitation commenced.<sup>1105.</sup>

[s 364-A.6]Distinction between offences under section 364 and section 364-A.—

The ingredients for the offence under sections 364 and 364-A are different. Whereas the intention to kidnap a person in order that he may be murdered or may be so disposed of as to be put in danger of being murdered satisfies the requirements of section 364; for obtaining conviction for the offence under section 364-A it is

necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom. Thus, it was obligatory on the part of the trial court to frame a charge which would answer the description of the offence envisaged under section 364-A. It may be true that the kidnapping was done with a view to getting ransom but the same should have been put to the appellant while framing a charge. The prejudice to the appellant is apparent as the ingredients of a higher offence had not been put to him while framing the charge. Hence, the appellant could not have been convicted under section 364-A. The appellant was held to be guilty of an offence under section 364. He deserved the highest punishment prescribed therein, i.e., rigorous imprisonment for life. <sup>1106</sup>.

<sup>1095</sup>. Ins. by Act 42 of 1993, section 2, (w.e.f. 22 May 1993).

<sup>1096</sup>. Subs. by Act 24 of 1995, for "any other person" (w.e.f. 26-5-1995).

<sup>1097</sup>. *Akram Khan v State of WB*, AIR 2012 SC 308 [LNIND 2011 SC 1205] : (2012) 1 SCC 406 [LNIND 2011 SC 1205] .

<sup>1098</sup>. *Malleshi v State of Karnataka*, 2004 (8) SCC 95 [LNIND 2004 SC 934] : AIR 2004 SC 4865 [LNIND 2004 SC 934] ; *Vinod v State of Haryana*, AIR 2008 SC 1142 [LNIND 2008 SC 155] : 2008 (2) SCC 246 [LNIND 2008 SC 155] .

<sup>1099</sup>. *Suman Sood v State of Rajasthan*, (2007) 5 SCC 634 [LNIND 2007 SC 647] : AIR 2007 SC 2774 [LNIND 2007 SC 647] : (2007) Cr LJ 4080 , it was proved in this case that one accused kidnapped a person for getting an arrested person released. His wife (second accused) remained at the secret place where the victim was kept, and provided him food and medicine. This was held to be not sufficient to convict her under section 364-A, though found to be enough to sustain conviction under sections 365/120-B.

<sup>1100</sup>. *Sunder @ Sundararajan v State*, (2013) 3 SCC 215 [LNIND 2013 SC 91] : AIR 2013 SC 777 [LNIND 2013 SC 91] ; *Vikram Singh v State of Punjab*, 2010 (3) SCC 56 [LNIND 2010 SC 106] : AIR 2010 SC 1007 [LNIND 2010 SC 106] .

<sup>1101</sup>. *Vinod Kumar v State of Haryana*, 2015 Cr LJ 1250 .

<sup>1102</sup>. *Vikram Singh v UOI*, 2015 Cr LJ 4500 .

<sup>1103</sup>. *Vinod v State of Haryana*, (2008) 2 SCC 246 [LNIND 2008 SC 155] : AIR 2008 SC 1142 [LNIND 2008 SC 155] : 2008 Cr LJ 1811 : (2008) 105 Cut LT 559.

<sup>1104</sup>. *Jaipal v State*, 2011 Cr LJ 4444 (Del).

<sup>1105</sup>. *Vikas Chaudhary v State of NCT of Delhi*, AIR 2010 SC 3380 [LNIND 2010 SC 743] : (2010) 3 SCC (Cr) 936.

<sup>1106</sup>. *Anil v Admn of Daman & Diu, Daman*, (2006) 13 SCC 36 [LNIND 2006 SC 1035] : (2008) 1 SCC (Cr) 72.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

**[s 365] Kidnapping or abducting with intent secretly and wrongfully to confine person.**

**Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

#### COMMENT.—

Where there was sufficient evidence to show that the victim woman was abducted from her house and then taken to different places which included confinement to one place till she was recovered by the police, it was held that the accused could be convicted under this section and section 368 but not section 366.<sup>1107.</sup>

The prosecutrix had left her home voluntarily, of her own free will to get married to the appellant. She was 19 years of age at the relevant time and was, hence, capable of understanding the complications and issues surrounding her marriage to the appellant. According to the version of events provided by her, the prosecutrix had called the appellant on a number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. Offence not made out.<sup>1108.</sup>

In the order of extradition section 364A mentioned and not [section 365 IPC, 1860](#). Offence under [section 365 IPC, 1860](#) is lesser offence than the offence punishable under [section 364A IPC, 1860](#). Hence, protection of accused and trial for lesser offence under [section 365 IPC, 1860](#) cannot be held to be without authority of law.<sup>1109.</sup>

<sup>1107.</sup> *Fiyaz Ahmed v State of Bihar*, 1990 Cr LJ 2241 SC : AIR 1990 SC 2147 .

<sup>1108.</sup> *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : 2013 (7) Scale 383 [LNIND 2013 SC 533] .

<sup>1109.</sup> *Suman Sood v State of Rajasthan*, AIR 2007 SC 2774 [LNIND 2007 SC 647] : (2007) 5 SCC 634 [LNIND 2007 SC 647] .



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

##### [s 366] Kidnapping, abducting or inducing woman to compel her marriage, etc.

Whoever kidnaps or abducts any woman<sup>1</sup> with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will,<sup>2</sup> or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; **1110.** [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid].

#### COMMENT.—

Where a woman has no intention of marriage or lawful intercourse when kidnapped, this section applies.

#### [s 366.1] Ingredients.—

The section requires.—

1. Kidnapping or abducting of any woman.
2. Such kidnapping or abducting must be—
  - (i) with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will; or
  - (ii) in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse; or
  - (iii) by means of criminal intimidation or otherwise by inducing any woman to go from any place with intent that she may be, or knowing that she will be, forced or seduced to illicit intercourse.

It is immaterial whether the woman kidnapped is a married woman or not. To constitute an offence under [section 366, IPC, 1860](#), it is necessary for the prosecution to prove that the accused induced the complainant-woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an

accused under the ambit of this penal section. So far as a charge under [section 366, IPC, 1860](#) is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in [section 366, IPC, 1860](#) the Court cannot hold the accused guilty and punish him under [section 366, IPC, 1860](#).<sup>1111.</sup>

**1. 'Kidnaps or abducts any woman'.—**If the girl was 18 years old or over, she could only be abducted and not kidnapped, but if she was under eighteen she could be kidnapped as well as abducted if the taking was by force or the taking or enticing was by deceitful means.<sup>1112.</sup> Doubts about age, if not resolved satisfactorily, would go in favour of the accused.<sup>1113.</sup>

**2. 'With intent that she may be compelled ... to marry any person against her will'.—**The intention of the accused is the basis and the gravamen of the offence under this section. The volition, the intention and the conduct of the woman do not determine the offence; they can only bear upon the intent with which the accused kidnapped or abducted the woman, and the intent of the accused is the vital question for determination in each case. Where only confinement was established, the Supreme Court held that conviction was possible under sections 365 and 368 and not 366.<sup>1114.</sup> Once the necessary intent of the accused is established the offence is complete, whether or not the accused succeeded in effecting his purpose, and whether or not in the event the woman consented to the marriage or the illicit intercourse.<sup>1115.</sup>

In order to establish an offence under [section 366 IPC, 1860](#) it must first be established that the offence of kidnapping under [section 361 IPC, 1860](#) has been proved. It must then be shown that such kidnapping was with the contumacious intent referred to under [section 366 IPC, 1860](#).<sup>1116.</sup> If the girl kidnapped is below 18 years, consent is immaterial for the offence to be made out.<sup>1117.</sup>

**3. 'Forced or seduced to illicit intercourse'.—**The word 'forced' is used in its ordinary dictionary sense and includes force by stress of circumstances. The expression 'seduced', used in this section and section 366A, means inducing a woman to submit to illicit intercourse at any time.<sup>1118.</sup> The Supreme Court in this case disapproved of the view taken by the Allahabad and Lahore High Courts that the word 'seduced' used in this section is properly applicable only to the first act of illicit intercourse unless there be a proof of return to chastity on the part of the girl. The Calcutta, the Patna, the Madras and the Bombay High Courts had held that 'seduction' is not used in the narrow sense of inducing a girl to part with her virtue for the first time, but includes subsequent seduction for further acts of illicit intercourse.<sup>1119.</sup> Mere abduction does not make out an offence under [section 366, IPC, 1860](#). It must further be proved that the accused abducted the woman for any of the purposes mentioned in section 366.<sup>1120.</sup>

### [s 366.2] Consent.—

Merely because a person did not give passive resistance it does not mean his helpless resignation on face of inevitable compulsion cannot be deemed as consent. Only conclusion relevant is that she was kidnapped and kept under barrier and was raped against her will.<sup>1121.</sup> Where the evidence showed that victim herself had called the accused to meet her at a place outside the village, it was held that accused was entitled to acquittal.<sup>1122.</sup> Prosecutrix aged 19 years accompanied her elder sister went with appellant voluntarily and did not make any annoyance and performed intercourse

with him. Only after tracing her out by Police, in connection with report of missing person, she stated to Police some ingredients of offence of rape. It is apparent that in spite of having opportunity at various stages and various places, she did not complain to any one or did not make any annoyance saying that she is being taken by appellant without her will. Offence was not made out.<sup>1123.</sup> Where the girl supposed to have been taken away under threats was taken from one place to another and they stayed at different hotels, the girl making no protest anywhere, her consent was presumed.<sup>1124.</sup> Where the prosecutrix, a teenaged girl, did not put up struggle or jump down from the cycle of the accused or not even raised an alarm while being taken away, the offence under section 366 was not made out. The conviction was set aside.<sup>1125.</sup>

Mere submission without resistance cannot tantamount to consent.<sup>1126.</sup>

### **[s 366.3] Tribal custom of forced marriage.—**

The existence of a tribal custom under which a girl can be forced to marry her abductor or kidnapper by taking her away and subjecting her to intercourse cannot be accepted as a good defence, it being contrary to law. But a lenient sentence of only six months was imposed in view of the application for compounding submitted by the victim girl and her father. The token punishment was necessary because the offence was not compoundable.<sup>1127.</sup>

### **[s 366.4] Section 366 is not a minor offence of section 376.—**

It is true that [section 222 of the Cr PC, 1973](#) entitles a Court to convict a person of an offence which is minor in comparison to the one for which he is being tried but [section 366 of the IPC, 1860](#) cannot be said to be a minor offence in relation to an offence under [section 376 of the IPC, 1860](#) as both the offences are of distinct and different categories having different ingredients.<sup>1128.</sup>

### **[s 366.5] Punishment.—**

In *State of MP v Rameshwar*,<sup>1129.</sup> where the victim was approximately 16 years of age and was seduced and kidnapped by the respondent by promising to marry her. The Supreme Court, restored the sentence awarded by the trial Court, but reduced it to one year.<sup>1130.</sup>

### **[s 366.6] When sentence shall run consecutively.—**

In *Muthuramalingam v State*,<sup>1131.</sup> the [Constitution](#) Bench of the Supreme Court examined the various issues relating to the sentencing of the accused, where multiple murders were committed by them, and held that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be super imposed over each other, so that any remission or commutation granted by a competent authority in one does not *ipso facto* result in remission of the sentence awarded to the prisoner for the other.

1110. Added by Act 20 of 1923, section 2.
1111. *Gabbu v State of MP*, AIR 2006 SC 2461 [LNIND 2006 SC 410] : (2006) 5 SCC 740 [LNIND 2006 SC 410] .
1112. *Prfullakumar Basu*, (1929) 57 Cal 1074 , 1079. For an example of kidnaping by deceitful means, see *Nawabkhan v State of MP*, 1990 Cr LJ 1179 (MP). The Supreme Court did not approve the conviction on the evidence of a prosecutrix who was for several days taken openly from place to place and she never protested even when she had opportunities to do so. *Hari Ram v State of Rajasthan*, 1991 Supp (2) SCC 475 : 1991 SCC (Cr) 1071.
1113. *Satish Kumar v State*, 1988 Cr LJ 565 (Del).
1114. *Fiyaz Ahmad v State of Bihar*, 1990 Cr LJ 2241 : AIR 1990 SC 2147 . There was nothing to show that the confinement was either to compel her to marry or to submit to sexual intercourse against her wish.
1115. *Khalil-Ur-Rahman*, (1933) 11 Ran 213 (FB). *Moniram Hazarika v State of Assam*, (2004) 5 SCC 120 [LNIND 2004 SC 476] : 2004 Cr LJ 2553 : AIR 2005 SC 2472 , accused regular visited to the house of the girl's brother, developed intimacy and persuaded her to abandon the lawful guardianship under promise of marriage. Conviction under section 366 was upheld.
1116. *Shajahan v State*, 2011 Cr LJ 573 .
1117. *Brij Lal Sud v State of Punjab*, (1970) 3 SC 808 ; *Parshotam Lal v State of Punjab*, (2010) 1 SCC 65 [LNIND 2009 SC 1870] : (2010) 1 SCC (Cr) 449 – prosecutrix below 16 years; compounding not allowed. *Sachindra Nath*, 1978 Cr LJ 1494 (Cal). A girl of 18 years old left home, in the absence of her father, of her own choice with cash and gold and joined the accused who took her to various places and subjected her to sex, no offence made out against the accused. *Om Prakash v State of Haryana*, 1988 Cr LJ 1606 (P&H). *Keshav v State*, 2001 Cr LJ 1201 (Del), the victim aged about 18 years, evidence showed that she had voluntarily gone with the accused and of her own free will, acquittal because the offence not made out. *Varda v State of Rajasthan*, 2001 Cr LJ 1283 (Raj), allegation of kidnapping of daughter-in-law not proved, she accompanied the accused to many places. *Mehmood v State*, 1998 Cr LJ 2408 (Del), the girl had voluntarily gone with the accused. Hence the acquittal. *P Ashriya v State of Orissa*, 1998 Cr LJ 3162 (Ori), the girl in question was minor, there was no adjudication as to valid marriage, the accused being a kidnapper, his application for custody of the girl was rejected.
1118. *Ramesh*, (1962) 64 Bom LR 780 (SC).
1119. *Prfullakumar Basu*, (1929) 57 Cal 1074 ; *Krishna Maharana*, (1929) 9 Pat 647; *Lakshman Bala*, (1934) 37 Bom LR 176 , 59 Bom 652; *Kartara v State*, (1957) Pun 2003; *Gopichand Fattumal*, (1960) 63 Bom LR 408 .
1120. *Chote Lal*, 1979 Cr LJ 1126 : AIR 1979 SC 1494 . *Goverdhan v State of MP*, (1995) 1 Cr LJ 633 (MP), the conduct of the abducted girl showed her willingness to marriage because she accompanied the accused to court premises for swearing an affidavit for marriage and thereafter stayed at a rest house, the charge under the section not made out.
1121. *Dipak Kumar v The State of Bihar*, 2012 Cr LJ 480 (Pat).
1122. *Amarshibhai v State of Gujarat*, 2013 Cr LJ 2768 (Guj); *Shyam v State*, AIR 1995 SC 2169 .
1123. *Mahesh v State of MP*, 2012 Cr LJ 910 (MP).

1124. *State of Haryana v Naresh*, 1996 Cr LJ 3614 (P&H), girl was below 18 years old. In such cases the courts of both places would have jurisdiction namely, the place from where the girl was taken away and the place to which she was carried.
1125. *Shyam v State of Maharashtra*, AIR 1994 SC 2169 : 1995 Cr LJ 3974 . *Baldeo v State of UP*, 1993 Cr LJ 1915 (All), the girl attained the age of discretion, voluntarily accompanied the accused, the latter only fulfilling her desire to go away, acquittal.
1126. *Satish Kumar v State of Rajasthan*, 2001 Cr LJ 4860 (Raj). Sentence was reduced to the period already undergone. Similar benefit of reduction was ordered to be given to the accused who had not appealed. *Gurnam Singh v State of Punjab*, 1998 Cr LJ 4024 (SC), kidnapping and murder of three persons, death sentence reduced to life imprisonment under sections 302/34. *Kuldeep K Mahato v State of Bihar*, 1998 Cr LJ 4033 : AIR 1998 SC 2694 [LNIND 1998 SC 714] , for details see under section 363. See also *Shivnath v State of MP*, 1998 Cr LJ 2691 (MP); *State of Maharashtra v Surendra Kumar Mevalal Mahesh*, 1998 Cr LJ 3768 (Bom); *Dewan Singh v State*, 1998 Cr LJ 3905 (Del).
1127. *Nattu v State of MP*, 1990 Cr LJ 1567 (MP). See also *Kunwarsingh v State of MP*, 2013 Cr LJ 901 (MP); *Panna v State of Rajasthan*, 1987 Cr LJ 997 (Raj), where a tribal custom for sale of girls was not accepted but light punishment was inflicted because of the custom and senior age of the accused.
1128. *Surendra Rai v State of Bihar*, 2013 Cr LJ 1847 (Pat).
1129. *State of MP v Rameshwar*, AIR 2005 SC 687 [LNIND 2005 SC 77] : (2005) 2 SCC 373 [LNIND 2005 SC 77] .
1130. *Rajesh v State of Maharashtra*, AIR 1998 SC 2724 [LNIND 1998 SC 752] : 1998 Cr LJ 4042 (SC).
1131. *Muthuramalingam v State*, 2016 Cr LJ 4165 : (2016) 8 SCC 313 [LNIND 2016 SC 308] .

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

##### **1132.**[s 366A] Procurement of minor girl.

**Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.]**

#### COMMENT.—

Section 366A was enacted by Act XX of 1923 to give effect to certain Articles of the International Convention for the Suppression of Traffic in Women and Children signed by various nations at Paris on 4 May 1910. While section 366A deals with procurement of minor girls from one part of India to another section 366B makes it an offence to import into India from any country outside India girls below the age of 21 years for the purpose of prostitution.

#### [s 366A.1] **Ingredients.—**

This section requires two things: (1) inducing a girl under eighteen years to go from any place or to do an act,<sup>1133.</sup> and (2) intention or knowledge that such girl will be forced or seduced to illicit intercourse with a person.

The applicability of [section 366-A of the IPC, 1860](#) requires, first, that the accused must induce a girl; second, that the person induced was a girl under the age of 18 years; third, that the accused has induced the victim knowing that it is likely that she will be forced or seduced to an illicit sexual intercourse; fourth, that such intercourse must be with that person other than the accused; fifth, that the inducement caused the girl to go there in the place or to do any act.<sup>1134.</sup> An offence under this section is one of inducement with a particular object, and when after the inducement the offender offers the girl to several persons a fresh offence is not committed at every fresh offer for sale.<sup>1135.</sup> Where a woman, even if she has not attained the age of 18 years, follows the profession of a prostitute, and in following that profession she is encouraged or assisted by someone, no offence under this section is committed by such person, for it cannot be said that the person who assists a girl accustomed to indulge in promiscuous intercourse for money in carrying on her profession acts with intent or knowledge that she will be forced or seduced to illicit intercourse.<sup>1136.</sup>

**1. 'Seduced'.—**The verb 'seduce' is used in two senses. It is used in its ordinary and narrow sense as inducing a woman to stray from the path of virtue for the first time: it is also used in the wider sense of inducing a woman to submit to illicit intercourse at any time or on any occasion. It is in the latter sense that the expression has been used in [sections 366](#) and [366A](#) of the [IPC, 1860](#) which sections partially overlap. The word

"seduced" is used in the ordinary sense of enticing or tempting irrespective of whether the minor girl has been previously compelled or has submitted to illicit intercourse.<sup>1137.</sup> A person who merely accompanies a woman going out to ply her profession of a prostitute, even if she has not attained the age of 18 years, could not be said thereby to induce her to go from any place or to do any act with the intent or knowledge that she will be forced or seduced to illicit intercourse within the meaning of section 366A.<sup>1138.</sup>

[s 366A.2] **Age.—**

In a case before the Supreme Court, the father of the girl stated that her age on the date of the incident was around 19 years. The doctor also certified the age to be above 18 years. The girl told the Court that she was of only 14 years. The Supreme Court said that the High Court did not consider the age factor fully. The charge failed on the ground of the failure of prosecution to establish that the girl was less than 18 years of age.<sup>1139.</sup>

[s 366A.3] **CASES.—**

Where statement and conduct of the victim showed that there was neither threat nor force used by the accused, it cannot be said that victim was forcibly kidnapped and kept in custody. Accused was held entitled to acquittal.<sup>1140.</sup>

[s 366A.4] **Non-framing of charge under section 366-A.—**

Offence under section 366-A is not a minor offence to [section 366 IPC, 1860](#) so as to invoke [section 222\(2\) of Cr PC, 1973](#). Conviction of appellants under [section 366 IPC, 1860](#) without there being a charge is illegal and liable to be set aside.<sup>1141.</sup>

[s 366A.5] **Difference between sections 366 and 366A.—**

A bare perusal of this section would indicate that the kidnapping or abduction of any woman with a view to compel her for marriage, etc. is covered by this section. Now, a perusal of the section would indicate that if the minor girl is induced to go from any place or to do any act with an intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine. The title to the section is procurement of minor girl. The essential ingredient is inducement of a minor girl to go from any place or to do any act with intent that such girl may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another. The minor must be proved to have been induced to go or to do something. If the charge is under section 366A then "Kidnapping" is not the essential ingredient. While kidnapping, abduction is a part of the offence under section 366, its latter part, viz., "inducement" is the only common ingredient in [section 366](#) and [section 366A IPC, 1860](#).<sup>1142.</sup>

<sup>1132.</sup> Ins. by Act 20 of 1923, section 3.

<sup>1133.</sup> Where there was no threat or inducement or persuasion in taking away a minor girl, provisions of section 361 or 366A were not attracted. *State of Kerala v Rajayyan*, [1996 Cr LJ 145 \(Ker\)](#). *Sannaia Subba Rao v State of AP*, [\(2008\) 17 SCC 225 \[LNIND 2008 SC 1502\]](#), the evidence on record did not reveal the requisite intention. The accusation of forced came to be stated at the trial only for the purpose of attracting major punishment. There was no reliable evidence of

kidnapping. *Zakir v State of MP*, (2009) 6 SCC 646 [LNIND 2009 SC 2977] : AIR 2009 SC 2437 [LNIND 2009 SC 2977], the prosecutrix in her examine-in-chief could not recognise the accused as she had not seen him before. The trial court and High Court ignored this statement. The conviction was set aside.

1134. *Ganesh Mallik v State of Jharkhand*, 2011 Cr LJ 562 (Jha).

1135. *Sis Ram*, (1929) 51 All 1888 .

1136. *Ramesh*, (1962) 64 Bom LR 780 (SC). *Y Srinivasa Rao v State of AP*, (1995) 2 Cr LJ 1997 (AP), here the fact of age below 18 years was not made out and, therefore, no offence under the section. *Ganga Dayal Singh v State of Bihar*, AIR 1994 SC 859 : 1994 Cr LJ 951 , the accused, aged 55 years, abducted a minor girl and his guilt was conclusively proved. His only plea that in that old age he could not have developed fancy for a minor girl, not tenable. His conviction was not interfered with.

1137. *Gopichand Fattumal*, (1960) 63 Bom LR 408 ; *Ramesh*, (1962) 64 Bom LR 780 (SC). *Mojuddin v State of Rajasthan*, 2001 Cr LJ 2000 (Raj) girl above 18 years old, she had been going away and staying with the accused earlier also. Conviction set aside. *Rajan v State of Rajasthan*, 2002 Cr LJ 3152 (Raj), the prosecutrix, a minor girl, and the accused had love affair. She herself went with the accused to different places. Hence, no offence made out under section 366A. *Mahesh v State of Rajasthan*, 1999 Cr LJ 4625 (Raj), conviction for kidnapping a minor girl and subjecting her to rape and also forcing her to surrender before others. *Rakesh v State of Rajasthan*, 1998 Cr LJ 1434 (Raj), age of the prosecutrix could not be proved to be below 18 years. Offence under the section not made out. *Sushanta v State of Tripura*, 2002 Cr LJ 195 (Gau), fact of abduction established by unimpeachable testimony of prosecutrix, offence of abduction was made out. *Krishna Mohan Thakur v State of Bihar*, 2000 Cr LJ 1898 (Pat), kidnapping away a girl from a hotel room and subjecting her to rape, conviction under the section.

1138. *Ramesh v State of Maharashtra*, AIR 1962 SC 1908 [LNIND 1962 SC 239] : 1963 Cr LJ 16 .

1139. *Jinish Lal Sha v State of Bihar*, AIR 2002 SC 2081 , on appeal from 2002 Cr LJ 274 (Pat).

1140. *Ramji Prasad v State of Bihar*, 2013 Cr LJ 446 (Pat); *Ashok Mahto v State of Jharkhand*, 2011 Cr LJ 1601 (Jha); *State of Bihar v Rakesh Kumar*, 2013 Cr LJ 1990 (Pat) – Accused acquitted for non-existing of ingredients for constituting offences under section 366A of the IPC, 1860.

1141. *Suramani v State*, 2011 Cr LJ 2871 (Mad)

1142. *Kailash Laxman Khamkar v State of Maharashtra*, 2010 Cr LJ 3255 (Bom).



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

**1143.**[s 366B] Importation of girl from foreign country.

Whoever imports into **1144.**[India] from any country outside India **1145.**[or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person,

**1146.**[\*\*\*] shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.]

#### COMMENT.—

This section makes it an offence (1) to import into India from any country outside India a girl under the age of twenty-one years with the intent or knowledge specified in the section, or (2) to import into India from the State of Jammu and Kashmir a girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with any person. The Select Committee in their Report observed:

The case of girls imported from a foreign country we propose to deal with by the insertion of a new section 366B in the Code. We are unanimously of opinion that the requirements of the Convention will be substantially met by penalising the importation of girls from a foreign country. At the same time we have so worded the clause as to prevent its being made a dead letter by the adoption of the course of importing the girl first into an Indian State.<sup>1147.</sup>

After the coming into force of the [Constitution of India](#) this section was amended to bring it in accord with the changed circumstances.

**1143.** Ins. by Act 20 of 1923, section 3.

**1144.** The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951 sec. 3 and Sch. (w.e.f. 1-4-1951), to read as above.

**1145.** Ins. by Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1-4-1951).

**1146.** Certain words omitted by Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1-4-1951).

**1147.** *Gazette of India*, dated 10 February 1923, Part V, p 79.

## **THE INDIAN PENAL CODE**

### **CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE**

#### **Of Kidnapping, Abduction, Slavery and Forced Labour**

**[s 367] Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.**

**Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

**[s 368] Wrongfully concealing or keeping in confinement, kidnapped or abducted person.**

**Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.**

#### COMMENT.—

This section does not apply to the principal offender but to those persons who assist him in concealing a kidnapped or abducted person. It refers to some other party who assists in concealing any person who has been kidnapped. A kidnapper cannot be convicted under this section.<sup>1148</sup> The other party who wrongfully conceals or confines a kidnapped person knowing that he has been kidnapped suffers the same consequences at par with the person who had kidnapped or abducted the person with the same intention or knowledge or for the same purpose.<sup>1149</sup> This is one of those sections in which subsequent abetment is punished as a substantive offence.

#### [s 368.1] Ingredients.—

To constitute an offence under this section it is necessary to establish the following ingredients:—

- (1) The person in question has been kidnapped.
- (2) The accused knew that the said person had been kidnapped.
- (3) The accused having such knowledge wrongfully conceals or confines the person concerned.

Apart from direct evidence these ingredients can be proved by facts and circumstances of a particular case.<sup>1150</sup> Where the complicity of the accused in selling the wife of the co-accused was established and the buyer raped and killed her, a conviction under this section was upheld by the Supreme Court.<sup>1151</sup> Three accused persons were charged of the offence of kidnapping a child but the child was recovered from the custody of another person who was a relative of the three accused persons. They were acquitted. It was held that the other person could not be convicted under section 368 unless it was proved that the person from whose custody the child was recovered had knowledge of the fact that the child was a kidnapped child.<sup>1152</sup>

1148. *Bannu Mal*, (1926) 2 Luck 249 . *Fiyaz Ahmed v State of Bihar*, 1990 Cr LJ 2241 : AIR 1990 SC 2147 , a conviction for confinement of the abducted person.

1149. *Birbal Choudhary v State of Bihar*, AIR 2017 SC 4866 [LNIND 2017 SC 2898] .

1150. *Saroj Kumari*, 1973 Cr LJ 267 : AIR 1973 SC 201 [LNIND 1972 SC 554] .

1151. *Pyare Lal v State of UP*, AIR 1987 SC 852 [LNIND 1987 SC 99] : 1987 Cr LJ 769 : 1987 All CC 77 (2) : 1987 1 SCC 526 .

1152. *Tikam v State of UP*, 1992 Cr LJ 1381 (All). *Dharam Pal v State*, 2000 Cr LJ 5060 (Del), guilt under the section established. The accused had undergone some part of the sentence and had faced the trauma of prosecution for 25 years. The sentence was reduced to the period already undergone.

## **THE INDIAN PENAL CODE**

### **CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE**

#### **Of Kidnapping, Abduction, Slavery and Forced Labour**

**[s 369] Kidnapping or abducting child under ten years with intent to steal from its person.**

Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

##### 1153.[s 370] Trafficking of person

- (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

*First.*—using threats, or

*Secondly.*—using force, or any other form of coercion, or *Thirdly.*—by abduction, or

*Fourthly.*—by practising fraud, or deception, or

*Fifthly.*—by abuse of power, or

*Sixthly.*—by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

commits the offence of trafficking.

*Explanation 1.*—The expression "exploitation" shall include any act of physical exploitation or other form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

*Explanation 2.*—The consent of the victim is immaterial in determination of the offence of trafficking.

- (2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.
- (3) Where the offence involves the trafficking of more than one person, it shall be punishable with 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.
- (4) Where the offence involves the trafficking of a minor, it shall be punishable with 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.
- (5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

- (6) **If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.**
  
- (7) **When a public servant or a police officer is involved in the trafficking of any person, then such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.]**

## COMMENTS

**1. Amendment of 2013.**—*Vide* the [Criminal Law \(Amendment\) Act 2013](#) (Act 13 of 2013), the entire section has been changed so as to enlarge the scope of the offence and include within its purview not just the mischief of slavery, but trafficking in general—of minors and also adults, and also forced or bonded labour, prostitution, organ transplantation and to some extent child-marriages. <sup>1154.</sup>

For the purposes of this new offence, an offender has been classified into five categories, thus covering every aspect of the commission of such offences. A person can be held liable within the mischief of this offence if he either (i) recruits, or (ii) transports, (iii) harbours, (iv) transfers, or (v) receives, a person or persons.

## COMMENT.—

The sections of the Code relating to slavery were enacted for the suppression of slavery, not only in its strict and proper sense, namely, that condition whereby an absolute and unlimited power is given to the master over the life, fortune and liberty of another, but in any modified form where an absolute power is asserted over the liberty of another. <sup>1155.</sup>

## [s 370.1] Ingredients.—

This section makes penal—

- (1) the importation, exportation, removal, buying, selling of a person as a slave;
- (2) the disposal of a person as a slave; and
- (3) the acceptance, reception, or detention, of any person against his will as a slave.

<sup>1153.</sup> Sections 370 and 370A subs. for section 370 by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 8 (w.e.f. 3 February 2013). Prior to substitution by [section 8 of the Criminal Law \(Amendment\) Act, 2013](#) (w.e.f. 3 February 2013), section 370 stood as under:

[s 370] Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

1154. Chapter 6 of Justice JS Verma Committee's Report is on Trafficking of Woman and Children, wherein the entire issue of trafficking has been discussed at length.

1155. *Ram Kuar v State*, (1880) 2 All 723 , 731 (FB).



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

**1156.** [s 370-A] **Exploitation of a trafficked person.**

- (1) **Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.**
  
- (2) **Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.]**

**1156.** Sections 370 and 370A subs. for section 370 by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 8 (w.e.f. 3 February 2013).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

[s 371] Habitual dealing in slaves.

Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with <sup>1157.</sup>[imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

#### COMMENT.—

This section provides for the punishment of the slave-trader who is habitually engaged in the traffic of buying and selling human beings. The preceding section dealt with the casual offender.

<sup>1157.</sup> Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

##### [s 372] Selling minor for purposes of prostitution, etc.

Whoever sells, lets to hire, or otherwise disposes of<sup>1</sup> any <sup>1158.</sup>[person under the age of eighteen years<sup>2</sup> with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose,<sup>3</sup> or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

<sup>1159.</sup>[*Explanation I.*—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

*Explanation II.*—For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.]

#### COMMENT.—

This section requires:—

- (1) Selling, or letting to hire, or other disposal of a person.
- (2) Such person should be under the age of eighteen years.
- (3) The selling, letting to hire, or other disposal must be with intent or knowledge of likelihood that the person shall at any age be employed or used for
  - (i) prostitution, or
  - (ii) illicit intercourse with any person, or
  - (iii) any unlawful and immoral purpose.

#### [s 372.1] Scope.—

This section applies to males or females under the age of 18 years. <sup>1160.</sup> It applies to a married or an unmarried female even where such female, prior to sale or purchase, was leading an immoral life. <sup>1161.</sup> It also applies where the girl is a member of the dancing girl caste. <sup>1162.</sup>

This section deals with one who sells a person under 18 years; the next section punishes one who buys such person.

**1. 'Sells, lets to hire, or otherwise disposes of'.—**These words are the counterpart of the words "buys, hires or otherwise obtains possession", occurring in section 373. The performance of *gejee* (initiation ceremony) on a minor girl does not amount to her disposal.<sup>1163</sup> The ceremony of tying a *talimani* to a minor girl, worshipping a basin of water by her and distributing food is merely a preliminary step before the selling, letting out, or disposing of the girl for the purpose of prostitution, and is no offence under this section.<sup>1164</sup>

**2. 'Person under the age of eighteen years'.—**The section applies to all persons under 18 years, whether males or females.

**3. 'With intent that such persons shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose'.—**It is necessary to show that the accused intended that the person *shall* be employed for an immoral purpose. The introduction of the words 'at any age' takes away the defence that though a girl was made over to a prostitute it was not intended that she should actually be used for the purpose of prostitution until she had passed the age of eighteen years.<sup>1165</sup>

The word 'prostitution' is not confined to acts of natural sexual intercourse, but includes any act of lewdness. It means surrender of a girl's chastity for money.

The words 'illicit intercourse with any person' are explained in Explanation 2. The accused cannot now rely on the plea that the girl was not destined for a life of prostitution, but merely for a single act of sexual intercourse. Cases which laid down that no offence was committed if employment for prostitution was not habitual are no longer of any authority.

### **[s 372.2] Adoption of daughter by dancing girl.—**

Such adoption would be an offence if it was done with the intention or knowledge specified in the section. The burden of proof that the possession of the girl is not given to or obtained by a prostitute for leading an immoral life is on the person who gives the possession of such girl and the person who receives the girl under Explanation 1 to this section and section 373.

### **[s 372.3] Dev dasi.—**

The dedication of minors to the service of a temple as *dasis* (servants) amounts to a disposal of such minors, knowing it to be likely that they will be used for the purpose of prostitution within the meaning of this section.<sup>1166</sup>

1158. Subs. by Act 18 of 1924, sec. 2, for certain words.
1159. Ins. by Act 18 of 1924, sec. 3.
1160. *Kammu*, (1878) PR No. 12 of 1879.
1161. *Ismail Rustomkhan*, (1906) 8 Bom LR 236 [LNIND 1906 BOM 10] .
1162. *Ramanna v State*, (1889) 12 Mad 273.
1163. *Parmeshwari Subbi*, (1920) 22 Bom LR 894 [LNIND 1920 BOM 54] .
1164. *Sahebava Birappa*, (1925) 27 Bom LR 1022 .
1165. *Ramanna*, (1889) 12 Mad 273; and *Karuna Baistobi*, (1894) 22 Cal 164 , are therefore overruled.
1166. (1881) 1 Weir 359, FB; *Basava v State*, (1891) 15 Mad 75; *Jaili Bhavin*, (1869) 6 BHC (Cr C) 60; *Tippa*, (1892) 16 Bom 737.

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

##### [s 373] Buying minor for purposes of prostitution, etc.

Whoever buys, hires or otherwise obtains possession of any <sup>1167</sup>[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

<sup>1168</sup>[Explanation I.—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II.—"Illicit intercourse" has the same meaning as in section 372.

#### COMMENT.—

This section and section 372 conjointly punish both the giver as well as the receiver of a person under the age of eighteen years for an immoral purpose. Both the sections relate to the same subject-matter. The former contemplates an offence committed by the person who sells, or lets to hire, or otherwise disposes of any person under the age of eighteen years, with the requisite intent or knowledge. The latter relates to the case of the person who buys, hires, or otherwise obtains possession of any person under the age of eighteen. The first section strikes at any bargain of the nature contemplated by it, whoever may be the party who sells or lets the person, even though it should be the father or mother or lawful guardian. The second strikes at the bawds, keepers of brothels and all others who fatten on the profits arising from the general prostitution of girls.

#### [s 373.1] Ingredients.—

This section requires—

1. Buying, hiring or otherwise obtaining possession of a person.
2. The person should be under the age of eighteen years.
3. The buying, hiring, or otherwise obtaining possession must be with intent or knowledge of likelihood that the person shall at any age be employed or used for
  - (i) prostitution, or

- (ii) illicit intercourse, or
- (iii) any unlawful and immoral purpose.

**[s 373.2] Explanation I.—**

In order that the presumption under this Explanation should take effect, it is necessary that the accused should be a prostitute or should be keeping or managing a brothel at the time he or she obtains possession of a girl.<sup>1169.</sup>

**[s 373.3] 'Person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person, etc.'—**

The age-limit was raised to 18 years by Act V of 1924.

The introduction of the words 'at any age' indicates that the offence is committed even if the employment of the person for immoral purpose is to take place after the completion of eighteen years, that is, at any time.

The words 'illicit intercourse' are explained in Explanation 2 to section 372. See comment on section 372.

<sup>1167.</sup> Subs. by Act 18 of 1924, sec. 2, for certain words.

<sup>1168.</sup> Ins. by Act 18 of 1924, sec. 4.

<sup>1169.</sup> *Banubai Irani*, (1942) 45 Bom LR 281 (FB).

## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Kidnapping, Abduction, Slavery and Forced Labour

##### [s 374] Unlawful compulsory labour.

**Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.**

#### COMMENT.—

This section is intended to put a stop to the practice of forced labour. It requires—

- (1) Unlawful compulsion of any person.
- (2) The unlawful compulsion must be to labour against the will of that person.

This section is aimed at the abuses arising from forced labour which *ryots* were in former times compelled to render to great landholders.

Where the accused induced the complainants who, he alleged, were indebted to him in various sums of money, to consent to live on his premises and to work off their debts and the complainants were to, and did in fact, receive no pay, but were fed by the accused as his servants, and he insisted on their working for him, and punished them by beating them if they did not do so, it was held that he was not guilty under this section though his act came within section 352. <sup>1170.</sup>

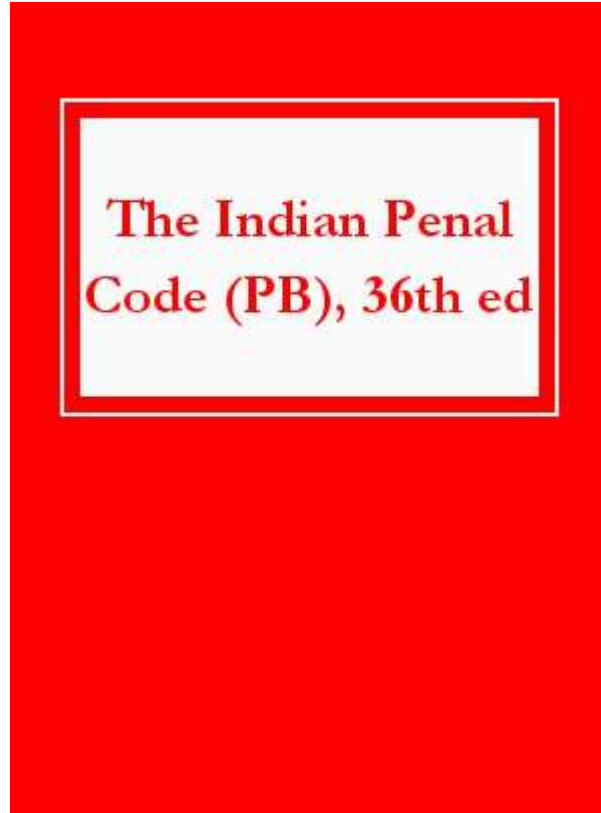
Imposition of hard labour on persons undergoing imprisonment is legal. They can be compelled to do hard labour. <sup>1171.</sup>

<sup>1170.</sup> *Madan Mohan Biswas*, (1892) 19 Cal 572 .

<sup>1171.</sup> *State of Gujarat v Hon'ble High Court of Gujarat*, 1998 Cr LJ 4561 : AIR 1998 SC 3164 [LNIND 1998 SC 920] .



## The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1173. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 9 (w.e.f. 3 February 2013). Prior to substitution by section 9 of the Criminal Law (Amendment) Act, 2013 (w.e.f. 3 February 2013), section 375 stood as: [s 375] Rape.—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:— First.—Against her will. Secondly.— Without her consent. Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt. Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly.—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. Sixthly.—With or without her consent, when she is under sixteen years of age. Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. State Amendments Manipur.—The following amendments were made by Act 30 of 1950 (prior to Act 43 of 1983). (a) in clause fifthly for the word

“sixteen” substitute the word “fourteen” and (b) in the Exception, for the word “fifteen” substitute the word “thirteen”. [s 375] Rape.

Currency Date: 28 April 2020

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## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### 1172. [Sexual Offences]

#### 1173. [s 375] Rape.

A man is said to commit "rape" if he —

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person;

under the circumstances falling under any of the following seven descriptions:  
—

*First.*—Against her will.

*Secondly.*—Without her consent.

*Thirdly.*—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

*Fourthly.*—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

*Fifthly.*—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

*Sixthly.*—With or without her consent, when she is under eighteen years of age.

*Seventhly.*—When she is unable to communicate consent.

*Explanation 1.*—For the purposes of this section, "vagina" shall also include *labia majora*.

**Explanation 2.**—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

**Provided** that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

**Exception 1.**—A medical procedure or intervention shall not constitute rape.

**Exception 2.**—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.]

## COMMENTS.—

The chapter sub-heading itself was changed from 'Of rape' to 'Sexual Offences' by Act 43 of 1983. The definition of rape has undergone a major change in admitting non-penile penetration also but it continues to be gender-specific as committed against a female. Earlier, a public interest litigation in *Sakshi v UOI*,<sup>1174</sup> seeking for a declaration to treat non-penile penetration also to be treated as rape failed when the Supreme Court declined the relief but the Court's exhortation to alter the definition paved way for the change of law.

[s 375.1] **The Criminal Law (Amendment) Act, 2013**

Based on the recommendations made by the Justice Verma Committee, the [Criminal Law \(Amendment\) Act, 2013](#), came into force with effect from 3 February 2013. The [Criminal Law \(Amendment\) Act, 2013](#) made amendments to the [Cr PC, 1973](#), [Indian Evidence Act, 1872](#) and the [IPC, 1860](#). The [Criminal Law \(Amendment\) Act, 2013](#) expanded the definition of rape and substituted new sections for old sections such as sections 370, 375, 376, 376A, 376B, 376C and 376D. The [Criminal Law \(Amendment\) Act, 2013](#) also amended existing sections as well as created new offences in the [IPC, 1860](#), such as:

- Public servant disobeying direction under law (section 166A)
- Punishment for non-treatment of victim (section 166B)
- Voluntarily causing grievous hurt by use of acid, etc. (section 326A)
- Voluntarily throwing or attempting to throw acid (section 326B)
- Sexual harassment and punishment for sexual harassment (section 354A)
- Assault or use of criminal force to woman with intent to disrobe (section 354B)
- Voyeurism (section 354C)
- Stalking (section 354D)
- Punishment for repeat offenders (section 376E)

The altered definition increasing the age of consent to 18 is also significant for it makes any form of penetration as set out under the section with any girl less than 18 years of age to constitute rape. In a matrimonial setting, it would not have resulted in rape if the woman was still less than 18 and above 15 so long as there was consent by virtue of Exception 2 contained in the section. But the decision of the Supreme Court in

*Independent Thought v UOI*,<sup>1175</sup> has held the provision to be unconstitutional in so far it relates to girl between ages 15 to 18. Now the Exception 2 has to be read as 'Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age is not rape'.

Rape is violative of victim's fundamental right under [Article 21 of the Constitution](#). It is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore a rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks.<sup>1176</sup>

[s 375.2] **First clause—Against her will.—In a case decided prior to the enactment of the Criminal Law (Amendment) Act, 2013,**

the prosecutrix stated that first offending act was done despite her resistance but subsequently she became a consenting party because of repeated promises of marriage. In the FIR she stated that she surrendered before him even at the time of the first act because of the promises of marriage. The Court held that her version was not reliable and found that the charge against the accused did not stand established.<sup>1177</sup>

[s 375.3] **Second clause—Without consent.—**

It must be said that now in a custodial rape if the girl says that she did not give consent, the Court shall presume that she did not consent<sup>1178</sup>. (*vide section 114A Indian Evidence Act, 1872*).

[s 375.4] **Consent on promise of marriage.—**

Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and the Court must very carefully examine whether the accused had actually wanted to marry the victim, or had *mala fide* motive, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the Court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the Court reaches a conclusion that the intention of the accused was *mala fide*, and that he had clandestine motives.<sup>1179</sup> Where a man and woman were living together, sometimes at her house and sometimes at the residence of the man and when the evidence suggested that it was not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent not borne out of any misconception created in her mind, complaint under this section will be untenable.<sup>1180</sup> In the event that the accused's promise is not false and has not been made with the

sole intention to seduce the prosecutrix to indulge in sexual acts, such an act(s) would not amount to rape. Thus, the same would only hold that the prosecutrix, under a misconception of fact to the extent that the accused is likely to marry her, submits to the lust of the accused, such a fraudulent act cannot be said to be consensual, so far as the offence of the accused is concerned.<sup>1181.</sup>

[s 375.5] **Consent.—Meaning.—**

[IPC, 1860](#) does not define consent in positive terms. But what cannot be regarded as consent is explained by section 90 which reads as 'consent given first under fear of injury and second under a misconception of fact is not consent at all'. There are two grounds specified in section 90 which are analogous to coercion and mistake of fact. The factors set out in first part of section 90 are from the point of view of the victim and second part of section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the Court has to see whether the person giving the consent has given it under fear or misconception of fact and the Court should also be satisfied that the person doing the act, i.e., the alleged offender is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of section 90 which is couched in negative terminology. As observed in *Deelip Singh @ Dilip Kumar v State of Bihar*,<sup>1182.</sup> section 90 cannot be considered as an exhaustive definition of consent for the purposes of [IPC, 1860](#). The normal connotation and concept of consent is not intended to be excluded.<sup>1183.</sup> Submission of the body under the fear or terror cannot be construed as a consented sexual act. Consent for the purpose of section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.<sup>1184.</sup> The consent does not merely mean hesitation or reluctance or a 'No' to any sexual advances but has to be an affirmative one in clear terms. Consent has to be categorical, unequivocal, voluntary and could be given by words, gestures or any form of verbal or non-verbal communication signifying willingness to participate in specific sexual act. Woman who does not physically resist act of rape shall not by that reason only be regarded as having consented to such sexual activity. In normal parlance, consent would mean voluntary agreement of complainant to engage in sexual activity without being abused or exploited by coercion or threats. Normal rule is that consent has to be given and it cannot be assumed.<sup>1185.</sup>

[s 375.6] **Section 114A of Indian Evidence Act, 1872.—**

India [Evidence Act, 1872](#) was amended by the [Criminal Law Amendment Act, 1983](#) and section 114A was incorporated which imposed the burden of proving "consent" upon the accused in the cases of aggravated rape. This was an exception of the general rule of presumption of innocence of the accused. By the [Criminal Law Amendment Act, 2013](#) the old section was substituted on the recommendation of Justice Verma Commission which reads as a follows;—

*[114A] Presumption as to absence of consent in certain prosecution for rape*

*In a prosecution for rape under clause(a), clause(b), clause(c), clause(d), clause(e), clause(f), clause(g), clause(g), clause(h), clause(i), clause(j), clause(k), clause(l), clause(m), clause(n), of sub-section (2) of section 376, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she or he did not consent.*

*Explanation.—In this section "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (c) of [section 375 of the Indian Penal Code](#)*

### [s 375.7] Will and Consent.—

In *Dileep Singh v State of Bihar*,<sup>1186</sup> the Supreme Court observed that:

though will and consent often interlace and an act done against the will of the person can be said to be an act done without consent, the [Indian Penal Code](#) categorizes these two expressions under separate heads in order to be as comprehensive as possible.

In the facts of the case what is crucial to be considered is whether first clause or second clause of [section 375 IPC, 1860](#) is attracted. The expressions 'against her will' and 'without her consent' may overlap sometimes but surely the two expressions in first and second clause have different connotation and dimension. The expression 'against her will' would ordinarily mean that the intercourse was done by a man with a woman despite her resistance and opposition. On the other hand, the expression 'without her consent' would comprehend an act of reason accompanied by deliberation.<sup>1187</sup>

### Supreme Court Guidelines to Prevent Child Sexual Abuse

(1) The persons in charge of the schools/educational institutions, special homes, children homes, shelter homes, hostels, remand homes, jails, etc., or wherever children are housed, if they come across instances of sexual abuse or assault on a minor child which they believe to have committed or come to know that they are being sexually molested or assaulted are directed to report those facts keeping utmost secrecy to the nearest SJPU or local police, and they, depending upon the gravity of the complaint and its genuineness, take appropriate follow up action casting no stigma to the child or to the family members.

(2) Media personals, persons in charge of Hotel, lodge, hospital, clubs, studios, photograph facilities have to duly comply with the provision of section 20 of the Act 32 of 2012 and provide information to the SJPU, or local police. Media has to strictly comply with section 23 of the Act as well.

(3) Children with intellectual disability are more vulnerable to physical, sexual and emotional abuse. Institutions which house them or persons in care and protection, come across any act of sexual abuse, have a duty to bring to the notice of the Juvenile Justice Board/SJPU or local police and they in turn be in touch with the competent authority and take appropriate action.

(4) Further, it is made clear that if the perpetrator of the crime is a family member himself, then utmost care be taken and further action be taken in consultation with the mother or other female members of the family of the child, bearing in mind the fact that best interest of the child is of paramount consideration.

(5) Hospitals, whether Government or privately-owned or medical institutions where children are being treated come to know that children admitted are subjected to sexual abuse, the same will immediately be reported to the nearest JJ Board/SJPU and the JJ Board, in consultation with SJPU, should take appropriate steps in accordance with the law safeguarding the interest of child.

(6) The non-reporting of the crime by anybody, after having come to know that a minor child below the age of 18 years was subjected to any sexual assault, is a serious crime and by not reporting they are screening offenders from legal punishment and hence be held liable under the ordinary criminal law and prompt action be taken against them, in accordance with law.

(7) Complaints, if any, received by NCPCR, SCPCR, Child Welfare Committee (CWC) and Child Helpline, NGO's or Women's Organizations, etc., they may take further follow up action in consultation with the nearest JJ Board, SJPU or local police in accordance with law.

(8) The Central Government and the State Governments are directed to constitute SJPU's in all the Districts, if not already constituted and they have to take prompt and effective action in consultation with JJ Board to take care of child and protect the child and also take appropriate steps against the perpetrator of the crime.

(9) The Central Government and every State Government should take all measures as provided under section 43 of the [The Protection of Children from Sexual Offences Act, 2012](#) (Act 32/2012) to give wide publicity of the provisions of the Act through media including television, radio and print media, at regular intervals, to make the general public, children as well as their parents and guardians, aware of the provisions of the Act.

[*Shankar Kisanrao Khade v State of Maharashtra*.<sup>1188.</sup>]

#### [s 375.8] **Consent of woman of Scheduled Caste or Tribe.—**

In *Re Director General of Prosecution*,<sup>1189.</sup> it was held that the consent given by a woman of Scheduled Castes or Scheduled Tribe community for sexual intercourse to one who was in a position to dominate her was no defence to a charge under section 375.

The [Scheduled Castes and Scheduled Tribes \(Prevention of Atrocities\) Act, 1989](#) specified the sessions Court as a special Court under the Act. It was held that the trial of the offence of rape by such a Court was not without jurisdiction. The sessions Court remained the same Court even after its specification as a special Court. Setting aside of conviction on the technical ground of want of jurisdiction which was raised after the trial was over was not proper.<sup>1190.</sup>

#### [s 375.9] **No consent.—**

Where physical contact with the accused in the nature of a kiss or a hug was being accepted by the prosecutrix without any protest, such past conduct will definitely not amount to consent as for every sexual act, every time, consent is a must.<sup>1191.</sup> Where the accused took away the prosecutrix to offer prayers to a deity, stayed in a 'dharamshala' for the night and had sex with her threatening her that the police were nearby, it was held that the prosecutrix could not be described as an accomplice merely because she did not raise alarm and the accused was liable to be convicted under section 376.<sup>1192.</sup>

Where a blind helpless young girl was raped by the accused, it was held that expression "consent" cannot be equated to inability to resist out of helplessness and absence of injuries on the victim also does not by itself amount to consent by her.<sup>1193.</sup> Section 375, as amended by the [Criminal Law \(Amendment\) Act, 2013](#), lays down a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

#### [s 375.10] **Third and Fourth clauses—Passive non-resistance or consent obtained by fraud.—**

If a girl does not resist intercourse in consequence of misapprehension this does not amount to a consent on her part. Where a medical man, to whom a girl of fourteen years of age was sent for professional advice, had criminal connection with her, she making no resistance from a *bona fide* belief that he was treating her medically, it was



held that he was guilty of rape.<sup>1194</sup> The submission of her body by the prosecutrix under fear or terror, cannot be construed as a consented sexual act. The Supreme Court said in this case that the fact of consent is to be ascertained only on careful study of all the relevant circumstances.<sup>1195</sup>

[s 375.11] **Husband and wife.—**

Clause 4 deals with a rapist who knows that he is not his victim's husband and also knows that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. In a case because of matrimonial difficulties the wife left the matrimonial home and returned to live with her parents informing the husband of her intention to petition for divorce. While the wife was so staying at her parents' house, the husband forced his way in and attempted to have sexual intercourse with her in the course of which he assaulted her. His conviction for attempted rape and assault occasioning actual bodily harm was upheld.<sup>1196</sup>

[s 375.12] **Void marriage.—**

Where the marriage with the complainant was void because the accused was already married and had a living spouse, of which fact was known to the complainant, he was held to be guilty of rape.<sup>1197</sup>

[s 375.13] **Pregnant woman.—**

Stringent punishment has been provided for commission of rape on a woman known to the culprit to be pregnant. It is, therefore, necessary knowledge of the accused should be established by evidence.<sup>1198</sup>

[s 375.14] **Fifth clause—Sexual intercourse with idiot or drunken person.—**

Where a man had carnal knowledge of a girl of imbecile mind, and the jury found that it was without her consent, she being incapable of giving consent from defect of understanding, it was held that this amounted to rape. Where the accused made a woman quite drunk, and whilst she was insensible violated her person, it was held that this offence was committed.<sup>1199</sup> These cases will now fall within the mischief of the fifth clause to [section 375, IPC, 1860](#).

[s 375.15] **Exception 2.—**

The age limit was raised to 15 years by an amendment of the Act in 1949.

There may be cases in which the check of the law may be necessary to restrain men from taking advantage of their marital rights prematurely. Instances of abuse by the husband in such cases will fall under this clause.

[s 375.16] **Section 375, Exception 2—Constitutional validity**

In *Independent Thought v UOI*,<sup>1200</sup> the Supreme Court held that sexual intercourse with girl below 18 years of age is rape regardless of whether she is married or not. The Court held that Exception 2 creates unnecessary and artificial distinction between married girl child and unmarried girl child and has no rational nexus with any unclear objective sought to be achieved. This artificial distinction is contrary to philosophy and ethos of [Article 15\(3\) of Constitution](#) as well as contrary to [Article 21 of Constitution](#). It is also contrary to philosophy behind some statutes, bodily integrity of girl child and her reproductive choice. It is inconsistent with provisions of POCSO, which must prevail. The Supreme Court held that Exception 2 to [section 375, IPC, 1860](#) insofar as it relates to girl child below 18 years is liable to be struck down and is to read down as, "Sexual

intercourse or sexual acts by man with his own wife, wife not being 18 years, is not rape".

[s 375.17] **Attempt.—**

Where the accused dragged the prosecutrix from a canal to the thrashing ground, disrobed her and made her to lie down and attempted to rape her, it was held that it was not a mere preparation but an attempt to commit rape.<sup>1201</sup> It has been held that intention or expression or even an indecent assault upon a woman does not amount to attempt to rape unless the determination of the accused to gratify his passion at all events and in spite of resistance is established.<sup>1202</sup>

[s 375.18] **Indecent assault is not attempt to commit rape.—**

Indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passion at all events, and in spite of all resistance.<sup>1203</sup>

<sup>1172</sup>. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

<sup>1173</sup>. Subs. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 9 (w.e.f. 3 February 2013). Prior to substitution by [section 9 of the Criminal Law \(Amendment\) Act, 2013](#) (w.e.f. 3 February 2013), section 375 stood as:

[s 375] *Rape*.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

#### State Amendments

Manipur.—The following amendments were made by Act 30 of 1950 (prior to Act 43 of 1983).

(a) in clause fifthly for the word "sixteen" substitute the word "fourteen" and

(b) in the Exception, for the word "fifteen" substitute the word "thirteen".

1174. *Sakshi v UOI*, AIR 2004 SC 3566 [LNIND 2004 SC 657] .

1175. *Independent Thought v UOI*, AIR 2017 SC 4904 .

1176. *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : (2013) 7 SCC 675 [LNIND 2013 SC 533] .

1177. *Deelip Singh v State of Bihar*, (2005) 1 SCC 88 [LNIND 2004 SC 1123] : AIR 2005 SC 203 [LNIND 2004 SC 1123] .

1178. *Fletcher*, (1859) 8 Cox 131. *Sohan Singh v State of Rajasthan*, 1998 Cr LJ 2618 (Raj), the prosecutrix fell prey to persons dealing in flesh trade. Passing through several hands she was ultimately purchased by the accused. The fact that she had given consent at the starting point of the chain did not ensure for the benefit of the accused. She ran away from the hands of the accused. Her testimony was considered to be fully reliable for the purpose of convicting the accused. *Shiv Nath v State of MP*, 1998 Cr LJ 2691 (MP), statements and letters to the accused of the prosecutrix showed her consent. No conviction.

1179. *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : (2013) 7 SCC 675 [LNIND 2013 SC 533] .

1180. *Dhruvaram Murlidhar Sonar v State of Maharashtra*, 2019 (1) Scale 64 .

1181. *Uday v State of Karnataka*, AIR 2003 SC 1639 [LNIND 2003 SC 228] ; *Yedla Srinivasa Rao v State of AP*, 2006 (11) SCC 615 [LNIND 2006 SC 785] ; *Pradeep Kumar Verma v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] .

1182. *Deelip Singh @ Dilip Kumar v State of Bihar*, 2005 (1) SCC 88 [LNIND 2004 SC 1123] .

1183. *Pradeep Kumar Verma v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] .

1184. *State of HP v Mange Ram*, AIR 2000 SC 2798 [LNIND 2000 SC 1144] ; *Uday v State of Karnataka*, AIR 2003 SC 1639 [LNIND 2003 SC 228] .

1185. *Mahmood Farooqui v State*, 2018 Cr LJ 3457 (Del).

1186. *Dileep Singh v State of Bihar*, (2005) 1 SCC 88 [LNIND 2004 SC 1123] .

1187. *State of UP v Chhteyal*, AIR 2011 SC 697 [LNIND 2011 SC 73] : (2011) 2 SCC 550 [LNIND 2011 SC 73] .

1188. *Shankar Kisanrao Khade v State of Maharashtra*, (2013)5 SCC 546 [LNIND 2013 SC 429] : 2013 (6) Scale 277 [LNIND 2013 SC 429] : 2013 Cr LJ 2595 .

1189. *Re Director General of Prosecution*, 1993 Cr LJ 760 (Ker).

1190. *State of HP v Gita Ram*, AIR 2000 SC 2940 [LNIND 2000 SC 1209] : 2000 Cr LJ 4039 .

1191. *Mahmood Farooqui v State*, 2018 Cr LJ 3457 (Del).

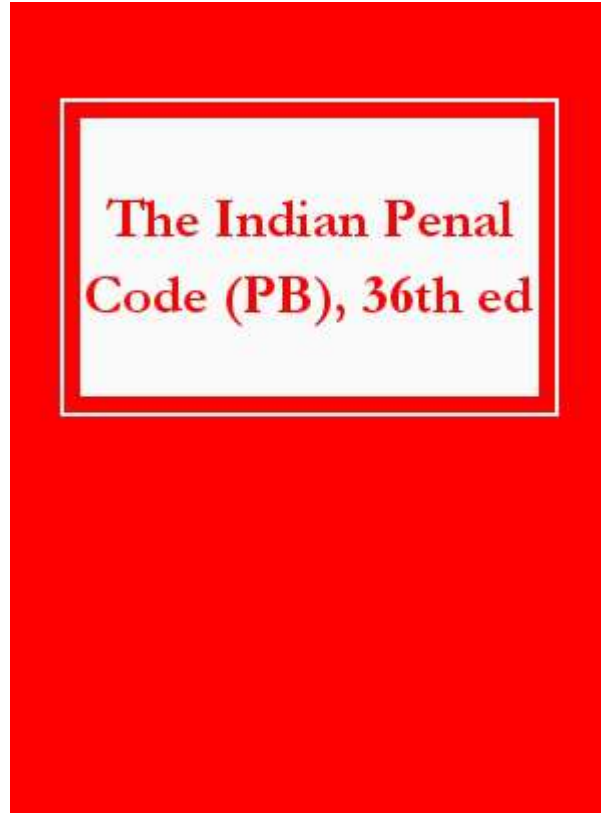
1192. *State of Orissa v Gangadhar Behuria*, 1992 Cr LJ 3814 (Ori). *Dayaram v State of MP*, 1992 Cr LJ 3154 (MP), the accused took away a minor girl pretending that he would marry her and instead subjected her to sex without consent, conviction under section 376 (1) and not under section 376 as such.

1193. *Rabinarayan Das v State of Orissa*, 1992 Cr LJ 269 (Ori).

1194. *William's Case*, (1850) 4 Cox 220.

1195. *State of HP v Mange Ram*, AIR 2000 SC 2798 [LNIND 2000 SC 1144] : 2000 Cr LJ 4027 .
1196. *Reg v R*, 3 WLR 767 (HL).
1197. *Bhupinder Singh v UT of Chandigarh*, (2008) 8 SCC 531 [LNIND 2008 SC 1375] : 2008 Cr LJ 3546 , the Supreme Court refused to interfere.
1198. *Om Prakash v State of UP*, 2006 Cr LJ 2913 : AIR 2006 SC 2214 [LNIND 2006 SC 382] : (2006) 9 SCC 787 [LNIND 2006 SC 382] , the suggestion of false accusation was not accepted because there was no apparent for the married woman to do so. The sentence was reduced from 10 to seven years.
1199. *Camplin*, (1845) 1 Cox 220.
1200. Writ Petition (Civil) No. 382 of 2013 decided by Supreme Court on 11 October 2017.
1201. *Fagnu Bhoi v State of Orissa*, 1992 Cr LJ 1808 (Ori).
1202. *Kandarpa Thakuria v State of Assam*, 1992 Cr LJ 3084 (Gau).
1203. *Shankar*, (1881) 5 Bom 403; *Rameswar*, 1984 Cr LJ 786 (Raj). *State of MP v Udhe Lal*, 1996 Cr LJ 3202 (MP), attempt proved by the statements of the prosecutrix and corroboration, acquittal only on the ground that there were minor variations in her statements was held to be not proper, sixteen years had passed, sentence of two years RI and fine of Rs. 5000 was held to be sufficient. *R v C*, 1992 Cr LR 642 (CA), self-induced intoxication was held to be no defence to the charge of indecent assault on a child by inserting his fingers into her vagina.

## The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1204. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376 was substituted by Act 43 of 1983, section 3 (w.e.f. 25 December 1983). Section 376, before substitution by Act 13 of 2013, stood as under: [s 376] Punishment for rape.—(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. (2) Whoever,— (a) being a police officer commits rape— (i) within the limits of the police station to which he is appointed; or (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or (iii) on a woman in his custody or in the custody of a police officer subordinate to him; or (b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or (c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate

of such jail, remand home, place or institution; or (d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or (e) commits rape on a woman knowing her to be pregnant; or (f) commits rape on a woman when she is under twelve years of age; or (g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. Explanation 2.—“Women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected women or children or a widows’ home or by any other name, which is established and maintained for the reception and care of woman or children. Explanation 3.—“Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation. [s 376] Punishment for rape.—

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## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### 1172. [Sexual Offences]

#### 1204. [s 376] Punishment for rape.—

- (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which 1205. [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].
- (2) Whoever,—
  - (a) being a police officer, commits rape—
    - (i) within the limits of the police station to which such police officer is appointed; or
    - (ii) in the premises of any station house; or
    - (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or
  - (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
  - (c) being a member of the armed forces deployed in area by the Central or a State Government commits rape in such area; or
  - (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
  - (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
  - (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
  - (g) commits rape during communal or sectarian violence; or
  - (h) commits rape on a woman knowing her to be pregnant; or 1206. [\* \* \*]
  - (j) commits rape, on a woman incapable of giving consent; or
  - (k) being in a position of control or dominance over a woman, commits rape on such woman; or
  - (l) commits rape on a woman suffering from mental or physical disability; or

- (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- (n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

*Explanation.*—For the purposes of this sub-section,—

- (a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;
- (b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
- (c) "police officer" shall have the same meaning as assigned to the expression "police" under the [Police Act, 1861](#) (5 of 1861);
- (d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.]

<sup>1207</sup>[(3) Whoever, commits rape on a woman under sixteen years of age 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 imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

## COMMENT.—

**Criminal Law (Amendment) Act, 1983 (Mathura Act).**—Acquittal of policemen in the infamous Mathura Rape Case <sup>1208</sup> and the nationwide protest against the verdict led to the 1983 Amendments to the Rape Laws in India. [Sections 375 and 376, IPC, 1860](#) had been substantially changed by the [Criminal Law \(Amendment\) Act, 1983](#) (Act 43 of 1983). The same Act also introduced several new sections, viz., [sections 376A, 376B, 376C and 376D, IPC, 1860](#). Of these, section 376A punished sexual intercourse with wife without her consent by a judicially separated husband, section 376B punished sexual intercourse by a public servant with woman in his custody, section 376C punished sexual intercourse by Superintendent of Jail, Remand Home, etc., with inmates in such institutions and section 376D punished sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital. These new sections were introduced with a view to stop sexual abuses of women in



custody, care and control by various categories of persons which though not amounting to rape were nevertheless considered highly reprehensible. The amended [section 376 IPC, 1860](#) prescribed a minimum punishment of seven years' imprisonment for the offence of rape. For combating the vice of custodial rape, rape on pregnant woman, rape on girls under 12 years of age and gang rape a minimum punishment of 10 years' imprisonment had been made obligatory. However, for special reasons to be recorded in the judgment the Court in either case could impose a sentence lesser than seven or 10 years, as the case may be.

A further improvement in the law relating to sexual offences could be found in the provisions of [section 228A IPC, 1860](#), [section 327\(2\) Cr PC, 1973](#) and [section 114A Indian Evidence Act, 1872](#) which were introduced by the [Criminal Law \(Amendment\) Act, 1983](#). New provisions for trial in camera ([section 327\(2\) Cr PC, 1973](#)) and against disclosure as to identity of the victims of sexual offences as in [sections 376, 376A, 376B, 376C and 376D, IPC, 1860](#) ([section 228, IPC, 1860](#)) were not only to protect the honour of sexually-victimised women but also made it possible for them to depose in Court without any fear of social ostracism. And [section 114A Indian Evidence Act, 1872](#) by raising a presumption as to absence of consent in cases of custodial rape, rape on pregnant women and gang rape as in clauses (a), (b), (c), (d), (e) and (g) of sub-section (2) of [section 376, IPC, 1860](#) merely on the evidence of the ravished women had, at least partially, removed the infirmity from the evidence of a victim of rape that was hitherto unjustly attached to her testimony without taking note of the fact that in India, a disclosure of this nature was likely to ruin the prospect of the girl's rehabilitation in society for all times to come and unless her story was painfully true she would not have taken such a grave risk merely to malign the accused.<sup>1209</sup> Moreover, in cases of rape, particularly custodial rape it was almost impossible to get any other independent evidence to corroborate the testimony of the prosecutrix.

It has been held that the result of the Amendment of 1983 is that the offences listed in section 376(2) are graver in nature and therefore, it is necessary that the charge under the sub-section should be distinctly recorded and also reasons for conviction should be recorded.<sup>1210</sup>

[s 376.1]Criminal Law (Amendment) Act, 13 of 2013 (w.e.f. 2 March 2013) (post *Nirbhaya*):

After a violent incident of a gang rape of a woman in the capital city of Delhi in 2012, bowing to public outrage, Verma Committee had been set up whose recommendations gave place to important changes in law relating to rape. Some recommendations, viz., not to increase the age of consent to 18 from 16, as it stood before; introduction of matrimonial rape; non-requirement of sanction for prosecution of armed personnel were not accepted but the law changed as regards against consent by introducing [section 114A of the Indian Evidence Act, 1872](#) barring questions in cross-examination of the victim about the previous sexual experience or immoral character and also making the issue of previous sexual experience as irrelevant, and certain other procedural aspects in [Cr PC, 1973](#) *inter alia*, relating to investigation by woman police officers, video recording of statements before magistrates, time limit for completing of enquiry, requirement of trial proceedings *in camera*, etc.

[s 376.1.1] **No death for rape.**—

Respecting the demand from many quarters, the Verma committee reacted as:

In our considered view, taking into account the views expressed on the subject by an overwhelming majority of scholars, leaders of women's organisations, and other stakeholders, there is a strong submission that the seeking of death penalty would be a regressive step in the field of sentencing and reformation. We, having bestowed considerable thought on the subject, and having provided for enhanced sentences (short of death) in respect of the above-noted aggravated forms of sexual assault, in the larger

interests of society, and having regard to the current thinking in favour of abolition of the death penalty, and also to avoid the argument of any sentencing arbitrariness, we are not inclined to recommend the death penalty.

[s 376.1.2] **Chemical Castration.**—

Rejecting the proposal of Chemical Castration as a punishment for rape Committee observed:

We note that it would be unconstitutional and inconsistent with basic human rights treaties for the state to expose any citizen without their consent to potentially dangerous medical side-effects. For this reason, we do not recommend mandatory chemical castration of any type as a punishment for sex offenders.

[s 376.2] **Criminal Law (Amendment) Act, 2018 (w.e.f. 21 April 2018).**

After public outrage against a suspected gang rape and murder of a girl aged eight in Rasana village near Kathua in the State of Jammu and Kashmir, the Criminal Law (Amendment) Act, 2018 amended Chapter XVI of the [IPC, 1860](#) to provide for stringent punishment for perpetrators of rape particularly of girls below 12 and 16 years. Rape on a woman under 12 years of age is now made punishable with rigorous imprisonment for a term which shall not be less than 20 years, but which may extend to imprisonment for life, and with fine or with death. Gang rape on a woman under 12 years of age is now made punishable with imprisonment for life, and with fine, or with death. Rape of girls below the age of 16 years is punishable with imprisonment of 20 years or life imprisonment. The imprisonment for life shall mean imprisonment for the remainder of that person's natural life. The minimum punishment for rape of girl above the age of 16 is 10 years.

Section 376 is not gender neutral and sexual abuse of minor boys does not come within its purview. The punishment under Protection of Children from Sexual Offences (POCSO) Act, 2012 continues to be 10 years to life imprisonment for offences against boys below 12 and seven years to life imprisonment for offences against boys above 12 to 18.

The law amends the [Cr PC, 1973](#) mandating the completing of investigation from the existing provision of three months to two months. The Act also bars anticipatory bail in cases of rape of minor girls below 16 years of age. Any appeal against sentence of rape shall be disposed of within six months.

[s 376.3] **Medical Examination of accused and victim.**—

In cases of rape or attempted rape medical examination of the victim and the accused soon after the incident often yields a wealth of corroborative evidence. Such an opportunity should not, therefore, be lost on any account. Though the prosecutrix can be examined only with her consent, the accused can be subjected to such an examination by virtue of [section 53 of the Cr PC, 1973](#). It has also to be remembered that the accused too can demand such an examination under [section 54 Cr PC, 1860](#) especially when he feels that such an examination will disprove the charge brought against him. Thus, presence of smegma on corona glandis (*glans penis*) of the accused soon after the incident is proof against complete penetration since it is rubbed off during intercourse.<sup>1211</sup> But to be of any value examination of smegma must be done within 24 hours.<sup>1212</sup>

Where proof of sexual intercourse with the woman is itself not an issue, such as when it is an admitted fact and the case rests upon issues of consent and where medical examination revealed semen stains on the vaginal swabs and salwar of the victim, the Court said that at best it is an evidence of commission of sexual intercourse but not necessarily of rape.<sup>1213</sup>

[s 376.4] **Two finger Test.—**

The two finger test and its interpretation violate the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot *ipso facto*, be given rise to presumption of consent. In view of International Covenant on Economic, Social, and Cultural Rights, 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, rape survivors are entitled to legal recourse that does not re-traumatise them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with his privacy.<sup>1214.</sup>

[s 376.5] **Prosecutrix not an accomplice.—**

A prosecutrix complaining of having been a victim of an offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars, for the reason, that she stands on a much higher pedestal than an injured witness.<sup>1215.</sup> A woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The [Indian Evidence Act, 1872](#) nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence.<sup>1216.</sup>

[s 376.6] **Defence that the girl was of easy virtue.—**

Whether the victim of rape was previously accustomed to sexual intercourse or not, cannot be the determinative question. On the contrary, the question still remains as to whether the accused committed rape on the victim on the occasion complained of. Even if the victim had lost her virginity earlier, it can certainly not give a licence to any person to rape her. It is the accused who was on trial and not the victim. So as to whether the victim is of a promiscuous character is totally irrelevant in a case of rape. Even a woman of easy virtue has a right to refuse to submit herself to sexual intercourse to anyone and everyone, because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. A prosecutrix stands on a higher pedestal than an injured witness for the reason that an injured witness gets the injury on the physical form, while the prosecutrix suffers psychologically and emotionally.<sup>1217.</sup> In *Narender Kumar v State (NCT of Delhi)*,<sup>1218.</sup> the Supreme Court dealt with a case where the allegation was that the victim of rape herself was an unchaste woman, and a woman of easy virtue. The Court discussed *Rajoo v State of MP*,<sup>1219.</sup> and held that so far as the prosecutrix is concerned, mere statement of prosecutrix herself is enough to record a conviction, when her evidence is read in its totality and found to be worthy of reliance. The incident in itself causes a great distress and humiliation to the victim though, undoubtedly a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The Court further held that some facts exist proving that victim was habituated to sexual intercourse, cannot be a reason to draw an inference that she was of 'loose moral character'. This cannot be a reason for her to be raped; she also has a right to protect her dignity and refuse to submit to sexual intercourse by anyone. Merely because a woman is of easy virtue, her evidence cannot be discarded on that ground alone rather it is to be cautiously appreciated.<sup>1220.</sup>

[s 376.7] **Past Sexual conduct of Victim.—Legislative changes.—** [s 376.8] **Section 155(4) of Indian Evidence Act, 1872 removed.—**

Under section 155(4) of Indian Evidence Act, 1872 the credit of a witness may be impeached when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character. This clause was omitted by Act 4 of 2003, section 3 (w.e.f. 11 December 2002) whereby the defence is prohibited from impeaching prosecutrix's testimony on the basis of her past sexual history.

[s 376.9] **Insertion of new section 53A in Indian Evidence Act, 1872.—**

By the Criminal Law (Amendment) Act 2013 a new section (53A) was inserted in the Indian Evidence Act, 1872 in which it is clearly stated that where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent. *Section 53A of Evidence Act; Evidence of character or previous sexual experience not relevant in certain cases.—In a prosecution for an offence u/ss. 354, 354A, 354B, 354C, section 354D, 376, 376A, 376B, 376C, 376D or 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.*

[s 376.10] **Amendment to section 146 of Indian Evidence Act, 1872.—**

By the Criminal Law (Amendment) Act, 2013 the proviso to section 146 of the Indian Evidence Act, 1872 was substituted by a new proviso which prohibits to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.<sup>1221</sup> :—

[s 376.11] **Suicide by victim.—**

Where in a rape case, the victim committed suicide before the trial and was not available for examination but the other evidence proved the guilt of the accused, it was held that non-availability of the victim was no ground for acquittal. The accused was convicted under sections 375/511 as at least attempt to rape, if not rape, was established from the evidence.<sup>1222</sup>

[s 376.12] **Absence of injury.—**

It is true that injury is not a *sine qua non* for deciding whether rape has been committed. But it has to be decided on the factual matrix of each case. It was observed in *Pratap Misra v State of Orissa*,<sup>1223</sup> where allegation was of rape by many persons and several times, but no injury was noticed. Presence of injury in this case, certainly is an important factor if the prosecutrix's version is credible, and then no corroboration would be necessary. But if the prosecutrix's version is not credible then there would be need for corroboration.<sup>1224</sup>

[s 376.13] **Corroboration of testimony.—**

The trend of judicial opinion is that in rape cases corroboration is not a matter of law, but a guide of prudence, as the testimony of the victim is vital unless there are compelling reasons for corroboration.<sup>1225</sup> The Supreme Court has held that a woman who has been raped is not an accomplice. If she was ravished she is the victim of an outrage and if she consented there is no rape. In the case of a girl below the age of consent, her consent will not matter so far as the offence of rape is concerned, but if she consented her evidence will be suspect as that of an accomplice. The true rule of

prudence requires that in every case of this type the advisability of corroboration should be present in the mind of the Judge and that must be indicated in the judgment. But corroboration can be dispensed with by the Judge if in the particular circumstances of the case before him he himself is satisfied that it is safe to do so.<sup>1226</sup> Indeed no rule of thumb can be laid down in this matter for every case must depend a good deal on its own peculiar facts and circumstances. Thus, in *Rafiq's* case<sup>1227</sup>. Krishna Iyer, J, observed:

when no woman of honour will accuse another of rape since she sacrifices thereby what is dearest to her, he cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable ... When a woman is ravished what is inflicted is not merely physical injury but the deep sense of some deathless shame ... Judicial response to human rights cannot be blunted by legal bigotry.

Similarly, in *Bhoginbhai's* case<sup>1228</sup>. Thakkar, J, observed with some anguish:

In the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule is adding insult to injury ... A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracised by the society ... And when in the face of these factors the crime is brought to light, there is built-in assurance that the charge is genuine rather than fabricated ... Just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight absence of corroboration notwithstanding.

Refusal by the accused person to subject himself to blood test for the purpose of determining his fatherhood of the child who was born as a result of the alleged rape was considered to be an evidence of corroboration.<sup>1229</sup>

#### [s 376.14] **Conviction on sole testimony of prosecutrix.—**

A conviction on the sole testimony of the prosecutrix is sustainable where the Court is convicted of the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity.<sup>1230</sup> To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another, with an accomplice to a crime and thereby insult womanhood.<sup>1231</sup>

#### [s 376.15] **CASES.— Rape by police constable.—**

The victim was allegedly raped in a hotel room by a police constable. She could not identify him. No test identification parade was held. The Supreme Court said that the identity was established by the fact that the accused was arrested from the hotel. The room was booked by him. He was not able to explain his whereabouts at the time of the offence. The Court further observed that the Courts have to adopt a different approach in such case. The Court should not get swayed by minor contradictions or discrepancies and defective investigation.<sup>1232</sup>

#### [s 376.16] **Rape and conspiracy for rape.—**

The four accused persons used their affluence and pretensions for friendship and thereby lured innocent schoolgirls and then sexually exploited them and subjected them to rape. Two of them actually committed acts of rape, the third made overtures to one of the victims and the fourth, being a driver, conveyed them to the farmhouse where they were exploited. Their acts were proved by witnesses. Two of them were convicted under section 376. The third and the fourth, though committed no act of rape, were convicted under section 376 read with section 120-B (conspiracy), it being not necessary that all co-conspirators should act in a similar manner. Their life sentence was reduced to 10 years of RI.<sup>1233</sup>

[s 376.17] **CASES.—Charge not proved.—**

Where the evidence of prosecutrix contradicts as to time and offence, and when the medical and FSL reports did not support the prosecution case, Supreme Court held that the acquittal is proper.<sup>1234</sup> Where the age of the victim was doubtful and she stated that without her consent the accused did something to her which he ought not to have done but not disclosing what he actually did, it was held that it could not be inferred that the accused had committed rape on her. It was held that conviction of the accused under section 376 was rightly set aside.<sup>1235</sup>

The prosecutrix was an educated woman and employed. She went in the jeep of the accused at night for a long distance intending to meet her senior officer. She alleged that she was raped by the accused in his house when they halted there. This was wholly unusual conduct. There was no explanation of any compelling reason for meeting the officer at night. There were no stains of semen or blood on her clothes. She asserted virginity but medical evidence showed that she was habituated to sex. The accused was held to be entitled to benefit of doubt.<sup>1236</sup>

Two persons were charged and prosecuted under section 376(2)(g) for gang raping a girl. The victim was desirous of marrying one of them and, therefore, did not report the matter willingly. There were various infirmities in the prosecution evidence. The conviction of the accused for the aforesaid offence was set aside.<sup>1237</sup>

[s 376.18] **Unchaste woman.—**

The Supreme Court has laid down that the unchastity of a woman does not make her "open to any and every person to violate her person as and when he wishes. Merely because she is a woman of easy virtue, her evidence cannot be thrown overboard. At the most the officer called upon to evaluate her evidence would be required to administer caution unto himself before accepting her evidence.<sup>1238</sup> Where in a prosecution for gang rape, the prosecutrix did not make any complaint to anybody for five days giving false explanation for delay, the doctor found no injury on any part of her body and she was found to be a lady of immoral character or of lax morals, it was held that it was unsafe to rely on her evidence.<sup>1239</sup> The Supreme Court has held that the mere fact that the prosecutrix was of loose moral character and was used to sexual intercourse and might have gone to the accused herself, were not grounds to disbelieve her statement. Such facts could demolish the case of abduction. But the prosecutrix, being of 10–11 years of age, was not capable of giving consent for abusing her sexually. The conviction of the accused was restored.<sup>1240</sup>

According to the Supreme Court, it is not a ground for acquittal of the accused that the prosecutrix was not having a good character and was a girl of easy virtues.<sup>1241</sup>

[s 376.19] **The proviso removed by Criminal Law (Amendment) Act, 2013.—**

The proviso to [section 376\(2\) IPC, 1860](#) laid down that the Court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment of either description for a term of less than 10 years. This proviso is now removed by [Criminal Law \(Amendment\) Act, 2013](#) in the wake of increasing crimes against women. It is, therefore, no longer possible to plead for any mitigating circumstances for reducing the quantum of punishment.

Where a person took away his niece under the promise of providing her a job, and completely believing his trust, raped her in a beastly manner, the Court said that no further leniency could be shown to him and, therefore, the sentence of seven years' RI and a fine of Rs. 2000 was to be maintained.<sup>1242</sup>

A defenceless married woman was tricked out of her house taking advantage of the drunken state of her husband. She was ravished in a most dastardly manner by three out of six members of the gang. All the three were awarded the maximum penalty of life-term by the Courts below. Only one came up in appeal before the Supreme Court. The Court said that no leniency could be shown to any one of them. The single appellant could not be treated differently from others who were serving their life sentence.<sup>1243.</sup>

[s 376.19.1] **Incest.**—

The accused had lost contact with his daughter when she was very young. They met again when she was 23 and they were both alcoholics. The incest started when the daughter was 24 and continued for three years, during which time she gave birth to their child. It was held that the offence was aggravated by the duration of the relationship, the fact that a child was born and that the incest continued before, during and after the pregnancy. The sentencing judge had given due weight to the accused's depression, alcoholism and contrition, The sentence of 2½ years was considered to be alright. However, there was no justification for the extended licence period it was not possible to conclude that the normal licence period would be inadequate to prevent recommitment, having regard to other ways in which contact with the daughter could be prevented.<sup>1244.</sup>

[s 376.20] **Rape and grievous hurt.**—

The victim girl aged seven years was in the care and custody of the accused and the natural and unnatural sexual acts were committed by him over a period of time. The injuries which were caused by the accused on the day of the incident were either on the skull or the hand or the thumb and therefore could not have been the reason for which death had occurred. In such a situation the liability of the accused for the commission of the offence under [section 302, IPC, 1860](#) would remain in serious doubt. The accused should be held liable for the offence under [section 325, IPC, 1860](#). Thus, the Court while maintaining the conviction and sentences awarded under sections 376 (2) (f) and 377, [IPC, 1860](#) altered the conviction under [section 302, IPC, 1860](#) to one under [section 325, IPC, 1860](#). Accordingly, the death penalty was set aside and punishment of RI for seven years was imposed.<sup>1245.</sup>

[s 376.21] **Jurisdiction.**—

The offence was completed at the place of kidnapping. The girl was carried to some other place where the ultimate purpose of raping her by several persons was accomplished. The Court said that the offences in question were a series of acts so connected together as to form part of the same transaction within the meaning of section 223(d), [Cr PC, 1973](#). All of them could be tried at the place of kidnapping.<sup>1246.</sup>

The offence is not compoundable. It has been held that a compromise cannot be a factor in reduction of quantum of punishment.<sup>1247.</sup>

[s 376.22] **Trial-in-camera.**—

An application for trial-in-camera without disclosing the name of the applicant was allowed and her father was not allowed to seek quashing of the complaint in the interest of family honour.<sup>1248.</sup>

[s 376.23] **Offences comparable to rape and indecent assault.**—

The accused appealed against a sentence of nine years' imprisonment imposed following his guilty plea to causing a nuisance to the public by making threatening, obscene and malicious telephone calls. He had made about 1000 telephone calls over

a two weeks' period to 15 complainants. The calls had been made for his sexual gratification and had involved him ordering his victims to perform sexual acts against themselves, under threat of rape or serious physical injury. He had a record of previous convictions for using the telephone system to send offensive and indecent matter.

It was held that the sentencing judge was entitled to conclude that the offences committed by the accused had been comparable to rape and indecent assault. His previous convictions, together with the pre-sentence report and a psychiatric report, also demonstrated that he presented a continuing and escalating danger to women. Accordingly, the sentence imposed was not excessive.<sup>1249.</sup>

#### [s 376.24] Probation.—

The refusal to grant probation to the person found guilty of rape has been held to be proper.<sup>1250.?</sup>

#### Assistance to Rape Victims : Supreme Court Guidelines

In *Delhi Domestic Working Women's Forum v UOI*,<sup>1251.</sup> the Supreme Court found that in the cases of rape, the investigating agency as well as the Subordinate Courts sometimes adopt totally an indifferent attitude towards the prosecutrix and therefore, the Supreme Court issued following directions in order to render assistance to the victims of rape:

- (1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in Court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represents her till the end of the case.
- (2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.
- (3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.
- (4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.
- (5) The advocate shall be appointed by the Court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the Court was sought or obtained.
- (6) In all rape trials anonymity of the victim must be maintained, as far as necessary.
- (7) It is necessary, having regard to the Directive Principles contained under [Article 38\(1\) of the Constitution of India](#) to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.
- (8) Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

In addition thereto, it is an obligation on the part of the State authorities and particularly, the Director General of Police and Home Ministry of the State to issue proper guidelines and instructions to the other authorities as how to deal with such cases and what kind of treatment is to be given to the prosecutrix, as a victim of sexual assault requires a totally different kind of treatment not only from the society but also



from the State authorities. Certain care has to be taken by the Doctor who medically examines the victim of rape. The victim of rape should generally be examined by a female doctor. Simultaneously, she should be provided the help of some psychiatric. The medical report should be prepared expeditiously and the Doctor should examine the victim of rape thoroughly and give his/her opinion with all possible angle, e.g., opinion regarding the age taking into consideration the number of teeth, secondary sex characters, and radiological test, etc. The Investigating Officer must ensure that the victim of rape should be handled carefully by lady police official/officer, depending upon the availability of such official/officer. The victim should be sent for medical examination at the earliest and her statement should be recorded by the IO in the presence of her family members making the victim comfortable except in incest cases. Investigation should be completed at the earliest to avoid the bail to the accused on technicalities as provided under [section 167 Cr PC, 1973](#) and final report should be submitted under [section 173 Cr PC, 1973](#) at the earliest.

[*Dilip v State of MP*. <sup>1252.</sup>]

<sup>1172.</sup> Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

<sup>1204.</sup> Subs. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376 was substituted by Act 43 of 1983, section 3 (w.e.f. 25 December 1983). Section 376, before substitution by Act 13 of 2013, stood as under:

[s 376] *Punishment for rape*.—(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

- (a) being a police officer commits rape—
  - (i) within the limits of the police station to which he is appointed; or
  - (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
  - (iii) on a woman in his custody or in the custody of a police officer subordinate to him; or
- (b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or
- (c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or

children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

- (d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or
- (e) commits rape on a woman knowing her to be pregnant; or
- (f) commits rape on a woman when she is under twelve years of age; or
- (g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.  
Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2.—"Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3.—"Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

**1205.** Subs. by Act 22 of 2018, section 4(a), for "shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine" (w.r.e.f. 21-4-2018).

**1206.** Clause (i) omitted by Act 22 of 2018, section 4(b) (w.r.e.f. 21-4-2018). Clause (i), before omission, stood as under:

"(i) commits rape on a woman when she is under sixteen years of age; or".

**1207.** Ins. by Act 22 of 2018, section 4(c) (w.r.e.f. 21-4-2018).

**1208.** *Tukaram*, 1978 Cr LJ 1864 : AIR 1979 SC 185 [LNIND 1978 SC 254] .

**1209.** *Bharwada Bhoginbhai Hirjibhai*, 1983 Cr LJ 1096 (SC) : AIR 1983 SC 753 [LNIND 1983 SC 161] : (1983) 3 SCC 753 : 1983 SCC (Cr) 728.

**1210.** *Ram Charan v State of MP*, 1993 Cr LJ 1825 (MP); *Saifuddin v UOI*, 2002 Cr LJ 3159 (J&K) dismissal of army man from service on account of rape which was proved. No interference.

**1211.** *Ram Kala*, 47 Cr LJ 611 (All).

**1212.** *SP Kohil*, 1978 Cr LJ 1804 : AIR 1978 SC 1753 [LNIND 1978 SC 235] . Followed in *Panibhusan Behera v State of Orissa*, (1995) 2 Cr LJ 1561 (Ori). Where there was no other evidence of either enticement or rape, the mere presence of semen stains on the frock of the alleged victim was held to be not sufficient for conviction; *Mahesh Kumar Bherulal v State of MP*, (1995) 2 Cr LJ 2021 (MP). *Y Srinivasa Rao v State of AP*, (1995) 2 Cr LJ 1597 (AP), no medical evidence that any forced act was committed on the prosecutrix. *Rahim Beg v State of UP*, AIR 1973 SC 343 : 1972 Cr LJ 1260 , held that semen stain on the 'langot' of a young man can exist because of a variety of reasons and would not necessarily connect him with the offence of rape.

**1213.** *Tameezuddin v State (NCT) of Delhi*, (2009) 15 SCC 566 [LNINDORD 2009 SC 430] . *Raju v State of MP*, AIR 2009 SC 858 [LNIND 2008 SC 2358] , recovery of stained underwear of the accused, could not by itself support the allegation of rape. *Pawan v State of Uttaranchal*, (2009) 15 SCC 259 [LNIND 2009 SC 464] : (2009) 3 All LJ 637 : 2009 Cr LJ 2257 , semen stains found on the underwear of the accused labourers as supported by other circumstances were held sufficient to lead to conviction.

**1214.** *Lillu @ Rajesh v State of Haryana*, AIR 2013 SC 1784 [LNIND 2013 SC 435] : 2013 (6) Scale 17 [LNIND 2013 SC 435] .

**1215.** *State of UP v Pappu @ Yunus*, AIR 2005 SC 1248 : 2005 (3) SCC 594 ; *Aman Kumar v State of Haryana*, AIR 2004 SC 1497 [LNIND 2004 SC 184] : 2004 (4) SCC 379 [LNIND 2004 SC 184] .

**1216.** *Vijay alias Chinee v State of MP*, 2010 (8) SCC 191 [LNIND 2010 SC 659] : 2010 AIR SCW 5510, *State of Maharashtra v Chandraprakash Kewal Chand Jain*, 1990 (1) SCC 550 [LNIND 1990 SC 26] : 1990 Cr LJ 889 .

**1217.** *State of UP v Munshi*, AIR 2009 SC 370 [LNIND 2008 SC 1717] : 2008 (9) SCC 390 [LNIND 2008 SC 1717] .

**1218.** *Narender Kumar v State (NCT of Delhi)*, AIR 2012 SC 2281 [LNIND 2012 SC 347] : 2012 (5) Scale 657 [LNIND 2012 SC 347] .

**1219.** *Rajoo v State of MP*, AIR 2009 SC 858 [LNIND 2008 SC 2358] .

**1220.** *State of Maharashtra v Madhukar Narayan Gardikar*, AIR 1991 SC 207 [LNIND 1990 SC 610] ; *State of Punjab v Gurmit Singh*, AIR 1996 SC 1393 [LNIND 1996 SC 2903] ; and *State of UP v Pappu @ Yunus*, AIR 2005 SC 1248 .

**1221.** Section 146 of the Indian Evidence Act, 1872 has been further amended vide the Criminal Law (Amendment) Act, 2018. In section 146 of the Evidence Act, in the proviso, for the words, figures and letters "section 376A, section 376B, section 376C, section 376D", the words, figures and letters "section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB" have been substituted

**1222.** *State of Karnataka v Mahabaleshwar Gourya Naik*, AIR 1992 SC 2043 : 1992 Cr LJ 3786 .

**1223.** *Pratap Misra v State of Orissa*, 1977 (3) SCC 41 .

**1224.** *Lalliram v State of MP*, 2008 (10) SCC 69 [LNIND 2008 SC 1833] : 2008 (12) Scale 491 [LNIND 2008 SC 1833] ; *Aman Kumar v State of Haryana*, 2004 (4) SCC 379 [LNIND 2004 SC 184] .

**1225.** *Gurcharan Singh v State of Haryana*, AIR 1972 SC 2661 [LNIND 1972 SC 433] : 1972 (2) SCC 749 [LNIND 1972 SC 433] ; *Shri Bodhisattwa Gautam v Miss Subhra Chakraborty*, AIR 1996 SC 922 [LNIND 1995 SC 1314] : 1996 (1) SCC 490 [LNIND 1995 SC 1314] .

**1226.** *Rameshwar*, (1952) SCR 377 [LNIND 1951 SC 76] : AIR 1952 SC 54 [LNIND 1951 SC 76] ; *Sidheswar Ganguly*, AIR 1958 SC 143 [LNIND 1957 SC 108] . *Karnel Singh v State of MP*, AIR 1995 SC 2472 [LNIND 1995 SC 776] : 1995 Cr LJ 4173 , the sole testimony of the prosecutrix corroborated by medical evidence found reliable, conviction of the accused under section 375 upheld; *Dharma v Nirmal Singh Bittu*, AIR 1996 SC 1136 [LNIND 1996 SC 272] : 1996 Cr LJ 1631 , where the accused was found guilty of attempt to rape and committing murder of his victim, the Supreme Court set aside the acquittal of the accused and sentenced him to life imprisonment. *Sri Narayan Saha v State of Tripura*, (2004) 7 SCC 775 [LNIND 2004 SC 906] : AIR 2005 SC 1452 [LNIND 2004 SC 906] , conviction without corroboration permissible.

**1227.** *Rafiq*, 1980 Cr LJ 1344 : AIR 1981 SC 96 [LNIND 1980 SC 331] . *State of Karnataka v Raju*, (2007) 11 SCC 490 [LNIND 2007 SC 1074] : AIR 2007 SC 3225 [LNIND 2007 SC 1074] : 2007 Cr LJ 4700 , evidence of the victim appearing to be probable. The court exposed the impermissibility of insistence by the accused on corroboration of the testimony. No accused can cling to a fossil formula and insist on corroboration even if the case taken as a whole

strikes to the judicial mind as probable. Judicial response to human rights cannot be allowed to be blunted by legal jugglery. *Shrawan v State of Maharashtra*, (2006) 13 SCC 191 , the allegation of rape of the woman and assault on her husband when the latter went to the house of the accused to protest, police antipathy, alleged facts seemed to be true, conviction and sentence upheld.

1228. *Bharwada Bhoginbhai Hirjibhai*, 1983 Cr LJ 1096 : AIR 1983 SC 753 [LNIND 1983 SC 161] : (1983) 3 SCC 217 [LNIND 1983 SC 161] . *Satpal v State of Rajasthan*, 2001 Cr LJ 564 (Raj), corroboration is not required as a rule. The fact of a litigation between the complainant and accused families was not material because a father would not involve his daughter into such a bad role. *Laxman Dass v State of Rajasthan*, 2001 Cr LJ 4501 , corroboration not considered necessary, injuries on person though not on private part, conviction. *Gurmit Singh* case was followed in *State of Karnataka v Manjanna*, AIR 2000 SC 2231 [LNIND 2000 SC 812] : 2000 Cr LJ 3471 here also acquittal was set aside, the court saying that the conclusion of the court below regarding reaction of the victim and her mother and delay in lodging the FIR was contrary to evidence. *Visweswaran v State of TN*, 2003 Cr LJ 2548 (SC), rape by accused constable in hotel room, no identification by the victim, but the room was booked by him, he was arrested at the hotel premises and he was not able to explain his whereabouts at about the time of offence. The court said that these circumstances sufficiently made him out.

1229. *Swati Lodha v State of Rajasthan*, 1991 Cr LJ 939 (Raj).

1230. *Ramdas v State of Maharashtra*, (2007) 2 SCC 170 [LNIND 2006 SC 928] : AIR 2007 SC 155 [LNIND 2006 SC 928] . *Narayan v State of Rajasthan*, (2007) 6 SCC 465 [LNIND 2007 SC 456] : 2007 Cr LJ 2733 , testimony of the prosecutrix found to be not believable, no conviction on that basis. *State of Punjab v Ramdev Singh*, AIR 2004 SC 1290 [LNIND 2003 SC 1106] ; *State of Chhattisgarh v Derha*, (2004) 9 SCC 699 [LNIND 2004 SC 535] ; *State of HP v Shree Kant Shekari*, AIR 2004 SC 4404 [LNIND 2004 SC 921] . Medical evidence that the victim showed signs of previous sexual intercourse, the court said it would not have any adverse effect on her testimony. It could not be a ground for acquitting the rapist. *Wahid Khan v State of MP*, (2010) 1 SCC Cr 1208 : (2010) 2 SCC 9 [LNIND 2009 SC 2041] : AIR 2010 SC 1 [LNIND 2009 SC 2041] , evidence of prosecutrix stands on equal footing with that of an injured witness and if it inspires confidence, corroboration is not necessary. The court noted the adverse things like social repercussions, backward society, dangers of being ostracized, difficulties of rehabilitation and survival, psychology not to admit adverse unless it was a fact. A 12-year-old girl was the victim in this case, being taken away by the accused in auto-rickshaw.

1231. *State of HP v Sanjay Kumar*, 2016 (4) Crimes 424 (SC) : 2016 (12) Scale 831 .

1232. *Visveswaran v State of TN*, AIR 2003 SC 2471 [LNIND 2003 SC 481] , imprisonment for a period of seven years and fine of Rs. 10,000 was affirmed.

1233. *Mojjullah v State of Rajasthan*, (2004) 2 SCC 90 [LNIND 2003 SC 1143] : AIR 2004 SC 3186 [LNIND 2003 SC 1143] .

1234. *State v Babu Meena*, AIR 2013 SC 2207 [LNIND 2013 SC 114] : (2013) 4 SCC 206 [LNIND 2013 SC 114] ; *Rajesh Patil v State of Jharkhand*, 2013 Cr LJ 2062 (SC); delay coupled with non-examination of doctor and IO created reasonable doubt in the prosecution story.

1235. *State of Karnataka v Sureshbabu Puk Raj Porral*, 1994 Cr LJ 1216 .

1236. *Sudhansif Sekhar Sahoo v State of Orissa*, AIR 2003 SC 2136 [LNIND 2002 SC 832] . The Supreme Court expressed the opinion that sole testimony is not to be relied upon unless it is safe, reliable and worthy of acceptance. *State of Punjab v Chatinder Pal Singh*, (2008) 17 SCC 90 [LNINDORD 2008 SC 308] : AIR 2009 SC 974 [LNINDORD 2008 SC 308] , prosecution witnesses going back upon their statements, two inconsistent dying declaration, when two courts on analysis of evidence found the accused not guilty, no scope for interference.

1237. *Shatrughan v State of MP*, 1993 Cr LJ 120 (MP). *Thomas v State of Kerala*, 1999 Cr LJ 1297 (Ker), accused committed forced sex from behind, medical opinion that such act was possible by use of force. Offence proved and conviction upheld. *State of Rajasthan v Om Prakash*, AIR 2002 SC 2235 [LNIND 2002 SC 370] (Supp), charge proved, non-examination of witnesses other than family members was immaterial. *Fota v State of Rajasthan*, 1999 Cr LJ 1677 (Raj), charge of rape found to be false, one of the reasons for the finding being that the father of the girl had compromised with the alleged rapist, this could not be probable. *State of Punjab v Gurdeep Singh*, 1999 Cr LJ 4597 : (2000) 8 SCC 547 [LNIND 2000 SC 1292] , the only evidence was that the accused was seen by a relative of the girl chasing her in a drunken state, but he did nothing, not enough to connect that man with rape and murder. *Suresh N Bhusane v State of Maharashtra*, 1998 Cr LJ 4559 : AIR 1998 SC 3131 [LNIND 1998 SC 733] , voluntary conduct rather than forcible lifting, charge of rape not proved. *Prahlad Singh v State of MP*, 1997 Cr LJ 4078 : AIR 1997 SC 3442 [LNIND 1997 SC 1080] , fact of rape established, but the accused could not be identified by the victim girl. Acquittal. *Prakash Sakharam Mandale v State of Maharashtra*, 1997 Cr LJ 4199 (Bom), the victim's age could not be established beyond doubt. She remained silent about her age. This fact spoke of her connivance. Acquittal.

1238. *State of Maharashtra v Madhukar N Mardikar*, (1991) 1 SCC 57 [LNIND 1990 SC 610] : AIR 1991 SC 207 [LNIND 1990 SC 610] . For a review of case—law on the need for corroboration see *State of Maharashtra v Kalgya Kale*, 1989 Cr LJ 1389 (Bom). See also *Daler Singh v State of Haryana*, (1995) 1 Cr LJ 614 (P&H), no implicit reliance can be placed upon the testimony of a prosecutrix who is a woman of easy virtue and seems to be consenting. There were other infirmities also in the evidence tendered, hence acquittal.

1239. *Banti v State of MP*, 1992 Cr LJ 715 (MP). *Mohan v State of MP*, 2001 Cr LJ 3046 (MP), it is no defence that the girl was used for sex. The spontaneity in disclosure of the incident by the prosecutrix has a greater value as *res gestae*. It is substantive evidence.

1240. *State of UP v Om*, 1999 Cr LJ 5030 : 1998 SCC (Cr) 1343. *Milind Ambadas Mhaske v State*, 1998 Cr LJ 357 (Bom), bad character of the prosecutrix does not enable the accused to escape from his culpability. Grown-up married woman having two children, consent could not be inferred from the absence of injuries on private part. *Sanju Gupta v State of Orissa*, 1998 Cr LJ 1684 (Ori), a woman may be of immoral character, persons forcing her to sex against her will would be guilty of rape.

1241. *State of UP v Pappu*, 2005 Cr LJ 331 : AIR 2005 SC 1248 : (2005) 3 SCC 594 .

1242. *Maguni Ranjan Jyoti v State of Orissa*, 2003 Cr LJ 530 (Ori).

1243. *Ramesh Kumar v State of Haryana*, (2008) 5 SCC 139 [LNIND 2008 SC 508] . *Viswanathan v State*, (2008) 5 SCC 354 [LNIND 2008 SC 999] : AIR 2008 SC 2222 [LNIND 2008 SC 999] , version of the victim and her brother was corroborated by material objects medical evidence and dispositions, accused persons carried away the victim to an isolated place and subjected her to rape, clearly showed their common intention of gang rape.

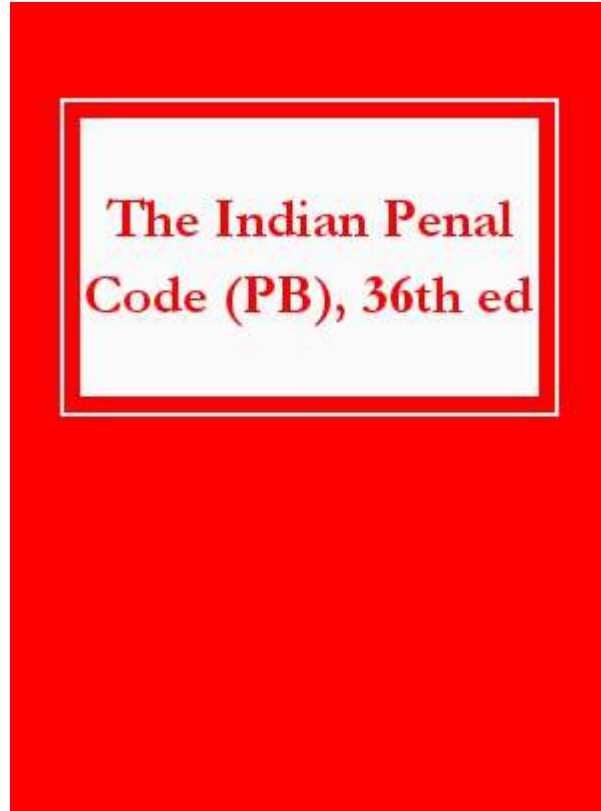
1244. *R v DM (Incest : Sentencing)*, (2002) EWCA Crim 1702 : (2003) 1 Cr App R (S) 59 [CA (Crim Div)]; *Ram Kumar v State of MP*, 2003 Cr LJ (NOC) 18 (MP) : (2002) 3 MPH7 111, rape on the accused's own minor daughter. She stood cross-examination, she could not cry out because she was in helpless situation, conviction was based solely on her testimony. *Neel Kumar v State of Haryana*, (2012) 5 SCC 766 [LNIND 2012 SC 298] : 2012 (5) Scale 185 [LNIND 2012 SC 298]; Rape and murder of his own four-year daughter by the appellant; Death sentence liable to be set aside and life imprisonment awarded. The appellant must serve a minimum of 30 years in jail without remissions.

1245. *Rajesh v State of MP*, AIR 2017 SC 532 [LNINDORD 2016 SC 11435] .

1246. *Praveen v State of Maharashtra*, 2001 Cr LJ 3417 (Bom).

1247. *Mangilal v State of MP*, 1998 Cr LJ 2304 (MP).
1248. *Trilochan Singh Johar v State*, 2002 Cr LJ 528 (Del).
1249. *R v Eskdale (Stuart Anthony)*, (2002) 1 Cr App R (S) 28, [CA (Crim Div)].
1250. *State of MP v Babulal*, (2008) 1 SCC 234 [LNIND 2007 SC 1400] : AIR 2008 SC 582 [LNIND 2007 SC 1400] : 2008 Cr LJ 714 .
1251. *Delhi Domestic Working Women's Forum v UOI*, (1995) 1 SCC 14 [LNIND 1994 SC 1582] .
1252. *Dilip v State of MP*, 2013 Cr LJ 2446 (SC).

## The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1253. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376A was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376A, before substitution by Act 13 of 2013, stood as under: [s 376A] Intercourse by a man with his wife during separation.—Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine. [s 376A] Punishment for causing death or resulting in persistent vegetative state of victim.

Currency Date: 28 April 2020

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## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### **1172.**[Sexual Offences]

#### **1253.**[s 376A] **Punishment for causing death or resulting in persistent vegetative state of victim.**

**Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman 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 imprisonment for the remainder of that person's natural life, or with death.]**

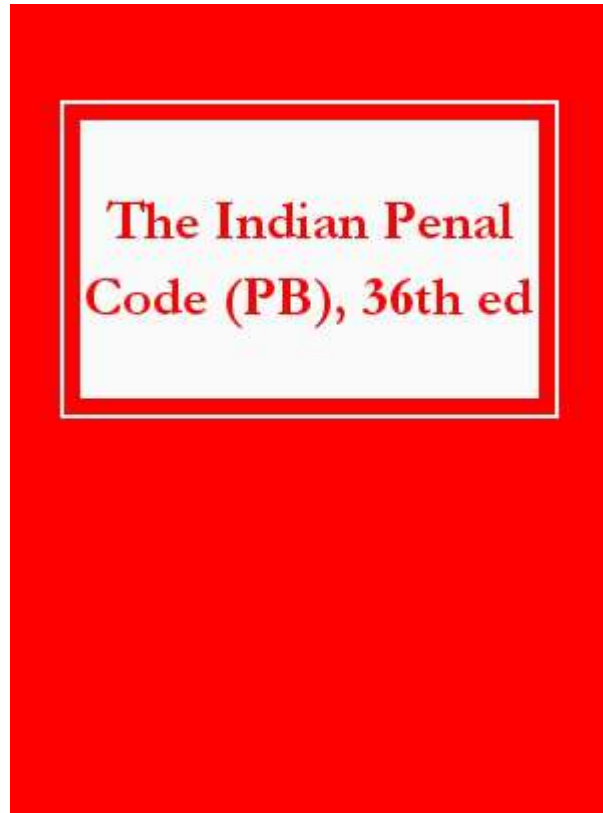
**1172.** Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

**1253.** Subs. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376A was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376A, before substitution by Act 13 of 2013, stood as under:

[s 376A] *Intercourse by a man with his wife during separation.*—Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.



**The Indian Penal Code (PB), 36th ed**



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1254. Ins. by Act 22 of 2018, section 5 (w.r.e.f. 21-4-2018). [s 376AB] Punishment for rape on woman under twelve years of age.

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## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### **1172.** [Sexual Offences]

#### **1254.** [s 376AB] Punishment for rape on woman under twelve years of age.

**Whoever, commits rape on a woman under twelve years of age 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 imprisonment for the remainder of that person's natural life, and with fine or with death:**

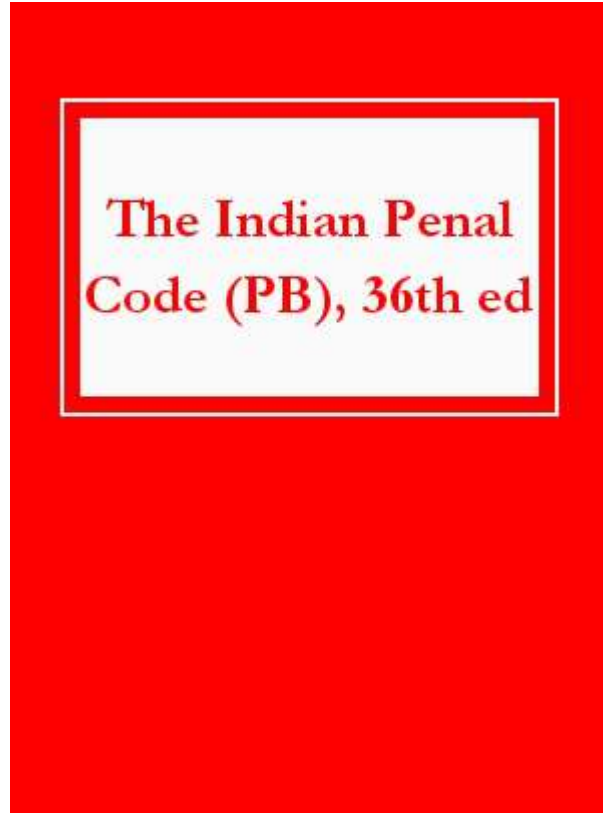
***Provided* that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:**

***Provided further* that any fine imposed under this section shall be paid to the victim.**

**1172.** Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

**1254.** Ins. by Act 22 of 2018, section 5 (w.r.e.f. 21-4-2018).

## The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1255. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 376B (w.e.f. 3-2-2013). Earlier section 376B was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376B, before substitution by Act 13 of 2013, stood as under: “[s 376B]

Intercourse by public servant with woman in his custody.—Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine”. [[s 376-B] Sexual intercourse by husband upon his wife during separation.

Currency Date: 28 April 2020

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## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### 1172. [Sexual Offences]

#### 1255. [[s 376-B] Sexual intercourse by husband upon his wife during separation.

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description, for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

*Explanation.*—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375].

#### COMMENT.—

At a trial for rape, the accused asked the judge to give his ruling on the point whether a husband could be convicted of raping his wife where the parties are living apart at the time. The judge held that the common law rule of marital exemption that a man cannot be guilty of raping his own wife applied to the facts. The report did not show the cause of their living apart.<sup>1256</sup> This decision should be taken in the light of the declaration by the House of Lords that a husband can be guilty of raping his wife.<sup>1257</sup> [Edited under the preceding section under the heading "Exception: Rape by Husband".] The legislative intent in changes introduced in sections 375 and 376 and introduction of sections 376-A to 376-D in 1983 has been restated by the Supreme Court in *Mohan Anna Chavan v State of Maharashtra*.<sup>1258</sup>

<sup>1172</sup>. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

<sup>1255</sup>. Subs. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 376B (w.e.f. 3-2-2013). Earlier section 376B was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376B, before substitution by Act 13 of 2013, stood as under:

"[s 376B] *Intercourse by public servant with woman in his custody.*—Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine".

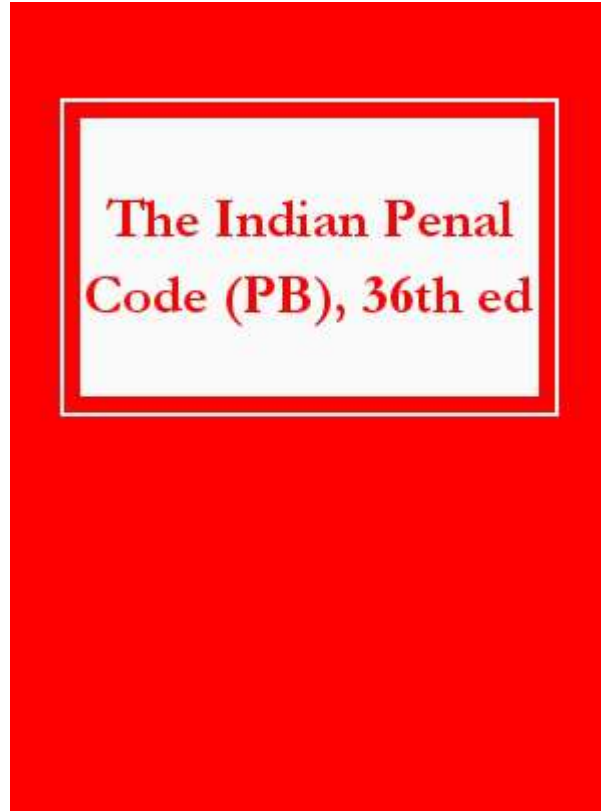
1256. *R v J (Rape : Marital Exemption)*, (1991) 1 All ER 759 .

1257. *R v R (Rape : Marital Exemption)*, (1991) 4 All ER 481 .

1258. *Mohan Anna Chavan v State of Maharashtra*, (2008) 7 SCC 561 [LNIND 2008 SC 1265] .

The Supreme Court also restated the meaning, consequences and egregiousness of the matters dealt with in the amendment.

## The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1259. Subs. by Act 13 of 2013, section 9, for section 376C (w.r.e.f. 3-2-2013). Earlier section 376C was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983).

Section 376C, before substitution by Act 13 of 2013, stood as under: “[s 376C] Intercourse by superintendent of jail, remand home, etc.—Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman’s or children’s institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine. Explanation 1.—“Superintendent” in relation to jail, remand home or other place of custody or a women’s or children’s institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates. Explanation 2.—The expression “women’s or children’s institution” shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.” [s 376C] Sexual intercourse by a person in authority.



## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### 1172. [Sexual Offences]

#### 1259. [s 376C] Sexual intercourse by a person in authority.

Whoever, being—

- (a) in a position of authority or in a fiduciary relationship; or
- (b) a public servant; or
- (c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or
- (d) on the management of a hospital or being on the staff of a hospital,

abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

*Explanation 1.*—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

*Explanation 2.*—For the purposes of this section, *Explanation 1* to section 375 shall also be applicable.

*Explanation 3.*—"Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

*Explanation 4.*—The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in *Explanation* to subsection (2) of section 376].

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1259. Subs. by Act 13 of 2013, section 9, for section 376C (w.r.e.f. 3-2-2013). Earlier section 376C was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376C, before substitution by Act 13 of 2013, stood as under::

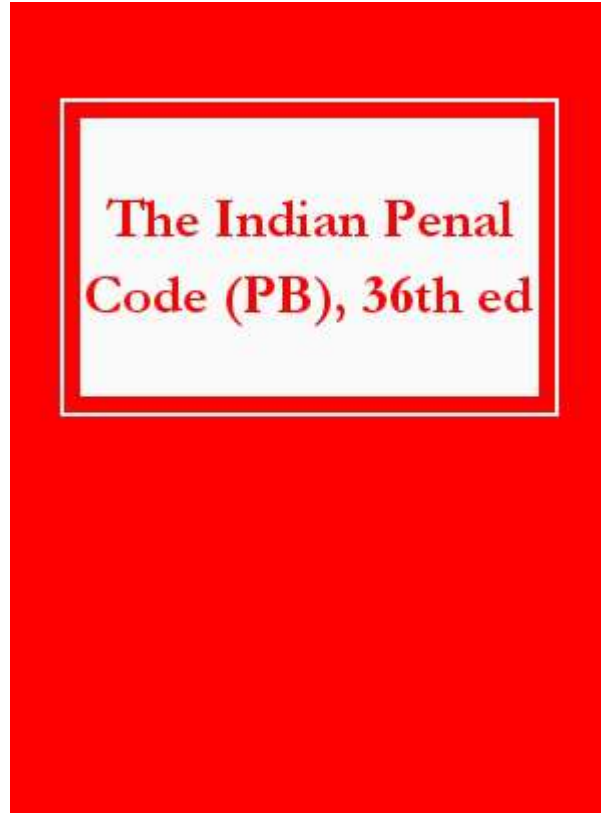


"[s 376C] *Intercourse by superintendent of jail, remand home, etc.*—Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation 1.—"Superintendent" in relation to jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates.

Explanation 2.—The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376."

## The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1260. Subs. by Act 13 of 2013, section 9, for section 376D (w.r.e.f. 3 February 2013). Earlier section 376D was substituted by Act 43 of 1983, section 3 (w.e.f. 25 December 1983). Section 376D, before substitution by Act 13 of 2013, stood as under: “[s 376D] Intercourse by any member of the management or staff of a hospital with any woman in that hospital.—Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine. Explanation.—The expression “hospital” shall have the same meaning as in Explanation 3 to sub-section (2) of section 376”. [s 376-D] Gang rape.

Currency Date: 28 April 2020

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## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

**1172.** [Sexual Offences]

**1260.** [s 376-D] Gang rape.

**Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:**

***Provided* that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:**

***Provided further* that any fine imposed under this section shall be paid to the victim.]**

#### COMMENT.—

Sections 376-A–376-D inserted by the Act 43 of 1983 were sought to deal with such cases which were not covered by section 376. They have thus, been inserted to meet a situation which was otherwise not provided for under section 376. These sections now stand substituted by the [Criminal Law \(Amendment\) Act, 2013](#).

**1172.** Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

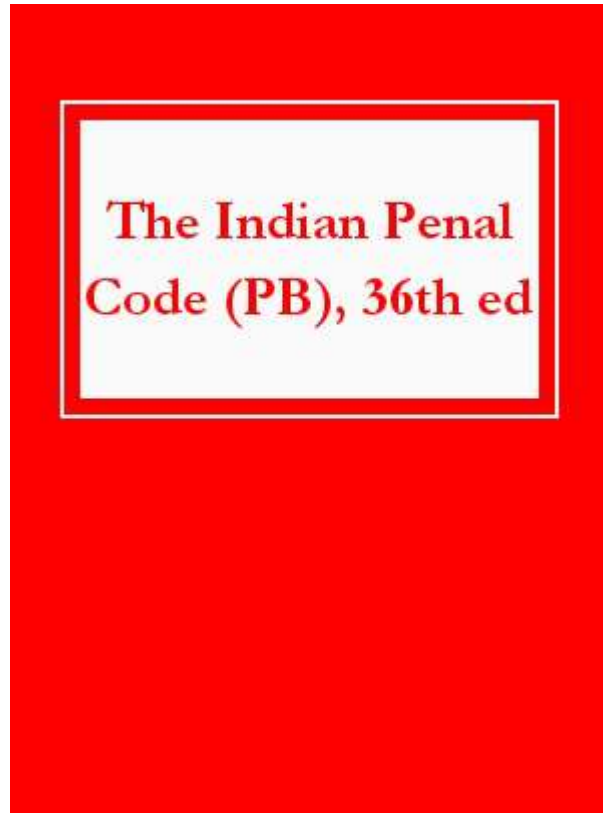
**1260.** Subs. by Act 13 of 2013, section 9, for section 376D (w.r.e.f. 3 February 2013). Earlier section 376D was substituted by Act 43 of 1983, section 3 (w.e.f. 25 December 1983). Section 376D, before substitution by Act 13 of 2013, stood as under:

"[s 376D] *Intercourse by any member of the management or staff of a hospital with any woman in that hospital.—Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.*

Explanation.—The expression "hospital" shall have the same meaning as in Explanation 3 to sub-section (2) of section 376".



**The Indian Penal Code (PB), 36th ed**



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1261. Ins. by Act 22 of 2018, section 6 (w.r.e.f. 21 April 2018).  
[[s 376DA] Punishment for gang rape on woman under sixteen years of age.

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## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### **1172.**[Sexual Offences]

#### **1261.**[[s 376DA] Punishment for gang rape on woman under sixteen years of age.

Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine:

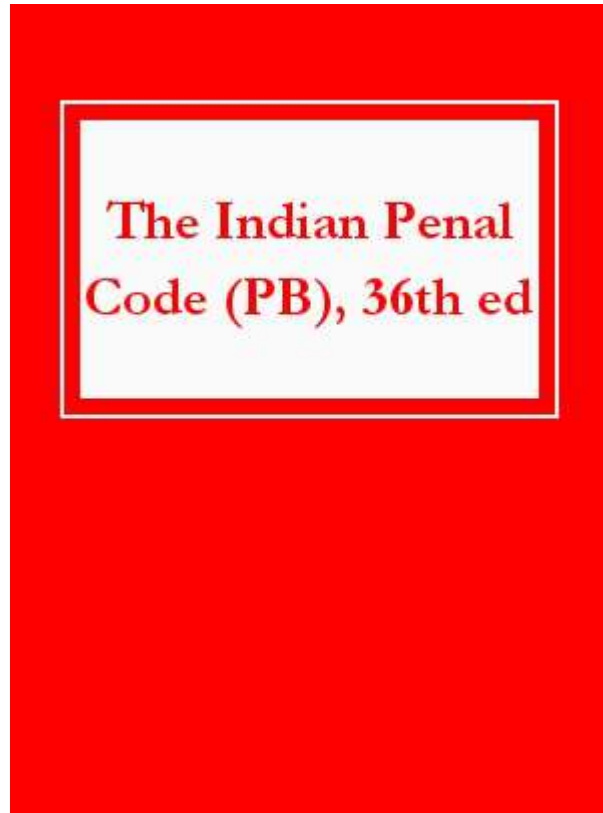
*Provided* that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

*Provided further* that any fine imposed under this section shall be paid to the victim.]

**1172.** Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

**1261.** Ins. by Act 22 of 2018, section 6 (w.r.e.f. 21 April 2018).

**The Indian Penal Code (PB), 36th ed**



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1262. Ins. by Act 22 of 2018, section 6 (w.r.e.f. 21-4-2018). [[s 376DB] Punishment for gang rape on woman under twelve years of age.

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## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### **1172.**[Sexual Offences]

#### **1262.**[[s 376DB] Punishment for gang rape on woman under twelve years of age.

Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for

the remainder of that person's natural life, and with fine, or with death:

*Provided* that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

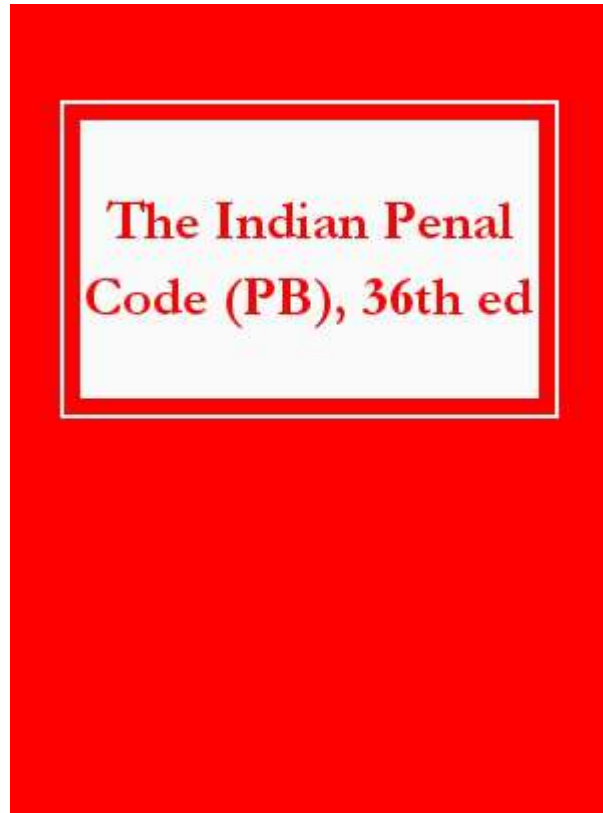
*Provided further* that any fine imposed under this section shall be paid to the victim.]

**1172.** Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

**1262.** Ins. by Act 22 of 2018, section 6 (w.r.e.f. 21-4-2018).



**The Indian Penal Code (PB), 36th ed**



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1263. Ins. by Act 13 of 2013, section 9 (w.r.e.f. 3-2-2013). [s 376E] Punishment for repeat offenders.

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## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

**1172.** [Sexual Offences]

**1263.** [s 376E] Punishment for repeat offenders.

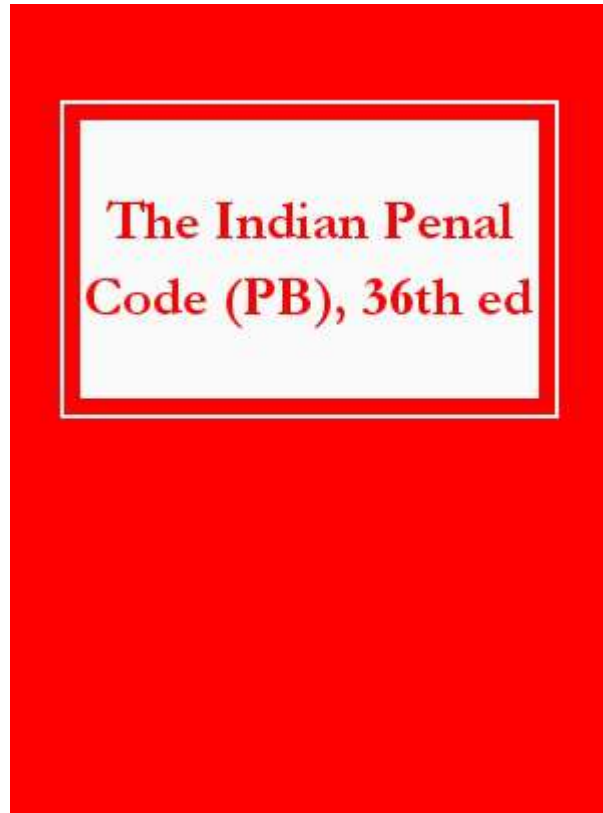
Whoever has been previously convicted of an offence punishable under section 376 or section 376A or **1264.** [section 376AB or section 376D or section 376DA or section 376DB,] and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.]

**1172.** Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

**1263.** Ins. by Act 13 of 2013, section 9 (w.r.e.f. 3-2-2013).

**1264.** Subs. by Act 22 of 2018, section 7, for "section 376D" (w.r.e.f. 21-4-2018).

**The Indian Penal Code (PB), 36th ed**



Ratanlal & Dhirajlal: Indian Penal Code (PB) / [s 377] Unnatural offences.

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## THE INDIAN PENAL CODE

### CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

#### Of Unnatural Offences

##### [s 377] Unnatural offences.

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with <sup>1265</sup>[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.

#### COMMENT.—

This section was intended to punish the offence of sodomy, buggery and bestiality. The offence purported to consist in a carnal knowledge committed against the order of nature by a person with a man, or in the same unnatural manner with a woman, or by a man or woman in any manner with an animal. To attract the above offence, the following ingredients were required: 1) Carnal intercourse and 2) against the order of nature.

##### [s 377.1] Constitutionality of section 377.—Naz Judgment.—

The Delhi High Court in a landmark judgment declared [section 377 IPC, 1860](#) unconstitutional, insofar it criminalised consensual sexual acts of adults in private as violative of [Articles 21, 14 and 15](#) of the [Constitution](#).<sup>1266</sup> But in *Suresh Kumar Koushal v NAZ Foundation*,<sup>1267</sup> the Supreme Court overruled the Delhi High Court judgment holding that those who indulge in carnal intercourse in the ordinary course and those who indulge in carnal intercourse against the order of nature constitute different classes and the people falling in the latter category cannot claim that section 377 suffers from the vice of arbitrariness and irrational classification. What section 377 does is merely to define the particular offence and prescribe punishment for the same which can be awarded if in the trial conducted in accordance with the provisions of the [Cr PC, 1973](#) and other statutes of the same family the person is found guilty. Therefore, [section 377 IPC, 1860](#) was held to be not *ultra vires* [Articles 14 and 15](#) of the [Constitution](#). It was also observed by the Supreme Court that the Court merely pronounced on the correctness of the view taken by the Delhi High Court on the constitutionality of [section 377 IPC, 1860](#) and found that the said section did not suffer from any constitutional infirmity. Notwithstanding this verdict, the competent legislature shall be free to consider the desirability and propriety of deleting [section 377 IPC, 1860](#) from the statute book or amend the same.

A [constitution](#) bench of the Supreme Court in *Navtej Singh Johar v UOI*,<sup>1268</sup> overruled *Suresh Kumar Koushal* and held that consensual carnal intercourse among adults in private space, does not in any way harm public decency or morality. Therefore, section

377 in its present form violates [Article 19\(1\)\(a\)](#). The court held that so far as section 377 penalises any consensual sexual relationship between two adults, be it homosexuals (man and man), heterosexuals (man and woman) or lesbians (woman and woman), cannot be regarded as constitutional. However, if anyone engages in any kind of sexual activity with animal, said aspect of section 377 is constitutional and it shall remain a penal offence. The court held that any act of description covered under section 377 done between two individuals without consent of any one of them would invite penal liability. Further, non-consensual acts which have been criminalised by virtue of section 377 have already been designated as penal offences under section 375 and under [POCSO Act, 2012](#).

### **[s 377.2] Section 375 not subject to section 377.—**

In *Navtej Singh Johar v UOI*,<sup>1269</sup> the Supreme Court further held that section 375 gives due recognition to absence of 'wilful and informed consent' for act to be termed as rape, per contra, section 377 which does not contain any such qualification. Section 375, as substituted by the [Criminal Law \(Amendment\) Act, 2013](#), does not use words 'subject to any other provision of IPC' which indicates that section 375 is not subject to section 377. Criminalisation of carnal intercourse between two adults was held legally unsustainable.

### **[s 377.3] Penetration.—**

The explanation states that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. [Section 377 of IPC, 1860](#) presupposes carnal intercourse against the order of nature.<sup>1270</sup> As in rape so also in an unnatural offence even the slightest degree of penetration is enough and it is not necessary to prove the completion of the intercourse by the emission of seed.<sup>1271</sup>

In a case arising out of unnatural offence, it was held that the acts alleged against the accused falling into two categories (1) sexual intercourse per OS (mouth) and (2) manipulation and movement of penis of the accused whilst being held by the victims in such a way as to create orifice like thing for making manipulated movement of insertion and withdrawal till ejaculation of semen, fell within the sweep of unnatural carnal offences and quashing of proceedings was not warranted.<sup>1272</sup>

The victim girl aged seven years was in the care and custody of the accused and the offences were committed by him over a period of time. Medical evidence and DNA profile conclusively established commission of natural and unnatural sexual acts on the deceased by the accused. Imposition of the maximum punishment awardable for the said offences, i.e., life imprisonment was held perfectly justified.<sup>1273</sup>

### **[s 377.4] Anal intercourse—Sodomy, medical evidence.—**

When an expert categorically ruled out the commission of an unnatural offence having regard to his expertise, it was obligatory on the part of the prosecution to draw his attention so as to enable him to furnish an explanation. It was contended that lacerations are likely to disappear if the examination is made after two to three days and nature of injuries would also depend upon several factors. The doctor in his evidence stated that the tissues around the anus are hard and rough. At the time of answering the calls of nature, the extra skin will be expanded. Immediately after it will

come to original status. By examination it was found that the boy was not habitually used for anal intercourse. If there is continuous act of intercourse for about a week or even two, three days it can be found out as to whether he had any intercourse or not. It may be true that absence of medical evidence by itself is not a crucial factor in all cases, but, the same has to be taken into consideration as a relevant factor when other evidence points towards the innocence of the appellant. It was not a case where only one view was possible. It is a well-settled principle of law that where two views are possible, the High Court would not ordinarily interfere with the judgment of acquittal.<sup>1274.</sup>

### **[s 377.5] Conviction without charge.—**

Though medical evidence shows that victim was subjected to rape and carnal intercourse on more than one occasion before she was murdered, there was no charge of sodomy under [section 377 IPC, 1860](#) framed by trial Court. It was held that accused cannot be convicted under section 377.<sup>1275.</sup>

<sup>1265.</sup> Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

<sup>1266.</sup> *Naz Foundation v Government of NCT of Delhi*, [2010 Cr LJ 94](#) (Del).

<sup>1267.</sup> *Suresh Kumar Koushal v NAZ Foundation*, [AIR 2014 SC 563](#) [[LNIND 2013 SC 1059](#)] : [2014 Cr LJ 784](#) .

<sup>1268.</sup> *Navtej Singh Johar v UOI*, [AIR 2018 SC 4321](#) .

<sup>1269.</sup> *Navtej Singh Johar v UOI*, [AIR 2018 SC 4321](#) .

<sup>1270.</sup> *Kailash Laxman Khamkar v State of Maharashtra*, [2010 Cr LJ 3255](#) (Bom).

<sup>1271.</sup> *Hughes*, (1841) 9 C & P 752; See also *GD Ghadge*, [1980 Cr LJ 1380](#) (Bom).

<sup>1272.</sup> *Brother John Antony v State of TN*, [1992 Cr LJ 1352](#) (Mad). The court explained the meaning and scope of the unnatural offence and referred to various authorities on this subject.

<sup>1273.</sup> *Rajesh v State of MP*, [AIR 2017 SC 532](#) [[LNINDORD 2016 SC 11435](#)] .

<sup>1274.</sup> *Gowrishankara Swamigalu v State of Karnataka*, (2008) 14 SCC 411 [[LNIND 2008 SC 598](#)] : [AIR 2008 SC 2349](#) [[LNIND 2008 SC 598](#)] : [2008 Cr LJ 3042](#) . The offence was supposed to have been committed for seven consecutive days at 8 a.m. in the office room a part of which was converted into a bed room. The whole thing sounded like unnatural.

<sup>1275.</sup> *State of Maharashtra v Shankar Krisanrao Khade*, [2009 Cr LJ 73](#) (Bom).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

#### [s 378] Theft.

Whoever, intending to take dishonestly<sup>1</sup>. any movable property<sup>2</sup>. out of the possession of any person<sup>3</sup>. without that person's consent,<sup>4</sup>. moves that property<sup>5</sup>. in order to such taking, is said to commit theft.

**Explanation 1.**—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

**Explanation 2.**—A moving effected by the same act which affects the severance may be a theft.

**Explanation 3.**—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

**Explanation 4.**—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

**Explanation 5.**—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

#### ILLUSTRATIONS

- (a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.
- (b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent. A has committed theft as soon as Z's dog has begun to follow A.
- (c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.
- (d) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.
- (e) Z, going on a journey, entrusts his plate to A, the keeper of the warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and

A has not committed theft, though he may have committed criminal breach of trust.

- (f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.
- (g) A finds a ring lying on the highroad, not in the possession of any person. A by taking it, commits no theft, though he may commit criminal misappropriation of property.
- (h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.
- (i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.
- (j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.
- (k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.
- (l) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.
- (m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.
- (n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.
- (o) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has no authority from Z to give. If A takes the property dishonestly, he commits theft.
- (p) A, in good faith, believing property belonging to Z to be A's own property, takes



that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

## COMMENT—

[Section 378 of the Indian Penal Code, 1860 \(IPC, 1860\)](#) defines 'theft' as the dishonest removal of movable property 'out of the possession of any person' without the consent of that person. 'Theft', has the following ingredients, namely, (i) dishonest intention to take property; (ii) the property must be movable; (iii) it should be taken out of the possession of another person; (iv) it should be taken without the consent of that person; and (v) there must be some moving of the property in order to accomplish the taking of it.

To bring home an offence under [section 378 IPC, 1860](#), the prosecution is to prove (a) that there was a movable property; (b) that the said movable property was in the possession of person other than the accused; (c) that the accused took it out or moved it out of the possession of the said person; (d) that the accused did it dishonestly, i.e., with intention to cause wrongful gain to himself or wrongful loss to another; (e) that the accused took the movable property or moved it without the consent of the possessor of the movable property.<sup>1</sup>

The Criminal Court is not required to adjudicate on rival claims of title claimed by the parties. All that the Criminal Court has to decide is whether at the time of the alleged incident the property which is the subject-matter of theft was in the 'possession' of the complainant and whether it was taken out of the possession of the complainant with a dishonest intention.<sup>2</sup>

1. *Prafula Saikia v State of Assam*, [2012 Cr LJ 3889](#) (Gau).
2. *P T Rajan Babu v Anitha Chandra Babu*, [2011 Cr LJ 4541](#) (Ker).
3. *Nobin Chunder Holder*, (1866) 6 WR (Cr) 79.
4. *Ramratan*, [AIR 1965 SC 926](#) [[LNIND 1964 SC 365](#)] : (1965) 2 Cr LJ 18 .
5. *Rameshwar Singh*, (1936) 12 Luck 92 .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

#### [s 379] Punishment for theft.

**Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.**

#### COMMENT—

In order to constitute theft five factors are essential:—

- (1) Dishonest intention to take property;
- (2) The property must be movable;
- (3) The property should be taken out of the possession of another person;
- (4) The property should be taken without the consent of that person; and
- (5) There must be some moving of the property in order to accomplish the taking of it.

**1. 'Intending to take dishonestly'.—**Intention is the gist of the offence. The intention to take dishonestly exists when the taker intends to cause wrongful gain to one person or wrongful loss to another person. Where, therefore, the accused acting *bona fide* in the interests of his employers finding a party of fishermen poaching on his master's fisheries, took charge of the nets and retained possession of them, pending the orders of his employers, it was held that he was not guilty of theft.<sup>3</sup> When a person seizes cattle on the ground that they were trespassing on his land and causing damage to his crop or produce and gives out that he is taking them to the cattle pound, he commits no offence of theft, and however mistaken he may be about his right to that land or crop. He has no dishonest intention.<sup>4</sup> Where a respectable person just pinches the cycle of another person, as his own cycle at the time was missing, and brings it back and the important element of criminal intention is completely absent and he did not intend by his act to cause wrongful gain to himself, it does not amount to theft.<sup>5</sup>

The intention to take dishonestly must exist at the time of the moving of the property [*vide ill. (h)*]. The taking must be dishonest. It is not necessary that the taking must cause wrongful gain to the taker; it will suffice if it causes wrongful loss to the owner.<sup>6</sup> Thus, where the accused took the complainant's three cows against her will and distributed them among her creditors, he was found guilty of stealing.<sup>7</sup> It makes no difference in the accused's guilt that the act was not intended to procure any personal benefit to him. Could it be said that a servant would not be guilty of theft if he were to deliver over his master's plate to a pressing tailor, and tell him to pay himself? If the act done was not done *animo furtandi*, it will not amount to theft. It is no more stealing than it will be to take a stick out of a man's hand to beat him with it.<sup>8</sup>

**[s 379.1] Taking need not be with intent to retain property permanently.—**

It is not necessary that the taking should be permanent or with an intention to appropriate the thing taken<sup>9</sup>. [vide ill. (1)]. There may be theft without an intention to deprive the owner of the property permanently. Where the accused took out an Indian Air Force plane for an unauthorised flight, even temporarily, it was held that he was guilty of theft.<sup>10</sup> It would satisfy the definition of theft if the accused takes away any movable property out of the possession of another person though he intended to return it later on. The accused, who was working in a Government office, removed a file to his house, made it available to an outsider and then returned it to the office after two days. It was held by the Supreme Court that the accused was guilty of theft.<sup>11</sup>

### **[s 379.2] Bona fide dispute.—**

Where property is removed in the assertion of a contested claim of right, however ill-founded that claim may be, the removal thereof does not constitute theft.<sup>12</sup> Where the question in dispute between two parties was whether the sale of a *mahal* (village) carried within its ambit the sale of certain trees and the servant of one of the parties cut and removed the trees under his master's orders under the *bona fide* belief that they belonged to his master, it was held that the servant was not guilty of theft.<sup>13</sup> The dispute as to ownership must be *bona fide*. A mere colourable pretence to obtain or keep possession of property does not avail as a defence.<sup>14</sup> It is not theft if a person, acting under a mistaken notion of law, and believing that certain property is his, and that he has the right to take the same, until payment of the balance of some money due to him from the vendor, removes such property from the possession of the vendee.<sup>15</sup> Where a *bona fide* claim of right exists, it can be a good defence to a prosecution for theft. Thus where the question of possession was in a fluid state and the accused *bona fide* believed that the crop was his as he had cultivated the land, no offence either of criminal trespass or theft could be made out against him. Such a matter is better decided in a Civil Court.<sup>16</sup> However, it was held in a case of dacoity that the question of *bona fide* claim of right arises only where the accused show to the Court's satisfaction that their belief is reasonable and is based on some documents and title, however weak it may be.<sup>17</sup> An act does not amount to theft under such circumstances unless there be not only no legal right but no appearance or colour of a legal right.<sup>18</sup>

### **[s 379.3] Mistake.—**

When a person takes another man's property believing under a mistake of fact and in ignorance of law, that he has a right to take it, he is not guilty of theft because there is no dishonest intention, even though he may cause wrongful loss.<sup>19</sup>

### **[s 379.4] Taking back property lent on hire.—**

There was a hire-purchase agreement in respect of a vehicle. The custody of the vehicle was handed over to the hirer. The financier was to continue as the owner till the last instalment. The financier took back the vehicle for default in payments in accordance with the agreement. It was held that this did not amount to theft by the owner of his vehicle as the vital element of dishonest intention was lacking.<sup>20</sup>

### **[s 379.5] Hire Purchase.—**

When hirer himself committed default by not paying the instalments and under the agreement, the appellants have repossessed the vehicle, the respondent-hirer cannot have any grievance as the vital element of 'dishonest intention' is lacking. The element of 'dishonest intention' which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer.<sup>21</sup> Because of the fact that status of complainant relating to the vehicle in question having purchased under Hire Purchase Agreement till saturation of the loan amount remains merely a trustee or bailee on behalf of financier and further in the aforesaid background the financier happens to be the real owner of the vehicle till saturation of the loan amount, no prosecution would lie on that score.<sup>22</sup>

The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on hire until the conditions for transfer of the property to him have been fulfilled.<sup>23</sup>

**2. 'Movable property'.—**Explanations 1 and 2 state that things attached to the land may become movable property by severance from the earth, and that the act of severance may of itself be theft [*vide* ill (a)]. Thus, the thief who severs and carries away is put in exactly the same position as if he carried away what had previously been severed. A sale of trees belonging to others and not cut down at the time of sale does not constitute theft.<sup>24</sup> But removal of a man's trees that had been blown down by a storm amounts to theft.<sup>25</sup>

It is not necessary that the thing stolen must have some appreciable value.

### **[s 379.6] CASES.— *Earth and stones.*—**

Cart-loads of earth<sup>26</sup> or stones<sup>27</sup> quarried and carried away from the land of another are subject of theft.

#### **[s 379.6.1] *Timber.*—**

Extraction of teak timber without licence amounts to theft of Government timber.<sup>28</sup> In *Bhaiyalal v State of MP*,<sup>29</sup> it was held that the act of cutting of trees standing on Government land amounts to theft under section 378.

#### **[s 379.6.2] *Salt.*—**

Salt spontaneously formed on the surface of a swamp appropriated by Government,<sup>30</sup> or in a creek under the supervision of Government,<sup>31</sup> is subject of theft; but not that which is formed on a swamp not guarded by Government.<sup>32</sup>

#### **[s 379.6.3] *Human body.*—**

Human body whether living or dead (except bodies, or portions thereof, or mummies, preserved in museums or scientific institutions) is not movable property.<sup>33</sup>

#### **[s 379.6.4] Idol.—**

Idol is movable property and can be the subject matter of theft. It's being a juridical person for certain purposes is no bar to its also being a movable property.<sup>34.</sup>

#### **[s 379.6.5] Gas.—**

A, having contracted with a gas company to consume gas and pay according to meter, in order to avoid paying for the full quantity of gas consumed, introduced into the entrance pipe another pipe for the purpose of conveying the gas to the exit pipe of the meter and so to the burners, for consumption without passing through the meter itself. The entrance pipe was the property of A, but he had not by his contract any interest in the gas until it passed through the meter. It was held that A was guilty of larceny.<sup>35.</sup>

#### **[s 379.6.6] Electricity.—**

Theft of electricity is governed by [section 135 of the Electricity Act, 2003](#). Though the electricity is not movable property within the meaning of [section 378, IPC, 1860](#), and as such its dishonest abstraction cannot be regarded as theft under section 378, yet by a legal fiction created by section 39 of the Indian [Electricity Act, 1910](#) (now repealed), such an act should be deemed to be an offence of theft and punished under [section 379, IPC, 1860](#), and [section 39 of the Electricity Act, 1910](#). In the case of *Mahalakshmi Spinners Ltd v State of Haryana*,<sup>36.</sup> it was held that when there is a specific/ special law covering the question of theft of electricity, i.e. [section 135 of the Electricity Act, \(Act 9 of 1910\)](#), the general law contained in [section 379, IPC, 1860](#) will not be applicable. Any attempt by the notice to add offence under [section 379 IPC, 1860](#) will be a crude device by the prosecution to overcome the likely objection from the accused about the filing of the complaint instead of registration of FIR. Law is well settled that special law will prevail over the general law.

#### **[s 379.6.7] Water.—**

Water supplied by a water company to a consumer, and standing in his pipes, may be the subject of larceny.<sup>37.</sup> Water when conveyed in pipes and so reduced into possession can be the subject of theft;<sup>38.</sup> but not water running freely from a river through an open channel made and maintained by a person.<sup>39.</sup>

#### **[s 379.6.8] Animals.—Bull.—**

A bull dedicated to an idol and allowed to roam at large is not *res nullius* (thing belonging to no one) but remains the property of the trustees of the temple, and can become the subject of theft;<sup>40.</sup> but not a bull set at large in accordance with a religious usage.<sup>41.</sup>

#### **[s 379.6.9] Peacock.—**

A peacock tamed but not kept in confinement is the subject of theft.<sup>42</sup> So is the case with pigeons kept in a dovecote and partridges.

**[s 379.6.10] Fish.—**

Fish in an ordinary open irrigation tank,<sup>43</sup> or in a tank not enclosed on all sides but dependent on the overflow of a neighbouring channel,<sup>44</sup> are *ferae naturae* and not subject to theft. If the water in an irrigation tank has gone so low as not to permit the fish leaving the tank then they may be subject of theft.<sup>45</sup> Similarly, fish in an enclosed tank are restrained of their natural liberty and liable to be taken at any time according to the pleasure of the owner, and are, therefore, subject of theft.<sup>46</sup> Thus fish in an enclosed Government tank is the property in possession of Government and it is theft to catch fish therein without a licence apart from being an offence under the Fisheries Act, 1897.<sup>47</sup> Fish are said to be in the possession of a person who has possession of any expanse of water such as a tank where they live but from where they cannot escape. They are also regarded as being in the possession of a person who owns an exclusive right to catch them in a particular spot known as a fishery but only within that spot.<sup>48</sup> Where plots belonging to different owners in a low-lying area, demarcated by ridges of small height, are sub-merged during certain months in the year by one sheet of water and fish escape from one plot to another, it cannot be said in such a case that fish is the subject matter of theft.<sup>49</sup>

**[s 379.6.11] Crop.—**

Removal of paddy crop has been held to be theft. Persons who helped removal under directions as labourers were not guilty. The fact that the land was in the possession of the complainant and it was he who had grown the crop was held to be sufficient to negative the accused's suggestion that he removed the crop under a *bona fide* belief that he was entitled to it.<sup>50</sup>

**[s 379.6.12] Standing Timber.—**

Standing timber being embedded in the earth is immovable property but the moment it is severed from the earth it becomes capable of being the object of theft.<sup>51</sup>

**[s 379.6.13] Ballot Paper.—**

Accused was allegedly found in possession of a bundle of 84 stolen postal ballot papers at gate of printing press. High Court rejected the plea of petitioner that since he was found in possession of ballot papers, he ought not to have been tried for an offence under [section 380 IPC, 1860](#), rather he could have been tried under section 127(p)(iv) of Assam Panchayat Act, 1994.<sup>52</sup>

**[s 379.6.14] Motor vehicles.—**

The allegation was that the accused changed engine, colour, etc. of stolen vehicles and got them registered in new owners' names. But no particular instance was shown. The incident was more than ten years old. There was no explanation for delay in presenting charge-sheet. Hence, acquittal was held proper.<sup>53.</sup>

**3. 'Out of the possession of any person'.—**The property must be in the possession of the prosecutor.<sup>54.</sup> Thus, there can be no theft of wild animals, birds, or fish, while at large, but there can be a theft of tamed animals. It is sufficient if property is removed against his wish from the custody of a person who has an apparent title, or even colour of right to such property.<sup>55.</sup> Transfer of possession of movable property without consent of the person in possession need not, however, be permanent or for a considerable length of time nor is it necessary that the property should be found in possession of the accused. Even a transient transfer of possession is sufficient to meet the requirement of this section.<sup>56.</sup>

The authors of the Code remark: "We believe it to be impossible to mark with precision, by any words, the circumstances which constitute possession. It is easy to put cases about which no doubt whatever exists, and about which the language of lawyers and of the multitude would be the same. It will hardly be doubted, for example, that a gentleman's watch lying on a table in his room is in his possession, though it is not in his hand, and though he may not know whether it is on his writing-table or on his dressing-table. As little will it be doubted that a watch which a gentleman lost a year ago on a journey, and which he has never heard of since, is not in his possession. It will not be doubted that when a person gives a dinner, his silver forks, while in the hands of his guests, are still in his possession; and it will be as little doubted that his silver forks are not in his possession when he has deposited them with a pawnbroker as a pledge. But between these extreme cases lie many cases in which it is difficult to pronounce, with confidence, either that property is or that it is not in a person's possession."<sup>57.</sup>

A movable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need.<sup>58.</sup>

### **[s 379.7] 'Any person'.—**

The person from whose possession the property is taken may or may not be the owner of it and may have his possession either rightful or wrongful. Mere physical control of the person over the thing is quite enough [*vide* ill. (j) and (k)].

### **[s 379.8] Attachment.—**

Theft can be committed by the owner of property under attachment by removing it.<sup>59.</sup> The removal of crops, standing on land attached and taken possession of by the Court under [section 145, Code of Criminal Procedure, 1973](#)(Cr PC, 1973), amounts to theft.<sup>60.</sup>

Where a judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force, it was held by the Madras High Court that he could not be convicted of theft but of offences under sections 424 and 403.<sup>61.</sup>

### **[s 379.9] Joint possession.—**

Where there are several joint owners in joint possession, and any one of them, dishonestly takes exclusive possession, he would be guilty of theft.<sup>62</sup> A co-owner of movable property with another, even if his share is defined, can be guilty of theft, if he is found to remove the joint property without even an implied consent of the co-owner, with a view to cause wrongful loss to the co-owner and consequently wrongful gain to himself or anybody else.<sup>63</sup> Similarly, if a coparcener dishonestly takes the separate property of another coparcener, it amounts to theft.<sup>64</sup>

### **[s 379.10] Seizure of things delivered under hire-purchase.—**

In *Shriram Transport Finance Co Ltd v R Khaishiulla Khan*,<sup>65</sup> it was held that in case of a hire-purchase transaction, when the financier seizes the vehicle for default in payment of instalments by the hirer, the financier cannot be charged for an offence of theft under section 378 because of absence of *mens rea*. The right of the owner to get back the vehicle is not affected by the fiction of 'deemed owner' under the [Motor Vehicles Act, 1988](#). The act of taking back the vehicle did not amount to theft.<sup>66</sup>

### **[s 379.11] Animals *ferae naturae*.—**

Animals found in reserve forests are *ferae naturae* and incapable of possession. Till they are tamed and domesticated and brought to the custody of a person, whether it is Government or any other individual, such animals cannot be said to be in the possession of the Government and persons who remove them cannot be convicted of theft.<sup>67</sup>

### **[s 379.12] CASES.—**

Where the complainant had an apparent title as tenant of the land together with long possession, and he had on the strength of this raised the crops which the accused removed, it was held that the accused was guilty of theft because he was not justified in taking the law into his own hands, even if he was entitled to hold the land, as he was not in actual possession of it.<sup>68</sup>

Where a person takes a lorry on hire-purchase system from a company which under the agreement had reserved the right of seizing the lorry in the event of default in payment of instalments, and default is made, then the company is not entitled to retake possession of the lorry by force or by removing it from the hands of the purchaser's servants who had no authority, express or implied, to give any consent. If the company or its agents do so they are guilty of an offence under this section. The question whether ownership had or had not passed to the purchaser is wholly immaterial as this section deals with possession and not ownership. The legal possession of the lorry was vested in the purchaser and the company was not entitled to recover possession of the lorry, even though default in payment of any instalments had taken place, without the consent of the purchaser. Possession of the driver and the cleaner was the possession of their master and they were not competent to give consent on behalf of the master.<sup>69</sup>



**4. 'Consent'.—**The thing stolen must have been taken without the consent of the person in possession of it. Explanation 5 says that consent may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied [*vide* ills. (m) and (n)]. But consent given under improper circumstances will be of no avail [*vide* ill. (c)]. Consent obtained by a false representation which leads to a misconception of facts will not be a valid consent.<sup>70.</sup>

#### **[s 379.13] CASES.—**

A sought the aid of B with the intention of committing a theft of the property of B's master. B, with the knowledge and consent of his master, and for the purpose of procuring A's punishment, aided A in carrying out his object. It was held that as the property removed was so taken with the knowledge of the owner, theft was not committed, but A was guilty of abetment of theft.<sup>71.</sup> Really speaking, the owner did not consent to the dishonest taking away of the property. He merely assisted the thief in carrying out the latter's dishonest intention. Cf. ills. (m), (n) and (o). The thief had no knowledge of the owner's act and it could not, therefore, be construed as a consent.

#### **[s 379.14] Unauthorised consent.—**

Possession of wood by a Forest Inspector, who is a servant of Government, is possession of the Government itself and a dishonest removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, was held to constitute theft as consent was unauthorised and fraudulent.<sup>72.</sup>

**5. 'Moves that property'.—**The offence of theft is completed when there is a dishonest moving of the property, even though the property is not detached from that to which it is secured. The least removal of the thing taken from the place where it was before is a sufficient asportation though it is not quite carried off. Upon this principle the guest, who having taken off the sheets from his bed with an intent to steal them carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of theft. So also was he, who having taken a horse in a close with intent to steal it, was apprehended before he could get it out of the close.<sup>73.</sup>

Explanations 3 and 4 state how 'moving' could be effected in certain cases. Illustrations (b) and (c) elucidate the meaning of Explanation 4.

In a prosecution under sections 379/411 in respect of timber seized in a raid the link between the seized timber and the accused was not established nor was any evidence brought to show that the seized timber was transported by the accused under the guise of permits issued to him by the forest department. Acquittal of the accused of the offences under the aforesaid sections was not interfered with.<sup>74.</sup>

**6. Explanations 1 and 2.—**The moving by the same act, which effects the severance, may constitute theft.<sup>75.</sup> Carrying away of trees after felling them is theft<sup>76.</sup> but mere sale is not.<sup>77.</sup> In the case of growing grass, a moving by the same act, which affects its severance from the earth, may amount to theft.<sup>78.</sup>

Where certain land, on which there was a standing crop of paddy, was entrusted to the accused to take care of and watch till the paddy was ripe when they were to give notice

to the factory people who would reap it, it was held that by cutting the crops themselves and disposing of the same, the accused had committed theft.<sup>79.</sup>

#### **[s 379.15] Husband and wife.—Hindu law.—**

There is no presumption of law that husband and wife constitute one person in India for the purpose of criminal law. If the wife removes her husband's property from his house with dishonest intention, she is guilty of theft.<sup>80.</sup> A Hindu woman who removes from the possession of her husband and without his consent, her *stridhan* (woman's property) cannot be convicted of theft because this species of property belongs to her absolutely.<sup>81.</sup> So also, a husband can be convicted if he steals his wife's *stridhan*.

Where certain articles of movable property were in the joint possession of husband and wife, it was held that the husband who was alleged to have taken away the articles could not be held guilty of theft.<sup>82.</sup>

#### **[s 379.16] Mohammedan law.—**

It is laid down that a Mohammedan wife may be convicted of stealing from her husband, because under this system of law, there does not exist the same union of interest between husband and wife as exists between an English husband and wife.<sup>83.</sup> The same reasoning would apply in the case of a Mohammedan husband.

#### **[s 379.16.1] *Necessitas inducit privilegium quo ad jura privata.*—**

Where a man in extreme want of food or clothing steals either in order to relieve his present necessities, the law allows no such excuse to be considered.

#### **[s 379.17] Single or several thefts.—**

Removal by one single act of several articles constitutes one offence of theft only although the articles belong to different persons.<sup>84.</sup>

#### **[s 379.18] Restoration of stolen property.—**

The property stolen may be returned to the person from whom it was stolen under [section 452, Cr PC, 1973](#), and an innocent purchaser may be compensated for the price paid under section 453, if any money is found in the possession of the thief. But the property restored should be in existence at the time of theft. R's cow having been stolen, the thief after a lapse of a year and a half was convicted. Six months after the theft V innocently purchased the cow, which while in his possession, had a calf. The Magistrate ordered that the cow and the calf should be delivered up by V to R. It was held that, as the calf was not even in embryo at the date of the theft, the order to deliver up the calf was illegal.<sup>85.</sup>

In *Karuppanan v Guruswami*,<sup>86.</sup> it was held by the High Court of Madras that where the person accused of theft is acquitted and claims as his own the property seized from him, it should be restored to him in the absence of special reasons to the contrary. The

Court observed that since it was clear that the learned Sub-Magistrate has over-looked the fundamental principle, that when property is seized from a person who is afterwards acquitted of stealing it, the property should ordinarily be returned to that person. The Magistrate cannot be said to have exercised his discretion in a judicial manner.

#### **[s 379.19] Possession, presumption of theft.—**

Where electric wires stolen from an electric sub-station were found in the possession of the accused and there was evidence to show that the material of that kind was not available in the market, it was held that a presumption arose that the material was a stolen property and that the accused committed the theft. Considering that the accused was the sole breadwinner of the family and he had no past criminal record, one year's RI was considered to be good enough punishment to meet the ends of justice.<sup>87.</sup>

#### **[s 379.20] Theft and extortion.—**

The offence of extortion is carried out by overpowering the will of the victim, in committing a theft, on the other hand, the offender's intention always is to take away without consent.<sup>88.</sup>

#### **[s 379.21] Charge proved.—**

The accused administered intoxicating substance to complainant and took away valuable goods and cash. The complainant identified these articles in the Test Identification Proceedings conducted during investigation and they were also identified by him in the Court hence, conviction was held to be proper.<sup>89.</sup>

#### **[s 379.22] Double jeopardy.—**

In a case, FIR was registered under [section 379 of IPC, 1860](#) and [section 21\(1\) of Mines and Minerals \(Development and Regulation\) Act, 1957](#) for the allegation was theft of sand belonging to Government. The plea of Double Jeopardy was rejected holding that both offences are not same in terms of [Article 20\(2\) of the Constitution](#). A cursory comparison of these two provisions with [section 378 of IPC, 1860](#) would go to show that the ingredients are totally different. The contravention of the terms and conditions of mining lease, etc. constitutes an offence punishable under section 21 of the Mines and Minerals Act, 1957, whereas dishonestly taking any movable property out of the possession of a person without his consent constitutes theft. Thus, it is undoubtedly clear that the ingredients of an offence of theft as defined in [s 378 of IPC, 1860](#) are totally different from the ingredients of an offence punishable under section 21(1) r/w.s. 4 (1) and 4 (1 A) of the Mines and Minerals Act, 1957.<sup>90.</sup>

6. *Madra*, (1946) Nag 326.
7. *Madaree Chowkeedar*, (1865) 3 WR (Cr) 2.
8. Bailey, (1872) LR 1 CCR 347. For a general study as to the notion of theft and obtaining by false pretenses, see M Adekunle Owaade, *THE DILEMMA OF THE CRIMINAL LAW IN PROPERTY OFFENCES—A comparative Analysis of the basic Issues in stealing and obtaining by false pretenses*, (1989) 31 JILI 226.
9. *Sri Churn Chungo*, (1895) 22 Cal 1017 (FB); *Nagappa*, (1890) 15 Bom 344.
10. *KN Mehra*, AIR 1957 SC 369 [LNIND 1957 SC 14] : 1957 Cr LJ 550 .
11. *Pyare Lal*, AIR 1963 SC 1094 [LNIND 1962 SC 341] : (1963) 2 Cr LJ 178 .
12. *Algarasawmi Tevan*, (1904) 28 Mad 304.
13. *Ramzani*, (1943) 19 Luck 399 .
14. *Arfan Ali*, (1916) 44 Cal 66 ; *Harnam Singh v State*, (1923) 5 Lah 56.
15. *Hamid Ali Bepari*, (1925) 52 C I 1015.
16. *Ram Ekbal v State*, 1972 Cr LJ 584 : AIR 1972 SC 949 .
17. *G Raminadin*, 1980 Cr LJ 1477 : AIR 1980 SC 2127 ; See also *Dandi Deka*, 1982 Cr LJ NOC 188 (Gau).
18. *Apparao v Lakshminarayana*, AIR 1962 SC 586 [LNIND 1961 SC 324] : (1962) 1 Cr LJ 518 ; *Chandi Kumar v Abanidhar Roy*, AIR 1965 SC 585 [LNIND 1963 SC 231] : (1965) 1 Cr LJ 518 .
19. *Nagappa*, (1890) 15 Bom 344.
20. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] .
21. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] : (2001) 7 SCC 417 [LNIND 2001 SC 2906] .
22. *Naresh Singh v State of Bihar*, (PATNA HC) : 2017 (2) PLJR 514 .
23. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] .
24. *Balos*, (1882) 1 Weir 419.
25. *Dunyapat*, (1919) 42 All 53 .
26. *Shivramm*, (1891) 15 Bom 702.
27. *Suri Venkatappayya Sastri v Madula Venkanna*, (1904) 27 Mad 531 (FB).
28. *Yeok Kuk*, (1928) 6 Ran 386.
29. *Bhaiyalal v State of MP*, 1993 Cr LJ 29 (MP).
30. *Tamma Ghantaya*, (1881) 4 Mad 228.
31. *Mansang Bhavsang*, (1873) 10 BHC 74.
32. *Government Pleader*, (1882) 1 Weir 412.
33. *Ramadhin*, (1902) 25 All 129 .
34. *Ahmed v State*, AIR 1967 Raj 190 [LNIND 1966 RAJ 32] .
35. *White v White*, (1853) 6 Cox 213. *R v Hughes*, (2000) 2 Cr App R (S) 399 [CA (Crim Div)], gas meter by passed, three months' imprisonment.
36. *Mahalakshmi Spinners Ltd v State of Haryana*, 2007 Cr LJ 429 (P&H).
37. *Ferens v O'Brien*, (1883) 11 QBD 21 .
38. *Mahadeo Prasad*, (1923) 45 All 680 .
39. *Sheikh Arif*, (1908) 35 Cal 437 .
40. *Nalla*, (1887) 11 Mad 145.
41. *Romesh Chunder Sannyal v Hiru Mondal*, (1890) 17 Cal 852 ; *Bandhu*, (1885) 8 All 51 ; *Nihal*, (1887) 9 All 348 .
42. *Nanhe Khan*, (1897) 17 AWN 41.
43. *Subba Reddi v Munshoor Ali Saheb*, (1900) 24 Mad 81.
44. *Maya Ram Surma v Nichala Katani*, (1888) 15 Cal 402 .

45. *Subbian Servai*, (1911) 36 Mad 472.
46. *Shaik Adam*, (1886) 10 Bom 193; *Nokolo Behara v State*, (1927) 51 Mad 333.
47. *State of Rajasthan v Pooran Singh*, 1977 Cr LJ 1055 (Raj).
48. *Chandi Kumar v Abanidhar Roy*, AIR 1965 SC 585 [LNIND 1963 SC 231] : (1965) 1 Cr LJ 496 .
49. *Bairagi Rout v Brahmananda Das*, 1970 Cr LJ 638 .
50. *Sukchand Harijan v State of Orissa*, 1988 Cr LJ 1579 (Ori). **Relying** on *Kabir v Arjun Sial*, (1959) 25 Cut LT 249. *Droupadi Devi v Padmanabha Mishra*, 1997 Cr LJ 2807 (Ori), the accused removed his own cultivated crop. The fact of dispute about land which was in possession of the accused would not make him guilty of theft. Civil case of ownership was pending.
51. *P T Rajan Babu v Anitha Chandra Babu*, 2011 Cr LJ 4541 (Ker).
52. *Prafula Saikia v State of Assam*, 2012 Cr LJ 3889 (Gau).
53. *Public Prosecutor v B Ramakrishna*, 1997 Cr LJ 3940 (AP).
54. *Hossene v Rajkrishna*, (1873) 20 WR (Cr) 80. *Rabi Kumar Agarwal v State of WB*, 2003 Cr LJ 1342 (Cal), items of furniture alleged to be stolen by forcing entry into the room, no proof available that the complainant was in possession of such items. Charge not allowed to be framed. *Sashibhusan Giri v Kalakar Moharita*, 2003 Cr LJ 1065 , allegation of cutting and removing paddy crop from the complainant's land, but neither he nor his witness were able to identify the field in question and when the crop was shown there. There was dispute about possession, one claiming through succession and the other through sale deed. Thus, the ingredient of theft was not made out. *Lila Satynarayan Pd. v Shiv Nandan Singh*, 2003 Cr LJ NOC 34 : (2002) 2 BLJR 864 , theft of logs, no record of purchase or of possession, false charge.
55. *Queen-Empress v Gangaram Santram*, (1884) 9 Bom 135.
56. *State of Maharashtra v Vishwanath*, 1979 Cr LJ 1193 : AIR 1979 SC 1825 [LNIND 1979 SC 316] .
57. The Works of Lord Macaulay, Note N, On the Chapter of offences against property.
58. James Fitzjames Stephen, *DIGEST OF CRIMINAL LAW*, 9th Edn, Article 359. *Harichandran v State of TN*, 1997 Cr LJ 41 (Mad), the accused was admittedly the owner of the land from where he removed rocks for commercial purposes. No offence. *State of Rajasthan v Amit*, 1997 Cr LJ 121 (Raj), theft of generator, no details as to generator given, chowkedar not produced in evidence, delay of 15-20 days in lodging report, acquittal of accused proper.
59. *Periyannan*, (1883) 1 Weir 423; *Chunnu*, (1911) 8 ALJR 656.
60. *Bande Ali Shaikh*, (1939) 2 Cal 419 .
61. *Obayya*, (1898) 22 Mad 151.
62. *Ponnurangam*, (1887) 10 Mad 186.
63. *Ramsharnagat Singh*, 1966 Cr LJ 856 .
64. *Sita Ram Rai*, (1880) 3 All 181 .
65. *Finance Co Ltd v R Khaishiulla Khan*, 1993 Cr LJ 1069 (Kant).
66. *Sundaram Finance Ltd v Mohd. Abdul Wakeel*, 2001 Cr LJ 2441 (MP) Another similar case *Charanjit Singh Chadha v Sudhir Mehra*, 2001 Cr LJ 4255 (SC), retaking things delivered under hire-purchase. *Sekar v Arumugham*, 2000 Cr LJ 1552 (Mad) lorry financed under hire-purchase and hypothecation, seized by the banker on default, no theft.
67. *Perumal*, (1955) Mad 795.
68. *Pandita v Rahimulla Akundo*, (1900) 27 Cal 501 .
69. *HJ Ransom v Triloki Nath*, (1942) 17 Luck 663 . *Selvaraj v State of TN*, 1998 Cr LJ 2683 (Mad), the victim stated that someone had stolen his money by cutting his bag, but he had not seen him. The person who was caught was neither identified nor was anything recovered from him. Acquitted. See also *Shahul Hameed v State of TN*, 1998 Cr LJ 885 (Mad).

70. *Parshottam*, (1962) 64 Bom LR 788 .
71. *Troylukho Nath Chowdhry v State*, (1878) 4 Cal 366 .
72. *Hanmanta*, (1877) 1 Bom 610.
73. 2 East PC 555.
74. *State of HP v Jagat Ram*, 1992 Cr LJ 1445 (HP).
75. (1870) 5 MHC (Appx) xxxvi.
76. *Bhagu : Vishnu*, (1897) Unrep Cr C 928.
77. *Balos*, (1882) 1 Wier 419.
78. *Samsuddin*, (1900) 2 Bom LR 752 .
79. *Durga Tewari*, (1909) 36 Cal 758 .
80. *Butchi v State*, (1893) 17 Mad 401.
81. *Natha Kalyan*, (1871) 8 BHC (Cr C) 11.
82. *Harmanpreet Singh Ahluwalia v State of Punjab*, (2009) 7 SCC 712 [LNIND 2009 SC 1121] : 2009 Cr LJ 3462 .
83. *Khatabai*, (1869) 6 BHC (Cr C) 9.
84. *Krishna Shahuji*, (1897) Unrep Cr C 927.
85. *Vernede*, (1886) 10 Mad 25. The appellant and two others were put up for joint trial. The charges levelled against the two were under section 448 (house trespass) and section 380, whereas the charge against the appellant only was under section 448, which is a summons case and section 380 is a warrant case. The charge against the appellant was held to be an abuse of the process of the court and the proceeding against him was accordingly quashed. *Bhaskar Chatteraj v State of WB*, AIR 1991 SC 317 : 1991 Cr LJ 451 .
86. *Karuppanan v Guruswami*, (1933) ILR 56 Mad 654 : AIR 1933 Mad 434 [LNIND 1932 MAD 175] a.
87. *Rasananda Bindani v State of Orissa*, 1992 Cr LJ 121 (Ori). See further *State of Kerala v Kuttan Mohanan*, 1988 Cr LJ 453 (Ker), where the fact that the owner did not report the matter to the police was held to be no ground for rejecting his testimony. *Santu v State of MP*, 2001 Cr LJ 4455 (Chhattisgarh), property recovered from the accused could not be proved to be stolen, conviction set aside.
88. *Dhananjay v State of Bihar*, (2007) 14 SCC 768 [LNIND 2007 SC 111] : 2007 Cr LJ 1440 : (2007) 2 KLJ 294 .
89. *Manish Soni v State (Govt. of NCT) Delhi*, 2013 Cr LJ 1949 (Del). See *Abul Hassan v State* 2009 Cr LJ 3664 (Pat), where the allegation was that appellant took away cash and wrist watch of informant after administering intoxicant mixed in tea. But accused is given benefit of doubt on the ground that the prosecution failed to produce any medical report on the record of the Forensic Science Laboratory that the mouth wash of the informant or his brother contained intoxicant substance, sufficient to cause sedation if administered in required quantity.
90. *Sengol v State*, 2012 Cr LJ 1705 (Mad).

## THE INDIAN PENAL CODE

### CHAPTER XVII OF OFFENCES AGAINST PROPERTY

#### Of Theft

#### [s 380] Theft in dwelling house, etc.

Whoever commits theft in any building,<sup>1</sup> tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### State Amendment

**Tamil Nadu.**—*The following amendments were made by Tamil Nadu Act No. 28 of 1993, Section 2.*

**Section 380 of the Indian Penal Code** (Central Act XLV of 1860) (hereinafter in this Part referred to as the principal Act), shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be added, namely:—

"(2) Whoever commits theft in respect of any idol or icon in any building used as a place of worship 'shall be punished with rigorous imprisonment for a term which shall not be less than two years but which may extend to three years and with fine which shall not be less than two thousand rupees:

*Provided that the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than two years."*

#### COMMENT—

The object of the section is to give greater security to property deposited in a house, tent or vessel. Theft from a person in a dwelling house will be simple theft under section 379.<sup>91.</sup>

**1. 'Theft in any building'.—**Building means a permanent edifice of some kind. Theft should, under the section, have been committed in any such building. Theft from a veranda,<sup>92.</sup> or the top of a house,<sup>93.</sup> or a brake-van,<sup>94.</sup> is not theft in a building. But where the accused stole some luggage and cash from a railway carriage, when it was at a railway station, it was held that though the railway carriage was not a building, the railway station was, and the accused was therefore, guilty under this section.<sup>95.</sup> An entrance hall surrounded by a wall in which there were two doorways but no doors, which was used for custody of property, was held to be a building.<sup>96.</sup> A courtyard<sup>97.</sup> is, but a compound<sup>98.</sup> is not, a building. Merely on basis of having possession of some stolen articles, accused cannot be held to be guilty of offences punishable under sections 450 and 380.<sup>99.</sup>

#### [s 380.1] CASES.—

The only evidence against accused is the alleged recovery of gold chain at his instance. That cannot connect the appellant to the theft.<sup>100</sup> The accused persons were suspected to have committed some offences of house-breaking and on being interrogated they voluntarily disclosed some places where they had committed house-breaking in respect of gold ornaments and then they disclosed the shop of a goldsmith to whom they had sold the gold and silver ornaments. It was held that their conviction, based merely on uncorroborated evidence as to recovery of stolen property at their instance, was highly unsafe. Accordingly, their conviction under sections 380 and 457 was set aside.<sup>101</sup> In a case involving theft of an idol, the guilt of the accused could not be proved by circumstantial evidence. The confession of the co-accused was not voluntary. Acquittal of the accused was held to be justified.<sup>102</sup>

### **[s 380.2] House breaking and Theft.—**

Offence under section 454 also includes section 380. In view of the conviction for [section 454 of the IPC, 1860](#), separate conviction for the offence under [section 380 of the IPC, 1860](#) is not needed.<sup>103</sup>

### **[s 380.3] Punishment.—**

The accused was poor and rustic villager. He was the only bread winner of the family. He was not a previous convict. He had already faced trial for seven years. The order releasing him after due admonition was held to be proper.<sup>104</sup>

### **[s 380.4] Sentences in different cases can run concurrently.—**

The Supreme Court, in *Benson v State of Kerala*,<sup>105</sup> examined whether an accused, who is sentenced to undergo different periods of sentences punished in different cases should undergo the imprisonment consecutively or can undergo concurrently, and held that in terms of sub-section (1) of [section 427 Cr PC, 1973](#), if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced, however, this normal Rule is subject to a qualification and it is within the powers of the Court to direct that the subsequent sentence shall run concurrently with the previous sentence.

### **[s 380.5] Probation.—**

Taking note of the age of accused which is put at 20 years, he could be given the benefit of the [Probation of Offenders Act, 1958](#).<sup>106</sup>



91. *Tandi Ram v State*, (1876) PR No. 14 of 1876.
92. (1870) 1 Weir 435; contra, *Jabar*, (1880) PR No. 1 of 1881.
93. (1866) 1 Weir 435.
94. (1880) 1 Weir 436.
95. *Sheik Saheb*, (1886) Unrep Cr C 293.
96. *Dad*, (1878) PR No. 10 of 1879.
97. *Ghulam Jelani*, (1889) PR No. 16 of 1889.
98. *Rama*, (1889) Unrep Cr C 484.
99. *Bablu Alias Mahendra v State of Madhya Pradesh*, 2009 Cr LJ 1856 (MP).
100. *Azeez v State of Kerala*, (2013) 2 SCC 184 [LNIND 2013 SC 54] .
101. *Meghaji Godaji Thakore v State of Gujarat*, 1993 Cr LJ 730 (Guj); *Kuldip Singh v State of Delhi*, (2003) 12 SCC 528 [LNIND 2003 SC 1071] : AIR 2004 AC 771 : (2004) 109 DLT 190 , conviction set aside because of doubtful recovery. The accused was employed in the house of the deceased. He was removed but reemployed in the factory of the deceased. This fact had to be excluded because it was not put to him during his examination under [section 313, Cr PC, 1973](#). The accused being a domestic help, the presence of his fingerprints in the household articles was natural and not of any special significance. He was not the only person employed the deceased being in the habit of changing servants.
102. *State of HP v Raj Kumar*, 1004 Cr LJ 894 (HP). *Om Prakash v State of Rajasthan*, 1998 Cr LJ 1636 : AIR 1998 SC 1220 [LNIND 1998 SC 87] , five accused persons robbed complainant of his wrist watch and currency notes and ran away. The witnesses chased them out to no use and went to police station. But two of them were acquitted. Conviction of the rest of them was altered from section 395 to one under section 392, (punishment for robbery). *Raju v State of Rajasthan*, 1997 Cr LJ 4547 (Raj), woman attacked when alone by accused persons, they strangulated her, recovery of stolen articles on their information, evidence of sons and daughters-in-law of deceased, conviction under sections 302, 380 and 454.
103. *K E Lokesha v State of Karnataka*, 2012 Cr LJ 2120 (Kar).
104. *State of HP v Ishwar Dass*, 1999 Cr LJ 3931 (HP).
105. *Benson v State of Kerala*, (2016) 10 SCC 307 [LNIND 2016 SC 408] : 2016 (9) Scale 670 .
106. *E Lokesha v State of Karnataka*, 2012 Cr LJ 2120 (Kar).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

#### [s 381] Theft by clerk or servant of property in possession of master.

**Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

#### COMMENT—

This section provides for a severe punishment when a clerk or servant has committed theft because he has greater opportunities of committing this offence owing to the confidence reposed in him. When the possession of the stolen property is with the master, this section applies; when it is with the servant, section 408 applies. Where some policemen stole a sum of money shut up in a box, and placed it in the Police Treasury building, over which they were mounting guard as sentinels, they were held to have committed an offence under this section and not under section 409.<sup>107</sup> Where the property was not in possession of the master, or the money was entrusted to the accused and he misappropriated the same, the offence under section 381 will not be attracted.<sup>108</sup>

<sup>107</sup>. *Juggurnath Singh*, (1865) 2 WR (Cr) 55; *Radhey Shyam v State of UP*, 2002 Cr LJ 1227 (All), domestic servants who were prosecuted for theft and murder of their master remained on duty even when investigation was going on, nothing was found against them, they were not allowed to be prosecuted only on the basis of suspicion. *Slim Babamiya Sutar v State of Maharashtra*, 2000 Cr LJ 2696 (Bom), murder, connection of the accused with it not proved, but two gold articles of the deceased were recovered from the accused, hence convicted under section 381, sentence of three years RI reduced to 6 months already undergone, accused directed to be released. *N Narasimha Kumar v State of AP*, 2003 Cr LJ 3188 (AP), theft by clerk of the State Public Service Commission's question papers and stealing xerox copies. Investigating Officer was not examined. No recovery of question paper from the accused. His conviction was set aside. *State of HP v Dev Prakash*, 2003 Cr LJ 2882 (HP), alleged theft of stamp papers from the strong room of the District Treasury Officer. Not proved.

<sup>108</sup>. *Vijay Kumar v State of Rajasthan* 2012 Cr LJ 2790 (Raj).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

#### **[s 382] Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.**

Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

#### ILLUSTRATIONS

- (a) A commits theft on property in Z's possession; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.
- (b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

#### COMMENT—

Under this section it is not necessary to either to cause hurt or even to make an attempt to cause hurt. Mere preparation to cause hurt should the occasion arise e.g., to affect his escape is enough to bring the accused within the mischief of this section. One who keeping a knife with him commits theft may be liable under this section even though there was no occasion to wield the knife or to cause injury.<sup>109</sup>

If hurt is actually caused when a theft is committed, the offence is punishable as robbery, and not under this section.<sup>110</sup> In robbery there is always injury. In offences under this section the thief is full of preparation to cause hurt but he may not cause it.

Offences against Property—Extortion

<sup>109</sup>. *Re Diwan Singh*, 1980 Cr LJ 760 (MP).

<sup>110</sup>. *Hushrut Sheikh*, (1866) 6 WR (Cr) 85.



# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Extortion

#### [s 383] Extortion.

**Whoever intentionally puts any person in fear of any injury<sup>1</sup> to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property<sup>2</sup> or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".**

#### ILLUSTRATIONS

- (a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.
- (b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.
- (c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.
- (d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Extortion

#### [s 384] Punishment for extortion.

**Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.**

#### COMMENT—

This offence takes a middle place between theft and robbery.

#### [s 384.1] Ingredients.—

The section requires two things:—

- (1) intentionally putting a person in fear of injury to himself or another;
- (2) dishonestly inducing the person so put in fear to deliver to any person any property or valuable security.

These ingredients have been restated by the Supreme Court as follows:

- (1) the accused must put any person in fear of injury to him or to any other person;
- (2) the putting of a person in such fear must be intentional;
- (3) the accused must thereby induce the person so put in fear to deliver to any person any property or anything signed or sealed which may be converted into a valuable security;
- (4) such inducement must be done dishonestly.<sup>111.</sup>

#### [s 384.2] Theft and extortion.—

Extortion is thus distinguished from theft—

- (1) Extortion is committed by the wrongful obtaining of consent. In theft the offender takes without the owner's consent.<sup>112.</sup>
- (2) The property obtained by extortion is not limited as in theft to movable property only. Immovable property may be the subject of extortion.
- (3) In extortion the property is obtained by intentionally putting a person in fear of injury to that person or to any other, and thereby dishonestly inducing him to

part with his property. In theft the element of force does not arise.

**1. 'Puts any person in fear of any injury'.—**The 'fear' must be of such a nature and extent as to unsettle the mind of the person on whom it operates, and takes away from his acts that element of free voluntary action which alone constitutes consent.<sup>113</sup> Thus threatening to expose a clergyman, who had criminal intercourse with a woman in a house of ill-fame in his own church and village, to his own bishop, and to the archbishop, and also to publish his shame in the newspapers, was held to be such a threat as men of ordinary firmness could not be expected to resist.<sup>114</sup> The making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, was held to be extortion.<sup>115</sup> The accused husband took his wife to a forest and obtained her ornaments under threats to kill her. The ornaments were subsequently recovered from him. He was held guilty of the offence of extortion, not robbery.<sup>116</sup> A refusal to allow people to carry away firewood collected in a Government forest without payment of proper fees;<sup>117</sup> a payment taken from the owners of trespassing cattle under the influence of a threat that the cattle would be impounded if the payment were refused;<sup>118</sup> the obtaining of a bond under the threat of non-rendering of service as a *vakil*,<sup>119</sup> and a refusal to perform a marriage ceremony and enter the marriage in the register unless the accused was paid Rs. 5,<sup>120</sup> were held not to constitute extortion.

### [s 384.3] Threat of criminal accusation.—

The terror of criminal charge, whether true or false, amounts to a fear of injury.<sup>121</sup> The guilt or innocence of the party threatened is immaterial. Even the threat need not be a threat to accuse before a judicial tribunal, a threat to charge before any third person is enough.<sup>122</sup>

Housing Loan taken by the complainant. Proceedings initiated by issuing notice under [section 13 \(2\) of SARFAESI Act, 2002](#) would not amount to extortion.<sup>123</sup>

**2. 'Dishonestly induces the person ... to deliver to any person any property'.—** Delivery by the person put in fear is essential in order to constitute the offence of extortion. Where a person through fear offers no resistance to the carrying off of his property, but does not deliver any of the property to those who carry it off, the offence committed will be robbery and not extortion.<sup>124</sup> The offence of extortion is not complete before actual delivery of the possession of the property by the person put in fear.<sup>125</sup>

When the accused honestly believes that the complainant had taken the money belonging to him (the accused), an attempt to get it back cannot be said to be with the intention of causing wrongful loss to him.<sup>126</sup>

Where the headmaster of a school called a lady teacher to a place where he was alone and induced her to sign three blank papers by threatening an attack on her modesty, the Supreme Court held that it amounted to an offence under this section.<sup>127</sup>

An accused was charged with the offence of murder by resorting to extortion. The prosecution failed to prove several particulars relating to the major offence, but proved the commission of minor offence punishable under section 384 read with section 34. The conviction of the accused for the minor offences under section 384 read with section 34 was held to be proper.

### [s 384.4] 'To any person'.—

It is not necessary that the threat should be used, and the property received, by one and the same individual. It may be a matter of arrangement between several persons that the threats should be used by some, and property received by others; and they all would be guilty of extortion.<sup>128.</sup>

### [s 384.5] CASES.—

The accused persons came to the place of their victims with fire arms and forced them to handover their gun. The accused then abducted them and shot them dead in nearby orchard. The Court said that all of them who came there to commit extortion must be attributed knowledge that killings might take place in the prosecution of their object. All of them were held vicariously liable for murder. Their conviction under sections 384/149 and 302/149 was proper.<sup>129.</sup>

### [s 384.6] Compounding.—

The offences under sections 384 and 506 Part II IPC, 1860 are not compoundable under section 320 of the Cr PC, 1973. Therefore, the prayer of compounding the offences made by the complainant and A1 in their joint application supported by their affidavits cannot be legally accepted.<sup>130.</sup>

111. *Dhananjay v State of Bihar*, (2007) 14 SCC 768 [LNIND 2007 SC 111] : 2007 Cr LJ 1440 ; *J Senthil Kumar v State of Jhar* 2006 Cr LJ 4524 (Jha).

112. See the judgment of the Supreme Court in *Dhananjay v State of Bihar*, (2007) 14 SCC 768 [LNIND 2007 SC 111] .

113. *Walton v Walton*, (1863) 9 Cox 268. Bare threats are not enough. *Ramjee Singh v State of Bihar*, 1987 Cr LJ 137 (Pat).

114. *Miard*, (1844) 1 Cox 22.

115. *Meer Abbas Ali v Omed Ali*, (1872) 18 WR 17 .

116. *State of Karnataka v Basavegowda*, 1997 Cr LJ 4386 (Kant). See also *Raju v State of Rajasthan*, 1997 Cr LJ 4547 (Raj).

117. *Abdul Kadar v State*, (1866) 3 BHC (Cr C) 45.

118. (1880) 1 Weir 438, 440; *Habib-ul-Razzaq v State*, (1923) 46 All 81 .

119. (1870) 5 MHC (Appex) xiv.

120. *Nizam Din v State*, (1923) 4 Lah 179.

121. *Mobarruk*, (1867) 7 WR (Cr) 28.

122. *Robinson*, (1837) 2 M & R 14; *Abdulahab Abdulmajid Shaikh v State of Gujarat*, (2007) 4 SCC 257 [LNIND 2007 SC 527] : (2007) 3 Guj LR 1841, conviction for extortion, all the essentials proved.



123. *GIC Housing Finance Ltd v The State of Maharashtra*, 2016 Cr LJ 4824 (Bom) : 2017 (2) Bom CR (Cr) 234 .
124. *Duleelooddeen Sheik*, (1866) 5 WR (Cr) 19.
125. *Labhshanker*, AIR 1955 Sau 42 .
126. *Mahadeo v State*, (1950) Nag 715.
127. *Chander Kala v Ram Kishan*, AIR 1985 SC 1268 [LNIND 1985 SC 166] : 1985 Cr LJ 1490 : (1985) 4 SCC 212 [LNIND 1985 SC 166] : 1985 SCC (Cr) 491.
128. *Shankar Bhagvat*, (1866) 2 BHC 394.
129. *Rameshwar Pandey v State of Bihar*, 2005 Cr LJ 1407 : AIR 2005 SC 1064 [LNIND 2005 SC 1058] : (2005) 9 SCC 210 [LNIND 2005 SC 1058] .
130. *Karipi Rasheed v State of AP* (2009) 17 SCC 515 [LNINDU 2009 SC 26] .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Extortion

**[s 385] Putting, person in fear of injury in order to commit extortion.**

**Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### COMMENT—

By this section a distinction between the inchoate and the consummated offence is recognised. The attempt to commit extortion may proceed so far as to put a person in fear of injury, or there may be an attempt to excite such fear; but there may not be any delivery of property, etc. This section punishes the putting of a person in fear of injury in order to commit extortion.

The injury contemplated must be one which the accused can inflict, or cause to be inflicted. A threat that God will punish a man for some act is not such an injury. No injury can be caused or threatened to be caused unless the act done is either an offence or such as may properly be made the basis of a civil action.<sup>131.</sup>

#### [s 385.1] CASES.—

A cloth-seller was threatened with the imposition of a fine if he continued to sell foreign cloth. He continued to sell such cloth, and, to enforce payment of the fine, his shop was picketed for two hours and he lost a certain amount of business and ultimately paid the fine. It was held that the person responsible for the picketing was guilty of an offence under this section as well as under section 384.<sup>132.</sup> Where a *mukhtar* in a criminal case threatened with intent to extort money to put questions to prosecution witnesses which were irrelevant, scandalous and indecent, and which were intended to annoy and insult, it was held that he was guilty under this section.<sup>133.</sup> No sanction is necessary for prosecuting a police officer under this section for his act abetting the accused to extort money from a person by putting him under fear of arrest. Such an act is not a part of his official functions.<sup>134.</sup>

<sup>131.</sup> *Tanumal Udhasing*, (1944) Kar 146 .

<sup>132.</sup> *Chaturbhuj*, (1922) 45 All 137 .

133. *Fazlur Rahman*, (1929) 9 Pat 725.

134. *Chand Ahuja v Gautam K. Hoda*, [1987 Cr LJ 1328](#) (P&H).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Extortion

**[s 386] Extortion by putting a person in fear of death or grievous hurt.**

**Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

### COMMENT—

If the fear caused is that of death or grievous hurt it naturally causes great alarm. The section therefore, provides for severe penalty in such cases.

Where the accused wrote letters demanding ransom from the father of the boy whom they kidnapped, putting the father in fright of the boy being murdered and there was throughout the likelihood of the boy being murdered if the ransom money was not paid, the accused were held guilty under this section. <sup>135.</sup>

<sup>135.</sup> *Ram Chandra v State*, AIR 1957 SC 381 : 1957 Cr LJ 567 .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Extortion

**[s 387] Putting person in fear of death or of grievous hurt, in order to commit extortion.**

**Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

### COMMENT—

The relation between this section and section 386 is the same as that between section 385 and section 384.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Extortion

**[s 388] Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.**

**Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with <sup>136.</sup>[imprisonment for life], or with imprisonment for a term which may extend to ten years or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with <sup>137.</sup> [imprisonment for life].**

### COMMENT—

It is immaterial whether the person against whom the accusation is threatened be innocent or guilty, if the prisoner intended to extort money. The aggravating circumstance under this section is the threat of an accusation of an offence punishable with imprisonment for life, or with imprisonment for ten years. If the accusation is of unnatural offence then the penalty provided is severer.

<sup>136.</sup> Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>137.</sup> Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Extortion

**[s 389] Putting person in fear of accusation of offence, in order to commit extortion.**

**Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit an offence punishable with death or with <sup>138</sup>[imprisonment for life], or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with <sup>139</sup>[imprisonment for life].**

### COMMENT—

This section bears the same relation to section 388 as section 385 bears to section 384.

<sup>138</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>139</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Robbery and Dacoity

#### [s 390] Robbery.

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<sup>1</sup> or attempting to carry away property obtained by the theft, the offender, for that end,<sup>2</sup> voluntarily causes<sup>3</sup> or attempts to cause to any person<sup>4</sup> 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, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

**Explanation.**—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, or instant hurt, or of instant wrongful restraint.

#### ILLUSTRATIONS

- (a) A holds Z down and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.
- (b) A meets Z on the highroads, shows a pistol, and demands Z's purse. Z in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.
- (c) A meets Z and Z's child on the highroad. A takes the child and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.
- (d) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion,



and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

## COMMENT—

Robbery is a special and aggravated form of either theft or extortion. The chief distinguishing element in robbery is the presence of imminent fear of violence. The second para distinguishes robbery from theft, the third distinguishes it from extortion.

### [s 390.1] Object.—

The authors of the Code observe: "There can be no case of robbery which does not fall within the definition either of theft or of extortion; but in practice it will perpetually be a matter of doubt whether a particular act of robbery was a theft or extortion. A large proportion of robberies will be half theft, half extortion. A seizes Z, threatens to murder him, unless he delivers all his property, and begins to pull off Z's ornaments. Z in terror begs that A will take all he has, and spare his life, assists in taking off his ornaments, and delivers them to A. Here, such ornaments as A took without Z's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means improbable that Z's right-arm bracelet may have been obtained by theft, and left-arm bracelet by extortion; that the rupees in Z's girdle may have been obtained by theft, and those in his turban by extortion. Probably in nine-tenths of the robberies which are committed, something like this actually takes place, and it is probable that a few minutes later neither the robber nor the person robbed would be able to recollect in what proportions theft and extortion were mixed in the crime; nor is it at all necessary for the ends of justice that this should be ascertained. For though, in general the consent of a sufferer is a circumstance which vary materially modifies the character of the offence, and which ought, therefore, to be made known to the Courts, yet the consent which a person gives to the taking of his property by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial".<sup>140</sup>

The Explanation and illustrations (b) and (c) mark the distinction between simple extortion and extortion which is robbery. Illustration (a) indicates when theft is robbery.

An analysis of [section 390 IPC, 1860](#) would show that in order that theft may constitute robbery, prosecution has to establish:

- (a) if in order to the committing of theft; or
- (b) in committing the theft; or
- (c) in carrying away or attempting to carry away property obtained by theft; or
- (d) the offender for that end i.e. any of the ends contemplated by (a) to (c); or
- (e) 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 instant wrongful restraint.

In other words, theft would only be robbery if for any of the ends mentioned in (a) to (c) the offender voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurl or instant wrongful restraint.

If the ends does not fall within (a) to (c) but, the offender still causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or instant wrongful restraint, the offence would not be robbery. The Court emphasised that (a) or (b) or (c) have to be read conjunctively with (d) and (e). It is only

when (a) or (b) or (c) co-exist with (d) and (e) or there is a nexus between any of them and (d) and (e) would theft amount to robbery.<sup>141.</sup>

### [s 390.2] Theft, extortion and robbery.—

Theft or extortion when caused with violence causing death or fear of death, hurt or wrongful restraint is robbery. When there is no theft, as a natural corollary, there cannot be robbery. Robbery is only an aggravated form of theft or extortion. Aggravation is in the use of violence causing death or fear of death, hurt or restraint. Violence must be in the course of theft and not subsequently. Also, it is not necessary that violence should actually be committed, even attempt to commit it is enough.<sup>142.</sup>

**1. 'Carrying away'.—**Even if death, hurt or wrongful restraint, or fear of any of these, is caused after committing theft, in order to carry away the property obtained by theft, this offence would be committed.

**2. 'For that end'.—**Death, hurt or wrongful restraint must be caused in committing theft, or in carrying away property obtained by theft. The expression "for that end" clearly means that the hurt caused by the offender must be with the object of facilitating the committing of theft or must be caused while the offender is committing theft or is carrying away or is attempting to carry away property obtained by theft.<sup>143.</sup> Where a person caused hurt only to avoid capture when surprised while stealing<sup>144.</sup> it was held that theft, and not robbery, was committed. The use of violence will not convert the offence of theft into robbery, unless the violence is committed for one of the ends specified in this section. Where the accused abandoned the property obtained by theft and threw stones at his pursuer to deter him from continuing the pursuit, it was held that the accused was guilty of theft and not of robbery.<sup>145.</sup> The victim was relieved of his watch in a running train by one of the two accused who were associates in crime. As the snatcher was trying to get down from the train, the victim raised alarm. Whereupon the second accused gave a slap to the victim. It was held that the hurt caused was directly related to the theft i.e., to facilitate carrying away of the property obtained by theft and as such the accused were rightly convicted under [section 392, IPC, 1860](#).<sup>146.</sup>

**3. 'Voluntarily causes'.—**These words denote that an accidental infliction of injury by a thief will not convert his offence into robbery. Thus, where a person while cutting a string, by which a basket was tied, with intent to steal it, accidentally cut the wrist of the owner, who at the moment tried to seize and keep the basket, and ran away with it, it was held that the offence committed was theft and not robbery.<sup>147.</sup> But where in committing theft, there is indubitably an intention seconded by an attempt to cause hurt, the offence is robbery.<sup>148.</sup> In order to make an offence of theft a robbery there must be either theft and injury or threat of injury while committing theft.<sup>149.</sup>

**4. 'Person'.—**The word 'person' cannot be so narrowly construed as to exclude the dead body of a human being who was killed in the course of the same transaction in which theft was committed.<sup>150.</sup>

### [s 390.3] CASES.—

Where participation of the accused, was not explained by the prosecution and there were contradictions in the evidence of prosecution witnesses, the Court acquitted the accused.<sup>151.</sup>

The accused sprinkled chilli powder in the eyes of certain persons and snatched their attaches containing cash. The evidence of persons who were carrying was found to be reliable. Cash was recovered as a result of disclosures made by the accused. Presumption under [section 114 of the Indian Evidence Act, 1872](#) applied. The accused was accordingly convicted.<sup>152.</sup>

140. Note N, p 162.

141. *State of Maharashtra v Joseph Mingel Koli*, 1997 (2) Crimes 228 [LNIND 1996 BOM 667] (Bom.).

142. *Venu v State of Karnataka*, (2008) 3 SCC 94 [LNIND 2008 SC 208] : (2008) 1 SCC (Cr) 623 : AIR 2008 SC 1199 [LNIND 2008 SC 208] : 2008 Cr LJ 1634 .

143. *Venu v State of Karnataka*, (2008) 3 SCC 94 [LNIND 2008 SC 208] : AIR 2008 SC 1199 [LNIND 2008 SC 208] : 2008 Cr LJ 1634 .

144. *Kalio Kerio*, (1872) Unrep Cr C 65.

145. (1865) 1 Weir 442; *Kalio Kiero*, *sup.*

146. *Harish Chandra*, 1976 Cr LJ 1168 : AIR 1976 SC 1430 : (1976) 2 SCC 795 .

147. *Edwards*, (1843) 1 Cox 32.

148. *Teekai Bheer*, (1866) 5 WR (Cr) 95.

149. *Padmanava Mohapatra*, 1983 Cr LJ NOC 238 (Ori). Proved case of robbery and murder. *State of Kerala v Naduvelil Vishwanathan*, 1991 Cr LJ 1501 .

150. *Jamnadas*, AIR 1963 MP 106 [LNIND 1962 MP 173] .

151. *Prabhat Marak v State of Tripura*, 2011 Cr LJ 1844 (Gau).

152. *Rameshwar Soni v State of MP*, 1997 Cr LJ 3418 (MP). As to when theft becomes robbery see *State of Maharashtra v Vinayak Tukaram*, 1997 Cr LJ 3988 (Bom), here the accused snatched three gold buttons from the shirt of the victim at a railway platform. He gave a knife blow on being caught. Convicted for robbery. The Court said that it could not be contended that he gave the knife blow only to extricate himself from the clutches of the person holding him and to ensure the taking away of the stolen gold buttons.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Robbery and Dacoity

#### [s 391] Dacoity.

**When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".**

#### COMMENT—

Dacoity is robbery committed by five or more persons, otherwise there is no difference between dacoity and robbery. The gravity of the offence consists in the terror it causes by the presence of a number of offenders. Abettors who are present and aiding when the crime is committed are counted in the number. [Section 391 IPC, 1860](#) explains the offence of 'dacoity'. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission and attempt amount to five or more, every person so committing, attempting or aiding, is said to commit 'dacoity'. Under [section 392 IPC, 1860](#), the offence of 'robbery' *simpliciter* is punishable with rigorous imprisonment which may extend to ten years or 14 years depending upon the facts of a given case. [Section 396 IPC, 1860](#) brings within its ambit a murder committed along with 'dacoity'. In terms of this provision, if any one of the five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death or imprisonment for life or rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine. On a plain reading of these provisions, it is clear that to constitute an offence of 'dacoity', robbery essentially should be committed by five or more persons. Similarly, to constitute an offence of 'dacoity with murder' any one of the five or more persons should commit a murder while committing the dacoity, then every one of such persons so committing, attempting to commit or aiding, by fiction of law, would be deemed to have committed the offence of murder and be liable for punishment provided under these provisions depending upon the facts and circumstances of the case.<sup>153.</sup>

Dacoity is perhaps the only offence which the Legislature has made punishable at four stages. When five or more persons assemble for the purpose of committing a dacoity, each of them is punishable under section 402 merely on the ground of joining the assembly. Another stage is that of preparation and if any one makes preparation to commit a dacoity, he is punishable under section 399. The definition of 'dacoity' in this section shows that the other two stages, namely, the stage of attempting to commit and the stage of actual commission of robbery, have been treated alike, and come within the definition.<sup>154.</sup> In other words, attempt to commit dacoity is also dacoity.

"It will, therefore, be seen that it is possible to commit the offence of dacoity under [section 395, IPC, 1860](#), by merely attempting to commit a robbery by five or more persons without being successful in getting any booty whatsoever. Thus, if in a particular case the dacoits are forced to retreat due to stiff opposition from the inmates or villagers without collecting any booty, then it must be held that the offence of dacoity is completed the moment the dacoits take to their heels without any booty".<sup>155</sup> Even in such a case all the dacoits can be convicted and punished under [section 395, IPC, 1860](#).<sup>156</sup>

In a case of dacoity the circumstance that the inmates of the house, seeing the large number of dacoits, do not offer any resistance and no force or violence is required or used does not reduce the dacoity to theft.<sup>157</sup>

### **[s 391.1] 'Conjointly'.—**

This word manifestly refers to united or concerted action of the persons participating in the transaction. It is only when their individual action can be properly referred to their concerted action that the question of conviction under this section can arise.<sup>158</sup> When there is doubt as to how many persons are involved in commission of offence and the accused/appellants were not identified during Test Identification Parade, they are entitled to benefit of doubt.<sup>159</sup>

### **[s 391.2] Five or more persons.—**

Interpretation of [section 391 IPC, 1860](#) is simple, that there must be at least five persons in a dacoity; the section nowhere says that minimum five persons must be convicted of it.<sup>160</sup>

### **[s 391.3] CASES.—**

Where the allegation was that on the day of incident, victim was travelling on scooter with cash, two scooter borne accused armed with sword, knife, club and pistol stopped victim, asked him to leave scooter and get away and then accused with their accomplices fled away with scooter, accused were acquitted on the ground that test identification parade was conducted after 46 days of arrest of alleged accused.<sup>161</sup>

The accused persons took away gold ornaments and service revolver of the victim. They were apprehended and, on the basis of their statements, stolen articles were recovered. Identification of the accused persons and the articles was made by the victim at TI parade. The conviction of the accused person was held to be proper.<sup>162</sup>

Where there were only five named accused who committed the dacoity and out of five two were acquitted holding that only three took part in the offence, it was held that the remaining three could not be convicted of dacoity, as the offence of dacoity could not be committed by less than five persons.<sup>163</sup> Where in spite of the acquittal of a number of persons, it is found as a fact that along with the persons convicted there were other unidentified persons who participated in the offence, bringing the total number of participants to five or more, it was held that the conviction of the identified persons, though less than five, was perfectly correct.<sup>164</sup> Recovery of articles shortly after a dacoity at the instance of the accused persons has been held by the Supreme Court to be sufficient for conviction under section 396 as well as under section 412.<sup>165</sup>

153. *Rafiq Ahmed @ Rafi v State of UP*, (2011) 8 SCC 300 [LNIND 2011 SC 726] : AIR 2011 SC 3114 [LNIND 2011 SC 726].
154. *Dhanpat*, AIR 1960 Pat 582 .
155. R Deb, *PRINCIPLES OF CRIMINOLOGY, CRIMINAL LAW AND INVESTIGATION*, 2nd Edn, vol II, p 780.
156. *Shyam Behari v State*, 1957 Cr LJ 416 (SC-Para 5).
157. *Ram Chand*, (1932) 55 All 117 .
158. *Dambaru Dhar Injal*, (1951) 3 Ass 365.
159. *Musku Pentu v State of AP*, 2005 Cr LJ 1355 (AP).
160. *Allaudin v State (NCT of Delhi)*, 2016 Cr LJ 1617 (Del) : 2016 (2) RCR (Criminal) 734.
161. *Asif Ahmad v State of Chhattisgarh*, 2011 Cr LJ 4461 (Cha).
162. *Lalu v State of Orissa*, 2003 Cr LJ 1677 (Ori).
163. *Debi*, (1952) 2 Raj 177 ; *Lingayya*, AIR 1958 AP 510 ; See also *Ram Shankar*, 1956 Cr LJ 822 (SC); *Khagendra Gahan*, 1982 Cr LJ 487 (Ori); *Ram Lekhan*, 1983 Cr LJ 691 (1) : 1983 All LJ 283 : AIR 1983 SC 352 (1) : (1983) 2 SCC 65 : 1983 SCC (Cr) 339. *Atar Singh v State of UP*, 2003 Cr LJ 676 (All), the informant alleged that 3-4 persons entered into the house forcibly, the offence could not amount to dacoity.
164. *Ghamandi v State*, 1970 Cr LJ 386 ; See also *Saktu v State*, 1973 Cr LJ 599 : AIR 1973 SC 760 . Conviction for dacoity requires proper identification of the persons involved. *Ram Ishwar Paswan v State of Bihar*, 1989 Cr LJ 1042 (Pat), acquittal because no identification. *State of HP v Jagar Singh*, 1989 Cr LJ 1213 , conviction for highway dacoity.
165. *Lachman Ram v State of Orissa*, AIR 1985 SC 486 [LNIND 1985 SC 77] : 1985 Cr LJ 753 : 1985 SCC (Cr) 263. Failure in filing the list of articles supposed to have been taken away or in indicating their nature makes the complaint liable to be dismissed. *Suresh v State of UP*, 1990 Supp SCC 138 : 1990 SCC (Cr) 643. Revision against acquittal not allowed in a case where the trial court considered every piece of evidence and gave cogent reasons, *Mohamed Nagoor Meeran v State of TN*, (1995) 1 Cr LJ 857 (Mad). *Joseph v State of Kerala*, AIR 2000 SC 1608 [LNIND 2000 SC 746] : (1998) 4 SCC 387 [LNIND 1998 SC 328] , conviction of accused for murder and for robbing the victim of her jewelry, good proof. *George v State of Kerala*, (2002) 4 SCC 475 [LNIND 2002 SC 256] , robbery, rings and wristwatch recovered from the accused, presumption under section 114A, conviction. *Sanjay v State (NCT) of Delhi*, 2001 Cr LJ 1231 (SC), robbery with murder, proved against accused, conviction. *Ronny v State of Maharashtra*, 1998 Cr LJ 1638 : AIR 1998 SC 1251 [LNIND 1998 SC 302] robbery with triple murder. Conviction.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Robbery and Dacoity

#### [s 392] Punishment for robbery.

**Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.**

#### COMMENT—

This section no doubt allows the Court discretion as regards the minimum punishment to be awarded, but when the offence is attended with circumstances which would make the attempt to commit it punishable with the minimum sentence of seven years, it would not be a proper exercise of discretion to award a lesser sentence when the offence has been accomplished.<sup>166</sup> A person who has been convicted of robbery under this section need not be convicted of theft.<sup>167</sup> Where the wholly of the robbed property was not recovered from the persons accused, it was held that the proper section to convict was section 411.<sup>168</sup>

#### [s 392.1] Essential ingredients for punishment under Section 392.—

Essential ingredients for punishment under section 392 are:

- (1) The accused committed theft;
- (2) he voluntarily caused or attempted to cause:
  - (i) death, hurt or wrongful restraint,
  - (ii) fear of instant death, hurt or wrongful restraint;
- (3) he did either act for the end:
  - (i) of committing theft,
  - (ii) while committing theft,
  - (iii) in carrying away or in the attempt to carry away property obtained by theft.<sup>169</sup>

Where section 397 also applies, (robbery accompanied by attempt to cause death or grievous hurt) the punishment has to be for a period not less than seven years. The Supreme Court has held that this minimum prescribed sentence cannot be by-passed by resorting to plea bargaining.<sup>170</sup> Section 392 itself provides that when robbery is

committed on a highway and between sunset and sunrise, deterrent punishment is called for.<sup>171.</sup>

### **[s 392.2] CASES.—**

In a case of alleged dacoity and murder, seven accused persons were convicted under section 396 as looted property was recovered from their possession within a very short time after the offence. The evidence of an eye-witness showed that murder was committed only by the three of the accused persons of whom one was given benefit of doubt. It was held only the remaining two accused were liable to be punished under sections 392 and 302 and other only under section 411.<sup>172.</sup> Where the accused was alleged to have committed dacoity alongwith four other co-accused who were acquitted, his conviction under section 395 was altered to one under section 392 (robbery).<sup>173.</sup> When articles recovered from accused were identified to be articles of theft by complainant, the fact that watch recovered was not mentioned in FIR is not sufficient to reject testimony of complainant. No explanation was offered by accused as to how they came into possession of articles recovered. The Supreme Court held that Recoveries proved sufficient to connect accused with crime.<sup>174.</sup>

### **[s 392.3] Bank Robbery.—**

The identity of the accused was proved by fingerprint impressions available at the door of the bank. The photographs of the fingerprints were to be proved by examining the photographer. However, this lapse in the prosecution cannot result in acquittal of the appellants. The evidence adduced by the prosecution must be scrutinized independently of such lapses either in the investigation or by the prosecution or otherwise. The result of the criminal trial would depend upon the level of investigation or the conduct of the prosecution. Criminal trials should not be made casualty for such lapses in the investigation or prosecution.<sup>175.</sup>

### **[s 392.4] Sentence.—**

The offence was committed in a cool, calculated and gruesome manner. The accused could have easily committed the robbery without taking away the life of the victim, if robbery had been the motive. Keeping in mind the macabre nature of the crime, the High Court of Madras ordered that the sentences imposed on the accused should run consecutively and not concurrently.<sup>176.</sup>

<sup>166.</sup> *Chandra Nath*, (1931) 7 Luck 543 . See also *Suryamoorthi v Govindaswamy*, AIR 1989 SC 1410 [LNIND 1989 SC 232] : 1989 Cr LJ 1451 : (1989) 3 SCC 24 [LNIND 1989 SC 232] , a conviction under the section for robbery; *Laxmi Raj Shetty v State of TN*, AIR 1988 SC 1274 [LNIND 1988 SC 260] : 1988 Cr LJ 1783 : (1988) 3 SCC 319 [LNIND 1988 SC 260] where the



death sentence was reduced to life imprisonment for offence of robbery with murder. More fully discussed under section 302. *Hardayal Prem v State of Rajasthan*, AIR 1991 SC 269 : 1991 Cr LJ 345 , charges against two under sections 302, 304 and 392 for murder and robbery. Both convicted of robbery and murder under sections 302/ 392. One did not appeal and the other having appealed by special leave earned his acquittal. His companion was also given the same right of acquittal; *Chandran v State of Kerala*, AIR 1990 SC 2148 : 1990 Cr LJ 2296 , setting aside of conviction for robbery because of irregularities. *Din Dayal v State (Delhi Admn.)*, AIR 1991 SC 44 , accused, a higher secondary boy of 14 years old, snatching wrist watch with others, sentence of 2½ years reduced to 8 months already spent in custody.

167. *State of Kerala v Suku*, 1989 Cr LJ 2401 (Ker).

168. *Shankar v State*, 1989 Cr LJ 1066 (Del). It has also been held that an accused should not be convicted both under sections 392 and 394, *Philip Bhimsen v State of Maharashtra*, (1995) 2 Cr LJ 1694 (Bom).

169. *Venu v State of Karnataka*, (2008) 3 SCC 94 [LNIND 2008 SC 208] : (2008) 1 SCC (Cr) 623 : AIR 2008 SC 1199 [LNIND 2008 SC 208] : 2008 Cr LJ 1634 .

170. *Kripal Singh v State of Haryana*, 1999 Cr LJ 5031 : (1999) 5 SCC 649 ; *R v Williams*, (2001) Cr App R (S) 2 [CA (Crim Div)], maximum penalty imposed upon the accused who used and threatened violence to force the attendant to give him a whisky bottle from the vend out of vending hours.

171. *Venu v State of Karnataka*, (2008) 3 SCC 94 [LNIND 2008 SC 208] : AIR 2008 SC 1199 [LNIND 2008 SC 208] .

172. *State of MP v Samaylal*, 1994 Cr LJ 3407 (MP).

173. *Madan Kandi v State of Orissa*, 1996 Cr LJ 227 (Ori); *Ram Rakha v State of Punjab*, AIR 2000 SC 3521 : 2000 Cr LJ 4038 the two convicts came to the house of the victim and took away his licensed rifle and also Rs. 3000, and jewelry belonging to some other person. Conviction under the section was upheld. *Ganga Din v State of UP*, 2001 Cr LJ 1762 (All), robbery, no proper identification, acquittal. *Ronny v State of Maharashtra*, 1998 Cr LJ 1638 : AIR 1998 SC 1251 [LNIND 1998 SC 302] , in a case of triple murder and robbery, the accused persons was recognised and articles recovered. Complete chain of circumstances, conviction not interfered with. *Ravi Magor v State*, 1997 Cr LJ 2886 , robbery by entering home, tying up people, recoveries, identification, conviction. Identification in court without test identification did not render evidence of identification inadmissible. *Kayyumkhan v State of Maharashtra*, 1997 Cr LJ 3137 (Bom) robbery in train, victims identified robbers, conviction. *Pravakar Behera v State of Orissa*, 1997 Cr LJ 3291 (Ori), uncertainty as to number of persons involved. Conviction shifted from dacoity to robbery.

174. *Akil @ Javed v State of Nct of Delhi*, 2013 Cr LJ 571 : 2013 AIR(SCW) 59.

175. *Ajay Kumar Singh v The Flag Officer Commanding-in-Chief*, 2016 Cr LJ 4174 : AIR 2016 SC 3528 [LNIND 2016 SC 301] : (2016) 2 SCC (LS) 547.

176. *K Ramajayam v The Inspector of Police*, 2016 Cr LJ 1542 (Mad) : 2016 (2) MLJ (Cr) 715 .

# **THE INDIAN PENAL CODE**

## **CHAPTER XVII OF OFFENCES AGAINST PROPERTY**

**Of Theft**

**Of Robbery and Dacoity**

**[s 393] Attempt to commit robbery.**

**Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.**

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Robbery and Dacoity

#### [s 394] Voluntarily causing hurt in committing robbery.

If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with <sup>177</sup>[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

#### COMMENT—

This section imposes severe punishment when hurt is caused in committing robbery. Section 397 similarly provides for the minimum sentence of imprisonment which must be inflicted when grievous hurt is caused.

Commenting on the section, the Supreme Court observed: section 394 prescribes punishment for voluntarily causing hurt in committing or attempting to commit robbery. The offence under section 394 is a more serious than one under section 392. Section 394 postulates and contemplates the causing of harm during commission of robbery or in attempting to commit robbery when such causing of hurt is hardly necessary to facilitate the commission of robbery. Section 394 applies to cases where during the course of robbery voluntary hurt is caused. Section 394 classifies two distinct classes of persons. Firstly, those who actually cause hurt and secondly, those who do not actually cause hurt but are "jointly concerned" in the commission of the offence of robbery. The second class of persons may not be concerned in the causing of hurt, but they become liable independently of the knowledge of its likelihood or a reasonable belief in its probability.<sup>178</sup>

In a prosecution for robbery and murder, injuries were caused to the deceased in the process of removing earrings. The Court said that the fact that the booty was distributed among three accused and they had secreted the robbed articles. These things revealed the common intention to commit robbery. One of them picked up a stone piece and caused death of the victim. There was nothing to show that the accused even knew of any such possibility. Others could not be convicted of murder and robbery with the help of presumption under [section 114 Evidence Act, 1872](#). They were liable to be convicted only under sections 394/34.<sup>179</sup>

#### [s 394.1] Forceful removal of vehicle by finance company.—

Forcible removal of vehicle from possession of purchaser by finance company on default of payment without recourse to proper remedy through civil Court or to arbitration clause, contained in hypothecation agreement, would be covered under [section 394 of IPC, 1860](#).<sup>180</sup> The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to

procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong-arm tactics. The recovery of loans or seizure of vehicles could be done only through legal means. The banks cannot employ goondas to take possession by force.<sup>181.</sup>

### **[s 394.2] Charge framed under sections 394 and 397.—**

There is nothing wrong in convicting the accused under section 394 read with section 397.<sup>182.</sup> All ingredients of offence punishable under section 392 are covered in offence under section 394.<sup>183.</sup> [Section 397 of the IPC, 1860](#) prescribes enhanced punishment for using a deadly weapon at the time of committing robbery. As an obvious corollary, section 397 had no application to the case where robbery was not actually completed. Even so, measure of punishment had to be regulated by [section 398 of the IPC, 1860](#) that provides for minimum punishment of seven years imprisonment in a case of attempt to commit robbery when armed with deadly weapon. In this view of the matter, the conviction of the appellants for the offence under [section 394](#) read with [section 397](#) of the [IPC, 1860](#) deserves to be converted into one under [section 394](#) read with [section 398](#) of the [IPC, 1860](#).<sup>184.</sup>

### **[s 394.3] Compounding.—**

An offence punishable under [section 394 IPC, 1860](#) is not compoundable with or without the permission of the Court concerned. But High Court can use its power under [section 482 Cr PC, 1973](#) for quashing the prosecution under the said provision in the light of the compromise that the parties have arrived at.<sup>185.</sup>

### **[s 394.4] Presumption under section 114(a) of [Evidence Act, 1872](#).—**

*As per [Section 114\(a\) of the Evidence Act, 1872](#), when the stolen property is recovered from a person, soon after the commission of theft or dacoity, a presumption can be raised that either he has himself committed the offence of theft or he has received the stolen property.*<sup>186.</sup>

<sup>177.</sup> Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>178.</sup> *Aslam v State of Rajasthan*, (2008) 9 SCC 227 [LNINDORD 2008 SC 127] : (2008) 3 SCC (Cr) 764 : [AIR 2009 SC 363](#) [LNIND 2008 SC 1918] .

<sup>179.</sup> *Limbaji v State of Maharashtra*, [AIR 2002 SC 491](#) [LNIND 2001 SC 2859] ; *Om Prakash v State of Rajasthan*, [AIR 1998 SC 1220](#) [LNIND 1998 SC 87] , five accused persons robbed the complainant of his wrist watch and currency notes and ran away. Eye-witnesses chased them

and then went to police station. Investigation was also successful. Two accused were let off, others acquitted. *Rama Kant v State of UP*, [2001 Cr LJ 2072](#) (All), complaint against police personnel alleging robbery and extracting of money, the court lamented that those who were supposed to protect people themselves resorted to crime, the complaint was not to be quashed. *State of UP v Tekchand*, [2000 Cr LJ 3821](#) (All), snatching of a gun in a hotel cabin, conviction under section 394, but it could not be known to one of the accused that the other was going to kill. *Sudesh v State of MP*, [1999 Cr LJ 2602](#) (MP), evidence showed that murder and removal of ornaments from the body of the victim were simultaneous acts, conviction under sections 302/394; *Rajjo v State of UP*, [1999 Cr LJ 2996](#) (All), death caused in robbery by a single knife blow, conviction under section 304 II, the matter being 20 years old. *Abu Barks v State of Rajasthan*, [1998 Cr LJ 154](#) (Raj), robbery and murder, the accused was seen going towards the place with knife, not enough to connect him with the incident, acquittal. *Shravan Dashrath Datarange v State of Maharashtra*, [1998 Cr LJ 1196](#) (Bom), not only the accused who caused hurt, but also an associate would be equally liable for the mischief contemplated by the section. See also *Public Prosecutor v Yenta Arjuna*, [1998 Cr LJ 179](#) (AP); *Shravan Dashrath Datarange v State of Maharashtra*, [1998 Cr LJ 1196](#) (Bom); *Ratanlal v State of Rajasthan*, [1998 Cr LJ 1788](#) (Raj); *Ashok Kumar v State of MP*, [1998 Cr LJ 4103](#) (MP); *State of MP v Mukund*, [1997 Cr LJ 534](#) (MP), a housewife and her two minor children found throttled to death in their house, things recovered from robbers very soon thereafter on guidance provided by the husband. Both the intruders and murderers convicted.

**180.** *V A George v Abraham Augustine*, [2012 Cr LJ 3355](#) (Ker).

**181.** *ICICI Bank Ltd v Prakash Kaur*, [2007 \(2\) SCC 711](#) [LNIND 2007 SC 237] : [JT 2007 \(4\) SC 39](#) [LNIND 2007 SC 237] : [2007 \(1\) KLJ 846](#) : [AIR 2007 SC 1349](#) [LNIND 2007 SC 237] ; *The Managing Director, Orix Auto Finance Indian Ltd v Shri Jagminder Singh*, [2006 \(1\) Supreme 708](#) : [2006 \(2\) SCC 598](#) [LNIND 2006 SC 89] ; *Maruthi Finance Ltd v Vijayalaxmi* reported in [\(2012\) 1 SCC 1](#) [LNIND 2011 SC 1153] : [AIR 2012 SC 509](#) [LNIND 2011 SC 1153] -even in case of mortgaged goods subject to Hire Purchase Agreements, the recovery process has to be in accordance with law and the recovery process referred to in the Agreements also contemplates such recovery to be effected in due process of law and not by use of force. Till such time as the ownership is not transferred to the purchaser, the hirer normally continues to be the owner of the goods, but that does not entitle him on the strength of the agreement to take back possession of the vehicle by use of force. The guidelines which had been laid down by the Reserve Bank of India as well as the appellant bank itself, in fact, support and make a virtue of such conduct. If any action is taken for recovery in violation of such guidelines or the principles as laid down by this Court, such an action cannot but be struck down.

**182.** *Narottam Das v State*, [2013 Cr LJ 2676](#) (Chh).

**183.** *Rahamat Khan alias Badal Khan v State of W B*, [2008 Cr LJ 3285](#) (Cal).

**184.** *Ganesh Singh v State of MP*, **relied** on *Phool Kumar v Delhi Admn*, [1975 \(1\) SCC 797](#) [LNIND 1975 SC 112] .

**185.** *Shiji @ Pappu v Radhika*, [2012 Cr LJ 840](#) (SC) : [\(2011\) 10 SCC 705](#) [LNIND 2011 SC 1158] : [AIR 2012 SC 499](#) [LNIND 2011 SC 1158] .

**186.** *Satish Raju Waman Koli v State of Maharashtra*, [2010 Cr LJ 4247](#) (Bom).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Robbery and Dacoity

#### [s 395] Punishment for dacoity.

Whoever commits dacoity shall be punished with <sup>187.</sup>[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

#### COMMENT—

<sup>188.</sup>—When a person is involved in an offence of theft of higher magnitude, then it becomes dacoity and when dacoity is committed with murder and also results in causing grievous hurt to others, it becomes robbery punishable under sections 395, [section 396](#) and [section 397](#) of [IPC, 1860](#). In other words, when the offence of theft is committed conjointly by five or more persons, it becomes dacoity and such dacoity by those persons also results in commission of murder as well as causing of grievous hurt to the victims, it results in an offence of robbery. A reading of section 395, [section 396](#) and [section 397](#) of [IPC, 1860](#) makes the position clear that by virtue of the conjoint effort of the accused while indulging in the said offence, makes every one of them deemed to have committed the offence of dacoity and robbery. In the result, when such offences of dacoity and robbery are committed, the same result in the death of a person or hurt or wrongful restrain or creating fear of instant death or instant hurt or instant wrongful restraint. In substance, in order to find a person guilty of offences committed under [sections 395, 396](#) and [397](#) of [IPC, 1860](#), his participation along with a group of five or more persons indulging in robbery and in that process commits murder and also attempts to cause death or grievous hurt with deadly weapons would be sufficient. Use of a knife in the course of commission of such a crime has always been held to be use of a deadly weapon. Keeping the above basic prescription of the offence described in the above provisions in mind, we examined the case on hand. In the first instance, what is to be examined is whether the basic ingredient of the offence falling under section 395, [section 396](#) and [section 397](#) of [IPC, 1860](#), namely, participation of five or more persons was made out. <sup>189.</sup>

#### [s 395.1] Cases.—

In *T Alias Sankaranarayanan v State Rep. By Inspector of Police*, <sup>190.</sup> allegation was that accused along with others entered the premises of complainant in false pretext of conducting income tax raid and looted jewels and cash. Accused acquitted since there was no TIP and accused was identified for first time in Court after seven years of occurrence.

#### [s 395.2] Sentence.—

Dacoity is a daredevil act. Most of the time, a serious crime like dacoity is committed by unknown persons and it is very difficult to trace them and still difficult to secure their conviction. As a matter of fact, looking to the nature of crime and the manner in which the appellants looted temple properties, graver punishment was warranted. In any case, sentence of five years rigorous imprisonment awarded by the trial Court and confirmed in appeal by the High Court for the offence under [section 395 IPC, 1860](#) calls for no interference.<sup>191.</sup>

Considering that the value of the alleged loot including cash and mobile was only Rs. 16,550 and the young age of the accused, the trial Court sentenced him to rigorous imprisonment of only one year along with a fine of Rs. 100. The High Court allowed the appeal to the extent of enhancing the sentence to five years of rigorous imprisonment along with the fine imposed by the trial Court. Considering the same reasons as recorded by the trial Court the Supreme Court reduced the sentence of imprisonment to the extent already undergone, i.e., three years and two months.<sup>192.</sup>

<sup>187.</sup> Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>188.</sup> *Krishna Gopal Singh v State of UP*, [AIR 2000 SC 3616](#) , finding that the accused person committed robbery is a *sine qua non* for sustaining a conviction under section 395. *Kapoorchand Chaudhary v State of Bihar*, [2002 Cr LJ 1424](#) (Pat), no leniency in terms of punishment was shown to dacoits who had robbed innocent bus passengers of their belongings irrespective of the fact that the accused persons had been facing the rigour of the trial for 14 years. *Praful Kumar Patel v State of Orissa*, [2000 Cr LJ 2724](#) (Ori) entry into house with court orders to seize articles attached, complaint quashed. *Gandikota Narasaiah v Superintendent*, [1999 Cr LJ 3947](#) (AP), conviction in three cases of dacoity, direction should not be given that the sentence in all the three cases should run concurrently. Such direction may operate as a licence to professional dacoity. *Subedar Yadav v State of UP*, [1999 Cr LJ 4663](#) (All), punishment for dacoity in five houses in the night of the incident, identified by 4 witnesses in lantern light. *Devendran v State of TN*, [1998 Cr LJ 814](#) : [AIR 1998 SC 2821](#) [[LNIND 1997 SC 1368](#)] , entered house, killed two old ladies and car driver, and looted jewelry, etc., offence against accused persons proved beyond doubt. Conviction under sections 302, 326. *Shahul Hameed v State of TN*, [1998 Cr LJ 885](#) (Mad), doubtful evidence, acquittal. *Badloo v State of UP*, [1998 Cr LJ 1072](#) (All), concocted evidence, no conviction, not even for a lesser offence. *Rajvee v State of UP*, [1998 Cr LJ 1588](#) (All), conviction on sale basis of identification evidence not proper. *SK Jamir v State of Orissa*, [1998 Cr LJ 1728](#) (Ori), dacoity by entering into house, good evidence, conviction. Another similar conviction, *Satish v State of UP*, [1998 Cr LJ 3352](#) (All); *Subhaya Perumal Pilley v State of Maharashtra*, [1997 Cr LJ 922](#) (Bom), more than five were involved, force was used, threatening words were spoken, and gold was taken away, essentials of section 395, proved. No hurt or injury caused. 10 years imprisonment was reduced to 7 years. *Araf Mulla v State of Orissa*, [1997 Cr LJ 4213](#) (Ori), dacoity at petrol pump, no proper proof. *Abdul Gafur v State of Assam*, [\(2007\) 12 SCC 627](#) [[LNIND 2007 SC 1422](#)] : [AIR 2008 SC 607](#) [[LNIND 2007 SC 1422](#)] : [2008 Cr LJ 800](#) , acquittal, infirmities in the prosecution in the background of admitted animosity between the parties, the prosecution version was unacceptable.

189. *Deepak @ Wireless v State of Maharashtra*, 2012 Cr LJ 4643 : (2012) 8 SCC 785 [LNIND 2012 SC 558] .
190. *T Alias Sankaranarayanan v State Rep. By Inspector of Police*, 2011 Cr LJ 4006 (Mad).
191. *Ram Babu v State of UP*, AIR 2010 SC 2143 [LNIND 2010 SC 365] : (2010) 5 SCC 63 [LNIND 2010 SC 365] ; *Arjun Mahto v State of Bihar*, AIR 2008 SC 3270 [LNIND 2008 SC 1627] : (2008) 15 SCC 604 [LNIND 2008 SC 1627] - the passage of time cannot wash away gravity of offence.
192. *Pareshbhai Annabhai Sonvane v State of Gujarat*, 2016 Cr LJ 2076 : 2016 (3) Scale 349 [LNINDU 2016 SC 73] .



# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Robbery and Dacoity

#### [s 396] Dacoity with murder.

If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or <sup>193</sup>[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

#### COMMENT—

Under this section extreme penalty of death may be inflicted on a person convicted of taking part in a dacoity in the course of which a murder is committed, even though there is nothing to show that he himself committed the murder or that he abetted it. The section declares the liability of other persons as co-extensive with the one who has actually committed murder. Where in the course of a dacoity one man was shot dead, and the accused person who was tried had a gun and others of the dacoits also had guns, and there was no evidence that the accused was the man who fired the fatal shot, the sentence was altered from one of death to one of transportation for life. <sup>194</sup>

#### [s 396.1] Ingredients.—

The offence under this section requires two things:—

- (1) The dacoity must be the joint act of the persons concerned.
- (2) Murder must have been committed in the course of the commission of the dacoity. <sup>195</sup>

[Section 391 IPC, 1860](#) explains the offence of 'dacoity'. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission and attempt amount to five or more, every person so committing, attempting or aiding, is said to commit 'dacoity'. Under [section 392 IPC, 1860](#), the offence of 'robbery' *simpliciter* is punishable with rigorous imprisonment which may extend to ten years or 14 years depending upon the facts of a given case. [Section 396 IPC, 1860](#) brings within its ambit a murder committed along with 'dacoity'. In terms of this provision, if any one of the five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death or imprisonment for life or rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine. <sup>196</sup> In the first instance, what is to be examined is whether the basic ingredient of the offence falling under [sections 395, 396 and 397 of IPC, 1860](#), namely, participation of five or more persons was made out. <sup>197</sup> On a plain reading of these provisions, it is

clear that to constitute an offence of 'dacoity', robbery essentially should be committed by five or more persons. Similarly, to constitute an offence of 'dacoity with murder' any one of the five or more persons should commit a murder while committing the dacoity, then every one of such persons so committing, attempting to commit or aiding, by fiction of law, would be deemed to have committed the offence of murder and be liable for punishment provided under these provisions depending upon the facts and circumstances of the case.<sup>198.</sup>

For recording conviction for dacoity, there must be five or more persons. In the absence of such finding, an accused cannot be convicted for dacoity. In a given case, however, it may happen that there may be five or more persons and the *factum* of five or more persons is either not disputed or is clearly established, but the Court may not be able to record a finding as to identity of all the persons said to have committed the dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons—or even one—can stand. But in the absence of such finding, less than five persons cannot be convicted for dacoity. A similar situation arises in dealing with cases of "unlawful assembly" as defined in [section 141 IPC, 1860](#) and liability of every member of such unlawful assembly for an offence committed in prosecution of common object under [section 149 IPC, 1860](#). In this case there were six accused. Out of those six accused, two were acquitted by the trial Court without recording a finding that though offence of dacoity was committed by six persons, identity of two accused could not be established. They were simply acquitted by the Court. Therefore, as per settled law, four persons could not be convicted for dacoity, being less than five which is an essential ingredient for commission of dacoity. Moreover, all of them were acquitted for an offence of criminal conspiracy punishable under [section 120-B IPC, 1860](#) as also for receiving stolen property in the commission of dacoity punishable under [section 412 IPC, 1860](#). The conviction of the appellant in this case for an offence punishable under [section 396 IPC, 1860](#), therefore, could not stand and must be set aside.<sup>199.</sup>

### **[s 396.2] Presence of all not necessary.—**

The section says that if "any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity" then every one of those persons shall be liable to the penalty prescribed in the section. It is not necessary that murder should be committed in the presence of all. When in the commission of a dacoity a murder is committed, it matters not whether the particular dacoit was inside the house where the dacoity is committed, or outside the house, or whether the murder was committed inside or outside the house, so long only as the murder was committed in the commission of that dacoity.<sup>200.</sup> The essence of an offence under this section is murder committed in commission of dacoity. It does not matter whether murder is committed in the immediate presence of a particular person or persons. It is not even necessary that murder should have been within the previous contemplation of the perpetrators of the crime.<sup>201.</sup> But in a case the dacoits were forced to retreat without collecting any booty, the offence of dacoity would be completed as soon as they left the house of occurrence and took to their heels. And if a murder was committed by any one of the dacoits in course of such a retreat without any booty, then only the actual murderer will be liable under [section 302, IPC, 1860](#), and conjoint responsibility under [section 396, IPC, 1860](#), could not be fixed on others though all of them could be convicted under [section 395, IPC, 1860](#) as attempt to commit dacoity is also dacoity.<sup>202.</sup>

### **[s 396.3] Number of Persons.—**

Conviction for an offence of dacoity of less than five persons is not sustainable.<sup>203</sup> For recording conviction, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the factum of five or more persons is either not disputed or is clearly established, but the Court may not be able to record a finding as to identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons — or even one can stand. But in absence of such finding, less than five persons cannot be convicted for an offence of dacoity.<sup>204</sup>

### **[s 396.4] Presumption from recent possession.—**

Simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery.<sup>205</sup> The nature of the presumption under Illustration (a) of [section 114 of the Indian Evidence Act, 1872](#) must depend upon the nature of evidence adduced. No fixed time-limit can be laid down to determine whether possession is recent or otherwise. Each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according "as the stolen article is or is not calculated to pass readily from hand to hand". If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed could not be said to be too long particularly when the appellant had been absconding during that period.<sup>206</sup>

### **[s 396.5] Section 396 and Section 302.—**

The ingredients of both these offences, to some extent, are also different in as much as to complete an offence of 'dacoity' under [section 396 IPC, 1860](#), five or more persons must conjointly commit the robbery while under [section 302 of the IPC, 1860](#) even one person by himself can commit the offence of murder. But, as already noticed, to attract the provisions of section 396, the offence of 'dacoity' must be coupled with murder. In other words, the ingredients of section 302 become an integral part of the offences punishable under [section 396 of the IPC, 1860](#). Resultantly, the distinction with regard to the number of persons involved in the commission of the crime loses its significance as it is possible that the offence of 'dacoity' may not be proved but still the offence of murder could be established, like in the present case. Upon reasonable analysis of the language of these provisions, it is clear that the Court has to keep in mind the ingredients which shall constitute a criminal offence within the meaning of the penal section. This is not only essential in the case of the offence charged with but even where there is comparative study of different penal provisions as the accused may have committed more than one offence or even offences of a graver nature. He may finally be punished for a lesser offence or vice versa, if the law so permits and the requisite ingredients are satisfied.<sup>207</sup> On the conjoint reading of [sections 396 and 302 IPC, 1860](#), it is clear that the offence of murder has been lifted and incorporated in the provisions of [section 396 IPC, 1860](#). In other words, the offence of murder punishable under section 302 and as defined under section 300 will have to be read into the provisions of offences stated under [section 396 IPC, 1860](#). In other words, where a provision is physically lifted and made part of another provision, it shall fall within the ambit and scope of principle akin to 'legislation by incorporation' which normally is

applied between an existing statute and a newly enacted law. The expression 'murder' appearing in section 396 would have to take necessarily in its ambit and scope the ingredients of [section 300 of the IPC, 1860](#). The provisions are clear and admit no scope for application of any other principle of interpretation except the 'golden rule of construction', i.e., to read the statutory language grammatically and terminologically in the ordinary and primary sense which it appears in its context without omission or addition. These provisions read collectively, put the matter beyond ambiguity that the offence of murder, is by specific language, included in the offences under section 396. It will have the same connotation, meaning and ingredients as are contemplated under the provisions of [section 302 IPC, 1860](#).<sup>208</sup>

#### **[s 396.6] Charge under section 396.—Conviction under section 302.—**

No prejudice has been caused to the appellant by his conviction for an offence under [section 302 IPC, 1860](#) though he was initially charged with an offence punishable under [section 396 IPC, 1860](#) read with [section 201 IPC, 1860](#). The circumstances which constitute an offence under section 302 were literally put to him, as [section 302 IPC, 1860](#) itself is an integral part of an offence punishable under [section 396 IPC, 1860](#). Once the appellant has not suffered any prejudice, much less a serious prejudice, then the conviction of the appellant under [section 302 IPC, 1860](#) cannot be set aside merely for want of framing of a specific/ alternate charge for an offence punishable under [section 302 IPC, 1860](#). It is more so because the dimensions and facets of an offence under section 302 are incorporated by specific language and are inbuilt in the offence punishable under [section 396 IPC, 1860](#). Thus, on the application of principle of 'cognate offences', there is no prejudice caused to the rights of the appellant.<sup>209</sup>

#### **[s 396.7] Rarest of the rare.—**

Five members of a family including two minor children and the driver were ruthlessly killed by the use of a knife, an axe and an iron rod with the help of four other. The crime was obviously committed after pre-meditation with absolutely no consideration for human lives and for money. Even though the appellant was young, his criminal propensities are beyond reform and he is a menace to the society. death sentence was held to be the appropriate punishment.<sup>210</sup> In a dacoity with double murder, the accused had gained confidence of the lady of the house and other inmates and visited them frequently. They committed dacoity after killing the lady and her grandson cold-bloodedly and attempted to kill two others. Their guilt was proved duly by circumstantial and direct evidence. The offences were found to be both heinous and barbaric and it was a 'rarest of rare case'.<sup>211</sup>

<sup>193</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>194</sup>. *Lal Singh*, (1938) All 875 . See also *Nanhau Ram v State of MP*, 1988 Cr LJ 936 : AIR 1988 SC 912 : 1988 Supp SCC 152 . Where all the ingredients were established and the conviction

was sustained, *Lalli v State of West Bengal*, AIR 1986 SC 990 : 1986 Cr LJ 1083 : 1986 All LJ 768 : (1986) 2 SCC 409 , pre-planned dacoity, cold- blooded murder, concealment of bodies, the Supreme Court did not reduce life sentence and six-year *R I Sheodan v State of UP*, 1988 Cr LJ 479 (All), R I for five years to persons robbing and injuring bus passengers disrupting social life of the area. *State of UP v Hardeo*, AIR 1992 SC 1854 : 1992 Cr LJ 3160 , evidence not reliable, acquittal.

195. To bring an offence under section 396, the prosecution has to establish that murder was committed during dacoity. Hence, when prosecution alleges commission of murder during dacoity, the offence traverses from section 395 to section 396. Any person committing the offence of dacoity with murder cannot be convicted and sentenced under both the sections, *Rahimal v State of UP*, 1992 Cr LJ 3819 (All).

196. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] .

197. *Deepak @ Wireless v State of Maharashtra*, 2012 Cr LJ 4643 : (2012) 8 SCC 785 [LNIND 2012 SC 558] .

198. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] .

199. *Raj Kumar v State of Uttaranchal*, (2008) 11 SCC 709 [LNIND 2008 SC 849] : (2008) 3 SCC (Cr) 888 : (2008) 5 All LJ 637 : AIR 2008 SC 3248 [LNIND 2008 SC 849] .

200. *Teja*, (1895) 17 All 86 ; *Umrao v State*, (1894) 16 All 437 , **dissented** from; *Chittu*, (1900) PR No. 4 of 1900. *Sunil v State of Rajasthan*, 2001 Cr LJ 3063 (Raj), it was not material that all the five dacoits were not arrested. Miscreants entered the house of victim, caused one death, injured others and looted property. Crime against them proved. Conviction. *Shobit Chamar v State of Bihar*, 1998 Cr LJ 2259 (SC) six members of family killed in the process of dacoity, trustworthy eye-witnesses, conviction. *Anthony De Souza v State of Karnataka*, AIR 2003 SC 258 [LNIND 2002 SC 674] , all the five accused proved to have participated in murder, the trial of juvenile delinquent was split, High Court converting conviction from under sections 396/149 to that under sections 396/34, improper.

201. *Samunder Singh*, AIR 1965 Cal 598 [LNIND 1963 CAL 83] .

202. *Shyam Behari*, 1957 Cr LJ 416 (SC-Para 5) : AIR 1956 SC 320 . See *Suryamurthy v Govindaswamy*, AIR 1989 SC 1410 [LNIND 1989 SC 232] : 1989 Cr LJ 1451 : (1989) 3 SCC 24 [LNIND 1989 SC 232] , where some of the accused were acquitted because evidence of their identity was not dependable. *Ajab v State of Maharashtra*, 1989 Cr LJ 954 : AIR 1989 SC 827 : 1989 Supp (1) SCC 601 , appeal on the matter of sentence; *Hari Nath v State of UP*, 1988 Cr LJ 422 : (1988) 1 SCC 14 [LNIND 1987 SC 743] : AIR 1988 SC 345 [LNIND 1987 SC 743] , dacoity at night, identification not dependable. *Sheonath Bhar v State of UP*, 1990 Cr LJ 2423 (All), no conviction on the basis only of identification. *Ramdeo Rai Yadav v State of Bihar*, AIR 1990 SC 1180 [LNIND 1990 SC 126] : 1990 Cr LJ 1183 the High Court finding that the appellant alone was guilty of the murder shifted the conviction to under section 302 with no prejudice to the accused, upheld by the Supreme Court.

203. *Ram Lakhan v State of UP*, (1983) 2 SCC 65 .

204. *Raj Kumar Alias Raju v State of Uttaranchal*, (2008) 11 SCC 709 [LNIND 2008 SC 849] ; *Saktu v State of UP*, (1973) 1 SCC 202 distinguished.

205. *Geejaganda Somaiah v State of Karnataka*, AIR 2007 SC 1355 [LNIND 2007 SC 312] ; *Gulab Chand*, AIR 1995 SC 1598 [LNIND 1995 SC 440] ; *Tulsiram Kanu v State*, AIR 1954 SC 1 : 1954 Cr LJ 225 - the presumption permitted to be drawn under Section 114, Illustration (a) of the **Evidence Act, 1872** has to be drawn under the 'important time factor'. If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a

presumption of guilt may be permitted. But if a long period has expired in the interval, the presumption cannot be drawn having regard to the circumstances of the case.

206. *Earabhadrapa v State of Karnataka*, AIR 1983 SC 446 [LNIND 1983 SC 83] : 1983 Cr LJ 846

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207. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] ; *Iman Ali v State of Assam*, AIR 1968 SC 1464 [LNIND 1968 SC 92] : 1968 (3) SCR 610 [LNIND 1968 SC 92] .

208. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] .

209. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] ; *State of UP v Sukhpal Singh*, (2009) 4 SCC 385 [LNIND 2009 SC 339] : AIR 2009 SC 1729 [LNIND 2009 SC 339] - Accused persons entered premises, looted licensed gun and other articles and also killed two persons and injured others. Supreme Court held that charging accused under section 396 and instead of sub-section 302 is proper.

210. *Sonu Sardar v State of Chhattisgarh*, (2012) 4 SCC 97 [LNIND 2012 SC 909] : AIR 2012 SC 1480 [LNIND 2012 SC 909] ; *Ankush Maruti Shinde v State of Maharashtra* [(2009) 6 SCC 667 [LNIND 2009 SC 1056] : AIR 2009 SC 2609 [LNIND 2009 SC 1056] .

211. *State of Karnataka v Rajan*, 1994 Cr LJ 1042 (Kant).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Robbery and Dacoity

#### [s 397] Robbery or dacoity, with attempt to cause death or grievous hurt.

If, at the time of committing robbery or dacoity, the offender uses any deadly weapon,<sup>1</sup> or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

#### COMMENT—

Sections 397 and 398 do not create any offence but merely regulate the punishment already provided for robbery and dacoity.<sup>212</sup> This section fixes a minimum term of imprisonment when the commission of robbery and dacoity has been attended with certain aggravating circumstances, viz., (1) the use of a deadly weapon, or (2) the causing of grievous hurt, or (3) attempting to cause death or grievous hurt.

Section 34 of the Code has no application in the construction of this section.<sup>213</sup>

#### [s 397.1] Accused must be armed with deadly weapon.—

It is necessary to prove that at the time of committing robbery, the accused was armed with a deadly weapon and not merely that one of the robbers who was with him at the time carried one.<sup>214</sup> The liability to enhanced punishment is limited to the offender who actually uses the weapon himself and causes grievous hurt and not to others who in combination with such person have committed robbery or dacoity.<sup>215</sup> The expression 'the offender' occurring in this section pertains to actual offender. It does not include all persons who participate in robbery or dacoity.<sup>216</sup> The section does not provide for constructive liability as in section 149.<sup>217</sup>

**1. 'Uses any deadly weapon'.—**These words are wide enough to include a case in which a person levels his revolver against another person in order to overawe him. It is not correct to say that a person does not use a revolver unless he fires it.<sup>218</sup> Where the accused carried knife open to the view of the victims, it is sufficient use of a deadly weapon to terrorise them within the meaning of this section and no other overt act as brandishing of the knife is necessary to apply this section.<sup>219</sup> In reference to the word "uses" as it occurs in the section, it has been held that if the weapon carried by the offender was within the vision of the victim so as to be capable of creating terror in his mind that is sufficient to satisfy the requirement of use of deadly weapon. It is not necessary to show further any hurt caused by the use of the weapon.<sup>220</sup>

The section postulates only the individual act of the accused to be relevant. It thus negates the application of the principle of constructive or vicarious liability as provided in section 34. Where all the accused persons carried their respective deadly weapons, it

was held that each one of them satisfy the requirement of section 397. Conviction could be only under section 397 and not section 397 read with section 34.<sup>221.</sup>

### **[s 397.2] Comparison with section 394.—**

The section relates itself only to an offender who actually uses the weapon himself. It has no scope for constructive liability. The accused in this case had not himself caused any grievous hurt in the commission of the robbery. His conviction under this section read with section 34 was not proper.<sup>222.</sup> The liability under section 397 is only individual, whereas liability under section 394 is both individual and vicarious.<sup>223.</sup>

### **[s 397.3] Deadly weapon.—**

In *Babulal Jairam Maurya v State of Maharashtra*,<sup>224.</sup> it was held that the word "deadly weapon" as used here has to be a real deadly weapon and not just assumed or mistaken to be a deadly weapon. A toy-pistol cannot be said to be a deadly weapon whatever be its impact on persons who were frightened with it. Bamboo sticks or *lathis*, which were possessed and held by the accused, were held by the Supreme Court to be not deadly weapons. There was no evidence of any grievous hurt or attempt to inflict it.<sup>225.</sup>

### **[s 397.4] Grievous hurt.—**

Any hurt which endangers life is a grievous hurt. It would be seen that one of the injuries was caused just below the nipple. The term 'endangers life' is much stronger than the expression 'dangerous to life'. Apart from that in the provision, attempt to cause grievous hurt attracts its application.<sup>226.</sup>

### **[s 397.5] Recovery of property.—**

The Supreme Court observed in *Lachhman Ram v State of Orissa*:<sup>227.</sup> "The factum of recovery of articles at the instance of the accused persons in the presence of police officers and *panch* witnesses is itself sufficient to bring the case not only under section 412 but also under section 391".

### **[s 397.6] Death sentence.—**

In a robbery and double murder case, it was found that the acts of the accused persons were heinous and they had committed murder brutally and showed no regard for human lives. They were hardened criminals with previous criminal records. It was held that life imprisonment could not serve any reformatory treatment to the accused. The sentence was enhanced to capital punishment.<sup>228.</sup>

The accused was convicted for the offence of robbery and murder of five persons; murders were premeditated and carried out for gain. The entire family was



exterminated in a cruel manner. The accused was a young person but not the breadwinner of anyone. The imposition of death sentence was confirmed.<sup>229.</sup>

### [s 397.7] Probation.—

The Supreme Court had granted the benefit of probation to the appellant who was less than 21 years of age as on the date of the offence. The report of the Probation officer had been called and keeping in view the circumstances as had been detailed in the report of the Probation officer coupled with the fact that the appellant being less than 21 years of age on the date of offence, he had been granted benefit of probation.<sup>230.</sup>

212. *Gaya Bhakta v State of Orissa*, 1988 Cr LJ 1576 (Ori), the charge should, therefore be under section 395 read with section 397. *Kallu v State of MP*, 1992 Cr LJ 238 (MP).

213. *Ali Mirza*, (1923) 51 Cal 265 ; *Dulli*, (1924) 47 All 59 .

214. *Bhavjya v State*, (1895) Unrep Cr C 797. *Dhanai Mahto v State of Bihar*, AIR 2000 SC 3602 , bamboo sticks and lathis have been held to be not deadly weapons for the purposes of this section. *KV Chacko v State of Kerala*, 2001 Cr LJ 713 : AIR 2001 SC 537 [LNIND 2000 SC 1797] , circumstance of dacoity with murder not proved. Hence, acquittal.

215. *Deoji Keru*, (1872) Unrep Cr C 65; *Phool Kumar*, 1975 Cr LJ 778 : AIR 1975 SC 905 [LNIND 1975 SC 112] : (1975) 1 SCC 797 [LNIND 1975 SC 112] ; *Komali Viswasam*, (1886) 1 Weir 450; *Nageshwar*, (1906) 28 All 404 ; *Ali Mirza*, *supra*; *Dulli*, *supra*.

216. *Willson v State of Maharashtra*, 1995 Cr LJ 4042 (Bom).

217. *Hazara Singh v State*, (1946) 25 Pat 227.

218. *Chandra Nath*, (1931) 7 Luck 543 . Where the accused, while committing the robbery did not use the Deshi Katta recovered from his possession for threatening the victims nor caused them any grievous injury, it was held that offence under section 397 was not made out against him, *Babu Lal v State of Rajasthan*, 1994 Cr LJ 3531 (Raj). Where the accused was caught red-handed brandishing his knife and demanding money from a man and was convicted under section 397. The sentence being minimum seven years R.I., it was not interfered with. *Sanjay v State of Maharashtra*, 1996 Cr LJ 2172 (Bom).

219. *Phool Kumar*, 1975 Cr LJ 778 : AIR 1975 SC 905 [LNIND 1975 SC 112] ; *Jai Prakash*, 1981 Cr LJ 1340 (Del); *Jang Singh*, 1984 Cr LJ 1135 (Raj).

220. (2004) 3 SCC 116 : AIR 2004 SC 1253 : 2004 Cr LJ 936 : (2004) 3 MPLJ 361 : (2004) 3 Mah LJ 581 .

221. *Ashfaq v State Govt. of NCT of Delhi*, (2004) 3 SCC 116 : AIR 2004 SC 1253 .

222. *Paramjeet Singh v State of Rajasthan*, 2001 Cr LJ 757 (Raj).

223. *Shravan Deshrath v State of Maharashtra*, 1998 Cr LJ 1196 (Bom).

224. *Babulal Jairam Maurya v State of Maharashtra*, 1993 Cr LJ 281 (Bom).

225. *Dhanai Mahto v State of Bihar*, 2001 Cr LJ 147 (SC), the court said that in such a case the maximum punishment provided by section 397 need not be imposed. Four years were held to be sufficient.

226. *Niranjan Singh v State of M.P.*, AIR 2007 SC 2434 [LNIND 2007 SC 796] : (2007) 10 SCC 459 [LNIND 2007 SC 796] .
227. *Lachhman Ram v State of Orissa*, AIR 1985 SC 486 [LNIND 1985 SC 77] : 1985 Cr LJ 753 : (1985) 2 SCC 533 [LNIND 1985 SC 77] . *Mangal Tularam Warkhade v State of Maharashtra* 2012 Cr LJ 510 (Bom) Recovery of cash as booty of dacoity, not proved. Accused acquitted
228. *Prem v State of Maharashtra*, 1993 Cr LJ 1608 (Del).
229. *KV Chacko v State of Kerala*, 2001 Cr LJ 1179 (Ker).
230. *Masarullah v State of Tamil Nadu*, 1983 SCC (Cr) 84 : (1983 Cr LJ 1043) .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Robbery and Dacoity

#### [s 398] Attempt to commit robbery or dacoity when armed with deadly weapon.

**If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.**

#### COMMENT—

This section can regulate the punishment only in cases of an attempt to commit robbery as distinguished from a case in which the offender has accomplished his purpose and robbery has actually been committed.<sup>231</sup> It applies to such of the offenders as are armed with deadly weapons though they do not use them in the attempt to rob or commit dacoity. It does not apply to other offenders who in combination with such persons have committed robbery or dacoity.<sup>232</sup> The words "uses" and "is armed" in [sections 397 and 398, IPC, 1860](#), have to be given identical meaning to resolve apparent anomaly.<sup>233</sup> Thus, carrying a deadly weapon would be enough to attract the mischief of either section. In the charge-sheet, accused were charged under section 396. Section 398 is referred only for the purpose of sentence. Hence, the argument that when section 398 is attracted, life imprisonment cannot be awarded is untenable. Substantive offence here is section 396. But, if section 398 is attracted, minimum punishment shall be seven years. Sections 397 and 398 cannot be used conjunctively or constructively as held by the Apex Court in *Paramjeet Singh v State of Rajasthan*.<sup>234</sup> In fact, as held in various Court decisions, a person cannot be convicted under section 398 unless he is armed with a deadly weapon while committing or attempting to commit robbery or dacoity.<sup>235</sup>

[Section 398, IPC, 1860](#) gets attracted if at the time of attempting to commit robbery or dacoity, the offender is armed with a deadly weapon which will attract an imprisonment not less than seven years. When no robbery or dacoity has been committed as such, in the sense that no property was removed from the house of the complainants and nothing said to be belonging to the complainants was recovered, it would be difficult to hold that there was any attempt in regard to the commission of robbery or dacoity. Scattering of articles in the house may cause a scene as if ransacked, but that does not prove the charge.<sup>236</sup> For the offence of attempt to commit robbery the maximum punishment prescribed by law is rigorous imprisonment for seven years with fine. However the discretion is left to the Court to quantify the actual sentence to be awarded. However, if at the time of attempting to commit robbery the offender is armed with any deadly weapon, the offence becomes more serious or aggravated and therefore, section 398 provides that in such circumstances the imprisonment with which, the offender shall be punishable, shall not be less than seven years. If at the time of committing robbery the offender is not armed with any deadly weapon the Court may award sentence of imprisonment for a term up to seven years and if he was

armed with deadly weapon the sentence of imprisonment shall not be less than seven years. In such circumstances the maximum sentence of rigorous imprisonment of seven years has to be awarded. It is well settled that [section 398 IPC, 1860](#) does not create any offence but merely regulates the punishment already provided for robbery or dacoity. One cannot be convicted and sentenced separately under [sections 393 and 398 of IPC, 1860](#).<sup>237</sup>.

### **[s 398.1] Cases.—**

The allegation was that appellants entered into the house of complainant, injured her in order to commit robbery but was apprehended by police. They demanded key of *almirah* and ornaments from complainant by overawing her with deadly weapons like knife and *kattas*. High Court held that conviction under section 394 read with section 397 deserves to be converted into one under section 394 read with s, 398 of [IPC, 1860](#).<sup>238</sup>.

### **[s 398.2] Charge under section 398 conviction under [section 458 IPC, 1860](#).—**

The accused was charged under [section 398 of IPC, 1860](#) and section 25(1)(A) and [section 27 of the Arms Act, 1959](#). Trial Court acquitted the accused from both the charges holding that prosecution has failed to prove the charges, however, come to the conclusion that the accused committed an offence under [section 458 of IPC, 1860](#). The High Court held that [section 458 of Penal Code](#) in no way was a cognate offence of offence prescribed under [section 398, IPC, 1860](#). Hence, Conviction for offence under [section 458 IPC, 1860](#) without framing charge was set aside.<sup>239</sup>.

231. *Chandra Nath*, (1931) 7 Luck 543 .

232. *Ali Mirza*, (1923) 51 Cal 265 ; *Nabibux*, (1927) 30 Bom LR 88 ; 52 Bom 168.

233. *Phool Kumar*, 1975 Cr LJ 778 : AIR 1975 SC 905 [LNIND 1975 SC 112] . *Surender @ Babli v State* AIR 2012 SC 1725 [LNINDORD 2011 SC 141] -High Court convicted the accused under [sections 393, 398 and 302/34 of IPC, 1860](#) on the ground that weapon which had been recovered at the instance of appellant proved his involvement in the incident. Supreme Court set aside the conviction

234. *Paramjeet Singh v State of Rajasthan*, 2001 Cr LJ 757 (SC)

235. *Sharafu Alias Sharafudheen v State of Kerala*, 2007 Cr LJ 2908 (Ker).

236. *Chinnadurai v State of Tamil Nadu*, AIR 1996 SC 546 : (1995) Supp3 SCC 686.

237. *Shahaji Ramanna Nair v State of Maharashtra*, 2007 Cr LJ 4653 (Bom).

238. *Ganesh Singh v State of MP*, 2009 Cr LJ 3691 (MP).

239. *Manik Miah v State of Tripura*, 2013 Cr LJ 1899 (Gau).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Robbery and Dacoity

#### [s 399] Making preparation to commit dacoity.

**Whoever makes, any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.**

#### COMMENT—

This section makes preparation to commit dacoity punishable. 'Preparation' consists in devising or arranging means necessary for the commission of an offence.<sup>240.</sup>

Under the Code preparation to commit an offence is punishable in three cases:—

- (1) Preparation to wage war against the Government of India (section 122).
- (2) Preparation to commit depredation on territories of a Power at peace with the Government of India (section 126).
- (3) Preparation to commit dacoity.

In a popular sense assembling to commit dacoity may be an act of preparation for it, but a mere assembly, without further preparation, is not 'preparation' within the meaning of this section. Section 402 applies to mere assembling without proof of other preparation. A person may not be guilty of dacoity, yet guilty of preparation, and not guilty of preparation, yet guilty of assembling.<sup>241.</sup>

#### [s 399.1] Distinction between sections 399 and 402.—

Though the offences falling under both the sections, more or less, involve similar ingredients, the only difference between the two is that while under section 402 mere assemblage without preparation is enough, section 399 require some additional steps by way of preparation. There can be cases where there may be an assembly for the purpose of dacoity without even a fringe of preparation. The mere fact that the appellants are acquitted of the charge under section 399 is no ground to knock off the charge under [section 402, IPC, 1860](#).<sup>242.</sup> In order to establish an offence punishable under [section 399, IPC, 1860](#) some act amounting to preparation must be proved and what must be proved further is an act for which preparation was being made was a dacoity, that is to say, robbery to be committed by five or more persons. The prosecution has to establish under [section 402, IPC, 1860](#) that there had been an assembly of five or more persons constituted for the purpose of committing dacoity and that the accused persons were members of that assembly. If there is no clear and acceptable evidence of any assemblage of the appellants with three or more persons

for the purpose of committing dacoity then the appellants cannot be held liable under [section 402, IPC, 1860](#).<sup>243.</sup>

### **[s 399.2] Distinction between attempt and preparation.—**

A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word "attempt" is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress, has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under section 122 (waging war against the Government of India) and section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation.<sup>244.</sup>

### **[s 399.3] CASES.—**

Where it is proved that the accused, who were residents of different villages had gathered with lethal arms at an unearthly hour in a desolate place under a tree with no explanation for their conduct whatsoever much less an acceptable one, the Court found them guilty under sections 399 and 402.<sup>245.</sup>

Where a number of persons were sitting in a Railway waiting hall at about 9.30 at night and a country-made gun without any cartridge, a whistle and a torch of five cells were recovered from their possession, it could not be said without any other evidence that they had made preparation to commit dacoity within the meaning of this section nor would it amount to an offence of assemblage for the purpose of committing dacoity under section 402.<sup>246.</sup> The mere fact that eight persons were found in a school at about 1 a.m. and some of them were armed does not make out a case either under section 399 or under [section 402, IPC, 1860](#), unless it is shown that they assembled there for the purpose of committing dacoity. In such a situation the possibility that they had so assembled there for murdering somebody or committing some other offence cannot be ruled out.<sup>247.</sup> In this connection see also Comments under [section 402, IPC, 1860](#), especially the case of *Naushera* therein.

### **[s 399.4] Sentence.—**

The occurrence had taken place twenty nine years ago and the appellant has remained in custody for a period of more than six months. The Supreme Court while upholding the conviction of the appellant, sentence of imprisonment awarded against him is reduced to the period already undergone by him.<sup>248.</sup>

240. *Jain Lal*, (1942) 21 Pat 667.

241. *Ramesh Chandra Banerjee*, (1913) 41 Cal 350 ; *Madhusudan Sen Gupta*, AIR 1958 Cal 25 [LNIND 1957 CAL 48] . *Shiv Ram Singh v State of UP*, 1999 Cr LJ 4103 (All), assembly in preparation for dacoity on trucks and other motor vehicles, spot arrests, 2 years RI imposed. Another case of the same kind *Radharaman v State of UP*, 1997 Cr LJ 4129 (All), arrest by police party when the accused assembled for preparation for dacoity, independent public witnesses.

242. *Naushera v State*, 1982 Cr LJ 29 (P&H). *Shravan Dashrath v State of Maharashtra*, 1998 Cr LJ 1196 (Bom), the same distinction stated.

243. *Asgar v State of Rajasthan*, 2003 Cr LJ 1997 ; In *Karam Dass v State*, AIR 1952 Pun 249 : 1952 Cr LJ 1119 , the Punjab High Court held that to bring the case within section 399 of the Code, it is not necessary that persons shown to be making the preparations should be five or more in number. It is, however, necessary for the prosecution to prove that the raid for which the persons prosecuted were making preparation was to be committed by five or more persons, for otherwise it would not be dacoity but merely robbery, and mere preparation for committing robbery, unless it ends in an actual attempt, is not punishable by law.

244. *Koppula Venkat Rao v State of Andhra Pradesh*, AIR 2004 SC 1874 [LNIND 2004 SC 301] : (2004) 3 SCC 602 [LNIND 2004 SC 301] .

245. *Birbal B Chouhan v State of Chhattisgarh*, AIR 2012 SC 911 [LNIND 2011 SC 1157] : (2011) 10 SCC 776 [LNIND 2011 SC 1157] .

246. *Brijlal Mandal*, 1978 Cr LJ 877 (Pat); see also *Gholtu Modi*, 1986 Cr LJ 1031 (Pat). *Suleman v State of Delhi*, AIR 1999 SC 1707 [LNIND 1999 SC 133] : 1999 Cr LJ 2525 , persons staying in *Dharamsala* at noon, witness stated that he overheard them talking about their plan to loot a petrol pump, it did not seem to be truthful to the court, their conviction under sections 399 and 402 was held to be not proper. *Shiv Ram Singh v State of UP*, 1999 Cr LJ 4103 (All), criminals caught on spot alongwith articles, the sentence of two years RI being already on the lower side, no scope for further reduction. *Ram Sewak v State of UP*, 1999 Cr LJ 4680 (All), failure to prove that accused assembled in preparation for dacoity. Another similar case is *Sukhlal v State of MP*, 1998 Cr LJ 1366 (MP).

247. *Chaturi Yadav*, 1979 Cr LJ 1090 : AIR 1990 SC 1412 [LNIND 1998 SC 579] .

248. *Nasir v State of UP*, AIR 2010 SC 1926 [LNIND 2009 SC 1517] : (2010) 13 SCC 251 [LNIND 2009 SC 1517] ; *Ravi Rajwar v State of Bihar*, 2003 Cr LJ 634 (Pat).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Robbery and Dacoity

#### [s 400] Punishment for belonging to gang of dacoits.

Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with <sup>249</sup>[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

#### COMMENT—

This section provides for the punishment of those who belong to a gang of persons who make it their business to commit dacoity. Its object is to break up gangs of dacoits by punishing persons associated for the purpose of committing dacoity. The mere fact that women lived as wives or mistresses with men who were dacoits was held not sufficient to prove that they belonged to a gang of persons associated for the purpose of habitually committing dacoity within the meaning of this section, unless it be proved that the women themselves were associated with the husbands or protectors for the purpose of themselves habitually committing dacoities.<sup>250</sup>

The expression 'belong' implies something more than casual association for the purpose of committing one or two dacoities by a person who was ordinarily living by honest means. It refers to those persons who habitually associate with a gang of dacoits and actively assist them in their operations. But if a person with a bad past record participates in the commission of dacoity even on one occasion in association with a well-known gang of habitual dacoits knowing them to be such a gang, it may be reasonably inferred that he belongs to that gang unless there is some other material on record to justify an inference that the association was of a casual nature.<sup>251</sup>

The word 'gang' means any band or company of persons who go about together or act in concert. The essence of the word is that the persons should act in concert.<sup>252</sup> Evidence that persons concerned were associated for the purpose of committing dacoities in a number of cases during a short period of time is good enough evidence to prove association within the meaning of this section even if such evidence was not considered sufficient for conviction under [section 395, IPC, 1860](#), in specific cases.<sup>253</sup>

<sup>249</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).



250. *Yella*, (1896) Unrep Cr C 863.
251. *Bhima Shaw*, (1956) Cut 195; *Bai Chaturi*, AIR 1960 Guj 5 [LNIND 1989 GUJ 36] .
252. *Sharaf Shah Khan*, AIR 1963 AP 314 [LNIND 1961 AP 52] .
253. *State of Assam v Hetep Boro*, 1972 Cr LJ 1074 (Assam).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Robbery and Dacoity

#### [s 401] Punishment for belonging to gang of thieves.

**Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.**

#### COMMENT—

The principle enunciated in the last section is extended by this section to a gang of thieves or robbers. It is not necessary to prove that each individual member of the gang has habitually committed theft or has committed any particular theft in company with the other members.<sup>254</sup> Even so the word 'belonging' implies something more than mere casual association. It conveys the notion of continuity and more or less continued association of the accused with the gang extending over a considerable length of time which must be proved so as to warrant an inference that the accused identified himself with the gang the common purpose of which was the habitual commission of either theft or robbery.<sup>255</sup>

<sup>254</sup>. *Beja*, (1913) PR No. 13 of 1914.

<sup>255</sup>. *Re Akbar Ali*, 1981 Cr LJ NOC 36 (Mad). Acquittal by lower courts under this section and there being no charge at that time of receiving stolen property under section 410, the Supreme Court did not in an appeal under [Article 136 of the Constitution](#) convict under section 410. *Pandara Nadar v State of TN*, AIR 1991 SC 391 : 1991 Cr LJ 468 . See the comments under section 399.

## THE INDIAN PENAL CODE

### CHAPTER XVII OF OFFENCES AGAINST PROPERTY

#### Of Theft

#### Of Robbery and Dacoity

**[s 402] Assembling for purpose of committing dacoity.**

**Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.**

#### COMMENT—

An unlawful assembly of persons meeting for a common purpose to commit dacoity is subject to the severe punishment provided in this section even though no step is taken in the prosecution of the common object.<sup>256</sup>

<sup>256</sup>. *Bholu*, (1900) 23 All 124 .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Misappropriation of Property

#### [s 403] Dishonest misappropriation of property.

**Whoever dishonestly misappropriates or converts to his own use<sup>1</sup> 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.**

#### ILLUSTRATIONS

- (a) A takes property belonging to Z out of Z's possession, in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.
- (b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.
- (c) A and B, being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

**Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.**

#### ILLUSTRATION

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

**Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.**

**What are reasonable means or what is a reasonable time in such a case, is a question of fact.**

**It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.**

#### ILLUSTRATIONS

- (a) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.
- (b) A finds a letter on the road, containing a banknote. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.
- (c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.
- (d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.
- (e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.
- (f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

#### **COMMENT—**

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.<sup>257</sup> The offence consists in the dishonest misappropriation or conversion, either permanently or for a time, of property which is already without wrong in the possession of the offender.<sup>258</sup> See illustrations (a), (b) and (c) which show that the original innocent taking amounts to criminal misappropriation by subsequent acts. Illustration (a) is qualified by ill. (b).<sup>259</sup>

#### **[s 403.1] Ingredients.—**

This section requires—

- (1) Dishonest misappropriation or conversion of property for a person's own use.

(2) Such property must be movable. Section 403 deals with the offence of dishonest misappropriation of property. It provides 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 both. The basic requirement for attracting the section is: (i) the movable property in question should belong to a person other than the accused; (ii) the accused should wrongly appropriate or convert such property to his own use; and (iii) there should be dishonest intention on the part of the accused. Here again the basic requirement is that the subject matter of dishonest misappropriation or conversion should be someone else's movable property. When NEPC India owns/possesses the aircraft, it obviously cannot 'misappropriate or convert to its own use' such aircraft or parts thereof. Therefore, section 403 is also not attracted.<sup>260</sup> Section 403 uses the words 'dishonestly' and 'misappropriate'. These are necessary ingredients of an offence under [section 403, IPC, 1860](#).<sup>261</sup>

**1. 'Dishonestly misappropriates or converts to his own use'.—**There must be actual conversion of the thing misappropriated to the accused's own use. Where, therefore, the accused found a thing, and merely retained it in his possession, he was acquitted of this offence.<sup>262</sup> Where the accused found a purse on the pavement of a temple in a crowded gathering and put it in his pocket but was immediately after arrested, it was held that he was not guilty of criminal misappropriation, for it could not be assumed that by the mere act of picking up the purse or putting it in his pocket he intended to appropriate its contents to his own use.<sup>263</sup> Where a person took possession of a bullock which had strayed, but there was no evidence that it was stolen property, and he dishonestly retained it, he could be convicted under this section and not under section 411.<sup>264</sup> The accused purchased for one *anna*, from a child aged six years, two pieces of cloth valued at 15 *annas*, which the child had taken from the house of a third person. It was held that assuming that a charge of dishonest reception of property (section 411) could not be sustained owing to the incapacity of the child to commit an offence, the accused was guilty of criminal misappropriation, if he knew that the property belonged to the child's guardian and dishonestly appropriated it to his own use.<sup>265</sup>

### **[s 403.2] Theft and criminal misappropriation.—**

(1) In theft the offender dishonestly takes property which is in the possession of a person out of that person's possession; and the offence is complete as soon as the offender moves the property. Criminal misappropriation takes place even 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.

(2) The dishonest intention to appropriate the property of another is common to theft and to criminal misappropriation. But this intention, which in theft is sufficiently manifested by a moving of the property, must in criminal misappropriation be carried into action by an actual misappropriation or conversion.

### **[s 403.3] Entrustment of cash.—**

Where a certain amount of cash, which was entrusted to the cashier, was missing from the bank and the money was neither found with the cashier nor at his home, the Court

said that he could be held liable for negligence but not for breach of trust in the absence of proof for misappropriation by him.<sup>266.</sup>

#### **[s 403.4] Joint property.—**

An owner of property, in whichever way he uses his property and with whatever intention, will not be liable for misappropriation and that would be so even if he is not the exclusive owner thereof. A partner has undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other partners. But he does not thereby commit misappropriation.<sup>267.</sup>

#### **[s 403.5] Main contractor receiving payment but not paying to sub-contractor.**

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The principal or main contractor contracted with a sub-contractor for completion of the project. The sub-contractor filed a criminal complaint alleging that the main contractor had received payment under the project but was not paying him. The Supreme Court said that the money paid to the main contractor was not in the nature of money or immovable property of the sub-contractor. Hence, there could be no misappropriation. It was a claim of civil nature.<sup>268.</sup>

#### **[s 403.6] Civil nature.—**

When the dispute in question is purely of civil nature, Magistrate is justified in dismissing the complaint under [section 203 Cr PC, 1973](#).<sup>269.</sup> Merely because a civil claim has been raised by the complainant regarding the breach of agreement, it cannot prevent him from initiating criminal proceedings.<sup>270.</sup>

#### **[s 403.7] Charge under section 406.—Conviction under section 403.—**

[Section 222\(1\) Cr PC, 1973](#) provides when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of section 222 provides that when a person is charged with an offence and facts are proved which reduced it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Offence under section 403 is certainly a minor offence in relation to the offence under [section 406, IPC, 1860](#).<sup>271.</sup>

#### **[s 403.8] Offence partly committed outside India.—**

Indian Courts have jurisdiction against foreigners residing in foreign countries but their acts connected with transaction or part of transaction arising in India. Foreign nationality, their residence outside India, and the fact that they were not present in India when the offence(s) was/were allegedly committed, are of no consequence, in view of

the aforesaid decision rendered by the Supreme Court in *Mobarik Ali Ahmed*<sup>272</sup>.  
case.<sup>273</sup>.

257. *Bhagiram Dome v Abar Dome*, (1988) 15 Cal 388 , 400; *Pramode*, (1965) 2 Cr LJ 562 .
258. *Ramakrishna*, (1888) 12 Mad 49, 50.
259. *Mahadev Govind*, (1930) 32 Bom LR 356 .
260. *Indian Oil Corporation. v NEPC India Ltd.* AIR 2006 SC 2780 [LNIND 2006 SC 537] : (2006) 6 SCC 736 [LNIND 2006 SC 537] ; *Ramaswamy Nadar v The State of Madras*, AIR 1958 SC 56 [LNIND 1957 SC 102] : 1958 Cr LJ 228 ; *Mohammed Ali v State of MP*, 2006 Cr LJ 1368 (MP); *Diamond Cables Ltd v State of Andhra Pradesh*, 2004 Cr LJ 4100 (AP).
261. *Udhar v State*, AIR 2003 SC 974 [LNIND 2003 SC 67] : (2003) 2 SCC 219 [LNIND 2003 SC 67] - Neither of these ingredients are satisfied in the facts and circumstance of this case. It cannot be said that there is any dishonest intention on the part of appellants nor it can be said that TCPL or the appellants have misappropriated or converted the movable property of the complainant to their own use. Since the basic ingredients of the relevant Section in the IPC, 1860 are not satisfied, the order taking cognizance of the offence as well as the issue of summons to the appellants is wholly uncalled for.
262. *Abdool*, (1868) 10 WR (Cr) 23A.
263. *Phuman*, (1907) PR No. 11 of 1908.
264. *Phul Chand Dube*, (1929) 52 All 200 .
265. *Makhulshah v State*, (1886) 1 Weir 470.
266. *State of Maharashtra v Mohan Radhakrishna Pednekar*, 1998 Cr LJ 3771 (Bom).
267. *Velji Raghavji*, (1964) 67 Bom LR 443 (SC). *Mahal Chand Sikwal v State of WB*, 1987 Cr LJ 1569 (Cal).
268. *U Dhar v State of Jharkhand*, AIR 2003 SC 974 [LNIND 2003 SC 67] : 2003 Cr LJ 1224 .
269. *Kaumudiben Harshadbhai Joshi v State of Gujarat*, 2012 Cr LJ 4720 (Guj).
270. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : 2012 Cr LJ 1551 .
271. *Kundanlal v State of Maharashtra*, 2001 Cr LJ 2288 (Bom).
272. *Mobarik Ali Ahmed*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 .
273. *Lee Kun Hee v State of UP* (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : 2012 Cr LJ 1551 .



# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Misappropriation of Property

**[s 404] Dishonest misappropriation of property possessed by deceased person at the time of his death.**

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

#### ILLUSTRATION

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

#### COMMENT—

This section relates to a description of property peculiarly needing protection. The offence consists in the pillaging of movable property during the interval which elapses between the time when the possessor of the property dies, and the time when it comes into the possession of some person or officer authorized to take charge of it.<sup>274</sup> The very object of this provision was to protect the property which was in possession of deceased at the time of his death till the person(s) entitled to it step in.<sup>275</sup>

#### [s 404.1] CASES.—

The circumstances namely recovery of revolver of the deceased from accused, along with live and spent cartridges, the recovery of mobile handset of Panasonic from the custody of the accused, and the fact that the accused was using the same soon after the murder of the deceased with mobile phone which was registered in the name of the accused (and that he continued to use it till his arrest), leaves no room for any doubt, that the prosecution has brought home the charges as have been found to be established against the accused.<sup>276</sup> Where the accused misused the ATM card of the deceased, it was held he had committed offence under this section.<sup>277</sup>

274. M & M 364.

275. *Prabhat Bhatnagar v State*, 2007 Cr LJ 4349 (Raj).

276. *Gajraj v State (NCT) of Delhi*, (2011) 10 SCC 675 [LNIND 2011 SC 929] : 2012 Cr LJ 413 ; *Munish Mubar v State*, 2013 Cr LJ 56 (SC) : AIR 2013 SC 912 [LNIND 2012 SC 610] . Articles belong to the deceased recovered from the accused based on his disclosure statement. Accused could not offer any explanation. Conviction confirmed by the Supreme Court. *Prakash Alias Ajayan v State*, 2009 Cr LJ 2930 (Ker)-Gold chain of deceased recovered from one of the accused. Conviction was held proper. Also see *Ramesh v State of Rajasthan* (2011) 3 SCC 685 [LNIND 2011 SC 213] .

277. *Ashok Kumar Kundi v State of Uttarakhand*, 2014 Cr LJ 378 (Utknd).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Breach of Trust

#### [s 405] Criminal breach of trust.

Whoever, being in any manner entrusted with property,<sup>1</sup> or with any dominion over property, dishonestly misappropriates<sup>2</sup> or converts to his own use that property, or dishonestly uses or disposes of that property<sup>3</sup> in violation of any direction of law prescribing the mode in which such trust<sup>4</sup> is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

**278.** [Explanation **279.** [1].—A person, being an employer **280.** [of an establishment whether exempted under [section 17 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 \(19 of 1952\)](#), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

**281.** [Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State [Insurance Act, 1948 \(34 of 1948\)](#), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

#### ILLUSTRATIONS

- (a) A, being Executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriate them to his own use. A has committed criminal breach of trust.
- (b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.
- (c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys

the direction and employs the money in his own business. A has committed criminal breach of trust.

- (d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.
- (e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.
- (f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

## COMMENT—

The basic requirement to bring home the accusations under section 405 are the requirements to prove conjointly i) entrustment and ii) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it.<sup>282</sup> Two distinct parts are involved in the commission of the offence of criminal breach of trust. The first part consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is the misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created.<sup>283</sup> A trust contemplated by section 405 would arise only when there is an entrustment of property or dominion over property. There has, therefore, to be a property belonging to someone which is entrusted to the person accused of the offence under section 405. The entrustment of property creates a trust which is only an obligation annexed to the ownership of the property and arises out of a confidence reposed and accepted by the owner.<sup>284</sup> However, it must be borne in mind that [section 405 IPC, 1860](#) does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event.<sup>285</sup>

<sup>278</sup>. Ins. by Act 40 of 1973, section 9 (w.e.f. 1 November 1973).

<sup>279</sup>. Explanation renumbered as Explanation 1 by Act 38 of 1975, section 9 (w.e.f. 1 September 1975).

<sup>280</sup>. Ins. by Act 33 of 1988, section 27 (w.e.f. 1 August 1988).

<sup>281</sup>. Ins. by Act 38 of 1975, section 9 (w.e.f. 1 September 1975).

282. *Sadhupati Nageswara Rao v State of Andhra Pradesh*, (2012) 8 SCC 547 [LNIND 2012 SC 461] : AIR 2012 SC 3242 [LNIND 2012 SC 461] ; *Asoke Basak v State of Maharashtra*, (2010) 10 SCC 660 [LNIND 2010 SC 1699] : (2011) 1 SCC(Cr) 85; *Indian Oil Corpn. v NEPC India Ltd*, (2006) 6 SCC 736 [LNIND 2006 SC 537] ; *Pratibha Rani v Suraj Kumar*, (1985) 2 SCC 370 [LNIND 1985 SC 86] ; *Rashmi Kumar v Mahesh Kumar Bhada*, (1997) 2 SCC 397 [LNIND 1996 SC 2178] ; *R Venkatkrishnan v Central Bureau of Investigation*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .
283. *Onkar Nath Mishra v State*, (NCT of Delhi) (2008) 2 SCC 561 [LNIND 2007 SC 1511] : (2008) 1 SCC (Cr) 507.
284. *Common Cause v UOI*, (1999) 6 SCC 667 [LNIND 1999 SC 637] : 1999 SCC (Cr) 1196.
285. *VP Shrivastava v Indian Explosives Ltd* (2010) 10 SCC 361 [LNIND 2010 SC 920] : (2010) 3 SCC (Cr) 1290; *Jaswantrai Manilal Akhaney v State of Bombay*, AIR 1956 SC 575 [LNIND 1956 SC 40] : 1956 Cr LJ 1116 .

## THE INDIAN PENAL CODE

### CHAPTER XVII OF OFFENCES AGAINST PROPERTY

#### Of Theft

#### Of Criminal Breach of Trust

##### [s 406] Punishment for criminal breach of trust.

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

#### COMMENT—

The criminal breach of trust would, *inter alia*, mean using or disposing of the property by a person who is entrusted with or has otherwise dominion there over. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.<sup>286</sup> To constitute this offence there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. The ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.<sup>287</sup> The offence of criminal breach of trust closely resembles the offence of embezzlement under the English law. Offences committed by trustees with regard to trust property fall within the purview of this section.

A partner has undefined ownership along with other partners over all the assets of the partnership. If he chooses to use any of them for his own purpose he may be accountable civilly to other partners. But he does not thereby commit any misappropriation. A partner may have dominion over the partnership property. But mere dominion is not enough. It must further be shown that his dominion was the result of entrustment. Thus to prosecute a partner the prosecution must establish that dominion over the assets or a particular asset of the partnership was by a special agreement between the parties, entrusted to the accused partner. If in the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be held to have been entrusted with dominion over partnership properties and without entrustment there cannot be any criminal breach of trust.<sup>288</sup> The Supreme Court has reiterated that where a partner is entrusted with property under special contract and he holds that property in a fiduciary capacity, any misappropriation of that property would amount to criminal breach of trust.<sup>289</sup>

##### [s 406.1] Ingredients.—

The section requires—

- (1) Entrusting any person with property or with any dominion over property;

- (2) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or
- (b) Dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation
  - (i) of any direction of law prescribing the mode in which such trust is to be discharged, or
  - (ii) of any legal contract made touching the discharge of such trust.

This offence consists of any one of four positive acts, namely, misappropriation, conversion, user, or disposal of property. Neither failure to account for breach of contract, however dishonest, is actually and by itself the offence of criminal breach of trust.<sup>290.</sup>

Sufferance of any loss by the victim is not necessary for leading to a conviction under the section.<sup>291.</sup>

The section does not require that the trust should be in furtherance of any lawful object. Offences committed by trustees with regard to trust property fall within the purview of this section. Negligence or other misconduct causing the loss of trust property may make the person entrusted civilly responsible, but will not make him guilty of criminal breach of trust.

### **[s 406.2] Criminal misappropriation and criminal breach of trust.—**

In criminal misappropriation the property comes into the possession of the offender by some casualty or otherwise, and he afterwards misappropriates it. In the case of criminal breach of trust the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same, or wilfully suffers any other person so to do, instead of discharging the trust attached to it.

**1. 'Being in any manner entrusted with property'.—**The words "in any manner" do not enlarge the term "entrustment" itself and, unless there is entrustment, the transaction in question cannot be affected by the terms of that section.<sup>292.</sup> The word 'entrusted' is not a term of law. In its most general significance all it imports is a handing over of the possession for some purpose which may not imply the conferring of any proprietary right at all.<sup>293.</sup> The natural meaning of 'entrusted' involves that the assured should by some real and conscious volition have imposed on the person, to whom he delivers the goods, some species of fiduciary duty.<sup>294.</sup> The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further, the person handing over property must have confidence in the person taking the property so as to create a fiduciary relationship between them.<sup>295.</sup>

Once entrustment is proved, the prosecution has not to prove any misappropriation. It is for the accused to prove in his defence that there was no misappropriation. The offence becomes proved when it is shown that the money has not been applied to the purpose for which it was entrusted.<sup>296.</sup>

### **[s 406.3] Customary gifts at engagement, etc.—**

Gifts in cash or kind which are customarily given at the time of engagement, *tilak* or marriage ceremony cannot be regarded as an entrustment of items of dowry. No complaint can be presented against the donee in respect of such customary practices.<sup>297.</sup>

Where a person authorised to collect, delegates his functions to a subordinate of his, and the latter acts in exercise of such delegated authority, any amount that is paid to him would constitute 'entrustment' within the meaning of section 405.<sup>298.</sup>

#### **[s 406.4] 'Property'.—**

The word 'property' is used in the Code in a much wider sense than the expression 'movable property'. There is no good reason to restrict the meaning of the word 'property' to movable property only when it is used without any qualification in this section or other sections of the [Penal Code](#).<sup>299.</sup> The offence of criminal breach of trust is committed not only by dishonest conversion, but also by dishonest use or disposition, and there is nothing in the wording of this section to exempt from the definition of criminal breach of trust dishonest use of immovable property by the person entrusted with dominion over it.

In cases of criminal breach of trust a distinction has to be drawn between the person entrusted with property and one having control or general charge over the property. In case of the former, if it is found that the property is missing, without further proof, the person so entrusted will be liable to account for it. In the latter case, that person will be liable only when it is shown that he misappropriated it or was a party to criminal breach of trust committed in respect of that property by any other person.<sup>300.</sup>

**2. 'Dishonestly misappropriates'.—**A temporary misappropriation may also constitute a criminal breach of trust. The bank officials in this case made public money available to a private party contrary to statutory provisions and Departmental instructions. The dishonest intention was self-evident.<sup>301.</sup> Terms of section 405 are very wide. They apply to one who is in any manner entrusted with property or dominion over property. Section 405 does not require that trust should be in furtherance of any lawful object. It merely provides that a person commits criminal breach of trust if he dishonestly misappropriates or converts to his own use the property entrusted to him.<sup>302.</sup>

#### **[s 406.5] Negligence is not 'Dishonestly'.—**

Criminal or dishonest intention is a *sine qua non* in an offence of criminal breach of trust. This being so the prosecution has to show that the accused dishonestly misappropriated or converted to his own use or dishonestly disposed of property entrusted to him. The prosecution must prove 'entrustment' or 'domino' over the property with the person proceeded and the person so entrusted has dishonestly misappropriated or converted that property. Even if the prosecution succeeds in proving entrustment, it would fail to establish the offence against the accused, if it fails to prove that he has misappropriated the property entrusted<sup>303.</sup>

It has been held that a mere error of judgment does not attract criminal liability.<sup>304.</sup>

#### **[s 406.6] Wilful omission to account.—**



Similarly, "in the case of a servant charged with misappropriating the goods of his master the elements of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account was due to an accidental loss the facts being within the servant's knowledge, it is, for him to explain the loss".<sup>305</sup> In *JM Desai's* case the matter was further clarified by the Supreme Court to say, "conviction of a person for the offence of criminal breach of trust may not in all cases be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account which is untrue an inference of misappropriation with dishonest intent may readily be made".<sup>306</sup>

Mere retention of goods by a person without misappropriation does not constitute criminal breach of trust.<sup>307</sup>

**3. 'Dishonestly uses or disposes of that property'.—** To constitute the offence of criminal breach of trust punishable under [section 406 of the IPC, 1860](#), there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. The misappropriation or conversion or disposal must be with a dishonest intention. Every breach of trust gives rise to a suit for damages, but it is only when there is evidence of a mental act of fraudulent misappropriation that the commission of embezzlement of any sum of money becomes a penal offence punishable as criminal breach of trust. It is this mental act of fraudulent misappropriation that clearly demarcates an act of embezzlement which is a civil wrong or tort, from the offence of criminal breach of trust. In the present case, apparently the prosecution has failed to establish the offence of cheating and criminal breach of trust in the absence of *mens rea*. In such view of the matter, the accused persons could not have been convicted.<sup>308</sup>

**3A. In violation of any direction of law.—**The criminal breach of trust would, *inter alia*, mean using or disposing of the property by a person who is entrusted with or has otherwise dominion there over. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust. A direction of law need not be a law made by the Parliament or a Legislature; it may be made by an authority having the power therefor; the law could be a subordinate legislation, a notification or even a custom.<sup>309</sup> It has been held that the expression "direction of law", even if taken literally, would include a direction issued by authorities in exercise of their statutory power as also power of supervision. Failure on the part of bank officials to follow RBI instructions and provisions of a Departmental Manual was a violation of a direction of law amounting to criminal breach of trust. The Manual was the UCO Bank Manual of Instructions on Bill Discounting.<sup>310</sup>

It has been held that the expression "direction of law" in section 405 includes banking norms, practices and directions given in internal Departmental instructions of a bank. Bank officials who allowed advance credits on banker's cheques to a customer in violation of Departmental instructions acted in violation of direction of law. The officials had dominion over the money belonging to the bank and they dishonestly used that money for conferring a benefit on the customer. They were held guilty of the offence under the section.<sup>311</sup>

**[s 406.7] Partner.—**

In *Velji Raghavji*,<sup>312</sup> the Supreme Court approved this statement of law in *Bhuban MohanRana v Surendra Mohan Das*, and held that mere existence of the accused's dominion over property is not enough and that it must be further shown that his dominion was the result of entrustment. According to the Supreme Court the prosecution must establish that dominion over the assets or a particular asset of the partnership was by a special agreement between the parties, entrusted to the accused partner. Where the partner of a firm had taken away some VCRs and cassettes, a criminal complaint was not allowed, the loss to the firm being essentially of civil nature and, therefore, civil proceedings would have been more appropriate.<sup>313</sup> Signing of contracts on behalf of the firm particularly when the partnership deed authorised partners to sign documents on behalf of others was held to be not constituting a criminal breach of trust.<sup>314</sup> As to when can a partner be prosecuted on a charge of criminal breach of trust see "Comments" *ante*.

#### **[s 406.8] Misappropriation of company money by nominated director.—**

The accused was the director of a public limited company and in that capacity he misappropriated a huge sum of money. In the complaint against him the charge was made out under section 409. However, the charge was framed under section 408. It was held that the accused was a nominated director of the company and there was nothing to indicate that he was an employee or servant of the company. Hence, his conviction under section 408 was not to be legally sound. He was convicted under section 406.<sup>315</sup>

#### **[s 406.9] Directors of company.—**

The directors of a company were prosecuted for non-deposit of PF amount of employees. It was held that directors are not in the position of the principal employer. They could not be prosecuted as there was no entrustment of the amount to them in terms of section 405, explanation 1.<sup>316</sup> The offence alleged in the criminal complaint filed by respondent is under [sections 405 and 420 IPC, 1860](#) where under no specific liability is imposed on the officers of the company, if the alleged offence is by the Company. In the absence of specific details about the same, no person other than Company can be prosecuted under the alleged complaint.<sup>317</sup>

The complainant was the wholesale dealer of the company. His dealership was terminated. Even so he sent a demand draft to the company for supply of goods. He did so because his dealership was subsequently reinstated by the company. The proprietor of the dealer firm filed a complaint alleged offence by the company because neither it supplied the goods nor returned the money. The company's application for quashing the complaint was rejected because the offence was *prima facie* made out. The Supreme Court said that only the company could be made liable but not its managing director or any other employee. The Supreme Court reversed the order of the High Court. Costs and compensation of harassment was quantified at Rs. 1,00,000.<sup>318</sup>

#### **[s 406.10] Husband and Wife.—**

The Supreme Court has held that reading this section with [sections 4 and 6 of the Dowry Prohibition Act, 1961](#), marriage gifts and ornaments received from in-laws must be handed over to the wife on being driven out and a failure to do so, would amount to

an offence under this section.<sup>319</sup> Where the wife was turned out of the house by the husband who refused to return the 'streedhan' despite repeated requests and persuasions, it was held that criminal breach of trust is a continuing offence and fresh cause of action accrues to the wife till the return of the property.<sup>320</sup>

It has been held that taking away by the mother-in-law of gifts and cash offerings to the wife at the time of her marriage amounts to misappropriation of *streedhan*. It was further held that offering of 25 lakh rupees for grant of divorce by mutual consent as compensation to the complainant did not *per se* constitute any offence under the section. Any gift made to the bridegroom or her parents, whether in accordance with any custom or law also did not constitute an offence under the section. The proceedings were directed to be continued only against the mother-in-law.<sup>321</sup>

#### **[s 406.11] Pledgee.—**

where, in derogation of the statutory requirement of giving reasonable notice before disposing of the articles pledged, the pledgee sells them and the price obtained is also not commensurate with the real value of the goods, the Delhi High Court expressed the opinion that it may amount to criminal breach of trust.<sup>322</sup>

#### **[s 406.12] Vehicle delivered under hire-purchase.—**

When hirer himself committed default by not paying the instalments and under the agreement, the appellants have repossessed the vehicle, the respondent-hirer cannot have any grievance as the vital element of 'dishonest intention' is lacking. The element of 'dishonest intention' which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer.<sup>323</sup> Where a person to whom a truck was delivered under hire-purchase scheme, altered the identity of the vehicle by tampering with numbers, it was held that an offence under section 406 was made out. The accused was convicted to four years R1.<sup>324</sup>

#### **[s 406.13] Default in refunding share application money.—**

A person, who makes a public issue for inviting applications for shares and who becomes liable to refund the share application money because of refusal by a stock exchange to approve his securities and fails to refund the money, can be prosecuted for criminal breach of trust.<sup>325</sup>

#### **[s 406.14] Money saving scheme.—**

The petitioner was running money saving scheme. He used to collect money from the members for different committees and disbursement to them. The disbursement was stopped because of non-payment by members of the amount due. It was held that there was no dishonest intention to misappropriate money and offences under sections 406 and 420 were not made out.<sup>326</sup>

#### **[s 406.15] Re-payment of loan.—**

Where the accused sold machinery and goods which had been hypothecated to bank and the amount not paid to bank for repayment of loan, Court held that dispute in question is of civil nature and the trial Court justified in dismissing complaint under section 203.<sup>327.</sup>

**4. 'Legal contract express or implied'.—**Violation of a contract in order to amount to criminal breach of trust has to be in respect of a legal or valid contract, and not one for a criminal purpose, e.g., purchase of stolen property, etc.<sup>328.</sup>

#### **[s 406.16] CASES.—Breach of trust.—**

Where a retired employee of a company wrongly occupied the Company quarters for more than 18 years, dismissal of complaint under [section 630 Companies Act, 2013](#) and [section 406 IPC, 1860](#) on technical grounds by the magistrate was held untenable.<sup>329.</sup> The complaint does not contain the averment that Rs.5 lakhs was entrusted to the appellant, either in his personal capacity or as the Chairman of MSEB and that he misappropriated it for his own use. The said amount was deposited by the complainant company with MSEB and there is nothing in the complaint which may even remotely suggest that the complainant had entrusted any property to appellant or that the appellant had dominion over the said money of the complainant, which was converted by him to his own use, so as to satisfy the ingredients of [section 405 IPC, 1860](#). Proceedings quashed.<sup>330.</sup> Where the accused took a jeep on loan for a specific purpose and for a particular period but refused to return it on demand by the complainant after the purpose had been served and the stipulated period was long over, it was held that there was a *prima facie* case of criminal breach of trust and as such the complaint could not be thrown out.<sup>331.</sup>

#### **[s 406.17] Refusal to return *streedhan*.—**

Where the husband and the father-in-law turned out a Hindu woman from the marital home and refused to return her ornaments, money and clothes despite repeated demands, it was held that an offence of criminal breach of trust as defined in [sections 405 and 406, IPC, 1860](#), was *prima facie* made out and the case could not be quashed. [Section 27 of the Hindu Marriage Act, 1955](#) and [section 14 of the Hindu Succession Act, 1956](#), nowhere provide that the concept of *streedhan* is abolished or that a remedy under the criminal law is not available.<sup>332.</sup>

#### **[s 406.18] Violation of legal contract.—**

where there is a mere breach of the contract terms, such as default in payment of an instalment, a liability of civil nature only would arise.<sup>333.</sup> Where a contractor was given cement for construction work by the Minor Irrigation Department, Government of Bihar under a specific agreement that he would return unused cement but instead of doing so he sold the cement to outsiders, it was held a fiduciary relationship had been clearly established in the instant case and the contractor was liable to be convicted under [section 406, IPC, 1860](#).<sup>334.</sup>

### [s 406.19] Acting contrary to directions of person entrusting money.—

One of the accused persons, a registered stock broker, purchased mutual fund securities in the name of a bank and later on sold them. The sale was contrary to the terms subject to which securities were issued (sale before completion of lock-in period). But otherwise there was no violation of any statutory provisions. Neither the name lending bank nor the issuing institution objected to the sale. It was held that the accused was the real owner of the securities. There was no breach of trust on his part because the property sold was his own. The securities were purchased by another financial institution and the other accused was an officer of that institution. He was also acquitted of similar charges. He could not be convicted under the [Prevention of Corruption Act, 1988](#) for the reason that purchase of securities to the tune of 33 crores could not have been done without authorisation from higher authorities. The transaction was also legal.<sup>335.</sup>

### [s 406.20] Civil wrong when becomes crime.—

A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the Courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out<sup>336.</sup> An act of breach of trust *simpliciter* involves a civil wrong of which the person wronged may seek his redress for damages in a civil Court but a breach of trust with *mens rea* gives rise to a criminal prosecution as well. The element of 'dishonest intention' is therefore, an essential element to constitute the offence of Criminal Breach of Trust.<sup>337.</sup> Breach of trust may be basically a civil wrong, but it gives rise to criminal liability also when there is *mens rea*.<sup>338.</sup> The difference between the two lies in dishonest intention.<sup>339.</sup> If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to a criminal proceeding.<sup>340.</sup> A civil suit was filed alleging negligence and breach of contractual obligations. The Court said that a breach of contract *simpliciter* does not constitute any offence. The criminal complaint must disclose the ingredients of the offence. For ascertaining the *prima facie* correctness of the allegations the Court can look at the correspondence between the parties and other admitted documents. Criminal proceedings should not be encouraged when they are found to be *mala fide* or otherwise an abuse of the process of the Court.<sup>341.</sup> Merely because a civil claim has been raised by the complainant regarding the breach of agreement, it cannot prevent him from initiating criminal proceedings.<sup>342.</sup> Though a case of breach of trust may be both a civil wrong and a criminal offence but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. The present case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Having regard to the relevant documents including the trust deed as also the correspondence following the creation of the tenancy, the submissions advanced on behalf of the parties, the natural relationship between the settlor and the trustee as mother and son and the fall out in their relationship and the fact that the wife of the co-trustee was no more interested in the tenancy, it must be held that the criminal case should not be continued.<sup>343.</sup>

### [s 406.20.1] Matters under special laws.—

The act of taking away dowry articles by the husband and in-laws, being in violation of special legislation contained in the [Dowry Prohibition Act, 1961](#), such offence should be tried under the special legislation rather than under the general provisions of IPC,

1860. The Supreme Court also pointed out that if any article was given by way of dowry, the question of its entrustment on behalf of wife would not arise.<sup>344.</sup>

#### **[s 406.21] Arbitration clause.—**

The presence of an arbitration clause between the parties does not bar criminal proceedings under section 406. Both civil and criminal proceedings can be there side by side.<sup>345.</sup>

#### **[s 406.22] Period of Limitation.—**

The Punjab and Haryana High Court is of the view that the offence under the section is of continuing nature. Every day a fresh cause of action keeps accruing until the property is actually returned.<sup>346.</sup>

#### **[s 406.23] Sanction for prosecution.—**

In a charge against a Government servant under the section read with section 120B (conspiracy), sanction for prosecution is not necessary.<sup>347.</sup> Since transaction for offences involved took place in a foreign country, sanction from Central Government is a must to enable Court to take cognizance of offences and proceed further in case. The High Court held that trial has proceeded without sanction and, thus, rendering it invalid, and in course of such invalid trial magistrate passed order for further investigation, which too was invalid.<sup>348.</sup>

#### **[s 406.24] Compromise.**

Compounding was denied on the ground that section 406 not compoundable as amount involved was more than Rs. 250. The Supreme Court held that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.<sup>349.</sup>

#### **[s 406.25] Jurisdiction.—**

The *Streedhan* was handed over at one place and misappropriated at another place. It was held that there was no jurisdiction at the place where it was entrusted because at that time there might have been no intention to misappropriate. Thus jurisdiction was only at the place where misappropriation was committed.<sup>350.</sup>

#### **[s 406.25.1] Entrustment of cheque.—**

A cheque has been held to be a property within the meaning of section 405. A blank cheque was issued to a person who misappropriated the same or used it for a purpose for which it was not given. The case under section 406 was held to have been made out.<sup>351</sup>.

### [s 406.26] Dishonour of cheque.—

There were regular business dealings in the course of which payments were made by cheques. One such cheque was dishonoured for which the criminal complaint was instituted. There was nothing in the complaint to show that the intention was to cheat the complainant by giving him the cheque as a camouflage. The transaction under which the cheque was given was a mere agreement to sell without any actual transfer of goods. Thus the offence of cheating or of criminal breach of trust was not made out. The complaint was quashed.<sup>352</sup>.

286. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646.
287. *CM Narayan*, AIR 1953 SC 478 [LNIND 1952 SC 159] : 1954 Cr LJ 102 .
288. *Velji Raghavji Patel*, 1965 (2) Cr LJ 431 : AIR 1965 SC 1433 [LNIND 1964 SC 350] .
289. *Anil Saran v State of Bihar*, AIR 1996 SC 204 [LNIND 1995 SC 819] : 1996 Cr LJ 408 .
290. *Daityari Tripatti v Subodh Chandra Chaudhuri*, (1942) 2 Cal 507 .
291. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .
292. *Satyendra Nath Mukherji*, (1947) 1 Cal 97 . This case was **approved** by the Supreme Court in *Jaswantlal*, AIR 1968 SC 700 [LNIND 1967 SC 338] : 1968 Cr LJ 803 . *Dani Singh*, AIR 1963 Pat 52 ; *Ram Niranjana*, (1964) 1 Cr LJ 614 .
293. Per Lord Haldane in *Lake v Simmons*, (1927) AC 487 . *VR Dalal v Yougendra Naranji Thakkar*, (2008) 15 SCC 625 [LNIND 2008 SC 1222] : AIR 2008 SC 2793 [LNIND 2008 SC 1222] , "entrustment" being the first ingredient of breach of trust, if it is missing, there would be no criminal breach of trust. *Onkar Nath Mishra v State (NCT) of Delhi*, (2008) 2 SCC 561 [LNIND 2007 SC 1511] : 2008 Cr LJ 1391 , entrustment of property to in-laws or any misappropriation by them found lacking, charge not made out.
294. Per Lord Sumner in *ibid*.
295. *Jaswantlal*, AIR 1968 SC 700 [LNIND 1967 SC 338] : 1968 Cr LJ 803 .
296. *State of HP v Karanvir*, 2006 Cr LJ 2917 : AIR 2006 SC 2211 [LNIND 2006 SC 394] : (2006) 5 SCC 381 [LNIND 2006 SC 394] .
297. *Khuman Chand v State of Rajasthan*, 1998 Cr LJ 1693 (Raj).
298. *Rajkishore v State*, AIR 1969 Ori 190 [LNIND 1969 ORI 35] .
299. *RK Dalmia*, AIR 1962 SC 1821 [LNIND 1962 SC 146] : (1962) 2 Cr LJ 805 .
300. *Kesar Singh v State*, 1969 Cr LJ 1595 .
301. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] . It made no difference to the criminal liability that the money was quickly recovered and Departmental action was taken against bank officials.

302. *Ibid.*
303. *Sardar Singh*, 1977 Cr LJ 1158 : AIR 1977 SC 1766 .
304. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] .
305. *Krishan Kumar*, 1959 Cr LJ 1508 (SC) : AIR 1959 SC 1390 [LNIND 1959 SC 135] .
306. *JM Desai*, 1960 Cr LJ 1250 : AIR 1960 SC 889 [LNIND 1960 SC 79] ; See also *Bipin Chandra*, 1964 (1) Cr LJ 688 (Ori).
307. *Nirmalabai v State*, (1953) Nag 813.
308. *Ramdeo Singh v State of Bihar*, 2013 Cr LJ 891 (Pat).
309. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC(Cr) 646.
310. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] .
311. *Mir Naqvi Askari v CBI*, (2009) 15 SCC 643 [LNIND 2009 SC 1651] : AIR 2010 SC 528 [LNIND 2009 SC 1651] .
312. *Velji Raghavji*, (1964) 67 Bom LR 443 SC : AIR 1965 SC 1433 [LNIND 1964 SC 350] : (1965) 2 Cr LJ 431 .
313. *Alagiri v State*, 1996 Cr LJ 2978 (Mad).
314. *Anwarul Islam v WB*, 1996 Cr LJ 2912 (Cal). *Nandlal Lakotia v State of Bihar*, 2001 Cr LJ 1900 (Pat), a partner becomes the owner of his share only after settlement of accounts and allotment of his share to the partner. The partner in this case was a working partner. He dishonestly misappropriated the property to the firm entrusted to him. He was liable for criminal breach of trust.
315. *Turner Morrison & Co, Bombay v KN Tapuria*, 1993 Cr LJ 3384 .
316. *BP Gupta, v State of Bihar*, 2000 Cr LJ 781 (Pat).
317. *Thermax Ltd v KM Johnny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC (Cr) 650; *Pramod Parmeshwarlal Banka v State of Maharashtra*, 2011 Cr LJ 4906 (Bom).
318. *SK Alagh v State of UP*, (2008) 5 SCC 662 [LNIND 2008 SC 368] : AIR 2008 SC 1731 [LNIND 2008 SC 368] : 2008 Cr LJ 2256 : (2008) 3 All LJ 588.
319. *Madhu Sudan Malhotra v Kishore Chand Bhandari*, 1988 BLJR 360 : 1988 SCC (Cr) 854 : 1988 Supp SCC 424 .
320. *Balram Singh v Sukhwant Kaur*, 1992 Cr LJ 792 (P&H).
321. *Bhaskar Lal Sharma v Monica*, (2009) 10 SCC 604 [LNIND 2009 SC 1432] : (2009) 161 DLT 739 .
322. *JRD Tata, Chairman TISCO v Payal Kumar*, 1987 Cr LJ 447 (Del).
323. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] : (2001) 7 SCC 417 [LNIND 2001 SC 2906] .
324. *State of UP v Sita Ram*, 1998 Cr LJ 4225 (All), the court said that ingredients of the offence under section 420 were not made out.
325. *Radhey Shyam Khemka v State of Bihar*, 1993 AIR SCW 2427 : 1993 Cr LJ 2888 : (1993) 3 SCC 54 [LNIND 1993 SC 276] .
326. *Ghansham Das v State of Haryana*, 1992 Cr LJ 2594 (P&H).
327. *Kaumudiben Harshadbhai Joshi v State of Gujarat*, 2012 Cr LJ 4720 (Guj).
328. *Gobardhan Chandra Mandal v Kanai Lal Mandal*, (1953) 2 Cal 133 .
329. *Automobile Products India Ltd v Das John Peter*, (2010) 12 SCC 593 [LNIND 2010 SC 624] : (2011) 1 SCC(Cr) 768.
330. *Asoke Basak v State of Maharashtra*, (2010) 10 SCC 660 [LNIND 2010 SC 1699] : (2011) 1 SCC(Cr) 85 ; *Chandralekha v State of Rajasthan*, JT 2012 (12) SC 390 [LNIND 2012 SC 809] : 2012 (12) Scale 692 [LNIND 2012 SC 809] – FIR filed after six years of the incident-Continuation



of proceedings is an abuse of process of law-FIR quashed; Also see *MM Prasad Khaitan v RG Poddar*, (2010) 10 SCC 673 [LNIND 2010 SC 991] .

331. *Halimuddin Ahmad*, 1976 Cr LJ 449 (Pat).

332. *Pratibha Rani*, 1985 Cr LJ 817 : AIR 1985 SC 628 [LNIND 1985 SC 86] : (1983) 2 SCC 370 .

For other cases of prosecution of the same kind, see *Manas Kumar Dutta v Aloka Dutta*, 1991 Cr LJ 288 (Ori); *Bairo Prasad v Laxmibai Pateria*, 1991 Cr LJ 2535 : AIR 1985 SC 628 [LNIND 1985 SC 86] : (1985) 2 SCC 370 [LNIND 1985 SC 86] . Where the amount defalcated was surrendered by the accused and he was released on bail. His sentence of one year R.I. was reduced to the period already undergone. *Diannatus v State of Kerala*, 1988 SCC (Cr) 57 (II) : 1987 Supp SCC 189 . Such a proceeding cannot be stayed under writ jurisdiction. *C Laxmichand v State of TN*, 1991 Cr LJ 1647 (Mad).

333. *Sunil Ranjan Ghose v Samar Roy*, 1987 Cr LJ 1603 (Cal).

334. *Kalaktar Singh*, 1978 Cr LJ 663 (Pat); *State v Jaswantlal Nathalal*, 1968 Cr LJ 803 (SC) **distinguished** on the ground that in the latter case the contract was not produced in evidence nor any oral evidence led to prove the terms of the contract. See further *Madhavrao J Scindia v SC Angre*, AIR 1988 SC 709 [LNIND 1988 SC 100] : 1988 Cr LJ 853 : (1988) 1 SCC 692 [LNIND 1988 SC 100] , where elements of a crime were wanting and, therefore, proceedings, were quashed; *Bal Kishan Das v PC Nagar*, AIR 1991 SC 1531 : 1991 Cr LJ 1837 , where arbitration proceedings about the matter in question had been going on for more than 17 years, the Supreme Court rejected prosecution under this section. The matter was of civil nature; *AL Panian v State of AP*, 1990 Supp SCC 607 : 1991 SCC (Cr) 84, failure to pay on due date on the expiry of credit period of sale is not a matter covered by this provision. *Central Bureau of Investigation v Duncan Industries*, AIR 1996 SC 2452 [LNIND 1996 SC 1028] : 1996 Cr LJ 3501 , the allegation in the complaint that the goods in respect of which floating charge was created in favour of banks were disposed by the debtor company, does not constitute criminal breach of trust.

335. *S Mohan v CBI*, (2008) 7 SCC 1 [LNIND 2008 SC 1234] : (2008) 106 Cut LT 360, **following** the *Canbank Financial Services Ltd*, case (2004) 8 SCC 355 [LNIND 2004 SC 892] : AIR 2004 SC 5123 [LNIND 2004 SC 892] , where it was held that the accused had a transferable interest in the securities purchased in the name of Andhra Bank and its subsidiary.

336. *Joseph Salvaraj A v State of Gujarat*, AIR 2011 SC 2258 [LNIND 2011 SC 576] : (2011) 7 SCC 59 [LNIND 2011 SC 576] ; *Devendra v State of UP*, (2009) 7 SCC 495 [LNIND 2009 SC 1158] : (2009) 3 SCC Cr 461.

337. *Venkatakrishnan v CBI*, 2010 SC 1812 : (2009) 11 SCC 737 [LNIND 2009 SC 1653] ; *SW Palanikar v State of Bihar*, 2002 (1) SCC 241 [LNIND 2001 SC 2381] .

338. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC Cr 646.

339. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .

340. *Thermax Ltd v KM Johny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC (Cr) 650.

341. *All Cargo Movers India Pvt Ltd v Dhanesh Badarmal Jain*, (2007) 14 SCC 776 [LNIND 2007 SC 1227] : AIR 2008 SC 247 [LNIND 2007 SC 1227] .

342. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNIND 2012 SC 443] : 2012 Cr LJ 1551 ; *Arun Bhandari v State of UP*, (2013) 2 SCC 801 [LNIND 2013 SC 18] : 2013 Cr LJ 1020 (SC)- Case is not purely in civil nature- High Court erred in quashing the order of cognizance; See also *Adarsh Kaur Gill v State of NCT of Delhi*, 2013 Cr LJ 1955 (Del).

343. *Thermax Ltd v KM Johny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC (Cr) 650; *Nagawwa v Veeranna Shivalingappa Konjalgi*, 1976 (3) SCC 736 [LNIND 1976 SC 188] : AIR 1976 SC 1947 [LNIND 1976 SC 188] ; *State of Haryana v Bhajan Lal*, 1992 Supp (1) SCC 335 : AIR 1992 SC 604 .

344. *Harmanpreet Singh Ahluwalia v State of Punjab*, (2009) 7 SCC 712 [LNIND 2009 SC 1121] : 2009 Cr LJ 3462.
345. *Sham Lal v State of Punjab*, 2001 Cr LJ 2987 (P&H).
346. *Balram Singh v Sukhwant Kaur*, 1992 Cr LJ 972 (P&H). The court surveyed a number of authorities on the concept of continuing offence. *State of Bihar v Deokaran Kenshi*, AIR 1973 SC 908 [LNIND 1972 SC 392] : 1973 Cr LJ 347 and *Bhagirath Kanoris v State of MP*, AIR 1984 SC 1688 [LNIND 1984 SC 377] : 1984 Lab IC 1578 , wherein the Supreme Court explained the concept of a continuing offence. *Best v Butter*, (1932) 2 KB 108 , wherein it was held under the [Trade Unions Act](#) that every day that the moneys were willfully withheld, the offence was committed. The court noted the **contrary** view expressed in *Waryam Singh v State of Punjab*, 1982 Cr LJ (NOC) 117 (P&H) and *State of Punjab v Sarwan Singh*, 1981 Cr LJ 722 (SC) : 1981 PLR 451 : AIR 1981 SC 1054 [LNIND 1981 SC 201] , but **distinguished** them because there in the opposite party had conceded to the proposition. In *Gurcharan Singh v Lakhwinder Singh*, (1987) 1 Recent CR 424 it was again taken for granted without argument that the offence under the section was not of continuing nature.
347. *State of Kerala v V Padmanabhan*, AIR 1999 SC 2405 [LNIND 1999 SC 585] : 1999 Cr LJ 3696 .
348. *P T Abdul Rahiman v State of Kerala*, 2013 Cr LJ 893 (Ker).
349. *Madan Mohan Abbot v State of Punjab*, AIR 2008 SC 1969 [LNIND 2008 SC 755] : (2008) 4 SCC 582; Now section 406 is made compoundable irrespective of the amount involved in the case by the Amendment Act 5 of 2009.
350. *Vijay Kumar v Sunita*, 2000 Cr LJ 4116 (MP).
351. *Suryalakshmi Cotton Mills Ltd v Rajvir Industries Ltd*, (2008) 13 SCC 678 [LNIND 2008 SC 36] : AIR 2008 SC 1683 [LNIND 2008 SC 36].
352. *Sneh Lata v Swastika Agro Industrial Corp*, 2001 Cr LJ 4432 (P&H).

## THE INDIAN PENAL CODE

### CHAPTER XVII OF OFFENCES AGAINST PROPERTY

#### Of Theft

#### Of Criminal Breach of Trust

##### [s 407] Criminal breach of trust by carrier, etc.

**Whoever, being entrusted with property as a carrier,<sup>1</sup> wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

#### COMMENT—

Those who receive property under a contract, express or implied, to carry it or to keep it in safe custody are punishable under this section for a criminal breach of trust with respect to such property.<sup>353.</sup>

**1. 'Carrier'.—**A carrier is a person who undertakes to transport the goods of other persons from one place to another for hire.<sup>354.</sup> It is clear that the expression 'carrier' in [s.407 IPC, 1860](#) includes all types of carriers, including a common carrier or a private carrier.<sup>355.</sup>

##### [s 407.1] Jurisdiction.—

Where the accused was entrusted with the carriage of a quantity of coffee from an estate in Mysore to a firm of merchants in Mangalore, and a portion of the goods was abstracted and there was no evidence as to when or where such abstraction took place, it was held that the Magistrate at Mangalore had jurisdiction to try the accused as there was failure to deliver the goods at Mangalore in accordance with the terms of entrustment.<sup>356.</sup>

Where there was misappropriation of goods entrusted for delivery, the Court said that the Courts at both the places, namely the place of entrustment and place of delivery, would have jurisdiction.<sup>357.</sup>

<sup>353.</sup> The section does not apply to a custodian of goods under the [Essential Commodities Act, 1955](#) for violation of certain clauses storage of licence. *Pramod Kumar Nayak v State of Orissa*,

[1989 Cr LJ 1041](#) (Ori). *Surinder Arora v Durga Das*, [1988 Cr LJ 1645](#) , nor to company officers for violation of Gratuity Act, 1972.

[354](#). Wharton, 14th Edn p. 164.

[355](#). *Kanhayalal Baid v RajKumar Agarval*, [1981 Cr LJ. 824](#) .

[356](#). *Public Prosecutor v Podimonu Beary*, (1928) 52 Mad 61.

[357](#). *Jijo v State of Karnataka*, [2003 Cr LJ 256](#) (Kant).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Breach of Trust

#### [s 408] Criminal breach of trust by clerk or servant.

**Whoever, being a clerk<sup>1</sup> or servant<sup>2</sup> or employed as a clerk or servant,<sup>3</sup> and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

#### COMMENT—

Section 381 punishes theft by a clerk or a servant. This section inflicts enhanced punishment on such a person for criminal breach of trust. The property must have been entrusted to the accused in his capacity as a clerk or a servant. A clerk or a servant who takes his master's property is punishable for theft.

**1. 'Clerk'.—**A clerk in modern usage means a writer in an office, public or private, either for keeping accounts or entering minutes.

**2. 'Servant'.—**Master and servant—a relation whereby a person calls in the assistance of others, where his own skill and labour are not sufficient to carry out his own business or purpose.<sup>358</sup> A servant acts under the direct control and supervision of the master and is bound to conform to all reasonable orders given in the course of his work.<sup>359</sup>

**3. 'Employed as a clerk or servant'.—**Where the accused employee dishonestly misappropriated money entrusted with him and left the service and there is no documentary evidence except extra-judicial confession of accused Court held that accused is entitled to acquittal.<sup>360</sup> Where a person sent his salesman with a letter to fetch Rs. 10,000 from his residence and he, instead of returning, slipped away with the money, it was held that the fact that he absconded for a number of days clearly established his intention of causing wrongful gain for himself.<sup>361</sup>

In the prosecution of an employee under this section, the original account books were destroyed after the matter was decided by the sessions' judge, so that it was impossible for the appellate Court to verify the correctness of the questionable entries and the other evidence was of suspicious nature, the Court had no choice but to acquit the accused.<sup>362</sup> The Court relied upon its own earlier decision<sup>363</sup> where it was observed: "The appellate court and the revisional court are entitled, while scrutinising the case against the accused, to have complete material before it on which the prosecution relies for proving the case against the accused persons. In the present case, to deprive this court of the benefit of looking at the entries, in a serious infirmity which must be held fatal to the prosecution case."<sup>364</sup>

### **[s 408.1] Branch manager of transport company.—**

The accused was a branch manager of a transport company. He delivered a consignment to the co-accused on his promise to deposit consignee copy inspite of specific instructions from the head office not to deliver the consignment without receiving the consignee copy. It was held that the conduct of the accused was *prima facie* dishonest and he was properly convicted under section 408.<sup>365.</sup>

### **[s 408.2] Employer.—Directors of company.—**

Criminal proceedings were launched against the employer for default in payment of contribution to the Employees State Insurance. It was held that the expression "employer" did not include directors.<sup>366.</sup>

<sup>358.</sup> Wharton, 14th Edn, p 641.

<sup>359.</sup> *Chandi Prasad*, (1955) 2 SCR 1035 [LNIND 1955 SC 108] : AIR 1955 SC 149 .

<sup>360.</sup> *Raghunath Dhondu Vani v Ilahi Babulal Mujavar*, 2012 Cr LJ 1345 (Bom); *Mancheswar Service Co-op Society Ltd v Anant Narayan Mishra*, 2003 Cr LJ 4390 (Ori).

<sup>361.</sup> *Harish Chandra Singh v State of Orissa*, (1995) 1 Cr LJ 602 (Ori), the offence under the section was made out.

<sup>362.</sup> *Makimuddin v State*, 1991 Cr LJ 2903 (Del).

<sup>363.</sup> *Mohd. Ibrahim v State*, AIR 1969 (Del) 315 [LNIND 1968 DEL 115] : 1969 Cr LJ 1377 .

<sup>364.</sup> **Citing** *Lala Ram v State*, 1988 Chand Cr C 446 : 1989 Cr LJ 572 , stressing the duty of the prosecution under [sections 451-452, Cr PC](#) to preserve the evidence.

<sup>365.</sup> *Banwarilal Agrawal v A Suryanarayan*, 1994 Cr LJ 370 .

<sup>366.</sup> *Employees State Insurance Corpn. v SK Agarwal*, AIR 1998 SC 2676 : 1998 Cr LJ 4027 .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Breach of Trust

**[s 409] Criminal breach of trust by public servant, or by banker, merchant or agent.**

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant<sup>1</sup> or in the way of his business as a banker,<sup>2</sup> merchant,<sup>3</sup> factor,<sup>4</sup> broker,<sup>5</sup> attorney<sup>6</sup> or agent,<sup>7</sup> commits criminal breach of trust in respect of that property, shall be punished with <sup>367.</sup>[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.

### COMMENT—

This section classes together public servants, bankers, merchants, factors, brokers, attorneys and agents. As a rule the duties of such persons are of a highly confidential character, involving great powers of control over the property entrusted to them; and a breach of trust by such persons may often induce serious public and private calamity.

### [s 409.1] Ingredients.—

In order to sustain conviction under [section 409, IPC, 1860](#), two ingredients are to be proved; namely, (i) the accused, a public servant or a banker or agent was entrusted with the property of which he is duty bound to account for; and (ii) the accused has committed criminal breach of trust. What amounts to criminal breach of trust is provided under [section 405, IPC, 1860](#). The basic requirement to bring home the accusations under section 405 are the requirements to prove conjointly (i) entrustment and (ii) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it.<sup>368.</sup>

Merely because the accused allegedly kept the amount in defiance of the official instruction, it cannot be an incriminating circumstance to arrive at a conclusion that he has committed the breach of trust. It is a settled position of law that suspicion howsoever grave cannot take the place of proof.<sup>369.</sup>

The section cannot be construed as implying that any head of an office that is negligent in seeing that the rules about remitting money to the treasury are observed is *ipso facto* guilty of criminal breach of trust; but something more than that is required to bring home the dishonest intention. There should be some indication which justifies a finding that the accused definitely had the intention of wrongfully keeping Government out of the moneys.<sup>370.</sup> Subjecting to a civil liability would thus attract one of the ingredients of criminal breach of trust. There cannot be, however, any doubt whatsoever that a mere error of judgment would not attract the penal provision

contained in [section 409 of the IPC, 1860](#).<sup>371</sup>. the fact that the accused puts back the money,<sup>372</sup>. or promises to do so,<sup>373</sup>. does not wipe out the offence or absolve him from liability. Where a post-master misappropriated the money entrusted to him but paid back the whole amount before being challenged, his acquittal on this ground was held to be wrong.<sup>374</sup> But the Courts do take that fact into account as a mitigating factor and would consider light punishment as sufficient to meet the ends of justice.<sup>375</sup> Where certain articles disappeared from an open *godown* which was being watched by a *Chowkidar* (watchman), it was held that the over-all incharge overseer could not be held liable under the section unless there was the proof that the articles disappeared because of his doings or non-doings.<sup>376</sup>

The offence under the section requires criminal intent or *mens rea*. Where in the matter of post office deposit accounts, all that was proved showed that there was negligence in maintaining them, the Court said that it could be a fit case for departmental proceedings but not proceedings under section 409 because the intention to misappropriate the proceeds of the accounts was not in evidence.<sup>377</sup>

### **[s 409.2] Property of Government company.—**

The property of a Government company was purchased by a firm of which the accused was a partner. He was the CM of the company. The CM or the Minister was not shown to have dominion over the property of the company. The relationship between the CM and the company was not shown to be of trustee and fiduciary. It was held that the ingredients of the section were not satisfied.<sup>378</sup> The complaint does not contain the averment that Rs.5 lakhs was entrusted to the appellant, either in his personal capacity or as the Chairman of Maharashtra State Electricity Board and that he misappropriated it for his own use. The said amount was deposited by the complainant company with MSEB and there is nothing in the complaint which may even remotely suggest that the complainant had entrusted any property to appellant or that the appellant had dominion over the said money of the complainant, which was converted by him to his own use, so as to satisfy the ingredients of [section 405 IPC, 1860](#). Proceedings quashed.<sup>379</sup>

### **[s 409.3] Prosecution against company.—**

Since, the majority of the [Constitution Bench](#) ruled in *Standard Chartered Bank v Directorate of Enforcement*.<sup>380</sup> That the company can be prosecuted even in a case where the Court can impose substantive sentence as also fine, and in such case only fine can be imposed on the corporate body.<sup>381</sup>

### **[s 409.4] Ownership right in films.—**

In an agreement for film production the terms stated that the rights in the negative of the film and the right of distribution for exhibition were to be vested in the complainant. The accused, the other party, departed from the terms and exhibited the film publicly without consent of the complainant. It was held that the accused was guilty of the offence of breach of trust.<sup>382</sup>



## [s 409.5] Temporary misappropriation.—

The allegation is that while he was working as a Lower Division Clerk in the Office of the Deputy Superintendent of Police, the accused had temporarily misappropriated an amount of Rs. 1,839. Admittedly, the sum had been deposited in the post office before the due date and that no loss had been caused to the Department, even if it is assumed that a false entry had been made in the record. Offence alleged under [IPC, 1860](#) against the appellant are trivial in nature and have caused no harm and in fact no offences in the eye of law. The benefit of [section 95 IPC, 1860](#) is available to the appellant.<sup>383.</sup>

**1. 'In his capacity of a public servant'.—**Persons like public servants, bankers, etc., who are made liable under the section occupy a position of highly confidential nature involving great power of control over property entrusted to them. Breach of trust by such persons may result in serious public or private calamity. High morality is expected from such persons. They are supposed to discharge their duties honestly.<sup>384.</sup> Where a police dog handler had taken a sum of money by way of travelling and daily allowance (TA, DA), but went on to his native place on unauthorized absence and returned the money on coming back, it was held that he did not use the money for the official purpose and though the diversion was temporary, it constituted an offence under the section. The trial Court convicted him. It was held that there was no scope for interference in the judgment of the trial Court.<sup>385.</sup>

**2. 'Banker'.—**A banker is one who receives money to be drawn out again as the owner has occasion for it, the customer being lender, and the banker borrower, with the superadded obligation of honouring the customer's cheques up to the amount of the money received and still in the banker's hands.<sup>386.</sup> The word 'banker' includes a cashier or shroff.<sup>387.</sup> In *ANZ Grindlays Bank plc v Shipping and Clearing (Agents) Pvt Ltd*,<sup>388.</sup> it was held that relation between the bank and its depositors is that of debtor and creditor but that the relation of trust can be created under special circumstances.

Where the principal debtor did not repay the bank loan, the bank as creditor can adjust it at the maturity of the fixed deposit receipts deposited by the guarantor with the bank as security, though the debt became barred by limitation at the time of maturity of the said fixed deposit receipts. Such adjustment would not amount to offences punishable under [sections 109, 114 and 409 IPC, 1860](#).<sup>389.</sup> Bank officials who allowed advance credits on banker's cheques to a customer in violation of Departmental instructions acted in violation of direction of law. The officials had dominion over the money belonging to the bank and they dishonestly used that money for conferring a benefit on the customer. They were held guilty of the offence under the section.<sup>390.</sup>

## [s 409.6] Securities Scam.—

The National Housing Bank cannot advance loans to anybody except housing finance institutions, scheduled banks and statutory slum clearance bodies. The advancement of any loan to any individual is an offence under [National Housing Bank Act, 1987](#). Allegation of advancement of loan to Harshad Mehta by NHB under the disguise of a call money transaction was held illegal. If as result of that illegal transaction a private person who was not expected to reap the fruit of 'call money' was allowed to retain the same for a period to make an unlawful gain therefrom, offence of criminal breach of trust must be held to be have been committed.<sup>391.</sup>

**3. 'Merchant'.—**A merchant is one who traffics to remote countries; also any one dealing in the purchase and sale of goods.<sup>392.</sup> A failure on the part of persons responsible to refund the share application money when it becomes refundable

because of the stock exchange refusal to approve the prospectus, has been taken to be a misappropriation by a merchant.<sup>393.</sup>

**4. 'Factor'.—**Is a substitute in mercantile affairs; an agent employed to sell goods or merchandise consigned or delivered to him by or for his principal, for a compensation commonly called factorage or commission.<sup>394.</sup> Complainant took loan from company against shares of complainant. Shares were not returned to him after repayment of loan. Court below has found that the charge under section 409 was tenable since, though the accused were not bankers or the public servants, they would fit in the category of factor. The "factor" has been defined in Law Lexicon as "A factor is a mercantile agent who, in the customary course of his business as such agent, is entrusted with the possession or control of goods, wares, or merchandise for sale on commission". An agent employed to sell goods or merchandise consigned or delivered to him, by or for his principal, for compensation commonly called "factorage" or "commission". The Bombay High Court held that it cannot be held that accused directors of company were agent, employed by complainant, to sell goods or merchandise, entrusted to them for compensation called a "factorage" or "commission" and the accused were not covered by definition of 'factor' as envisaged under [section 409 IPC, 1860](#).<sup>395.</sup>

**5. 'Broker'.—**Is an agent employed to make bargains and contracts between other persons in matters of trade, commerce and navigation, by explaining the intentions of both parties, and negotiating in such a manner as to put those who employ him in a condition to treat together personally. More commonly he is an agent employed by one party only to make a binding contract with another.<sup>396.</sup>

A factor is entrusted with the possession as well as the disposal of property; a broker is employed to contract about it without being put in possession.<sup>397.</sup>

**6. 'Attorney'.—**Is one who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated.<sup>398.</sup> The High Court, while dismissing the revision petition, observed that it was possible that the appellants were duped by the general power of attorney holder who knew that his powers had been revoked but concealed the fact. If there any *bona fides* in the conduct of the accused person, (by reason of revival of power), such arguments could have made at the trial stage. The Court refused to interfere in the judgment.<sup>399.</sup>

**7. 'Agent'.—**Is a person employed to do any act for another, or to represent another in dealings with third persons.<sup>400.</sup> An agent though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal is not subject in its exercise to the direct control or supervision of the principal.<sup>401.</sup> The trustee of a temple is an agent of the deity, and if he misappropriates temple jewels he is guilty under this section.<sup>402.</sup> Where it is a servant's duty to account for and pay over the moneys received by him at stated times, his not doing so wilfully amounts to embezzlement.<sup>403.</sup> The term 'agent' is not restricted to persons who carry on the profession of agents. The requirements of this section would be satisfied if the person is an agent of another and that other person entrusts him with property or with any dominion over property in the course of his duties as an agent. The entrustment must be in connection with his duties as an agent.<sup>404.</sup> Where the appellant, an agent entrusted with the distribution of the rice under the 'Food for Work Scheme' to the workers on production of coupons was charged with misappropriation of 67.65 quintals of rice, the evidence proves that there was entrustment of property to the accused, Court upheld the conviction.<sup>405.</sup>

#### **[s 409.7] Commission agent.—**

The accused was appointed as commission agent. Certain accounts were found to be outstanding against the accused. The Court said that it was a dispute between a principal and his agent of civil nature. The agent should not be harassed for such a dispute by resort to criminal proceedings.<sup>406.</sup>

#### **[s 409.8] Minister.—**

Accused, the Minister for electricity and higher officials of Electricity Board alleged to have awarded contract at a very high and exorbitant rate with special conditions having heavy financial implications, by reducing the retention and security amount and by allowing the contractor to return only fifty per cent of the empty cement bags. It is found that accused persons have abused their official positions. Supreme Court set aside the order of acquittal and convicted the accused.<sup>407.</sup>

#### **[s 409.9] Independent contractor.—**

An independent contractor was entrusted with a specific quantity of steel for purposes of fabrication and erection of trolley. He fraudulently disposed of the steel contrary to the terms on which possession was handed over to him. The Court said that he could be treated as a trustee for the purposes of appropriate use of steel, in view of the decision of the Supreme Court in *Somnath v State of Rajasthan*.<sup>408.</sup> He was guilty of criminal breach of trust and liable to be punished under section.<sup>409.</sup>

#### **[s 409.10] Insurance agent.—**

Where an agent of the Life Insurance Corporation collected the premium amount from the policy holder but did not deposit it with the corporation, his conviction for misappropriation was held to be proper.<sup>410.</sup>

#### **[s 409.11] Buyer of goods.—**

Goods were delivered to a buyer in a sales transaction in the ordinary course of business and he became the owner also because the vesting of property was not linked with payment. It was held that he could not be held liable for misappropriating his own property though his cheque, which was issued for payment of price afterwards, bounced.<sup>411.</sup> Where the buyer refused to accept the shipment on premise that on a random checking too many defects were found in the garments and complaint was filed to recover the dues, Supreme Court held that the dispute between the parties is civil in nature.<sup>412.</sup>

#### **[s 409.12] Entrustment.—"**

Entrustment" being a necessary part of the offence, where it is not proved, no offence arises under this section.<sup>413.</sup> It is the settled law that mere proof of entries in the books

of account, unsupported by any evidence of receipt, is not alone sufficient to fasten the accused with the offence of criminal breach of trust.<sup>414</sup> An Assistant Engineer was charged for criminal breach of trust for misappropriating Govt. Funds. It was found that there was no entrustment of funds to the accused public servant. It was held that question of misappropriation of funds does not arise.<sup>415</sup> Accordingly, a school inspector withdrawing money against false pay bills and misappropriating the entire amount was held to be punishable for misappropriation and cheating but not of criminal breach of trust because the amount withdrawn was not entrusted to him.<sup>416</sup> Where a postal delivery agent was given an insured cover supposed to contain Rs. 1000 and on delivery to the addressee, who opened the cover in the presence of the agent, it was found that it contained blank papers, the agent was held not liable under the section. The prosecution did not prove the most vital fact that at the time of handing over to the agent, the cover did contain the amount in question.<sup>417</sup> Where a quantity of diesel oil which was delivered to a junior officer under his signature and he embezzled it, his senior was not allowed to be prosecuted. There was no entrustment to him. The fact that he exercised authority over the junior did not establish his possession. The conviction of the senior was set aside, while that of the junior was upheld.<sup>418</sup> Where no account was produced as to the quantity of yarn entrusted and how much was returned after making the finished product, it was held that there was no infirmity in the order of acquittal.<sup>419</sup>

#### **[s 409.13] President of Co-operative Society.—**

It has been held that the President of a Co-operative Society is not a public servant. Dishonest retention of money of the society by the President was not an offence under section 409. But section 406 was attracted.<sup>420</sup> Secretary of co-operative society is not a public servant within meaning of [section 21 IPC, 1860](#) r/w.s. 8 of W.B. [Co-operative Societies Act](#), and no previous sanction is necessary for prosecuting him for offence under [section 409, IPC, 1860](#).<sup>421</sup>

#### **[s 409.14] Burden of proof.—**

The prosecution has to prove that a public servant was entrusted with property which he was duty bound to account for and that he misappropriated the property. Where the fact of entrustment has been admitted or proved, the burden is then upon him to show that the property was applied to the purpose for which it was entrusted to him.<sup>422</sup>

#### **[s 409.15] Amount repaid.—**

The accused persons acting through directors of company in concert with the Chartered Accountants and some other persons hatched a criminal conspiracy and executed it by forging and fabricating a number of documents in order to support their claim to avail hire purchase loan from the bank. The accused had not only duped the bank, they had also availed of depreciation on the machinery, which was never purchased and used by them, causing loss to the exchequer, a serious economic offence against the society. Supreme Court had declined to quash the proceedings. Merely because the dues of the bank have been paid up, the appellant cannot be exonerated from the criminal liability.<sup>423</sup>

## [s 409.16] CASES.

Even a mistaken receipt of money by a public servant in official capacity does create an obligation for the public servant to render an account of the money so received. All that is required is entrustment or acquisition of dominion over property in the capacity of a public servant. Thus where the accused, an official of the Indian Unit of Hindustan Insurance Society who had no authority to collect premiums from Pakistani policy-holders, did in fact represent to them that they could pay their premiums to him and also issued receipts purporting to act in his official capacity and thereafter misappropriated the money after making false entries in the relevant register, it was held that he was guilty under [section 409, IPC, 1860](#).<sup>424</sup> It should, however, be remembered that the prosecution has to prove that the public servant has acted dishonestly in regard to property entrusted to him.<sup>425</sup>

## [s 409.17] Section 420 and 409.—Distinction.—

In 'criminal breach of trust', an accused comes into possession of a property or acquires dominion over a property honestly and *bona fide*, but he develops dishonest intention subsequent to the taking possession of, or subsequent to having acquired the dominion over, the property and, having developed such dishonest intention, he dishonestly misappropriates or converts to his own use the property or dishonestly uses or disposes of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do. Thus, in 'criminal breach of trust', the intention of the accused cannot be dishonest or *mala fide* at the time, when he comes into possession of the property or comes to acquire dominion over the property; but, having come into possession of, or having acquired dominion over, the property, the accused develops dishonest intention and actuated by such *mens rea*, he converts to his own use the property or dishonestly uses or disposes of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do. Contrary to what happens in "criminal breach of trust", the intention of the accused, in a case of "cheating", is dishonest from the very commencement of the transaction. There is really no consent by the person, who is intentionally induced by deception to deliver the property or allow any person to retain the property or is intentionally induced, as a result of deception, to do or omit to do anything, which he would not do or omit to do 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. In short, thus, while in "criminal breach of trust", the accused comes into possession of the property without dishonest intention and develops dishonest intention subsequent to his coming into possession of the property, the offence of 'cheating' is one, wherein the accused has dishonest intention from the very commencement of the transaction.<sup>426</sup>

## [s 409.18] Section 409 and section 477A IPC, 1860.—

Contention of the accused is that scheme of [sections 408 and 409 IPC, 1860](#) goes to show that distinct offences have been provided respectively for the clerks or servants and for the bankers and the present petitioner has been charged for the offence under [section 409 IPC, 1860](#) as he is a banker, but at the same time, he has been convicted for the offence under [section 477A IPC, 1860](#), where bankers have not been included in the description of offence under [section 477A IPC, 1860](#) and conviction under [sections](#)

477A and 409 IPC, 1860 cannot go hand to hand. The accused has been charged for the offence under [section 409 IPC, 1860](#) as he was public servant at the relevant time being a Postal Assistant and his contention that he was a banker is misplaced. The accused has not been charged as a banker.<sup>427.</sup>

### **[s 409.19] Director.—**

A director of a company is not only an agent but also a trustee of the assets of the company which come to his hand. Thus having dominion and control over property he can come within the mischief of this section if he dishonestly misappropriates that property to his own use.<sup>428.</sup> The manager of a rice mill was held liable under the section for causing disappearance of a quantity of paddy from a huge stock of the material entrusted to him.<sup>429.</sup>

### **[s 409.20] Directors of Company.—Vicarious liability.—**

It is to be noted that the concept of 'vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the board and senior executives are joined as the persons looking after the management and business of the appellant Company.<sup>430.</sup> The [Penal Code](#) does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question, viz., as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the Statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.<sup>431.</sup> In the case of *Punjab National Bank v Surendra Prasad Sinha*,<sup>432.</sup> a complaint was lodged by the complainant for prosecution under [sections 409, 109 and 114, IPC, 1860](#) against the Chairman, the Managing Director of the Bank and a host of officers. Since the principal debtor defaulted in payment of debt, the Branch Manager of the bank on maturity of the said fixed deposit adjusted a part of the amount against the said loan. The complainant alleged that the debt became barred by limitation and, therefore, the liability of the guarantors also stood extinguished. It was, therefore, alleged that the officers of the bank criminally embezzled the said amount with dishonest intention to save themselves from financial obligation. The Magistrate without advertent whether the allegations in the complaint *prima facie* make out an offence charged for, in a mechanical manner, issued the process against all the accused persons. The High Court refused to quash the complaint and the matter finally came to Supreme Court. The Supreme Court allowed the appeal, quashed the proceedings and held that the complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued.

### **[s 409.21] Society.—**

The accused was in charge of a society's affairs. Shortage of funds was detected. It was held that the fact that the accused agreed to make good the shortage at a later point of time could not be treated as an admission of guilt on his part. Ingredients of misappropriation were not made out. The mere discrepancy in amount was not sufficient to sustain the conviction.<sup>433.</sup>

*Prosecution has to prove entrustment and not how property was dealt with.*—The prosecution has to show that the property in question was entrusted to the accused. It is then for the accused to show how he dealt with the property.<sup>434.</sup>

#### **[s 409.22] Previous sanction.—**

In a prosecution against the Vice-chancellor of a University where section 50(2) of the 1994 University Act, 1904 says no prosecution will lie against the appellant without previous sanction of the Syndicate, prosecution cannot be launched in the absence of the previous sanction of the Syndicate.<sup>435.</sup> As far as the offence of criminal conspiracy punishable under section 120-B, read with [section 409 of the IPC, 1860](#) is concerned and also [section 5\(2\) of the Prevention of Corruption Act, 1988](#), are concerned they cannot be said to be of the nature mentioned in [section 197 of the Cr PC, 1973](#).<sup>436.</sup>

#### **[s 409.23] Punishment.—**

The accused, working as an assistant accountant in a company, received on behalf of the company certain recoveries from a firm but did not credit them in the account of the said firm. He was found guilty and was convicted and sentenced to undergo RI of 1 and a half years under section 409 and RI of 1 and a half years under section 477-A. The Apex Court upheld the conviction but considering time factor and age of the accused, the sentence was reduced to six months, RI under each count.<sup>437.</sup>

The accused, a postmaster, was convicted under this section. The offence happened 15 years ago. He deposited the misappropriated amount with interest even before the FIR was filed. He was punished only with fine of Rs. 4,000 without any imprisonment.<sup>438.</sup>

#### **[s 409.24] Moral turpitude.—**

Undoubtedly, the embezzlement of Rs.5000 by the appellant, for which he had been convicted under [section 409 IPC, 1860](#), was an offence involving moral turpitude.<sup>439.</sup>

#### **[s 409.25] Conviction of Employee under section 409.—will release on probation remove the disqualification.—**

Once a Criminal Court grants a delinquent employee the benefit of P.O. Act, 1958, its order does not have any bearing so far as the service of such employee is concerned. The word "disqualification" in section 12 of the Act 1958 provides that such a person shall not stand disqualified for the purposes of other Acts like the [Representation of the People Act, 1950](#) etc. The conviction in a criminal case is one part of the case and release on probation is another. Therefore, grant of benefit of the provisions of Act

1958, only enables the delinquent not to undergo the sentence on showing his good conduct during the period of probation. In case, after being released, the delinquent commits another offence, benefit of Act 1958 gets terminated and the delinquent can be made liable to undergo the sentence. Therefore, in case of an employee who stands convicted for an offence involving moral turpitude, it is his misconduct that leads to his dismissal.<sup>440</sup>.

367. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).
368. *Sadhupati Nageswara Rao v State of Andhra Pradesh*, (2012) 8 SCC 547 [LNIND 2012 SC 461] : AIR 2012 SC 3242 [LNIND 2012 SC 461] .
369. *Sachindra Das v The State of Tripura*, 2016 Cr LJ 3908 : 2016 (2) GLT 894 .
370. *Lala Raoji*, (1928) 30 Bom LR 624 . *Mohan Tiwari v State of Arunachal Pradesh*, 1992 Cr LJ 737 (Gau), unauthorised extraction of timber by the contractor from a forest officer in connivance with the officials concerned, *prima facie* evidence of guilt.
371. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646.
372. *Vishwa Nath v State of J&K*, AIR 1983 SC 174 : 1983 Cr LJ 231 : (1983) 1 SCC 215 .
373. *Vijay Digambar Lanjekar v State of Maharashtra*, 1991 SCC (Cr) 841 : 1991 Supp (2) SCC 8, the court reduced the sentence of 2 years' RI to the period already undergone. Where, on the other hand, credit sale was in vogue and the amounts involved stood deposited before CID probe, the conviction was not sustained. *Narendra Pratap Narain Singh v State of UP*, AIR 1991 SC 1394 [LNIND 1991 SC 186] : 1991 Cr LJ 1816 .
374. *State of MP v Prempal*, 1991 Cr LJ 2878 . The court **followed** *Vishwanath v State of J & K*, AIR 1983 SC 174 : 1983 Cr LJ 231 where the principle laid down was that a public servant entrusted with Government money misappropriates that amount for personal use, refund of that amount, after the act of defalcation is discovered, does not absolve the accused of the offence.
375. See *Ram Mohan Saxena v State of MP*, 1977 (II) MPWN 377; *Bahadur Singh v State of MP*, (1976) JLJSN 120; *Narbada Singh Chouhan v State of MP*, (1971) JLJ SN 11 and *State v Autar Singh*, (1966) JLJ SN 99.
376. *Janeshwar Das Agarwal v State of UP*, AIR 1981 SC 1646 : 1981 All LJ 887 : (1981) 18 All CC 151 : (1981) 3 SCC 10 .
377. *Chandraiah v State of AP*, (2003) 12 SCC 670 : AIR 2004 SC 252 : 2004 Cr LJ 365 .
378. *R Sai Bharathi v J Jayalalitha*, (2004) 2 SCC 9 [LNIND 2003 SC 1023] : AIR 2004 SC 692 [LNIND 2003 SC 1023] : 2004 Cr LJ 286 .
379. *Asoke Basak v State of Maharashtra*, (2010) 10 SCC 660 [LNIND 2010 SC 1699] : (2011) 1 SCC(Cr) 85.
380. *Standard Chartered Bank v Directorate of Enforcement*, (2005) 4 SCC 530 [LNIND 2005 SC 476] .
381. *CBI v Blue Sky Tie-up Pvt Ltd*, 2012 Cr LJ 1216 : AIR 2012 SC (Supp) 613.
382. *Krishna Rao Keshav v State of UP*, 1997 Cr LJ 1129 (All).



383. *NK Illiyas v State of Kerala*, 2012 CR LJ 2418 : AIR 2012 SC 3790 [LNIND 2011 SC 646] ; *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] . It made no difference to the criminal liability that the money was quickly recovered and departmental action was taken against bank officials.
384. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .
385. *Shabbir Ahmed Sher Khan v State of Maharashtra*, (2009) 5 SCC 22 [LNIND 2009 SC 621] : (2009) 1 SCC (L&S) 1016 .
386. Wharton, 14th Edn, p 109. The relationship of trust can arise between them only under special circumstances. *ANZ Grindlays Bank v Shipping and Clearing (Agents) Pvt Ltd*, 1992 Cr LJ 77 (Cal), paying money after instructions to close account, no cheating. *MV Bany v State of TN*, 1989 Cr LJ 667 (Mad).
387. *Hira Lal*, (1907) PR No. 19 of 1908. A bank manager permitting money to be withdrawn against false drafts signed by him commits this offence. *Adithela Immanuel Raju v State of Orissa*, 1992 Cr LJ 243 . The protections and privileges of a banker are not available to persons who are not legally engaged in the banking business. *AG Abreham v State of Kerala*, 1987 Cr LJ 2009 (Ker). Withdrawal of money from Post Office by forging signature, liability made out. *State of Orissa v Sapneswar Thappa*, 1987 Cr LJ 612 (Ori).
388. *ANZ Grindlays Bank plc v Shipping and Clearing (Agents) Pvt Ltd*, 1992 Cr LJ 77 (Cal).
389. *Punjab National Bank v Surendra Prasad Sinha*, AIR 1992 SC 1815 [LNIND 1992 SC 300] : 1992 Cr LJ 2916 ; *S Jayaseelan v State of SPF*, 2002 Cr LJ 732 (Mad), the cashier received repayment of loan installments, issued receipts and also made entries in the pass book but did not show the repayments in the ledger books. Dishonest intention established. Sentence of 2 years reduced to 18 months because he had paid back. *Bank of Baroda v Samrat Exports*, 1998 Cr LJ 2773 (Kant), the debit by the bank to the guarantor's account in respect of the sum due from the principal borrower was not a dishonest misappropriation. *MN Ojha v Alok Kumar Srivastav*, (2009) 9 SCC 682 [LNIND 2009 SC 1708] : AIR 2010 SC 201 [LNIND 2009 SC 1708] - the averments made in the complaint does not disclose the commission of any offence by the appellant or any one of them. Proceedings quashed.
390. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646; *Satyajit Roy v State of Tripura*, 2010 Cr LJ 3397 (Gau)- Where the allegation was of Criminal breach of trust by banker, conviction based on an alleged writing of accused without examining the hand writing expert is held not proper.
391. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] : AIR 2010 SC 1812 [LNIND 2009 SC 1653] .
392. Wharton, 14th Edn, p 649.
393. *Radhey Shyam Khemka v State of Bihar*, AIR 1993 SCW 2427 : 1993 Cr LJ 2888 : (1993) 3 SCC 54 [LNIND 1993 SC 276] .
394. *Ibid*, p. 400.
395. *Pramod Parmeshwarlal Banka v State of Maharashtra*, 2011 Cr LJ 4906 (Bom).
396. *Ibid*, p. 148.
397. *Stevens v Biller*, (1883) 25 Ch D 31 .
398. Wharton, 14th Edn, p 95.
399. *Chaman Lal v State of Punjab*, (2008) 11 SCC 721 : AIR 2009 SC 2972 [LNIND 2009 SC 721]
- .
400. The Indian Contract Act (IX of 1872) section 182.
401. *Chandi Prasad*, (1955) 2 SCR 1035 [LNIND 1955 SC 108] .
402. *Muthusami Pillai*, (1895) 1 Weir 432.

403. *Chandra Prasad*, (1926) 5 Pat 578.
404. *RK Dalmia*, AIR 1962 SC 1821 [LNIND 1962 SC 146] : (1962) 2 Cr LJ 805 . A partner of a firm opening an account in the firm name showing himself as a proprietor and depositing firm cheques into it and withdrawing money from it, does not commit an offence under this section or section 419. *Tapan Kumar Mitra v Manick Lal Dey*, 1987 Cr LJ 1483 (Cal).
405. *Sadhupati Nageswara Rao v State of Andhra Pradesh*, (2012) 8 SCC 547 [LNIND 2012 SC 461] : AIR 2012 SC 3242 [LNIND 2012 SC 461] .
406. *SK Agarwal v Manoj Dalmia*, 2001 Cr LJ 3343 (All).
407. *V S Achuthanandan v R Balakrishna Pillai*, AIR 2011 SC 1037 [LNIND 2011 SC 165] : 2011 (3) SCC 317 [LNIND 2011 SC 165] .
408. *Somnath v State of Rajasthan*, AIR 1972 SC 1490 [LNIND 1972 SC 112] : 1972 Cr LJ 897
409. *Sadashiva Rao v State of AP*, 2000 Cr LJ 2110 .
410. *Suresh Tolani v State of Rajasthan*, 2001 Cr LJ 1959 (Raj).
411. *HICEL Pharma Ltd v State of AP*, 2000 Cr LJ 2566 (AP).
412. *Sharon Michael v State of Tamil Nadu*, (2009) 3 SCC 375 [LNIND 2008 SC 2506] : (2009) 2 SCC (Cr) 103.
413. *Roshan Lal Raina v State of J & K*, AIR 1983 SC 631 : 1983 Cr LJ 975 : 1983 2 SCC 429 . See also *Jat Ram v State of HP*, 1991 Cr LJ 1435 , false wage bill, not properly proved.
414. *State of Orissa v Gopinath Panigrahi*, 1995 Cr LJ 4095 (Ori). *Todar Singh Premi v State of UP*, 1992 Cr LJ 1724 (All), no proof of entrustment of money to the accused Government service. *Prafulla Kumar Panda v State of Orissa*, 1994 Cr LJ 3818 (Ori), no proof of entrustment of cheque, the only cheque produced was of personal payment, no offence.
415. *Bansidhar Swain v State*, 1993 Cr LJ 830 (Ori).
416. *Shankarlal Vishwakarma v State of MP*, 1991 Cr LJ 2808 (MP). The Court cited this book at p. 2812 to highlight the **distinction** between Cheating and Criminal Breach of Trust and Criminal Misappropriation. See at p 396 of 26th Edn of 1987 and *State of MP v DN Pandya*, 1983 MPLJ 778 . *Jitendra Nath Bose v State of WB*, 1991 Cr LJ 922 (Cal), no evidence of entrustment; Government and non-Government property lumped together in charge, held not proper, *Baikuntha v Nilamani Bantha*, 1991 Cr LJ 59 (Ori), entrustment of cash not proved.
417. *Fakira Nayak v State of Orissa*, 1987 Cr LJ 1479 (Ori).
418. *Jiwan Dass v State of Haryana*, AIR 1999 SC 1301 [LNIND 1999 SC 204] : 1999 Cr LJ 2034 .
419. *VN Sonal v Nagamanickam*, 2001 Cr PC 3428 (Mad).
420. *Shanmugham v State of TN*, 1997 Cr LJ 2042 (Mad).
421. *Rabindra Nath Bera v State of West Bengal*, 2012 CR LJ 913 (Cal).
422. *Mustafikhan v State of Maharashtra*, (2007) 1 SCC 623 [LNIND 2006 SC 1076] .
423. *Sushil Suri v CBI*, (2011) 5 SCC 708 [LNIND 2011 SC 494] : AIR 2011 SC 1713 [LNIND 2011 SC 494] ; *Nikhil Merchant v Central Bureau of Investigation*, (2008) 9 SCC 677 [LNIND 2008 SC 1660] distinguished.
424. *S and R, Legal Affairs, West Bengal v SK Roy*, 1974 Cr LJ 678 : AIR 1974 SC 794 [LNIND 1974 SC 35] .
425. *Sardar Singh*, 1977 Cr LJ 1158 : AIR 1977 SC 1766 : (1977) 1 SCC 463 . See also *State of Orissa v Gangadhar Pande*, 1989 Supp (2) SCC 150 : 1991 SCC (Cr) 389, leniency shown to a misappropriating Government servant because of old age and retirement since long. *Kulbir Singh v State of Punjab*, 1991 Cr LJ 1756 (P&H), embezzlement of stone metal, proceedings instituted after a lapse of 9 yrs., quashed.
426. *Mahindra and Mahindra Financial Services Ltd v Delta Classic Pvt Ltd*, 2010 Cr LJ 4591 (Bom).

427. *Vijay Kumar v State of Rajasthan*, 2012 Cr LJ 2790 (Raj).
428. *Shivanarayan*, 1980 Cr LJ 388 (SC).
429. *Narindra Kumar Jain v MP*, 1996 Cr LJ 3200 : AIR 1996 SC 2213 .
430. *Thermax Ltd v K M Johny*, 2011 (11) Scale 128 [LNIND 2011 SC 947] : 2011 (13) SCC 412 [LNIND 2011 SC 947] ; *GHCL Employees Stock Option Trust v India Infoline Ltd*, (2013) 4 SCC 505 [LNIND 2013 SC 232] : AIR 2013 SC 1433 [LNIND 2013 SC 232] - from perusal of order passed by the Magistrate it reveals that two witnesses including one of the trustees were examined by the complainant but none of them specifically stated as to which of the accused committed breach of trust or cheated the complainant except general and bald allegations made therein-proceedings quashed.
431. *Maksud Saiyed v State of Gujarat*, 2008 (5) SCC 668 [LNIND 2007 SC 1090] : JT 2007 (11) SC 276 [LNIND 2007 SC 1090] ; *Pramod Parmeshwarlal Banka v State of Maharashtra*, 2011 Cr LJ 4906 (Bom).
432. *Punjab National Bank v Surendra Prasad Sinha*, AIR 1992 SC 1815 [LNIND 1992 SC 300] : 1993 Supp (1) SCC 499
433. *State of Karnataka v Syed Mehaboob*, 2000 Cr LJ 1184 (Kant).
434. *N Bhargavan Pillai v State of Kerala*, AIR 2004 SC 2317 [LNIND 2004 SC 520] : 2004 Cr LJ 2494 : (2004) 2 KLT 725 .
435. *R Ramachandran Nair v Deputy Superintendent Vigilance Police*, (2011) 4 SCC 395 [LNIND 2011 SC 319] : (2011) 2 SCC (Cr) 251.
436. *Raghunath Anant Govilkar v State of Maharashtra*, AIR 2008 SC (Supp) 1486; *Shreekantiah Ramayya Munipalli v State of Bombay*, AIR 1955 SC 287 [LNIND 1954 SC 180] and also *Amrik Singh v State of Pepsu*, AIR 1955 SC 309 [LNIND 1955 SC 15] ; *State of UP v Paras Nath Singh*, (2009) 6 SCC 372 [LNINDORD 2009 SC 650] : 2009 Cr LJ 3069 .
437. *Inder Sen Jain v State of Punjab*, AIR 1994 SC 1065 : 1994 Cr LJ 1224 . *Bachchu Singh v State of Haryana*, AIR 1999 SC 2285 [LNIND 1999 SC 1375] : 1999 Cr LJ 3528 , misuse of tax money collected by a *Gram Sachiv*, he was sentenced to six months RI and fine. He had already undergone 4½ months. His sentence was reduced to period already undergone.
438. *State of HP v Karanvir*, 2006 Cr LJ 2917 : AIR 2006 SC 2211 [LNIND 2006 SC 394] : (2006) 5 SCC 381 [LNIND 2006 SC 394] .
439. *Sushil Kumar Singhal v Regional Manager, Punjab National Bank*, 2010 AIR (SCW) 5119 : (2010) 8 SCC 573 [LNIND 2010 SC 730] .
440. *Sushil Kumar Singhal v Regional Manager, Punjab National Bank*, 2010 AIR (SCW) 5119 : (2010) 8 SCC 573 [LNIND 2010 SC 730] .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of the Receiving of Stolen Property

#### [s 410] Stolen property.

Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which <sup>441</sup>.<sup>[\*\*\*]</sup> criminal breach of trust has been committed, is designated as "stolen property", <sup>442</sup>.<sup>[whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without</sup> <sup>443</sup>.<sup>[India]]</sup>. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

<sup>441</sup>. The words "the" and "offence of" rep. by Act 12 of 1891, section 2 and Sch I and Act 8 of 1882, section 9, respectively.

<sup>442</sup>. Ins. by Act 8 of 1882, section 9.

<sup>443</sup>. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951), to read as above.

## THE INDIAN PENAL CODE

### CHAPTER XVII OF OFFENCES AGAINST PROPERTY

#### Of Theft

#### Of the Receiving of Stolen Property

##### [s 411] Dishonestly receiving stolen property.

Whoever dishonestly receives or retains<sup>1</sup> any stolen property, knowing or having reason to believe the same to be stolen property,<sup>2</sup> shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

##### State Amendment

**Tamil Nadu.**—*The following amendments were made by T.N. Act No. 28 of 1993, section 2.*

Section 411 of the principal Act shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be added, namely—

"(2) Whoever dishonestly receives or retains any idol or icon stolen from any building used as a place of worship knowing or having reason to believe the same to be stolen property shall, notwithstanding anything contained in sub-section (1), be punished with rigorous imprisonment which shall not be less than two years but which may exceed to three years and with fine which shall not be less than two thousand rupees:

*Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than two years."*

#### COMMENT—

Section 410 defines stolen property. A property is stolen for the purpose of this section when its possession is transferred by theft, extortion, robbery, dacoity or criminal breach of trust or which was obtained under misappropriation committed whether in India or outside. An extended meaning is given to the words 'stolen property' which are used in the four subsequent sections. Not only things which have been stolen, extorted or robbed but also things which have been obtained by criminal misappropriation or criminal breach of trust are within the meaning assigned to these words. Section 411 provides punishment to the person who dishonestly receives stolen property. The person must have the knowledge that it is a stolen property. This section as also the succeeding sections are directed not against the principal offender, e.g., a thief, robber or misappropriator but against the class of persons who trade in stolen articles and are receivers of stolen property. Principal offenders are therefore, outside the scope of this section. Accordingly the conviction of the principal offender is also not a prerequisite to the conviction of the receiver of stolen property under this section.<sup>444.</sup>

##### [s 411.1] Essential ingredients.—

(a) Dishonest receipt or retention of stolen property. (b) Knowledge or reason to believe at the time of receipt that the property was obtained in the ways specified in the section. The offence of dishonest retention of property is almost contemporaneous with the offence of dishonestly receiving stolen property. A person who dishonestly receives property and retains it, must obviously continue to retain it. It is the duty of the prosecution in order to bring home the guilt of a person under section 411 to prove:

- (1) That the stolen property was in the possession of the accused.
- (2) That some person other than the accused had possession of the property before the accused got possession of it and
- (3) That the accused had knowledge that the property was stolen.<sup>445</sup> When the field from which the ornaments were recovered was an open one, and accessible to all and sundry, it is difficult to hold positively that the accused was in possession of these articles. The fact of recovery by the accused is compatible with the circumstance of somebody else having placed the articles there and of the accused somehow acquiring knowledge about their whereabouts and that being so, the fact of discovery cannot be regarded as conclusive proof that the accused was in possession of these articles.<sup>446</sup>

As observed by the Apex Court in the case of *N Madhavan v State of Kerala*,<sup>447</sup> as a normal rule after an inquiry or trial when the accused is discharged or acquitted the Court ought to restore the property from the person from whose custody it was taken and in a case of conviction, it is the person from whose possession it was stolen, who would be entitled to its possession when the property seized is referable to such stolen property.

**1. 'Dishonestly receives or retains'.—** To constitute dishonest retention, there must have been a change in the mental element of possession,—possession always subsisting *animo et facto*—from an honest to a dishonest condition of the mind in relation to the thing possessed. Where pursuant to a hire purchase agreement, on the default of the purchaser to pay the instalment amount, the seller of a vehicle repossessed it, it was held that as there was no dishonest intention to retain on his part, the provisions of this section were not attracted.<sup>448</sup>

### **[s 411.2] Identity of stolen property.—**

Before a conviction can be recorded under this section it must be shown that the property recovered and seized was stolen property. Where, therefore, the identity of the property is not established, there cannot be any conviction under [section 411, IPC, 1860](#).<sup>449</sup>

**2. 'Knowing or having reason to believe the same to be stolen property'.—**The offence made punishable is not the receiving of stolen property from any particular person, but receiving such property knowing it to be stolen. The word 'believe' is a much stronger word than suspect, and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property.<sup>450</sup>

### **[s 411.3] Stolen property of the deceased.—**

Where stolen ornaments of the deceased which she had been wearing when she was last seen alive are discovered within three days of the murder in pursuance of an

information given by the accused and there is no other evidence, the accused can be convicted only under section 411 and not under [section 302, IPC, 1860](#), or [section 394, IPC, 1860](#), as there is nothing to connect him with the murder or the robbery.<sup>451.</sup>

#### **[s 411.4] Recent Possession.—**

There is a presumption under the law that where a person is found to be in a recent possession of stolen or robbed articles, he must be the offender himself or must have received them with knowledge. In reference to the meaning of the expression "recent possession", the Supreme Court has suggested that no fixed time limit can be laid down and each matter must go by its own facts. It varies according to whether the property in question in its nature is capable of passing readily from hand to hand. If the goods are not of that kind, even one year may not be too long. In the present case, however, there was no gap of time between the arrest of the accused and the recovery and, hence, the presumption of his guilt.<sup>452.</sup>

#### **[s 411.5] Sentencing.—**

Where the period of 12 years had elapsed since the institution of the case and the accused (revision petitioner) remained in jail for ten months, his sentence was reduced to the period already undergone. The Court did not interfere in the concurrent finding of fact.<sup>453.</sup>

#### **[s 411.6] Presumption from possession.—**

A property which was alleged to have been taken by robbery at the point of pistol was found in the possession of the accused. While the charge of robbery under section 392 failed, that of receiving stolen property became established by reason of the presumption created by [section 114 of the Evidence Act, 1872](#).<sup>454.</sup> When the prosecution established beyond all reasonable doubt that M.O s. 25–27 belonged to the deceased No. 1, were found in the possession of A2, the burden shifts to the accused to explain the same under [section 114-A of the Evidence Act](#). If he has not explained the possession of stolen articles, the presumption is that he is receiver of stolen property or a thief.<sup>455.</sup>

#### **[s 411.7] Probation.—**

The accused was under 21 years of age; has five brothers and sisters; is son of a poor agriculturist and that the stolen articles recovered from him are not so valuable, the sentence of imprisonment imposed by the learned appellate Court is set aside and the petitioner is directed to be released on probation of good conduct for a period of six months.<sup>456.</sup>

444. *Mir Naqvi Askari v CBI*, (2009) 15 SCC 643 [LNIND 2009 SC 1651] : AIR 2010 SC 528 [LNIND 2009 SC 1651] .

445. *Mir Naqvi Askari v CBI*, (2009) 15 SCC 643 [LNIND 2009 SC 1651] : AIR 2010 SC 528 [LNIND 2009 SC 1651] .

446. *Trimbak v State*, AIR 1954 SC 39 : 1954 Cr LJ 335 (SC).

447. *N Madhavan v State of Kerala*, AIR 1979 SC 1829 [LNIND 1979 SC 321] .

448. *Rajendra Kumar*, 1969 Cr LJ 243 . *Sheonath Bhar v State of UP*, 1990 Cr LJ 1423 (All), where dishonest retention of stolen watch was proved and fine Rs. 125 only was imposed because a long time had passed and the accused had already remained in jail for a month. *Syed Basha v State of Karnataka*, 2001 Cr LJ 1813 (Kant), the prosecution failed to prove that the accused was in possession of sandalwood billets stolen by someone else. The presumption under section 84 of the Karnataka Forest Act, 1963 regarding ownership of sandalwood trees was held to be not applicable to sandalwood billets. *Jitendra Kumar Agarwal v State of Bihar*, 2001 Cr LJ 3834 (Jhar), charge of receiving ration material not quashed because wheat was found in the compound of the petitioner. *Karni Singh v State of Rajasthan*, 1999 Cr LJ 1791 (Raj), where the accused was not seen anywhere near the house from which things were stolen, he was punished only for receiving stolen property because things were recovered from his possession. *A Devendran v State of TN*, 1998 Cr LJ 814 : AIR 1998 SC 2821 [LNIND 1997 SC 1368] , articles stolen in an incident of murder and robbery were recovered from the house of the accused after two months. Not sufficient to convict him for robbery and murder, but only for receiving stolen property under section 411. See also *Shahul Hameed v State*, 1998 Cr LJ 885 (Mad).

449. *Mahabir Sao v State*, 1972 Cr LJ 458 : AIR 1972 SC 642 : (1972) 1 SCC 505 ; *Chandmal*, 1976 Cr LJ 679 : AIR 1976 SC 917 : (1976) 1 SCC 621 ; *Mewaram v State of UP*, 1988 Cr LJ 1215 All, failure to identify wrist watch recovered, conviction under the section set aside. *Sabitri Sharma v State of Orissa*, 1987 Cr LJ 956 (Ori), mere possession, no liability. *Narayan Das v State of Rajasthan*, 1998 Cr LJ 29 (Raj) failure to prove identity of the stolen property so as to show that it was the same stolen property which was recovered.

450. *Mohon Lal*, 1979 Cr LJ 1328 : AIR 1979 SC 1718 .

451. *Nagappa Dhondiba*, 1980 Cr LJ 1270 : AIR 1980 SC 1753 . See further *Joga Gola v State of Gujarat*, 1982 SCC (Cr) 141 : AIR 1982 SC 1227 : 1981 Supp SCC 66 , possession by the accused of the cows which were in the herd of the deceased at the time of his death was considered to be enough proof for a conviction under the section. See also *Pandara Nadar v State of TN*, AIR 1991 SC 391 : 1991 Cr LJ 468 , where there was neither proof of possession on the part of any of the several persons, who were already acquitted from the charge of belonging to a gang of thieves; *Kedar Nath v State of UP*, AIR 1991 SC 1224 : 1991 Cr LJ 989 , no value of recovery of possession, where appeal being heard 17 years after occurrence. There was no charge in this case under the section. The Supreme Court refused to convict 17 years after the occurrence.

452. *Errabhadrapa v State of Karnataka*, AIR 1983 SC 446 [LNIND 1983 SC 83] : 1983 Cr LJ 846 : (1983) 2 SCC 330 [LNIND 1983 SC 83] .

453. *Kanik Lal Thakur v State of Bihar*, 2003 Cr LJ 375 .

454. *Karni Singh v State of Rajasthan*, 1999 Cr LJ 1791 (Raj). *Public Prosecutor v Yenta Arjuna*, 1998 Cr LJ 179 (AP), no evidence connecting the accused person with murder and robbery, but recovery from him created the presumption under section 114, Evidence Act, 1872 that he was recipient with knowledge. *Preetam Singh v State*, 1998 Cr LJ 1483 (Del) no presumption where the recovery process itself was faulted. *Pentapati Veerababu v State of AP*, 1998 Cr LJ 2505 (AP), recovery of stolen property from an employee of the shop at the instance of the accused from the house of his brother-in-law. Presumption against him because the incriminating evidence.



455. *Giriraj Singh Gaghela v State of A P*, [2009 Cr LJ 1257](#) (AP).

456. *Rajive Sandhu v State of Union Territory*, [2004 Cr LJ 4308](#) (PH).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of the Receiving of Stolen Property

**[s 412] Dishonestly receiving property stolen in the commission of a dacoity.**

**Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with <sup>457</sup> [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.**

### COMMENT—

This section was enacted to stamp out the offence of dacoity which was very rampant when the Code came into force. It refers to persons other than actual dacoits. It provides the same punishment to a receiver of property obtained in dacoity as to dacoits themselves. It is apparent from a plain reading of [section 412 IPC, 1860](#), that a person receiving stolen goods, would be guilty of the offence under [section 412 IPC, 1860](#), if it can further be shown, that the recipient of the goods knew (or had reason to believe), that the person offering the goods, belonged to a gang of dacoits.<sup>458</sup>

### [s 412.1] CASES.—

The Supreme Court held in *PB Soundankar v State of Maharashtra*, in absence of any evidence to show the appellant was aware, that the silver chips presented to him by accused were procured by the commission of a dacoity or in the alternative that he knew (or had reason to believe) that accused belonged to a gang of dacoits the guilt of the appellant under [section 412 IPC, 1860](#) could not be stated to have been substantiated in the facts and circumstances of the present case." Hence, the conviction altered to section 411.<sup>459</sup> Where properties looted in a dacoity were found in the possession of the accused who was the resident of the neighbouring village within three days of the occurrence, it was held that it could be presumed that he had known or had reason to believe that the properties were the stolen properties of the dacoity and as such his conviction under [section 412, IPC, 1860](#), was quite in order.<sup>460</sup> The same principle was upheld by the Supreme Court to say that where property looted in a dacoity was recovered from the accused very soon after the dacoity, the accused could not be convicted under section 395 but his conviction under [section 412, IPC, 1860](#), would be quite in order.<sup>461</sup> Recovery at the instance of the accused persons of stolen property shortly after a dacoity has been held by the Supreme Court as sufficient for a conviction under this section.<sup>462</sup>

## [s 412.2] Conviction under section 395 and section 412;-

When the accused was convicted of having committed dacoity there could not be any further conviction under section 412.<sup>463</sup> Even though dacoity is proved, conviction under section 412 is maintainable.<sup>464</sup> In *Mohan Chetri v State of West Bengal*, it was held that conviction under sections 412 or 411 is not permissible simultaneously with conviction under sections 395 or 394, as the case may be, in respect of the same accused.<sup>465</sup>

<sup>457</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>458</sup>. *PB Soundankar v State of Maharashtra*, (2013) 1 SCC 635 [LNIND 2012 SC 759] .

<sup>459</sup>. *PB Soundankar v State of Maharashtra*, (2013) 1 SCC 635 [LNIND 2012 SC 759] ; *Narayan Prasad v State of Madhya Pradesh*, AIR 2006 SC 204 [LNIND 2005 SC 881] : (2005) 13 SCC 247 [LNIND 2005 SC 881] ; *Rafi v State of Uttaranchal*, 2012 Cr LJ. 4012 (Utt)-where looted property was recovered from possession of accused persons conviction under section 396 and 412 was held proper.

<sup>460</sup>. *Ishwari*, 1980 Cr LJ 571 (All).

<sup>461</sup>. *Amar Singh*, 1982 Cr LJ 610 (SC) : AIR 1982 SC 129 .

<sup>462</sup>. *Lachhman Ram v State of Orissa*, AIR 1985 SC 486 [LNIND 1985 SC 77] : 1985 Cr LJ 753 : (1985) 2 SCC 533 [LNIND 1985 SC 77] . *Pawan Yadav v State of Bihar*, 2001 Cr LJ 3626 (Pat), property stolen in dacoity recovered from the house of the co-accused, conviction proper, spent 3 years in jail, single identification of looted property, sentence reduced to the period already undergone.

<sup>463</sup>. *Mojaffar v State of West Bengal*, 2011 Cr LJ 1249 ; *Dilip Malik v State*, 1991 Cr LJ 2171 (Cal).

<sup>464</sup>. *Mursalim Shaikh v State of West Bengal*, 2011 Cr LJ 1840 (Cal).

<sup>465</sup>. *Mohan Chetri v State of West Bengal*, 1992 Cr LJ 2374 (Cal). *Rafikul Alam v State of West Bengal*; 2008 CR LJ 2005 (Cal); *Raj Kumar v State*, AIR 2008 SC 3284 [LNIND 2008 SC 2782] : (2008) 11 SCC 709 [LNIND 2008 SC 849] - the Trial Court held that since recovery effected by the prosecution was not in consonance with law, it could not be said that stolen articles of dacoity were found from the accused and consequently charge for an offence punishable under section 412, IPC, 1860 also could not be said to be established. Supreme Court did not interfere with the order of acquittal.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of the Receiving of Stolen Property

#### [s 413] Habitually dealing in stolen property.

Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with <sup>466</sup>[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.

#### COMMENT—

The reason for inserting section 413 by the legislature is clear from the language of the section. The legislature purposely enacted knowing it well that there is already section 411 in respect of offence of dishonestly receiving stolen property knowing it to be stolen. The legislature inserted section 413 in the [IPC, 1860](#) where under it is provided that if a person is habitually dealing in stolen property, he will be charged for offence under [section 413, IPC, 1860](#). The terms of the provision make it clear that "habitually dealing" means there is evidence on record that there are other instances other than the present instance of the accused found to be indulging in the act and he is facing trial, then, it can be said that [section 413, IPC, 1860](#) is attracted.<sup>467</sup> This section punishes severely the common receiver or professional dealer in stolen property.

<sup>466</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>467</sup>. *State v Waman Gheeya*, [2007 Cr LJ 3614](#) (Raj).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of the Receiving of Stolen Property

#### [s 414] Assisting in concealment of stolen property.

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

#### COMMENT—

This section requires two things—

1. Voluntary assistance in concealing or disposing of or making away with property.
2. Knowledge or reason to believe that such property is stolen property.

The section is intended to penalise the person, who deal with stolen property in such a way that it becomes difficult to identify it or use it as evidence. It is not necessary to establish that the property was the subject matter of any particular theft. It would suffice if the prosecution can establish that the accused had knowledge or "had reason to believe" that the property is stolen one. All that the prosecution is required to establish is that the accused rendered help in either concealment or disposal of the property, which he had reason to believe to be stolen property or had knowledge to believe that it was such.<sup>468</sup> It is not necessary for a person to be convicted under this section that another person must be traced out and convicted of an offence of committing theft. The prosecution has simply to establish that the property recovered is stolen property and that the accused provided help in its concealment and disposal.<sup>469</sup>

#### [s 414.1] CASES.—

The accused was the driver of a taxi, which was carrying several persons who had hired it. While on its way the taxi stopped at a place for some reason, not known, and two of the passengers got down from the taxi and within a distance of about three and a half yards from the taxi they suddenly and without premeditation attacked, injured and robbed a man of his purse containing about Rs. 50. The robbers then boarded the taxi and the driver, in spite of the cries of the victim, drove away as fast as he could. It was held that the driver assisted the robbers in making away with the money so robbed and was guilty under this section.<sup>470</sup> A person who helps the disposal of stolen property by buying the same himself has been held to be guilty of the offence under the section.<sup>471</sup>

468. *Sayyed Issaq v State of Maharashtra*, 2008 Cr LJ 2950 (Bom).
469. *Ajendranath*, AIR 1964 SC 170 [LNIND 1963 SC 126] : (1964) 1 Cr LJ 129 .
470. *Hari Singh*, (1940) 2 Cal 9 .
471. *Bhanwarlal v State of Rajasthan*, (1995) 1 Cr LJ 625 (Raj).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Cheating

#### [s 415] Cheating.

Whoever, by deceiving any person<sup>1</sup>, fraudulently or dishonestly induces the person so deceived to deliver any property<sup>2</sup> to any person, or to consent that any person shall retain any property,<sup>3</sup> 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,<sup>4</sup> and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property,<sup>5</sup> is said to "cheat".

**Explanation.**—A dishonest concealment of facts is a deception within the meaning of this section.

#### ILLUSTRATIONS

- (a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- (b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.
- (d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
- (e) A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.
- (f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.
- (g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A

cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

- (h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.
- (i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

## COMMENT—

In most of the foregoing offences relating to property the offender merely got possession of the thing in question, but in the case of cheating he obtains possession plus property in it.

The authors of the Code observe: "We propose to make it cheating to obtain property by deception in all cases where the property is fraudulently obtained; that is to say, in all cases where the intention of the person who has by deceit obtained the property was to cause a distribution of property which the law pronounces to be a wrongful distribution, and in no other case whatever. However immoral a deception may be, we do not consider it as an offence against the rights of property if its object is only to cause a distribution of property which the law recognizes as rightful.

"We propose to punish as guilty of cheating a man who, by false representations, obtains a loan of money, not meaning to repay it; a man who, by false representations, obtains an advance of money, not meaning to perform the service or to deliver the article for which the advance is given; a man who, by falsely pretending to have performed work for which he was hired, obtains pay to which he is not entitled.

"In all these cases there is deception. In all, the deceiver's object is fraudulent. He intends in all these cases to acquire or retain wrongful possession of that to which some other person has a better claim and which that other person is entitled to recover by law. In all these cases, therefore, the object has been wrongful gain, attended with wrongful loss. In all, therefore, there has, according to our definition, been cheating".<sup>472</sup>

## [s 415.1] Ingredients.—

The section requires—

- (1) Deception of any person.
- (2) (a) Fraudulently or dishonestly inducing that person—
  - (i) to deliver any property to any person; or
  - (ii) to consent that any person shall retain any property; or
- (b) Intentionally inducing that person 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.<sup>473</sup> There



are two separate classes of acts which the persons deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.<sup>474.</sup>

In the definition of cheating there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place, he may be induced fraudulently or dishonestly to deliver any property to any person or to consent that any person shall retain any property. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts the inducing must be intentional but not fraudulent or dishonest.

The definition of the offence of cheating embraces some cases in which no transfer of property is occasioned by the deception and some in which such a transfer occurs; for these cases generally provision is made in section 417 of the Code. For cases in which property is transferred a more specific provision is made by section 420.

The offence of cheating is not committed if a third party, on whom no deception has been practised, sustains pecuniary loss in consequence of the accused's act.<sup>475.</sup>

### **[s 415.2] Cheating and extortion.—**

The offence of cheating must, like that of extortion, be committed by the wrongful obtaining of a consent. The difference is that the extortioner obtains the consent by intimidation, and the cheat by deception.<sup>476.</sup>

### **[s 415.3] Breach of contract and cheating.—**

The distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct, but for which the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution under [section 420, IPC, 1860](#), unless fraudulent or dishonest intention is shown right at the beginning of the transaction, which is the time when the offence is said to have been committed.<sup>477.</sup> There was allegation from one side that no payment was being made under the contract. The other side pleaded that part payments were made from time to time and the balance was withheld due to non-standard nature of the work and a letter to that effect was issued. The Court said that the controversy was wholly of civil nature. There was total absence of dishonest criminal intention to dupe contractors' right from the inception of the relationship.<sup>478.</sup> Although breach of contract *per se* would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the Court should not hesitate to exercise its jurisdiction under [section 482 of the Cr PC, 1973](#).<sup>479.</sup>

The distinction was explained by the Supreme Court in a case involving an agreement for sale of property. The allegation in the complaint was that the seller had not disclosed that one of his brothers had filed a partition suit which was pending. There

was no allegation that non-disclosure of the suit was intentional. The dishonest intention on the part of the accused at the beginning of negotiations was not made out by averments in the complaint. The High Court was wrong in declining to quash the criminal proceedings.<sup>480.</sup>

The accused promised, propagated and induced the public through advertisements to invest money in a circulation scheme. Double the money was promised to a member who enrolled 14 new members. The scheme was found to be practically impossible. Thus there was an element of cheating.<sup>481.</sup>

#### **[s 415.4] Dishonest intention at the time of making the promise a *sine qua non* for the offence of cheating.—**

To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From mere fact that the promisor could not keep his promise, it cannot be presumed that he all along had a culpable intention to break the promise from the beginning.<sup>482.</sup>

#### **[s 415.5] Cheating, criminal breach of trust, and criminal misappropriation.—**

Cheating differs from the last two offences in the fact that the cheat takes possession of property by deception. There is wrongful gain or loss in both cases and in both cases there is inducement to deliver property. In the case of cheating the dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, the person who comes into possession of but retains it or converts it to his own use against the terms of the contract.<sup>483.</sup>

Criminal breach of trust and cheating are two distinct offences generally involving dishonest intention but mutually exclusive and different in basic concept. The former is voluntary but the latter is purely on the basis of inducement with dishonest intention.<sup>484.</sup>

**1. 'Deceiving any person'.—**Deceiving means causing to believe what is false, or misleading as to a matter of fact, or leading into error. Whenever a person fraudulently represents as an existing fact that which is not an existing fact, he commits this offence. A wilful misrepresentation of a definite fact with intent to defraud, cognizable by the senses—as where a seller represents the quantity of coal to be 14 cwt. whereas it is in fact only eight cwt. but so packed as to look more; or where the seller, by manoeuvring, contrives to pass off tasters of cheese as if extracted from the cheese offered for sale, whereas it is not—is a cheating.<sup>485.</sup> Deception is a necessary ingredient for the offences of cheating under both parts of this section. The complainant, therefore, necessarily needs to prove that the inducement had been caused by the deception exercised by the accused. Such deception must necessarily produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from deception. The explanation to the section would clearly indicate that there must be no dishonest concealment of facts. In other words, non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception.<sup>486.</sup>

It is not sufficient to prove that a false representation had been made but it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.<sup>487.</sup> Where a party was persuaded

to take out a policy of insurance and the insurer subsequently failed to pay on the happening of the event insured against, it was held that a dishonest intention cannot be inferred from a subsequent failure to fulfil a promise.<sup>488</sup>

It is not necessary that the false pretence should be made in express words; it can be inferred from all the circumstances attending the obtaining of the property,<sup>489</sup> or from conduct.<sup>490</sup> If a person orders out goods on credit promising to pay for them on a particular day knowing that it was impossible for him to pay, this would amount to cheating. But the mere fact that he is in embarrassed circumstances does not lead to such inference.<sup>491</sup>

### **[s 415.6] Cheque discounting facility.—**

The complainant is required to show that accused had fraudulent or dishonest intention at the time of making promise or representation. In the absence of culpable intention at the time of making initial promise, no offence is made out under section 420. In present case, the allowing of cheque discounting facility by bank officials to customers of the bank, without any criminal intent being proved, did not amount to commission of offence, particularly as facility allowed was not contrary to RBI Guidelines. It could not also be said that there was a meeting of minds in a conspiracy to commit an offence, nor an act of corruption could be inferred from transactions between the bank and its customers. The accused officials might have been prosecuted under section 409 but they were not so charged. Their conviction was set aside.<sup>492</sup>

**2. 'Fraudulently or dishonestly induces the person so deceived to deliver any property'.—**The words 'fraudulently' and 'dishonestly' do not govern the whole of the definition of cheating. The section is divided into two parts, the second of which provides for the case of a person who, by deceiving another intentionally, induces the person so deceived to do an act which causes or is likely to cause damage or harm although the deceiver has not acted fraudulently or dishonestly.<sup>493</sup>

**3. 'Or to consent that any person shall retain any property'.—**It is cheating whether a deception causes a person fraudulently or dishonestly to acquire property by delivery, or to retain property already in his possession.

Property does not have to be a thing which has money or market value. Since a passport is a tangible thing and a document of great importance for travel abroad there can be no doubt that it is property within the meaning of this section. Thus where the accused obtained several passports by making false representation to the passport issuing authority they were rightly convicted under [sections 420 and 420/120B, IPC, 1860](#).<sup>494</sup>

**4. 'Intentionally inducing that person to do or omit to do anything which he would not do or omit, etc.'.—**Intention is the gist of the offence. The person cheated must have been intentionally induced to do an act which he would not have done or to omit to do an act which he would have done, owing to the deception practised on him. The intention at the time of the offence and the consequence of the act or omission itself has to be considered.<sup>495</sup> Intent refers to the dominant motive of action, and not to a casual or merely possible result.<sup>496</sup> Where the facts narrated in the complaint revealed a commercial transaction, it was held that such a transaction could not lead to the conclusion of a criminal intention to cheat. The Court said that the crux of this offence is the intention of the accused person.<sup>497</sup>

Sections 415 read with section 420 indicates that fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage. In this case, blank cheques were handed over to the accused during the period 2000–2004 for use of business purposes but the dispute between the parties admittedly arose much after that, i.e., in 2005. Thus, no case for proceeding against the respondent under section 420 is made out. Filling up of the blanks in a cheque by itself would not amount to forgery. A case for proceeding against the respondents under [section 406 IPC, 1860](#) has been made out. A cheque being a property, the same was entrusted to the respondents. If the property has been misappropriated has been used for a purpose for which the same had been handed over, a case under [section 406 IPC, 1860](#) may be found to have been made out. It may be true that even in a proceeding under [section 138 of Negotiable Instruments Act](#), the appellant could raise a defence that the cheques were not meant to be used towards discharge of a lawful liability or a debt, but the same by itself would not mean that in an appropriate case, a complaint petition cannot be allowed to be filed.<sup>498.</sup>

The existence of fraudulent intention at the time of making promise or misrepresentation is a necessary ingredient. The mere failure on the part of the accused to keep up the promise is not sufficient to prove the existence of such intention from the beginning.<sup>499.</sup>

#### **[s 415.7] Fraudulent or dishonest intention to be at the outset.—**

To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up the promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.<sup>500.</sup>

A beverages company entered into a bottling agreement with a bottling company for bottling services for a period of five years, subsequently, however, the beverage company transferred its trade mark to another company to which the bottling agreement was also assigned. But the latter company terminated the agreement. The bottling company filed a complaint for cheating saying that they had spent a huge amount in setting up their bottling unit. The complaint was quashed. There was no arrangement with the beverages company at the time when the complainant was bringing up his unit, nor did the beverages company have any intention of cheating from the start or at any subsequent stage.<sup>501.</sup>

Although it is necessary that there should be misrepresentation from the very beginning, the intention to cheat may in some cases develop at a later stage in the process of formation of the contract. The respondent in this case was a co-sharer in the joint property. The other co-sharers sold it to others representing that they had one-third share in the property when in fact it was not so. It was held that no cheating was practiced in the transaction upon the complaining co-sharer. It was a fraud on others. The complainant could not launch a criminal prosecution against them.<sup>502.</sup>

The illustration (b) provided in [section 415, IPC, 1860](#), very well covers the facts of this case for cheating by the accused. The illustration provides that "*(b) A, by putting a counterfoil mark on an article, intentionally deceives Z into a belief that this article was made in a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article, A cheats.*"<sup>503.</sup>

#### **[s 415.8] Civil and Criminal liability.—**

A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the Courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.<sup>504</sup> The case of breach of trust or cheating is both a civil wrong and a criminal offence, but under certain situations where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence.<sup>505</sup> Sometimes case may apparently look to be of civil nature or may involve a commercial transaction but civil disputes or commercial disputes in certain circumstances may also contain ingredients of criminal offences and such disputes have to be entertained notwithstanding they are also civil disputes.<sup>506</sup>

#### **[s 415.9] Cheating by Misrepresentation as to Encumbrance to Property.—**

It is the intention which is important and not whether a man is under a legal duty to disclose or suppress facts within his knowledge. Therefore, where a person with the intention of causing wrongful loss to another makes a false representation to him or suppresses certain facts, he will be said to have acted dishonestly even if the law does not require him to state the truth. Therefore, the non-disclosure of the previous encumbrances will not affect the rights of the previous mortgagees and will not pass a complete title to the purchaser; the purchaser may nevertheless have been cheated.<sup>507</sup> Where the vendor of immovable property omitted to mention that there was an encumbrance on the property, it was held that he could not be convicted of cheating unless it was shown either that he was asked by the vendee whether the property was encumbered and said it was not, or that he sold the property on the representation that it was unencumbered.<sup>508</sup>

#### **[s 415.10] Disconnection of Electricity and Water by Landlord.—**

The landlord disconnected the electricity and water supply of the tenant. The tenant could not make out that the landlord had the fraudulent intention of deceiving the tenant at the time of entering into the transaction of lease. Thus, there was no possibility of conviction for an offence under section 415.<sup>509</sup>

**5. 'Which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property'.—**The damage must be the direct, natural or probable consequence of the induced act. The resulting damage or likelihood of damage may not be within the actual contemplation of the accused when the deceit was practised. The person deceived must have acted under the influence of deceit, and the damage must not be too remote.<sup>510</sup> The use of the expression "cause" in this section postulates a direct and proximate casual connection between the act or omission and the harm and damage to the victim.<sup>511</sup>

It is necessary that the harm should be caused to the person deceived. Damage or harm in mind covers both, injury to mental faculties or mental pain or anguish.<sup>512</sup> Where the accused falsely identified a person before the Oaths Commissioner and thus induced him to attest an affidavit, it was held that no offence under [section 419, IPC, 1860](#), was committed as the Oaths Commissioner did not suffer any harm in his body, mind, reputation or property.<sup>513</sup>

#### **[s 415.11] Explanation.—**

The Explanation refers to the actual deception itself and not to the concealment of a deception by someone else. For the purposes of this section the concealment of fact need not be illegal if it is dishonest.<sup>514.</sup>

### **[s 415.12] Trade mark.—**

The Madras High Court has held that the infringement of a trade mark may constitute the offence of cheating and, therefore, the FIR for the offence was not to be quashed.<sup>515.</sup>

*Selling property having no right to do so.*—Where property is sold by a person knowing that it does not belong to him, it was held that he defrauded the purchaser. The latter could prosecute him under section 415, but no third person could do so.<sup>516.</sup>

The offence of cheating need not necessarily relate to property. It can also partake the nature of personation. The accused in this case palmed off his sister as belonging to a higher caste with the object of getting her married to the petitioner, a person of higher caste. It was held that the offence fell under the second part of the definition.<sup>517.</sup>

### **[s 415.13] Prosecution of Company.—**

In the case of [Penal Code](#) offences, for example under [section 420 of the IPC, 1860](#), for cheating and dishonestly inducing delivery of property, the punishment prescribed is imprisonment of either description for a term which may extend to seven years and shall also be liable to fine; and for the offence under section 417, that is, simple cheating, the punishment prescribed is imprisonment of either description for a term which may extend to one year or with fine or with both. If the appellants' plea is accepted then for the offence under [section 417 IPC, 1860](#), which is an offence of minor nature, a company could be prosecuted and punished with fine whereas for the offence under section 420, which is an aggravated form of cheating by which the victim is dishonestly induced to deliver property, the company cannot be prosecuted as there is a mandatory sentence of imprisonment. There is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment.<sup>518.</sup> A corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring *mens rea*. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. Companies and corporate houses can no longer claim immunity from criminal prosecution on ground that they are incapable of possessing necessary *mens rea*.<sup>519.</sup> Since, the majority of the [Constitution](#) Bench ruled in *Standard Chartered Bank v Directorate of Enforcement*,<sup>520.</sup> that the company can be prosecuted even in a case where the Court can impose substantive sentence as also fine, and in such case only fine can be imposed on the corporate body.<sup>521.</sup>

### **[s 415.14] Directors of Company.—**

The [Penal Code](#) does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question, viz.,

as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the Statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.<sup>522.</sup>

#### **[s 415.15] Vicarious liability of employees.—**

A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in-charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created." No case of criminal misconduct on their part has been made out before the formation of the contract. There is nothing to show that the appellants herein who hold different positions in the appellant-company made any representation in their personal capacities and, thus, they cannot be made vicariously liable only because they are employees of the company."<sup>523.</sup>

#### **[s 415.16] Allotment of wagons on false letters.—**

The accused who were railway employees tried to divert wagons by procuring their allotment on fake letters of request issued by a fake firm, were held to be guilty of cheating.<sup>524.</sup>

#### **[s 415.17] Representation to Public Service Commission and other appointing authority.—**

The accused who was at the time serving in the Madras Medical Service as a Civil Assistant Surgeon on a temporary basis applied for a permanent post notified by the Madras Public Service Commission and made false representations as to his name, place of birth, father's name and a degree held by him which was a necessary qualification. His name was recommended by the Commission and he was appointed by the Government to the post and drew his salary for several years before the fraud was detected. It was held that although the Commission was an independent statutory body performing advisory function, the deception of such adviser was deception of the Government and the accused was liable under the section.<sup>525.</sup> Where a non-scheduled caste candidate sat for the Indian Administrative Service Examination falsely declaring himself to be a scheduled caste candidate in his application before the Union Public Service Commission and thus obtained the advantage of the relaxed standard of examination prescribed for scheduled caste candidates and eventually got appointed as an IAS. officer by the Government of India, it was held that he had clearly cheated both the Union Public Service Commission and the Government of India and was rightly convicted under [section 429, IPC, 1860](#).<sup>526.</sup>

Securing appointments from Government officials by producing fake letters from Ministers and also by posing to be the brother of a minister, has been held to constitute

an offence of cheating by personation, and of forgery under sections 466–467 and of forging Ministerial communications under section 468.<sup>527</sup>

### [s 415.18] Illustration(f).—

It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under [section 415 of the IPC, 1860](#) (Illustration f) is worthy of notice now "(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."<sup>528</sup> On its plain language it is manifest from this illustration that what is material is the intention of the drawer at the time the cheque is issued, and the intention has to be gathered from the facts on the record. If from the circumstances it is established that the failure to meet a cheque was not accidental but was the consequence expected by the accused, the presumption would be that the accused intended to cheat.<sup>529</sup>

The accused introduced a person to the bank only for opening an account. It was held that such act could not by itself spell out any intention to commit fraud or cheating. The evidence did not show that the introducer was in any way connected with the fraud committed on the bank by the person introduced or with the loss suffered by the bank. He was accordingly acquitted of all charges.<sup>530</sup>

<sup>472</sup>. Note N, pp 164, 166.

<sup>473</sup>. The restatement of these ingredients occurs in *Divender Kumar Singla v Baldev Krishna Singla*, [AIR 2004 SC 3084](#) [[LNIND 2004 SC 228](#)] : (2005) 9 SCC 15 [[LNIND 2004 SC 228](#)] .

<sup>474</sup>. *Hridya Rajan Pd. Verma v State of Bihar*, [AIR 2000 SC 2341](#) [[LNIND 2000 SC 563](#)] ; *Arun Bhandari v State of UP*, (2013) 2 SCC 801 [[LNIND 2013 SC 18](#)] : 2013 Cr LJ 1020 (SC).

<sup>475</sup>. *Sundar Singh*, (1904) PR No. 25 of 1904.

<sup>476</sup>. Note N p 163.

<sup>477</sup>. *K Periasami v State*, [1985 Cr LJ 1721](#) (Mad); See also discussion under para "Dishonest Intention at the outset" *infra*. See also *Poovalappil David v State of Kerala*, [1989 Cr LJ 2452](#) (Ker), switching off AC machines in a cinema hall after the patrons are in, cheating. Proceedings on the report of a police sub-inspector not illegal. *Vinar Ltd v Chenab Textile Mills*, [1989 Cr LJ 1858](#) (J&K) Ranbir Code, breach of business contract, no criminal proceeding allowed. *Ranjit Pant v State of Jharkhand*, [2003 Cr LJ 1736](#) (Jhar), the complainant (landowner) was induced by the accused that on his handing over his land under a lease for establishing a petrol pump he would be given dealership. A bank guarantee of Rs. 4 lacs was taken from him, but dealership was allotted to another person. Thus, it seemed to the court that the accused did not have *bona fide* intention from the beginning. Framing of charge-sheet under section 468 forgery for cheating and section 420 was held to be proper.



478. *Gautam Sinha v State of Bihar*, 2003 Cr LJ 635 (Jhar).
479. *V Y Jose v State of Gujarat*, AIR 2009 SC (Supp) 59.
480. *Hridaya Ranjan Pd. Verma v State of Bihar*, AIR 2000 SC 2341 [LNIND 2000 SC 563] : 2000 Cr LJ 2983 ; *Murari Lal Gupta v Gopi Singh*, (2006) 2 SCC (Cr) 430; *B Suresh Yadav v Sharifa Bee*, (2007) 13 SCC 107 [LNIND 2007 SC 1238] .
481. *Kuriachan Chacko v State of Kerala*, (2008) 8 SCC 708 [LNIND 2008 SC 1378] .
482. *Inder Mohan Goswami v State of Uttaranchal*, (2007) 12 SCC 1 [LNIND 2007 SC 1179] : (2008) 1 SCC (Cr) 259 : AIR 2008 SC 251 [LNIND 2007 SC 1179] ; *SN Palanitkar v State of Bihar*, AIR 2001 SC 2960 [LNIND 2001 SC 2381] .
483. *KC Thomas v A Varghse*, 1974 Cr LJ 207 (Ker).
484. *Vadivel v Packialakshmi*, 1996 Cr LJ 300 (Mad).
485. *Goss*, (1860) 8 Cox 262.
486. *Iridium India Telecom Ltd v Motorola Incorporated*, (2011) 1 SCC 74 [LNIND 2010 SC 1012] : AIR 2011 SC 20 [LNIND 2010 SC 1012] .
487. *Matilal Chakrabarti*, (1950) 2 Cal 73 .
488. *National Insurance Co v Narendra Kumar Jhanjari*, 1990 Cr LJ 773 (Pat). The court **followed**, *State of Kerala v SA Pareed Pillai*, AIR 1973 SC 326 : 1972 Cr LJ 1243 and *Hari Prasad Chamaria v Bishun Kumar Surekha*, AIR 1974 SC 301 [LNIND 1973 SC 264] : 1974 Cr LJ 352 . *VP Shrivastava v Indian Explosives Limited*, (2010) 10 SCC 361 [LNIND 2010 SC 920] : (2010) 3 SCC(Cr) 1290.
489. *Maria Giles*, (1865) 10 Cox 44; *Khoda Bux v Bakeya Mundari*, (1905) 32 Cal 941 .
490. *Mohsinbhai*, (1931) 34 Bom LR 313 : 56 Bom 204.
491. *Mohsinbhai*, (1931) 34 Bom LR 313 : 56 Bom 204.
492. *SVL Murthy v State*, (2009) 6 SCC 77 [LNIND 2009 SC 1167] : AIR 2009 SC 2717 [LNIND 2009 SC 1167] .
493. *Mohabat*, (1889) PR No. 20 of 1889. Representation that accommodation would be provided to tourists and taking money from them in advance and then not providing accommodation could amount to cheating, hence, process not stopped. *Sanjiv Bharadwaj v Hasmukhlal Rambhai Patel*, 1989 Cr LJ 1892 (Guj); *Anil Ritolla v State of Bihar*, (2007) 10 SCC 110 [LNIND 2007 SC 1096] , such offence can be committed even in the making of a commercial transaction. The allegations in the complaint did not show any intention to induce a person to deliver property.
494. *NM Chakraborty*, 1977 Cr LJ 961 (SC) : AIR 1977 SC 1174 [LNIND 1977 SC 179] .
495. *Harendra Nath Das v Jyotish Chandra Datta*, (1924) 52 Cal 188 .
496. *Ibid*.
497. *Rajesh Bajaj v State, NCT of Delhi*, AIR 1999 SC 1216 [LNIND 1999 SC 233] : 1999 Cr LJ 1833 .
498. *Suryalakshmi Cotton Mills Ltd v Rajvir Industries Ltd*, (2008) 13 SCC 678 [LNIND 2008 SC 36] : AIR 2008 SC 1683 [LNIND 2008 SC 36] .
499. *KC Builders v CIT*, (2004) 2 SCC 731 [LNIND 2004 SC 118] : AIR 2004 SC 1340 : (2004) 265 ITR 562 [LNIND 2004 SC 118] : (2004) 1 KLT 596 .
500. *State of Kerala v AP Pillai*, 1972 Cr LJ 1243 (SC) : AIR 1973 SC 326 . Followed in *Bimal Kumar v Vishram Lekhraj*, 1990 Cr LJ 444 (Bom), where dishonest intention in failing to furnish "G" form was not proved. The court referred to, *Trilok Singh v Satya Deo Tripathi*, AIR 1979 SC 850 : 1980 Cr LJ 822 and *Ram Avtar Gupta v Gopal Das Taliwal*, AIR 1983 SC 1149 : (1983) 2 SCC 431 ; *Shyam Sundar v Lala Bhavan Kishore*, 1989 Cr LJ 559 (All), post-dated cheques dishonoured, intention at the outset to have them dishonoured not established. But see *Radhakishan Dalmia v Narayan*, 1989 Cr LJ 443 (MP), where payment of post- dated cheques

was stopped by the drawer and the court refused to quash proceedings because dishonest intention could be inferred.

501. *Ajay Mitra v State of MP*, AIR 2003 SC 1069 [LNIND 2003 SC 108] : 2003 Cr LJ 1249 .
502. *Devendra v State of UP*, (2009) 7 SCC 495 [LNIND 2009 SC 1158] : (2009) 3 SCC Cr 461. *Harmanpreet Singh Ahluwalia v State of Punjab*, (2009) 7 SCC 712 [LNIND 2009 SC 1121] : 2009 Cr LJ 3462 , here also there was no element of wrongful intention in the transaction either at the initial stage or developing subsequently.
503. *Raj Mangal Kushwaha v State of UP*, 2010 Cr LJ 3611 (All).
504. *Devendra v State of UP*, 2009 (7) SCC 495 [LNIND 2009 SC 1158] 2009 (7) Scale 613 [LNIND 2009 SC 1158] .
505. *GHCL Employees Stock Option Trust v India Infoline Ltd* (2013) 4 SCC 505 [LNIND 2013 SC 232] : AIR 2013 SC 1433 [LNIND 2013 SC 232] .
506. *Arun Bhandari v State of UP* (2013) 2 SCC 801 [LNIND 2013 SC 18] : 2013 Cr LJ 1020 (SC); *Lee Kun Hee v State*, AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : (2012) 3 SCC 132 [LNIND 2012 SC 89] .
507. *Kuldip Singh v State*, 1954 Cr LJ 299 (P&H).
508. *Bishan Das*, (1905) ILR 27 All 561.
509. *TP Amina v P Nalla Thampy Thera Dr.*, 2003 Cr LJ 2945 (Ker).
510. *Legal Remembrancer v Manmatha Bhusan Chatterjee*, (1923) 51 Cal 250 ; *Harendra Nath Das v Jyotish Chandra Datta*, (1924) 52 Cal 188 .
511. *Ramji Lakhamsi v Harshadrai*, (1959) 61 Bom LR 1648 .
512. *Baboo Khan v State*, (1961) 2 Cr LJ 759 .
513. *Ram Jas*, 1974 Cr LJ 1261 (SC); See also *Bhujang*, 1977 Cr LJ NOC 17 (Kant).
514. *Surendra Meneklal v Bai Narmada*, AIR 1963 Guj 239 [LNIND 1963 GUJ 55] .
515. *Anja Match Industries v South Indian Locifer Match Works*, 1999 Cr LJ 181 (Mad).
516. *Mohd. Ibrahim v State of Bihar*, (2009) 8 SCC 751 [LNIND 2009 SC 1774] : (2009) 3 SCC (Cr) 929.
517. *G v Rao v LHV Prasad*, AIR 2000 SC 2474 [LNIND 2000 SC 429] : 2000 Cr LJ 3487 . See for example, *V Srinivasa Reddy v State of AP*, AIR 1998 SC 2079 [LNIND 1998 SC 158] : 1998 Cr LJ 2918 , a case of bank fraud.
518. *Standard Chartered Bank v Directorate of Enforcement* (2005) 4 SCC 405 : 2005 (5) Scale 97 .
519. *Iridium India Telecom Ltd v Motorola Incorporated*, (2011) 1 SCC 74 [LNIND 2010 SC 1012] : AIR 2011 SC 20 [LNIND 2010 SC 1012] .
520. *Supra*.
521. *CBI v Blue Sky Tie-up Pvt Ltd* 2012 Cr LJ 1216 : AIR 2012 SC (Supp) 613.
522. *Maksud Saiyed v State of Gujarat*, 2008 (5) SCC 668 [LNIND 2007 SC 1090] : JT 2007 (11) SC 276 [LNIND 2007 SC 1090] .
523. *Sharon Michael v State of Tamil Nadu*, AIR 2008 SC (Supp) 688; *R Kalyani v Janak C Mehta*, 2008 (14) Scale 85 [LNIND 2008 SC 2127] .
524. *Jagdish Prasad v State of Bihar*, 1990 Cr LJ 366 (Pat).
525. *Krishnamurthy*, AIR 1965 SC 333 [LNIND 1964 SC 95] .
526. *Sushil Kumar Datta*, 1985 Cr LJ 1948 (Cal).
527. *State of UP v Ram Dhani*, 1987 Cr LJ 933 (All).
528. *Rajesh Bajaj v State NCT of Delhi*, (1999) 3 SCC 259 [LNIND 1999 SC 233] ; *Trisuns Chemical Industry v Rajesh Agarwal*, (1999) 8 SCC 686 [LNIND 1999 SC 840] .
529. *Punit Pruthi v State*, 2010 (1) Crimes 439 : 2010 Cr LJ 1111 (Del).

530. *Manoranjan Das v State of Jharkhand*, (2004) 12 SCC 90 : AIR 2004 SC 3623 : (2004) 121  
Comp. Cas 8 : 2004 Cr LJ 3042 .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Cheating

#### [s 416] Cheating by personation.

A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

**Explanation.**—The offence is committed whether the individual personated is a real or imaginary person.

#### ILLUSTRATIONS

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

#### COMMENT—

To 'personate' means to pretend to be a particular person.<sup>531</sup> As soon as a man by word, act, or sign holds himself forth as a person entitled to vote with the object of passing himself off as that person, and exercising the right which that person has, he has personated him.<sup>532</sup> If a person at Oxford, who is not a member of the university, goes to a shop for the purpose of fraud, wearing a commoner's cap and gown, and obtains goods, his appearing in a cap and gown is a sufficient false pretence although nothing passed in words.<sup>533</sup>

The person personated may be a real or an imaginary person.

#### [s 416.1] Ingredients.—

This section requires any one of the following essentials:

- (1) Pretention by a person to be some other person.
- (2) Knowingly substituting one person for another.
- (3) Representation that he or any other person is a person other than he or such other person really is.

#### [s 416.2] CASES.—False representation at examination.—

Where A falsely represented himself to be B at a University Examination, got a hall-ticket under B's name, and wrote papers in B's name, it was held that A was guilty of cheating by personation and forgery.<sup>534</sup>

### **[s 416.3] False Representation as bachelor.—**

It is not correct to say that without delivery of property there cannot be any cheating. A bare reading of [section 415, IPC, 1860](#), will show that if the person deceived is induced by reason of deception to do or omit to do anything which he would not do if he were not so deceived and if the act he has done being so deceived results in some damage or harm to his body, mind, reputation or property, the offence of cheating would nevertheless be committed. Thus where the accused dishonestly induced the complainant and his daughter to go through the marriage ceremony professing himself to be a bachelor while he had a wife living, it was held that his act amounted to an offence both under [sections 416 and 417, IPC, 1860](#), as harm was caused to the complainant and his daughter to their body, mind, reputation and even to their property.<sup>535</sup> In this connection see discussion under head "*Explanation*" under section 415, *ante*.

<sup>531</sup>. *Hague*, (1864) 4B & S 715, 720.

<sup>532</sup>. *Ibid*, p. 721.

<sup>533</sup>. *Barnard*, (1837) 7 C & P 784.

<sup>534</sup>. *Appasami*, (1889) 12 Mad 151; *Ashwini Kumar Gupta*, (1937) 1 Cal 71 .

<sup>535</sup>. *MNA Achar v Dr. DL Rajgopal*, 1977 Cr LJ NOC 228 (Kant). *Anil Sharma v SN Marwaha*, (1995) 1 Cr LJ 163 (Del) complaint made after three years on the ground that the accused concealed the fact that he had a child from his first marriage held to be not maintainable.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Cheating

#### [s 417] Punishment for cheating.

**Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.**

#### COMMENT—

This section punishes simple cases of cheating. Where there is delivery of any property or destruction of any valuable security, section 420 is the proper section to apply.<sup>536.</sup> The accused made false representation to the complainant by way of promise to marry her and believing such promise she complied with his request by sharing the bed together. Consequently she became pregnant but he refused to marry her. The accused challenged the proceedings initiated against him under section 417. It was held that *prima facie* case was made out under the section.<sup>537.</sup>

Certain letters were prepared on the letterhead of a Minister by the accused by which actors were invited to a cultural show. Letters did not carry the signature of the Minister. The Court said that the act of the accused did not cause nor was likely to cause any harm to any person in mind or body. His conviction under section 417 was held to be not proper.<sup>538.</sup> Only because accused issued cheques which were dishonoured, the same by itself would not mean that he had cheated the complainant. Assuming that such a statement had been made, the same, does not exhibit that there had been any intention on the part of the appellant herein to commit an offence under [section 417 of the Penal Code](#).<sup>539.</sup> Where accused giving assurance of marriage to victim girl had undergone intercourse with victim and she would not have undergone intercourse had there been no such assurance of marriage by accused. Accused subsequently having disowned assurance given by him. It was held that ingredients of cheating under section 415 can be said to have been established. Accused held guilty of committing offence punishable under section 417 of Code.<sup>540.</sup> Where accused is liable to be convicted under section 376 on allegation sexual intercourse by false promise of marriage there cannot be any separate conviction under section 417.<sup>541.</sup> Though once the accused-appellant alleged failed to keep his promise she allowed him to commit sexual intercourse for the second time and invited her pregnancy. Not only that, even after termination of pregnancy for the second time she again allowed the accused-appellant to have sexual intercourse with her and make her pregnant for the third time. Offence under section 417 not made out.<sup>542.</sup> Accused allegedly committed sexual intercourse on prosecutrix on pretext that he would provide temporary job of peon to her in bank which would be regularized after completion of one year. Though the offence under section 376 is not made out, offence under section 417 is made out.<sup>543.</sup> Where accused wanted to marry prosecutrix and on her refusal committed forcible sexual intercourse with her. But, if the promise of marriage was given and the girl had succumbed on that account, by itself, may not amount to cheating. Besides

this, the girl has very specifically stated that even subsequently, she was ravished against her wishes. Therefore, the theory of promise of marriage and the consent for sexual intercourse will wither away, acquit the accused of the offence under [section 417 of IPC, 1860](#) though he was convicted under [section 376 IPC, 1860](#).<sup>544.</sup>

**536.** No process was issued where the allegations were that the girl was represented to be as hale and hearty and it was found after the marriage that she was weak of sight and had urinary infection. The complaint dismissed. *Anilchandra Pitambardas v Rajesh*, [1991 Cr LJ 487](#) (Bom).

**537.** *Ravichandran v Mariyammal*, [1992 Cr LJ 1675](#) (Mad).

**538.** *Jibrial Diwan v State of Maharashtra*, [AIR 1997 SC 3424](#) [LNINDORD 1997 SC 149] : [1997 Cr LJ 4070](#) .

**539.** *V Y Jose v State of Gujarat*, AIR 2009 SC (Supp) 59. Allegation is accused cheated the complainant by not making of payment of money within time given at time of receiving of loan. It is held that fraudulent dishonest intention of accused at time of issuance of cheques is to be proved to book her for offence of cheating and there is no such intention proved on the part of accused. Accused cannot be punished under [sec 417](#) or [420](#) of [IPC](#) *Kanailal Bhattacharjee v Bhajana Biswas*, [2012 Cr LJ 4158](#) (Gau).

**540.** *Manik Das Baishnav v State of Tripura*, [2012 Cr LJ 1954](#) (Gau); *Bipul Medhi v State of Assam*, [2008 Cr LJ 1099](#) (Gau); *Sukhamay Manna v State of West Bengal*, [2010 Cr LJ 829](#) (Cal)-question cannot be decided in revisional jurisdiction against framing of charge.

**541.** *Ravi v State by Inspector of Police*, [2010 Cr LJ. 3493](#) (Mad).

**542.** *Kanchan Deb v State of Tripura*, [2011 Cr LJ 3853](#) (Gau); *K Ashok Kumar Reddy v State of AP*, [2008 Cr LJ 2783](#) (AP); *P Govindan v State by Inspector of Police*, [2008 Cr LJ 4263](#) (Mad).

**543.** *Girish Kumar Sharan v State of Jharkhand*, [2010 Cr LJ 4215](#) (Jha); *Subrato Ghosh v State of Jharkhand*, [2011 Cr LJ 3637](#) (Jha).

**544.** *Zindar Ali SK v State of West Bengal*, [2009 \(3\) SCC 761](#) [LNIND 2009 SC 249] : [AIR 2009 SC 1467](#) [LNIND 2009 SC 249] .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Cheating

**[s 418] Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.**

**Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.**

### COMMENT—

Under [section 418 of IPC, 1860](#) who ever cheats with the knowledge that is likely thereby to cause wrongful loss to the person whose interest in the transaction to which the cheating relates he was bound either by law or by legal contract to protect, shall be punished with imprisonment or fine or with both.<sup>545</sup> This section applies to cases of cheating by guardians, trustees, solicitors, agents, and the manager of a Hindu family, directors or managers of a bank in fraud of the shareholders. It is the abuse of trust that is met with severe punishment.

### **[s 418.1] False balance-sheet for inducing to renew deposit.—**

Where the directors, manager and accountant dishonestly that is to obtain wrongful gain for themselves or to cause wrongful loss to others put before the shareholders balance sheets which they knew to be materially false and misleading and likely to mislead the public as to the condition of the bank and concealed its true condition and thereby induced depositors to allow their money to remain in deposit with the bank, they were held liable under this section.<sup>546</sup> In *Medchl Chemicals & Pharma Pvt Ltd v Biological E Ltd*,<sup>547</sup> wherein it was observed that: "In order to attract the provisions of section 418 and section 420 the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfil the promise by itself would not attract the provisions of section 418 or section 420. *Mens rea* is one of the essential ingredients of the offence of cheating under section 420. As a matter of fact Illustration (g) to section 415 makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract."



545. *Behram Bomanji Dubash v State of Karnataka*, 2010 Cr LJ 3963 (KAR).

546. *Moss*, (1893) 16 All 88 . Refusal by bank officers, for reasons beyond their control, to take a house on rent after promising was not punishable under this section though the landlord **relying** on the promise spent money on finishing the house as desired. It was a matter for a civil action. *S Shankarmani v Nibar Ranjan Parida*, 1991 Cr LJ 65 (Ori).

547. *Medchl Chemicals & Pharma Pvt Ltd v Biological E Ltd*, 2000 (3) SCC 269 [LNIND 2000 SC 373] .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Cheating

#### [s 419] Punishment for cheating by personation.

Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### COMMENT—

If a person cheats by pretending to be some other person, or representing that he is a person other than he, then, such person can be charged with the allegation of 'cheating by personation' ([section 416, IPC, 1860](#)) and punished under section. 419, [IPC, 1860](#).

#### [s 419.1] Overlapping.—

The offences under [sections 170, IPC, 1860](#) and [419, IPC, 1860](#) overlap each other. Cheating by personation ([section 419, IPC, 1860](#)) is an offence of general character, under which a person may pretend to be anyone, other than what he really is. But, cheating by pretending to be a public servant ([section 170, IPC, 1860](#)) is a specific offence, where one pretends to be a public servant and has all the ingredients of cheating by personation under [section 419, IPC, 1860](#).<sup>548</sup>

<sup>548</sup>. *I K Narayana v State of Karnataka*, [2013 Cr LJ 874](#) (Kar).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Cheating

#### [s 420] Cheating and dishonestly inducing delivery of property.

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### COMMENT—

Simple cheating is punishable under section 417. But where there is delivery or destruction of any property or alteration or destruction of any valuable security resulting from the act of the person deceiving this section comes into operation. For an offence under this section it must be proved that the complainant parted with his property acting on a representation which was false to the knowledge of the accused and that the accused had a dishonest intention from the outset.<sup>549</sup> In *Sonbhadra Coke Products v State of UP*,<sup>550</sup> it was held that offence of cheating can be made out only if it has been shown that damage or harm has been caused to the person so deceived.

The Supreme Court has held that the word 'property' in this section does not necessarily mean that the thing, of which a delivery is dishonestly desired by the person who cheats, must have a money value or a market value, in the hand of the person cheated. The communicated order of assessment received by an assessee is "property".<sup>551</sup>

An admission card to sit for an Examination of a University is property within the meaning of this section; though the admission card as such has no pecuniary value it has immense value to the candidate for the examination.<sup>552</sup> A driving licence or its duplicate<sup>553</sup> had been held to be property within the meaning of this section. Where a bank was defrauded of a large amount and the signatures of the accused bank manager on drafts used for the purpose were proved beyond doubt to be his signature, his conviction under the section was held to be proper.<sup>554</sup> Where a builder was defrauded by a conspiring team of financiers by giving him counterfeit currency, conviction under this section was fully warranted.<sup>555</sup> In the ordinary course of things, relationship of banker and customer is that of debtor and creditor and not that of trustee and beneficiary. Payment of money against cheques already issued by the customer at a time when the bank had received notice to close the account did not in itself amount to cheating the customer in conspiracy with the payee.<sup>556</sup>

#### [s 420.1] Intention to deceive at the time of inducement.—

The primary requirement to make out an offence of cheating under section 415 punishable under [section 420 IPC, 1860](#) is dishonest/fraudulent intention at the time of inducement is made.<sup>557</sup> The intention to deceive should be in existence at the time when the inducement was made. Mere failure to keep up a promise subsequently cannot be presumed as leading to cheating.<sup>558</sup>

The intention to deceive was held to be not there either at the initial stage or any subsequent stage in the mere fact of transferring a portion of the property over which the transferors had no complete ownership. The sale could be binding only to the extent of the transferor's right.<sup>559</sup> Where bogus receipts were issued for part payment of the price of the property over which the recipient had no ownership and therefore, no right to sell, he was held to be guilty of the offence under the section.<sup>560</sup>

### **[s 420.2] Dishonour of cheque.—**

A cheque was returned unpaid by the bank under the remark "payment stopped by drawer". The complainant alleged that the cheque was dishonoured because the drawer of the cheque had no sufficient balance or arrangement. The Court refused to quash the complaint. Issuing a cheque without arrangement of sufficient funds may amount to cheating.<sup>561</sup> Where goods were delivered in a normal sales transaction and the buyer had also become the owner of the goods because the transfer of ownership was not linked with payment, it was held that the fact that a cheque for the price, which was issued in due course, bounced, did not constitute the offence of cheating because there was no evidence of intention to cheat at the outset of the transaction.<sup>562</sup> Dishonest intention cannot be inferred from the bouncing of a cheque issued for an existing debt. The conviction of the accused for return of such cheque was not proper.<sup>563</sup>

A cheque was handed over in a share transaction by the accused. The cheque was signed by his wife. The person who passed the cheque was held guilty of cheating because of the dishonour but not his wife because she was not seen anywhere near the transaction.<sup>564</sup>

### **[s 420.3] [Section 138, NI Act](#) and [section 420 IPC, 1860](#).—**

In the prosecution under [section 138 Negotiable Instruments Act, 1881](#), the *mens rea*, i.e., fraudulent or dishonest intention at the time of issuance of Cheque is not required to be proved. But in a prosecution under [section 420 IPC, 1860](#) the issue of *mens rea* may be relevant. There may be some overlapping of facts in the cases under [section 420 IPC, 1860](#) and [section 138 of Negotiable Instruments Act, 1881](#), but ingredients of offences are entirely different. Thus, the subsequent case is not barred.<sup>565</sup>

### **[s 420.4] Conversion of Cheques.—**

Cheques issued by a company in the name of a supplier were converted by an employee of the company by opening an account in the name of the supplier. The opening of the account was facilitated by an employee of the bank. Both of them were held to be joint offenders. The order of convicting both of them was held to be not improper.<sup>566</sup>

#### **[s 420.5] Sections 417 and 420.—**

In every case when property is delivered by a person cheated, there must always be a stage when the person makes up his mind to give the property on accepting the false representation made to him. It cannot be said that in such cases the person committing the offence can only be tried for the simple offence of cheating under section 417 and cannot be tried under this section because the person cheated parts with his property subsequent to making up his mind to do so.<sup>567.</sup>

#### **[s 420.6] Goods received under hire-purchase.—**

Breach of the conditions of a hire purchase agreement under which goods or property has been received does not amount to an offence under this section.<sup>568.</sup>

Where the complainant stated that the accused had taken the vehicle on hire-purchase but failed and neglected to pay certain instalments and the Court found that there was no dishonest intention on the part of the hirer at the time of the transaction, the complaint was quashed, the Court observed that it was open to the complainant to proceed against the hirer before a civil Court for appropriate relief.<sup>569.</sup>

#### **[s 420.7] Arbitration clause.—**

The presence of an arbitration clause in an agreement cannot prevent criminal prosecution of a person if the ingredients of the offence are made out to the *prima facie* extent.<sup>570.</sup>

#### **[s 420.8] Financial crime.—**

The accused an investment advisor charged with dishonestly concealing material facts relating to bonds. The question was whether he had committed the alleged act of dishonesty contrary to the Financial Services Act, 1986 section 47(1). Such determination would have to include considering his intentions as to his future conduct. It was held that the phrase "material facts" within section 47(1) was to be widely construed so as to include his present intention as to future conduct. Dishonest concealment was also included within "material facts". It was required under section 4(A) of the 1964 Act to consider his intentions and it was appropriate for the jury to consider such intentions, not in relation to dishonesty, but in relation to the victims of the alleged acts in connection with the particulars of the offence.<sup>571.</sup>

#### **[s 420.9] Finance company's inability to pay back deposits.—**

A finance company was not able to pay back deposit owing to its poor financial condition as found by the Company Law Board and Reserve Bank. The Court found no evidence of any intention to commit criminal breach of trust or any dishonest inducement. The complaint was held liable to be quashed.<sup>572.</sup>

Issuing cheques with knowledge that they would be dishonoured amounts to an offence under this section.<sup>573.</sup> Offence under section 420 was alleged against the

accused for issuance of cheque, who died and his business was inherited by his son. Police filed final report stating that the son is liable. The Court held that as it is well-settled law that a criminal's culpable offence shall not be inherited by his heirs. Once the accused died, the charge against the accused has been dismissed as abates.<sup>574.</sup>

#### **[s 420.10] Legal opinion given by Advocate.—**

Allegation is that advocate submitted false legal opinion to the bank in respect of the housing loans in the capacity of a panel advocate and did not point out actual ownership of the properties in question. The liability against an opining advocate arises only when the lawyer has an active participant in a plan to defraud the bank. Merely because his opinion may not be acceptable, he cannot be made liable for criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. There is no *prima facie* case for proceeding in respect of the charges alleged against him. Proceedings quashed.<sup>575.</sup>

#### **[s 420.11] Fraudulent inducement for deposits, each deposit a separate offence.—**

Where a fraudulent finance company collects deposits, there is a separate offence towards each depositor. The fact that the maximum punishment of five years is prescribed for a single offence of a cheating could not be pressed into service by the accused for seeking relief.<sup>576.</sup>

#### **[s 420.12] Punishment.—**

The accused obtained payments from the Government by sending bills with bogus railway receipt numbers. This was a false representation which amounted to cheating. A long period of 30 years had passed since then. The sentence of one year imprisonment was reduced to the period already undergone but the fine of Rs. 15,000 was maintained.<sup>577.</sup> In a conspiracy to benefit from a forged will, the Court imposed maximum possible punishment.<sup>578.</sup>

#### **[s 420.13] Pendency of civil suit.—**

A civil suit for specific performance was already pending against the party who caused the deception. The Court said that criminal proceeding was not to be quashed on that basis alone.<sup>579.</sup>

#### **[s 420.14] Proceedings quashed because the dispute is purely civil in nature.—**

It may be true that where the Court finds that the dispute between the parties was purely of civil nature, it may not allow criminal proceedings to go on. But no such law can be laid down because a case may be such that both a civil action and criminal complaint may be maintainable, the cause of action for both being the same.<sup>580.</sup> Mere breach of contract does not necessarily involve cheating.<sup>581.</sup> Where the dispute is

essentially about the profit of the hotel business and its ownership, it is purely civil in nature and hence, the proceedings are quashed.<sup>582</sup> Where, complaint is about the non-payment after placing orders for fabrication work on complainant, the complaint would only reveal that the allegations as contained in the complaint are of civil nature and do not *prima facie* disclose commission of alleged criminal offence under [section 420 IPC, 1860](#). Proceedings quashed.<sup>583</sup> Allegation was that appellant had executed a sale deed in his favour in respect of a plot of land which had already been the subject matter of a previous transfer, Court held that he can at best question such transfer and claim damages in respect thereof from the vendor of the appellant by way of appropriate damages, but an action in the Criminal Court would not lie in the absence of any intention to cheat and/or defraud.<sup>584</sup> An agreement for sale of land and the earnest money paid to the owner as part consideration and possession of the land having been transferred to the purchasers/complainants and the subsequent unwillingness of the owner to complete the same, gave rise to a liability of a civil nature and the criminal complaint was, therefore, not competent.<sup>585</sup>

#### **[s 420.15] Using forged marks sheet.—**

The petitioner knew that they were submitting a forged marks-sheet for the purpose of securing a seat in the medical college. Their conviction under sections 420 and 471 (using as genuine a forged document) was held to be proper. Failure in securing the purpose would not result in acquittal.<sup>586</sup>

#### **[s 420.16] Checking in under false pretences.—**

The allegation against the accused was that he made a representation to the railway retiring room attendant that he was an Assistant Commercial Manager in railways and got a room allotted to him on that basis. Thus, a *prima facie* case of cheating was made out. The complaint was not to be quashed.<sup>587</sup>

#### **[s 420.17] Juristic persons.—**

The punishment of imprisonment provided under the section cannot be imposed on a juristic person, a construction company in this case.<sup>588</sup>

In order to hold persons liable vicariously for any offence involved in the affairs of the company, it is not enough to show that they were running the affairs of the company. All the ingredients of the offence must be proved against them. The company has also to be made a party to the proceeding. In this case, there were only individual accusations against the persons concerned.<sup>589</sup>

#### **[s 420.18] Previous sanction.—**

The offence of cheating under section 420 or for that matter offences relating to section 467, section 468, section 471 and section 120B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. Hence, the sanction of the competent authority under [section 197 Cr PC, 1973](#) is not required.<sup>590</sup>

### [s 420.19] Compounding.—

Where the allegation was that accused with the assistance of known officials of AICTE had produced forged and fraudulent document to obtain recognition of the mentioned institution from AICTE and thereby cheated AICTE, the application for compounding of offence could not have been considered by the learned Magistrate without affording an opportunity of hearing to the AICTE. It is not the CBI which has been cheated by the action of the respondent No. 1 but in fact the AICTE.<sup>591.</sup>

### [s 420.20] Section 420 with non-compoundable offences.—

Simply because an offence is not compoundable under [section 320 Cr PC, 1973](#) is by itself no reason for the High Court to refuse exercise of its power under [section 482 Cr PC, 1973](#). That power can be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility.<sup>592.</sup>

<sup>549.</sup> *Mobarik Ali*, (1958) SCR 328 [LNIND 1957 SC 81] .

<sup>550.</sup> *Sonbhadra Coke Products v State of UP*, 1994 Cr LJ 657 (All).

<sup>551.</sup> *Ishwarlal Girdharilal*, 1969 (71) Bom LR 52 : AIR 1969 SC 40 [LNIND 1968 SC 143] ; see also *NM Chakraborty*, 1977 Cr LJ 961 (SC).

<sup>552.</sup> *Abhayanand*, (1961) 2 Cr LJ 822 SC.

<sup>553.</sup> *Ramchander*, AIR 1966 Raj 182 [LNIND 1965 RAJ 67] .

<sup>554.</sup> *Adithela Immanuel Raju v State of Orissa*, 1992 Cr LJ 243 .

<sup>555.</sup> *Nellai Ganesan v State of TN*, 1991 Cr LJ 2157 (Mad).

<sup>556.</sup> *ANZ Grindlays Bank v Shipping and Clearing (Agent) Pvt Ltd*, 1992 Cr LJ 77 (Cal).

<sup>557.</sup> *Annamalai v State of Karnataka*, 2011 Cr LJ 692 (SC) : (2010) 8 SCC 524 [LNIND 2010 SC 745] .

<sup>558.</sup> *SN Palantikar v State of Bihar*, AIR 2001 SC 2960 [LNIND 2001 SC 2381] : 2001 Cr LJ 4765 .  
*Hira Lal Hari Lal Bhagwati v CBI*, New Delhi, 2003 (5) SCC 257 [LNIND 2003 SC 499] .

<sup>559.</sup> *Ramesh Dutt v State of Punjab*, (2009) 15 SCC 429 [LNIND 2009 SC 1475] .

<sup>560.</sup> *N Devindrappa v State of Karnataka*, (2007) 5 SCC 228 [LNIND 2007 SC 602] : AIR 2007 SC 1741 [LNIND 2007 SC 602] : 2007 Cr LJ 2949 .

<sup>561.</sup> *Thomas Verghese v P Jerome*, 1992 Cr LJ 3080 (Ker). *Nemichand Swaroopchand v TH Raibhagi*, 2001 Cr LJ 4301 (Kant), a cheque issued for return of articles in a business transaction dishonoured, there was nothing to show any fraudulent or dishonest intention, no offence made out. *Jasmin B Shah v State of Jharkhand*, 2003 Cr LJ 621 (Jhar), dishonour of cheque, investigation not complete, charge sheet not submitted, prayer for quashing the proceeding rejected.

<sup>562.</sup> *HICEL Pharma Ltd v State of AP*, 2000 Cr LJ 2566 (AP). *Rajendra Vasant Rao Khoda, v Laxmikant*, 2000 Cr LJ 1196 (Bom) a complaint as to dishonour of cheque was not quashed, ingredients of cheating being made out. *Subodh S Salaskar v Jayaprakash M Shah*, (2008) 13



SCC 689 [LNIND 2008 SC 1549] : AIR 2008 SC 3086 [LNIND 2008 SC 1549] : (2008) KLT 616 : 2008 Cr LJ 3953 post-dated cheque issued in 1996, presented in 2001, dishonoured because account closed, but money had been paid back before that, no cheating, subsequent closing was inconsequential.

563. *Venkatchalam v State*, 1998 Cr LJ 3189 (Mad). *Bipin Singh v Chongitham*, 1997 Cr LJ 724 : AIR 1997 SC 1448 [LNIND 1996 SC 1690] , representation by the accused so as to create public belief that a particular writing was that of a certain other person and not that he had himself written that book. No forgery or cheating. *Mintu Singha Roy v Tenzing Dolkar*, 2012 Cr LJ 3115 (Sik) regarding the bounced cheque it was condoned as 50% of payment is received by the complainant

564. *Devender Kumar Singla v Baldev Krishna Singla*, AIR 2004 SC 3084 [LNIND 2004 SC 228] : (2005) 9 SCC 15 [LNIND 2004 SC 228] .

565. *Sangeetaben Mahendrabhai Patel v State of Gujarat*, (2012) 7 SCC 621 [LNIND 2012 SC 1473] : AIR 2012 SC 2844 [LNIND 2012 SC 1473] ; See the other view in *Kolla Veera Raghav Rao v Gorantla Venkatewwara Rao*, (2011) 2 SCC 703 [LNIND 2011 SC 128] : 2011 Cr LJ 1094 .

566. *Vadivelu v State of TN*, 1999 Cr LJ 369 (Mad).

567. *BS Dhaliwal*, (1967) 1 SCR 211 [LNIND 1966 SC 165] .

568. *Abdul Rahim v Inspector of Police*, 1992 Cr LJ 370 (Mad). *OPTS Marketing Pvt Ltd v State of AP*, 2001 Cr LJ 1489 (AP), prosecution under section 420, IPC, 1860 is still possible after the introduction of section 138 in the *Negotiable Instruments Act*, if the ingredients of the offence are satisfied, the complaint cannot be quashed.

569. *Mahesh Kumar v State of Karnataka*, 2003 Cr LJ 528 (Kant).

570. *SN Palanitkar v State of Bihar*, AIR 2001 SC 2960 [LNIND 2001 SC 2381] : 2001 Cr LJ 4765 .

571. *R v Central Criminal Court*, (2002) EWHC 548 : (2002) 2 Cr App. R 12 [QBD (Admin. Ct)].

572. *Nilesh Lalit Parekh v State of Gujarat*, 2003 Cr LJ 1018 (Guj); *Mohd. Shaf-at Khan v National Capital Territory of Delhi*, (2007) 13 SCC 354 [LNIND 2007 SC 924] , collection by fraud company, the court said that it would be appropriate to work out modalities as to how the properties of the company could be sold to get the highest price, so that the dues of the depositors and others could be paid back.

573. *Ramprasad Chatterjee v Md. Jakir Kureshi*, 1987 Cr LJ 1485 (Cal). But otherwise a cheque is not a representation that there is balance in the account. *GK Mohanty v Pratap Kishore Das*, 1987 Cr LJ 1446 (Ori). Where cheques were given subsequently to the transaction and there was no inducement at the stage of negotiations, prosecution under the section was quashed, *MS Natrajan v Ramasis Shaw*, (1995) 2 Cr LJ 2011 (Cal). *S Muthu Kumar v State of TN*, (1995) 1 Cr LJ 350 (Mad) purchasing goods against post-dated cheques knowing that they would not be honoured is a ground for registering a complaint and the complaint is not liable to be quashed.

574. *Lakshmi Metal Works v State*, 2016 Cr LJ 2730 (Mad) : IV (2016) CCR 282 (Mad).

575. *Central Bureau of Investigation Hyderabad v K Narayana Rao*, 2012 Cr LJ 4610 : (2012) 9 SCC 512 [LNIND 2012 SC 569] .

576. *Narinderjit Singh v UOI*, AIR 2001 SC 3810 [LNIND 2001 SC 2325] .

577. *Kuldip Sharma v State*, 2000 Cr LJ 1272 (Del).

578. *R v Spillman*, (2001) 1 Cr App R (S) 139 [CA (Crim Div)]. *R v Ball*, (2001) 1 Cr App R (S) 49[CA (Crim Div)] serious custodial punishment awarded where the accused persons deceived 81 year old lady by receiving several times more money than the actual worth of the repair work done. The sentences correctly reflected that both the accused were jointly part of the conspiracy which concerned an extremely serious fraud, an enormous sum of money and the worst possible breach of trust. The report had been considered and the judge was entitled to

decide what weight should be attached to the evidence. *Rajamani v Inspector of Police*, 2003 Cr PC 2002 (Mad), freezing of the accounts of third parties was held to be illegal.

579. *Vitoori Pradeep Kumar v Kaisula Dharmiah*, 2001 Cr LJ 4948 (SC).

580. *VR Dalal v Yougendra Naranji Thakkar*, (2008) 15 SCC 625 [LNIND 2008 SC 1222] : AIR 2008 SC 2793 [LNIND 2008 SC 1222]. In the relations between partners in opening and closing a firm, the essential ingredients of the offence of criminal breach of trust and cheating were missing.

581. *VY Jose v State of Gujarat*, (2009) 3 SCC 78 [LNIND 2008 SC 2435] : (2009) 1 SCC Cr 996. *Dalip Kaur v Jagnar Singh*, (2009) 14 SCC 696 [LNIND 2009 SC 1409] : AIR 2009 SC 3191 [LNIND 2009 SC 1409], mere failure to refund the amount of advance which became due constituting breach of contract did not amount to cheating or criminal breach of trust. *B Suresh Yadav v Sharifa Bee*, (2007) 13 SCC 107 [LNIND 2007 SC 1238] : AIR 2008 SC 210 [LNIND 2007 SC 1238] : 2008 Cr LJ 431, dispute of civil nature, complaint was an abuse of process, quashed.

582. *Paramjeet Batra v State of Uttarakhand*, JT 2012 (12) SC 393 [LNIND 2012 SC 812] : 2012 (12) Scale 688 [LNIND 2012 SC 812]; *Hussainbeg Hayatbeg Mirza v State of Gujarat*, 2013 Cr LJ 1090 (SC) - proceedings quashed since there were no ingredients or elements of criminal offence; to the same effect *VP Shrivastava v Indian Explosives Limited*, (2010) 10 SCC 361 [LNIND 2010 SC 920] : (2010) 3 SCC (Cr) 1290.

583. *Thermax Ltd v KM Johny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC (Cr) 650; but where the allegation is about the execution of fictitious sale deeds the purpose of which was to make unlawful gain, the question whether the respondent was aware that such deeds were executed for getting lawful gain, which may cause injury to another person as defined under section 44 IPC, 1860 is a matter which can be established only on adducing evidence. Order quashing the proceedings set aside [*State of Madhya Pradesh v Surendra Kori*, (2012) 10 SCC 155 [LNIND 2012 SC 681] : 2013 Cr LJ 167 : AIR 2012 SC (Supp) 949; *Joseph Salvaraj A v State of Gujarat*, AIR 2011 SC 2258 [LNIND 2011 SC 576] : (2011) 7 SCC 59 [LNIND 2011 SC 576] ; *Udai Shankar Awasthi v State of UP*, (2013) 2 SCC 435 [LNIND 2013 SC 22] 2013 (1) Scale 212 [LNIND 2013 SC 22].

584. *Rama Devi v State of Bihar*, (2010) 12 SCC 273 [LNIND 2010 SC 875] : AIR 2010 SC (Supp) 83; *Kishan Singh v Gural Singh*, (2010) 8 SCC 775 [LNIND 2010 SC 747] : AIR 2010 SC 3624 [LNIND 2010 SC 747] - After losing in civil suit FIR filed with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. Proceedings quashed.

585. *Nageshwar Prasad Singh v Narayan Singh*,k (1998) 5 SCC 694 ; **distinguished** on facts in *SP Gupta v Ashutosh Gupta*, (2010) 6 SCC 562 [LNIND 2010 SC 507] : (2010) 3 SCC (Cr) 193.

586. *AS Krishna v State of Kerala*, 1998 Cr LJ 207 (Ker). The incident was 17 years old. The sentence of 1 year and 2 years was reduced to the period of three months. *Premlata v State of Rajasthan*, 1998 Cr LJ 1430 (Raj) using false certificate to secure an appointment.

587. *Develle Venkateswarlu v State of AP*, 2000 Cr LJ 2929 (AP).

588. *Essar Constructions Ltd v CBI*, 1999 Cr LJ 1861 (Bom).

589. *R Kalyani v Janak C Mehta*, (2009) 1 SCC 516 [LNIND 2008 SC 2127] : (2009) 1 SCC Cr 567; *MAA Annamalai v State of Karnataka*, (2010) 8 SCC 524 [LNIND 2010 SC 745] : 2011 Cr LJ. 692 (SC).

590. *Om Dhankar v State of Haryana*, (2012) 11 SCC 252 [LNINDORD 2012 SC 439] : 2012 (3) Scale 363 [LNINDORD 2012 SC 439] **relied on** *Prakash Singh Badal v State of Punjab*, 2007 (1) SCC 1 [LNIND 2006 SC 1091] : AIR 2007 SC 1274 [LNIND 2006 SC 1091].

591. *All India Council for Technical Education v Rakesh Sachan*, 2013 (2) Scale 15.

592. AIR 2012 SC 499 [LNIND 2011 SC 1158] ; *Jayrajsinh Digvijaysinh Rana v State of Gujarat*, 2012 (6) Scale 525 [LNIND 2012 SC 417] : 2012 CR LJ 3900 ; *Shiji @ Pappu v Radhika*, 2011 (10)



# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Fraudulent Deeds and Dispositions of Property

**[s 421] Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.**

**Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfer or causes to be transferred to any person, without adequate consideration, any property,<sup>1</sup> intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### COMMENT—

This and the three following sections deal with fraudulent conveyances referred to in [section 53 of the Transfer of Property Act, 1882](#) and the Presidency- towns and Provincial Insolvency Acts.

This section specially refers to frauds connected with insolvency. The offence under it consists in a dishonest disposition of property with intent to cause wrongful loss to the creditors. It will cover *benami* transactions in fraud of creditors. It will apply to property both movable and immovable.

Compare sections 205–210 with sections 421–424 as they are similar in character. The former sections deal with fraud on Courts, the latter, with fraud on creditors.

#### **[s 421.1] Ingredients.—**

To prove an offence under this section the prosecution must show:—

1. That the accused removed, concealed or delivered the property or that he transferred it or caused it to be transferred to someone.
2. That such transfer was without adequate consideration.
3. That the accused thereby intended to prevent or knew that he was thereby likely to prevent the distribution of that property according to law among his creditors or creditors of another person.
4. That he acted dishonestly and fraudulently.<sup>593.</sup>

**1. 'Property'.—**This word includes a chose in action. The right to cut trees under an agreement for the purpose of making charcoal from wood is movable property.<sup>594.</sup>

593. *Ramautar Chaukhany*, [1982 Cr LJ 2266](#) (Gau).

594. *Manchersha v Ismail*, (1935) 60 Bom 706, 38 Bom LR 168.

# **THE INDIAN PENAL CODE**

## **CHAPTER XVII OF OFFENCES AGAINST PROPERTY**

### **Of Theft**

### **Of Fraudulent Deeds and Dispositions of Property**

**[s 422] Dishonestly or fraudulently preventing debt being available for creditors.**

**Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### **COMMENT—**

This section, like the preceding section, is intended to prevent the defrauding of creditors by masking property. Any proceedings to prevent the attachment and sale of debts due to the accused will fall under this section. The offence consists in the dishonest or fraudulent evasion of one's own liability.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Fraudulent Deeds and Dispositions of Property

**[s 423] Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.**

**Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### COMMENT—

This section deals with fraudulent and fictitious conveyances and trusts. Under it, the dishonest execution of a *benami* deed is punishable. Where the consideration for the sale of immovable property was, with the consent of the purchaser, exaggerated in a deed of sale in order to defeat the claim of the pre-emptor, it was held that the purchaser was guilty of this offence.<sup>595.</sup>

The scope of [section 423, IPC, 1860](#) deals with two specific frauds in the execution of deeds or instruments of transfer or charge, namely, (i) false recital as to consideration and (ii) false recital as to the name of beneficiary.<sup>596.</sup>

The word 'consideration' does not mean the property transferred. An untrue assertion in a transfer deed that the whole of a plot of land belonged to the transferor is not a statement relating to the consideration for the transfer and is not an offence under this section.<sup>597.</sup>

<sup>595.</sup> *Gurditta Mal*, (1901) PR No. 10 of 1902; *Mahabir Singh*, (1902) 25 All 31 .

<sup>596.</sup> *Mukesh Dhirubhai Ambani v State of Orissa*, 2005 Cr LJ 2902 (Ori).

<sup>597.</sup> *Mania Goundan*, (1911) 37 Mad 47.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Fraudulent Deeds and Dispositions of Property

**[s 424] Dishonest or fraudulent removal or concealment of property.**

**Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### COMMENT—

This section provides for cases not coming within the purview of sections 421 and 422. It contemplates such a concealment or removal of property from the place in which it is deposited, as can be considered fraudulent. Where one of the several partners removed the partnership books at night, and when questioned denied having done so,<sup>598</sup> where a judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force,<sup>599</sup> where the accused who was bound under the conditions of his tenure to share the produce of his land with the landholder in a certain proportion, dishonestly concealed and removed the produce, thus preventing the landholder from taking his due share,<sup>600</sup> it was held that this offence was committed. But a removal of crops to avoid an illegal restraint,<sup>601</sup> or removal of property, which was attached after the date fixed for the return of the warrant of attachment, from the possession of the custodian<sup>602</sup> was held not to amount to an offence under this section. Certain crops were attached in execution of a decree and placed in the custody of a bailiff. The crops did not belong to the judgment-debtors, and the owners cut and removed a portion of them in spite of the resistance of the bailiff. It was held that no offence was committed.<sup>603</sup> In order to bring the case within [section 424, IPC, 1860](#) it is necessary to show that there has been dishonest or fraudulent concealment or removal of any property or dishonest or fraudulent assistance in the matter of concealment or removal of the property. The other part of section 424 is not applicable and therefore, it is not adverted to. There is no case in the complaint that any furniture or equipment have been concealed or removed. The facts averred do not indicate any such removal or concealment. What is stated is that they are still there, but that the complainant is being obstructed from exercising the rights of joint possession over them. The question of assisting in the dishonest or fraudulent removal arises only if there is concealment. Therefore, [section 424, IPC, 1860](#) is not applicable.<sup>604</sup>



- 598. *Gour Benode Dutt*, (1873) 21 WR (Cr) 10.
- 599. *Obayya*, (1898) 22 Mad 151.
- 600. *Sivanupandia Thevan*, (1914) 38 Mad 793.
- 601. *Gopaldasamy*, (1902) 25 Mad 729.
- 602. *Gurdial*, (1932) 55 All 119 .
- 603. *Ghasi*, (1929) 52 All 214 .
- 604. *GS Rajakumar v Dr. Subramoniam Poti*, 1979 Cr LJ 738 .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

#### [s 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,<sup>1</sup> causes the destruction of any property, or any such change in any property or in the situation thereof<sup>2</sup> as destroys or diminishes its value or utility, or affects it injuriously,<sup>3</sup> 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 into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.
- (c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.
- (d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.
- (e) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the under-writers. A has committed mischief.
- (f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.
- (g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.
- (h) A causes cattle to enter upon a field belonging to Z, intending to cause and

knowing that he is likely to cause damage to Z's crop. A has committed mischief.

### COMMENT—

A bare perusal of this provision clearly reveals that either intention or knowledge, is required for the offence of mischief. Explanation-1 clearly states that it is not essential for the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. In fact 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. Thus, for the offence of mischief it is sufficient that the offender knows that by his act he is likely to cause wrongful loss or damage to the public or to any person.<sup>605</sup> This section clearly speaks of causing any change in property or to destroy or diminishes its value or utility, or affects it injuriously, commits "mischief. Thus, on this broad definition, certainly by making construction on public land, which is not permissible, its utility will be diminished and the property will be injuriously affected".<sup>606</sup>

<sup>605</sup>. *Satish Chand Singhal v State of Rajasthan*, 2007 Cr LJ 4132 (Raj).

<sup>606</sup>. *Dilip Kumar v State of U P*, 2011 Cr LJ 2832 (All).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

#### [s 426] Punishment for mischief.

**Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.**

#### COMMENT—

**Ingredients.**—This section requires three things:—

- (1) intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person;
- (2) causing the destruction of some property or any change in it or in its situation; and
- (3) such change must destroy or diminish its value or utility, or affect it injuriously.

This section deals with a physical injury from a physical cause.<sup>607</sup> Section 426, IPC, 1860 deals with punishment for the offence of "mischief" as defined in section 425. The said section 425 enacts a rule of which the maxim *sic utere tuo ut alienum non laedasis* but a partial exponent. It enacts a rule which, while preserving to the owner the maximum rights of property, prevents his using it to the injury or damage of another and all fortiori it punishes all who wantonly cause such injury or damage to another's property. Neither malice nor an intention to cause injury is essential for the constitution of the offence which may be committed by injury caused with only the knowledge of likelihood, which must, however, be strictly proved. The first part of the section sets out the *mens rea* on the guilty mind, which is the intention or the knowledge of likelihood of causing wrongful loss or damage to the public or to any person. The second part of the section pertains to the *actus res*, that is to say, the **criminal act**, which consists in causing destruction to 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. The express mention of "damage" in the section is indicative of the fact that the purview of the offence of "mischief" is not intended to be confined only to cases of "wrongful loss", but also to engulf within it all such cases of damages by unlawful means. Destruction of any property within the meaning of the section carries with it the implication that something should be done to the property contrary to its natural use and serviceableness. Mischief implies the causing of wrongful loss or damage and no loss or damage is wrongful unless it involves invasion of a legal right. In any other case it is *damnum sine injuria*.<sup>608</sup>

Acts done or attempted to be done in *bona fide* assertion of a right, however ill-founded in law that right may be, cannot amount to the offence of mischief within section 425.<sup>609</sup> Thus, where the accused pulled down a wall which obstructed his pathway to

his *kotha* and which pathway he had been using for the last 22 years, it was held no offence under [section 425, IPC, 1860](#), was committed.<sup>610</sup>

**1. 'Intend to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person'.—**This section does not necessarily contemplate damage of a destructive character. It requires merely that there should be an invasion of right and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it.<sup>611</sup> A dominant owner, having a right of way over land belonging to another, has no right himself to remove an obstruction unless his right of way is impaired by it. If he does so, he has employed unlawful means and if loss of property is caused thereby to another, he is guilty under this section.<sup>612</sup> It is no answer to a charge of mischief to plead that the motive of the accused was to benefit himself, and not to injure another, if he knew that he could only secure that benefit by causing wrongful loss to another.<sup>613</sup> Where while taking possession of the allotted portion of a house on the basis of a valid allotment order, the goods were simply put outside the premises and no obstruction was caused to the complainant landlord to collect his goods, offences under sections 425 and 427 were not made out.<sup>614</sup>

**2. 'Causes the destruction of any property or any such change in any property, etc.'.—**It is the essence of this offence that the perpetrator must cause the destruction of property or such change in it as destroys or diminishes its value or utility. The destruction of a document evidencing an agreement void for immorality constitutes this offence as it can be used as evidence for other collateral purposes.<sup>615</sup> The accused on receiving delivery of a registered article from a Postmaster was requested to sign an acknowledgement for the article received by him, but instead of returning the same duly signed he tore it up and threw it on the ground. It was held that he was guilty of mischief.<sup>616</sup>

The 'destruction' or 'change' should be contrary to the natural use and serviceableness of the property in question. If a person unauthorisedly allows goats to graze in a forest, the grazing rights in which are restricted to holders of permits, the offence of mischief is not committed as by such an act the grass is only put to its normal use.<sup>617</sup> The accused had a dispute about the possession of a certain land with the complainant. The complainant dug a well with a view to cultivate the said land, but the accused forcibly entered on the land and damaged the well. It was held that accused were guilty of mischief even though the complainant was a trespasser.<sup>618</sup> Merely disconnecting electric supply does not amount to destruction of property or to such a change in property as destroys or diminishes its utility or value, and does not constitute an offence of mischief.<sup>619</sup> A contrary view to this view of the Calcutta High Court has been taken by the Delhi High Court to say that switching off the electric supply by the landlord to the tenanted premises, even without causing damage to the distribution board or wires supplying electric current diminishes the value and utility of the tenanted premises within the meaning of [section 425, IPC, 1860](#).<sup>620</sup> In order to make out an offence of mischief it is necessary to show that there was wrongful loss or damage to the property. So unless the property was destroyed or underwent such a change due to the action of the accused that its utility or value was diminished, no offence under [section 425, IPC, 1860](#), could be said to have been committed. Thus where a family took shelter in the door-way of an uninhabitable and dilapidated house by throwing away a few articles, the offence of mischief was not committed.<sup>621</sup> Cutting off the water supply constitutes such destructive change in the flat as diminishes its value or utility.<sup>622</sup>

## [s 426.1] 'Property'

means some tangible property capable of being forcibly destroyed but does not include an easement. The section refers to corporeal property and provides for cases in which such property is either destroyed or altered or otherwise damaged with a particular intent. A right to collect tolls at a public ferry is not property within the meaning of this section.<sup>623</sup> Where a person owns land on which there is a drain, the water running through which is used as of right by way of easement by another person, the former is not guilty of mischief, if the drain is destroyed by him because an easement does not come within the purview of 'property' within the meaning of section 425.<sup>624</sup> The offence of mischief may be committed in respect of both movable and immovable property.<sup>625</sup>

### **[s 426.2] 'Change'**

means a physical change in composition or form. The section contemplates a physical injury from a physical cause. Making a breach in the wall of a canal is an act which causes such a change in the property as destroys or diminishes its value or affects it injuriously.<sup>626</sup>

Where a landlord, in breach of an agreement with his tenants, omitted to pump water into their flats from a central reservoir without, however, interfering in any way with their taking water from the central reservoir, such omission did not constitute such a change as would make it "mischief" within the meaning of this section.<sup>627</sup> There is a contrary view to this which holds that cutting off the water supply does constitute an offence of mischief.<sup>628</sup> So also would be the case in regard to cutting off the supply of electricity by the landlord to the tenanted portion of the house.<sup>629</sup> This latter view appears to be more reasonable.

**3. 'As destroys or diminishes its value or utility, etc.'**—Destruction or diminution in value of the property regarding which the offence is committed is essential. The utility referred to in this section is that conceived by the owner and not by the accused.<sup>630</sup>

### **[s 426.3] Explanation 1.—**

Illustrations (e) and (f) exemplify this Explanation. It is not essential that the property interfered with should belong to the person injuriously affected. D, as a lessee of Government, held rights of fishery in a particular stretch of a river. C, by diverting the water of that river, converted the bed of the river for a considerable distance into dry land, or land with a very shallow covering of water upon it, and by so doing he was enabled to destroy, and did destroy, very large quantities of fish, both mature and immature. It was held that when C deliberately changed the course and condition of the river in the manner described to the detriment of D. he was guilty of mischief.<sup>631</sup>

### **[s 426.4] Explanation 2.—**

A person who destroys property, which, at the time, belongs to himself, with the intention of causing, or knowing that it is likely to cause, wrongful loss or damage to anybody else is guilty of this offence.<sup>632</sup> Illustrations (b) and (g) show that a man may commit mischief on his own property. In order, however, to his doing so, it is necessary that he intends to cause wrongful loss to some person, as in the cases stated in the illustrations.

607. *Moti Lal*, (1901) 24 All 155 , 156.
608. *Gopinath Nayak v Lepa Majhi*, 1996 Cr LJ 3814 (Ori).
609. *Ramchandra*, (1968) 70 Bom LR 399 .
610. *Manikchand*, 1975 Cr LJ 1044 (Bom); see also *Santosh Kumar Biswas*, 1979 Cr LJ NOC 79 (Cal.)
611. *Juggeshwar Dass v Koylash Chunder*, (1885) 12 Cal 55 . In *Nagendranath Roy v Bijoy Kumar Dasburma*, 1992 Cr LJ 1871 (Ori), it was held that mere negligence is not mischief. Negligence accompanied with intention to cause wrongful loss or damage may amount to mischief. Mischief involves mental act with destructive animus. In the instant case, an ailing calf died due to administering of injections despite protests.
612. *Hari Bilash Shau v Narayan Das Agarwala*, (1938) 1 Cal 680 ; *Zipru v State*, (1927) 51 Bom 487, 29 Bom LR 484.
613. *S Pannadi*, AIR 1960 Mad 240 [LNIND 1959 MAD 76] . Breaking open a person's godown and throwing out articles is an offence under this section. *Balai Chandra Nandy v Durga Charan Banerjee*, 1988 Cr LJ 710 (Cal).
614. *Ved Prakash v Chaman Singh*, 1995 Cr LJ 3890 (All).
615. *Vyapuri*, (1882) 5 Mad 401.
616. *Sukha Singh*, (1905) PR No. 24 of 1905.
617. *Ragupathi Ayyar v Narayana Goundan*, (1928) 52 Mad 151.
618. *Abdul Hussain*, (1943) Kar 7 .
619. *IH Khan v M Arathoon*, 1969 Cr LJ 242 (Cal).
620. *PS Sundaran v S Vershaswami*, 1983 Cr LJ 1119 (Del).
621. *Jaddan*, 1973 Cr LJ 490 (All).
622. *Gopi Naik*, 1977 Cr LJ 1665 (Goa).
623. *Ali Ahmad v Ibadat-Ullah Khan*, (1944) All 189 .
624. *Punjaji v Maroti*, (1951) Nag 855.
625. *Ram Birich v Bishwanath*, (1961) 2 Cr LJ 265 . See however, *Sippattar Singh v Krishna*, AIR 1957 All 405 [LNIND 1957 ALL 15] .
626. *Bansi v State*, (1912) 34 All 210 .
627. *Ram Das Pandey v Nagendra Nath Chatterji*, (1948) 1 Cal 329 .
628. *Gopi Naik*, 1977 Cr LJ 1665 (Goa).
629. *PS Sundaram*, 1983 Cr LJ 1119 (Del).
630. *Sumerchand*, (1962) 2 Cr LJ 692 .
631. *Chanda*, (1905) 28 All 204 .
632. *Dharma Das Ghose v Nusseruddin*, (1886) 12 Cal 660 .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 427] Mischief causing damage to the amount of fifty rupees.**

**Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### COMMENT—

Where evidence on record clearly establishes that the sugarcane stems in the fields of the claimants were totally destroyed by using a tractor. Therefore, [section 427, IPC, 1860](#) is clearly established. <sup>633.</sup>

While causing mischief, there must be an intention behind that. In the present case, the petitioners were discharging their official duty. Therefore, they had no intention to cause any injury or mischief. <sup>634.</sup>

<sup>633.</sup> *Kashiben Chhaganbhai Koli v State of Gujarat*, (2008) 17 SCC 100 [LNIND 2008 SC 2366] : 2009 Cr LJ 1156 (SC).

<sup>634.</sup> *Ramnish v CBI*, 2016 Cr LJ 2371 (Del) : 2016 V AD (Del) 574.



# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 428] Mischief by killing or maiming animal of the value of ten rupees. Mischief by killing or maiming animal of the value of ten rupees.**

**Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

### COMMENT—

This section is intended to prevent cruelty to animals and consequent loss to the owner.

#### **[s 428.1] 'Maiming'.—**

refers to those injuries which cause the privation of the use of a limb or a member of the body.<sup>635</sup> 'Maiming' implies a permanent injury,<sup>636</sup> wounding is not necessarily maiming.

<sup>635</sup>. *Fattehdin*, (1881) PR No. 33 of 1881.

<sup>636</sup>. *Jeans*, (1884) 1 C & K 539.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 429] Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.**

**Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.**

### COMMENT—

This section provides for enhanced punishment owing to the greater value of the animals mentioned therein. This section is applicable where permanent injury is caused to the animal by the offence of mischief.<sup>637</sup> It has been held by the Supreme Court that the offence created by this section and the one under section 9(1) read with [section 50 of the Wild Life Protection Act, 1972](#) are substantially the same offence. Therefore, the bar of double jeopardy will not operate.<sup>638</sup> It is apparent that the most significant words are the opening words of the section which says, "whoever commits mischief by killing..." and thus 'mischief' appears to be an essential ingredient for attracting the offence and the mischief has been defined under [section 425 of the IPC, 1860](#). For constituting offence of mischief the essential ingredient would be the destruction of the property. Therefore, if no one has any property or right in any animal, the killing of that animal does not come within the purview of section 425 of the Code and thus, in the facts and circumstances of the instant case where the complainant has never come with the case that any dog over which somebody has right, has been caught, rather according to complaint, only stray dogs have been caught that too where it has never been alleged to have been poisoned, maimed or rendered useless there would be no application of [section 429 of the IPC, 1860](#).<sup>639</sup>

### [s 429.1] Cruelty to animals.—

Though the complainant under the allegations made in the complaint petition made prayer to take cognizance of the offence under sections 11 (i) (a)(b)(c)(e)(f)(g)(h)(i) and (1) of the [Prevention of Cruelty to Animals Act, 1960](#) and also under [section 429 of the IPC, 1860](#) but the Court did not find any ground to proceed with the case so far offence under [section 429 of the IPC, 1860](#) is concerned and hence, he did not take any cognizance of the said offence, still the petitioner has been summoned to face trial not only for the offence under sections 11 (i)(a)(b)(c)(e)(f)(g)(h)(i) and (l) of the [Prevention of Cruelty to Animals Act, 1960](#) but also under [section 429 of the IPC, 1860](#) and therefore, any insertion of the offence under [section 429 of the IPC, 1860](#) in the summon under the facts and circumstances stated above is an error which may have

crept in inadvertently but otherwise also in the fact of allegation there would be no application of [section 429 of the IPC, 1860](#).<sup>640</sup>.

637. *Gopalakrishna v Krishna Bhatta*, [AIR 1960 Ker 74](#) [[LNIND 1959 KER 134](#)] .

638. *State of Bihar v Murad Ali Khan*, [\(1988\) 4 SCC 655](#) [[LNIND 1988 SC 507](#)] : [1989 Cr LJ 1005](#) : [AIR 1989 SC 1](#) [[LNIND 1986 SC 198](#)] .

639. *A P Arya v State of Jharkhand*, [2008 Cr LJ 3350](#) (Jha).

640. *A P Arya v State of Jharkhand*, [2008 Cr LJ 3350](#) (Jha).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 430] Mischief by injury to works of irrigation or by wrongfully diverting water.**

**Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.**

### COMMENT—

This section deals with diminution of water supply, e.g., the placing of an embankment across a channel. Section 277 applies if the water is fouled so as to be unfit for use. This section applies equally to irrigation channels as to other sources of irrigation, such as tanks and ponds.

For a conviction under this section, there must be some infringement of right resting in some one by the act of the accused.<sup>641</sup>

<sup>641</sup>. *Ashutosh Ghosh, (1929) 57 Cal 897* .

# **THE INDIAN PENAL CODE**

## **CHAPTER XVII OF OFFENCES AGAINST PROPERTY**

### **Of Theft**

### **Of Mischief**

**[s 431] Mischief by injury to public road, bridge, river or channel.**

**Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.**

# **THE INDIAN PENAL CODE**

## **CHAPTER XVII OF OFFENCES AGAINST PROPERTY**

**Of Theft**

**Of Mischief**

**[s 432] Mischief by causing inundation or obstruction to public drainage attended with damage.**

**Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.**

## **THE INDIAN PENAL CODE**

### **CHAPTER XVII OF OFFENCES AGAINST PROPERTY**

#### **Of Theft**

#### **Of Mischief**

**[s 433] Mischief by destroying, moving or rendering less useful a light-house or sea-mark.**

**Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.**

#### **COMMENT—**

This section is an extension of the principle laid down in section 281. Sea-marks are very important in navigation and any tampering with them may lead to disastrous results.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 434] Mischief by destroying or moving, etc., a land-mark fixed by public authority.**

**Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.**

### COMMENT—

This section is similar to the last section but the punishment prescribed is not so severe because tampering with land-marks does not lead to disastrous results. Possession by the accused of the land in which the land-marks are situated will not be a defence in a case where the ingredients of the offence under this section are made out.<sup>642.</sup>

<sup>642.</sup> *Kannan Pillai v Ismail*, (1961) KLT 656 .



# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 435] Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.**

**Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards <sup>643</sup>[or (where the property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

<sup>643</sup>. Ins. by Act 8 of 1882, section 10.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 436] Mischief by fire or explosive substance with intent to destroy house, etc.**

**Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with <sup>644</sup>[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.**

### COMMENT—

In order to attract [section 436 of the IPC, 1860](#), the following ingredients must be satisfied:

- (i) There must be commission of mischief by fire or any explosive substance.
- (ii) It should have been committed intending to cause, or knowing it to be likely that the accused will thereby cause the destruction of any building.
- (iii) The building should be one which is ordinarily used as a place of worship or as a human dwelling or as a place for custody of property.

The section contemplates the destruction of a building. A 'building' is not necessarily a finished structure.<sup>645</sup> An unfinished house, of which the walls are built and finished, the roof on and finished, a considerable part of the flooring laid, and the internal walls and ceiling prepared ready for plastering is a building.<sup>646</sup> The dominant intention of the Legislature in framing [section 436, IPC, 1860](#), was to give protection to those buildings which are used as human dwelling or as places where properties are stored for custody.

See also discussions under head 'Building' under section 442, *infra*.

<sup>644</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>645</sup>. *Manning*, (1871) LR 1 CCR 338.

<sup>646</sup>. *William Edgell*, (1867) 11 Cox 132.



## **THE INDIAN PENAL CODE**

### **CHAPTER XVII OF OFFENCES AGAINST PROPERTY**

#### **Of Theft**

#### **Of Mischief**

**[s 437] Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.**

**Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

#### **COMMENT—**

The vessel must be a 'decked vessel' or a 'vessel of a burden of twenty tons or upwards'. This limitation is laid down to exclude small craft of all kinds. The intention of the Legislature is to punish mischief committed on vessels which are likely to carry passengers.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 438] Punishment for the mischief described in section 437 committed by fire or explosive substance.**

**Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with <sup>647</sup> [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.**

### COMMENT—

This section merely extends the principle laid down in the last section. It imposes higher penalty owing to the dangerous nature of the means used.

<sup>647</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

## **THE INDIAN PENAL CODE**

### **CHAPTER XVII OF OFFENCES AGAINST PROPERTY**

#### **Of Theft**

#### **Of Mischief**

**[s 439] Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.**

**Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

#### **COMMENT—**

This section punishes an act which is akin to piracy.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 440] Mischief committed after preparation made for causing death or hurt.**

**Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.**

### COMMENT—

In order to attract the provisions of [section 440](#) read with [section 44, Penal Code](#), it is necessary to allege and establish the following three essentials which constitute the offence under the said sections:-

- (1) Intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person.
- (2) Causing the destruction of some property or any such change in any property or in the situation thereof; and
- (3) Such changes must result in destroying or diminishing the value or utility of any property or affecting it injuriously.

It is thus, plain that either destruction of property or some change in the property or in the situation which has the effect of destroying or diminishing the value or utility or, in any event, affecting it injuriously is necessary. The word 'property' used in this section really means some intangible property capable of being destroyed or damaged in its value or utility. It must be remembered that [section 440](#) read with [section 44, IPC, 1860](#) is an offence committed against the property. Sections 425 and 440 appear in the 17th chapter entitled "Offences against Property." If there is no allegation that mischief was committed through the medium of property as is visualised by [section 440](#) read with [section 425, IPC, 1860](#), it is plain that it cannot be validly said that an offence is constituted.<sup>648.</sup>

<sup>648.</sup> *Abid Ali Khan v Prabhakara Rao*, [1968 CR LJ 398](#) (Vol 74, C. N. 115)(AP); *Ramakant Rai v Madan rai*, [\(2003\) 12 SCC 395 \[LNIND 2003 SC 837\]](#) : [2004 Cr LJ 36](#) (SC)- Order of acquittal reversed.





# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

#### [s 441] Criminal trespass.

Whoever enters into or upon property in the possession of another<sup>1</sup> with intent to commit an offence<sup>2</sup> or to intimidate, insult or annoy any person in possession<sup>3</sup> of such property,

or having lawfully entered into or upon such property, unlawfully remains there<sup>4</sup> with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit "criminal trespass".

#### State Amendments

**Orissa.**—Amendment by Orissa Act No. 22 of 1986 (w.e.f. 6-12-1986). Same as in Uttar Pradesh except that for the words "whether before or after the coming into force of the Criminal Laws (U.P. Amendment) Act, 1961" read "remains there", and omit "by the specified in the notice."

**Uttar Pradesh.**—The following amendments were made by U.P. Act No. 31 of 1961, section 2 (w.e.f. 13-11-1961).

For Section 441, substitute the following:—

"441. *Criminal Trespass.*—Whoever enters into or upon property in 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,

or, having entered into or upon such property, whether before or after the coming into force of the Criminal Law (U.P. Amendment) Act, 1961, with the intention of taking unauthorised possession or making unauthorised use of such property fails to withdraw from such property or its possession or use, when called upon to do so by that another person by notice in writing, duly served upon him, by the date specified in the notice,

is said to commit "criminal trespass".

#### COMMENT—

The word "trespass" in common English acceptation means and implies unlawful or unwarrantable intrusion upon land. It is a transgression of law or right, and a trespasser is a person, entering the premises of another with the knowledge that his entrance is in

excess of the permission that has been given to him.<sup>649</sup> The authors of the Code say: "We have given the name of trespass to every usurpation, however slight, of dominion over property. We do not propose to make trespass, as such, an offence, except when it is committed in order to the commission of some offence injurious to some person interested in the property on which the trespass is committed, or for the purpose of causing annoyance to such a person. Even then we propose to visit it with a light punishment, unless it is attended with aggravating circumstances".<sup>650</sup>

### [s 441.1] Ingredients.—

The section requires—

- (1) Entry into or upon property in the possession of another.
- (2) If such entry is lawful, then unlawfully remaining upon such property.
- (3) Such entry or unlawful remaining must be with intent—
  - (a) to commit an offence; or
  - (b) to intimidate, insult, or annoy any person in possession of the property.

The use of criminal force is not a necessary ingredient.

**1. 'Enters into or upon property in the possession of another'.—**'Property' in this section means immovable corporeal property, and not incorporeal property such as a right of fishery,<sup>651</sup> or a right of ferry.<sup>652</sup> A person plying a boat for hire within the prohibited distance from a public ferry cannot be said, with reference to such ferry, to commit criminal trespass.<sup>653</sup>

The possession must be actual possession of some person other than the alleged trespasser.<sup>654</sup> The offence can only be committed against a person who is in actual physical possession of the property in question. If the complainant is not in actual possession of the property this offence cannot be committed.<sup>655</sup> But the offence may be committed even when the person in possession of the property is absent provided the entering into or upon the property is done with intent to do any of the acts mentioned in the section. Where a person entered upon a field that had been leased, during the absence of the lessee, and ploughed it, and the lessor came to the spot on hearing of it to prevent the commission of such acts, it was held that that was not enough to exonerate that person from intention to annoy the lessee and that such a person could be convicted of criminal trespass.<sup>656</sup> The mere taking of unlawful possession of a house will not amount to either criminal trespass or house-trespass. An unlawful act is not necessarily an offence. The house in question must be in actual possession of the complainant. Mere constructive possession is not sufficient.<sup>657</sup>

**2. 'Intent to commit an offence'.—**Where in a pen-down peaceful strike the employees of the bank entered the office and occupied their seats and refused to work during office hours and was wholly confined to regular working hours and the only act alleged against them was that they refused to vacate their seats when they were called upon to do so by the superior officers, it was held by the Supreme Court that the conduct of strikers did not amount to criminal trespass.<sup>658</sup>

**3. 'Or to intimidate, insult or annoy any person in possession'.—**In order to establish that the entry on the property was with intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the main aim of the entry; it is not sufficient to show merely that the natural

consequence of the entry was likely to be annoyance, intimidation or insult and this was known to the accused.<sup>659</sup>

The word 'intimidate' must be understood in its ordinary sense "to overawe, to put in fear, by a show of force or threats of violence".<sup>660</sup>

The Supreme Court has held that this section does not require that the intention must be to annoy a person who is actually present at the time of the trespass.<sup>661</sup>

**4. 'Having lawfully entered into or upon such property, unlawfully remains there'.—** The original entry may be lawful, but if the person entering remains on the property with the intent specified in the section he commits trespass. Where a person armed with weapons went on land of which he was the owner when no one else was there at the time and refused to vacate it, when called upon to do so by a person who had no right to the land, it was held that the owner did not remain on the land unlawfully and was not therefore, guilty of the offence of criminal trespass.<sup>662</sup>

#### **[s 441.2] *Bona fide* claim.—**

If a person enters on land in the possession of another in the exercise of a *bona fide* claim of right, but without any intention to intimidate, insult, or annoy the person in possession, or to commit an offence, then although he may have no right to the land, he cannot be convicted of criminal trespass, because the entry was not made with any such intent as constitutes the offence.<sup>663</sup> *Bona fide* claim of right, however ill-founded, nullifies a case of criminal trespass.<sup>664</sup> Where certain hutment dwellers of Bombay were facing demolition for having erected their huts on public footpaths and pavements, the Supreme Court held that no offence under the section was made out. Their act was not voluntary. It was the dictate of their moral right to survive and their state of helplessness. They did not intend to commit an offence or to intimidate, insult or annoy any person in possession and that is the gist of the offence of criminal trespass under section 441.<sup>665</sup> Where the accused continued in possession of the tenanted premises even after the expiry of the lease period, he could not be said to be in unauthorised possession and to have committed trespass.<sup>666</sup>

#### **[s 441.3] Dispute as to possession in civil suit.—**

Where dispute regarding possession of a property was pending in a civil suit, there could be no trespass in respect of that property. The complainant must be in unquestionable possession of property at the time of alleged trespass.<sup>667</sup>

#### **[s 441.4] Honest civil trespass.—**

A Judicial Magistrate was posted at a place where no Government accommodation was available. He, therefore, stayed in a room in a *dak* bungalow. When he went away on leave, he locked his household effects in the room. A junior engineer broke open the lock and shifted the belongings to another room as a senior official was to visit the area. On return, the Magistrate filed an FIR against the junior engineer and cognizance of the offence was taken. It was held that the engineer was not actuated with any dishonest intention and it was a case of honest civil trespass for which no cognizance could be taken.<sup>668</sup>

### [s 441.5] Uttar Pradesh Amendment.—

The effect of the Uttar Pradesh amendment was considered by the Allahabad High Court in *Somnath Paul v Ram Bharose*.<sup>669</sup> The amendment has the effect of converting a civil trespass into a criminal trespass when the entry into, or retention of, premises is for the purpose of taking unauthorised possession or making unauthorised use. Going by the earlier authorities, the court held that refusal to vacate premises after revocation of licence under which possession was given would not by itself constitute a criminal trespass. The intent to do the acts stated in the amendment must also be proved.<sup>670</sup>

### [s 441.6] Orissa Amendment.—

Section 441, IPC, 1860, as amended by Orissa Act, 22 of 1986, defines criminal trespass, which, when committed in respect of, *inter alia*, a human dwelling, becomes an offence punishable under section 448, IPC, 1860. Ordinarily, a dispute between the tenant and the landlord regarding vacation of a premise after expiry of the period of tenancy is a civil dispute, unless an offence of criminal trespass can be said to have been committed. Prosecution against the tenant would not lie except the cases covered by the Orissa Amendment. Section 441, IPC, 1860, which has been defined by Orissa Act, 22 of 1986, is quoted hereunder for better appreciation:

..... Whoever enters into or upon property in 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;

or having lawfully entered into or upon such property, remains there with the intention of taking unauthorised possession or making unauthorised use of such property and fails to withdraw from such property or its possession or use, when called upon to do so by that another person by notice in writing duly served on him, is said to commit criminal trespass.

The aforesaid section consists of three parts. The first two parts are same and similar to that of the original section of the IPC, 1860. The third part, with which the charge is concerned, says that if the person has lawfully entered into the premises and remains there with intention of (i) taking unauthorised possession or (ii) making unauthorised use of such property or (iii) fails to withdraw from such property or its possession or use when called upon to do so by notice in writing duly served on him, he is said to have committed the offence.<sup>671</sup> The rigors of section 441, IPC, 1860 as amended by the Orissa Act, 22 of the 198 shall not be applicable to the following cases:

- (i) *Statutory tenants whose tenancy is governed by any statute.*

*(They are protected by tenancy laws like Public Premises Eviction Act, etc.)*

- (ii) *Tenant who has entered into possession by virtue of a lease.*

*(Rights of such tenant are governed under the provisions of the Transfer of Property Act and the Specific Relief Act and he acquires a right of possession. After determination of tenancy by notice, he would become "Tenant holding over" "Tenant on sufferance" or "Tenant at will" as the case may be. His possession being juridical, is protected. He can be evicted only in due process of law. The possession of such tenant cannot be equated with that of trespassers.)*

- (iii) *Person who has entered into possession by virtue of some covenant like, agreement to sell, will etc. and/or put forth a genuine right over the property possessed.*

(If a person claims a right of title coupled with possession, till the dispute is adjudicated, his possession cannot be conclusively said to be that of a trespasser and his right to possess would be subject to the result of the suit or legal proceeding.)<sup>672</sup>

649. *Kewal Chand v SK Sen*, AIR 2001 SC 2569 [LNIND 2001 SC 1415] : (2001) 6 SCC 512 [LNIND 2001 SC 1415].
650. Note N, p 168.
651. *Charu Nayiah*, (1877) 2 Cal 354 .
652. *Muthra v Jawahir*, (1877) 1 All 527 .
653. *Ibid*.
654. *Foujdar*, (1878) PR No. 28 of 1878; *Kunjilal v State*, (1913) 12 ALJR 151.
655. *Bismillah*, (1928) 3 Luck 661 .
656. *Venkatesu v Kesamma*, (1930) 54 Mad 515.
657. *Satish Chandra Modak*, (1949) 2 Cal 171 .
658. *Punjab National Bank v AIPNBE Federation*, AIR 1960 SC 160 [LNIND 1959 SC 166] .
659. *Mathri v State*, AIR 1964 SC 986 [LNIND 1963 SC 292] . *Sujya v State of Rajasthan*, 2003 Cr LJ 1612 (Raj), entering the field of another and releasing cows to graze there, revenue records showed that the victims were *khatedars* of the field, the trespassers caused injuries on resistance, guilty of criminal trespass. They have no right of private defence.
660. *TH Bird*, (1933) 13 Pat 268.
661. *Rash Behari v Fagu Shaw*, (1970) 1 SCR 425 [LNIND 1969 SC 192] .
662. *Adalat*, (1945) 24 Pat 519. The offence is of continuing nature within the meaning of section 472 Cr PC. The offence would be continuing so long as the trespass is not lifted or vacated or insult etc. of the person lawfully in possession is not stopped. *Gokak Patel Valkart Ltd v Dundayya Gurushiddaiah Hiremath*, (1991) 71 Com Cases 403 : (1991) 2 SCC 141 [LNIND 1991 SC 878] . *Akapati Bhaskar Patro v Trinath Sahu*, 2002 Cr LJ 3397 (Ori), by virtue of the Orissa Amendment and even otherwise also a tenant remaining in possession even after termination notice does not commit the offence of mischief by trespass. His possession is not unlawful.
663. *Budh Singh*, (1879) 2 All 101 , 103.
664. *Manik Chand*, 1975 Cr LJ 1044 (Bom); *Santosh Kumar Biswas*, 1979 Cr LJ NOC 79 (Cal).
665. *Olga Tellis v Bombay MC*, (1985) 3 SCC 545 [LNIND 1985 SC 215] : AIR 1986 SC 180 [LNIND 1985 SC 215] . For an analysis of the wider implications of this decision, see TN Singh, *Ex Curia : Tulsiram Patel v Olga Tellis*, (1987) 29 JI LI 547.
666. *S Subramaniam v State of UP*, 1996 Cr LJ 929 (All).
667. *State of Goa v Pedro Lopes*, 1996 Cr LJ 256 (Bom).
668. *Bagirath Singh v State of Rajasthan*, 1992 Cr LJ 3934 (Raj).
669. *Somnath Paul v Ram Bharose*, 1991 Cr LJ 2499 (All).
670. The court followed *Punjab National Bank v AIP NBE Federation*, AIR 1960 SC 160 [LNIND 1959 SC 166] , entry of employees on pen down strike; *Kanwal Sood v Nawal Kishore*, AIR 1983 SC 159 [LNIND 1982 SC 180] : 1983 Cr LJ 173 : (1983) 3 SCC 25 [LNIND 1982 SC 180] , refusal to vacate premises after the death of testator; *Sinnasamy v King*, 1951 AC 83 (PC), entry with *bona fide* belief in right to do so; *Jawanmal v Bhanwari*, AIR 1958 Raj 214 [LNIND 1958 RAJ 237] : 1958 Cr LJ 1099 , *bona fide* belief; *Babu Ram v State of UP*, 1971 All LJ 4, *bona fide* belief; *Mahabir Pd v State*, 1976 Cr LJ 245 , notice under section 447; *Rashid Ad v Rashidan*, 1980 All LJ

939, effect of UP Amendment, lawful entry becoming criminal trespass; *DP Titus v LW Lyall*, 1981

[Cr LJ 68](#), lawful entry, subsequent unauthorised use.

671. *Abdul Samad v Md. Qamruddin*, 2007 Cr LJ. 4383 (Ori).

672. *Kumar Debasish v State of Orissa*, 2008 Cr LJ 2397 (Ori).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

#### [s 442] House trespass.

**Whoever commits criminal trespass by entering into<sup>1</sup> or remaining in any building,<sup>2</sup> tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".**

***Explanation.*—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.**

#### COMMENT—

The offence of criminal trespass may be aggravated in several ways. It may be aggravated by the way in which it is committed, and by the end for which it is committed. When criminal trespass is committed in a dwelling house, or any building, tent or vessel used for human dwelling, it becomes, 'house trespass' as defined under [section 442 IPC, 1860](#) and punishable under [section 448 IPC, 1860](#). The offence intended to be committed so as to constitute 'criminal trespass' is any offence. But if such offence intended to be committed is one punishable with imprisonment and the criminal trespass is committed in a dwelling house, then the offence which is made out is not one punishable under [section 448 IPC, 1860](#) but one punishable under [section 451 IPC, 1860](#) which is an aggravated form of house trespass.<sup>673</sup>

**1. 'Entering into'.—**The introduction of any part of the trespasser's body is entering sufficient to constitute house-trespass.<sup>674</sup> The roof being a part of a building, if any one goes on the roof of a building that will be tantamount to "entering into" the building within the meaning of that expression in this section.<sup>675</sup> [Section 441, IPC, 1860](#) would show that it is only when a person unlawfully remains in a property of another person "with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence" that an offence of criminal trespass is committed. While there may be evidence in the present case that the accused/opposite party has unlawfully remained in the property belonging to the petitioner or that of the Mosque Committee to whom the petitioner is said to have donated the property, there is no evidence whatsoever that the accused/opposite party remained there with intent to intimidate, insult or annoy the petitioner or the Mosque Committee or with intent to commit an offence.<sup>676</sup>

**2. 'Building'.—**What is a 'building' must always be a question of degree and circumstances; its ordinary and usual meaning is an enclosure of brick or stone work covered in by a roof.<sup>677</sup> The mere surrounding of an open space of ground by a wall or fence of any kind cannot be deemed to convert the open space itself into a building, and trespass thereon does not amount to house-trespass.<sup>678</sup> Even a structure with a

thatched roof, doors and shutters would come within the meaning of building if it is used as a human dwelling or place for the custody of property.<sup>679</sup>.

**[s 442.1] Police Station.—**

The criminal trespass in question need not be only in respect of a building used as a human dwelling, but it also covers in building used as a place for custody of property and as the police station is a place where there will also be custody of property, it will also come under the definition of "Building" in [section 442 IPC, 1860](#).<sup>680</sup>.

<sup>673</sup>. *Appukuttan v State*, [2010 Cr LJ. 3186](#) .

<sup>674</sup>. *Vide* Explanation.

<sup>675</sup>. *Dinesh Thakur*, [1970 Cr LJ 1199](#) .

<sup>676</sup>. *Md. Sahabuddin v Sayed Monowar Hussain*, [1999 Cr LJ. 349](#) (Gau).

<sup>677</sup>. *Moir v Williams*, [\(1892\) 1 QB 264](#) , 270.

<sup>678</sup>. *Palani Goundan*, (1896) 1 Weir 523.

<sup>679</sup>. *Rajoo v State*, [1977 Cr LJ 837](#) (Raj).

<sup>680</sup>. *State of Karnataka v Richard*, [2008 Cr LJ 2200](#) (Kar).



# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

#### [s 443] Lurking house-trespass.

**Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".**

#### COMMENT—

The authors of the Code say: "House-trespass, again, may be aggravated by being committed in a surreptitious or in a violent manner. The former aggravated form of house-trespass we designate as lurking house-trespass; the latter we designate as house-breaking. Again, house-trespass, in every form, may be aggravated by the time at which it is committed. Trespass of this sort has, for obvious reasons, always been considered as a more serious offence when committed by night than when committed by day. Thus, we have four aggravated forms of that sort of criminal trespass which we designate as house-trespass, lurking house-trespass, house-breaking, lurking house-trespass by night, and house-breaking by night".

"These are aggravations arising from the way in which the criminal trespass is committed. But criminal trespass may also be aggravated by the end for which it is committed. It may be committed for a frolic. It may be committed in order to (commit) a murder. It may also often happen that a criminal trespass which is venial, as respects the mode, may be of the greatest enormity as respects the end; and that a criminal trespass committed in the most reprehensible mode may be committed for an end of no great atrocity. Thus, A may commit house-breaking by night for the purpose of playing some idle trick on the inmates of a dwelling. B may commit simple criminal trespass by merely entering another's field for the purpose of murder or gang-robbery. Here A commits trespass in the worst way. B commits trespass with the worst object. In our provisions we have endeavoured to combine the aggravating circumstances in such a way that each may have its due effect in settling the punishment.<sup>681</sup> The law is well settled that unless the accused is alleged to have taken some active steps and means to conceal his presence, the allegation that the house-trespass was committed by night and the darkness helped the accused in concealing his presence, does not and cannot justify a charge for the offence of committing lurking house-trespass. But if the house-trespass is a lurking house-trespass" as defined in [section 443, IPC, 1860](#), because of the offender having taken some active steps to conceal his presence, it becomes automatically lurking house-trespass by night under [section 444, IPC, 1860](#), if it is committed after sunset and before sunrise.<sup>682</sup>

#### [s 443.1] CASES.—

Entry upon the roof of a building may be criminal trespass. But it cannot sustain a conviction for lurking house-trespass,<sup>683.</sup> or for house-breaking.<sup>684.</sup>

<sup>681.</sup> Note N, p 168.

<sup>682.</sup> *Prem Bahadur*, [1978 Cr LJ 945](#) (Sikkim); see also *Dasai Kandou*, [1979 Cr LJ NOC 110](#) (Pat); *Bejoy Kumar Mohapatra*, [1982 Cr LJ 2162](#) (Ori).

<sup>683.</sup> *Alla Bakhsh*, (1886) PR No. 9 of 1887.

<sup>684.</sup> *Fazla*, (1890) PR No. 9 of 1890.

# **THE INDIAN PENAL CODE**

## **CHAPTER XVII OF OFFENCES AGAINST PROPERTY**

**Of Theft**

**Of Criminal Trespass**

**[s 444] Lurking house-trespass by night.**

**Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night".**

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

#### [s 445] House-breaking.

A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say—

*First.*—If he enters or quits through a passage by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

*Secondly.*—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

*Thirdly.*—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

*Fourthly.*—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

*Fifthly.*—If he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault.

*Sixthly.*—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

*Explanation.*—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

#### ILLUSTRATIONS

- (a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.
- (b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.
- (c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

- (d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.
- (e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in door. This is house-breaking.
- (f) A finds the key of Z's house, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.
- (g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.
- (h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

#### COMMENT—

Invasion of a person's residence should naturally be meted out with deterrent punishment. This section describes six ways in which the offence of house-breaking may be committed. Clauses 1–3 deal with entry which is effected by means of a passage which is not ordinary. Clauses 4–6 deal with entry which is effected by force. Where a hole was made by burglars in the wall of a house but their way was blocked by the presence of beams on the other side of the wall, it was held that the offence committed was one of attempt to commit house-breaking and not actual house-breaking, and illustration (a) to this section did not apply.<sup>685</sup>

<sup>685</sup>. *Ghulam*, (1923) 4 Lah 399. See *Bhagwan Das v State of UP*, 1990 Cr LJ 916 (All), there being no evidence that the accused was armed with any weapons whatsoever or anybody had received injury, the offence was converted from one under section 395 to section 448.

## **THE INDIAN PENAL CODE**

### **CHAPTER XVII OF OFFENCES AGAINST PROPERTY**

#### **Of Theft**

#### **Of Criminal Trespass**

#### **[s 446] House-breaking by night.**

**Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night".**

#### **COMMENT—**

The preceding section contains an elaborate definition of house-breaking. The addition in this section of the element of time turns the offence into 'house-breaking by night'. The analysis of this offence suggests a division of its ingredients into (1) the breaking; (2) the entry; (3) the place; (4) the time; and (5) the intent.

## THE INDIAN PENAL CODE

### CHAPTER XVII OF OFFENCES AGAINST PROPERTY

#### Of Theft

#### Of Criminal Trespass

##### [s 447] Punishment for criminal trespass.

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

#### COMMENT—

A party claimed title by adverse possession. The other filed a complaint for criminal trespass. The complaint was dismissed for the fact that the dispute was of civil nature. It was held that such acquittal did not have the effect of proving the existence of title by adverse possession.<sup>686</sup> Where the land in question was not shown to be in the exclusive possession of the complainant, and the accused having his right of entry, his entry into the land did not constitute a criminal trespass.<sup>687</sup> Where certain land was allotted to the complainant but the same was already in the possession of the accused, the offence of criminal trespass was not made out because mere occupation even if illegal cannot amount to criminal trespass.<sup>688</sup>

##### [s 447.1] Continuing offence.—

Trespass is a continuing offence. Allegation is that petitioners had constructed a wall on the retaining wall of the complainant. The petitioners in the petition have not projected the case that they had removed alleged wall. Thus, it is a continuing offence under [section 472 Cr PC, 1973](#). The bar of limitation is not applicable.<sup>689</sup>

<sup>686</sup>. *Jageshwar Ramsahay Ahir v Parmeshwar*, AIR 2000 MP 223 [LNIND 1999 MP 382] .

<sup>687</sup>. *Dhanna Ram v State of Rajasthan*, 2000 Cr LJ 1204 (Raj).

<sup>688</sup>. *State of Rajasthan v Dipti Ram*, 2001 Cr LJ 3910 (Raj); *Janggu v State of MP*, 2000 Cr LJ 711 (MP) here also the complainant could not prove his possession. *Paramjeet Batra v State of Uttarakhand*; JT 2012 (12) SC 393 [LNIND 2012 SC 812] : 2012 (12) Scale 688 [LNIND 2012 SC 812] -proceedings quashed as it appears to be essentially a civil dispute

<sup>689</sup>. *Jasbir Singh v State of Himachal Pradesh*, 2012 Cr LJ 2955 (HP).





# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

#### [s 448] Punishment for house-trespass.

**Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.**

#### COMMENT—

In order to sustain conviction under the section it has to be found that the intention of the accused to commit an offence or intimidate, insult or annoy the complainant. There must be an unlawful entry and there must be proof of one or the other of the intentions mentioned in section 441. In this case, the evidence produced clearly established the offence.<sup>690</sup> The complainant was allotted a shop by the Rehabilitation Department because of his being a displaced person, but the accused persons did not allow him to enter the shop. Though the accused persons entered the shop lawfully they retained it unlawfully and dishonestly for more than 37 years. They were held to be guilty under this section read with section 34. The complainant died during the revision petition. The accused persons' conviction was maintained but they were released on probation and directed to restore the shop to the complainant's son.<sup>691</sup> Allegation was that accused went to house of victim in order to commit offence of rape. Though rape was not committed at house of victim but committed at house of accused but entry of accused into house of victim was with intent to commit offence of rape. Accused is liable to be convicted under [section 448 IPC, 1860](#).<sup>692</sup>

#### [s 448.1] Accused acquitted of main offence, trespass stands.—

Case of trespass and culpable homicide. Cause of death was not clearly established. There might have been some jostling but that did not lead to the death of the victim. The cardiac arrest cannot be attributed to this act of the accused. Though the accused was acquitted of the offence under section 304, he was found to be guilty of section 447.<sup>693</sup>

<sup>690</sup>. *Vidyadharan v State of Kerala*, (2004) 1 SCC 215 [LNIND 2003 SC 985] : AIR 2004 SC 536 [LNIND 2003 SC 985] : (2004) 1 KLT 105 [LNIND 2003 SC 985] : 2004 Cr LJ 605 : (2004) 2 MPLJ

691. *Kirpal Singh v Wazir Singh*, 2001 Cr LJ 1566 (Del); *NC Singhal (Dr.) v State*, 1998 Cr LJ 3568 (Del), the petitioner was carrying on medical practice in a licenced chamber of which the respondent always had actual physical possession. He alleged that the respondent demolished the chamber and committed theft of his books and equipment. The court found that there was written notice to the petitioner of demolition and also that the charge of theft was vague because no details of books and equipment alleged to be stolen were given. See also *Ram Chandra Singh v Nabrang Rai Burma*, 1998 Cr LJ 2156 (Ori); *Bimal Ram v State of Bihar*, 1997 Cr LJ 2846 (Pat), house trespass, the testimony of a witness could not be thrown overboard just only because he was a chance witness. Conviction. *Chintamani Sethi v Raghunath Mohanty*, 2003 Cr LJ 2866 (Ori), complaint against the *Sarpanch* was found to be motivated for other reasons, hence, dismissed. *Kishori Lal Agarwal v Ram Chandra Sindhi*, 2003 Cr. LJ 2299 (All), charge on tenant that he occupied an additional room in the house, he was given notice to vacate, the notice did not specify the date within which he should do so. An offence under the section, held, not made out.

692. *Krishna Bordoloi v State of Assam*, 2012 Cr LJ 4099 (Gau).

693. *Bappa Malik v The State of West Bengal*, 2016 Cr LJ 95 (Cal).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

#### [s 449] House-trespass in order to commit offence punishable with death.

Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with <sup>694.</sup>[imprisonment for life], or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

#### COMMENT—

An act can be said to be committed "in order to the committing of an offence" even though the offence may not have been completed. The words "in order to" have been used to mean "with the purpose of".<sup>695.</sup>

#### [s 449.1] Sentence to run concurrently.—

Offence under sections 302, 392, 404 and 449 committed in a gruesome manner. Considering the macabre nature of the crime the Court ordered the sentence to run consecutively.<sup>696.</sup>

<sup>694.</sup> Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>695.</sup> *Matiullah*, AIR 1965 SC 132 [LNIND 1964 SC 56] . See the decision of the Supreme Court in *Laxmi Raj Shetty v State of TN*, AIR 1988 SC 1274 [LNIND 1988 SC 260] : (1988) 3 SCC 319 [LNIND 1988 SC 260] , where death sentence for bank robbery and murder was reduced to life imprisonment. *Bhaskar Chatteraj v State of WB*, 1991 Cr LJ 451 (SC) : AIR 1991 SC 317 . One of the accused against whom there was no evidence, discharged. *Satrughana Lamar v State*, 1998 Cr LJ 1588 , the accused entered into a hut, killed a person there with an axe, seen coming out with axe, recovery of weapon at his instance, conviction under sections 304/349 held proper. *Muniappan v State of TN*, 1997 Cr LJ 2336 (Mad), charge of beating and murder not proved. All round failure of evidence.

<sup>696.</sup> *K Ramajayam v The Inspector of Police*, 2016 Cr LJ 1542 (Mad) : 2016 (2) CTC 135 [LNIND 2016 MAD 88] .



# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

**[s 450] House-trespass in order to commit offence punishable with imprisonment for life.**

**Whoever commits house-trespass in order to the committing of any offence punishable with <sup>697</sup>[imprisonment for life], shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.**

#### **698.COMMENT—**

Section 450 deals with house trespass in order to commit offence punishable with life imprisonment. In the case, where the offence punishable with life imprisonment has been ruled out, one would have to look into actual act of the accused person. The act of the appellant is that of assaulting the complainant with chopper. The injury caused by the appellant is a simple injury. In such case, it would not attract life imprisonment and hence, [section 450 of the IPC, 1860](#) would not be attracted.<sup>699</sup>

#### **[s 450.1] Murder and house trespass.—**

Where accused entered the house of deceased and killed him by giving sword blow, and his wife, who was the eye-witness to the incident lodged FIR within a period of three hours, it was held that accused was rightly convicted under [sections 450](#) and [302](#) of [IPC, 1860](#).<sup>700</sup>

#### **[s 450.2] Rape and House trespass.—**

Where the victim aged above 18 years alleged that while she was sleeping, accused entered her house and she woke-up when he was committing sexual intercourse with her, and it was proved that she did not bolted door of house from inside and when she woke-up she did not raise alarm for help, it was held that offences are not made out.<sup>701</sup> Where it was proved that the accused entered the mentally challenged victim's house, threw her on the cot and after removing her underwear committed forcible sexual intercourse with her, conviction under [section 450](#) and [section 376 IPC, 1860](#) was upheld.<sup>702</sup>

697. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

698. *Her Chand v State of Rajasthan*, 1997 Cr LJ 345 (Raj), entry into parental house to which the right of access was there. Hence, criminal trespass was not made out. *Surjit Singh v State of Punjab*, (2007) 15 SCC 391 [LNIND 2007 SC 724] , 5 policemen were accused of entering into the house of a woman with the intention to rape her. Their attempt was foiled by her sons who cried for help. On the suggestion of one of them, the other killed the woman. They were not the persons before the court. These two were neither involved in killing nor there any evidence of common intention. Criminal trespass into the house was established against them. They were convicted for the same.

699. *Mohd. Kamar Abdul Ansari v State of Maharashtra*, 2008 Cr LJ 4736 (Bom).

700. *Mohanlal v State of Rajasthan*, 2012 Cr LJ 769 (Raj); *Bablu Alias Mahendra v State of Madhya Pradesh*, 2009 Cr LJ 1856 (MP)-material witnesses are not examined and evidence of identification is doubtful. Accused is entitled to benefit of doubt.

701. *Prahalad Mohanlal Sahu v State of Chhattisgarh*, 2013 Cr LJ 1726 (SC); *Ramesh v State*, 2011 Cr LJ. 3816 (Mad); *Wilson David v State of Chhattisgarh*, 2009 Cr LJ 1402 (Chh).

702. *Jhaduram Sahu v State of Chhattisgarh*, 2013 Cr LJ 1722 (Chh); *Moti Lal v State of MP*, 2008 Cr LJ 3543 (SC); 2008 (11) SCC 20 [LNIND 2008 SC 1427] ; *Sadan v State of Madhya Pradesh*, 2011 Cr LJ 2488 (MP).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

**[s 451] House-trespass in order to commit offence punishable with imprisonment.**

**Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.**

### COMMENT—

This section is similar to sections 449 and 450. It provides punishment for house-trespass committed with intent to commit an offence punishable with imprisonment. Where the accused was convicted of house-breaking, his object being to have sexual intercourse with the complainant's wife, it was held that the conviction was valid.<sup>703</sup> The accused was held to be guilty of the offence under section 450 (lurking house-trespass where he entered the house at mid-night getting easy access because of acquaintance with the family and forcibly raped the victim girl finding her alone in her room. He was punished for rape and lurking house-trespass for committing an offence.<sup>704</sup> Accused persons committed house trespass in order to commit an offence punishable with imprisonment. They went to the house of complainant with preparation by holding sticks in their hands for assaulting the complainant. Therefore, all the four accused are liable to be convicted under [section 451 of the IPC, 1860](#).<sup>705</sup> Where evidence shows that accused after entering the house unlawfully remained there and had even intimidated and insulted and annoyed the victim when they were called upon to quit the house. Court held that conduct of the accused will clearly come within the latter part of [section 441 IPC, 1860](#) and the same will be punishable under [section 451 IPC, 1860](#).<sup>706</sup> There is enough material to show that the appellant had committed house trespass, however, not with intention to commit offence punishable with life imprisonment, hence, in such case [section 451 IPC, 1860](#) would be attracted instead of section 450.<sup>707</sup> The accused trespassed into the house of the victim girl who was nearly about ten years of age on the date of occurrence and committed unnatural offence on her. After finding the victim alone in the house the accused committed unnatural offence by putting his penis having carnal intercourse against order of nature. Order of acquittal is reversed by the Supreme Court.<sup>708</sup>

It was alleged that the accused trespassed into the house of the victim when she was all alone in order to commit rape. But there was no evidence of any preparation or attempt to rape. The conviction under section 452 was held to be not proper. Since the trespass was not for any pious purpose because an offence under section 354 (outraging modesty) was likely to be involved, conviction was recorded under section 451.<sup>709</sup> In another case the Courts below observed that from the evidence of PWs 1

and 2 it is seen that theft had taken place in the room in which PW 2 was sleeping; the thief entered the house and committed theft of gold chain which PW 2 was wearing and, therefore, this act will be covered by [section 451 of the IPC, 1860](#), i.e., house-trespass in order to commit offence punishable with imprisonment. A1 and A3 have been acquitted because nothing links them to the offence. But, similar is the case with the appellant. The only evidence against him is the alleged recovery of gold chain at his instance. That cannot connect the appellant to the offence.<sup>710</sup>.

The accused was convicted for house trespass for committing unnatural offence. The accused was convicted by the trial court but acquitted by the High Court because of no corroboration of the testimony of the victim. The Supreme Court restored the conviction and observed that corroboration could not be required as a fossil formula, even if the story revealed by the victim appeals to the judicial mind as probable.<sup>711</sup>.

<sup>703</sup>. (1875) 8 MHC (Appex) vi.

<sup>704</sup>. *Pacigi Narasimha v State of AP*, [1996 Cr LJ 2997](#) (AP).

<sup>705</sup>. *State of Maharashtra v Tatyaba Bajirao Jadhav*, [2011 Cr LJ 2717](#) (Bom).

<sup>706</sup>. *Appukuttan v State*, [2010 Cr LJ. 3186](#) .

<sup>707</sup>. *Mohd. Kamar Abdul Ansari v State of Maharashtra*, [2008 Cr LJ 4736](#) (Bom).

<sup>708</sup>. *State v Antony*, [\(2007\) 1 SCC 627](#) [[LNIND 2006 SC 940](#)] : AIR 2007 SC Supp 1828.

<sup>709</sup>. *Ram Pratap v State of Rajasthan*, [2002 Cr LJ 1450](#) (Raj). *Gulam v State of Madhya Pradesh*, [2011 Cr LJ 179](#)

<sup>710</sup>. *Azeez v State*, [\(2013\) 2 SCC 184](#) [[LNIND 2013 SC 54](#)] ; *Alistait v State*, [\(2009\) 17 SCC 794](#) .

<sup>711</sup>. *State of Kerala v Kurissum Moottil Antony*, [\(2007\) 1 scc 627](#).



# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

#### [s 452] House-trespass after preparation for hurt, assault or wrongful restraint.

**Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

#### COMMENT—

The Legislature has enacted this section to provide higher punishment where house-trespass is committed in order to cause hurt, or to assault, or to wrongfully restrain any person. For a conviction under this section, it is necessary to prove that the dominant intention of the accused was to cause hurt to or to assault or to wrongfully restrain any person.<sup>712</sup> Preparation is the genesis of offence under [section 452 of IPC, 1860](#). In absence of it being proved that any device as a metal rod, crow bar or even a stick was used by the accused due to which it could be described as "preparation for commission of offence," it appears to be impossible to hold that there exists adequate material even to frame the charge for offence under [section 452 of IPC, 1860](#).<sup>713</sup> Criminal trespass is committed by the accused when they entered the house of an individual with a view to insult, intimidate or annoy such owner of the house/property. If the accused entered the house of an individual to insult, intimidate or annoy any person other than the owner of the property, it would not constitute criminal trespass. Once the conduct of the accused is not criminal trespass, it would not be house trespass and would not become punishable under [section 452 IPC, 1860](#).<sup>714</sup>

<sup>712</sup>. *Pirmohammad*, AIR 1960 MP 24 [LNIND 1959 MP 33] . *Syam Lal v State of HP*, 2002 Cr LJ 3178 (HP), murder, rioting and house trespass, conviction. *Raghunandan Pd. v State of UP*, 1998 Cr LJ 1571 (All), probably accused persons were in possession and complainants fired at them causing gunshot injuries thus, the accused persons had the right of private defence of person and property and were given the benefit of doubt. See also *Jai Narain v State of Rajasthan*, 1998 Cr LJ 2199 (Raj); *Devkaran v State of Rajasthan*, 1998 Cr LJ 3883 (Raj). *Rala Singh v State*, 1997 Cr LJ 1313 (P&H), in a charge of trespass and kidnapping against the accused persons, the victim gave her age to be 20 years. She was examined but not subjected to ossification test.

School leaving certificate showed her age to be 18 but her parents were not examined for corroboration. Guilt not proved beyond reasonable doubt.

713. *Subhash Sahebrao Datkar v State of Maharashtra*, 2011 Cr LJ 736 (Bom); *Chandreee v State* 2011 (3) Crimes 215 (Raj)-although there is no evidence on record that the present accused Chandraee entered the house of the complainant with any preparation, therefore, the essential fact of preparation is missing in the evidence and in the absence of any preparation, the offence under [section 452 IPC, 1860](#) cannot be said to be made out and thus, the offence of the accused petitioner comes within the purview of [section 451 IPC, 1860](#).

714. *Koduri Venkata Rao v State of A P*, 2011 Cr LJ. 3512 (AP).

## THE INDIAN PENAL CODE

### CHAPTER XVII OF OFFENCES AGAINST PROPERTY

#### Of Theft

#### Of Criminal Trespass

#### [s 453] Punishment for lurking house-trespass or house-breaking.

**Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.**

#### COMMENT—

This section provides penalty for the offences defined in sections 443 and 444.

In all "house-breaking" there must be "house-trespass", and in all "house-trespass" there must be "criminal trespass". Unless, therefore, the intent necessary to prove "criminal trespass" is present, the offence of house-breaking or house-trespass cannot be committed. Where accused simply unlatched the chain and entered house of complainant in the night and there was nothing to show that any device such as metal rod, crow bar or even a stick was used by accused. It was held that preparation for commission of offence not proved. It is also held that house trespass without preparation is covered under [section 453 IPC, 1860](#), not under [section 452 IPC, 1860](#).<sup>715</sup>

<sup>715</sup>. *Subhash Sahebrao Datkar v State of Maharashtra*, 2011 Cr LJ 736 (Bom).

## THE INDIAN PENAL CODE

### CHAPTER XVII OF OFFENCES AGAINST PROPERTY

#### Of Theft

#### Of Criminal Trespass

**[s 454] Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.**

**Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.**

#### State Amendment

**Tamil Nadu.**—*The following amendments were made by Tamil Nadu Act No. 28 of 1993, Section 4.*

Section 454 of the Principal Act, shall be renumbered as sub-section (1) of that section and after sub-section (1) as to renumbered, the following sub-section shall be added, namely:—

"(2) Whoever commits lurking house-trespass or house-breaking in any building used as a place of worship, in order to the committing of the offence of theft of any idol or icon from such building, shall notwithstanding anything contained in sub-section (1), be punished with rigorous imprisonment which shall not be less than three years but which may extend to ten years and with fine which shall not be less than five thousand rupees:

*Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three years."*

#### COMMENT—

This is an aggravated form of the offence described in the last section. The latter portion of this section is framed to include the cases of house-trespassers and house-breakers by night who have not only intended to commit, but have actually committed, theft.<sup>716</sup> Though the relationship between parties is of landlord and tenant and accused is tenant in complainant's premises, It cannot be said that origin of dispute being of civil nature. It is held that criminal proceedings are maintainable.<sup>717</sup>

#### **[s 454.1] Section 380 and section 454.—**

In view of the conviction for [section 454 of the IPC, 1860](#), separate conviction for the offence under [section 380 of the IPC, 1860](#) is not needed as the offence under section 454 also includes section 380.<sup>718</sup>

716. *Zor Singh*, (1887) 10 All 146 . See *Khuda Bakhsh*, (1886) PR No. 10 of 1886. Breaking open a person's godown and throwing out articles is an offence under this section. *Balai Chandra Nandy v Durga Charan Banerjee*, 1988 Cr LJ 710 (Cal).

717. *Balwant Singh Chuphal v State of Uttaranchal*, 2007 Cr LJ 1362 (Utt); *Kana Ram v State of Rajasthan*, 2002 Cr LJ 1867 (Raj)-possession of house/room in question remained with accused petitioner. Offence not made out.

718. *K E Lokesha v State of Karnataka*, 2012 Cr LJ 2120 (Kar).

# **THE INDIAN PENAL CODE**

## **CHAPTER XVII OF OFFENCES AGAINST PROPERTY**

### **Of Theft**

### **Of Criminal Trespass**

**[s 455] Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.**

**Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

### **COMMENT—**

The relation between this section and section 435 is the same as that between sections 452 and 450. This section is similar to section 458. The only difference is that the trespass here is committed by day, whereas under section 458 it is committed during night.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

#### [s 456] Punishment for lurking house-trespass or house-breaking by night.

**Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.**

#### COMMENT—

Lurking house-trespass or house-breaking is ordinarily punishable under section 453; but when it is committed at night, this section is applicable. The intent necessary to prove 'criminal trespass' must be present and the Court must come to a definite inference as to the intention with which the entry was effected.<sup>719</sup> Where the accused persons, execution creditors, broke open the complainant's door before sunrise with intent to distrain his property, for which they were convicted on a charge of lurking house-trespass by night or house-breaking by night, it was held that as they were not guilty of the offence of criminal trespass the conviction must be quashed.<sup>720</sup>

<sup>719</sup>. *Sankarsan*, 1957 Cr LJ 286 .

<sup>720</sup>. *Jotharam Davay*, (1878) 2 Mad 30.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

**[s 457] Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.**

**Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.**

#### State Amendment

**Tamil Nadu.**—*The following amendments were made by Tamil Nadu Act No. 28 of 1993, Section 5.*

Section 457 of the principal Act, shall be renumbered as sub-section (1) of that section and after sub-section (1) as to renumbered, the following sub-section shall be added, namely:—

"(2) Whoever commits lurking house-trespass by night or house-breaking by night in any building used as a place of worship, in order to the committing of the offence of theft of any idol or icon from such building, shall, notwithstanding anything contained in sub-section (1), be punished with rigorous imprisonment which shall not be less than three years but which may extend to fourteen years and with fine which shall not be less than five thousand rupees:

*Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three years."*

**U.P.**—*The following amendments were made by U.P Act No. 24 of 1995, Section 11.*

Section 457 of the principal Act, shall be renumbered as sub-section (1) of that section and after sub-section (1) as to renumbered, the following sub-section shall be added, namely:—

"(2) Whoever commits lurking house-trespass by night or house breaking by night in any building used as a place of worship in order to the committing of the offence of theft of any idol or icon from such building shall notwithstanding anything contained in sub-section (1) be punished with rigorous imprisonment which shall not be less than three years but which may extend to fourteen years and with fine which shall not be less than five thousand rupees:

*Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three years."*



## COMMENT—

The offence under this section is an aggravated form of the offence described in the preceding section. When a person is charged under [section 457 IPC, 1860](#), on the allegation that he entered the dwelling house of another person with the intention of committing theft it will not be legal to convict him under section 456 on the ground that the entry was made with the intention of committing some other offence or with the intention of annoying or insulting the inmates.<sup>721.</sup>

### [s 457.1] For committing offence under the section.—

To constitute an offence under section 457, it is necessary to prove that house trespass or breaking at night was committed in order to commit any offence punishable under this section. The mere fact that house trespass was committed at night does not attract the offence of lurking house trespass within the meaning of this section.<sup>722.</sup>

<sup>721.</sup> *Sankarasan Boral v State*, [1957 Cr LJ 286](#) ; *Narayanan v State*, [AIR 1962 Ker.81 \[LNIND 1961 KER 232\]](#) .

<sup>722.</sup> *Kandarpa Thakuria v State of Assam*, [1992 Cr LJ 3084](#) (Gau). *State of Rajasthan v Vinod*, [2002 Cr LJ 1308](#) (Raj), the accused and his family were proved to be persons known to the complainant being neighbours. The entry into the house could not be proved to be with the intention of committing an offence punishable with imprisonment. The finding of acquittal was not interfered with. *Satyanarayanan v State of Rajasthan*, [2000 Cr LJ 2529](#) (Raj) accused entered house at night, beat up the girl and subjected her to rape, conviction under section 458 was altered to one under section 457 as the accused had not committed lurking house trespass. He had made preparation for assault. *Harjit Singh v State of Haryana*, [1999 Cr LJ 580](#) (SC) offence under sections 457, 392, 397, 307, 332, 34, made out. See also *R Trinath v State of Orissa*, [1998 Cr LJ 3458](#) (Ori). *Joseph v State of Kerala*, [1997 Cr LJ 4289](#) (Ker), case of theft not made out. *Raghabacharan Panda v V Dindayal Patra*, [2003 Cr LJ 1307](#) (Ori), allegation that the shop of the chemist broken open by the landlord and handed over to another person for another purpose, evidence was in favour of the accused land lord and his new tenant. Benefit of doubt. *Md. Siddique Hussain v State of Assam*, [2003 Cr LJ 1487](#) (Gau), it was difficult for the court to believe that any one should force his way to the house of another just only to committing a hurt. Benefit of doubt.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

**[s 458] Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.**

**Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.**

#### COMMENT—

This section is similar to sections 452 and 455. To prove the charge for the offence under [section 458, IPC, 1860](#), the prosecution must prove:—

- (i) that the accused committed lurking house-trespass by night, or house-breaking by night;
- (ii) that he did as above after having made preparation for causing hurt, or for assaulting, or for wrongfully restraining some person, or for putting some one in fear of hurt, assault or wrongful restraint.<sup>723.</sup>

It only applies to the house-breaker who actually has himself made preparation for causing hurt to any person, etc., and not to his companions as well who themselves have not made such preparation.<sup>724.</sup> There should also be some evidence of lurking house-trespass, as defined in [section 443, IPC, 1860](#).

#### **[s 458.1] Section 458 is not a cognate offence of section 398.—**

The accused was charged under [section 398 of IPC, 1860](#) and section 25(1)(A) and [section 27 of the Arms Act, 1959](#). Trial Court acquitted the accused from both the charges holding that prosecution has failed to prove the charges however, come to the conclusion that the accused committed an offence under [section 458 of IPC, 1860](#). The High Court held that [section 458 of Penal Code](#) in no way was a cognate offence of offence under [section 398, IPC, 1860](#). Hence, conviction for offence under [section 458 IPC, 1860](#) without framing charge is liable to be set aside.<sup>725.</sup>

723. *Pania v State*, [2002 Cr LJ 3050](#) (Raj).
724. *Ghulam*, (1923) 4 Lah 399.
725. *Manik Miah v State of Tripura*, [2013 Cr LJ 1899](#) (Gau).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

**[s 459] Grievous hurt caused whilst committing lurking house-trespass or house-breaking.**

**Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with <sup>726</sup>[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

### COMMENT—

The offence under this section is an aggravated form of the offence described in section 453.

This and the following section provide for a compound offence, the governing incident of which is that either a 'lurking house-trespass' or 'house-breaking' must have been completed in order to make a person, who accompanies that offence either by causing grievous hurt or attempt to cause death or grievous hurt, responsible under those sections.<sup>727</sup>

During the period house-breaking lasts, if the trespasser causes grievous hurt to any person or attempts to cause death or grievous hurt, the provisions of this section will be attracted. It cannot be accepted that it is only in the process of making an entry into a house if the trespasser causes grievous hurt, that this section will be attracted, for, the essential ingredient of lurking house-trespass or house-breaking is 'criminal trespass' and that offence continues so long as the trespasser remains on the property in possession of another.<sup>728</sup>

<sup>726</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>727</sup>. *Ismail Khan v State*, (1886) 8 All 649 ; *Hasmatullah Khan v State*, 2005 Cr LJ 2266 (Utt)-Charge U.S 459 convicted under section 457 since the injuries are simple in nature. *Gopal Singh v State of Rajasthan*, 2008 Cr LJ 3272 (Raj)-conviction and sentence of the accused under sections 458, 459, 395/397 and 396, IPC, 1860 are maintained.

<sup>728</sup>. *Bhanwarlal v Parbati*, 1968 Cr LJ 130 . See *contra Said Ahmed*, (1927) 49 All 864 . *Dharampal Singh v State of Rajasthan*, 1998 Cr LJ 3372 (Raj) murder in a chowk not owned and

possessed by the complainant party. The accused also had the right of way through it. He was not liable to be convicted under section 459 or 460.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

**[s 460] All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.**

**If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with <sup>729</sup>[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.**

### COMMENT—

Before holding a person to be guilty of offence under [section 460, IPC, 1860](#), the prosecution must prove:—

(i) that the accused committed lurking house trespass by night; or house breaking by night;

(ii) that he caused, or attempted to cause, death or grievous hurt;

(iii) that he did above whilst engaged in committing lurking house trespass by night or house breaking by night. On the aforesaid analysis of section, it is clear that this section applies to those persons who have actually committed lurking house trespass at night and not to those who may have accompanied their associates but did not commit the offence. Indeed, it applies to actual doers, and not the others.<sup>730</sup> This section deals with the constructive liability of persons jointly concerned in committing 'lurking house-trespass' or 'house-breaking by night' in the course of which death or grievous hurt to any one is caused. It is immaterial who causes death or grievous hurt. Every person jointly concerned in committing such house-trespass or house-breaking shall be punished in the manner provided in the section. A person who actually commits murder in the course of committing house-breaking will attract the penalty under section 302.<sup>731</sup> Every person who is jointly concerned in committing the offence of lurking house trespass by night or house breaking by night is to be punished with life imprisonment where death has been caused or with imprisonment which may extend to ten years where grievous hurt has been caused to any person. This joint liability is based upon the principle of constructive liability. Thus, the person who has actually committed the death or grievous hurt would be liable to be punished under the relevant provisions, i.e., section 302 or section 326, as the case may be, while committing the offence of lurking house trespass by night. It is possible that common intention or object be not the foundation of an offence under [section 460 IPC, 1860](#). Thus, to establish an offence under section 460, it may not be necessary for the prosecution to establish common intention or object. Suffice it will be to establish that they acted

jointly and committed the offences stated in [section 460 IPC, 1860](#). The principle of constructive liability is applicable in distinction to contributory liability. The Supreme Court in the case of *Abdul Aziz v State of Rajasthan*,<sup>732</sup> clearly stated that if a person committing housebreaking by night also actually commits murder, he must attract the penalty for the latter offence under section 302 and the Court found it almost impossible to hold that he can escape the punishment provided for murder merely because the murder was committed by him while he was committing the offence of housebreaking and that he can only be dealt with under section 460.<sup>733</sup>

The words "at the time of the committing of" are limited to the time during which the criminal trespass continues which forms an element in house-trespass, which is itself essential to house-breaking, and cannot be extended so as to include any prior or subsequent time.<sup>734</sup> If the offender causes grievous hurt while running away, he will not be punishable under this section.<sup>735</sup>

### **[s 460.1] Section 449 and section 460.—**

The element of house-trespass is common in both the sections and section 460 has large ambit. In section 449 actual commission of offence punishable with death is not required and if the house trespass is proved in order to commit such offence, the accused persons would be liable for punishment under section 449, whereas in section 460 if a person guilty of lurking house trespass or housebreaking in night voluntarily cause or attempt to cause death or grievous hurt to any person then every person jointly concerned in committing such lurking house trespass in night shall be liable for punishment.<sup>736</sup>

<sup>729</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>730</sup>. *Badri Prasad Prajapati v State of Madhya Pradesh*, [2005 Cr LJ 1856](#) (MP).

<sup>731</sup>. *Sohan Singh v State*, [AIR 1964 Punj 156](#). Where in a case of house-breaking committed in well-lighted house, the victim identified the accused and the articles stolen from her house in two exercises of identification parades, conviction of the accused was sustained. *Kasu Bhai v State of HP*, [1992 Cr LJ 3251](#) (HP). *State of MP v Bhagwan Singh*, [2002 Cr LJ 3169](#) (MP), the accused assailants entered into a house during night time, assaulted a man and hanged him and also caused death of his daughter. The motive was to avenge the action against them to prevent them from opening drainage towards the disputed land. They were held guilty of lurking trespass and murder. *Abdul Aziz v State of Rajasthan*, [\(2007\) 10 SCC 283 \[LNIND 2007 SC 592\]](#), house-breaking by several persons, death caused by one of them, others also constructively liable, attracted section 302. It would require the accused to be charged with murder also. *Mati Ratre v State of Chhattisgarh*, [2013 Cr LJ 560](#) (Chh)-Conviction set aside since testimony of sole witness found to be not reliable

<sup>732</sup>. *Abdul Aziz v State of Rajasthan*, [2007 \(10\) SCC 28](#).

<sup>733</sup>. *Haradhan Das v State of West Bengal*, [\(2013\) 2 SCC 197 \[LNIND 2012 SC 817\]](#); *Dukalu v State of Madhya Pradesh*, [2011 Cr LJ 1548](#) (Chh)- the appellants have been held responsible for causing death of the 2 deceased persons with the aid of [section 149, IPC, 1860](#). It is not a case

in which at the time of committing lurking house trespass by night any one of the appellant caused death of the deceased person and liability has to be fastened on the principle of section 460. In the facts and circumstances of the case, if all the appellants were held liable for punishment under section 302 with the aid of [section 149, IPC, 1860](#) on the principles of common object of the unlawful assembly, of which they were the members, it was not necessary to punish them separately under [section 460, IPC, 1860](#) and punishment of the appellants under [section 460, IPC, 1860](#), in the facts and circumstances of the case, also requires to be set aside.

**734.** *Muhammad*, (1921) 2 Lah 342. *State of Madhya Pradesh v Kalli*, [2012 Cr LJ 2399](#) (MP)- where death was caused while committing theft in the house of deceased, and looted property from house of deceased were recovered from possession of accused and identified by witnesses in test identification parade, conviction of accused is held proper.

**735.** *Ibid. Mohan Manjhi v State of Bihar*, [2000 Cr LJ 4482](#) (Pat), for an offence under sections 460 and 382, the accused was sentenced to undergo 3 years RI. The proceeding had lasted for 11 years. The accused had been in jail for 6 months. Considering their mental and financial strain, the court reduced their sentence to the period already undergone with a fine of Rs. 1000.

**736.** *Dukalu v State of Madhya Pradesh*, [2011 CR LJ 1548](#) (Chh).



# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

#### [s 461] Dishonestly breaking open receptacle containing property.

Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### COMMENT—

This and the following section provide for the same offence. As soon as the receptacle is broken open or unfastened the offence is complete. Where an IT raid could not be completed on the same day and the raiding team put the seized jewellery in an *almirah* and after locking and sealing it, left it in the custody of the accused, the latter was held liable of this offence because he cut the *almirah* to take out some articles.<sup>737</sup>

<sup>737</sup>. *State of Maharashtra v Narayan Champalal Bajaj*, 1990 Cr LJ 2635 : 1990 Tax LR 918 (Bom).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Criminal Trespass

**[s 462] Punishment for same offence when committed by person entrusted with custody.**

**Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.**

### COMMENT—

An offence under [section 462 of IPC, 1860](#) is an aggravated form of the offence made punishable under [section 461 of IPC, 1860](#).<sup>738.</sup>

<sup>738.</sup> *Yamunabai w/o Trimbak Lolge v The State of Maharashtra*, 1994 (2) Bom CR 73 [LNIND 1993 AUG 18] .

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### [s 463] Forgery.

**1. [Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.**

#### COMMENTS.—

The definition of 'forgery' in [section 463, Indian Penal Code, 1860 \(IPC, 1860\)](#) is very wide. The basic elements of forgery are: (i) the making of a false document or part of it; and (ii) such making should be with such intention as is specified in the section, viz., (a) to cause damage or injury to (i) the public, or (ii) any person, or (b) to support any claim or title, or (c) to cause any person to part with property, or (d) to cause any person to enter into an express or implied contract, or (e) to commit fraud or that fraud may be committed.<sup>2</sup> If a document, which is not genuine, is being used as such and a person is made to part with money on that basis then not only the offence of cheating as defined under [section 415 IPC](#) but also the offence of forgery as defined under [section 463 IPC](#) is attracted.<sup>3</sup>

1. Subs. by The [Information Technology Act](#) (Act 21 of 2000), section 91 and First Sch for the words "Whoever makes any false documents or part of a document with intent to cause damage or injury w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

2. *Sushil Suri v CBI*, (2011) 5 SCC 708 [LNIND 2011 SC 494] : AIR 2011 SC 1713 [LNIND 2011 SC 494] ; *State of UP v Ranjit Singh*, AIR 1999 SC 1201 : (1999) 2 SCC 617 .

3. *Nahul Kohli v State*, 2010 Cr LJ 4536 (Del).

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### [s 464] Making a false document.

**4.** [A person is said to make a false document or electronic record—

*First.*—Who dishonestly or fraudulently—

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or, transmits any electronic record or part of any electronic record;
- (c) affixes any <sup>5</sup>[electronic signature] on any electronic record;
- (d) makes any mark denoting the execution of a document or the authenticity of the <sup>6</sup>[electronic signature],

**with the intention of causing it to be believed that such document or part of document, electronic record or <sup>7</sup>[electronic signature] was made, signed, sealed executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or**

*Secondly.*—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document an electronic record in any material part thereof, after it has been made, executed or affixed with <sup>8</sup>[electronic signature] 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 or an electronic record or to affix his <sup>9</sup>[electronic signature] or any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record 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 believed by B that Z so wrote the letter. A has committed forgery.
- (b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.
- (c) A picks up a cheque on a banker signed by B, payable to bearer, but without any

sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

- (d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payment. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.
- (e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.
- (f) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C". A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.
- (g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order" and thereby converts the special endorsement into a blank endorsement. B commits forgery.
- (h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.
- (i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.
- (j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property. A has committed forgery.
- (k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery in as much as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

**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.

- (b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.
- (c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person whose order it was payable; here A has committed forgery.
- (d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate of Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.
- (e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before. A was on the point of insolvency. A has committed forgery under the first head of the definition.

**Explanation 2.**—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by 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.

<sup>10</sup>. [Explanation 3.—For the purposes of this section, the expression "affixing <sup>11</sup>. [electronic signature]" shall have the meaning assigned to it in clause (d) of subsection (1) of [section 2 of the Information Technology Act, 2000](#)].

#### 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.

#### COMMENTS.—

An analysis of [section 464 of IPC, 1860](#) shows that it divides false documents into three categories:

A. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

B. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

C. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind, or (b) intoxication, or (c) deception practised upon him, know the contents of the document or the nature of the alteration. In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else, or (ii) he altered or tampered a document, or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.<sup>12</sup> Making of any false document, in view of the definition of 'forgery' is the *sine qua non* therefor. What would amount to making of a false document is specified in section 464 thereof. What is, therefore, necessary is to execute a document with the intention of causing it to be believed that such document *inter alia* was made by the authority of a person by whom or by whose authority he knows that it was not made.<sup>13</sup> In the case of *Mir Nagvi Askari v CBI*, the Court held that:

A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of some one else. The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore in our opinion the second criteria of the said section is also not applicable to the present case. The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e because of intoxication or unsoundness of mind etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.<sup>14</sup>

To attract the second clause of section 464 there has to be alteration of document dishonestly and fraudulently. So in order to attract the clause 'secondly' if the document is to be altered it has to be for some gain or with such objective on the part of the accused. Merely changing a document does not make it a false document.<sup>15</sup>

#### **[s 464.1] Making of false document.—**

False document is said to have been made when a person dishonestly or fraudulently makes a document with the intention of causing it to be believed that such document was made by some other person.<sup>16</sup>

#### **[s 464.2] Issuance of a caste certificate.—**

The Sub-Divisional Officer (SDO) issued a caste certificate. The application for the same was supported by affidavit of the father of the applicant. Later, the High Power Scrutiny Committee cancelled the certificate. A complaint was filed alleging forgery, cheating, conspiracy, etc. The High Court held that no offence of forgery was constituted as neither signature nor seals, etc., of Sub-Divisional Officer were forged but the caste certificate was issued by the SDO, himself and therefore it was not a false document in the eyes of law according to the provisions of [section 464 of IPC, 1860](#).<sup>17</sup>

4. Subs. by The [Information Technology Act](#) (Act 21 of 2000), section 91 and First Schedule, w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.
5. Subs. for the words "digital signature" by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51 (w.e.f. 27 October 2009).
6. Subs. for the words "digital signature" by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51 (w.e.f. 27 October 2009).
7. *Ibid.*
8. *Ibid.*
9. *Ibid.*
10. Ins. by The [Information Technology Act](#) (Act 21 of 2000), section 91 and First Sch, w.e.f. 17 October 2000.
11. Subs. for the words "digital signature" by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51 (w.e.f. 27 October 2009).
12. *Mohammed Ibrahim v State of Bihar*, (2009) 8 SCC 751 [[LNIND 2009 SC 1774](#)] : 2010 Cr LJ 2223 : AIR 2010 SC (Supp) 347; *Malay Chatterjil v State of Bihar*, 2012 Cr LJ 2240 (Pat).
13. *Devendra v State of UP*, 2009 (7) SCC 495 : 2009 (7) Scale 613 [[LNIND 2009 SC 1158](#)] .
14. *Mir Nagvi Askari v CBI*, AIR 2010 SC 528 [[LNIND 2009 SC 1651](#)] : (2009) 15 SCC 643 [[LNIND 2009 SC 1651](#)] .
15. *Parminder Kaur v State of UP*, (2010) 1 SCC 322 [[LNIND 2009 SC 1924](#)] : AIR 2010 SC 840 [[LNIND 2009 SC 1924](#)] .
16. *Raj Shekhar Agrawal v State of WB*, 2016 Cr LJ 993 (Cal) : (2015) 4 CALLT 615 (HC).
17. *Harvir Singh v State of MP*, 2016 Cr LJ 3608 (MP) : 2016 (2) JLJ 422 .



## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### [s 465] Punishment for forgery.

**Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### COMMENT.—

The offence of forgery is defined in sections 463 and 464 of the Code. Under section 463 the making of a false document with any of the intents therein mentioned is forgery, and section 464 sets forth when a person is said to make a 'false document' within the meaning of the Code.

The definition of forgery in the Code is not as simple and clear as the definition of forgery in common law. Forgery in common law is defined as the fraudulent making or alteration of a writing to the prejudice of another man's right.

#### [s 465.1] Ingredients.—

The elements of forgery are—

1. The making of a false document or part of it.
2. Such making should be with the intent
  - (a) to cause damage or injury to (i) public, or (ii) any person; or
  - (b) to support any claim or title; or
  - (c) to cause any person to part with property; or
  - (d) to cause any person to enter into express or implied contract; or
  - (e) to commit fraud or that fraud may be committed.

**1. 'Makes any false document'.—** A school inspector prepared under his own signature false pay bills containing false claims for salaries of teachers who had not worked within his jurisdiction, some of whom being purely fictitious, and encashed them from the treasury. He was held to be guilty of making a false document but not of forgery because he had not made the signature or writing of another, nor had altered the pay bills.<sup>18.</sup>

The antedating of a document is not forgery, unless it has or could have operated to the prejudice of some one.<sup>19.</sup> Incorporation or inclusion of a false statement in a document would not *ipso facto* make the document false. For a document to be false, it has to tell a lie about itself.<sup>20.</sup>

## **[s 465.2] Publication of book.—**

There was allegation that the accused person, in order to induce the public to purchase the book, falsely represented that the book was by a certain person. There was no allegation that the accused himself had written the book and represented it to be that of some other person. The Court said such allegations, even if true, do not make out a case of forgery. The offence of cheating could not also be said to have been made out because it was a consequential offence.<sup>21.</sup>

Where the allegation was that the accused, who was working as a stenographer in the High Court, had fabricated a forged bail order and the evidence showed that the bail order in question was in fact written by the accused, the finding of the High Court that the paper could not be said to be a document in the absence of signature of the accused was held to be not tenable. The document could have been used for causing wrongful loss or obtaining wrongful gain. Hence, the offence under sections 466 and 468 was made out.<sup>22.</sup>

**2. 'To cause damage or injury to the public or to any person'.—**The damage or injury must be intended to be caused by the false document to the public or any individual.<sup>23.</sup> Thus, a police-officer who alters his diary so as to show that he had not kept certain persons under surveillance does not commit forgery, inasmuch as there is no risk of loss or injury to any individual and the element of fraud as defined in section 25 is absent.<sup>24.</sup> It is the intent to cause damage or injury which constitutes the gist of this offence. It is immaterial whether damage, injury or fraud is actually caused or not.<sup>25.</sup> Mere making of a false document would not constitute defrauding unless injury or intent to cause injury to the person deceived was also proved.<sup>26.</sup>

To tamper with a proceeding in a Court of Justice in order to obtain from the Court a decision or order, which it otherwise would not make, is as much a public mischief as to attempt to secure the unauthorised release of a prisoner from jail or to obtain for an unqualified person credentials entitling him to practise as a surgeon or to navigate a ship.<sup>27.</sup>

**3. 'Support any claim or title'.—**Even if a man has a legal claim or title to property, he will be guilty of forgery if he counterfeits documents in order to support it. See illustrations (f), (g), (h) and (i). An actual intention to convert an illegal or doubtful claim into an apparently legal one is dishonesty and will amount to forgery.<sup>28.</sup>

The term 'claim' is not limited in its application to a claim to property. It may be a claim to anything, as for instance, a claim to a woman as the claimant's wife, a claim to the custody of a child as being the claimant's child, or a claim to be admitted to attendance at a law class in a college, or to be admitted to a university or other examination, or a claim to the possession of immovable or any other kind of property.<sup>29.</sup>

**4. 'To cause any person to part with property'.—**It is not necessary that the property with which it is intended that false document shall cause a person to part should be in existence at the time when the false document was made. For example, if A gave an order to B to buy the material for making and to make a silver tea service for him, and C, before the tea service was made or the materials for making it had been bought were to make a false letter purporting, but falsely, to be signed by A, authorizing B to deliver to D the tea service when made, C would have committed forgery within the meaning of section 463 by making that false document with intent to cause B to part with property, namely, the tea service, when made.<sup>30.</sup> A written certificate has been held to be 'property' within the meaning of this section.<sup>31.</sup>

**5. 'Intent to commit fraud'.—**The Supreme Court had held that the expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived the second condition is satisfied.<sup>32</sup>

**6. 'Fraudulently'.—**This word is used in sections 471 and 464 together with the word 'dishonestly' and presumably in a sense not covered by the latter word. If, however, it be held that 'fraudulently' implies deprivation, either actual or intended, then apparently that word would perform no function which would not have been fully discharged by the word 'dishonestly' and its use would be mere surplusage. So far as such a consideration carries any weight, it obviously inclines in favour of the view that the word 'fraudulently' should not be confined to transactions of which deprivation of property forms a part.<sup>33</sup>

**7. 'Makes'.—**"The 'making of a document, or part of a document, does not mean 'writing' or 'printing' it, but signing or otherwise executing it; as in legal phrase we speak of 'making an indenture' or 'making a promissory note', by which is not meant the writing out of the form of the instrument, but the sealing or signing it as a deed or note. The fact that the word 'makes' is used in the section in conjunction with the words 'signs', 'seals' or 'executes', or 'makes any mark denoting the execution', etc., seems to very clearly to denote that this is its true meaning. What constitutes a false document or part of a document is not the writing of any number of words which in themselves are innocent, but affixing the seal or signature of some person to the document, or part of a document, knowing that the seal or signature is not his, and that he gave no authority to affix it. In other words, the falsity consists in the document, or part of a document, being signed or sealed with the name or seal of a person who did not in fact sign or seal it".<sup>34</sup>

### **[s 465.3] Fabricating letter or certificate.—**

In a case, the allegation was that the accused made false document for getting sim cards of mobile phones. Handwriting expert deposed that he was not in a position to give any finding on basis of specimen signature of appellant. It was held that since finding recorded by Special Judge was contrary to evidence given by handwriting expert, conviction of appellant for offence punishable under [section 465](#) read with [section 471](#) of [IPC, 1860](#), could not be sustained.<sup>35</sup> Where accused was alleged to have obtained employment on strength of forged document, finding that accused had not been proved to have forged the documents, it was held that offence under section 465 is not made out.<sup>36</sup>

### **[s 465.4] Creation of a website by the company—**

Where the appellant created a website with the name Devi Consultancy Services for the development of the existing company named Devi Polymers Private Limited, in the absence of any possibility to impute any intent to cause damage or injury or to enter into any express or implied contract or any intent to commit fraud in the making of the said website, no offence of forgery is made out, especially when he has not received a

single rupee or nor has he entered into any contract in his own name on the basis of the above website.<sup>37.</sup>

#### **[s 465.5] Acting for society after takeover.—**

Where the entire management of a society was taken over by the petitioners and they were looking after its affairs by writing letters, drawing cheques and operating bank accounts by signing their names on behalf of the society and not on anybody else's names or behalf, the offence of forgery/making false document was not made out.<sup>38.</sup>

#### **[s 465.6] Alteration of document.—**

The mere alteration of a document does not make it a forged document. The alteration must be for some gain or for some objective. The Court said that presuming that figure "1" was added to the date mentioned on the document, it could not be said that the document became false. The accused had nothing to gain from it, nor it affected the period of limitation.<sup>39.</sup>

#### **[s 465.7] Clause second.—Alteration on or cancellation of document [Section 464].—**

This clause requires dishonest or fraudulent cancellation or alteration of a document in any material part without lawful authority after it has been made or executed by a person who may be living or dead.

The conduct of an Advocate's clerk in forging the signature of another Advocate on a surety bond and in altering certain endorsements for the purposes of identification and attestation, was held by the Supreme Court as amounting to an offence under this section and not under section 468.<sup>40.</sup>

#### **[s 465.8] Sentence.—**

Accused employed as a sanitation supervisor was found to have committed offence of making fake trade licences and issuing them to various persons. Court below convicted him for one year under [section 471](#) read with [section 465 IPC, 1860](#), and two years' simple imprisonment (SI) under [section 468, IPC](#) imposed upon him. Considering the fact that he was a first offender and an orphan and sole bread earner of his family which consisted of a minor child and an unemployed wife, the sentence under [section 471](#) read with [section 465 IPC, 1860](#) was reduced to one month and the sentence under [section 468 IPC, 1860](#) was reduced to two months.<sup>41.</sup>

18. *Shankarlal Vishwakarma v State of MP*, 1991 Cr LJ 2808 (MP).
19. *Gobind Singh*, (1926) 5 Pat 573.
20. *AK Khosla v TS Venkatesan*, 1994 Cr LJ 1448 (Cal); *Lee Cheung Wing v R*, 1992 Cr App R 355 (PC), falsification of a withdrawal slip to enable the withdrawal of money, offence; *Premlata v State of Rajasthan*, 1998 Cr LJ 1430 (Raj); *Manilal v State of Kerala*, 1998 Cr LJ 785 (Ker). See also *Joginder Lal v State (Delhi Admn.)*, 1998 Cr LJ 3175 (Del); *Mohandas v State of TN*, 1998 Cr LJ 3409 (Mad); *Bharat Hiralal v Jaysiri Amarsinh*, 1997 Cr LJ 2509 (Bom), forgery of a document is possible even if the accused himself is the author and signatory of the document. A case of a false bill, magistrate justified in taking cognizance.
21. *Guru Bipin Singh v Chongtham Manihar Singh*, AIR 1997 SC 1448 [LNIND 1996 SC 1690] : 1997 Cr LJ 724 .
22. *State of UP v Ranjit Singh*, AIR 1999 SC 1201 : 1999 Cr LJ 1830 .
23. *RR Diwakar v B Guttal*, 1975 Cr LJ 90 (Kant).
24. *Sanjiv Ratnappa*, (1932) 34 Bom LR 1090 : 56 Bom 488.
25. *Kalyanmal*, (1937) Nag 45.
26. *Sadanand*, 1977 Cr LJ NOC 103 (Goa); *Tul Mohon Ram*, 1981 Cr LJ NOC 223 (Del); see also *Harnam Singh*, 1976 Cr LJ 913 (SC), as in 'Comments' under section 477A *infra*. *TN Rugmani v C. Achutha Menon*, AIR 1991 SC 983 [LNIND 1990 SC 803] , application for permission for construction made in another's name, but without any intention of causing harm, no offence under the section.
27. *Mahesh Chandra Prasad v State*, (1943) 22 Pat 292.
28. *Ibid*.
29. *Soshi Bhushan*, (1893) 15 All 210 , 217.
30. *Soshi Bhushan*, (1893) 15 All 210 , 217, 218.
31. *Ibid*, p 218.
32. *Dr. Vimla*, (1963) 2 Cr LJ 434 .
33. *Abbas Ali*, (1896) 25 Cal 512 , 521, FB **overruling** *Haradhan*, (1892) 19 Cal 380 .
34. *Per Garth CJ in Riasat Ali*, (1881) 7 Cal 352 , 355.
35. *Nazeem Ahmed Wahid Ahmed Khanl v State of Maharashtra*, 2011 Cr LJ 1786 (Bom).
36. *Rupa Bania v State of Assam*, 2006 Cr LJ 3455 (Gau).
37. *Ramesh Rajagopal v Devi Polymers Pvt Ltd*, AIR 2016 SC 1920 [LNIND 2016 SC 170] : 2016(4) Scale 198 [LNIND 2016 SC 170] .
38. *PN Parthasarthy v GK Srinivasa Rao*, 1995 Cr LJ 3406 (Kant).
39. *Parminder Kaur v State of UP*, 2010 Cr LJ 895 : AIR 2010 SC 840 [LNIND 2009 SC 1924] : (2010) 1 SCC 322 [LNIND 2009 SC 1924] .
40. *Sharvan Kumar v State of UP*, AIR 1985 SC 1663 [LNIND 1985 SC 231] : (1985) 3 SCC 658 [LNIND 1985 SC 231] , reducing the sentence to nine months, already undergone.
41. *Tashi Dadul Bhutia v State of Sikkim*, 2011 Cr LJ 1315 (Sik).

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 466] Forgery of record of Court or of public register, etc.

**42.** [Whoever forges a document or an electronic record], purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**43.** [Explanation.—For the purposes of this section, "register" includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of [section 2 of the Information Technology Act, 2000](#)].

#### COMMENT.—

Forging a document and using the forged document are quite different and distinct offence. The reliance on the false documents will not *ipso facto* implicate the person who relied upon, under sections 465 and 466.<sup>44</sup> If by virtue of preparing a false document purporting it to be a document of a Court of Justice and by virtue of such document, a person who is not entitled to be released on bail could be released then, undoubtedly damage or injury has been caused to the public at large and, therefore, there is no reason why under such circumstances the accused who is the author of such forged document cannot be said to have committed offence under [section 466 of IPC, 1860](#). A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. The expression 'defraud' involves two elements, namely deceit and injury to the person deceived. Injury is something other than economic loss and it will include any harm whatever caused to any person in body, mind, reputation or such others. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. The preparation of a forged bail order by the utilisation of which the person concerned obtained an advantage of being released deceiving the courts and the society at large cannot but be said to have made the document fraudulently, thereby attracting [section 466 of IPC, 1860](#).<sup>45</sup>

<sup>42.</sup> Subs. by The [Information Technology Act](#) (Act 21 of 2000), section 91 and First Sch for the words "whoever forges a document", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

<sup>43.</sup> Ins. by the [Information Technology Act](#) (21 of 2000), section 91 and First Sch, (w.e.f. 17 October 2000).

44. *C R Alimchandani v I K Shah*, 1999 Cr LJ 2416 (Bom).

45. *State of UP v Ranjit Singh*, AIR 1999 SC 1201 : 1999 (2) SCC 617 .

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### [s 467] Forgery of valuable security, will, etc.

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with <sup>46.</sup>[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.

#### COMMENT.—

The offence under this section is an aggravated form of the offence described in the preceding section. The forged document must be one of those mentioned in the section. A complaint by the court is necessary for cognizance of the offence.<sup>47.</sup> [Section 467, IPC, 1860](#), does not require the prosecution to prove that the accused who commits forgery, has benefitted thereby or any loss has occasioned to anyone thereby.<sup>48.</sup> There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he has a *bona fide* belief that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code is attracted.<sup>49.</sup>

#### [s 467.1] Quashing of complaint.—

There were bold allegations in the complaint that the shares of the complainant had been transferred on forged signatures. There was nothing to show how all or any of the accused persons were involved. No offence was constituted under sections 406, 420, 467, 468 and 120-B. The order taking cognizance was held to be improper. It was



quashed in respect of accused persons who preferred special leave petition and also in respect of those who did not file a petition.<sup>50.</sup>

### **[s 467.2] CASES.—**

Where the allegation was that a company, acting through its directors in concert with the chartered accountants and some other persons: (i) conceived a criminal conspiracy and executed it by forging and fabricating a number of documents, like photographs of old machines, purchase orders and invoices showing purchase of machinery in order to support their claim to avail hire-purchase loan from Bank; (ii) on the strength of these false documents, bank parted with the money by issuing pay orders and demand drafts in favour of the Company; and (iii) the accused opened six fictitious accounts in the banks to encash the pay orders/bank drafts issued by Bank in favour of the suppliers of machines, thereby directly rotating back the loan amount to the borrower from these fictitious accounts, and in the process committed a systematic fraud on the Bank and obtained pecuniary advantage for themselves. Precise details of all the fictitious accounts as also the further flow of money realized on encashment of demand drafts/pay orders have been incorporated in the charge sheet additionally, by allegedly claiming depreciation on the new machinery, which was never purchased, on the basis of forged invoices, etc.; the accused cheated the public exchequer as well. The Supreme Court held that proceedings are not liable to be quashed merely because dues of bank have been paid up.<sup>51.</sup>

A deed of agreement for purchase of shares is not a valuable security.<sup>52.</sup> A person who received money from a postman under a false representation that he was the payee when in fact he was not, and signed the postal acknowledgement in the name of the payee, was held to have committed an offence under this section.<sup>53.</sup> Where the accused fraudulently brought into existence a registered sale deed, said to have been executed by the widow of a person, intending to deceive and also to injure the reversioners of that person, it was held that they were guilty under this section.<sup>54.</sup> Where the accused falsely identified a person before the Oaths Commissioner as the deponent and the said person affixed his thumb impression on the document and it was also apparent that the document could not even become an affidavit without identification of the deponent by the accused, it was held that the accused abettor having been present at the time of the commission of the offence of impersonation he was guilty under [section 467](#) read with [section 114, IPC, 1860](#).<sup>55.</sup> A bank draft is a security for the purposes of this section and the bank manager signing a forged draft is guilty of this offence.<sup>56.</sup> Making out cheques for withdrawing money for official purposes and obtaining the signature of the signing officer under that pretence was held to be punishable offence under this section.<sup>57.</sup>

### **[s 467.3] Bar under [section 195\(1\)\(b\)\(ii\)](#) of the [Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#).—**

Section 195(1)(b)(ii), [Cr PC](#) mandates that no court shall take cognizance of any offence described in [section 463](#), or punishable under [sections 471, 475 or 476](#), of [IPC, 1860](#), when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, except on the complaint in writing of that court, or of some other court to which that court is subordinate. It contemplates a situation where offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court.<sup>58.</sup> The petitioner stood before the Court as surety in favour of

the accused person and filed the affidavit, bail declaration form and title document of the Land record-of-rights book before the Court. It was further revealed that the petitioner filed the false declaration as well as false affidavit in support of the said declaration. It was further found that both the documents, i.e., the declaration form as well as the affidavit of accused were prepared just before production of them in the Court. Admittedly, the offence was committed before the documents were filed in the Court. Section 195(1)(b)(ii) of Cr PC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it had been produced or given in evidence in a proceeding in any court, i.e., during the time when the document was in *custodia legis*. This being the settled position of law, there appears to be no justification in quashing the prosecution of the petitioner-accused on the ground that provisions of section 195(1)(b)(ii) are applicable.<sup>59</sup>

46. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

47. See *Sardul Singh v State of Haryana*, 1992 Cr LJ 354 (P&H).

48. *Suresh Hingorani v State of Haryana*, 2013 (1) Scale 225 [LNIND 2013 SC 21] : JT 2013 (8) SC 66 [LNIND 2013 SC 21] .

49. *Shiv Charan v State of Rajasthan*, 2012 Cr LJ 211 (Raj).

50. *Ashok Chaturvedi v Shitual H Chanchani*, 1998 Cr LJ 4091 : AIR 1998 SC 2796 [LNIND 1998 SC 751] .

51. *Sushil Suri v CBI*, (2011) 5 SCC 708 [LNIND 2011 SC 494] : AIR 2011 SC 1713 [LNIND 2011 SC 494] .

52. *AK Khosla v TS Venkatesan*, 1992 Cr LJ 1448 (Cal).

53. *Jogidas v State*, (1921) 24 Bom LR 99 ; *Sanjay Gaikwad v State of Maharashtra*, 2013 Cr LJ (NOC) 304 —using genuine special adhesive stamps fraudulently obtained for making false document— offence is under section 468 not under section 256–259 IPC.

54. *Ganga Dibya*, (1942) 22 Pat 95.

55. *Calcutta Singh*, 1978 Cr LJ 477 (P&H).

56. *Adithela Immanuel Raju v State of Orissa*, 1992 Cr LJ 243 ; *State of Haryana v Parmanand*, (1995) 1 Cr LJ 396 , embezzlement by forging entries in records, but neither signature nor handwriting proved by expert evidence, conviction on the statement of a sole witness not justified.

57. *State of Punjab v Baj Singh*, (1995) 2 Cr LJ 1311 (P&H); *Joginder Pal Dhiman v UOI*, 2002 Cr LJ 677 (HP), bank manager defrauded bank by forging amounts on FDRs and issuing drafts in his own and wife's name. But on being detected he returned the whole amount involved. Sentence reduced to one year and amount of fine maintained.

58. *Iqbal Singh Marwah v Meenakshi Marwah*, (2005) 4 SCC 370 [LNIND 2005 SC 261] ; *Mahesh Chand Sharma v State of UP*, AIR 2010 SC 812 [LNIND 2009 SC 1740] : (2009) 15 SCC 519 [LNIND 2009 SC 1740] ; *CP Subhash v Inspector of Police Chennai*, 2013 Cr LJ 3684 : JT 2013 (2) SC 270 [LNIND 2013 SC 74] , sale deed had not been forged while in custody of court, bar under section 195 not applicable.

59. *Jagannath Singh v State of MP*, 2011 Cr LJ 3008 (MP).



## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### [s 468] Forgery for purpose of cheating.

Whoever commits forgery, intending that the <sup>60.</sup>[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### COMMENT.—

This section does not require that the accused should actually commit the offence of cheating. What is material is the intention or purpose of the offender in committing forgery.<sup>61.</sup> Where documents had been forged and fabricated only to be used as genuine to make fraudulent and illegal claim over land owned by complainant, the Supreme Court held that it cannot be held that respondents were not makers of documents or that filing of civil suit based on same would not constitute an offence.<sup>62.</sup> The Supreme Court has expressed the opinion that the conduct of an Advocate's clerk in forging the signature of another advocate on a surety bond and forging some endorsements for identification and attestation, would not constitute an offence under this section and that the conviction should have been under section 465.<sup>63.</sup>

#### [s 468.1] Banking and other frauds.—

Where the accused, being the BDO, who was authorised to recommend the sanctioning of housing loans to the villagers misappropriated the money of the bank by availing loans in their names by forging their signatures, he was held to be guilty based on the evidence of the villagers that they did not apply under the scheme.<sup>64.</sup>

#### [s 468.2] Signing differently in *vakalatnama*.—

Where it was alleged that in order to cheat the Complainant the accused signed in his *vakalathnama* differently from his signatures available in his income tax returns, the Court quashed the complaint as neither the Complainant has alleged any 'forgery' by the petitioners causing any damage, or injury to the public nor to any person, nor to cause any person to part with property, nor to enter into any express or implied contract, nor with intent to commit fraud to any person or the Complainant in particular.<sup>65.</sup>

60. Subs. by The [Information Technology Act](#) (Act 21 of 2000) for the words "document forged", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.
61. *Shivaji Narayan*, (1970) 73 Bom LR 215 . *Mallinath Ambanna Shedjale v Purushottam Vasudeo Somshetty*, 2002 Cr LJ 506 (Bom), forgery of signature on partnership registration form, the mere fact that the handwriting expert could not positively say who committed the forgery, the accused partners could not be acquitted. *Chandu Mahto v State of Bihar*, 2000 Cr LJ 4472 (Pat), forgery of signature for operating colleague's PF Account. Held, guilty under sections 120-B, 419, 420, 468, 471 and 477-A. *Srinivas Rao v State of AP*, 2002 Cr LJ 3880 (AP), the offence took place about nine years ago. The sentence of six months was reduced to two months. *Saroj Kumar Sahoo v State of Orissa*, 2003 Cr LJ 1872 , allegation that the officers of the State Financial Corporation and accused persons entered into a conspiracy to cheat the owner of the unit of disposing it of at a lower value than the market price. The allegation was not proved on evidence.
62. *CP Subhash v Inspector of Police Chennai*, 2013 Cr LJ 3684 : JT 2013 (2) SC 270 [LNIND 2013 SC 74] ; *Siba Prasad Satpathy v Republic of India*, 2011 Cr LJ 3656 .
63. *Sharvan Kumar v State of UP*, AIR 1985 SC 1663 [LNIND 1985 SC 231] : (1985) 3 SCC 658 [LNIND 1985 SC 231] : 1985 SCC (Cr) 437. A complaint by the Court concerned is necessary for cognizance of this offence. See *Sardul Singh v State of Haryana*, 1992 Cr LJ 354 (P&H) vide section 195, Cr PC, 1973. *Surender Singh v State*, 2013 Cr LJ 3211 (Del), allegation of using fake number plates, not proved. Mere recovery of fake number plate does not establish guilt of appellant that he intended to cheat police official, accused acquitted.
64. *Sukh Ram v State of HP*, 2016 Cr LJ 4146 (SC) : 2016 (7) Scale 354 .
65. *Padam Chand v State of Bihar*, 2016 Cr LJ 4998 (Pat) : 2016 (3) PLJR 258 .

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

**[s 469] Forgery for purpose of harming reputation.**

**Whoever commits forgery, <sup>66</sup>[intending that the document or electronic record forged] shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.**

66. Subs. by The [Information Technology Act](#) (Act 21 of 2000), section 91 and First Sch for the words "intending that the document forged", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 470] Forged **\*\***[document or electronic record].

A false <sup>67.</sup>[document or electronic record] made wholly or in part by forgery is designated "a forged <sup>68.</sup>[document or electronic record]".

#### COMMENT.—

A person who forges a document or electronic record for the purpose of harming the reputation of another and thereby commits an offence under section 500 (defamation) commits an offence also under this section.

<sup>67.</sup> Subs. by The [Information Technology Act](#) (Act 21 of 2000), section 91 and First Sch for the words "document", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

<sup>68.</sup> Subs. by Act 21 of 2000, section 91 and Sch I, for "document" (w.e.f. 17 October 2000).

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

**[s 471] Using as genuine a forged \*\*\*[document or electronic record].**

Whoever fraudulently or dishonestly uses as genuine <sup>1</sup> any <sup>69.</sup> [document or electronic record] which he knows or has reason to believe to be a forged <sup>70.</sup> [document or electronic record], <sup>2</sup> shall be punished in the same manner as if he had forged such <sup>71.</sup> [document or electronic record].

#### COMMENT.—

What this section requires is the use as genuine of any document which is known or believed to be a forged document; it does not lay down that such use can only occur when the original itself is produced, for the section does not require the production of the original.<sup>72.</sup>

#### **[s 471.1] Ingredients.—**

There must be—

1. Fraudulent or dishonest use of a document as genuine.
2. The person using it must have knowledge or reason to believe that the document is a forged one.

1. '**Uses as genuine**'.— Accused registered various documents relating to a project without verifying the credentials of the purchaser and seller and without examining that the land covered by the sale deeds was in existence or not or the land belongs to the State Government. Documents were *prima facie* found to be forged so as to get the benefit of the package which was meant for the project affected persons/oustees displaced from the land. Order of High Court quashing the proceedings was held liable to be set aside.<sup>73.</sup>

#### **[s 471.2] Sections 467 and 471.—**

Where there is forgery of a document purporting to be a valuable security as defined in section 471 becomes an offence under section 471 when it is used as genuine. The Supreme Court observed that the basic ingredient of both the offences is that there should be "forgery" as defined in section 463 and forgery in turn depends upon creation of a "false document" as defined in section 464. If there is no "false document" as defined in section 464, offences under sections 467 and 471 are not made out. Further the mere execution of a sale deed by claiming that property being sold was executant's property did not amount to commission of offences under sections 467 and 471 even if title to property did not vest in the executant. This was for the reason that no "false document" as defined in section 464, was created.<sup>74.</sup>



**2. 'Knows or has reason to believe to be a forged document'.—**These words are of general application.<sup>75</sup> Where it was not shown that the accused had knowledge of the forged nature of the cheque<sup>76</sup> or the lottery ticket<sup>77</sup> which he used as genuine he cannot be convicted under [sections 467 and 471, IPC, 1860](#).

"Knowledge" is an awareness on the part of the person concerned indicating his state of mind. Reason to believe is another fact of the state of mind. It is not the same thing as "suspicion" or "doubt". The mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of the state of mind. Likewise knowledge will be slightly on a higher plane than reason to believe. A person can be supposed to know when there is a direct appeal to his senses and a person is presumed to have reason to believe if he has sufficient cause to believe the same. In substance, what is meant is that a reason to believe requires that a reasonable man would, by probable reasoning conclude or infer regarding the nature of the thing concerned. "Knowledge" and "reason to believe" has to be deduced from the various circumstances of the case.<sup>78</sup> The section is intended to apply to persons other than the forger himself but the forger is not excluded from the operation of the section. It is not required that the person forging the document must necessarily be convicted along with the person using the document.<sup>79</sup>

### **[s 471.3] Compounding.—**

Where there is no chance of recording a conviction insofar as the accused is concerned and the entire exercise of trial is destined to be an exercise in futility, the High Court by exercising the inherent power under [section 482 Cr PC, 1973](#), even in offences which are not compoundable under section 320 may quash the prosecution.<sup>80</sup>

### **[s 471.4] Punishment.—**

in *Bank of India v Yeturi Maredi Shanker Rao*,<sup>81</sup> the Supreme Court confirmed the sentence of nine months of rigorous imprisonment to a person who had knowledge of the forged signatures on withdrawal forms and who used them to affect withdrawal of money. A forged will was prepared and executed in favour of the accused, but he could not draw any benefit under it, nor it was acted upon in any civil proceedings. He had faced trial for more than 26 years. He was in jail for more than seven months. His sentence was accordingly reduced to the period already undergone.<sup>82</sup> The accused filed a false marks sheet and gained admission. His past record was good. He had already lost a job. The sentence of imprisonment was reduced to the period already undergone.<sup>83</sup>

### **[s 471.5] CASE.—**

Accused while working as a lower division clerk in the office of the Deputy Superintendent of Police had temporarily misappropriated an amount of Rs. 1,839 and made false entry in the record. Admittedly the sum had been deposited in the post office before the due date and that no loss had been caused to the department. Offence alleged under [IPC, 1860](#), against the accused are trivial in nature and have caused no harm and in fact no offences in the eye of law. The benefit of [section 95, IPC](#) is available to the appellant.<sup>84</sup>

### **[s 471.6] Certificate.—**

Where the accused applied to the Superintendent of Police for employment in the Police force, and in support of his application presented two certificates which he knew to be false, it was held that he was guilty of offences under sections 463 and 471.<sup>85</sup> Where the accused used a forged certificate of competency as an engine-room first Tindal, he was held guilty under sections 471 and 463.<sup>86</sup> With a view to qualify for appearance at the competitive P.C.S examination the accused presented a certified copy of the certificate granted to him by the University at his Matriculation examination, in which the date of birth had been altered from "5 January 1901" to "15 January 1904". It was held that he was guilty of an offence under this section inasmuch as the document presented, being a false document, was used with intent to cause damage and injury to the other candidates in the competitive examination for P.C.S. and to support his claim to appear.<sup>87</sup> Where a forged certificate of age was filed by an employee for the purpose of getting his superannuation postponed by two years, his conviction under sections 471, 420 and 511 was upheld. It was immaterial that the employer had not acted upon the certificate.<sup>88</sup>

### **[s 471.7] Passport.—**

A person who forges a passport and uses it as genuine to get entry into India is guilty under section 471 and section 467.<sup>89</sup> Where unauthorised endorsements were made in a passport with a view to helping the person having his photograph on the passport to travel to countries to which he was not entitled to go, such endorsements were made dishonestly and fraudulently and, therefore, the use of such a passport constituted an offence under [section 471, IPC, 1860](#). Where, however, the very basis of the prosecution case was that the endorsements were in the handwriting of the accused but the expert opinion was hesitant and unsatisfactory, the conviction of the accused could not be sustained.<sup>90</sup>

Where passport alleged to have issued by using the former seal of the passport officer, it is the duty of the investigating officer to find out in whose custody the unused seal was kept and how the accused obtained possession of the same, for using it for committing forgery.<sup>91</sup>

### **[s 471.8] Sanction.—**

The offence of cheating under section 420 or for that matter offences relating to sections 467, 468, 471 and 120B can by no stretch of imagination, by their very nature, be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence.<sup>92</sup>

70. Subs. by *Ibid.*
71. Subs. by *Ibid.*
72. *Budhu Ram v State*, (1963) 2 Cr LJ 698 (SC).
73. *State of Madhya Pradesh v Surendra Kori*, 2013 Cr LJ 167 (SC); (2012) 10 SCC 155 [LNIND 2012 SC 681] .
74. *Mohd Ibrahim v State of Bihar*, (2009) 8 SCC 751 [LNIND 2009 SC 1774] : (2009) 3 SCC (Cr) 929.
75. *Ranchhoddas*, (1896) 22 Bom 317.
76. *Abdul Karim v State*, 1979 Cr LJ 1123 (SC).
77. *Chatt Ram*, 1979 Cr LJ 1411 (SC).
78. *AS Krishanan v State of Kerala*, (2004) 11 SCC 576 [LNIND 2004 SC 349] : AIR 2004 SC 3229 [LNIND 2004 SC 349] : 2004 Cr LJ 2833 , forged marksheets were used in this case for securing admission to medical college. The candidate (accused) deserved no leniency in the matter of punishment.
79. *Ibid.*
80. *Jayrajsinh Digvijaysinh Rana v State of Gujarat*, 2012 AIR (SCW) 4092 : 2012 Cr LJ 3900 ; *Ashok Sadarangani v UOI*, AIR 2012 SC 1563 [LNIND 2012 SC 180] : (2012) 11 SCC 321 [LNIND 2012 SC 180] , where emphasis is more on the criminal intent of the petitioners than on the civil aspects involving the dues of the bank in respect of which a compromise was worked out, proceedings cannot be quashed.
81. *Bank of India v Yeturi Maredi Shanker Rao*, (1987) 1 SCC 577 [LNIND 1987 SC 104] : AIR 1987 SC 821 [LNIND 1987 SC 104] : 1987 Cr LJ 722 . Encashing a forged bank draft is an offence under this section. *Adithelo Immanuel Raju v State of Orissa*, (1992) Cr LJ 243 .
82. *Jagdish v State of Rajasthan*, 2002 Cr LJ 2171 (Raj).
83. *Tulsibhai Jivabhai Changani v State of Gujarat*, 2001 Cr LJ 741 (SC).
84. *NK Illiyas v State of Kerala*, 2012 Cr LJ 2418 : AIR 2012 SC 3790 [LNIND 2011 SC 646] .
85. *Khandusingh*, (1896) 22 Bom 768.
86. *Abbas Ali*, (1896) 25 Cal 512 (FB).
87. *Chanan Singh*, (1928) 10 Lah 545.
88. *Galla Nageswara Rao v State of AP*, 1992 Cr LJ 2601 (AP).
89. *Daniel*, AIR 1968 Mad 349 [LNIND 1967 MAD 140] . *Hema v State*, 2013 Cr LJ 1011 : AIR 2013 SC 1000 [LNIND 2013 SC 1240] , where accused in conspiracy with the owner of a travel agency filed application for passport by giving bogus particulars, court held that she is guilty.
90. *Mahendra Singh v State*, 1972 Cr LJ 34 (SC).
91. *Vijayachandran KK v The Supdt. of Police*, 2008 (2) Ker LJ 751 : 2008 (3) Ker LT 307 .
92. *Om Dhankar*, (2012) 11 SCC 252 [LNINDORD 2012 SC 439] : 2012 (3) Scale 363 [LNINDORD 2012 SC 439] ; *Prakash Singh Badal v State of Punjab*, 2007 (1) SCC 1 [LNIND 2006 SC 1091] : AIR 2007 SC 1274 [LNIND 2006 SC 1091] ; *Rakesh Kumar Mishra v State of Bihar*, 2006 (1) SCC 557 [LNIND 2006 SC 8] : AIR 2006 SC 820 [LNIND 2006 SC 8] .

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

**[s 472] Making or possessing counterfeit seal, etc., with intent to commit forgery, punishable under section 467.**

Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with <sup>93.</sup>[imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### COMMENT.—

This section and the section following are akin to sections 235, 255 and 256.

<sup>93.</sup> Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

## **THE INDIAN PENAL CODE**

### **CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS**

**[s 473] Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.**

**Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this Chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### **[s 474] Having possession of document described in sections 466 or 467 knowing it to be forged and intending to use it as genuine.**

<sup>94</sup>. [Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code], be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with <sup>95</sup>. [imprisonment for life], or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

#### **COMMENT.—**

This section resembles sections 242, 243 and 259.

The offence under [section 474, IPC, 1860](#), is made out by the mere fact of possession of forged documents knowing them to be forged and intending the same to be fraudulently and dishonestly used. So even if such documents are not actually used, it need not absolve the accused from the mischief of provisions contained in [section 474, IPC](#). Thus, where the accused falsely posed as an I.A.S. officer and as a Joint Director (Vigilance) attached to the Central Bureau of Investigation and was also found in possession of fictitious documents supporting such claim and such documents were being created by him from time to time with a view to entangle people in bogus criminal cases, it was held that the accused was an impostor and had intended to use these faked documents in furtherance of his criminal design. He was, therefore, rightly convicted under [section 474, IPC](#).<sup>96</sup>.

<sup>94</sup>. Subs. by The [Information Technology Act](#) (Act 21 of 2000), section 91 and First Sch for the words "whoever has in his possession ..", section 466 of this code", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

<sup>95</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>96</sup>. *Dharam Pal*, [1985 Cr LJ 474](#) (Del).

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

**[s 475] Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.**

**Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished <sup>97</sup>[with imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

#### **COMMENT.—**

The commencement of the forgery of banknotes and other similar securities, where it has proceeded to the length which is described in this section, is treated as a substantive offence and punished. This section supplements the provisions of section 472.

<sup>97</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

**[s 476] Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.**

**Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating <sup>98</sup>[any document or electronic record] other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

#### **COMMENT.—**

This section is similar to the preceding section, but as the document, the counterfeit of which is made punishable, is not of so much importance as in that section, the punishment is not so severe.

<sup>98</sup>. Subs. by The [Information Technology Act](#) (Act 21 of 2000), section 91 and First Sch for the words "any document", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.



## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 477] Fraudulent cancellation, destruction, etc., of will, authority to adopt or valuable security.

Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect of such documents, shall be punished with <sup>99.</sup>[imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### COMMENT.—

This section applies when the document tampered with or destroyed is either a will or an authority to adopt or a valuable security. Owing to the great importance of documents of this kind the punishment provided is severe.

1. '**Document**'.—The document must be a genuine one. The offence under this section cannot be committed in respect of a document which is a forgery.<sup>100.</sup>

<sup>99.</sup> Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>100.</sup> *Akbar Hossain*, (1938) 43 Cal WN 222.

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### [s 477A] Falsification of accounts.

Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any <sup>101</sup>. [book, electronic record, paper, writing], valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such <sup>102</sup>. [book, electronic record, paper, writing], valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

**Explanation.**—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.]

#### COMMENT.—

This section refers to acts relating to book-keeping or written accounts. It makes the falsification of books and accounts punishable even though there is no evidence to prove misappropriation of any specific sum on any particular occasion.

#### [s 477A.1] Ingredients.—

This section requires that—

1. The person coming within its purview must be a clerk, an officer, or a servant, or acting in the capacity of a clerk, an officer, or a servant.
2. He must wilfully and with intent to defraud—
  - (i) destroy, alter, mutilate, or falsify, any book, electronic record, paper, writing, valuable security, or account which:
    - (a) belongs to or is in the possession of his employer, or
    - (b) has been received by him for or on behalf of his employer;
  - (ii) make or abet the making of any false entry in or omit or alter or abet the omission or alteration of any material particular from or in any such book, paper, writing, valuable security or account.

To convict a person under [section 477-A IPC, 1860](#), the prosecution has to prove that there was a wilful act, which had been made with an intent to defraud and while proving "Intention to defraud" the prosecution has to further prove two elements that the act

was an act of deceit and it had caused an injury. In the present case, there may be an injury, but there is no deceit.<sup>103.</sup>

The principles laid down by the Supreme Court in Harnam Case<sup>104.</sup> are that there should be a wilful act of an accused with an intention to defraud. So both elements must be present and in other words it would mean that the act should be a wilful act and should also be done with an intention to defraud. While trying to define "intent to defraud", the Court noted that it contains two elements, deceit and injury. There is no doubt that to convict a person under [section 477-A IPC](#), the prosecution has to prove that there was a wilful act, which had been made with an intent to defraud and while proving "Intention to defraud" the prosecution has to further prove two elements that the act was an act of deceit and it had caused an injury. In the present case, there may be an injury, but there is no deceit.<sup>105.</sup>

### **[s 477A.2] CASES.—**

Where, however, the documents alleged to have been falsified are found to be missing from office records, no charge under [section 477A, IPC, 1860](#), can be made out;<sup>106.</sup> where the *Nazir* of Special Judicial Magistrate's Court accepted an amount as fine but failed to deposit it in the treasury and made false entries in the Register of Judicial Fines saying that the amount had been deposited, it was held that he was guilty of offences under [sections 409, 467, 468 and 477A, IPC](#).<sup>107.</sup>

<sup>101.</sup> Subs. by The [Information Technology Act](#) (Act 21 of 2000), section 91 and First Sch for the words "book, paper, writing", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

<sup>102.</sup> Subs. by The [Information Technology Act](#) (Act 21 of 2000), section 91 and First Sch for the words "book, paper, writing", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

<sup>103.</sup> *Kandipalli Madhavarao v State of AP*, [2007 Cr LJ 4555](#) (AP).

<sup>104.</sup> *Supra*.

<sup>105.</sup> *Kandipalli Madhavarao v State of AP*, [2007 Cr LJ 4555](#) (AP).

<sup>106.</sup> *Rasul Mohd v State of Maharashtra*, [1972 Cr LJ 313](#) : [AIR 1972 SC 521](#) ; *V Srinivasa Reddy v State of AP*, [AIR 1998 SC 2079](#) [[LNIND 1998 SC 158](#)] : [1998 Cr LJ 2918](#) , false advance shown by bank employee to customers against their FDs. This was abuse of position as public servant. Audit report was against any such manipulation. Proper documents were also not produced before the court. Evidence actually produced was also not examined properly. The case was sent back for fresh disposal without calling for additional evidence. See also *Mohandass v State*, [1998 Cr LJ 3409](#) (Mad); *Sharif Masin v State (UT Chandigarh)*, [1998 Cr LJ 1689](#) (P&H).

<sup>107.</sup> *State of Punjab v Rathchand*, [1984 Cr LJ NOC 153](#) (P&H). See also *Ravichandran v State by Dy. Supdt. of Police, Madras*, [2010 Cr LJ 2879](#) (SC) : [AIR 2010 SC 1922](#) [[LNINDORD 2010 SC 76](#)] ; *Mir Nagivi Askari v CBI*, [AIR 2009 SC 528](#) [[LNIND 2008 SC 1354](#)] : (2009) 15 643; *State v Mohan*, [AIR 2008 SC 368](#) [[LNIND 2007 SC 1250](#)] : (2007) 14 SCC 667 [[LNIND 2007 SC 1250](#)] .



## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of **108.** [\*\*\*] Property and Other Marks

[s 478] *[Omitted]*

*[Rep. by the [Trade and Merchandise Marks Act, 1958](#) (43 of 1958, section 135 and Sch. (w.e.f. 25-11-1959).]*

**108.** *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of **108.** [\*\*\*] Property and Other Marks

##### [s 479] Property mark.

A mark used for denoting that movable property belongs to a particular person is called a property mark.

#### COMMENT.—

The distinction between 'trade mark' and 'property mark' is not recognised in English law.

**108.** *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of **108.** [\*\*\*] Property and Other Marks

[s 480] *[Omitted]*

[Rep. by the [Trade and Merchandise Marks Act, 1958](#) (43 of 1958), section 135 and Sch. (w.e.f 25-11-1959).]

**108.** *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of **108.** [\*\*\*] Property and Other Marks

##### [s 481] Using a false property mark.

Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

#### COMMENT.—

**False property mark.**—This section defines the offence of using a false property mark.

A property mark is intended to denote ownership over all movable property belonging to a person whether it is all of one kind or of different kinds. So long as the person owns movable property, his property mark impressed upon them remains his, though any particular article out of it may after such impression pass out of his hands and cease to be his.<sup>109.</sup>

The function of a property mark to denote certain ownership is not destroyed because any particular property on which it was impressed has ceased to be of that ownership.

#### [s 481.1] Ingredients.—

This section requires two essentials:—

1. Marking any movable property or goods, or any case, package or receptacle containing goods; or using any case, package or receptacle, with any mark thereon.
2. Such marking or using must be in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or the property or goods, contained in such receptacle, belonged to the person to whom they did not belong.

The Supreme Court in *Sumant Prasad's* case said that the concept of a trade mark under section 2(1)(g) of [Trade and Merchandise Marks Act, 1958](#), is distinct from that of a property mark under [section 479 of IPC, 1860](#). It means the concept of trade mark has not nullified the concept of property mark. Thus, where the accused finding that his 'Puspa Raj' scent could not capture the market copied the property mark from the carton of complainant's best-selling scent 'Basant Bahar' *in toto* and marketed his inferior product under the same name, it was held that he had committed the offence of both using a false property mark as well as of selling goods marked with a



counterfeit property mark. The fact that the complainant loosely mentioned in his complaint 'trade mark' did not make any difference, for despite this the complainant's allegations clearly made out that the accused tried to palm off his inferior scent as if it was manufactured by and belonged to the complainant. He was, therefore, rightly convicted under [sections 482 and 486, IPC](#).<sup>110</sup>.

<sup>108</sup>. *Amendment*.—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

<sup>109</sup>. *Dahyabhai*, (1904) 6 Bom LR 513 .

<sup>110</sup>. *Sumant Prasad v Sheojanan*, 1972 Cr LJ 1707 (SC).

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of **108.** [\*\*\*] Property and Other Marks

[s 482] Punishment for using a false property mark.

Whoever uses **111.**[\*\*\*] any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

#### COMMENT.—

To succeed on the charges under sections 482 and 486 the complainant had to establish that the appellant marked the scent manufactured and sold by him, or the packets and receptacles containing such scent or used packets or receptacles bearing that mark, and that he did so in a manner reasonably calculated to cause it to be believed that the goods so marked or the scent contained in the packets and receptacles so marked belong to the complainant. **112.**

**108.** *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

**111.** The words "any false trade mark or" omitted by Act 43 of 1958, section 135 and Sch (w.e.f. 25 November 1959).

**112.** *Sumat Prasad Jain v Sheojanam Prasad*, [AIR 1972 SC 2488](#) [[LNIND 1972 SC 399](#)] : (1973) 1 [SCC 56](#) [[LNIND 1972 SC 399](#)] .

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of **108.** [\*\*\*] Property and Other Marks

[s 483] Counterfeiting a property mark used by another.

Whoever counterfeits any **113.**[\*\*\*] property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**108.** *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

**113.** The words "trade mark or" omitted by Act 43 of 1958, section 135 and Sch (w.e.f. 25 November 1959).

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of **108.** [\*\*\*] Property and Other Marks

##### [s 484] Counterfeiting a mark used by a public servant.

Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

#### COMMENT.—

The offence under this section is an aggravated form of the offence described in the preceding one. Enhanced punishment is inflicted where the mark used by a public servant is counterfeited.

**108.** *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of **108.** [\*\*\*] Property and Other Marks

**[s 485] Making or possession of any instrument for counterfeiting a property mark.**

**Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a property mark, or has in his possession a property mark for the purpose of denoting that any goods belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.**

#### **COMMENT.—**

The making or possession of instruments for counterfeiting a property mark is hereby punished.

**108.** *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of **108.** [\*\*\*] Property and Other Marks

[s 486] Selling goods marked with a counterfeit property mark.

**114.** [Whoever sells, or exposes, or has in possession for sale, any goods or things with a counterfeit property mark] affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

- (a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and
- (b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or
- (c) that otherwise he had acted innocently,

**be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.**

#### COMMENT.—

This section punishes those who sell or have in possession for sale goods marked with a counterfeit property mark. For the purpose of section 486, it is necessary to establish that the appellant had sold, or exposed for sale, or had in his possession for sale goods having a mark calculated to cause it to be believed that the scent was the scent manufactured by and belonging to the complainant. **115.**

**108.** *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

**114.** Subs. by Act 43 of 1958, section 135 and Sch, for certain words (w.e.f. 25 November 1959).

115. *Sumat Prasad Jain v Sheojanam Prasad*, AIR 1972 SC 2488 [LNIND 1972 SC 399] : (1973) 1 SCC 56 [LNIND 1972 SC 399] .

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of **108.** [\*\*\*] Property and Other Marks

##### [s 487] Making a false mark upon any receptacle containing goods.

Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### COMMENT.—

This section is more comprehensive than sections 482 and 486. The fraudulent making of false marks of any description on goods for the purpose of deceiving public servants, such as customs officers, is punishable under this section.

**108.** *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.



## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of **108.** [\*\*\*] Property and Other Marks

[s 488] Punishment for making use of any such false mark.

Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud be punished as if he had committed an offence against that section.

#### COMMENT.—

This section punishes the making use of a false mark. The preceding section punishes the making of such a mark.

**108.** *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of **108.** [\*\*\*] Property and Other Marks

[s 489] Tampering with property mark with intent to cause injury.

Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

#### COMMENT.—

This section punishes the tampering with a property mark, criminal intention or knowledge on the part of the accused is necessary.

**108.** *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of Currency-Notes and Bank-Notes

[s 489A] Counterfeiting currency-notes or bank-notes.

[Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with <sup>116.</sup> [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Explanation.**—For the purposes of this section and of sections <sup>117.</sup> [489B, 489C, 489D and 489E], the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money.]

#### COMMENT.—

The term counterfeit is defined in section 28 of the Code. Circulation of counterfeit currency would cause irreparable harm to our economy. Existence of a parallel economy would be highly detrimental to the growth of the nation. It affects the society as a whole. Offences affecting the people at large are to be viewed in a different angle. In such cases, harm would be caused not to an individual or to a few individuals. The adverse impact of trafficking in counterfeit currency in a large scale would be disastrous. It would appear that the society does not cast much of a stigma on people, who deal with counterfeit currency.<sup>118.</sup> Sections 489A, 489B, 489C and 489D were introduced in order to provide more adequately for the protection of currency-notes and banknotes from forgery. Under the [IPC, 1860](#), which was passed prior to the existence of a paper currency in India, currency-notes were not protected by any special provisions, but merely by the general provisions, applying to the forgery of valuable securities. Before these sections were introduced charges for forging currency-notes had to be preferred under section 467, for uttering them under section 471, and for making or possessing counterfeit plates under section 472. The provisions of section 467 afforded sufficient means for dealing both with forgery generally and with forgery of currency-notes. But it was at times difficult to obtain a conviction under the other sections. This provision says that the prosecution is required to prove that the accused was knowingly performing any part of the process to counterfeit currency-notes. It is needless to mention that for proving the offence of conspiracy, there must be some convincing evidence to the prosecution to prove that it was pre-arranged plan of all or some of the accused either for preparing fake currency or for their circulation. Only on the basis of circumstance like some persons were found in possession of counterfeit currency-notes at or about the same time, inference cannot be drawn that all of them had engaged themselves in a conspiracy. However, if an accused is found in possession of counterfeit currency-notes, it is up to him to furnish satisfactory explanation regarding the possession. This proposition is also applicable in respect of

the material which can be used for preparing fake currency-notes and the process which can be used for making fake currency-notes. If there is no such explanation, a person found in possession of such material and counterfeit currency-notes can be convicted for offence under [section 489-A of IPC](#).<sup>119</sup>.

The object is not only to protect the economy of the country but also to provide adequate protection to currency-notes and banknotes.<sup>120</sup> The section deals not only with the complete act of counterfeiting, it also covers cases where the accused performs any part of the process of counterfeiting.<sup>121</sup>.

### **[s 489A.1] Counterfeit currency-notes and terrorism.—**

The Act 3 of 2013 introduced amendment in the [Unlawful Activities \(Prevention\) Act 1967](#) to include the act of doing damage to the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material within the purview of terrorism. Thus, the act of dealing with high quality counterfeit Indian currency-notes and coins with the intention of threatening the economic security of India is viewed as a terrorist act. (For details see UA (P) Act, 1967, as amended by Act 3 of 2013.)

### **[s 489A.2] Foreign currency.—**

The Supreme Court in *State of Kerala v Mathai Vergheese*<sup>122</sup>. held that the expression 'any currency-note' refers to all currency-notes and cannot be confined only to Indian currency. The purpose of the provisions is to maintain market respectability of the currency by assuring people that notes being offered to them are genuine and not worthless pieces of paper. The Legislature could not have intended to exclude from the protection counterfeiting of currency-notes issued by foreign States. Further, the expression 'bank-note' as used by sections 498A–498E would include a dollar bill or note because they are also issued under the authority of a State or sovereign power. This section is similar to sections 231 and 255.

### **[s 489A.3] CASES.—**

Where many fake currency-notes, hundreds of stamp and some material required for preparing fake currency-notes were allegedly recovered from room and also from person of appellant, and evidence and material was seized by police. The Court ruled out possibility of implanting the material by police for falsely implicating the accused. It was held that accused appellant liable to be convicted under [section 489-A, IPC, 1860](#).<sup>123</sup>.

<sup>116</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>117</sup>. Subs. by Act 35 of 1950, section 3 and Sch II, for "489C and 489D".

118. *Ahammed v State*, 2010 Cr LJ 1797 (Ker).
119. *Narayan Maruti Waghmode v State of Maharashtra*, 2011 Cr LJ 3318 (Bom).
120. *K Hashim v State of TN*, (2005) 1 SCC 237 [LNIND 2004 SC 1142] : AIR 2005 SC 128 [LNIND 2004 SC 1142].
121. *K Hashim v State of TN*, 2005 Cr LJ 143 : (2005) 1 SCC 237 [LNIND 2004 SC 1142] : AIR 2005 SC 128 [LNIND 2004 SC 1142].
122. *State of Kerala v Mathai Vergheese*, (1986) 4 SCC 746 [LNIND 1986 SC 461] : AIR 1987 SC 33 [LNIND 1986 SC 461] : 1987 Cr LJ 308 ; *Surinder Pal v State of Punjab*, 2009 Cr LJ 4100 (P&H), counterfeiting US dollars, accused convicted. *K Hashim v State of TN*, 2005 Cr LJ 143 : AIR 2005 SC 128 [LNIND 2004 SC 1142] : (2005) 1 SCC 237 [LNIND 2004 SC 1142] , the evidence of accomplice, the artist, provided material for corroboration of evidence, being the evidence of an accomplice, reliable. *Chuan Suba v State of Sikkim*, 2013 Cr LJ 2135 (Sik), allegation of possession of machinery to print fake notes. Conviction was held improper since the disclosure statement was not voluntary.
123. *Narayan Maruti Waghmode v State of Maharashtra*, 2011 Cr LJ 3318 (Bom); *Md Amir Hussain v State of Assam*, 2010 Cr LJ. 4201 [Gau]. See also *Roney Dubey v State of WB*, 2007 Cr LJ 4577 (Cal); *Jayeshkumar Panchal v State*, 2007 Cr LJ 2254 (Guj); *Golo Mandla Ram Rao v State of Jharkhand*, 2004 Cr LJ 1738 (Jha).

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of Currency-Notes and Bank-Notes

**[s 489B] Using as genuine, forged or counterfeit currency-notes or bank-notes.**

**[Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counter-feit currency-note or bank-note, knowing or having reason to believe the same to be forged or counter-feit, shall be punished with <sup>124</sup>[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.]**

#### COMMENT.—

This section resembles sections 239, 241 and 258. It provides against trafficking in forged or counterfeit notes. The section deals with the use of counterfeited currency-notes.<sup>125</sup>

An offence under section 489-B has the following essential ingredients:—

- (i) selling, buying or receiving from any person or otherwise trafficking currency-note or banknote;
- (ii) any forged or counterfeit currency-note or bank-note;
- (iii) knowing (or having reason to believe) that such note was forged or counterfeit.

To bring home an offence under [section 498-B, IPC, 1860](#): (a) the prosecution is to prove that the relevant currency-note or banknote was forged or counterfeit; (b) that the accused sold to or received from, some person, or trafficked in, or used as genuine the aforesaid currency-note or banknote; (c) that when the accused did so he had knowledge or reason to believe about its being forged or counterfeit. In order to sustain the conviction of an accused, the prosecution has not only to prove that he had the possession of counterfeit note, having reason to believe it as such, but also to prove circumstances which lead clearly, indubitably and irresistibly to his intention to use/circulate the notes in the public. Such intention can be proved by a collateral circumstance that he had palmed off such notes before, or that he was in possession of such notes in such large a number, that his possession for any other purpose was inexplicable.<sup>126</sup> Merely because the petitioner had been found to be in possession of the counterfeit notes of similar denomination of the same series and numbers closer to the numbers of the notes detected by the bank, it would be difficult to accept that the notes have been used or circulated by the applicant.<sup>127</sup> Mere possession does not necessarily indicate that there was mal-intention or intention to use. Intention to use the counterfeit currency-notes, being an essential ingredient of the offence under [sections 489B and 489C of IPC](#), prosecution is, no doubt, saddled with the liability to establish such intention or attempt on the part of the appellant/accused to use such counterfeit notes. On careful scrutiny of the evidence on record there was no evidence,

whatsoever, which suggests that the appellant had made any effort to use the counterfeit currency-notes. Since evidence on that issue is lacking manifestly, hence, the conviction of the appellant under [section 489B of IPC](#) cannot be sustained.<sup>128.</sup>

#### **[s 489B.1] Burden of proof.—**

Under [section 489B of IPC, 1860](#), the burden is on the prosecution to prove that at the time when the accused was passing the counterfeit notes, he knew that they were forged one and the mere possession of such notes by him does not shift the burden of the accused to prove his innocent possession of such notes. The knowledge or reason to believe that the note was forged has to be proved to fix the liability under [sections 489B and 489C of IPC](#). In the case of *Golo Mandla Ram Rao v State of Jharkhand*,<sup>129.</sup> the counterfeit currency-notes and incriminating articles were recovered from the possession of the accused and only the counterfeit coins from the possession of the co-accused.

#### **[s 489B.2] Information regarding the involvement of the accused admissible.—**

Where on the basis of information regarding the source of counterfeit currency notes accused, who supplied it and subsequently all the others involved in the racket were arrested, though there were no recovery of notes from the intermediaries, the information was held admissible as the police were not aware of the other accused, who were involved in the offence.<sup>130.</sup>

<sup>124.</sup> Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>125.</sup> *K Hashim v State of TN*, [2005 Cr LJ 143](#) : [AIR 2005 SC 128](#) [[LNIND 2004 SC 1142](#)] : (2005) 1 [SCC 237](#) [[LNIND 2004 SC 1142](#)].

<sup>126.</sup> *Kiran Kumar K Khanda v State of Maharashtra*, [2011 Cr LJ 2748](#) (Bom).

<sup>127.</sup> *Aditya Yadav v State*, [2013 Cr LJ 3352](#) (Bom).

<sup>128.</sup> *Ashu Mondal v State of WB*, [2013 Cr LJ 715](#) (Cal); *Tej Pratap Singh v State*, [2012 Cr LJ 486](#) (Del).

<sup>129.</sup> *Golo Mandla Ram Rao v State of Jharkhand*, [2004 Cr LJ 1738](#) : 2004 AIR Jhar HCR 453.

<sup>130.</sup> *Mehboob Ali v State of Rajasthan*, [2015 \(4\) Crimes 357](#) (SC) : (2016) 14 [SCC 640](#) [[LNIND 2015 SC 630](#)].

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of Currency-Notes and Bank-Notes

**[s 489C] Possession of forged or counterfeit currency-notes or bank-notes.**

**[Whoever has in his possession any forged or counterfeit currency-note or banknote, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.]**

#### COMMENT.—

The ingredients which are required to constitute an offence under section 489C are as follows:

- (1) The note in question is a currency-note or bank-note;
- (2) Such note was forged or counterfeited;
- (3) The accused was in possession of the currency-note or bank-note;
- (4) The accused intended to use the same as genuine;
- (5) The accused knew or had reason to believe the note to be forged.<sup>131.</sup>

This section resembles sections 242, 243 and 257. It deals with possession of a forged or counterfeit currency-note or banknote. The mere possession of a forged note is not an offence. It is not only necessary to prove that the accused was in possession of the forged note; but it should be further established that (1) at the time of this possession he knew the note to be forged or had reason to believe it to be so, and (2) he intended to use it as genuine. The onus lies on the prosecution to prove circumstances which lead clearly, indubitably and irresistibly to the inference that the accused had the intention to foist the notes on the public.<sup>132.</sup> Possession and knowledge that the currency-notes in question were counterfeit are both necessary. The section is not confined to Indian currency-notes alone.<sup>133.</sup> Possession of a large number of counterfeit currency-notes may itself justify drawing up of a presumption that the intention of the accused was to use them as genuine or that they may be used as genuine within the meaning of [section 489C, IPC, 1860](#). Thus, where the accused led the searching officer to his Press premises and after digging the floor of it brought out a box containing many bundles of counterfeit currency-notes or where he produced 20 bundles of counterfeit currency-notes from his satchet, it was held an offence under [section 489C, IPC](#), was made out.<sup>134.</sup> This is, however, not to say that such a presumption can always be drawn from the mere fact of possession of a large bundle of counterfeit currency-notes by the accused. Thus, where the accused while trying to alter a two-rupee counterfeit note was caught and on search of his person 99 more such counterfeit notes were recovered but the accused claimed in course of his



examination that he got these notes by selling three quintals of tamarind to an unknown person and that he had no knowledge that they were counterfeit till his interrogation by the police and the notes too were not of such description that a mere look at them will convince anyone that they were counterfeit, it was held that the accused could not be convicted under [sections 389B and 389C, IPC](#), in the absence of any evidence or circumstance showing that he had knowledge that the notes were counterfeit notes. In this case the accused was not even asked in his examination under [section 342, Cr PC, 1973](#) (now section 313) if he knew the notes to be counterfeit.<sup>135.</sup>

In *Umashankar v State of Chhatisgarh*,<sup>136.</sup> the Supreme Court examined the facts of the case and principle involved therein as follows.<sup>137.</sup>

A perusal of the provisions, shows that *mens rea* of offences under Section 489B and 489C is, "knowing or having reasons to believe the currency-notes or bank-notes are forged or counterfeit". Without the afore-mentioned *mens rea*, selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency-notes or bank-notes is not enough to constitute offence under [Section 489B of IPC](#). So also possessing or even intending to use any forged or counterfeit currency-notes or bank-notes is not sufficient to make out a case under Section 489C in the absence of *mens rea*, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite *mens rea*. The High Court, however, completely missed this aspect. The learned trial Judge on the basis of the evidence of [some prosecution witnesses] that they were able to make out that currency note alleged to have been given to [one of them] was fake "presumed" such a *mens rea*. On the date of the incident, the appellant was said to be 18 years old student. On the facts of this case the presumption drawn by the trial Court is not warranted under [Section 4 of the Evidence Act](#). Further, it is also not shown that any specific question with regard to the currency-notes being fake or counterfeit was put to the appellant in his examination under [Section 313 of the Criminal Procedure Code](#). On these facts, we have no option but to hold that the charges framed under Sections 489B and 489C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under [Sections 489B and 489C of IPC](#) and acquit him of the said charges.<sup>138.</sup>

#### **[s 489C.1] Burden of proof.—**

In order to uphold conviction under [section 489C of IPC, 1860](#), intention to use counterfeit currency-notes as genuine, is also to be proved beyond reasonable doubt. Since the burden lies on the prosecution to prove the possession, knowledge and intention to use the currency-notes, it is also burden of the prosecution to establish the circumstances which lead clearly and irresistibly to the inference that the accused had intention to pass the currency-notes to the public. When a large number of counterfeit notes are recovered from the accused, in absence of any reasonable explanation tendered by the accused, this case must give rise to the presumption that possession of such notes was for trafficking in currency-notes. That presumption, no doubt, is a presumption of fact, which can be drawn from the circumstances of the case. The fact that the accused was found in possession of a large number of notes gives rise to inference that it might be used as genuine.<sup>139.</sup>

131. *Panna Lal Gupta v State of Sikkim*, 2010 Cr LJ 825 (Sik); See also *Karunakaran Nadar v State of Kerala*, 2000 Cr LJ 3748 (Ker).
132. *Bur Singh*, (1930) 11 Lah 555. *Md Amir Hussain v State of Assam*, 2010 Cr LJ 4201 [Gau].
133. *K Hashim v State of TN*, 2005 Cr LJ 143 : AIR 2005 SC 128 [LNIND 2004 SC 1142] : (2005) 1 SCC 237 [LNIND 2004 SC 1142] .
134. *State of Karnataka v KS Ramdas*, 1976 Cr LJ 228 (Kant). See also *Ashu Mondal v State of WB*, 2013 Cr LJ 715 (Cal), recovery of large number of counterfeit notes gives rise to presumption that possession was for trafficking in currency notes. Conviction under section 489C upheld. *Chuwan Suba v State of Sikkim*, 2013 Cr LJ 2135 (Sik), conviction was held improper since the disclosure statement is found not voluntary. *Tej Pratap Singh v State*, 2012 Cr LJ 486 (Del), difference in number of currency, held not material, conviction was held proper. *Prabhakar Narayan Patlola v State of Maharashtra*, 2011 Cr LJ 738 (Bom); *Kurukshetra Sena v State of Chhattisgarh*, 2011 Cr LJ 2493 ; *Inthiyas Ahmed v State*, 2011 Cr LJ 4802 (Kant), prosecution has not proved that the notes seized from the possession of the accused were the same notes which were subjected for examination and further that on examination they were found to be counterfeit notes. Accused acquitted.
135. *M Mammutti v State of Karnataka*, 1979 Cr LJ 1383 (SC). **Followed** in *Mohan Lal Sarma v State of WP*, 1990 Cr LJ 215 (Cal), where the court added that mere possession does not shift the burden to the accused. The prosecution has to prove the presence of the type of *mens rea* required by these sections. *Vijayan v State of Kerala*, 2002 Cr LJ 187 (Ker), the informant stated that even at first blush he was convinced that the notes in the possession of the accused were counterfeit as there was difference in colour. The accused held liable under the section. *Abdul Majeed v State of Maharashtra*, 2002 Cr LJ 720 (Bom), the notes in question did not carry any sign of being counterfeit, the accused was an ordinary person, mere possession by him did not create a presumption of guilty knowledge. *Mohammed Yasin v State of UP*, 1997 Cr LJ 3188 (All), a note of which two parts were pasted together was presented to a shopkeeper. He suspected genuineness and consulted another shopkeeper for guidance. Counterfeiting was so tactful that the accused could not detect it. He did not run away. He remained at the shop till police arrived. He had no other note. Ingredients of the offence not made out.
136. *Umashankar v State of Chhattisgarh*, AIR 2001 SC 3074 [LNIND 2001 SC 2237] : 2001 Cr LJ 4696 .
137. *Ibid* at p 3075.
138. Citing *M Mammutti v State of Karnataka*, AIR 1979 SC 1705 [LNIND 1979 SC 125] : 1979 Cr LJ 1383 .
139. *Ashu Mondal v State of WB*, 2013 Cr LJ 715 (Cal).

# THE INDIAN PENAL CODE

## CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

### Of Currency-Notes and Bank-Notes

[s 489D] Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.

[Whoever makes, or performs, any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with <sup>140</sup>[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.]

#### COMMENT.—

This section is analogous to sections 233, 234, 256, 257 and 485.

Where there is no evidence to show that the printing machine found on the land of the accused had any connection with the printing of the counterfeit notes found in the possession of the accused, he could not be held guilty under [section 489, IPC, 1860](#).<sup>141</sup> It is not necessary that the machinery for counterfeiting found in possession of the accused should be the whole set required for counterfeiting.<sup>142</sup>

<sup>140</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>141</sup>. *State of Karnataka v Ramdas*, *Supra*.

<sup>142</sup>. *K Hashim v State of TN*, 2005 Cr LJ 143 : AIR 2005 SC 128 [LNIND 2004 SC 1142] : (2005) 1 SCC 237 [LNIND 2004 SC 1142] .

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of Currency-Notes and Bank-Notes

**[s 489E] Making or using documents resembling currency-notes or bank-notes.**

- (1) [Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note shall be punished with fine which may extend to one hundred rupees.**
- (2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police-officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.**
- (3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that person caused the document to be made.]**

#### COMMENT.—

This section was introduced by Act VI of 1943 because photo prints and other reproductions of currency-notes and banknotes, though printed for innocent purposes, had passed into circulation in a number of cases and it was considered undesirable that in a country like India with a large mass of illiterate and ignorant persons such reproductions should be permitted to go unchecked before they menaced the safety of the currency.

While the counterfeiting of any currency-note or banknote constituted a criminal offence under section 489A read with section 28, there was no legal provision prohibiting the reproduction, or the production of imitations, of currency-notes and banknotes for such purposes as advertisement and the like where there was no intention to practise deception on any one, nor even a knowledge that deception was likely to be practised with the help of imitations.<sup>143</sup> There is no material on the record to show that the xerox machine, the voltage stabiliser, the blank papers and the paper containing some impression of the Indian currency-note belonged to the convict. Mere fact that they were seized is not enough. Therefore, the question of the convict becoming liable for possession of the aforesaid articles does not arise.<sup>144</sup>

143. *Statement of Objects and Reasons, Gaz of India, 1943, Part V, p 56, dated 10 February 1943.*

144. *Roney Dubey v State of WB, 2007 Cr LJ 4577 (Cal).*

## THE INDIAN PENAL CODE

### CHAPTER XIX OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

The authors of the Code observe:

We agree with the great body of Jurists in thinking that in general a mere breach of contract ought not to be an offence but only to be the subject of a civil action.

To this general rule there are, however, some exceptions. Some breaches of contract are very likely to cause evil such as no damages or only very high damages can repair, and are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. Such breaches of contract are, we conceive, proper subjects for penal Legislation.<sup>1</sup>

**[s 490] *[Repealed]***

<sup>2</sup>[\* \* \*].

1. The Works of Lord Macaulay - Note P.

2. Omitted by Act 3 of 1925.

## THE INDIAN PENAL CODE

### CHAPTER XIX OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

The authors of the Code observe:

We agree with the great body of Jurists in thinking that in general a mere breach of contract ought not to be an offence but only to be the subject of a civil action.

To this general rule there are, however, some exceptions. Some breaches of contract are very likely to cause evil such as no damages or only very high damages can repair, and are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. Such breaches of contract are, we conceive, proper subjects for penal Legislation.<sup>1.</sup>

#### **[s 491] Breach of contract to attend on and supply wants of helpless person.**

**Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.**

#### **COMMENT.—**

**Object.**—The authors of the Code say:

We also think that persons who contract to take care of infants of the sick and of the helpless, lay themselves under an obligation of a very peculiar kind, and may with propriety be punished if they omit to discharge their duty. The misery and distress which their neglect may cause is such as the largest pecuniary payment would not repair; they generally come from the lower ranks of life, and would be unable to pay anything. We, therefore, propose to add to this class of contracts the sanction of the penal law.<sup>3.</sup>

#### **[s 491.1] Ingredients.—This section requires:—**

1. Binding of a person by a lawful contract.
2. Such contract must be to attend on or to supply the wants of a person who is helpless or incapable of providing for his own safety or of supplying his own wants by reason of
  - (i) youth; or
  - (ii) unsoundness of mind; or
  - (iii) disease; or
  - (iv) bodily weakness.
3. Voluntary omission to perform the contract by the person bound by it.

Under this section it is not the breach of contract towards the other party to the contract that is to be regarded, but the breach of the legal obligation towards the

incapable person, which had been accepted and transferred by the contract.

**[s 491.2] Ordinary servants do not come within this section.—**

The accused, a cook, on a morning whilst the complainant's wife was ill and unable to supply her wants, left his service without warning or permission. It was alleged that the illness of the complainant's wife was aggravated thereby. It was held that the accused was engaged only as an ordinary cook to a family, and was not bound to attend on, or to supply the wants of, any helpless person, and that, therefore, this section did not apply.<sup>4</sup>

1. The Works of Lord Macaulay - Note P.

3. The Works of Lord Macaulay - Note P.

4. *Vithu*, (1892) (Unrep) CrC 608.



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**[s 492] *[Repealed]***

<sup>5</sup>[\* \* \*].

1. The Works of Lord Macaulay - Note P.

5. Omitted by Act 3 of 1925.

## THE INDIAN PENAL CODE

### CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

**[s 493] Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.**

**Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

#### COMMENT.—

Upon perusal of [section 493 of the IPC, 1860](#) to establish that a person has committed an offence under the said section, it must be established that a person had deceitfully induced a belief to a woman, who is not lawfully married to him, that she is a lawfully married wife of that person and thereupon she should cohabit or should have had sexual intercourse with that person. Looking at the afore-stated section, it is clear that the accused must induce a woman, who is not lawfully married to him, to believe that he is married to her and as a result of the afore-stated representation, the woman should believe that she was lawfully married to him and there should be cohabitation or sexual intercourse as a result of the deception. The essence of an offence under [section 493 IPC, 1860](#) is, therefore, practice of deception by a man on a woman as a consequence of which the woman is led to believe that she is lawfully married to him although she is not and then make her cohabit with him.<sup>1</sup> The offence under this section may also be punished as rape under section 375, clause (4).<sup>2</sup>

#### [s 493.1] Ingredients.—

The section contains two ingredients:—

- (1) Deceit causing a false belief in the existence of a lawful marriage.
- (2) Cohabitation or sexual intercourse with the person causing such belief.

#### [s 493.2] Proof of marriage.—

[Section 493 IPC, 1860](#) do not presuppose a marriage between the accused and the victim necessarily by following a ritual or marriage by customary ceremony. What has been clearly laid down and emphasised is that there should be an inducement of belief in the woman that she is lawfully married to the accused/ appellant and the inducement of belief of a lawful marriage cannot be interpreted so as to mean or infer that the marriage necessarily had to be in accordance with any custom or ritual or under the [Special Marriage Act, 1954](#). If the evidence on record indicate inducement of a belief in any manner in the woman which cannot possibly be enlisted but from which it can reasonably be inferred by ordinary prudence that she is a lawfully married wife of the man accused of an offence under [section 493 IPC, 1860](#) the same will have to be treated as sufficient material to bring home the guilt under [section 493 IPC, 1860](#).

Interpretation of the section in any other manner including an assertion that the marriage should have been performed by customary rituals or in similar manner only in order to establish that a belief of marriage had been induced, is bound to frustrate the very object and purpose of the provision for which it has been incorporated in the [IPC, 1860](#) which is clearly to prevent the deceitful act of a man inducing the belief of a lawful marriage for the purpose of cohabitation merely to satisfy his lust for sexual pleasure.<sup>3</sup>

Where a man and woman exchanged garlands, the man promising to marry formally, and had sex as a result of which the woman became pregnant, it was held that the exchange of garlands did not amount to falsely inducing the woman to believe that she was married to the man. Section 493 was not attracted.<sup>4</sup> Where a woman married a man with full knowledge that he was already a married man and there was no proof that the man falsely induced her to believe anything, it was held that the ingredients of the offence under section 493 were not made out.<sup>5</sup>

### **[s 493.3] Rape and section 493.—**

In a case, the complainant made the allegation of fraud played by the petitioner by suppressing the fact of earlier marriage and the alleged physical relationship were under a belief that she was a legally wedded wife of the petitioner. The Court held that a bare perusal of provision of [sections 493 and 495 of IPC, 1860](#) shows that the bodily relationship or sexual intercourse by a husband with his second wife falls under the category of offence under [sections 493 and 495 of IPC, 1860](#) and it cannot be treated as rape as defined in [section 375 of IPC, 1860](#). It is an independent offence, the cognizance of which can be taken by the Court on the basis of complaint filed by the complainant herself, therefore, the offence punishable under [section 376 of IPC, 1860](#) is not made out as the alleged act of sexual intercourse by the petitioner with the complainant may fall within the category of [sections 493 and 495 of IPC, 1860](#) but not in the category of rape as defined in [section 375 of IPC, 1860](#) and made punishable under [section 376 of IPC](#); therefore, the cognizance of [section 376 of IPC, 1860](#) is against the settled principles of law.<sup>6</sup>

### **[s 493.4] Cohabitation during the operation of divorce decree, set aside later.—**

The fact that the marriage between the appellant and the respondent was dissolved by an *ex parte* decree and while that order was in force, the respondent husband continued sexual relationship with the appellant, until he married another woman. Subsequently the *ex parte* decree was set aside by the Court. The Supreme Court held that the allegation that there was deception on the part of the husband for having sexual relationship and that constituted an offence under [section 493 of IPC, 1860](#) would not arise for the reason that there was subsistence of valid marriage during this period as the *ex parte* decree was set aside later.<sup>7</sup>

1. *Ram Chandra Bhagat v State of Jharkhand*, [2013 \(1\) SCC 562 \[LNIND 2010 SC 1138\]](#) .

2. *Kartick Kundu*, 1967 Cr LJ 1411 (Cal). *Sammun v State of MP*, 1988 Cr LJ 498 (MP) where the court added that the accused promising to marry the woman and passing her to others as his wife does not come under this section. *Moideenkutty Haji v Kunhikoya*, 1987 Cr LJ 1106 (Ker–FB), a woman, who knows that the man whom she is permitting sex is not married to him, cannot have recourse to this section to punish him.
3. *Ram Chandra Bhagat v State of Jharkhand*, 2013 (1) SCC 562 [LNIND 2010 SC 1138] . The three-Judge Bench accepted the view of Gyan Sudha Mishra J, in the referral order.
4. *Amruta Gadtia v Trilochan Pradhan*, 1993 Cr LJ 1022 (Ori).
5. *Saurava Barik v Gouri Kaudi*, 1994 Cr LJ 440 . The court **referred** to *Raghunath Padhy v State*, AIR 1954 Ori. 198 [LNIND 1954 ORI 28] . *Akhaya Kumar v State or Orissa*, 1998 Cr LJ 1757 (Ori), the accused and prosecutrix were in love with each other for several years. The accused married another and still continued to cohabit with the prosecutrix on false pretences of marrying her. The prosecutrix was aware of this fact. Hence, there was no deception. Framing of charge against the accused was not proper. *Mana Begum v Jula Mohd*, 1998 Cr LJ 3244 (Ori), evidence of the victim that the accused on promise to marry her had sex with her. The court said that ingredients of the offence under s 493 were not made out.
6. *Mahesh Kumar Dhawan v State of MP*, 2012 Cr LJ 1639 .
7. *Ravinder Kaur v Anil Kumar*, AIR 2015 SC 2447 [LNIND 2015 SC 268] : (2015) 8 SCC 286 [LNIND 2015 SC 268] .

# THE INDIAN PENAL CODE

## CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

### [s 494] Marrying again during lifetime of husband or wife.

Whoever, having a husband or wife living, marries <sup>1</sup> in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, <sup>2</sup> shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception<sup>3</sup>.—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.

#### State Amendment

**Andhra Pradesh.**—*In A.P. the offence is cognizable, non-bailable, triable by the Magistrate of the first class and non-compoundable vide A.P. Act No. 3 of 1992, Section 2 (w.e.f. 15-2-1992).*

### COMMENT.—

This section punishes the offence known to the English law as bigamy.

#### [s 494.1] Scope.—

The section does not apply to Mohammedan males, who are allowed to marry more than one wife, but it applies to Mohammedan females, and to Hindus, Christians<sup>8</sup>. and Parsis<sup>9</sup>. of either sex.

#### [s 494.2] Ingredients.—

Section 494, IPC, 1860, *inter alia*, requires the following ingredients to be satisfied, namely,

- (i) the accused must have contracted first marriage;
- (ii) he must have married again;
- (iii) the first marriage must be subsisting; and
- (iv) the spouse must be living.<sup>10</sup>

**1. 'Having a husband or wife living, marries, etc'.—**The validity of a marriage in the case of Mohammedans and Jews will be determined in accordance with their religious usages: in the case of Native Christians, by Act XV of 1872, in the case of Parsis, by Act III of 1936; and in the case of Hindus, Buddhists, Sikhs and Jains, by Act XXV of 1955. The validity of a marriage solemnised under the [Special Marriage Act, 1954](#) will be determined by its provisions.<sup>11.</sup>

There must be at the time of the second marriage a previous valid and subsisting marriage.<sup>12.</sup> If the first marriage is not a valid marriage, no offence is committed by contracting a second marriage.<sup>13.</sup>

Divorce dissolves a valid marriage, and the parties obtaining such dissolution can re-marry.<sup>14.</sup>

A Mohammedan woman marrying within the period of her *iddat* (the period of four months which a divorced wife was to observe after divorce before re-marrying) is not guilty of bigamy.<sup>15.</sup>

### [s 494.3] Second marriage under [Special Marriage Act, 1954](#).—

*SI Jafri J*, of the Allahabad High Court observed:<sup>16.</sup>

Notwithstanding the fact that the personal law permits a muslim male to contract four marriages, if a second marriage is contracted under the [Special Marriage Act 1954](#) *vis-a-vis* the fact that he has a legally wedded wife who has been married to him under the Mohammedan law, s. 494 has to claw at the erring male ... Mohammedan law does not take preference over [Special Marriage Act 1954](#) ... There being no saving clause for the applicant to purge him of the charges u/s. 494 ..., the applicant is liable to be punished under [this section].

**2. 'Marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife'.—**The Supreme Court has observed that *prima facie*, the expression "whoever marries" must mean "whoever marries validly" or "whoever ... marries and whose marriage is a valid one". If the marriage is not a valid one according to the law applicable to the parties no question of its being void by reason of its taking place during the life of the wife or the husband of the person arises. If the marriage is not a valid marriage, it is no marriage in the eyes of the law.<sup>17.</sup> The Supreme Court in another case had held that in a bigamy case, the second marriage as a fact, that is to say, the essential ceremonies constituting it, must be proved.<sup>18.</sup> Admission of marriage by the accused is not evidence of it for the purposes of proving marriage in an adultery or bigamy case.<sup>19.</sup> Thus, where the second [Hindu marriage](#) was not proved by showing *saptapadi* and *homam*, the mere production of a marriage certificate under [section 16 of the Special Marriage Act, 1954](#) would not be sufficient to prove that the second marriage was performed validly by performing all the essential ceremonies of a valid marriage. The mere fact of subsequent registration of the second marriage does not prove the validity of second marriage.<sup>20.</sup> Merely because the second marriage even if performed by performing all the essential ceremonies turns out to be void by virtue of [section 17 of the Hindu Marriage Act, 1955](#), it cannot be said that [section 494, IPC, 1860](#) will not be attracted.<sup>21.</sup> If the second marriage was not proved to have been validly performed by observing essential ceremonies and customs in the community, the conviction under [section 494, IPC, 1860](#) could not be maintained.<sup>22.</sup> Perhaps the Courts in India were obliged to take the view they have taken because of the word "solemnised" occurring in [section 17 of the Hindu Marriage Act, 1955](#) and the inhibition contained in the proviso to [section 50 of the Indian Evidence Act, 1972](#) which forbids taking into consideration even the opinion of a person with special means of

knowledge to show that the two persons were always received and treated as husband and wife by their friends and relatives so far offences under sections 494, 495, etc., IPC, 1860 are concerned.<sup>23.</sup>

Thus, if one deliberately keeps a small lacuna, e.g., instead of taking the seven steps (*saptapadi*), takes only six steps while celebrating the second marriage, one can easily avoid the penalty prescribed by these sections even though one virtually ruins the lives of two girls. If we are to effectively root out polygamy from this country, we must amend s. 494, IPC, and s. 17 of the Hindu Marriage Act, in such a way that anyone who goes through a form of marriage during the lifetime of his or her spouse will come within the mischief of the offence of bigamy. At the same time we should also delete from the proviso to s. 50 of the Indian Evidence Act, the last portion which says 'or in prosecutions u/s. 494, 495, 497 or 498 of the Indian Penal Code'. The National Committee on the Status of Women too made, more or less, similar recommendations in its report. It is also felt that ss. 493, 494, 495 and 496, IPC, which have an element of cheating in them and affect unsophisticated rural women more than women in urban areas should be made cognizable so that these poor women could get justice without being required to engage lawyers at their own cost.<sup>24.</sup>

The Courts are also changing their viewpoint. In *Indu Bhagya Natekar v Bhagya Pandurang Natekar*,<sup>25.</sup> it was held that it is not correct to say that in every case of bigamy, unless the second marriage can be proved by bringing in the evidence of the performance of ceremonies itself, a conviction under section 494 is virtually impossible. The accused can be convicted even if there is other reliable evidence to establish the charge.

Where in a particular community 'saptapadi' was not an essential ceremony, the provisions of section 7-A of the Hindu Marriage Act, 1955 applied and, therefore, the performance of other ceremonies prevalent in the community constituted a valid marriage.<sup>26.</sup>

Under the provisions of the Indian Christian Marriage Act (XV of 1872), the first accused, who was a Roman Catholic Indian Christian, married the complainant, who was a Protestant, in a Protestant Church, the ceremony being performed by a Protestant Pastor, and subsequently, after obtaining a release deed from her, he married the second accused in a Roman Catholic Church, the ceremony being performed by a Roman Catholic priest. It was held that the first accused had committed the offence of bigamy punishable under this section. The release deed executed by the complainant did not operate as a dissolution of the marriage between the first accused and herself. The marriage between the first accused and the complainant was a legal and valid marriage and, as it was subsisting when the first accused married the second accused, the marriage of the first accused with the second accused was void by reason of its taking place during the life of the complainant.<sup>27.</sup>

Good faith and mistake of law are no defences to a charge of bigamy.<sup>28.</sup>

#### **[s 494.4] Conversion from Hinduism.—**

A married Hindu person contracted second marriage after embracing Islam. The Supreme Court said that despite his conversion he was guilty of the offence under section 17 of the Hindu Marriage Act, 1955 read with section 494, IPC, 1860 since mere conversion did not automatically dissolve his first marriage.<sup>29.</sup> The Court followed its own decision in *Sarla Mudgal v UOI*,<sup>30.</sup> which was to the effect that a Hindu husband who had, after conversion to Islam, contracted a second marriage without dissolving his first marriage was guilty of the offence under section 494.

### **[s 494.5] Ex parte divorce.—**

The accused husband entered into second marriage after obtaining *ex parte* divorce against his first wife. The Court said that he could not possibly be convicted under the section, even if the *ex parte* divorce is subsequently set aside. Criminal proceeding against the husband was quashed, it being only an exercise in futility.<sup>31.</sup>

### **[s 494.6] Custom of second marriage in the community.—**

A person was not allowed to be prosecuted under the section because of a custom in the community. The parties belonged to a scheduled tribe. Their marriage was governed by the customs and usages applicable to the tribe. There was no allegation in the complaint nor a proof of it that there was a custom of monogamy in the community.<sup>32.</sup>

**3. Exception.—**The Exception lays down three conditions:—

1. Continual absence of one of the parties for the space of seven years;
2. The absent spouse not having been heard of by the other party as being alive within that time; and
3. The party marrying must inform the person with whom he or she marries of the above fact.

### **[s 494.7] Locus standi to file complaint.—**

According to [section 198 of Cr PC, 1973](#), no Court shall take cognizance of an offence punishable under Chapter XX of the [IPC \(45 of 1860\)](#) except upon a complaint made by some person aggrieved by the offence. Where the person aggrieved by an offence punishable under [sections 494 or 495 of the IPC \(45 of 1860\)](#) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, (with the leave of the Court) or by any other person related to her by blood, marriage or adoption.

### **[s 494.8] Complaint by Second wife.—**

Section 494 is intended to achieve laudable object of monogamy. This object can be achieved only by expanding the meaning of the phrase "aggrieved person". Having regard to the scope, purpose, context and object of enacting [section 494 IPC, 1860](#) and also the prevailing practices in the society sought to be curbed by [section 494 IPC, 1860](#) there is no manner of doubt that the second wife should be an aggrieved person. Until the declaration contemplated by [section 11 of the Hindu Marriage Act, 1955](#) is made by a competent Court, the woman with whom second marriage is solemnised continues to be the wife within the meaning of [s 494 IPC](#) and would be entitled to maintain a complaint against her husband.<sup>33.</sup>

### **[s 494.9] Police report.—**



In the case of *Ushaben v Kishorbhai Chunilal Talpada*<sup>34, 35</sup>, taking note of sub-section (4) of [section 155, Cr PC, 1973](#) the Apex Court held that if a complaint contains the allegation about commission of offences both under [section 498-A of the IPC, 1860](#) as well as [section 494 of the IPC, 1860](#) the Court can take cognizance thereof even on a police report. The bar under section 198 would not be applicable as complaint lodged before police for offence under [section 494 IPC, 1860](#) also related to other cognizable offences and if police files a charge-sheet, the Court can take cognizance also of offence under section 494 along with other cognizable offences by virtue of [section 155\(4\) of the Cr PC, 1973](#).<sup>36</sup>

#### **[s 494.10] Jurisdiction.—**

According to [section 182\(2\) of the Cr PC, 1973](#) any offence punishable under [sections 494 or 495 of the IPC \(45 of 1860\)](#), may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage or the wife by the first marriage has taken up permanent residence after the commission of the offence.<sup>37</sup>

#### **[s 494.11] Divorce in foreign country.—**

The marriage of the accused with the complainant was dissolved by a decree of divorce granted by a District Court in Sweden. The marriage of the accused with another lady after expiry of the period of appeal was held to be not an offence under the section.<sup>38</sup>

8. Act XV of 1872.

9. Act III of 1936.

10. *Pashaura Singh v State of Punjab*, AIR 2010 SC 922 [LNIND 2009 SC 1988] : 2010 Cr LJ 875 (SC).

11. Act XLIII of 1954.

12. *Padi v State*, AIR 1963 HP 16 [LNIND 1962 HP 8] .

13. *Chadwick*, (1847) 11 QB 173 , 205.

14. Where without granting divorce the court passed orders relieving the physically weak wife from the burden of the husband's sex demands and at the request of the wife permitted him to take another wife; that was held to be wrong. *Santosh Kumari v Surjit Singh*, AIR 1990 HP 77 [LNIND 1989 HP 19] : 1990 Cr LJ 1012 .

15. *Abdul Ghani v Azizul Huq*, (1911) 39 Cal 409 .

16. *Anwar Ahmed v State of UP*, 1991 Cr LJ 717 at 719. *Radhika Sameena v SHO Habeebnagar PS*, 1997 Cr LJ 1655 (AP), a Muslim entered into second marriage under the [Special Marriage Act, 1954](#). He was liable to be prosecuted for the offence of bigamy.

17. *Bhaurao*, (1965) 67 Bom LR 423 (SC). For a critical examination of such cases, see MP Singh, *Bigamy : A Conjecture for Deconstruction*, (1988) 30 J ILI 225.
18. Proof must be by cogent evidence. The mere fact of living together as husband and wife or of some letters on the point would not do. Religious ceremony of *saptapadi* also not proved. *Revanasiddaswamy HM v State of Karnataka*, 1990 Cr LJ 1001 (Kant), no specific allegation that *saptapadi* was not required in the community. Second marriage not proved. *Santi Deb Berma v Kanchan Prava Devi*, AIR 1991 SC 816 : 1991 Cr LJ 660 .
19. *Kanwal Ram*, AIR 1966 SC 614 [LNIND 1965 SC 198] .
20. *Baby Kar v Ram Rati*, 1975 Cr LJ 836 (Cal); see also *Chandra Bahadur*, 1978 Cr LJ 942 (Sikkim).
21. *Gopal Lal v State of Rajasthan*, 1979 Cr LJ 652 (SC).
22. *L Obulamma*, 1979 Cr LJ 849 (SC). Acting upon these cases in *Kashiram v Somvati*, 1992 Cr LJ 760 , the MP High Court found evidence of second formally valid marriage, but the earlier one was performed while the accused was a child, lesser sentence was awarded and the parents who arranged the second marriage were not awarded jail term **citing**, *Bhunda Sukru v Chetram*, 1976 MPLJ 600 [LNIND 1975 MP 112] : 1977 Cr LJ 134 ; and *Priya Bala v Suresh Chandra*, AIR 1971 SC 1153 [LNIND 1971 SC 163] : 1971 Cr LJ 939 . Where the second marriage was performed according to the Arya Samaj Custom and it was pleaded that accordingly only three and a half-rounds of sacred fire were enough to complete the marriage, it was held that without *saptapadi* the marriage was not complete; *Urmila v State of UP*, 1994 Cr LJ 2910 (All). Where there was no proof of performance of necessary ceremonies in the second marriage, it was held that conviction for bigamy was not permissible and the accused could not be punished for attempt to commit bigamy, *Subir Kumar Kundu v State of WB*, 1992 Cr LJ 1502 (Cal). *D Vijyalakshmi v D Sanjeeva Reddy*, 2001 Cr LJ 1583 , the first and second marriages should be proved to have been performed according to the legal or customary requirements applicable to the caste or community. The Andhra Pradesh State Amendment which has been approved by the President and which makes the offence cognizable would prevail over the Central Legislation in case of conflict. *P Satyanarayana v P Mallaiah*, 1997 Cr LJ 211 : (1996) 6 SCC 122 , the husband admitted second marriage after 10 years of desertion by his wife. The court said that the prosecution was not absolved of its burden of proving that the second wife was taken after solemnising due ceremonies of **Hindu marriage**. *Manju Ram Kalita v State of Assam*, (2009) 13 SCC 330 [LNIND 2009 SC 1363] , concurrent finding of three courts below of the existence of second marriage, the Supreme Court refused to interfere in such finding at the fourth place, and also not in the punishment awarded. *Purandar Sahoo v Golapi Sahoo*, (2007) 15 SCC 696 , disputes between man and wife, the latter left and lived with parents for 14 years, complaint of second marriage by the husband about four years ago from the date of complaint, prosecution not successful because neither there was any good proof of a second marriage, nor any explanation of four years' silence. *Manju Ram Kalita v State of Assam*, (2009) 13 SCC 330 [LNIND 2009 SC 1363] , petty quarrels could not be termed as "cruelty".
23. R Deb, *Offences Against Women*, 1985 Cr LJ, Journal portion, pp 9–16 (at p 11).
24. *Ibid*.
25. *Indu Bhagya Natekar v Bhagya Pandurang Natekar*, 1992 Cr LJ 601 (Bom).
26. *S Nagalingam v Sivagami*, AIR 2001 SC 3576 [LNIND 2001 SC 1898] , the accused being already a married man at the time he was convicted of the offence under the section. The matter was **remanded** to the trial court for proper punishment. *Manju Devi v State of Bihar*, 2000 Cr LJ 3382 (Pat), mere exchange of garlands could not take the place of a ceremony unless there was a custom to that effect. *Manjula v Mani*, 1998 Cr LJ 3244 (Ori), first marriage subsisting, second marriage proved by witnesses and entries in the marriage register under the

[Hindu Marriage Act, 1955](#). Those who came to bless the second marriage were not held to be guilty of abetment. The court also said that solemnisation of second marriage in accordance with applicable ceremonies is not necessary for conviction, viz., [section 7A of the Hindu Marriage Act, 1955](#). *Yelamanchali Nageswari v Venkata Prasada Rao*, [1998 Cr LJ 4128](#) (AP), admission of second marriage by the accused in the application for mutual divorce was not considered to be sufficient unless there was evidence of ceremonies or some other legally sanctioned form. See also, *Bhagwan Swaroop Srivastava v Asha Srivastava*, [1998 Cr LJ 265](#) (Raj); *Sutesh Karnat v State of Rajasthan*, [1998 Cr LJ 601](#) (Raj); *Elango S v S Ravindran*, [1998 Cr LJ 3095](#) (Mad); *Sham Singh v Satabjit Kaur*, Cr LJ 4788 (P&H).

27. *Gnanasoundari v Nallathambi*, (1946) Mad 367. *Prasanna Kumar v Dhanalaxmi*, [1989 Cr LJ 1829](#) (Mad), where the date, place and form of second marriage were not given, nor witnesses indicated, complaint not good. *B Chandra Manikyamma v B Sudarasna Rao*, [1988 Cr LJ 1849](#) (AP), second marriage must be strictly proved. Converting into another faith for show off and solemnising a marriage under that faith, no second marriage is valid in law.

28. *Narantakath v Parakkal*, (1922) 45 Mad 986; *Abdul Ghani v Azizul Hiq*, (1911) 39 Cal 409 , dissented from. *Gomathi v Vijayaraghavan*, (1995) 1 Cr LJ 81 (Mad), the court did not order blood test of a child alleged to be from second wife for the purpose of proving a bigamous marriage. The mere birth of a child does not bring about a ceremonised marriage.

29. *Lily Thomas v UOI*, [AIR 2000 SC 1650](#) [[LNIND 2000 SC 827](#)] : [2000 Cr LJ 2433](#) .

30. *Sarla Mudgal v UOI*, [AIR 1995 SC 1531](#) [[LNIND 1995 SC 661](#)] : 1995 AIR SCW 2326 : [1995 Cr LJ 2926](#) : (1995) 3 SCC 635 [[LNIND 1995 SC 661](#)] .

31. *Krishna Gopal Divedi v Prabha Divedi*, [AIR 2002 SC 389](#) [[LNIND 2002 SC 142](#)] .

32. *Surajmani Stella Kujur (Dr) v Durga Charan Hansdah*, [AIR 2001 SC 938](#) [[LNIND 2001 SC 412](#)] .

33. *A Subhash Babu v State of AP*, [AIR 2011 SC 3031](#) [[LNIND 2011 SC 679](#)] : [2011 \(7\) SCC 616](#) [[LNIND 2011 SC 679](#)] ; *Babu Ram Saini v State of Uttaranchal*, [2013 Cr LJ 1896](#) (Utt).

34. Also see *Pintu Alias Sujit Kumar Giri v State Of Orissa*, [2013 Cr LJ 2099](#) (Ori).

35. *Ushaben v Kishorbhai Chunilal Talpada*, (2012) 6 SCC 353 [[LNINDU 2012 SC 25](#)] : [2012 Cr LJ 2234](#) .

36. *A Subhash Babu v State of AP*, [AIR 2011 SC 3031](#) [[LNIND 2011 SC 679](#)] : [2011 \(7\) SCC 616](#) [[LNIND 2011 SC 679](#)] ; *Victor Auxilium v State*, [2008 Cr LJ 774](#) (Mad).

37. *Azad @Naresh Kr Azad v State of Bihar*, [2012 \(2\) Crimes 652](#) [[LNIND 2012 PAT 329](#)] (Pat).

38. *T Venkateswarlu v State of AP*, [1999 Cr LJ 39](#) (AP).

## THE INDIAN PENAL CODE

### CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

**[s 495] Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.**

Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### State Amendment

**Andhra Pradesh.**— *The offence is cognizable, non-bailable, triable by the Magistrate of the first class and non-compoundable vide A.P. Act No. 3 of 1992, Section 2 (w.e.f. 15-2-1992), in A.P.*

#### COMMENT.—

The offence mentioned in [section 495 IPC, 1860](#) is extension of [section 494 IPC, 1860](#) and also is an aggravated form of bigamy provided in [section 494 IPC, 1860](#). The complainant (second wife) has adduced enough evidence to prove that the accused had concealed the fact of the former marriage by assuring her that he had taken divorce from his first wife and subsequently married her by performing the essential Hindu rites and ceremonies in accordance with [section 7 of the Hindu Marriage Act, 1955](#). It is undisputed that accused first got married to Smt. Vijay Saini and thereafter to the complainant, as admission to this effect has been made by the accused himself in his statement under [section 313 Cr PC, 1973](#). Accused was rightly convicted under [section 495 IPC, 1860](#).<sup>39</sup>

#### [s 495.1] Right to file complaint.—

Non-filing of the complaint under [sections 494 or 495 IPC, 1860](#) by the first wife does not mean that the offence is wiped out. Even otherwise, the second wife suffers several legal wrongs and legal injuries and hence, complainant (second wife) was having every right to file the complaint under [section 495 IPC, 1860](#).<sup>40</sup>

A bare perusal of the provisions of [sections 493 and 495 of IPC, 1860](#) shows that the bodily relationship or sexual intercourse by a husband with his second wife falls under the category of offence under [sections 493 and 495 of IPC, 1860](#) and it cannot be treated as rape as defined in [section 375 of IPC, 1860](#).<sup>41</sup>

<sup>39</sup>. *Babu Ram Saini v State Of Uttaranchal*, 2013 Cr LJ 1896 (Utt).

40. *Babu Ram Saini v State Of Uttaranchal*, 2013 Cr LJ 1896 (Utt); *A Subhash Babu v State of AP*, AIR 2011 SC 3031 [LNIND 2011 SC 679] : 2011 (7) SCC 616 [LNIND 2011 SC 679] .
41. *Mahesh Kumar Dhawan v State of MP*, 2012 Cr LJ 1639 .

## THE INDIAN PENAL CODE

### CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

#### [s 496] Marriage ceremony fraudulently gone through without lawful marriage.

Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### State Amendment

**Andhra Pradesh.**— *The offence is cognizable, non-bailable, triable by the Magistrate of the first class and non-compoundable vide A.P. Act No. 3 of 1992, Section 2 (w.e.f. 15-2-1992), in A.P.*

#### COMMENT.—

This section punishes fraudulent or mock marriages.

It applies to cases in which a ceremony is gone through which would in no case constitute a marriage, and in which one of the parties is deceived by the other into the belief that it does constitute a marriage, or in which effect is sought to be given by the proceeding to some collateral fraudulent purpose. Where the ceremony gone through does, but for the previous marriage, constitutes a valid marriage, and both parties are aware of the circumstances of the previous marriage, s. 494 applies.<sup>42.</sup>

#### [s 496.1] Ingredients.—

The section requires two essentials:—

1. Dishonestly or with a fraudulent intention going through the ceremony of marriage.
2. Knowledge on the part of the person going through the ceremony that he is not thereby lawfully married.

#### [s 496.2] Sections 493 and 496.—

The two sections are somewhat alike: the difference appears to be that under section 493, deception is requisite on the part of the man, and cohabitation or sexual intercourse consequent on such deception. The offence under section 496 requires no deception, cohabitation, or sexual intercourse as a *sine qua non*, but a dishonest or fraudulent abuse of the marriage ceremony. In the latter case the offence can be committed by a man or woman, in the former, only by a man.

#### [s 496.3] Sections 494 and 496.—

An offence under section 494 is different from an offence under [section 496, IPC, 1860](#). If the accused intends that there should be a valid marriage and honestly goes through the necessary ceremonies during the lifetime of the other spouse, then it may be a case under [section 494, IPC, 1860](#), but if the accused only intends that there should only be a show of marriage and dishonestly and fraudulently goes through the marriage ceremony knowing fully well that he is not legally married thereby, then it is an offence under [section 496, IPC, 1860](#).<sup>43</sup>

#### **[s 496.4] CASE.—**

Where the accused married for the second time during the pendency of a special appeal against a decree of divorce in violation of [section 15 of the Hindu Marriage Act, 1955](#) but without concealing the fact of pendency of the appeal from the girl or her parents, no conviction could be entered under [section 496, IPC, 1860](#) as the act of the accused was neither dishonest nor fraudulent.<sup>44</sup>

<sup>42</sup>. *Rama Sona*, (1873) Unrep Cr C 77.

<sup>43</sup>. *Kailash Singh*, 1982 Cr LJ 1005 (Raj).

<sup>44</sup>. *Ibid.* Where the second marriage is performed fraudulently, a complaint can be made by the person so deceived, and not by the first regular wife. *Prasanna Kumar v Dhanalaxmi*, 1989 Cr LJ 1829 (Mad).

## THE INDIAN PENAL CODE

### CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

#### [s 497] Adultery.

Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

#### State Amendment

**Andhra Pradesh.**— *Punishment—Imprisonment for 5 years, or fine, or both—Non-cognizable, bailable triable by 1st class Magistrate and non-compoundable vide A.P. Act 3 of 1992, w.e.f. 15-2-1992.*

#### COMMENT.—

In *Joseph Shine v UOI*,<sup>45</sup> a [Constitution](#) bench of the Supreme Court decriminalised adultery and held [section 497 of the IPC, 1860](#) unconstitutional as violative of [Articles 14 and 21](#) of the [Constitution](#). Under section 397 a man who had sex with a married woman without getting her husband's permission could be charged and face punishment with imprisonment for a term up to five years, or with fine, or with both, if convicted. Before, it was struck down, the cognizance of the offence was limited to adultery committed with a married woman, and the male offender alone was made liable to punishment. Thus, under the Code, adultery was an offence committed by a third person against a husband in respect of his wife. A married man was not liable if had sexual intercourse with an unmarried woman, or with a widow, or even with a married woman whose husband consented to it.

Prior to the judgment in *Joseph Shine* case, the Supreme Court in *Sowmithri Vishnu's* case<sup>46</sup> had upheld the constitutional validity of [section 497, IPC, 1860](#). In *Joseph Shine v UOI*, [AIR 2018 SC 4898](#), the Supreme Court observed that: Adultery is different from an offence committed under Section 498-A or any violation of the [Protection of Women from Domestic Violence Act, 2005](#) or, for that matter, the protection conceived of under [Section 125 of the Code of Criminal Procedure](#) or Sections 306 or 304B or 494 [IPC](#). These offences are meant to sub-serve various other purposes relating to a matrimonial relationship and extinction of life of a married woman during subsistence of marriage. Treating adultery an offence would tantamount to the State entering into a real private realm. The act, i.e., adultery does not fit into the concept of a crime. If it is treated as a crime, there would be immense intrusion into the extreme privacy of the matrimonial sphere. *It is better to be left as a ground for divorce.* For any other purpose as the Parliament has perceived or may, at any time, perceive, to treat it as a criminal offence will offend the two facets of [Article 21 of the Constitution](#), namely, dignity of husband and wife, as the case may be, and the privacy attached to a relationship between the two.

<sup>45</sup>. *Joseph Shine v UOI*, [AIR 2018 SC 4898](#).



46. *Sowmithri Vishnu v UOI*, 1985 Cr LJ 1302 (SC) : AIR 1985 SC 1618 [LNIND 1985 SC 202] : (1985) Supp SCC 137 . Again **emphasised** in *V Revathi v UOI*, (1988) 2 SCC 72 [LNIND 1988 SC 20] : AIR 1988 SC 835 [LNIND 1988 SC 144] : (1988) 1 Ker LT 771 : (1988) 2 HLR 39 : (1988) 1 Punj LR 649 .

# THE INDIAN PENAL CODE

## CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

**[s 498] Enticing or taking away or detaining with criminal intent a married woman.**

**Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman,<sup>1</sup> shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

### COMMENT.—

Under [section 498, IPC, 1860](#) enticing or taking away a married woman with criminal intent is an offence. Entering or taking away somebody's wife for the purpose other than mentioned in [section 498, IPC, 1860](#) does not constitute an offence. Therefore, in order to bring home guilt of a person under [section 498, IPC, 1860](#), the prosecution has to prove that a married woman was enticed or taken away with an intention that she might have illicit intercourse with any person.<sup>47</sup>

Sections 361 and 366 may be compared with this section, which may come into operation when the two former sections fail to apply, but only in respect of a married woman. This and the preceding sections are evidently intended for the protection of husbands, who alone can institute prosecutions for offences under them.

The gist of the offence under this section appears to be the deprivation of the husband of his custody and his proper control over his wife with the object of having illicit intercourse with her.<sup>48</sup>

### **[s 498.1] Ingredients.—**

The section requires three things:—

1. Taking or enticing away or concealing or detaining the wife of another man from that man or from any person having the care of her on behalf of that man.
2. Such taking, enticing, concealing or detaining, must be with intent that she may have illicit intercourse with any person.
3. Knowledge or reason to believe that the woman is the wife of another man.

### **[s 498.2] Sections 366 and 498.—**

A comparison of the ingredients constituting an offence under sections 366 and 498 shows that though there are some ingredients which are common, but the ingredients for the offence under section 498 constitute of some of the very important particulars which are not in an offence under [section 366, IPC, 1860](#). The additional ingredients of

[section 498, IPC, 1860](#) namely, (i) that the woman said to have been taken away is the married wife of another man, and (ii) that the accused has taken her away with the knowledge that she is the wife of that person are not at all in the offence under [section 366, IPC, 1860](#). Therefore, the offence under section 498 cannot be said to be a minor offence or an offence under section 366 within the meaning of the term used in [section 222\(2\) of the Cr PC, 1973](#).<sup>49.</sup>

**1. 'Detains with that intent any such woman'.—**The word "detains" means "keeps back". The keeping back need not necessarily be by physical force, it may be by persuasion or by allurements and blandishments. The use of the word requires that there should be something in the nature of control or influence which can properly be described as a keeping back of the woman. To constitute detention proof of some kind of persuasion is necessary. It cannot properly be said that a man detains a woman if she has no desire to leave and on the contrary wishes to stay with him.<sup>50.</sup> The Supreme Court has held that the keeping back may be by force, but it need not be by force. It can be the result of persuasion, allurements or blandishments, which may either have caused the willingness of the woman, or may have encouraged, or co-operated with, her initial inclination to leave her husband.<sup>51.</sup>

47. *Singana Naga Nooka Chakrarao v State of AP*, 2007 Cr LJ 3466 .

48. *Alamgir v State of Bihar*, (1959) Pat 334 : AIR 1959 SC 436 [LNIND 1958 SC 145] : 1959 Cr LJ 527 : (1959) 2 SCA 116 [LNIND 1958 SC 145] . *Natarajan v Ramanujam*, 1977 Cr LJ 389 (Mad), the main ingredient is enticing away married woman from her husband. Criminal intent on the part of the accused has to be proved. The consequence of not examining the material witness, the wife, led to acquittal of accused. No interference.

49. *Satya Narain v State of Bihar*, 1985 Cr LJ 747 (Pat).

50. *Prithi Missir v Harak Nath*, (1937) 1 Cal 166 .

51. *Alamgir*, (1959) Pat 334 : AIR 1959 SC 436 [LNIND 1958 SC 145] .

## THE INDIAN PENAL CODE

### **1.**[CHAPTER XX-A OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND

**[s 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 wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

#### **State Amendment**

**Andhra Pradesh.**—In Andhra Pradesh, offence is compoundable.

#### **COMMENT.—**

This section has been introduced in the Code by the [Criminal Law \(Amendment\) Act, 1983](#) (Act 46 of 1983) to combat the menace of dowry deaths. By the same Act section 113A has been added to the [Indian Evidence Act, 1872](#) to raise a presumption regarding abetment of suicide by a married woman.

#### **[s 498A.1] Ingredients.—**

Ingredients of 498A of the [Indian Penal Code \(IPC\)](#), 1860 are:

- a) The woman must be married;
- b) She must be subjected to cruelty or harassment; and
- c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.<sup>2.</sup>

If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognisable.<sup>3.</sup>

Concept of cruelty under [section 498A IPC, 1860](#) and its effect under [section 306 IPC, 1860](#) varies from individual to individual also depending upon the social and economic status to which such person belongs. The Supreme Court held that cruelty for the

purpose of offence and the said Section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty or harassment in a given case.<sup>4</sup> Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life.<sup>5</sup>

The usual and common domestic discord in any matrimonial home cannot amount to 'cruelty' within the meaning of [section 498A of IPC, 1860](#).<sup>6</sup> Assault on a woman offends her dignity. It is one thing to say that every wear and tear of married life need not lead to suicide and it is another thing to put it so crudely and suggest that one or two assaults on a woman is an accepted social norm. Judges have to be sensitive to women's problems. What effect it will have on a woman depends on facts and circumstances of each case. There cannot be any generalisation on this issue.<sup>7</sup>

In a case before the Supreme Court<sup>8</sup> involving the death by burning of a newly married woman, the circumstances did not establish either murder or an abetted suicide and thus the in-laws escaped the jaws of sections 300 and 306, but they were caught in the web of this newly-enacted section for prevention of harassment for dowry. Not to speak of the things they were persistently demanding from the girl's side, the fact that a large number of articles were taken back by her father after her death from her matrimonial abode, showed that there was pressure being exerted on in-laws and continued to be exerted till death for more money and articles. The Supreme Court observed in another case that this section has given a new dimension to the concept of cruelty for the purposes of matrimonial remedies and that the type of conduct described here would be relevant for proving cruelty.<sup>9</sup> It is no impediment to a conviction under the section that the accused has been acquitted of the larger offence of murder under section 302. Where the charge was that of murdering wife for dowry and no evidence was available except this that the accused projected the theory of intruders killing her (which the Court did not believe) and did not immediately make police report or to get medical help for his injured wife, this was held to be not sufficient to convict him for murder. The harassment for dowry was established from his own conduct in deserting her and also through the mouth of the witnesses. That was held to be sufficient to convict him under section 498A.<sup>10</sup>

Where after a spell of cruelty, the husband and wife reconciled and resumed joint life and it was found that the husband left the wife back with her parents for a short spell and then took her back and within two days informed her parents of her death, the wife made no complaint of cruelty, etc., during her short stay with parents, the section could not come into play because there was no complaint after reconciliation.<sup>11</sup> The Court also added that sections 498A and 304B create distinct offences. "Cruelty" is common element to both. A person charged under section 304B can be convicted under section 498A without any charge under that section.

A married woman committed suicide by burning herself after pouring kerosene. In her dying declaration she said that her husband used to beat her after taking liquor and he used to borrow money from the villagers for the purpose. The Court said that this amounted to cruelty within the meaning of the section making the accused liable to be punished.<sup>12</sup> When the accused mother-in-law, the husband and his brother harassed the married woman and did not permit her to go to her parents. The husband and his brother disposed her of by fire after pouring kerosene. They were punished under section 302. Their mother was punished under this section (section 498A).<sup>13</sup>

Consequences of cruelty which was likely to drive a woman to commit suicide or to cause grave injury danger to life or limb or health, whether mental or physical, have to be shown for attracting the section.<sup>14</sup>

[s 498A.2] **Mens rea.**—

The requirement of proving that soon before her death the woman was subjected to cruelty or harassment by her husband or any relation of her husband for or in connection with any demand of dowry clearly shows that the legislation has imbibed the necessary *mens rea* for the offence of dowry death.<sup>15</sup>

[s 498A.3] **Actus reus.**—

The Supreme Court has observed that in-laws of a deceased cannot be roped in only on the ground of being the close relatives of the husband of the deceased. Some *overt act* must be attributed to them in the incident and the same should also be proved beyond reasonable doubt.<sup>16</sup>

[s 498A.4] **Suicide note.**—

The suicide note of the deceased wife made serious castigation against her husband for being an addict to some kind of narcotic drug. Serious allegations were also made against the mother-in-law. Allegations against the accused sister-in-law were not grave. But in no case there was reference to any concrete instance which could be termed to be cruelty. Hence, no case was made out against the accused persons.<sup>17</sup>

[s 498A.5] **Constitutional validity of section 498A.**—

The husband and relatives of the husband of a married woman form a class apart by themselves and it amounts to reasonable classification especially when a married woman is treated with cruelty within the four walls of the house of her husband and there is no likelihood of any evidence available. Consequently, this section cannot be said to be violative of [Article 14 of the Constitution](#).<sup>18</sup>

The mere possibility of abuse of a provision of law does not *per se* invalidate a legislation. The plea that section 498-A has no legal or constitutional foundation was held to be not tenable.<sup>19</sup> Mere possibility of abuse of power in a given case would not make it objectionable, *ultra vires* or unconstitutional. In such case, 'action' and not the 'section' may be vulnerable.<sup>20</sup>

Where the wife coming from respectable orthodox family was subjected by her husband, who was of highly suspicious nature, to humiliation by demeaning and insulting her, calling her a prostitute, denying her family life and comfort and not permitting anybody to meet her, all this was held to be sufficient to justify the husband's conviction under the section.<sup>21</sup> The Court said:<sup>22</sup>

The expression cruelty postulates such a treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband will be harmful and injurious to her life. To decide the question of cruelty the relevant factors are the matrimonial relationship between the husband and wife, their cultural and temperamental state of life, state of health and their inter-action in daily life.

[s 498A.6] **Cruelty by vexatious litigation.**—

Where out of a sense of vindictiveness, the husband instituted vexatious litigation against his wife and she was feeling humiliated and tortured by reason of execution of search warrants and seizure of personal property, it was held that the section was wide enough to encompass a cruelty committed through an abuse of the litigative process.

[s 498A.7] **Cruelty by deprivation and wasteful habits.**—

The husband disregarded his duty to provide his wife and infant child the elementary means of sustenance. He deliberately and irresponsibly squandered his earnings on

gambling and other vices and thereby starved his wife and infant child to death. This was held to be amounting to cruelty under section 498A.<sup>23</sup>

[s 498A.8] **Calling wife "barren woman".—**

It was alleged that, as the deceased did not beget children for a period of three years after the marriage, accused harassed the deceased by calling her "barren woman". It was held that mere commenting that deceased was not begetting children, does not amount to subjecting the deceased to cruelty within the meaning of [section 498A IPC, 1860](#).<sup>24</sup>

[s 498A.9] **Cruelty by persistent demand.—**

Cruelty or harassment need not be physical. Mental torture may amount to cruelty in a given situation. The bride, in this case, was repeatedly taunted, maltreated and mentally tortured right from the next day of marriage. There was a quarrel between her and the husband only a day before her death. This led the bride to commit suicide. Presumption as to dowry death under [section 113B, Indian Evidence Act, 1872](#) became applicable. There was no rebuttal from the side of the accused husband.<sup>25</sup>

[s 498A.10] **Cognizance on Police Report.—**

[Section 198A of Code of Criminal procedure \(Cr PC\), 1973](#) permits a Court to take cognizance of offence punishable under section 498A upon a police report of facts which constitute offence. Explanation to section 2(d) makes it clear that a report made by a police officer after investigation of a non-cognizable offence is to be treated as a complaint and the officer by whom such a report is made is to be deemed to be the complainant. Thus, if a complaint contains allegations about commission of offence under [section 498A of the IPC, 1860](#) which is a cognizable offence, apart from allegations about the commission of offence under [section 494 of the IPC, 1860](#) the Court can take cognizance thereof even on a police report. No fetters can be put on the police preventing them from investigating the complaint which alleges offence under [section 498A of the IPC, 1860](#) and also offence under [section 494 of the IPC, 1860](#).<sup>26</sup>

[s 498A.11] **Cruelty by extra-marital relations.—**

To the question whether 'extra-marital relationship' could be considered as 'cruelty' under [section 498A IPC, 1860](#) had arisen, the Supreme Court has answered the question in negative. Mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to [section 498A IPC, 1860](#).<sup>27</sup> Courts should carefully assess the facts of each case before deciding whether the cruelty meted out to the victim which induces her to commit suicide. The accused continued his relation with another woman and his illicit relation with another woman would have definitely created the psychological imbalance to the deceased which led her to take the extreme step of committing suicide. The conviction of accused under [sections 498-A and 306, IPC](#) was held proper.<sup>28</sup> In *Laxman Ram Mane v State of Maharashtra*,<sup>29</sup> it was held that an illicit relationship of a married man with another woman would clearly amount to cruelty within the meaning of section 498A. Even assuming for a moment that this did not amount to cruelty within the meaning of section 498A, it could still be used as a piece of evidence of harassment and misbehaviour of the appellant towards the deceased. The act of the husband in bringing a concubine to his house, living with her as husband and wife, and having sexual relations in the presence of his wife, amounts to 'cruelty' within the meaning of [section 498A of IPC, 1860](#).<sup>30</sup> Permitting the first wife to enter the house of deceased with new born child does not amount to a cruel act to the second wife as such act

cannot amount to cruelty within the meaning of second limb of clause (a) of the Explanation under [section 498A, IPC, 1860](#).<sup>31</sup>.

**[s 498A.12] Harassment and bigamy.—**

The wife filed an FIR alleging harassment and bigamy by the accused husband. The fact was that the second marriage was performed by the accused husband after the first marriage was dissolved. The affidavit filed by the wife did not state that the divorce decree had been either stayed or set aside. Thus, ingredients of the offence of bigamy were not made out. The affidavit was also silent about harassment for dowry demand. It was held that the FIR was frivolous, vexatious, unwarranted and abuse of process.<sup>32</sup>.

**[s 498A.13] Harassment for non-dowry demand.—**

Four years after the marriage, the wife was called upon to bring some money from her parents for sending her husband's younger brother abroad. It could not be termed as a dowry demand, but because she was harassed for it and on account of this she became compelled to end her life, it was held that an offence under section 498A was made out.<sup>33</sup>. Section 498A does not specifically speak of a dowry demand. It speaks only of unlawful demand for property and valuable articles.<sup>34</sup>.

**[s 498A.14] Cruelty by non-acceptance of baby girl.—**

The conduct of the accused husband and his father in not accepting the birth of the baby girl was held as amounting to cruelty.<sup>35</sup>.

**[s 498A.15] Demand of son in adoption.—**

The Supreme Court has held that the demand of a son in adoption did not amount to a dowry demand so as to attract the provisions of section 498A.<sup>36</sup>.

**[s 498A.16] Act of remaining silent.—**

The allegation was that accused Nos. 2 and 4 did not come forward to participate in the settlement of the dowry on the ground that they belonged to the groom's family and remained silent. The act of remaining silent with regard to the settlement of the dowry demand will not amount to cruelty within the meaning of either clause (a) or clause (b) of the Explanation of [section 498A IPC, 1860](#).<sup>37</sup>.

**[s 498A.17] Cruelty by false attacks on chastity.—**

The father-in-law and the husband were shown to demand dowry though their demand was met by stepfather of the girl at the time of marriage. They also attacked her chastity when there was no reasonable ground for it. Homicidal death of the wife took place within five months of marriage. The Court said that all this amounted to cruelty within the meaning of section 498A.<sup>38</sup>.

**[s 498A.18] Taking away children.—**

The act of the husband in taking away the minor child without the consent of the wife was held as not amounting to cruelty for the purposes of section 498A.<sup>39</sup>.

**[s 498A.19] Outraging of modesty by father-in-law.—**

Trying to outrage the modesty of a married woman in her matrimonial house, by her father-in-law also amounts cruelty as defined under [section 498A IPC, 1860](#).<sup>40</sup>.

**[s 498A.20] Demand for looking after aged in-laws.—**



A difference of opinion within family on everyday mundane matters would not fall within the category of cruelty. Merely because the appellants were of the opinion that the deceased, as a good daughter-in-law, should look after them in old age could not be said to be an abetment of suicide.<sup>41</sup>

**[s 498A.21] Mere demand of dowry an offence.—**

Mere demand of dowry will not attract an offence under [section 498-A IPC, 1860](#).<sup>42</sup> From a single instance of the accused stating that he had received meagre dowry, it could not be inferred that he demanded dowry and maltreated his deceased wife on that count.<sup>43</sup> In the absence of any agreement or settlement for dowry at the time of marriage, a demand constitutes no offence. The demand must come within the definition of dowry.<sup>44</sup>

Mere harassment or mere demand for property, etc., is not cruelty. It is only where harassment is shown to have been caused for the purpose of coercing a woman to meet demands that it amounts to a cruelty which has been made punishable under the section.

**[s 498A.22] Presumption of cruel treatment.—**

The wife of the accused committed suicide by jumping into a well. Her father testified that the neighbours told him of the sounds of a quarrel going on in the family on the fateful night. He testified that she was ill-treated for dowry and for being issueless. She attempted to jump into the same well earlier also. The ill-treatment did not stop even after she bore two sons. The Court said that a presumption could be raised that the ill-treatment continued unabated till the last moment of her decision to put an end to her life.<sup>45</sup>

The presumption of cruelty within the meaning of [section 113A, Indian Evidence Act, 1872](#) also arose making the husband guilty of abetment of suicide within the meaning of section 306 where the husband had illicit relationship with another woman and used to beat his wife making it a persistent cruelty within the meaning of Explanation (a) of section 498A.<sup>46</sup>

**[s 498A.23] Harassment.—**

There should be sufficient nexus between incidents to constitute harassment. The accused was convicted of harassment under the Protection from Harassment Act, 1997 [English] section 2 following two incidents separated by a period of four months in which he first slapped his former girlfriend and later on threatened her companion. He appealed by way of case stated on the basis that there had to exist a sufficient nexus between the incidents complained of so as to give rise to a "course of conduct" for the purposes of section 7(3). His appeal was allowed. The Court said that whilst no more than two incidents were needed to constitute harassment, the fewer the number of incidents and the wider the time lapse, the less likely such a finding would be justified. On the facts of the instant case there was insufficient evidence upon which the finding of harassment could be proved.<sup>47</sup>

**[s 498A.24] Every kind of harassment not covered.—**

It is not every harassment or every type of cruelty that would attract section 498A. The complainant has conclusively to establish that the beating and harassment in question was with a view to force her to commit suicide or to fulfil the illegal demand of dowry. In this case, though there might have been a previous history of harassment for those purposes, at the moment of the complaint those urges were not proved to be figuring in the harassment.<sup>48</sup> Where the deceased was asked to part with her jewellery and

valuables for the marriage of her sister-in-law but the matter was not pressed further on her refusal and there was no harassment or coercion by her in-laws, it was held that it did not amount to cruelty.<sup>49.</sup>

A husband who does not call his wife back to the matrimonial home does not thereby cause any harassment.<sup>50.</sup> Where the deceased wife was told not to attend kitchen as a measure for prevention of wastage, this was held to be no cruelty.<sup>51.</sup>

The remarks passed by the mother-in-law that the daughter-in-law was not beautiful were held to be not sufficient to drive anybody to suicide. There was no evidence of cruelty or deprivation.<sup>52.</sup> The mere statements in the dying declaration that she wanted to live separately, her husband gave her a beating the previous day and her grandmother disliked her were held to be not sufficient to substantiate the prosecution case that cruel treatment was meted out to her so as to constitute an offence under section 498A.<sup>53.</sup>

Where the deceased wife's annoyance was due to the fact that the children of a relative were being looked after in her husband's home, the Court said that it did not amount to cruelty or harassment because of dowry demand.<sup>54.</sup>

#### [s 498A.25] **Kicking daughter-in-law.—**

A three-judge Bench of the Supreme Court by order dated 14 March 2013 set aside its own judgment in *Bhaskar Lal Sharma v Monica*,<sup>55.</sup> which held that the action of a woman merely kicking her daughter-in-law or threatening her with divorce would not come within the meaning of "cruelty" under [section 498A of the IPC, 1860](#). The Supreme Court allowed the curative petition filed by the National Commission directed restoration of the special leave petition (SLP) filed by Bhaskar Lal Sharma and his wife for a fresh hearing.

#### [s 498A.26] **Wife's desire to stay separately.—**

Howsoever strong the desire of wife might be of staying separately, and howsoever genuine her grief would be for having been required to stay in a joint family, the same cannot constitute as "wilful conduct" of the appellants which was likely to drive wife to commit suicide.<sup>56.</sup>

#### [s 498A.27] **Make section 498A compoundable.—**

Offence under section 498A is not compoundable except in the State of Andhra Pradesh where by a State amendment, it has been made compoundable. In *Ramgopal v State of MP*,<sup>57.</sup> the Supreme Court requested the Law Commission and the Government of India to examine whether offence punishable under [section 498A of the IPC, 1860](#) could be made compoundable. The Commission has given a comprehensive report (237th Report) under the title of "Compounding of [IPC Offences](#)" recommending that that the offence under section 498A should be made a compoundable offence with the permission of Court. But it has not been made compoundable yet.

#### [s 498A.28] **Complaint filed after institution of suit.—**

A complaint was lodged by the wife under the section after a divorce suit was filed by her husband. In her written statement to the suit, the wife made no allegations of cruelty or harassment. In the meantime, the divorce was decreed and her application for reconciliation was rejected by the family Court, the complainant wife had also been living with her mother for a long time. Thus, no case was made out and the husband was entitled to acquittal.<sup>58.</sup>

Where the marriage was already 10 years old at the time of the incident of suicide by taking poison and there was neither any record of cruelty or harassment, nor any sign of forcible administration of poison, the conviction of the accused husband was held to be not proper.<sup>59</sup>

[s 498A.29] **Past cruelty.—**

The Supreme Court has given this observation that both [section 498A, IPC, 1860](#) and [section 113A, Indian Evidence Act, 1872](#) include in their amplitude past events of cruelty. The period of operation of [section 113A, Indian Evidence Act, 1872](#) is seven years. The presumption of suicide by a married woman arises when it takes place within seven years from the date of marriage.

[s 498A.30] **Section 498A and 304B.—**

The two provisions are not mutually inclusive. They deal with different and distinct offences. Persons charged under section 304B but acquitted can be convicted under section 498A even in the absence of any charge.<sup>60</sup> The deceased had been subjected to cruelty by her husband and mother-in-law over the demand of a Maruti Car as dowry and persistently pressed by them after about six months of the marriage and continuously till her death. Accused was convicted under [sections 498A and 304 IPC, 1860](#).<sup>61</sup>

[s 498A.31] **Sections 498A and 306.—**

Distinction between [sections 306 IPC](#) and [section 498A IPC](#) is that of intention. Under the latter, cruelty committed by the husband of his relations drag the woman concerned to commit suicide, while under the former provision suicide is abetted and intended.<sup>62</sup>

Offences under [sections 498A and 306 of IPC, 1860](#). Trial court acquitted of the offence under [section 498A IPC, 1860](#). It was argued that the acquittal of the accused of the offence under [section 498A IPC, 1860](#) has bearing on the offence under [section 306 IPC, 1860](#). The Supreme Court held that having absolved the appellants of the charge of cruelty, which is the most basic ingredient for the offence made out under section 498A, the third ingredient for application of [section 113A of Indian Evidence Act, 1872](#) is missing, namely, that the relatives, i.e., the mother-in-law and father-in-law who are charged under section 306 had subjected the victim to cruelty.<sup>63</sup>

[s 498A.32] **Jurisdiction.—**

A wife, maltreated for dowry, was sent back to her father where she became ill because of shock and after effects of cruelty. The Court having jurisdiction at the place was held competent to entertain a complaint both under section 498A in respect of cruelty and also under [section 181\(4\) of Cr PC, 1973](#) in respect of misappropriation of *streedhan*.<sup>64</sup> In *Dukhi Ram v State of UP*,<sup>65</sup> the Court observed that the scope of section 498A cannot be extended to co-villagers. Order summoning co-villagers for offence under section 498A amounts to abuse of process of Court. The order of the Magistrate was quashed.

[s 498A.33] **Territorial Jurisdiction.—**

Where the complaint by the aggrieved wife regarding ill-treatment by husband and in-laws was filed at a place where she was residing with her mother and the act subjecting her to cruelty occurred at some other place, it was held that the Magistrate at that place had no territorial jurisdiction to take cognizance of the offence under section 498A. The plea that her husband and sister-in-law visited that place and subjected her to cruelty was not substantiated.<sup>66</sup> In a prosecution for criminal breach

of trust and cruelty to wife, the facts were that the marriage had taken at one place where also all the items of dowry were handed over. Breach of trust and ill-treatment were committed at the husband's place. Thus, the offence was committed beyond the territorial jurisdiction of the magistrate at the place of marriage. Still it was held that he had jurisdiction because a part of the cause of action had arisen at that place.<sup>67</sup> In a case, as a consequence of ill-treatment inflicted upon the complainant from time to time and demand of dowry, she was thrown out of her matrimonial home at Delhi and as a result of that she was compelled to come and reside with her father at Bharatpur. It was held that the police station/Court situated at Bharatpur has also jurisdiction to inquire into or try the offence allegedly committed by the petitioners. [Section 179 Cr PC, 1973](#) makes it clear that if anything happened as a consequence of the offence, the same may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.<sup>68</sup> The Supreme Court in *Sunita Kumari Kashyap v State of Bihar*,<sup>69</sup> with almost similar set of facts came to a conclusion that the Court situated at Gaya also has jurisdiction to proceed with the criminal proceedings initiated on behalf of the complainant although the ill treatment upon the complainant in connection with demand of dowry was mainly inflicted at her matrimonial home situated at Ranchi because as a result of continuous torture and unbearable treatment of her husband and in-laws the complainant had no other option, but to come at her parental home situated at Gaya. The Supreme Court for arriving such a conclusion relied upon the case of *Sujata Mukherjee v Prashant Kumar Mukherjee*,<sup>70</sup> and *State of MP v Suresh Kaushal*,<sup>71</sup> but distinguished these cases being based on different set of facts.

[s 498A.34] **Suicide by mistress.—**

If the cruelty or harassment of the kind described in the Act is meted out to a mistress which leads her to commit suicide, the section would cover her case also.<sup>72</sup>

[s 498A.35] **Retrospective Effect of Section 498A.—**

A dowry harassment which had ended in March 1983 by the husband deserting his wife before the new provision came into force in 1983 was held to be not covered by it. This provision does not have retrospective effect.<sup>73</sup> Where the relationship of marriage is still continuing, the events of cruelty taking place prior to the amendment can be taken into account. That does not have the effect of giving a retrospective operation to the provision.<sup>74</sup>

[s 498A.36] **Compromise.—**

Where the wife had condoned the matrimonial cruelty of which she was the victim and had resumed consortium with her husband, the Court found no obstruction in the provisions of the section in permitting them to compound the complaint and, therefore, ordered accordingly.<sup>75</sup> In *D Jayalakshmi v State of MP*,<sup>76</sup> it was held that in a complaint under section 498A a compromise between husband and wife was permissible even though the offence is non-compoundable. It added that in exceptional circumstances only the High Court can permit compounding of a non-compoundable offence under its inherent powers. The offence under the section cannot be compounded by invoking inherent powers and by praying for quashing of proceedings on the ground of amicable settlement. The remedy of the parties is to take recourse to [sections 321 or 257, Cr PC, 1973](#) and seek withdrawal of the case.<sup>77</sup> The offence cannot be compounded on the basis of consent divorce under [section 13-B of the Hindu Marriage Act, 1955](#). The proceedings were, however, quashed under [section 482, Cr PC, 1973](#) to prevent abuse of judicial process.<sup>78</sup> During the pendency of the prosecution, the husband and wife sorted out their differences and obtained a consent divorce as per their compromise. The Court said that in the light of facts as they

developed, the ends of justice would be served by reducing the term of imprisonment to the period already undergone.<sup>79.</sup>

Compromise should be accepted as a basis for withdrawal or quashing of complaint at the instance of the complainant.<sup>80.</sup>

[s 498A.37] **Explanation.**—

**Clause (a).**—In *RP Bidlan v State of Maharashtra*,<sup>81.</sup> it was held that under section 498A, Explanation (a), for proof of cruelty it is necessary to show a reasonable nexus between cruelty and suicide. Mere proof of cruelty or suicide is not enough. There is no vagueness or obscurity about the meaning of the word "cruelty" as spelt out in clauses (a) and (b) of the Explanations. The definition sub-serves the object sought to be achieved.<sup>82.</sup>

[s 498A.38] **Meaning of the term 'relative of the husband'—whether include a 'girlfriend' or 'concubine'?.**—

An offence in terms of section 498A is committed by the persons specified therein. They have to be the 'husband' or his 'relative'. Either the husband of the woman or his relative must be subjected to her to cruelty within the aforementioned provision. In the absence of any statutory definition, the term 'relative' must be assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual or the spouse of any person. The meaning of the word 'relative' would depend upon the nature of the statute. It principally includes a person related by blood, marriage or adoption. By no stretch of imagination a girlfriend or even a concubine in an etymological sense would be a 'relative'. The word 'relative' brings within its purview a status. Such a status must be conferred by either blood or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise.<sup>83.</sup> A complaint was filed against the husband and his relatives because of demand for dowry. Shia law was applicable to the parties. The husband had divorced the complaining wife by "talak". Under the Shia law there is prohibition on marrying the woman whom one had earlier divorced. Thus, even if they were living together, they could not be called husband and wife. Section 498A was not applicable. The complaint was liable to be dismissed.<sup>84.</sup>

[s 498A.39] **Is Section 498A applicable to cruelty against "legally wedded wife" only?**

—

A person who enters into marital arrangement cannot be allowed to take shelter behind the smoke screen of contention that since there was no valid marriage the question of dowry does not arise. The word "husband" would apply to a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any purposes enumerated in sections 304B and 498A, whatever be the legitimacy of the marriage itself. A person contracting second marriage during the subsistence of the earlier marriage can be charged under sections 304B and 498A. The Court pressed into service the *Heyden's* rule of construction which means purposive construction and mischief rule.<sup>85.</sup> [Section 498A of the IPC](#) refers to word 'woman' and not to 'wife' and by the said section protection was contemplated to married woman and not to the legally wedded wife only. Where accused and deceased were residing together and the evidence proved that marriage of accused and deceased took place by 'sulagna procedure', the contention of the accused that deceased was not his legally wedded wife as there was no evidence of valid marriage between them to attract the provisions of section 498A, cannot be accepted.<sup>86.</sup>

[s 498A.40] **Explanation.—Clause (b).—**

Where the deceased bride was subjected to cruelty and harassment and demand of dowry and she was burnt to death within two years of her marriage, her earlier statements about her state of affairs to her father and neighbours and her sister were held to be admissible under clause (b) of the Explanation to section 498A and conviction of the accused under section 498A was held to be proper.<sup>87.</sup>

The basic ingredients of section 498A are cruelty and harassment. The Supreme Court further held that in Explanation II, which relates to harassment, there is absence of the requirement of physical injury but it includes coercive harassment for demand of dowry. It deals with the patent or latent acts of the husband or his family members.<sup>88.</sup>

In a case the Supreme Court held that:

unless the statement of a dead person would fall within the purview of [s. 32\(1\) of the Indian Evidence Act](#) there is no other provision under which the same can be admitted in evidence. In order to make the statement of a dead person admissible in law (written or verbal) the statement must be as to the cause of her death or as to any of the circumstance of the transactions which resulted in her death, in cases in which the cause of death comes into question. By no stretch of imagination can the statements of deceased contained in the two letters and those quoted by the witnesses be connected with any circumstance of the transaction which resulted in her death. Even that apart, when dealing with an offence [u/s. 498A IPC](#) disjunctured from the offence [u/s. 306 IPC](#) the question of her death is not an issue for consideration and on that premise also [s. 32\(1\) of the Evidence Act](#) will stand at bay so far as these materials are concerned.<sup>89.</sup>

[s 498A.41] **Punishment.—**

The accused contracted second marriage. He maltreated the first wife and denied her diet, thus, subjecting her to mental and physical cruelty of extreme level and leading her to suicide. He was not entitled to any sympathy. He was sentenced to undergo two years RI for offence under section 498A and five years under section 306 and also fine.<sup>90.</sup>

The wife of the accused died of burns. Her letters indicated anguish about various incidents and methods of harassment practised upon her. Filthiest language was used in expressing the demand for dowry. There was oral evidence of the prosecution witness to that effect. This section does not require harassment soon before death. The Court said that the offence under the section was made out. The sentence of imprisonment of three years was reduced to three months in the interest of the children and their safety in the society.<sup>91.</sup>

[s 498A.42] **Plea of leniency.—**

Where there was a history of the wife being continuously subjected to harassment, assault and torture to the point of leaving no option to committing suicide and the accused-husband was a police officer and an educated person, it was held that he could not be allowed to escape jail sentence.<sup>92.</sup> The deceased-wife within four months of her marriage took the extreme step of putting an end of her life and committed suicide. The court held that it was not a fit case for reducing the quantum of sentence of the accused as showing any leniency would be a misplaced one.<sup>93.</sup>

In the context of simple imprisonment of six months, it was pleaded before the Supreme Court that the appellant and the victim had since remarried and were living happily in their respective families, the Court reduced imprisonment to the period of two months already undergone.<sup>94.</sup>

[s 498A.43] **Misuse of section 498-A.—**

The section was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman. The expression 'cruelty' therein covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. The Supreme Court observed that it is a matter of serious concern that large number of cases continue to be filed under this section alleging harassment of married women. Most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not *bona fide*. At the time of filing of the complaint, implications and consequences are not visualised. But at times such complaints lead to uncalled for harassment not only to the accused but also to the complainant.<sup>95</sup> The provision should not be allowed to be used as a device for achieving oblique motives.<sup>96</sup>

**[s 498A.44] Misuse of provisions to be prevented.—**

The Supreme Court has observed that the section was introduced with the avowed object of combating the menace of dowry deaths and harassment of a woman at the hands of her in-laws. But the provision should not be allowed to be used as a device for achieving oblique motives.<sup>97</sup>

**[s 498A.45] CASES.—**

Where there is ample evidence on record to suggest that the deceased had been suffering from psychosis/mental disorder, it was held not safe to convict the accused under [sections 306 and 498A IPC, 1860](#).<sup>98</sup> Where the suicide note exonerated the husband and his relatives, accused cannot be convicted under section 498A.<sup>99</sup> Where mother of deceased had admitted in her evidence that there was no demand of dowry had been made by mother-in-law of the deceased, she is entitled to benefit of doubt.<sup>100</sup> Where the accused mother-in-law was residing in a separate residence far away from the place where deceased with her husband was residing and the evidence of independent witness proved that parents of deceased's husband had never visited their place during their stay in the said house, accused is entitled to benefit of doubt.

Where a husband had strangled his second wife to death within a short span of time immediately after her marriage and the cruelty and harassment on the part of the husband was proved from the evidence of the witnesses, the conviction of the husband under section 498A was confirmed.<sup>101</sup>

A harassment shown to have taken place eight months before the suicide, was held to be not coming within the scope of the words "soon before". The conviction under section 304B was set aside. The evidence showed that cruelty was there. The accused persons were not able to explain why the deceased wife committed suicide. The conviction and sentence under section 306 (abetment of suicide), [section 498A](#) and [section 4 of the Dowry Prohibition Act, 1961](#) was maintained.<sup>102</sup>

**[s 498A.46] Limitation.—**

For the offence of cruelty under section 498A cognizance can be taken even after the expiry of the period of limitation by virtue of the provisions of [section 473, Cr PC, 1973](#) since the offence is of continuing nature. There was nothing on record to show that more than three years ago prior to the filing of the complaint the accused had returned the dowry items demanded by the complainant. The complaint under [section 406 IPC, 1860](#) was not time-barred. The offence under [section 405, IPC, 1860](#) was committed as and when the accused refused to return the dowry items on demand and misappropriate them.<sup>103</sup>

A complaint under the section was dismissed by the trial Court on the ground that it was belated by two years. On the same ground the High Court declined leave to appeal against acquittal. The Supreme Court held that this was not proper. The section was brought in to protect woman against torture. The law of limitation must not be applied with such rigidity as to non-suit an aggrieved wife.<sup>104.</sup>

A complaint alleged cruelty by the husband and his relatives. The question was that of limitation for filing a complaint. The Court said that cruelty is a continuing offence. With every act of cruelty a new period of limitation takes a start. The wife was harassed and sent out of the matrimonial home. A complaint, even if time-barred, could be entertained if otherwise it would give an unfair advantage to the accused person or result in miscarriage of justice.<sup>105.</sup>

[s 498A.47] **A re-look at the provision.—Supreme Court direction and recommendations of Law commission of India.—**

In *Preeti Gupta v State of Jharkhand*,<sup>106.</sup> the Supreme Court held that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately, a large number of these complaints have not only flooded the Courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. Pursuant to the direction of the Supreme Court, Law Commission of India in its 243rd Report gave *inter alia* the following suggestions:

- (a) The offence under section 498A shall be made compoundable, with the permission of Court and subject to cooling off period of three months
- (b) The offence should remain non-bailable. However, the safeguard against arbitrary and unwarranted arrests lies in strictly observing the letter and spirit of the conditions laid down in [sections 41 and 41A of Cr PC, 1973](#) relating to power of arrest and sensitising the Police on the modalities to be observed in cases of this nature
- (c) There should be a monitoring mechanism in the Police Dept. to keep track of section 498A cases and the observance of guidelines
- (d) the need for expeditious disposal of cases under section 498A should be given special attention by the prosecution and Judiciary.<sup>107.</sup>

[s 498A.48] **Protection of Women from Domestic Violence Act, 2005.—**

The [Protection of Women from Domestic Violence Act, 2005](#) was enacted with a view to provide for more effective protection of rights of women who are victims of violence of any kind occurring within the family. Those rights are essentially of civil nature with a mix of penal provisions. Section 3 of the Act defines domestic violence in very wide terms. It encompasses the situations set out in the definition of 'cruelty' under section 498A. The Act has devised an elaborate machinery to safeguard the interests of women subjected to domestic violence. The Act enjoins the appointment of Protection Officers who will be under the control and supervision of a Judicial Magistrate of First Class. The said officer shall send a domestic incident report to the Magistrate, the police station and service providers. The Protection Officers are required to effectively



assist and guide the complainant victim and provide shelter, medical facilities, legal aid, etc., and also act on her behalf to present an application to the Magistrate for one or more reliefs under the Act. The Magistrate is required to hear the application ordinarily within three days from the date of its receipt. The Magistrate may at any stage of the proceedings direct the respondent and/or the aggrieved person to undergo counselling with a service provider. 'Service Providers' are those who conform to the requirements of section 10 of the Act. The Magistrate can also secure the services of a welfare expert preferably a woman for the purpose of assisting him. Under section 18, the Magistrate, after giving an opportunity of hearing to the Respondent and on being *prima facie* satisfied that domestic violence has taken place or is likely to take place, is empowered to pass a protection order prohibiting the Respondent from committing any act of domestic violence and/or aiding or abetting all acts of domestic violence. There are other powers vested in the Magistrate including granting residence orders and monetary reliefs. Section 23 further empowers the Magistrate to pass such interim order as he deems just and proper including an *ex parte* order. The breach of protection order by the respondent is regarded as an offence which is cognizable and non-bailable and punishable with imprisonment extending to one year (*vide* section 31). By the same section, the Magistrate is also empowered to frame charges under [section 498A of IPC, 1860](#) and/or [Dowry Prohibition Act, 1961](#). The provisions of the Act are supplemental to the provisions of any other law in force. The right to file a complaint under section 498A is specifically preserved under section 5 of the Act. An interplay of the provisions of this Act and the proceedings under section 498A assumes some relevance on two aspects: (1) Seeking Magistrate's expeditious intervention by way of passing a protective interim order to prevent secondary victimisation of a complainant who has lodged FIR under section 498A. (2) Paving the way for counselling process under the supervision of Magistrate at the earliest opportunity.<sup>108</sup>

1. Chapter XXA (containing section 498A) ins. by Act 46 of 1983, section 2 (w.e.f. 25 December 1983).
2. *Suvetha v State*, (2009) 6 SCC 757 [LNIND 2009 SC 1156] : 2009 Cr LJ 2974 .
3. *Reema Aggarwal v Anupam*, (2004) 3 SCC 199 [LNIND 2004 SC 1499] : AIR 2004 SC 1418 [LNIND 2004 SC 1499] .
4. *Gananath Pattnaik v State of Orissa*, (2002) 2 SCC 619 [LNIND 2002 SC 100] .
5. *Pinakin Mahipatray Rawal v State of Gujarat*, 2013 (3) Mad LJ (CrI) 700 : 2013 AIR (SCW) 5219.
6. *Rosamma Kurian v State of Kerala*, 2014 Cr LJ 2666 (Ker) : 2014 (2) KHC 64 .
7. *Vajresh Venkatray Anvekar v State of Karnataka*, AIR 2013 SC 329 [LNIND 2013 SC 4] : (2013) 3 SCC 462 [LNIND 2013 SC 4] .
8. *Wazir Chand v State of Haryana*, AIR 1989 SC 378 [LNIND 1988 SC 569] : 1989 Cr LJ 809 : (1989) 1 SCC 244 [LNIND 1988 SC 569] ; *U Suvetha v State*, (2009) 6 SCC 757 [LNIND 2009 SC 1156] : 2009 Cr LJ 2974 , ingredients re-enumerated by the Supreme Court. *Bhaskar Lal Sharma v Monica*, (2009) 10 SCC 604 [LNIND 2009 SC 1432] : (2009) 161 DLT 739 , misuse of anti-dowry law not to be allowed. A girlfriend of the husband or a concubine being in the category of relatives of the husband are not covered by section 498-A. *Narendra v State of Karnataka*, (2009) 6 SCC 61 [LNIND 2009 SC 1112] : (2009) 2 SCC (Cr) 929 : AIR 2009 SC 1881 [LNIND 2009 SC 1112] , death of wife in bed room due to compression of neck, husband's *alibi* plea found to be false, no two opinions, conviction. *Krishna Ghose v State of WB*, (2009) 12 SCC 413 [LNIND 2009

SC 724] : AIR 2009 SC 2279 [LNIND 2009 SC 724] , death due to cruelty by husband and family members in the matrimonial home, *alibi* false, conviction.

9. *Shobha Rani v Madhukar Reddi*, (1988) 1 SCC 105 [LNIND 1987 SC 757] : AIR 1988 SC 121 [LNIND 1987 SC 757] : (1988) 1 AIR 169 : 1988 BLJR 138 . See also *Akula Ravinder v State of AP*, AIR 1991 SC 1142 . For a comparative account of this section with section 304B see notes under section 304B and the decision of the Supreme Court in *Shanti v State of Haryana*, AIR 1991 SC 1226 [LNIND 1990 SC 696] . For another proceeding arising out of harassment of wife and acceptance of compromise by the Supreme Court on payment of compensation to the wife to end all proceedings, see *Mukund Martand Chitnis v Madhuri Mukund Chitnis*, 1991 Supp (2) SCC 359 . See also *Suman v State of Rajasthan*, (2010) 1 SCC (Cr) 770 : (2010) 1 SCC 250 [LNIND 2009 SC 1991] : AIR 2010 SC 518 [LNIND 2009 SC 1991] .

10. *Chanda v State of AP*, 1996 Cr LJ 2670 (AP). RI for three years and fine of Rs. 5,000. *Chandra Prakash v State*, 1996 Cr LJ 3443 (Del) a proceeding was not allowed to be quashed only on the ground that allegations in detail of dowry demand and cruelty were not made in a pending divorce proceedings between the parties. *Noorjahan v State*, (2008) 11 SCC 55 [LNIND 2008 SC 950] : AIR 2008 SC 2131 [LNIND 2008 SC 950] , object restated, crimes against women and children. There was no proof in this case of any demand for dowry.

11. *Keshab Chandra Panda v State of Orissa*, (1995) 1 Cr LJ 174 (Ori). Where the mother-in-law was convicted for the lesser offence under s 498A, it was an automatic acquittal from the serious offence under section 304-B, no appeal by State, High Court could not convict; *Prakash Chander v State*, (1995) 1 Cr LJ 368 (Del). *State of Kerala v Rajayyan*, (1995) 1 Cr LJ 989 (Ker) death by falling in well, proof of dowry-related cruelty, conviction. *Deepak v State of Maharashtra*, (1995) 2 Cr LJ 2219 (Bom) wife killed by strangulation, defence of injury by a falling object unnatural, conviction held proper. *Gondhan Ram v State of Rajasthan*, (1995) 1 Cr LJ 273 (Raj), married woman dying of spray poison which she consumed, within seven years, evidence of torture, conviction of husband alone. *Jai Ram v State of Rajasthan*, (1995) 1 Cr LJ 1020 (Raj) conviction of husband on evidence which was rejected in reference to all others was held to be not proper. *Chandrabhushan v State of Maharashtra*, (1995) 1 Cr LJ 101 (Bom) conviction of husband for leading wife to suicide by mental torture for dowry, but others not convicted because the couple was living separately. *Gajanansingh v State of Maharashtra*, 1996 Cr LJ 2921 (Bom) no proof that the husband caused death, acquittal. *Pammi Bai v State of MP*, 1996 Cr LJ 2796 (MP), death by burning, the conduct of the dying woman immediately after the incident not pointing to the husband setting her on fire, dying declaration doubtful and suspicious, acquittal.

12. *Pachipala Laxmaiah v State of AP*, 2001 Cr LJ 4063 (AP); another similar case *Hariappari v State of Karnataka*, 2001 Cr LJ 4286 (Kant), burnt by the husband, conviction. *Dasrath Sao v State of Bihar*, 2001 Cr LJ 4336 (Jhar) suicide by hanging, no proof of dowry demand or of cruelty or abetment, acquittal. *Shaik China Buda v State of AP*, 2002 Cr LJ 526 , no proof of cruelty, acquittal of husband.

13. *Kodadi Srinivasa Lingam v State of AP*, 2001 Cr LJ 602 (AP). *Bammidi Rajamallu v State of AP*, 2001 Cr LJ 1319 (AP), drinking husband, beating wife and consistently abusing her, cruelty under the section. *Vanamala Amaranadh v State of AP*, 2001 4498, dying declaration contained statements of cruelty, husband convicted. *State of Haryana v Jai Prakash*, 2000 Cr LJ 4995 (2) : (2000) 7 JT 404 (SC), no proper evidence, acquittal, appeal by State, copy of the evidence of the father and brother of the deceased not produced, acquittal not interfered with. *Mangal Ram v State of MP*, 1999 Cr LJ 4342 (MP), suicidal death of married woman within seven years, there was harassment for four *tolas* of gold and the demand being not met she was beaten up and driven out. Offence under the section made out. *Paparambaka Rosamma v State of AP*, 1989 Cr LJ 4321 : AIR 1999 SC 3455 , a mere statement in the dying declaration that she wanted to live

separately from her in-laws and that they did not like her was held to be not sufficient to sustain a charge under this section.

14. *Noorjahan v State*, (2008) 11 SCC 55 [LNIND 2008 SC 950] : AIR 2008 SC 2131 [LNIND 2008 SC 950] . *Ran Singh v State of Haryana*, (2008) 4 SCC 70 [LNIND 2008 SC 204] : AIR 2008 SC 1994 [LNIND 2008 SC 969] : 2008 Cr LJ 1941 , findings of the trial judge disapproved by the High Court on presumptive basis. The Supreme Court restored the order of the trial judge. There was no proof. *B Venkat Swamy v Vijaya Nehru*, (2008) 10 SCC 260 [LNIND 2008 SC 1682] , guilt not proved by circumstantial evidence, the deceased was found hanging in a room which was bolted from inside.
15. *Krishan Lal v UOI*, 1994 Cr LJ 2472 (P&H).
16. *Kans Raj v State of Punjab*, AIR 2000 SC 2324 [LNIND 2000 SC 735] : 2000 Cr LJ 2993 . See also *Ram Saran Varshney v State of UP*, 2016 Cr LJ 1251 : 2016 (3) SCJ 39 .
17. *Raj Rani v State (Delhi) Admn*, AIR 2000 SC 3559 : 2000 Cr LJ 4672 . See also *Satish Shetty v State of Karnataka*, 2016 Cr LJ 3147 : 2016 (6) SCJ 14 .
18. *Krishan Lal v UOI*, 1994 Cr LJ 3472 (P&H).
19. *Sushil Kumar Sharma v UOI*, 2005 Cr LJ 3439 : AIR 2005 SC 3100 [LNIND 2005 SC 1208] : (2005) 6 SCC 281 [LNIND 2005 SC 1208] . The court explained the distinction between sections 306 and 498-A, (cruelty and abetment of suicide) by saying that the difference is that of intention.
20. *Satish Kumar Batra v State of Haryana*, AIR 2009 SC 2180 [LNIND 2009 SC 754] : (2009) 12 SCC 191 .
21. *Sarojakshan v State of Maharashtra*, 1995 Cr LJ 340 (Bom).
22. At p 341. *State of Karnataka v HS Srinivasa*, 1996 Cr LJ 3103 (Kant) acquittal because of no proof. *Balkrishna Pandurang Moghe v State of Maharashtra*, 1992 Cr LJ 4496 (Bom), husband and his relatives treated as a class apart from other offenders with the object of dealing effectively with cases of cruelty by in-laws to married women. Such classification does not result in invidious discrimination violative of [Article 14 of the Constitution](#).
23. *State of Karnataka v Moorthy*, 2002 Cr LJ 1683 (Kant); *State of Maharashtra v Ashok Narayan*, 2000 Cr LJ 4993 : (2000) 9 SCC 257 [LNIND 2000 SC 413] (SC), a letter of the deceased wife was produced in evidence by her brother but it did not show any demand nor mentioned any cruelty. The oral testimony of the brother was not considered to be sufficient.
24. *State of AP v Kalidindi Sahadevudu*, 2012 Cr LJ 2302 (AP).
25. *Pawan Kumar v State of Haryana*, AIR 1998 SC 958 [LNIND 1998 SC 176] : 1998 Cr LJ 1144 (SC); *Mangal Ram v State of MP*, 1999 Cr LJ 4342 (MP), persistent demand for dowry, death due to burn injuries within seven years, conviction. Section 304B was not attracted because the "soon before" requirement was not satisfied.
26. *Ushaben v Kishorbhai Chunilal Talpada*, (2012) 6 SCC 353 [LNINDU 2012 SC 25] : 2012 Cr LJ 2234 .
27. *Pinakin Mahipatray Rawal v State of Gujarat*, 2013 (3) Mad LJ (Cr) 700 : 2013 AIR (SCW) 5219.
28. *Siddaling v State*, AIR 2018 SC 3829 [LNIND 2018 SC 355] .
29. *Laxman Ram Mane v State of Maharashtra*, 2010 (13) SCC 125 : (2011) 1 SCC (Cr) 782.
30. *Chami v State*, 2013 Cr LJ 3441 ; *Suman v Puran Chand*, 2013 Cr LJ 3703 (Raj). See also *State of HP v Pawan Kumar*, 2000 Cr LJ 4889 (HP).
31. *Kantilal Martaji Pandor v State of Gujarat*, 2013 Cr LJ 3866 (SC).
32. *Pashaura Singh v State of Punjab*, 2010 Cr LJ 875 : AIR 2010 SC 922 [LNIND 2009 SC 1988] .
33. *State of Punjab v Dal Jit Singh*, 1999 Cr LJ 2723 (P&H).

34. *Shivanand Mallappa Koti v State of Karnataka*, (2007) 13 SCC 68 [LNIND 2007 SC 778] : AIR 2007 SC 2314 [LNIND 2007 SC 778] . See also *M Sirinivaslu v State of AP*, (2007) 12 SCC 443 [LNIND 2007 SC 1047] : AIR 2007 SC 3146 [LNIND 2007 SC 1047] ; *Vipin Jaiswal v State*, AIR 2013 SC 1567 [LNIND 2013 SC 205] : (2013) 3 SCC 684 [LNIND 2013 SC 205] ; *Modinsab Kasimsab Kanchagar v State of Karnataka*, 2013 Cr LJ 2056 : AIR 2013 SC 1504 [LNIND 2013 SC 1276] : (2013) 4 SCC 551 [LNIND 2013 SC 1276] .
35. *State of Karnataka v Balappa*, 1999 Cr LJ 3064 (Kant).
36. *Bhaskar Ramappa Madar v State of Karnataka*, (2009) 11 SCC 690 [LNIND 2009 SC 723] : 2009 Cr LJ 2422 .
37. *Bharat Bhushan v State*, 2013 (4) Scale 524 [LNIND 2013 SC 199] .
38. *State of Karnataka v KS Manjunathchary*, 1999 Cr LJ 3949 (Kant), father-in-laws' conviction reduced from three to two years. Fine money was enhanced and directed to be paid to the father of the deceased.
39. *Sumangala L Hegde v Laxminarayana Anant Hegde*, 2003 Cr LJ 1418 (Kant). The court noted the ruling in *Ravindra Pyarelal Bidlan v State of Maharashtra*, 1993 Cr LJ 3019 (Bom) to the effect that a cruelty is not mere harassment or mere demand for property, etc. There must be a reasonable nexus between cruelty and suicide for proof of cruelty and also the ruling of the Allahabad High Court in *Vijay Kumar Sharma v State of UP*, (1991) 1 crimes 298 (All), wherein also a minor child was taken away by the husband and his relatives from the custody of the mother in order to coerce her to meet their dowry demand.
40. *Manoj Kumar v State of HP*, 2016 Cr LJ 5015 (MP).
41. *Nachhatar Singh v State of Punjab*, 2011 Cr LJ 2292 : (2011) 11 SCC 542 [LNINDORD 2011 SC 269] .
42. *Amar Singh v State of Rajasthan*, AIR 2010 SC 3391 [LNIND 2010 SC 701] : (2010) 3 SCC (Cr) 1130; *Rajesh Gupta v State*, 2011 Cr LJ 3506 (AP).
43. *Prem Dass v State of HP*, 1996 Cr LJ 951 (HP). *Ashok v State*, AIR 2000 SC 3444 [LNIND 2000 SC 597] : 2000 Cr LJ 2988 , evidence to the effect that the husband and mother-in-law were regularly beating her for not getting scooter, there were marks of injuries on her body. Conviction under the section. The brother-in-law was given the benefit of doubt because there was no evidence of his role. *State of Maharashtra v Ashok Narayan*, AIR 2000 SC 3568 [LNIND 2000 SC 413] : 2000 Cr LJ 4993 there was no assertion in her letters to her brother that the husband was making any demand or assaulted her or treated her with cruelty or torture. Conviction could not be maintained on the oral testimony of her brother. *State of Karnataka v Shivaraj*, 2000 Cr LJ 2741 (Kant) second wife, death of, presumption of validity of marriage unless the contrary is shown, allegations of torture and cruelty not made out.
44. *Ramesh Chand v State of UP*, 1992 Cr LJ 1444 (All); *Pyare Lal v State of Haryana*, AIR 1999 SC 1563 .
45. *Diwan Singh v State of Uttarakhand*, 2016 Cr LJ 1258 (Utr) : 2016 (93) ALLCC 861.
46. *Anoop Kumar v State of MP*, 1999 Cr LJ 2938 (MP).
47. *Lau v DPP*, (2000) 1 FLR 799 (QBD). *State of AP v Madhusudhan Rao*, (2008) 15 SCC 582 [LNIND 2008 SC 2124] ; *Hazarilal v State of MP*, (2009) 13 SCC 783 [LNIND 2007 SC 805] , harassment not proved.
48. *Sarla Prabhakar Waghmare v State of Maharashtra*, 1990 Cr LJ 407 (Bom). *Joytilal Chakraborty v Dipak Dutta*, (1995) 1 Cr LJ 930 (Cal) no complaint by the woman about torture during her life-time, other evidence was also not reliable, complaint rejected. *State of Haryana v Rajinder Singh*, 1996 Cr LJ 1875 (SC), offence not proved, acquittal proper.
49. *Tapan Pal v State of WB*, 1992 Cr LJ 1017 (Cal).

50. *Tasrem Singh v Amrit Kaur*, 1995 Cr LJ 3560 . Where the sufferings of the married woman who committed suicide within seven years were not due to dowry demands but due to incompatibility of temperament and attitudes, no conviction.
51. *U Subba Rao v State of Karnataka*, 2003 AIR—Kant HCR 1062 : 2003 Cr LJ (NOC) 120 (Kant).
52. *Annapurnabal v State of MP*, 1999 Cr LJ 2696 (MP); *Ramesh v State of TN*, 2005 Cr LJ 1732 : AIR 2005 SC 1989 [LNIND 2005 SC 222] : (2005) 3 SCC 507 [LNIND 2005 SC 222] , allegation that the husband's married sister stayed with her parents for a few days. The allegation against her was she directed the complainant wife to wash WC and also made imputations against her. Did not amount to harassment for dowry demand.
53. *Paparambaka Rosamma v State of AP*, 1999 Cr LJ 4321 : AIR 1999 SC 3455 ; *Lawrence v State of Kerala*, 2002 Cr LJ 3455 (Ker); *Taruna v State of WB*, 2001 Cr LJ 4937 (SC); *State of HP v Kewal Kumar*, 2002 Cr LJ 3807 (HP).
54. *Lella Srinivasa Rao v State of AP*, (2004) 9 SCC 713 [LNIND 2004 SC 1273] : AIR 2004 SC 1720 [LNIND 2004 SC 1273] .
55. *Bhaskar Lal Sharma v Monica*, (2010) 1 SCC (Cr) 383 : (2009) 10 SCC 604 [LNIND 2009 SC 1432] .
56. *Ganpat Dnyanoba Garje v State of Maharashtra*, 2012 Cr LJ 1874 (Bom).
57. *Ramgopal v State of MP*, 2010 (13) SCC 540 [LNIND 2010 SC 690] : 2010 (7) Scale 711 [LNIND 2010 SC 690] .
58. *State v Dhruv Kumar Singh*, 2002 Cr LJ 1315 .
59. *Lalmani Mahto v State of Bihar*, 2003 Cr LJ (NOC) 1 (Jhar) : (2002) 3 JLJR 576 .
60. *Arun Garg v State of Punjab*, (2004) 8 SCC 251 [LNIND 2004 SC 1012] .
61. *Satya Narayan Tiwari v State of UP*, 2011 Cr LJ 445 : (2010) 13 SCC 689 [LNINDORD 2010 SC 188] A.
62. *Satish Kumar Batra v State of Haryana*, AIR 2009 SC 2180 [LNIND 2009 SC 754] : (2009) 12 SCC 191 .
63. *Heera Lal v State of Rajasthan*, 2017 (6) Scale 152 .
64. *Vijai Ratan Sharma v State of UP*, 1988 Cr LJ 1581 (All). To the same effect is the decision in *S Faisal Nabi v State of MP*, 2001 Cr LJ 1598 (MP), cruelty was committed at her in-laws' place and continued at her parents' home where she was forced to go, letters of dowry demand also received at the latter place. The Courts at the place of parental home had jurisdiction. *Mohd Haroom v State of Rajasthan*, 1999 Cr LJ 2532 (Raj), unlawful demands, held not sufficient in themselves to constitute cruelty or lead to suicide.
65. *Dukhi Ram v State of UP*, 1993 Cr LJ 2539 (All).
66. *Rajaram Venkatesh v State of AP*, 1993 Cr LJ 707 (AP).
67. *Suman Upadhyay v State of UP*, 1999 Cr LJ 4657 (All).
68. *Gulshan Kapoor v State of Rajasthan*, 2011 Cr LJ 4864 (Raj).
69. *Sunita Kumari Kashyap v State of Bihar*, AIR 2011 SC 1674 [LNIND 2011 SC 405] : 2011 Cr LJ 2667 .
70. *Sujata Mukherjee v Prashant Kumar Mukherjee*, AIR 1997 SC 2465 : 1997 Cr LJ 2985 .
71. *State of MP v Suresh Kaushal*, 2003 (11) SCC 126 : 2002 Cr LJ 217 (SC) reported in 2008 (11) SCC 103 [LNIND 2008 SC 821] : AIR 2008 SC 2666 [LNIND 2008 SC 821] .
72. *Vamgarala Yedukondala v State of AP*, 1988 Cr LJ 1538 (AP).
73. *Prasanna Kumar v Dhanalaxmi*, 1989 Cr LJ 1829 (Mad). *Amrish Kumar Agarwal v State of UP*, 2000 Cr LJ 1324 (All), offence committed before commencement of the new section, prosecution not justified.
74. *Vasanta Tulshiram Bhojar v State of Maharashtra*, 1987 Cr LJ 901 (Bom).

75. *State of Rajasthan v Gopilal*, 1992 Cr LJ 273 . A similar approach was adopted by AP High Court in *Thathapadi Venkatalakshmi v State of AP*, 1991 Cr LJ 749 , the court pointing out that the wife cannot be permitted to withdraw the charge-sheet if it is filed by the police. *Gursharan Kaur v State of Rajasthan*, 1993 Cr LJ 2076 (Raj), the court ordered compromise to be recorded setting aside the Magistrate's order.
76. *D Jayalakshmi v State of MP*, 1993 Cr LJ 3162 (AP).
77. *Pyare Lal Gupta v State*, 2000 Cr LJ 1019 (Del).
78. *Manoj Kumar v State of Rajasthan*, 1999 Cr LJ 10 (Raj).
79. *Gopal v State of TN*, 1999 Cr LJ 3939 (Mad).
80. *BS Joshi v State of Haryana*, AIR 2003 SC 1386 [LNIND 2003 SC 335] : 2003 Cr LJ 2028 , the aggrieved wife settled the matter with her husband by going in for consent divorce and applied for quashing of her complaint. *Risal Singh v State of Punjab*, 2012 Cr LJ 2188 (SC) : 2012 AIR SCW 2249; *Jitendra v Babita*, (2013) 4 SCC 58 [LNIND 2013 SC 195] .
81. *RP Bidlan v State of Maharashtra*, 1993 Cr LJ 3019 (Bom).
82. *Balkrishna Pandurang Moghe v State of Maharashtra*, 1998 Cr LJ 4496 (Bom). The Court said that the section is not invalid on the ground of absence of nexus between the provision and the object sought to be achieved; *Rajendran v Commr of Police*, AIR 2009 SC 855 [LNIND 2008 SC 2339] : (2008) 17 SCC 501 [LNIND 2008 SC 2339] , evidence of torture leading to suicide.
83. *Suvetha v State*, (2009) 6 SCC 757 [LNIND 2009 SC 1156] : 2009 Cr LJ 2974 ; *Ranjana Gopalrao Thorat v State of Maharashtra*, 2008 Bom CR (Cr) 185 : (2007 (5) AIR Bom R 271; a person can become a relative only by blood or marriage and not otherwise. The word relative has been defined in the Chambers Dictionary 'person who is related by blood or marriage'. A second wife cannot assume a character as wife if there is no marriage in the eye of law. Since she is not a relative, she does not fall within the scope of section 498A of IPC, 1860 at all. She certainly deserves to be discharged as far as offence under section 498A of IPC, 1860 is concerned; *John Indiculla v State*, 2005 Cr LJ 2925 (Ker) - the second wife is a relative of the husband.
84. *Syed Hyder Hussain v State of AP*, (2002) Cr LJ 3602 (AP).
85. *Reema Agarwal v Anupam*, (2004) 3 SCC 199 [LNIND 2004 SC 1499] : AIR 2004 SC 1418 [LNIND 2004 SC 1499] : 2004 Cr LJ 892 ; *A Subhash Babu v State of AP*, AIR 2011 SC 3031 [LNIND 2011 SC 679] : 2011 (7) SCC 616 [LNIND 2011 SC 679] .
86. *Vasant Bhagwat Patil v State of Maharashtra*, 2012 Cr LJ 65 (Bom).
87. *Chandrawati v State*, 1996 Cr LJ 975 (Del).
88. *Undavalli Narayana Rao v State of AP*, (2009) 14 SCC 588 [LNIND 2009 SC 1515] .
89. *Inderpal v State of MP*, (2001) 10 SCC 736 : 2002 Cr LJ 926 (SC); *Gananath Pattnaik v State of Orissa*, (2002) 2 SCC 619 [LNIND 2002 SC 100] .
90. *State of Karnataka v Siddaraju*, 2000 Cr LJ 4220 (Kant); *Kishangiri Mangalgiri Goswami v State of Gujarat*, (2009) 4 SCC 52 [LNIND 2009 SC 193] : AIR 2009 SC 1808 [LNIND 2009 SC 193] : 2009 Cr LJ 1720 : (2009) 2 GLR 1074 , imprisonment for 10 years not interfered with, that under Dowry Prohibition Act, 1961, section 3, reduced from five to three years. *Balwant Singh v State of HP*, (2008) 15 SCC 497 [LNIND 2008 SC 1942] : 2008 Cr LJ 4683 , sentence for one year maintained, that of aged parents-in-law reduced to the period already undergone. *Shivcharan Lal Verma v State of MP*, (2007) 15 SCC 369 , second marriage during life-time of the first wife, second wife tortured by both, section 498-A not applicable, but because she committed suicide because of the torture, conviction under section 306 maintained, but sentence of seven years reduced to five years. *Milind Bhagwanrao Godse v State of Maharashtra*, (2009) 2 SCC (Cr) 182 : AIR 2009 AC 1828 : (2009) 3 SCC 699 [LNIND 2009 SC 338] : 2009 Cr LJ 1736 , torture leading to suicide, conviction under sections 498-A, 306, 109 read with section 34. *Kailash v State of MP*,

(2006) 12 SCC 667 [LNIND 2006 SC 803] : AIR 2007 SC 107 [LNIND 2006 SC 803] , the accused had already under gone eight years of imprisonment, the court reduced the sentence to eight years. *Anand Mohan Sen v State of WB*, (2007) 10 SCC 774 [LNIND 2007 SC 688] : 2007 Cr LJ 2770 , death by itself may not lead to an inference that cruelty was there, but in this case there were specific allegations which were proved by prosecution witnesses, ingredients were satisfied, no interference in the order of conviction by the High Court.

91. *Malyala Vishwanatha Rao v State of AP*, 2003 Cr LJ (NOC) 11 (AP) : (2002) 1 ALT (Cr) 499. *Konidela Madhusudhan v State of AP*, 2003 Cr LJ (NOC) 172 (AP) : (2003) 1 Andh LD (Cr) 823, harassment was not complained of immediately. The sentence of imprisonment was restricted to the period already undergone. *Chandra Kala Devi v State of Bihar*, 2003 Cr LJ 3146 (Pat), evidence of witnesses showed that the in-laws of the victim demanded motorcycle from parents and that she had to face hostile atmosphere for that reason. There was also an attempt to set her on fire. Finding of guilt and sentence imposed were confirmed, but looking at their age and the fact that they remained in custody for 52 days, their sentence was reduced to the period already undergone.

92. *State of Maharashtra v Vasant Shankar Mhasane*, 1993 Cr LJ 1134 (Bom). *Raghumunda Satya Narayana v State of AP*, AIR 2000 SC 3420 : 2000 Cr LJ 2779 the accused-husband was convicted under the section and sentenced to two years' imprisonment. The aggrieved wife filed affidavit saying that they had come to terms and that their peace would elude them if the husband had to undergo the whole sentence. The sentence was reduced to the period already undergone.

93. *Siddaling v State*, AIR 2018 SC 3829 [LNIND 2018 SC 355] .

94. *BT Jayaram v State of Karnataka*, (2008) 14 SCC 530 : AIR 2006 SC 1799 . *Satish Kumar Batra v State of Haryana*, (2009) 12 SCC 491 [LNIND 2009 SC 754] : AIR 2009 SC 2180 [LNIND 2009 SC 754] : 2009 Cr LJ 2447 , sentence reduced to the period already undergone 13 months.

95. *Rajesh Sharma v State of UP*, AIR 2017 SC 3869 [LNIND 2017 SC 351] .

96. *Onkar Nath Mishra v State (NCT) of Delhi*, (2008) 2 SCC 561 [LNIND 2007 SC 1511] : 2008 Cr LJ 1391 . See also *Social Action Forum for Manav Adhikar v Union of India Ministry of Law and Justice*, AIR 2018 SC 4273 .

97. *Onkar Nath Mishra v State (NCT) of Delhi*, (2008) 2 SCC 561 [LNIND 2007 SC 1511] : 2008 Cr LJ 1391 , there was not even whisper of wilful conduct of harassment.

98. *Sunil Kumar Sambhudayal Gupta v State of Maharashtra*, 2011 Cr LJ 705 : (2010) 13 SCC 657 [LNIND 2010 SC 1088] .

99. *KRJ Sarma v Surya Rao*, 2013 Cr LJ 2189 (SC); *State of HP v Manju Rani*, 2013 Cr LJ 101 (HP); *Anil Kumar Gupta v State of UP*, 2011 Cr LJ 2131 : (2011) 11 SCC 24 [LNIND 2011 SC 275] ; *Atikul Islam v State of Tripura*, 2013 Cr LJ 1374 (Gau) – allegation of cruelty is not proved beyond reasonable doubt, Accused was acquitted.

100. *Maniklal Jain v State of MP*, 2012 Cr LJ 613 (SC) : 2011 AIR SCW 6471.

101. *Anisetti Sivaprasada Rao v State of AP*, 1994 Cr LJ 1760 (AP). *Mangilal v State of Rajasthan*, AIR 2001 SC 2937 [LNIND 2001 SC 2385] , the accused administered poison to his wife, acquittal set aside; *Girdhar Shankar Tawade v State of Maharashtra*, AIR 2002 SC 2078 [LNIND 2002 SC 325] : 2002 Cr LJ 2814 (SC), charges under sections 306 and 498A are independent of each other. Acquittal under section 306 does not necessarily entail acquittal under section 498A. But there was no evidence to bring home the charge even under section 498A.

102. *Savalram v State of Maharashtra*, 2003 Cr LJ 2831 (Bom).

103. *Hussan Lal v State of Punjab*, 2002 Cr LJ 2436 (P&H).

104. *Vijaya v Laxmanan*, 1999 Cr LJ 5012 : (1998) 8 SCC 415 .

105. *Arun Vyas v Anita Vyas*, AIR 1999 SC 2071 [LNIND 1999 SC 1377] : 1999 Cr LJ 3479 .

106. *Preeti Gupta v State of Jharkhand*, (2010) 7 SCC 667 [LNIND 2010 SC 752] : AIR 2010 SC 3363 [LNIND 2010 SC 752].

107. Law Commission of India—243rd Report, Para-9.1; Available at : <http://lawcommissionofindia.nic.in/reports/report243.pdf> (last accessed in July 2019).

108. Law Commission of India- 243rd Report- Para-9.1; Available at : <http://lawcommissionofindia.nic.in/reports/report243.pdf> (last accessed in July 2019).



# THE INDIAN PENAL CODE

## CHAPTER XXI OF DEFAMATION

### [s 499] Defamation.

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

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

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

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

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

### ILLUSTRATIONS

- (a) A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.
- (b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation unless it falls within one of the exceptions.
- (c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

**Imputation of truth which public good requires to be made or published.**

**First Exception.**—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.

**Public conduct of public servants.**

**Second Exception.**—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.**

**Conduct of any person touching any public question.**

**Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.**

#### ILLUSTRATION

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending a such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharges of the duties of which the public is interested.

**Publication of reports of proceedings of Courts.**

**Fourth Exception.—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.**

**Explanation.—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.**

**Merits of a case decided in Court or conduct of witnesses and others concerned.**

**Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.**

#### ILLUSTRATIONS

- (a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this in good faith, in as much as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.
- (b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, in as much as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

**Merits of public performance.**

**Sixth Exception.—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.**

**Explanation.—A performance may be substituted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.**

#### ILLUSTRATIONS

- (a) A person who publishes a book, submits that book to the judgment of the public.
- (b) A person who makes a speech in public, submits that speech to the judgment of the public.
- (c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.
- (d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, in as much as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.
- (e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine". A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

**Censure passed in good faith by person having lawful authority over another.**

**Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.**

#### ILLUSTRATION

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

**Accusation preferred in good faith to authorised person.**

**Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.**

#### ILLUSTRATION

If A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

**Imputation made in good faith by person for protection of his or other's interests.**

**Ninth Exception.—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.**

#### ILLUSTRATIONS

- (a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.
- (b) A, a Magistrate, in making a report of his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

**Caution intended for good of person to whom conveyed or for public good.**

**Tenth Exception.—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.**

#### COMMENT.—

[Section 499 Indian Penal Code \(IPC, 1860\)](#) brings under the criminal law, the person who publishes as well as the person who makes the defamatory imputation. [Section 499, IPC, 1860](#) emphasises the words "makes or publishes". The gist of the offence of defamation lies in the dissemination of the harmful imputation. When a defamatory statement is published, it is not only the publisher, but also the maker who becomes responsible and it is in that context that the word "makes" is used in [section 499 IPC, 1860](#). It is of essence that in order to constitute the offence of defamation, it must be communicated to a third person because what is intended by the imputation is to arouse hostility of others. Therefore, in brief, the essentials of defamation are, first, the words must be defamatory; second, they must refer to the aggrieved party; third, they must be maliciously published.<sup>1</sup>

#### [s 499.1] Reputation.—

Right to reputation is a facet of right to life of a citizen under [Article 21 of the Constitution](#).<sup>2</sup> The right to enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the [Constitution](#) equally with the right to the enjoyment of life, liberty and property.<sup>3</sup> The term 'person' includes not only the physical body and members but also every bodily sense and personal attribute among which is the reputation a man has acquired. Reputation can also be defined to be good name, the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report. The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. 'Reputation' is an element of personal security and is protected by [Constitution](#) equally with the right to enjoyment of life, liberty and property. Although, 'character' and 'reputation' are often used synonymously, these terms are distinguishable. 'Character' is what a man is and

'reputation' is what he is supposed to be in what people say he is. 'Character' depends on attributes possessed and 'reputation' on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present.<sup>4</sup>

### [s 499.2] Constitutional validity.—

The Constitutional validity of [sections 499 and 500 of IPC, 1860](#) and [section 199 of Code of Criminal Procedure, \(Cr PC, 1973\)](#) was assailed in *Subramanian Swamy v UOI, Ministry of Law*,<sup>5</sup> and the Supreme Court upheld it. The Court observed thus:

One cannot be unmindful that right to freedom of speech and expression is a highly valued and cherished right but the [Constitution](#) conceives of reasonable restriction. In that context criminal defamation which is in existence in the form of [ss. 499 and 500 Indian Penal Code](#) is not a restriction on free speech that can be characterized as disproportionate. Right to free speech cannot mean that a citizen can defame the other. Protection of reputation is a fundamental right. It is also a human right. Cumulatively it serves the social interest.

The Apex Court did not accept that the provisions relating to criminal defamation are not saved by the doctrine of proportionality, because it determines a limit which is not impermissible within the criterion of reasonable restriction. The Court also held that the criminal prosecution on defamation will not negate and violate the right to speech and expression of opinion.

1. *BRK Murthy v State*, [2013 Cr LJ 1602 \(AP\)](#).

2. *Mehmood Azam v State*, [AIR 2012 SC 2573 \[LNIND 2012 SC 456\]](#) : (2012) 8 SCC 1 [LNIND 2012 SC 456] ; *Vishwanath S/o Sitaram Agrawal v Sarla Vishwanath Agrawal*, [AIR 2010 SC 1974 \[LNINDORD 2010 SC 207\]](#) : 2010 (7) SCC 263 [LNIND 2010 SC 438] .

3. *Smt. Kiran Bedi v Committee of Inquiry*, [AIR 1995 SC 117 \[LNIND 1994 SC 929\]](#) : 1994 (6) SCC 565 [LNIND 1994 SC 952] : 1995 SCC (Cr) 29, **quoted** from *D F Marion v Davis*, [1989 \(1\) SCC 494 \[LNIND 1989 SC 10\]](#) : [AIR 1989 SC 714 \[LNIND 1989 SC 833\]](#) .

4. *Kishore Samrite v State of UP*, [\(2013\) 2 SCC 398 \[LNIND 2012 SC 657\]](#) .

5. *Subramanian Swamy v UOI, Ministry of Law*, [2016 Cr LJ 3214](#) : 2016 (5) SCJ 643 .

# THE INDIAN PENAL CODE

## CHAPTER XXI OF DEFAMATION

### [s 500] Punishment for defamation.

**Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.**

### COMMENT.—

The essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed.<sup>6</sup>

### [s 500.1] Ingredients.—

The section requires three essentials:—

1. Making or publishing any imputation concerning any person.
2. Such imputation must have been made by
  - (a) words, either spoken or intended to be read; or
  - (b) signs; or
  - (c) visible representations.
3. Such imputation must have been made with the intention of harming or with knowledge or reason to believe that it will harm the reputation of the person concerning whom it is made.<sup>7</sup> It is clear that intention to cause harm is the most essential sine qua non for an offence under [section 499, IPC, 1860](#). An offence punishable under [section 500, IPC, 1860](#) requires blameworthy mind and is not a statutory offence requiring any *mens rea*.<sup>8</sup>

**1. 'Makes or publishes any imputation concerning any person'.—**Everyone who composes, dictates, writes or in any way contributes to the making of a libel, is the maker of the libel. If one dictates, and another writes, both are guilty of making it, for he shows his approbation of what he writes. So, if one repeats, another writes a libel, and a third approved what is written they are all makers of it, as all who concur and assent to the doing of an unlawful act are guilty; and murdering a man's reputation by a libel may be compared to murdering a man's person, in which all who are present and encourage the act are guilty, though the wound was given by one only.<sup>9</sup> The mechanic or the compositor of the Press does neither 'make nor publish' the matter that may be impugned as defamatory.<sup>10</sup> Intention on the part of the accused to harm the reputation or the knowledge or reasonable belief that an imputation will harm the reputation of the person concerned being an essential ingredient of the offence of defamation, the Chairman of a Company owning the newspaper in which the offending news item is published cannot be held liable unless it is shown that he was somehow

concerned with the publication of the defamatory news item. Under [section 7 of the Press and Registration of Books Act, 1867](#) a presumption regarding awareness of the contents of a newspaper can be raised only against the Editor whose name appears on the copy of the newspaper and no other Editors like the News Editor or Resident Editor whose names do not appear in the declaration printed on the copy of the newspaper.<sup>11</sup>

### [s 500.2] 'Publishes'.—

The defamatory matter must be published, that is, communicated to some person other than the person about whom it is addressed, e.g., dictating a letter to a clerk is publication.<sup>12</sup> Imputations in a charge sheet which is sent to the employee himself does not amount to a publication.<sup>13</sup> But where there is a duty which forms the ground of privileged occasion, the person exercising the privilege may communicate matters to a third person in the ordinary course of business. A solicitor who dictates to his clerk a letter containing defamatory statements regarding a person is not liable for defamation.<sup>14</sup> Where the complainant's Advocate sent a notice to a party whose Advocate dictated a reply to his steno containing defamatory remarks and the same was sent to the complainant's Advocate, the Kerala High Court held that this did not amount to any publication.<sup>15</sup>

Communicating defamatory matter only to the person defamed is not publication.<sup>16</sup> The action of a person who sent to a public officer by post, in a closed cover, a notice containing imputations on the character of the recipient but which was not communicated by the accused to any third person was held to be not such a 'making' or 'publishing' of the matter complained of as to constitute this offence.<sup>17</sup> A notice under a Municipal Act was issued by the President of the Municipal Committee to a certain person, who sent a reply containing defamatory allegations against the President. This reply was put on the official file by the President and it was read by the members of the Committee. It was held that there was publication of the defamation. The placing of the reply on the official file was not a gratuitous or voluntary act on the part of the President but it was his duty to do so, and the accused knew or must have known that the contents of his reply would be necessarily communicated to the members of the Committee.<sup>18</sup>

Where the alleged defamatory words were sent to the complainant by registered post, it was held that there was no publication. There was absence of one of the necessary ingredients of the offence, namely publication. The complaint was liable to be quashed.<sup>19</sup>

Defamatory matter written on a postcard<sup>20</sup> or printed on papers distributed or broadcast,<sup>21</sup> constitutes publication. So is the filing in a Court of a petition containing defamatory matter concerning a person with the intention that it should be read by other persons.<sup>22</sup> When a person presents a defamatory petition to a superior public officer, who, in the ordinary course of official routine, sends it to some subordinate officer for inquiry, there is a publication of the letter at the place where he may receive it, and publication for which the original writer may *prima facie* be held responsible, whether or not he expressly asks for an inquiry.<sup>23</sup> Communication to a husband or wife of a charge against the wife or husband is publication,<sup>24</sup> but uttering of a libel by a husband to his wife is not, as in England they are one in the eye of the law.<sup>25</sup>

Where a libel is printed, the sale of each copy is a distinct publication and a fresh offence; and conviction or acquittal on an indictment for publishing one copy will be no bar to an indictment for publishing another copy.<sup>26</sup>

The person who publishes the imputation need not necessarily be the author of the imputation. The person who publishes and the person who makes an imputation are alike guilty.<sup>27.</sup>

### **[s 500.3] General Statement.—**

In order to constitute offence of defamation the words, signs, imputation made by accused must either be intended to harm the reputation of a particular person or the accused must reasonably know that his/her conduct could cause such harm. Where the appellant's statement published in news magazine was a rather general endorsement of pre-marital sex and her remarks were not directed at any individual or even at a 'company or an association or collection of persons', it was held that it cannot be construed as an attack on the reputation of anyone in particular.<sup>28.</sup> Where a complaint was filed with regard to a statement made by the Gujarat Chief Minister published in media or newspaper or over television or through internet that ex-Prime Minister late Hon'ble Shri Jawahar Lal Nehru did nothing for children. The High Court upheld the rejection of complaint holding that it was only a general statement and cannot be construed as an attack on reputation of anyone in particular.<sup>29.</sup>

### **[s 500.4] Repetition.—**

The Code makes no exception in favour of a second or third publication as compared with the first. If a complaint is properly laid in respect of a publication which is *prima facie* defamatory, the Magistrate is bound to take cognizance of the complaint, and deal with it according to law.<sup>30.</sup> The publisher of a libel is strictly responsible, irrespective of the fact whether he is the originator of the libel or is merely repeating it.<sup>31.</sup>

### **[s 500.5] Publication of defamatory matter in newspaper.—**

In a case of defamation, only the source of information on which the person accused has acted and the justification for his so acting, are to be considered. If he has not taken proper care and acted on gossip against the complainant hereby defamed, he ought not to escape the consequence on the ground that he has contracted the incorrect report. The culpability in such cases does not depend upon the circumstances where he has tried to undo the wrong which he has committed or not put up on fact he has acted with care or attention or has done so rashly or negligently, it is no defence in the matter of defamation for the accused to say that he has acted on the information given to him by another. It is for him to establish that the source on which he acted is a proper source on which he is entitled and he did with care and circumspection. Therefore, the editor and publisher are liable for the baseless and false matter which was published in the journal. Such an irresponsible conduct and attitude on the part of the editor and publisher cannot be said to be done in good faith.<sup>32.</sup> In the matter of defamation the position of newspaper is not in any way different from that of member of the public in general. The responsibility in either case is the same.<sup>33.</sup> The publisher of a newspaper is responsible for defamatory matter published in such paper whether he knows the contents of such paper or not.<sup>34.</sup> But it would be a sufficient answer to a charge of defamation against the editor of a newspaper if he proved that the libel was published in his absence and without his knowledge and he had in good faith entrusted the temporary management of the newspaper during his absence to a



competent person.<sup>35</sup> The owner of a journal in order to be liable under section 499 has to have direct responsibility for the publication of the defamatory statement and he must also have the intention to harm, or knowledge or reason to believe that the imputation will harm the reputation of person concerned. The owner of a journal *qua* has no responsibility under the section.<sup>36</sup> The prosecution of the chairman and managing director of a company owning the newspaper for the publication of defamatory article in the newspaper by reason of their holding those posts would be invalid unless their personal involvement in the publication of the article is established.<sup>37</sup>

Where a newspaper carried extracts from a book written on one of the former Prime Ministers of India containing imputations of corruption, the editor of the newspaper was liable to be prosecuted. His plea that he was only a publisher and not the author of the extracts was held to be not tenable. It was alleged that there was a criminal conspiracy in the matter between the managing editor, resident editor and executing editor. All of them were liable to be prosecuted.<sup>38</sup> A chief editor of a newspaper cannot say that he is not responsible for selection and publication of matters in the newspaper. A complaint against the chief editor is maintainable.<sup>39</sup>

The sending of a newspaper, containing defamatory matter by post from Calcutta, where it is published, addressed to a subscriber at Allahabad, is publication of such defamatory matter at Allahabad.<sup>40</sup>

#### **[s 500.6] Liability of Editor.—**

From the scheme of the Press and Registration of Books (PRB) Act, it is evident that it is the Editor who controls the selection of matter that is published. A news item has the potentiality of bringing doom's day for an individual. The Editor controls the selection of the matter that is published. Therefore, he has to keep a careful eye on the selection. Blue-penciling of news articles by anyone other than the Editor is not welcome in a democratic polity. Editors have to take responsibility of everything they publish and to maintain the integrity of published record.<sup>41</sup>

#### **[s 500.7] Prosecution against CEO of TV Channel.—**

In order to constitute offence of defamation under criminal law, [section 499, IPC, 1860](#) contemplates "intending to harm, or knowing or having reason to believe that such imputation will harm reputation of such person" on the part of the accused. In the entire complaint, the complainant/1st respondent did not allege that the accused, who is Chief Executive Officer of TV-9 channel, telecast the news item or permitted to re-telecast the news item with such state of mind (*Mens rea*). Except as Chief Executive Officer of the TV news channel, the complainant did not allege any other connection for the accused with telecasting of the news item. In the absence of any such connection for the accused with this news item and in the absence of any such *mens rea* or state of mind for the accused in relation to this news item, simply because the accused happened to be Chief Executive Officer or proprietor or partner or managing director of the TV news channel, no criminal case can lie against him for offence punishable under [section 500, IPC, 1860](#).<sup>42</sup>

#### **[s 500.8] Jurisdiction.—**

Where a newspaper containing a defamatory article is printed and published at one place and is circulated or sold at other places by or on behalf of the accused responsible for printing and publishing the newspaper, then there would be publication of the defamatory article in all such places and jurisdictional Magistrate can entertain the complaint for defamation. It cannot be said that the act of publication comes to an end as soon as the issue of the newspaper is released at one place. If that newspaper is despatched by the printer and publisher to other places for being sold or circulated, the defamatory article gets published at each such place. The mere fact that the headquarter of a newspaper is based at a particular place or that it is printed and published at one place, does not necessarily mean that there cannot be publication of the defamatory article contained in the newspaper at another place. If the defamatory imputation is made available to public at several places, then the offence is committed at each such place. Though the first offence may be committed at the place where it is printed and first published, it gets repeated wherever the newspaper is circulated at other places.<sup>43.</sup>

### **[s 500.9] Apology.—**

Where the incriminating news was not published in the newspaper by the editor knowing or having good reason to believe that such matter was defamatory of the complainant, the editor had no ill will against him and had expressed regret for such publication, it was held that the editor could not be held responsible in connection with the defamation.<sup>44.</sup>

### **[s 500.10] 'Imputation'.—**

It is immaterial whether the imputation is conveyed obliquely or indirectly, or by way of question, conjecture, or exclamation, or by irony.<sup>45.</sup>

The words "coward, dishonest man, and something worse than either"<sup>46.</sup> and words to the effect that the complainant and others were preparing to bring a false charge against the accused,<sup>47.</sup> were held to be defamatory. Calling a counsel "badmash" in the open Court was held to be not an offence within the meaning of section 499. The Court said that it might come under section 504. The acquittal of the accused under section 500 was held to be proper.<sup>48.</sup> The accused married the complainant by exchange of garlands in a temple. He lived with her for a few days and then started demanding money and described her as unchaste woman and not decent looking. The Court said that the ingredients of section 500 were *prima facie* made out and, therefore, the accused was liable to be prosecuted.<sup>49.</sup>

### **[s 500.11] 'Concerning any person'.—**

The words must contain an imputation concerning some particular person or persons whose identity can be established. That person need not necessarily be a single individual. Where the accused published in a paper an account of an outrage on a woman alleged to have been perpetrated by two constables out of four constables stationed at a police station, it was held that, in the absence of proof that it was intended to charge any particular and identifiable constables with the alleged offence, the accused could not be convicted.<sup>50.</sup> Where a film which was alleged to be defamatory of lawyers as a class formed the basis of a defamation case against the

producers including artists and Chairman of the Central Board of Censors, it was held that though the offence of defamation can be committed in regard to a company or collection of persons in view of Explanation 2 to [section 499, IPC, 1860](#), yet it is necessary to show that this collection of persons is a small determinate body whose identity can be fixed. Advocates as a class are incapable of being defamed.<sup>51</sup> In this connection see comments under head "Explanation-2" *infra*.

A newspaper is not a person and therefore, it is not an offence to defame a newspaper. Defamation of a newspaper may, in certain cases, involve defamation of those responsible for its publication.<sup>52</sup>

### **[s 500.12] *Innuendo*.—**

Where the statement does not refer to the complainant directly, the doctrine of *innuendo* may be pressed into service for the purpose of showing that the complainant was the real target of the attack. He must bring forward additional facts showing how the words are related to him in a manner which is defamatory. "A true *innuendo* is an *innuendo* by which the plaintiff alleges a special defamatory meaning of the words distinct from their ordinary meaning and arising by virtue of extrinsic facts or matters known to the recipients."<sup>53</sup> Applying this principle to the facts of a case before it, the Supreme Court laid down that an *innuendo* cannot be established by an evidence showing inferences of two kinds. The evidence of additional facts must be capable of showing that the words were applicable to the complainant and the complainant alone.<sup>54</sup>

**2. 'Such imputation should have been made by words either spoken or intended to be read, or by signs or by visible representation'.—**[IPC, 1860](#) makes no distinction between written and spoken defamation.<sup>55</sup>

### **[s 500.13] 'By signs or by visible representations'.—**

The words 'visible representation' will include every possible form of defamation which ingenuity can devise. For instance, a statue, a caricature, and effigy, chalk marks on a wall, signs, or pictures may constitute a libel.<sup>56</sup> The publication of a group photograph with a false caption depicting the persons in the photograph as soldiers of a "goonda war" was held to be defamatory.<sup>57</sup> In another case, Complainant alleged that four photographs of an incident were published in a newspaper, in which, one photograph showed the complainant more or less nude and that has caused defamation and harm to him. The photographs during a protest demonstration a protest demonstration and depicted the sequence of events when the complainant was being pulled out of a police jeep. It can never be stated that the publication of the photographs in the newspaper was with the intention or with knowledge or having reason to believe that it will harm the reputation of the complainant. Proceedings are liable to be quashed.<sup>58</sup>

**3. 'Intending to harm, or knowing or having reason to believe that such imputation will harm'.—**In this section the expression "harm" means harm to the reputation of the aggrieved party.<sup>59</sup> It is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation alleged; it is sufficient to show that the accused intended to harm, or knew, or had reason to believe that the imputation made by him would harm the reputation of the complainant.<sup>60</sup> A statement made primarily with the object that the person making it should escape from a difficulty

cannot be made the subject of a criminal charge merely because it contains matter which may be harmful to the reputation of other people or hurtful to their feelings.<sup>61.</sup>

The meaning to be attached to the word 'harm' is not the ordinary sense in which it is used. By 'harm' is meant imputation on a man's character made and expressed to *others* so as to lower him in their estimation. Anything which lowers him merely in *his own* estimation does not constitute defamation.<sup>62.</sup> Accusing a person in front of the public, of having illicit relations with accuser's sister cannot be considered to have been uttered merely as scurrilous abuse in the situation in which they were used against the accused. The accusation took place in an open gathering when not only the members of the Gram Panchayat were present but also the members of the general public. Conviction of the accused under [section 500 IPC, 1860](#) was upheld.<sup>63.</sup>

#### **[s 500.14] 'Reputation'.—**

A man's opinion of himself cannot be called his reputation.<sup>64.</sup> A man has no 'reputation' to himself and therefore, communication of defamatory matter to the person defamed is no publication.

#### **[s 500.15] *Explanation 1.*—**

A prosecution may be maintained for defamation of a deceased person, but it has been ruled that no suit for damages will lie in such a case. Where, therefore, a suit was brought by the heir and nearest relation of a deceased person for defamatory words spoken of such deceased person, but alleged to have caused damage to the plaintiff as a member of the same family, it was held that the suit was not maintainable.<sup>65.</sup>

#### **[s 500.16] *Explanation 2.*—**

*Imputation concerning company, association or collection of persons.*—An action for libel will lie at the suit of an incorporated trading company in respect of a libel calculated to injure its reputation in the way of its business.<sup>66.</sup> The words complained of must attack the corporation or company in the method of conducting its affairs, must accuse it of fraud or mismanagement or must attack its financial position.<sup>67.</sup> A corporation has no reputation apart from its property or trade. It cannot maintain an action for a libel merely affecting personal reputation. The words complained of, to support a prosecution, must reflect on the management of its business and must injuriously affect the corporation, as distinct from the individuals who compose it. They must attack the corporation in its method of conducting its affairs, must accuse it of fraud or mismanagement or must attack its financial position. A corporation cannot bring a prosecution for words which merely affect its honour or dignity.<sup>68.</sup>

A prosecution lies for libelling Hindu widows as a class.<sup>69.</sup> Where the defamatory articles, published in a newspaper, related to the habitual immoral conduct of the girls of a particular college, but no particular girl or girls were named in or identifiable from the articles, and the complaint was filed by a number of girls of the college, it was held that the author of the articles was guilty of defamation, in as much as the inevitable effect of the articles on the mind of the reader must be to make him believe that it was habitual with the girls of the college to misbehave in the ways mentioned so that all the girls in the college collectively and each girl individually must suffer in reputation.<sup>70.</sup>

This Explanation covers any collection of persons but such collection of persons must be identifiable in the sense that one could with certainty say that this group of particular people has been defamed as distinguished from the rest of the community. Public Prosecutors and Assistant Public Prosecutors at Aligarh in Uttar Pradesh were held to be an identifiable group and hence, could be the subject of defamation according to the Supreme Court.<sup>71</sup> In this connection see para captioned "Concerning any Person" and the cases mentioned therein.

The offending article must carry an imputation against a definite and ascertainable body of people. A complaint was not allowed to be continued where the article published in a magazine carried imputations against a certain community in general and not against any particular group, nor the community was found to be a definite and identifiable body of people and the imputations also did not relate to the complainant.<sup>72</sup> Where a news in a local daily about insufficiency of sandal wood pieces at the cremation of the President of a National Political Party was published, but no defamatory words or imputation against the said political party was used in the news item and it did not refer to any definite or determinate person or persons, it was held that offence of defamation was not constituted.<sup>73</sup>

#### **[s 500.17] Explanation 4.—**

This Explanation would not apply when the words used and forming the subject-matter of the charge are *per se* defamatory.<sup>74</sup> Describing a woman that she has paramours wherever she goes is *per se* defamatory.<sup>75</sup> Wanton allegations by the accused against the complainant who was his wife that she was not virgin at the time of marriage, that she had a living husband at that time and had a child from him and that she had gone to the extent of committing theft, were held to be defamatory. The burden was upon him to show that the publication in question was necessary in good faith for the protection of his interest. He could not do this and, therefore, the Court showed no mercy and sentenced him to simple imprisonment for two months and a fine of Rs. 3,000.<sup>76</sup>

#### **[s 500.18] Exceptions.—**

The defamatory statement does not fall within any of the Exceptions by reason merely of the fact that it is punishable as an offence under section 182 or any other section of the Code.<sup>77</sup>

#### **[s 500.19] Members of Legislature and Parliament.—**

In the absence of legislation by the Indian Parliament on the subject, the privileges, powers and immunities of a House of State Legislature or Parliament or of its members are the same as those of the House of Commons in England. A member of the House of Commons has an absolute privilege in respect of what he has spoken within the four walls of the House but there is only a qualified privilege in his favour even in respect of what he has himself said in the House, if he causes the same to be published in the public press. Where a member of a State Legislature got published in the press a question which the member had sought to put in the House but which the Speaker had disallowed and the question contained defamatory imputations regarding

the character of a person, it was held that the publication was not accepted by any of the exceptions to section 499.<sup>78</sup>

A minister was questioned about misappropriation of Government funds. He replied by saying that the preliminary enquiry made by the government showed that some misappropriation had taken place. He also disclosed the names of the persons involved including that of the complainant as indicated in the report. This part of the proceedings was published in the newspaper of the accused. Since the newspaper exercised its qualified privilege in good faith, it was held that there was no intention to cause harm to the reputation of the complainant.<sup>79</sup>

### **[s 500.20] Exception 1.—**

This Exception and Exception 4 require that the imputation should be true. The remaining Exceptions do not require it to be so. They only require that it should be made in good faith. When truth is set up as a defence, it must extend to the entire libel and it is not sufficient that only a part of the libel is proved to be true.<sup>80</sup>

The truth of the imputation complained of shall amount to defence if it was for the public benefit that the imputation should be published, but not otherwise. A Court may find that an imputation is true, and made for the public good, but on considering the manner of the publication (e.g., in a newspaper) it may hold that the particular publication is not for the public good, and is, therefore, not privileged.<sup>81</sup> To get the benefit of this exception the accused must prove that the statement made by him is true in its substance and effect and not in part. Whether or not the statement was made for public good, an enquiry must be directed to the benefit that the publication has rendered or sought to render to the public or to a section of the public and whether the matter did concern the public.<sup>82</sup>

### **[s 500.21] CASE.—**

C was put out of caste by a committee of his caste-fellows on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of the committee, circulated a letter to the members of their caste stating that C and such woman had been put out of caste and requesting the members of the caste not to receive them into their houses or to eat with them and also made defamatory statements about them. It was held that, had such persons contented themselves with announcing the determination of the committee and the grounds upon which such determination was based, they would have been protected, but in as much as they went further and made false and uncalled for statements regarding C; they had not acted in good faith.<sup>83</sup> If a person really was outcasted, a statement to the members of the brotherhood that he was outcasted is the kind of statement contemplated by the expression "public good".<sup>84</sup> Where there exists a civil dispute between the parties as to the property where school is situated and run by complainant, which is admittedly pending in civil Court, mere alerting by accused to parents to take admission of their children at their own risk in school or in summer camp cannot be considered as defamatory or affecting the reputation or character of complainant. The above caution notice by no stretch of imagination can be considered as imputations actionable within the meaning of [section 499 of the IPC, 1860](#).<sup>85</sup>

### **[s 500.22] Exception 2.—**

Every citizen has a right to comment on those acts of public men which concern him as a citizen of the country, if he does not make his commentary a cloak for malice and slander. A writer in a public paper has the same right as any other person, and it is his privilege, if indeed it is not his duty, to comment on the act of public men which concern not himself only but which concern the public, and the discussion of which is for the public good. And where a person makes the public conduct of a public man the subject of comment and it is for the public good, he is not liable to an action if the comments are made honestly, and he honestly believes the facts to be as he states them, and there is no wilful misrepresentation of fact or any misstatement which he must have known to be a misstatement, if he had exercised ordinary care.<sup>86</sup> In order that a comment may be fair (a) it must be based on facts truly stated, (b) it must not impute corrupt or dishonourable motives to the person whose conduct or work is criticised except in so far as such imputations are warranted by the facts, (c) it must be the honest expression of the writer's real opinion made in good faith, and (d) it must be for the public good. The question to be considered in such cases is, would any fair man, however prejudiced he might be, or however exaggerated or obstinate his views may be, have made the criticism.<sup>87</sup>

Any opinion expressed in good faith made by a public servant would not amount to offence of defamation when public servant was acting in discharge of public functions. According to [section 21 of the IPC, 1860](#), clause fifth, a member of Panchayat assisting a Court of justice is within the scope of definition of "public servant". Hence, opinion expressed by member of Panchayat in good faith to assist Court of Justice does not amount to defamation.<sup>88</sup>

Those who fill a public position must not be too thin skinned in reference to comments made upon them. Whoever fills a public position renders himself open to attack. He must accept an attack as a necessary, though unpleasant, appendage to his office.<sup>89</sup>

The law of defamation under the [IPC, 1860](#) cannot be equated with that of contempt of Court in general terms.<sup>90</sup> The Court did not accept the proposition that a reply submitted to a contempt notice can in no case amount to contempt of Court in the light of the second exception to section 499.<sup>91</sup>

### **[s 500.23] Exception 3.—**

The conduct of publicists who take part in politics or other matters concerning the public can be commented on in good faith. M, a medical man and the editor of a medical journal, said in such journal of an advertisement published by H, another medical man, in which H solicited the public to subscribe to a hospital of which he was surgeon in charge stating the number of successful operations which had been performed, that it was unprofessional. It was held that in as much as such advertisement had the effect of making such hospital a "public question", M was within the third, sixth and ninth Exceptions.<sup>92</sup> A newspaper carried a letter to the editor stating certain facts about a co-operative hospital to the effect that there were embezzlements; female nurses were harassed if they refused to attend night duty and that the President signed only convenient vouchers. It was held that this was an assertion of facts and not an expression of opinion. The mere fact that the letter demanded an inquiry would not convert the factual assertion into an opinion. The third Exception was not applicable.<sup>93</sup>

Where the published statement was that the *Marwari* community had no faith and love towards India, their mother land, it was held that this was not sufficient to constitute the offence of defamation. The process issued by the magistrate was liable to be quashed.<sup>94.</sup>

#### **[s 500.24] Comparative Advertisement.—**

A commercial advertisement is a form of speech and "Commercial speech" is a part of the freedom of speech and expression guarantee under [Article 19\(1\)\(a\) of the Constitution](#).<sup>95.</sup> Comparative advertising is advertisement where a party advertises his goods or services by comparing them with goods and services of another party. This is generally done by either projecting that the advertiser's product is of same or superior quality to that of the compared product or by denigrating the quality of the compared product. The advertiser has right to boast of its technological superiority in comparison with product of the competitor. He can declare that his goods are better than that of his competitor. However, while doing so, he cannot disparage the goods of the competitor. Therefore, if the advertising is an insinuating campaign against the competitor's product such a negative campaigning is not permissible.<sup>96.</sup> The allegation was that advertisement published by petitioner along with Associated Traders at instance of petitioner disparaging respondents business. The Associated Traders had admitted that alleged advertisement was taken out by them on their own and Petitioner Company had nothing to do with that. Offence under [section 500 IPC, 1860](#) is not made out against the petitioner.<sup>97.</sup>

#### **[s 500.25] Exception 4.—**

Where there are judicial proceedings before a properly constituted judicial tribunal exercising its jurisdiction in open Court, then the publication, without malice, of a fair and accurate report of what takes place before that tribunal is privileged.<sup>98.</sup> Though the publication of such proceedings may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of Courts of Justice should be universally known. The general advantage to the country in having these proceedings made public more than counterbalances the inconvenience to the private persons whose conduct may be the subject of such proceedings.<sup>99.</sup> It is immaterial whether the proceedings were *ex parte* or not,<sup>100.</sup> or whether the Court had jurisdiction or not.<sup>101.</sup> But a report of judicial proceedings cannot be published if the Court has prohibited the publication of any such proceedings,<sup>102.</sup> or where the subject-matter of the trial is obscene<sup>103.</sup> or blasphemous.<sup>104.</sup>

#### **[s 500.26] CASE.—**

A trustee of a temple was charged with defamation, the alleged defamatory statement being that the complainant, who performed the worship in the temple, had been convicted and sent to jail for the theft of idols belonging to the temple. At the time when the statement was made, an appointment in connection with the temple was in question. It was held that the trustee was justified in making the statement either in the interest of the temple or because the statement was no more than a publication of the result of proceedings in a Court of Justice.<sup>105.</sup>



### **[s 500.27] Exception 5.—**

The administration of justice is a matter of universal interest to the whole public. The judgment of the Court, the verdict of jury, the conduct of parties and of witnesses, may all be made subjects of free comment. But the criticism should be made in good faith and should be fair. It must not wantonly assail the character of others or impute criminality to them. But in commenting on such matters, a public writer, as much as a private writer, is bound to attend to the truth, and to put forward the truth honestly and in good faith and to the best of his knowledge and ability. It is not to be expected that in discharging his duty of a public journalist he will always be infallible. His judgment may be biased, one way or the other, without the slightest reflection upon his good faith; and, therefore, if his comments are fair, no one has a right to complain.<sup>106.</sup>

### **[s 500.28] Exception 6.—**

The object of this Exception is that the public should be aided by comment in its judgment of the public performance submitted to its judgment. All kinds of performances in public may be truly criticised provided the comments are made in good faith and are fair. Liberty of criticism is allowed; otherwise we should neither have purity of taste nor of morals. Good faith under this Exception requires not logical infallibility but due care and attention.<sup>107.</sup>

### **[s 500.29] Exception 7.—**

This Exception allows a person under whose authority others have been placed, either by their own consent or by the law, to censure, in good faith, those who are so placed under his authority, so far as regards the matter to which that authority relates.<sup>108.</sup> But if this privilege is exceeded in any way the offence will be established. A man may in good faith complain of the conduct of a servant to the master of the servant even though the complaint amounts to defamation, but he is not protected if he publishes the complaint in a newspaper. A spiritual superior, in pronouncing and publishing a sentence of excommunication, may be protected by privilege so long as the publication is not more extensive than is required to effectuate the purpose for which the privilege is conceded to him for the censure of a member of the sect in matters appertaining to religion or the communication of a sentence he is authorized to pronounce to those who are to guide themselves by it.<sup>109.</sup> Where the complainant was dismissed from service on the allegation of theft of his master's property after a full domestic enquiry in which the complainant was given an opportunity to defend himself, the finding of such a domestic enquiry saying that the allegation was true could not form the basis of defamation case as it is fully protected by Exceptions 7 and 8 of [section 499, IPC, 1860](#). To hold otherwise would amount to paralysing the administration of justice.<sup>110.</sup>

### **[s 500.30] CASE.—Imputation made by person in authority.—**

The allegation was that accused, principal of a medical college made complaint against complainant, doctor that she was not taking interest in teaching or attending hospital, etc., and that she was more worried about her income from nursing home. It was held that words mentioned in complaint were not with intention to defame the complaint or harm her reputation. Complaint was made within idea to bring about

betterment in college. Proceedings under [section 500 IPC, 1860](#) is liable to be set aside.<sup>111.</sup>

### **[s 500.31] Exception 8.—**

Eighth Exception to section 499 provides that 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. In the present case, the accused No. 1 and other members of Society approached the police because admittedly, the letter received by them contained some obscene material and defamatory statement against the daughter of the accused No. 1 and they expected guidance, which could include appropriate action against the culprit. It is clear that the case is clearly covered by Exception 8 and no case under [section 500 IPC, 1860](#) could be made out.<sup>112.</sup> In order to establish a defence under this exception the accused would have to prove that the person to whom the complaint was made had lawful authority over the person complained against, in respect of the subject-matter of the accusation.<sup>113.</sup> To obtain the protection given by this Exception (1) the accusation must be made to a person in authority over the party accused, and (2) the accusation must be preferred in good faith.<sup>114.</sup> Defamatory averments made in a plaint are not absolutely protected in a criminal proceeding for defamation.<sup>115.</sup>

### **[s 500.32] CASES.—**

The accused had lodged a report with the police contending that the complainant had poured acid on the coconut trees and had damaged the same and he had asked the police to take action against the said complaint. According to the complainant the said complaint damaged his reputation. It was contended that the case would be covered by Exceptions 8 and 9 of section 499 and the accused sought to quash the proceedings under [section 500 IPC, 1860](#). The High Court found the petition meritless and had dismissed it. The Supreme Court held that:

for the purpose of bringing his case within the purview of the Exceptions 8 and 9 appended to [section 499 of the Penal Code](#), it would be necessary for the appellant to prove good faith for the protection of the interests of the person making it or of any other person or for the public good. It is now a well-settled principle of law that those who plead exception must prove it. The burden of proof that his action was bona fide would, thus, be on the appellant alone. At this stage, in our opinion, it would have been premature for the High Court to consider the materials placed by the, appellant before it so as to arrive at a definite conclusion that there was no element of bad faith on the part of the appellant in making the said complaint before the police authorities.<sup>116.</sup>

### **[s 500.33] Exception 9.—Good faith, individual interest or public good.—**

This Exception posits that the person to whom the communication is made has an interest in protecting the person making the accusation. Besides the *bona fides* of the person making the imputation, the person to whom the imputation is conveyed must have a common interest with the person making it which is served by the communication.<sup>117.</sup> The interest of the person referred to in this Exception has to be real and legitimate when communication is made in protection of the interest of the person making it. The privilege extends only to a communication upon the subject with respect to which the privilege extends and the privilege can be claimed in exercise of the right or safeguarding of the interest which creates the privilege.<sup>118.</sup> The regional

manager of a bank issued confidential circular to branch managers of his region advising them to be vigilant while dealing with persons included in the list including the complainant. The circular was issued in his official capacity in public interest and under instructions of the Central office. The Court said that the circular was covered by Exception 9. Therefore, even if the allegations made in the complaint were true, no offence would be made out under section 500.<sup>119.</sup>

This exception relates to private communication which a person makes in good faith for the protection of his own interest. This exception covers not only such allegations of facts as can be proved true but also expression of opinions and personal inferences. It has been incorporated to protect the interests of the parties in their business transaction which are generally done *bona fide* and, therefore, the rule of public good on which this principle is based is, that honest transaction of business and social intercourse would otherwise be deprived of the protection which they should enjoy. Whether any imputation made is with a motive or *mala fide* intention to lower the reputation or is made in good faith is to be determined from the facts and circumstances of the case. Undisputedly, the requirement of good faith and public good, both, are to be satisfied and the failure to prove good faith would exclude the application of Exception 9 in favour of the accused even if the requirement of public good is satisfied. The words 'good faith' as appearing in exception 9th not only require logical infallibility but also due care and attention.<sup>120.</sup>

This Exception refers to any imputation made in good faith, whereas the first Exception applies only to true imputation made for the public good. That he acted in good faith must be proved by the accused.<sup>121.</sup> Question of good faith is a question of fact and has to be decided in course of the trial and at the initial stage. The journalists do not enjoy any special privilege.<sup>122.</sup>

In determining the question of good faith, regard should be to the intellectual capacity of the accused, his predilections and the surrounding facts.<sup>123.</sup>

Where a rustic villager objected to the appointment of the complainant as a village *munsiff* in the *bona fide* belief that he was a rowdy and as such undesirable for a public post like this, it was held that he acted in good faith and was protected by this Exception.<sup>124.</sup>

In order to establish good faith and *bona fides* it has to be seen first the circumstances under which the defamatory matter was written or uttered; secondly, whether there was any malice; thirdly, whether the accused made any inquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution and finally whether there is preponderance of probability that the accused acted in good faith.<sup>125.</sup>

The burden lies on the person accused to prove the *bona fide* aspect of his publication. Cross-examination of the complainant can be used as a device for establishing good-faith. An imputation was made in a newspaper item that the complainant lady doctor had duped the Government by presenting false transfer allowance bills. The lady doctor's sole testimony that the publication harmed her reputation was held to be not sufficient to sustain her complaint. The accused showed that the publication was in good faith and in public interest.<sup>126.</sup>

Where the agreement for selling their properties for settling their dues was signed by the accused persons and registered before the Sub-Registrar in the presence of the accused but subsequently a publication in the newspaper was made by the accused after about two and a half months that the agreement was executed under compulsion, it was held that the publication was not made in 'good faith' and could not be brought under Exception 9 of section 499.<sup>127.</sup>

The ninth Exception to section 499 provides that 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. Even if it is assumed that the accused No. 1 and other accused made the imputation against the respondent No. 1 that he had written the letters and thus, that imputation was made against his character, still that was made in good faith because they wanted protection of the interest of the members of the family of accused No. 1 and particularly his daughter. They did not approach any unconnected person, but police who could protect the interest of the accused No. 1 and his family members. In view of the legal position and the facts, which are clear from the complaint and the documents submitted with the complaint, it is clear that the case is clearly covered by Exceptions 8 and 9 and no case under [section 500 IPC, 1860](#) could be made out.<sup>128.</sup>

#### **[s 500.34] Club committee.—**

The committee members of a social club, even if wrong, are given protection under this Exception, without which it would be impossible for such a body to function. Where the respondent, who was the wife of a member of a social club and was privileged to use the club, preferred a complaint against the members of the committee for defaming her in a letter addressed by them to her husband, it was held that as the committee had acted in good faith, even if they were mistaken they were protected by this Exception.<sup>129.</sup>

#### **[s 500.35] Communication by member of caste.—**

There is a dividing line between the passing of a resolution at a caste meeting and its communication by the authorities of the caste to its members in the discharge of their social duty. If any member of a caste publishes to all its members a caste resolution in such discharge of duty the law will hold the occasion of the publication to be privileged. But there must be good faith on the part of the member who publishes, that is, it must be proved that the publication was made with due care and attention.<sup>130.</sup> There must not be excessive publication, e.g., publication in a newspaper.<sup>131.</sup> Where a libellous communication is made regarding a member of a caste, the mere fact that the person making such communication is a member of a caste will not of itself suffice to make the communication privileged.<sup>132.</sup> A person making defamatory expressions for the protection of his son's interest is not privileged, unless the imputation is made in good faith.<sup>133.</sup>

#### **[s 500.36] Privileges of Judges, etc.—**

The privileges of parties, counsel, attorney, pleader and witnesses come under this Exception. So also, statements made in pleadings and reports to superior officers are protected by it. (As to civil actions, see the author's *Law of Torts*, 19th Edn; Chapter XIII).

In India the law regarding defamatory statements, made in the course of judicial proceeding, by judges, counsel or pleaders, witnesses and parties is lacking in uniformity. The High Court of Madras in earlier cases adopted the English rule of absolute immunity in all cases. The Bombay High Court has not followed the English

rule in cases of criminal prosecution on the ground that English law could not be resorted to where it went beyond the terms of section 499: but in civil actions it has followed the dictum of the Privy Council in *Baboo Gunnesh Dutt Singh v Mugneeram Chowdhry*.<sup>134</sup> The Allahabad High Court has gone a step further and held that cases of defamation under the Code as well as civil suits for damages must be decided in accordance with the provisions embodied in the [IPC, 1860](#) and the [Indian Evidence Act](#). The Calcutta High Court has held that the liability of a person prosecuted for defamation must be determined by the application of the provisions of the [IPC, 1860](#) and not otherwise.<sup>135</sup> The Patna High Court has adopted the view of the Calcutta High Court.<sup>136</sup>

### **[s 500.37] Counsel, pleader, etc.—**

Where the accused, father of the complainant, denied through a lawyer's notice that the complainant was his son imputing unchastity to his mother and as such was not entitled to any family property, it was held that the communication was protected under the 9th Exception to [section 499, IPC, 1860](#), and the typing of that notice by the lawyer's clerk also did not constitute publicity.<sup>137</sup>

The Kerala High Court has held that counsel who has signed the pleading of his client can rely on this Exception.<sup>138</sup>

### **[s 500.38] Witness.—**

The Bombay High Court has in a Full Bench case laid down that relevant statements made by a witness on oath or solemn affirmation in a judicial proceeding are not absolutely privileged on a prosecution for defamation, but are governed by the provisions of section 499.<sup>139</sup>

The Allahabad High Court in a Full Bench case held that a witness could be prosecuted for defamatory statements concerning a person unless he showed that the statements fell under one of the Exceptions to this section.<sup>140</sup>

The Nagpur High Court had followed the Bombay, the Calcutta and the Allahabad High Courts and held that a person giving evidence in a Court of law is not entitled to an absolute privilege in respect of statements which he makes and is consequently not immune from a complaint of defamation by reason of words uttered on oath in the witness-box.<sup>141</sup>

The Madhya Pradesh High Court followed the Bombay, the Calcutta and the Nagpur High Courts.<sup>142</sup>

### **[s 500.39] Pleadings.—**

Authority is strongly against the absolute immunity from prosecution for defamatory statements contained in applications, pleadings and affidavits. The Bombay High Court has held that statements made in a written statement filed by the accused are not absolutely privileged but are governed by the provisions of this section.<sup>143</sup> The allegation was that the averments contained in the pleadings and oral evidence in a suit filed by the accused constituted defamatory statements. The Court held that on

reading of Exception 9 to [section 499 of the IPC, 1860](#) the alleged imputations contained in pleadings and evidence in civil suit OS No. 966 of 1998 and AS No. 155 of 2004 are covered by Exception 9 of [section 499 of the IPC, 1860](#), even assuming that the imputations are *prima facie* defamatory in nature.<sup>144.</sup>

The Madras High Court has held in a Full Bench case that a defamatory statement in a complaint to a Magistrate is not absolutely privileged.<sup>145.</sup>

The Patna High Court had held, that a defamatory statement, whether on oath or otherwise, falls within section 499 and is not absolutely privileged. Where in a plaint the accused described the complainant (defendant No. 3) as the "kept woman" of defendant No. 1 without any foundation, it was held that he was guilty of defamation.<sup>146.</sup>

#### **[s 500.40] Vicarious liability.—**

A defamatory letter was issued on the pad of a partnership firm. The letter was signed by one of the partners. The complainant in his examination before the Court did not say on oath anything against the rest of the partners who had not signed the letter. The Court said that such other partners who had not signed could not be vicariously held liable with the signing partner.<sup>147.</sup>

#### **[s 500.41] Communications with counsel.—**

Communication with one's counsel for legal advice is not a publication. The Court distinguished the case from the Supreme Court decision in *MC Verghese v TJ Poonan*.<sup>148.</sup> In this case, a husband's letters to his wife contained defamatory remarks about her father. The father's proceedings against the husband were allowed because those letters amounted to a publication. But a communication between a client and his counsel is not a publication because of the intimate relationship between them. The counsel has no separate existence from the client in matters relating to legal duties. Communication to the council is communication to the client.<sup>149.</sup>

#### **[s 500.42] Reports.—**

The report of an officer, in the execution of his duty, under his superior's orders, which contains defamatory imputations against others, but which does not appear to have been made recklessly or unjustifiably is covered by this Exception. But a totally false report will not be protected.<sup>150.</sup>

#### **[s 500.43] Complaint through power of attorney.—**

The aggrieved person was employed in a foreign country. A complaint filed through a power of attorney was held as not offending the provisions of [section 199\(1\), Cr PC, 1973](#) as the complainant suffered from the infirmity of being away in a foreign country.<sup>151.</sup>

#### **[s 500.44] Exception 10.—**

This Exception protects a person giving caution in good faith to another for the good of that other, or of some person in whom that other is interested or for the public good.

#### **[s 500.45] Complaint by aggrieved person necessary.—**

No Court shall take cognizance of this offence except upon a complaint made by the person aggrieved ([section 199 Cr PC, 1973](#)). The words "person aggrieved" does not mean "person defamed". The words "person aggrieved" has a wider connotation than the words "person defamed".<sup>152.</sup>

A complaint for defamation by the person aggrieved by it can be entertained by a Court notwithstanding that the accused could have been prosecuted on the same facts under section 182 on the complaint of a public servant. The two offences are fundamentally distinct in nature, although they may arise out of one and the same statement of the accused. The defamatory statement does not fall within any of the Exception to section 499 by reason merely of the fact that it is punishable as an offence under section 182, or any other section of the Code; nor is this section included in the list of sections contained in [section 195\(1\)\(b\) of the Cr PC, 1973](#).<sup>153.</sup> Where the imputations were against the managing director of a society, the society was held to be not an aggrieved person and, therefore, had no *locus standi* to file a complaint.<sup>154.</sup>

A newspaper published extracts from books written on a former Prime Minister, imputing charges of corruption against him and also his family members including his sons, daughter and wife. It was held that his sons could be said to be aggrieved persons. A complaint filed by one of the sons was not to be quashed.<sup>155.</sup>

The continuation of the proceedings even after the death of the complainant has been held to be not proper.<sup>156.</sup> Where the allegation in the complaint was that the Kerala Police had been defamed, the Court said that Kerala Police was not a definite and determinable body and, therefore, a member of the Kerala Police was not a person affected by the defamatory statement and his complaint was not maintainable.<sup>157.</sup>

When the statements in question are not directed against any person or against an identifiable group of individuals, the complainants cannot be said to be an aggrieved persons. The complainants have alleged defamation in respect of imputations against the character of Tamil-speaking women, which could be viewed as a class of persons. However, the appellant's remarks did not suggest that all women in Tamil Nadu have engaged in pre-marital sex. In fact her statement in News Magazine did not refer to any specific individual or group at all.<sup>158.</sup>

#### **[s 500.46] Complaint by director of company.—**

**Locus standi.**—The words "some person aggrieved" do not make it necessary that the complaint should be made by the very person who has been defamed. In the case of an imputation against a company, a director of the company would fall within the words "some person aggrieved". He can file a complaint.<sup>159.</sup>

#### **[s 500.47] Complaint by advocate.—**

False allegations were made in a newspaper against the Commissioner of Endowments. A complaint filed by an Advocate was held to be non-maintainable being not an aggrieved person.<sup>160.</sup>

#### **[s 500.48] Employer—**

**Labour.**—Defamatory statements were made against retrenched workmen in the counter filed by the management. Some of the statements were repeated on different dates before the labour Court and labour officer. The Court said that the question of limitation could not be decided until the starting point of the offence was known and that had to be decided at the trial.<sup>161.</sup> The Court further said that aspects of good faith in the utterances could also be decided only after evidence.<sup>162.</sup>

#### **[s 500.49] President of Municipality.—**

The President of a Municipality is not a 'person aggrieved', within the meaning of [section 199 of the Cr PC, 1973](#), by the defamations of his subordinate officers.<sup>163.</sup>

#### **[s 500.50] Complaint against Juristic person.—**

Simply because the accused is a corporate body, it cannot be said that it cannot commit an offence of defamation as defined under [section 499 IPC, 1860](#).<sup>164.</sup>

[Section 499, IPC, 1860](#), is an offence involving personal malicious intent, which is evident from the fact that one of the essential ingredients is either intention to harm or knowledge or reasons to believe that such imputation will harm the reputation of the other. An artificial/juristic person cannot be prosecuted for offence under [section 500, IPC, 1860](#), for such an artificial/juristic person cannot be attributed with any malicious intention which can be attributed only to a living person. Chief Educational Officer being an artificial/ juristic person prosecution against him for offence under [section 500, IPC, 1860](#) would not be maintainable.<sup>165.</sup>

#### **[s 500.51] Punishment.—**

The accused, an editor of a weekly, published an article in his paper making defamatory allegation against the petitioner, who was a Class I Officer and belonged to a respectable business family. The editor made no amends till conviction. Sentence of simple fine was enhanced to RI of two months and fine of Rs. 2,000.<sup>166.</sup>

In a case of defamation, the revision petition for enhancement of the sentence was filed seven years after the commission of the offence. It was held that delay in filing the revision cannot be a ground for not to enhance the sentence when the accused had not made any amends for his [criminal act](#).<sup>167.</sup> Where the utterances of the accused in a meeting were proved to harm the reputation of the complainant, his conviction under section 500 was held to be proper.<sup>168.</sup>

For the publication of defamatory matter in a newspaper the sentence awarded was that of imprisonment till the rising of the Court and fine of Rs. 500. It was held to be too



low and inadequate considering the damage caused to the reputation of the complainant. The fine amount was accordingly enhanced to Rs. 10,000.

### **[s 500.52] Quashing of complaint.—**

There were allegations in a private complaint that the respondents made imputations against the complainant in applications made under [section 436, Cr PC, 1973](#). The sworn statements and documents produced showed that the imputations were made with the intention or knowledge or having reason to believe that they will harm reputation. Thus, a *prima facie* was made out. The High Court could not at that stage say that there was no reasonable prospect of conviction at the trial. Questions of good faith and of intention could be examined on the basis of evidence at the trial. The trial must go on. The quashing of the complaint was not proper.<sup>169</sup>

### **[s 500.53] Application of exceptions in pre-trial stage.—**

The Supreme Court in *Rajendra Kumar Sitaram Pande, v Uttam*,<sup>170</sup> held that issuing of process against the accused for the offence punishable under section 499 punishable under [section 500 of the IPC, 1860](#) can be questioned in higher Courts. Ultimately, the Supreme Court quashed proceedings relating to prosecution of such a case in that reported decision by applying Exception 8 to [section 499 of the IPC, 1860](#). Therefore, it cannot be said that application of exception cannot be considered at pre-trial stage and by invoking [section 482 of the Cr PC, 1973](#).<sup>171</sup> In *Vedurumudi Rama Rao v Chennuri Venkat Rao*,<sup>172</sup> Court considered applicability of Exception 9 to [section 499 of the IPC, 1860](#) and held that truth of imputation need not be probed by such accused while claiming privilege under Exception 9; and finally quashed proceedings in criminal case relating to the offence punishable under [section 500 of the IPC, 1860](#). The Gujarat High Court in *Darusing Durgasing v State of Gujarat*,<sup>173</sup> followed the above said reported decision of the Supreme Court and quashed criminal proceedings for the offence punishable under [section 500 of the IPC, 1860](#) in view of Exceptions 7, 8 and 9 to [section 499 of the IPC, 1860](#). In an examination fact situation, the Bombay High Court in *Valmiki Faleiro v Mrs. Lauriana Fernandes*,<sup>174</sup> went to the extent of holding a paper publication containing certain imputations as one saved by Exception 9 because intention of the accused was predominantly to protect his rights in the property and not to harm reputation of the complainant. In *Jeffrey J Diermeier v State of WB*,<sup>175</sup> it was pleaded that in the light of Explanation 4 as well as Tenth Exception to [section 499 IPC, 1860](#), the allegations in the complaint did not constitute an offence of defamation punishable under [section 500 IPC, 1860](#). But the Supreme Court held that the mere plea that the accused believed that what he had stated was in "good faith" is not sufficient to accept his defence and he must justify the same by adducing evidence. Court found it difficult to hold that a case for quashing of the complaint under section 482 of the Code has been made out.

### **[s 500.54] Jurisdiction.—**

The Courts at the place of printing and publication of a newspaper as well as those at the place of distribution have jurisdiction to entertain a complaint.<sup>176</sup> The respondent is said to have given an interview to the Newspaper "Economic Times" intending it to be published and to be read by public. Therefore, though the act of making the defamatory statement during the interview was done at a place outside the jurisdiction of the

Court, prosecution can be launched in Courts exercising jurisdiction over any one of the places wherein circulation of the paper is made.<sup>177.</sup>

### **[s 500.55] Cognizance on Police report.—**

In *Shiv Kumar Agarwal v State of Meghalaya*,<sup>178.</sup> Gauhati High Court examined the question whether a Magistrate can take cognizance of a non-cognizable offence punishable under [section 500, IPC, 1860](#) on the basis of the police report submitted by the police under [section 173\(2\), Cr PC, 1973](#) while investigating both a cognizable offence and a non-cognizable offence under [section 155\(4\), Cr PC, 1973](#) even after the accused is discharged from the cognizable case. It is held that as one of the offences alleged against the petitioner was a cognizable offence, namely, [section 505\(2\), IPC, 1860](#), by virtue of the legal fiction introduced in [section 155\(4\), Cr PC, 1973](#), the case was deemed to be a cognizable offence. Once the case was deemed to be a cognizable offence, there was no legal impediment in investigating the case by the police. After the case was investigated by the police, the charge-sheet was submitted by them to the learned Magistrate under [section 173, Cr PC, 1973](#) for trying the petitioner under [section 505 \(2\)/500, IPC, 1860](#). However, the charge made against the petitioner under [section 505\(2\), IPC, 1860](#) was quashed by this Court on the ground that no prosecution sanction under [section 196 \(1A\), Cr PC, 1973](#) was obtained by the police. The net result is that the trial Court had to proceed with consideration of the charge under [section 500, IPC, 1860](#) and, after hearing the parties, framed the charge accordingly by rejecting the prayer of the petitioner for dropping the charge against him.<sup>179.</sup>

In the defamation matter, issuance of process after having examination of defamatory material with reaction of the public, would certainly be sufficient to satisfy the test of holding the enquiry under [Section 202, Cr PC, 1973](#).<sup>180.</sup>

### **[s 500.56] Section 211 and Section 500.—**

Section 211 imposes a punishment in case of a false charge or offence made with the intent to injure someone before any Court of law, whereas section 500 provides for punishment in case of a defamation of a person by any one. Defamation has been defined under [section 499](#) which provides inter alia 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. Making a false complaint before a Court of law would amount to committing fraud on Court. It is for the Court to proceed against the erring person. The provision has been made to preserve the sanctity of the Court. Section 500 gives right to sue to a person who is defamed within the meaning of [section 499](#) by the conduct of the accused. These two provisions are totally distinct and can be tried in absence of each other.<sup>181.</sup>

6. Note R, p 175.
7. It is not necessary to incorporate the whole of the published matter in a complaint. A complaint was not dismissed only on the ground that the matter under complaint was presented not in the body of the complaint, but in an attached document. *T Kunhambu v A Sojath*, [1989 Cr LJ 1022](#) (Ker), **following** *Balraj Khanna v Motiram*, [1971 Cr LJ 1110](#) (SC). The complaint must be made by the party aggrieved. His wife is not an aggrieved person and, therefore, her complaint is not maintainable. *Nazeem Bavakunju v State of Kerala*, [1988 Cr LJ 487](#) (Ker). *MN Meera v AC Mathew*, [2002 Cr LJ 3845](#) (Ker), the name of the complainant was not mentioned by the accused while making the alleged defamatory statement. The complaint should not have been thrown overboard on that ground alone. *KM Selvaraj v A Amaralal*, [2002 Cr LJ 3811](#) (Mad), defamatory statements in a circular against members and president of an association regarding manipulation of accounts and misappropriation of funds. One of the signatories was a chartered accountant who had checked the accounts. The CA applied for dropping of his name because he was only a signatory. His request was accepted. It was held that the order discharging him was not proper. All accused persons had to face the consequences of the defamatory statement in the circular.
8. *Standard Chartered Bank v Vinay Kumar Sood*, [2010 Cr LJ 1277](#) (Del).
9. *Bacon's Abrid*, vol IV, p 457.
10. *Sunilakhya v HM Jadwet*, [AIR 1968 Cal 266 \[LNIND 1967 CAL 167\]](#) .
11. *S Nihal Singh v Arjan Das*, [1983 Cr LJ 777](#) (Del); see also *DN Rao v RD Bhagvandas*, [1986 Cr LJ 888](#) (AP). *M Chandran v F Fanthome*, [2003 Cr LJ 2173](#) (Sik), complainant had full knowledge of the document which was quite old, no witness cited, failure to make out defamatory nature of the remarks, the accused discharged. Period of limitation had also expired and no condonation was sought.
12. *Varnakote Illath v Kotalmana Keshavan*, (1900) 1 Weir 579.
13. *SS Sanyal v KVR Nair*, [1987 Cr LJ 2074](#) (Cal), **relying** on *TJ Ponnal v MU Verghese*, [AIR 1967 Ker 228 \[LNIND 1966 KER 242\]](#) : [1968 Cr LJ 1511](#) . It is different if the employee himself goes round showing the notice to others. Such notice comes under 9th exception being necessary to protect the employer's interest.
14. *Boxsius v Goblet Freres*, (1894) 1 QB 842 . Other matters of the same kind, *Pullman v Walter Hill*, (1891) 1 QB 524 , dictation by the managing director of a company to his short-hand steno, and after being transcribed, sent to the plaintiff, held to be a publication, but **not followed** in subsequent cases. See *Edmondson v Birch*, (1907) 1 KB 371 and *Sukhdeo Vithal v Prabhakar Sukhdeo*, [1974 Cr LJ 1435](#) (Bom).
15. *PR Ramakrishnan v Subbaramma*, [AIR 1988 Ker 18 \[LNIND 1986 KER 395\]](#) : [1988 Cr LJ 124](#) . But see *Rev Fr Bernad Thaltil v Ramchandran Pillai*, [1987 Cr LJ 739](#) (Ker), notice containing libellous imputations of misappropriation.
16. *Sadashiv Atmaram*, (1893) 18 Bom 205. In *BP Bhaskar v BP Shiva*, [1993 Cr LJ 2685](#) (Mad), it was held that scurrilous allegations or imputations contained in notices exchanged between parties do not amount to 'publication' under section 499. The court also held that a reply to the notice sent to the party's advocate containing defamatory statements of the party is not publication. It is a communication to the party himself.
17. *Taki Husain*, (1884) 7 All 205 (FB).
18. *Sukhdeo v State*, (1932) 55 All 253 .
19. *Nagrathimam (Dr.) v M Kalirajan*, [2001 Cr LJ 3007](#) (Mad).
20. *Sankara v State*, (1883) 6 Mad 381.
21. *Thiagaraya v Krishnasami*, (1892) 15 Mad 214.
22. *Greene v Delanney*, (1870) 14 WR (Cr) 27; *Abdul Hakim v Tej Chandar*, (1881) 3 All 815 .

23. *Raja Shah*, (1889) PR No. 14 of 1889.
24. *Wenman v Ash*, (1853) 13 CD 836.
25. *Wennhak v Morgan*, (1888) 20 QBD 635 ; *Dr. Jaikishen Das v Sher Singh*, (1910) PR No. 10 of 1910.
26. *Pundit Mokand Ram*, (1883) PR No. 12 of 1883.
27. *Janardhan Damodhar Dikshit*, (1894) 19 Bom 703. *PM Abubacker v PJ Alexander*, 2000 Cr LJ 1168 (Ker) the source of information regarding published defamatory statement is not a consideration for prosecution for defamation. *M Malle Reddy v T Venkatarama*, 2000 Cr LJ 1086 (AP), a complaint against an alleged defamatory statement published in a newspaper was not allowed to be quashed in the exercise of writ jurisdiction.
28. *S Khushboo v Kanniammal*, 2010 Cr LJ 2828 (SC) : AIR 2010 SC 3196 [LNIND 2010 SC 411] : 2010 (5) SCC 600 [LNIND 2010 SC 411] .
29. *Charmesh Sharma v State Of Rajasthan*, 2012 Cr LJ 2115 (Raj).
30. *Howard*, (1887) 12 Bom 167.
31. *Harbhajan Singh*, AIR 1961 Punj 215 .
32. *BRK Murthy v State*, 2013 Cr LJ 1602 (AP); *Tankasala Ashok v State of AP*, 2010 Cr LJ 2074 (AP) where there was nothing to show that editor had control over selection of publication, proceedings against accused editor is liable to be quashed.
33. *Dongar Singh v Krishna Kant*, AIR 1958 MP 216 [LNIND 1958 MP 58] .
34. *McLeod*, (1880) 3 All 342 .
35. *Ramasami v Lokanada*, (1886) 9 Mad 387.
36. *Bhagat Singh v Lachman Singh*, AIR 1968 Cal 296 [LNIND 1967 CAL 189] . The chairman of a company which is publishing a newspaper is not liable merely by virtue of his position as such. *Udayam Telugu Daily v State of AP*, 1987 Cr LJ 143 (AP).
37. *AK Jain v State of Sikkim*, 1992 Cr LJ 843 (Sikkim).
38. *KV Ramesh v HC Ramesh*, 2001 Cr LJ 3556 .
39. *KM Mathew v KA Abraham*, 1998 Cr LJ 327 (Ker). *CB Solanki v Srikanta Parashar*, 1997 Cr LJ 3050 (Kant), "editor" for the purposes of the section does not include a person described as chief editor or managing director, particularly when there were no specific allegations against them in the complaint. The Court also explained the scope of first and ninth exception and the burden of proof as to publication.
40. *McLeod, supra*; *Girjashankar Kashiram*, (1890) 15 Bom 286. The fact that the accused did not know the person defamed through his newspaper is no defence. *Sumatibai Vinayak Deo v Nandkumar Deshpande*, 1990 Cr LJ 2136 (Bom). Defamation in 1977. Appeal against acquittal allowed in 1990. No further prosecution allowed. Fine of Rs. 2,000 with a direction that Rs. 1,800 should be handed over to the aggrieved person imposed.
41. *Gambhirsinh R Dekare v Falgunbhai Chimanbhai Patel*, (2013) 3 SCC 697 [LNIND 2013 SC 175] : 2013 Cr LJ 1757 : AIR 2013 SC 1590 [LNIND 2013 SC 175] .
42. *Ravi Prakash v J C Diwakar Reddy*, 2010 Cr LJ 2558 (AP).
43. *P Lankesh v H Shivappa*, 1994 Cr LJ 3510 (Kant).
44. *Radhanath Rath v Birja Prasad Ray*, 1992 Cr LJ 938 (Ori).
45. *Archbold*, 35th Edn, p 3633.
46. *McCarthy*, (1887) 9 All 420 .
47. *Shibo Prosad Pandah*, (1878) 4 Cal 124 .
48. *Sirajuddin Ali v Mujtaba Ali*, 2001 Cr LJ NOC 125 (AP).
49. *Gautam Sahu v State of Orissa*, 1999 Cr LJ 838 .

50. *Government Advocate, B & O v Gopabandhu Das*, (1922) 1 Pat 414. *CL Sagar v Mayawati*, 2003 Cr LJ 690 (All), the complaint was that the vice president of a political party defamed the complainant by stating in a public meeting that the person with long moustache in the party was a corrupt person. The complainant could not show that he was the only member of the party with long moustache. The newspaper report of the meeting did not carry any such remark. No offence made out.
51. *Asha Parekh v State of Bihar*, 1977 Cr LJ 21 (Pat); see also *Narottamdas v Maganbhai*, 1984 Cr LJ 1790 (Guj); *Aruna Asafali v Purna Narayan*, 1984 Cr LJ 1121 (Gau).
52. *Maung Sein*, (1926) 4 Ran 462.
53. Clerk & Lindsell on *TORTS*, 1701 (14th Edn 1975).
54. *Manmohan Kalia v Yash*, (1984) 3 SCC 499 [LNIND 1984 SC 101] : AIR 1984 SC 1161 [LNIND 1984 SC 101] . See also *Sumatibai Vinayak Deo v Nandkumar Deshpande*, 1990 Cr LJ 2136 (Bom), where the veiled expression that only "S" knew what happened to the bowls brought by children to the school was held to be not defamatory; *Lalliani v R L Rina*, 1987 Cr LJ 1295 (Gau), a biographical account of the life of a poet mentioning a named girl as his source of inspiration and depicting their love affairs, a woman by that name was not able to convince the court that she was the object of the attack. But see *V Subair v PK Sudhakaran (Dr)*, 1987 Cr LJ 736 (Ker), where a medical practitioner was described as a "professional debauch" and of "low moral character", the accused was held liable because the complainant was able to prove that he was meant to be attacked.
55. *Parvathi v Mannar*, (1884) 8 Mad 175.
56. *Monson v Tussauds Ltd*, (1894) 1 QB 671 , 692.
57. *Chellappan Pillai v Karanjia*, (1962) 2 Cr LJ 142 .
58. *Jacob Mathew v Manikantan*, 2013 Cr LJ (NOC) 62 : 2012 (3) KLT 824 .
59. *Veeda Menezes v Yusuf Khan*, (1966) 68 Bom LR 629 (SC).
60. *Gobinda Pershad Pandey v Garth*, (1900) 28 Cal 63 ; *Pimento*, (1920) 22 Bom LR 1224 [LNIND 1920 BOM 117] ; *U Aung Pe*, (1938) Ran 404 (FB).
61. *Parwari*, (1919) 41 All 311 .
62. *Taki Husain*, (1884) 7 All 205 , 220 (FB); *J Jayalalitha v Arcot N Veerasamy*, 1997 Cr LJ 4585 (Mad), absence of averment in the complaint that because of the imputation the complainant's reputation had been lowered in the estimation of others, dismissal of the complaint was proper.
63. *Mohan Lal v State of HP*, 2011 Cr LJ 2413 (HP).
64. *Ibid*.
65. *Luckumsey Rowji v Hurban Nursey*, (1881) 5 Bom 580.
66. *South Hetton Coal Co v NE News Association*, (1894) 1 QB 133 .
67. *Ibid*, p 141.
68. *Maung Chit Tay v Maung Tun Nyun*, (1935) 13 Ran 297.
69. *Mahim Chandra Roy v Watson*, (1928) 55 Cal 1280 .
70. *Wahid Ullah Ahrari*, (1935) 57 All 1012 .
71. *Sahib Singh*, AIR 1965 SC 1451 [LNIND 1965 SC 15].
72. *Vishwa Nath v Shambhu Nath*, (1995) 1 Cr LJ 277 (All). The complainant had died and the proceedings were not allowed to be continued by others. The court distinguished *Ashwin Nanubhai Vyas v State of Maharashtra*, 1967 Cr LJ 943 : AIR 1967 SC 963 where the mother of the deceased complainant was allowed to continue the proceedings. The court cited *Raj Kapoor v Narendra Noranbhai Nagardas*, (1974) 15 Guj LJ 125 where the contemptuous remarks against Bhangi community uttered by caste Hindus were held to be not defamatory. The court said that if a person were to say that all lawyers were thieves, no particular lawyer could sue him unless

there is something to point out to a particular individual, *Eastwood v Holmes*, (1858) 1 F&F 347. The court also relied upon *Narottamdas L Shah v Maganibhai*, 1984 Cr LJ 1790 (Guj) where the agitating lawyers were described as "Kazia dalals" (dispute brokers) and it was held that the use of such words in reference to the lawyers as a class could not be taken to refer to a determinate or identifiable class of lawyers, namely, the lawyers who were participating in the agitation. *MP Narayana Pillai v MP Chacko*, 1986 Cr LJ 2002 (Ker) remarks in general about Christian girls being used for prostitution to enable them to earn livelihood because their parents were not able to support them were held to be too general to be defamatory of any body. The court said that identity of the collection of the people will have to be established in relation to the defamatory imputation. *KM Mathew v TU Balan*, 1985 Cr LJ 1039 (Ker) imputation against some leaders of teachers who were on strike was held to be not actionable.

73. *P Karunakaran v C Jayasooryan*, 1992 Cr LJ 3540 (Ker).

74. *Amar Singh v KS Badalia*, (1965) 2 Cr LJ 693 ; *Shamsher Singh v State*, 1982 Cr LJ NOC 167 (Del).

75. *J Chelliah v Rajeswari*, 1969 Cr LJ 571 .

76. *Madhuri Mukund Chitnis v Mukund Martand Chitnis*, 1990 Cr LJ 2084 . The court referred to *Sukhdeo v State of Maharashtra*, 1974 (Bom) LJ 777 : 1974 Cr LJ 1435 and *Baburao Shankarrao v Shaikh Biban Pahelwan*, 1984 Cr LJ 350 , burden as to good faith.

77. *U Aung Pe*, (1938) Ran 404 (FB).

78. *Jatish Chandra v Hari Sadhan*, AIR 1961 SC 613 [LNIND 1961 SC 19] .

79. *Jawaharlal Darda v Manoharao Ganpatrao*, AIR 1998 SC 2117 [LNIND 1998 SC 361] : 1998 Cr LJ 2928

80. *Chandrasekhara v Karthikeyan*, AIR 1964 Ker 277 [LNIND 1964 KER 90] . *Neelakantan Kamalasanan v Achutan*, 1988 Cr LJ 1212 (Ker).

81. *Janardhan Damodhar Dikshit*, (1894) 19 Bom 703.

82. *Deivasigamani*, 1977 Cr LJ NOC 110 (Mad).

83. *Ramanand v State*, (1881) 3 All 664 .

84. *Umed Singh*, (1923) 46 All 64 . Dissented in *Sukhdayal v Saraswati*, (936) Nag 217.

85. *Rajendra Vishwanath Chaudhary v Nayantara Durgadas Vasudeo*, 2012 Cr LJ 1363 (Bom).

86. *E I Howard v M Mull*, (1866) 1 BHC (Appx) 1xxxv, xci. Thus, the truth of the matter has not to be proved literally. It is sufficient if the imputation is proved to be substantially true. 1989 Cr LJ 1022 . Following *Murlidhar v Narayandas*, AIR 1914 Sind 85 : 1915-16 Cr LJ 141 ; *Surajmal Mehta v Horniman*, AIR 1917 Bom 62 . Where it is stressed that even an exaggeration will not by itself defeat this defence; *Purushottam Vijay v State of MP*, AIR 1961 MP 205 [LNIND 1960 MP 59] DB : 1961 (2) Cr LJ 114 where it is observed :

The statement of fact need only be substantially correct and need not be microscopically or photographically true : nor can the prosecutor fasten himself on to an inaccuracy in the detail unless the detail itself is such as to make substantial difference to the case.

87. *Khare v Massani*, (1943) Nag 347.

88. *Radhelal Mangalal Jaiswal v Sheshrao Anandrao Lad*, 2011 Cr LJ 2233 (Bom).

89. *Kartar Singh*, (1956) SCR 476 [LNIND 1956 SC 39] . Relying upon and citing the observations of Lord Cockburn in *Saymour v Butterworth*, (1862) 3 F&F 372 and dicta of judges in *R. v Sir R Garden*, (1879) 5 QBD 1 . Followed in *Radhanath Rath (Dr) v Biraja Prasad Rai*, 1992 Cr LJ 938 (Ori), where the editor and publisher of a newspaper were held not liable as they happened to include a defamatory matter relying upon their reporter who had been a trustworthy journalist.

90. *Arundhati Roy Re*, 2002 Cr LJ 1792 : AIR 2002 SC 1375 [LNIND 2002 SC 174] (para 24).

91. *Ibid.*
92. *McLeod*, (1880) 3 All 342 .
93. *T Kunhambu v A Sojath*, 1989 Cr LJ 1022 (Ker). See also *Dagar Singh v Shobha Gupta*, 1998 Cr LJ 1541 (P&H).
94. *Shatrughna Pd Sinha v Rajbhan Surajmal Rathi*, 1997 Cr LJ 212 : (1996) 6 SCC 263 (SC).
95. *Tata Press Ltd v Mahanagar Telephone Nigam Ltd*, (1995) 5 SCC 139 [LNIND 1995 SC 755] : AIR 1995 SC 2438 [LNIND 1995 SC 755] .
96. *Godrej Sara Lee Ltd v Reckitt Benckiser (I) Ltd*, (2006 (32) PTC 307) : ( 2006 CLC 1105 ).
97. *Nippon Sheet Glass Co Ltd v Raman Fibre Sciences Pvt Ltd*, 2011 Cr LJ 2702 (Kar).
98. *Kimber v The Press Association*, (1893) 1 QB 65 , 68.
99. *J Wright*, (1799) 8 TR 293, 298.
100. *Kimber v The Press Association*, *supra*.
101. *Usill v Hales*, (1878) 3 CPD 319 .
102. *Clement*, (1821) 4 B & Ald. 218.
103. *Hicklin*, (1868) LR 3 QB 360.
104. *Carlile*, (1819) 3 B & Ald. 167.
105. *Singaraju Nagabhushanam*, (1902) 26 Mad 464; *Maksud Saiyed v State of Gujarat*, (2005) 5 SCC 668 : (2007) 140 COMP CASES 590.
106. *Woodgate v Ridout*, (1865) 4 F&F 202, 216. See also *Harbans Singh v State of Rajasthan*, 1998 Cr LJ 433 (Raj), the word "shatir" might be of offending nature and objectionable but not necessarily defamatory. The order dropping the proceedings was not interfered with.
107. *Abdool Wadood*, (1907) 9 Bom LR 230 [LNIND 1907 BOM 6] , 31 Bom 293. See *Ranganayakamma v K Venugopala Rao*, 1987 Cr LJ 2000 (AP), the complainant's foreword to a book was criticised by imputing words to the complainant himself which lacked good faith and showed malice.
108. Note R, p 183.
109. *Sankara v State*, (1883) 6 Mad 381, 395, 396.
110. *ADM Stubbings v Shella Muthu*, 1972 Cr LJ 968 (Ker).
111. *Dr. Vishnu Dutt Agarwal v State of UP*, 2012 Cr LJ 3595 (All).
112. *Yadav Motiram Patil v Rajiv G Ghodankar*, 2011 Cr LJ 528 (Bom).
113. *Kanwal Lal*, AIR 1963 SC 1317 [LNIND 1962 SC 322] .
114. See *Damodra Sheno v PP Ernakulam*, 1989 Cr LJ 2398 where it is stressed that the accused must prove by preponderance of probability that he laboured under good faith as defined in section 52, IPC.
115. *J Sudershan v R Sankaran*, 1992 Cr LJ 2427 (Mad). The court referred to *MC Verugheese v TJ Ponnai*, AIR 1970 SC 1876 [LNIND 1968 SC 339] .
116. *MA Rumugam v Kittu alias Krishnamoorthy*, (2009) 1 SCC (Cr) 245 : AIR 2009 SC 341 [LNIND 2008 SC 2186] ; *Rallis India Ltd v K T Vijay Kumar*, 2010 Cr LJ 2485 (AP); *Nayana Jaikisan Tekwani v State of Maharashtra*, 2010 Cr LJ 4094 (Bom).
117. *Kanwal Lal*, AIR 1963 SC 1317 [LNIND 1962 SC 322] .
118. *Chamanlal*, (1970) 3 SCR 913 [LNIND 1970 SC 106] .
119. *Vedurumudi Rama Rao v Chennuri Venkat Rao*, 1997 Cr LJ 3851 (AP).
120. *Standard Chartered Bank v Vinay Kumar Sood*, 2010 Cr LJ 1277 (Del).
121. *Mrs. Jinnat Ara Borbora*, 1980 Cr LJ NOC (Gau).
122. *Sewakram v RK Karanjia*, 1981 Cr LJ 894 (SC) : AIR 1981 SC 514 : 1514 : (1981) 3 SCC 208 [LNIND 1981 SC 265] .
123. *Muhammad Gul v Haji Fazley Karim*, (1929) 56 Cal 1013 .

124. *Karuppusamy*, 1974 Cr LJ 33 (Mad).
125. *Chamanlal*, *supra*; see also *Sukra Mahato v Basudeo Kumar*, 1971 Cr LJ 1168 (SC); *Prayagdutt*, 1977 Cr LJ 1258 (MP).
126. *Pratibha (Dr.) v State of Maharashtra*, (1995) 1 Cr LJ 997 (Bom).
127. *P Swaminathan v Lakshmanan*, 1992 Cr LJ 990 (Mad).
128. *Yadav Motiram Patil v Rajiv G Ghodankar*, 2011 Cr LJ 528 (Bom).
129. *Beckett v Norris*, (1945) Mad 749.
130. *Virji Bhagwan*, (1909) 11 Bom LR 638 .
131. *Vinayak Atmaram v Shantaram Janardan*, (1941) 43 Bom LR 737 .
132. *Cooppoosami Chetty v Duraisami Chetty*, (1909) 33 Mad 67.
133. *Abdul Hakim v Tej Chandar Mukarji*, (1881) 3 All 815 .
134. *Baboo Gunnesh Dutt Singh v Mugneeram Chowdhry*, (1872) 11 Beng LR 321 (PC).
135. *Satish Chandra Chakravarti v Ram Doyal De*, (1920) 48 Cal 388 (SB).
136. *Karu Singh*, (1926) 7 PLT 587 .
137. *Sukhdeo Vithal Pansare*, 1974 Cr LJ 1435 (Bom); see also *Jiban Krishna Das*, 1983 Cr LJ NOC 39 (Cal).
138. *Parameswara v Krishna Pillai*, AIR 1966 Ker 264 [LNIND 1966 KER 11] .
139. *Bai Shanta v Umrao Amir*, (1925) 50 Bom 162 : 28 Bom LR 1 (FB), **overruling** *Babaji*, (1892) 17 Bom 127, and *Balkrishna Vithal*, (1893) 17 Bom 573.
140. *Ganga Prasad*, (1907) 29 All 685 (FB); *Isuri Prasad Singh v Umrao Singh*, (1900) 22 All 234 .
141. *Chotelal v Phulchand*, (1937) Nag 425.
142. *Hemraj v Babulal*, AIR 1962 MP 241 [LNIND 1961 MP 92] .
143. *Bai Shanta v Umrao Amir*, (1925) 50 Bom 162 : 28 Bom LR 1 (FB). Denial of the relationship of husband and wife in an eviction proceeding between the tenant and complainant was held to be not defamatory, *Girish Kakkar v Dr. (Mrs.) Dhanwantri*, 1991 Cr LJ 5 (Del). If the words are defamatory, the proceedings cannot be stayed because it is for the court to decide whether a privilege is available or not. *Pravinchand v Ibrahim Md*, 1987 Cr LJ 1795 (Bom).
144. *G Janardhana Reddy v A Narayana Reddy*, 2010 Cr LJ 2660 (AP).
145. *Tiruvengada Mudali v Tripurasundari Ammal*, (1926) 49 Mad 728, FB **overruling** *Venkata Reddy*, (1912) 36 Mad 216 (FB).
146. *Karu Singh*, (1926) 7 PLT 587 : 27 Cr LJ 1320, **following** *Kari Singh*, (1912) 40 Cal 433 .
147. *Narendra Kapoor v Ramesh C Bansal*, 1998 Cr LJ 1863 (Del).
148. *MC Vergheese v TJ Poonan*, AIR 1970 SC 1876 [LNIND 1968 SC 339] : 1970 Cr LJ 1651 .
149. The court also **distinguished** the present case from its earlier decision in *Rev Fr Bernard v Ramachandran Pillai*, 1986 Ker LT 1240 : 1987 Cr LJ 739 where in addition to the reply to the complainant's counsel, the accused spread the rumour in the locality about his alleged pilferage as an employee.
150. *Rajnarain Sein*, (1870) 6 Beng LR (Appx) 42 : 14 WR (Cr) 22.
151. *Fr. Thomas Maniankerikalam v Thomas J Padiyath*, 2003 Cr LJ 945 .
152. *Pat Sharpe Mrs. v Dwijendra Nath*, (1964) 1 Cr LJ 367 . *M S Jayaraj v Commissioner of Excise, Kerala*, (2000) 7 SCC 552 [LNIND 2000 SC 2302] : AIR 2000 SC 3266 [LNIND 2000 KER 461] - 'person aggrieved'- meaning
153. *U Aung Pe*, (1938) Ran 404 (FB).
154. *Homen Boroghain v Brahmaputra Valley Regional Handloom Weavers' Co-op Society*, (1995) 2 Cr LJ 2357 (Gau). *Viswanath v Shambhu Nath*, 1995 Cr LJ 277 (All) a complaint by a member of the community which was defamed in general, not maintainable. The complainant was not personally hurt. *MP Narayna Pillai v MP Chacko*, 1986 Cr LJ 2002 (Ker) a member of the



Christian community could not complain of a general remark against the community *KM Mathew v TU Balan*, 1985 Cr LJ 1039 (Ker), remarks about teachers on strike, a leader could not complain.

155. *KV Ramesh v HC Ramesh*, 2001 Cr LJ 3556 (Kant).
156. *Ratan Singh v Chain Singh*, 2000 Cr LJ 2736 (Raj).
157. *Sasikurnar B Menon v S Vijayan*, 1998 Cr LJ 3973 (Ker).
158. *S Khushboo v Kanniammal*, 2010 Cr LJ 2828 (SC) : AIR 2010 SC 3196 [LNIND 2010 SC 411] : 2010 (5) SCC 600 [LNIND 2010 SC 411] ; *Charmesh Sharma v State Of Rajasthan*, 2012 Cr LJ 2115 (Raj).
159. *John Thomas v Dr. K Jagdeesan*, AIR 2001 SC 2651 [LNIND 2001 SC 1323] .
160. *Swamy Anoopananda v Bagmisri*, 2000 Cr LJ 4296 (Ori).
161. *Beem Singh v S Ramayajam*, 2003 Cr LJ NOC 61 (Mad) : 2002 Mad LJ (Ori) 351.
162. *Ibid*.
163. *Beauchamp v Moore*, (1902) 26 Mad 43.
164. *Rallis India Ltd v K T Vijay Kumar*, 2010 Cr LJ 2485 (AP).
165. *Chief Education Officer, Salem v K S Palanichamy*, 2012 Cr LJ 2543 (Mad). See other view in *Rallis India Ltd v K T Vijay Kumar*, 2010 Cr LJ 2485 (AP) discussed above.
166. *Subhash K Shah v K Shankar Bhat*, 1993 Cr LJ 1296 (Kant).
167. *Subhash K Shah v K Shankar Bhat*, 1993 Cr LJ 1296 .
168. *Pyarelal Maganlal Jaiswal v State of Maharashtra*, 1996 Cr LJ 989 (Bom).
169. *MN Damani v SK Sinha*, AIR 2001 SC 2037 [LNIND 2001 SC 1149] . *Rajesh Rangarajan v Crop Care Fed. of India*, 2010 (9) Scale 23 [LNIND 2010 SC 626] -Proceedings quashed.
170. *Rajendra Kumar Sitaram Pande, v Uttam*, 1999 Cr LJ 1620 : AIR 1999 SC 1028 [LNIND 1999 SC 136] .
171. *G Janardhana Reddy v A Narayana Reddy*, 2010 Cr LJ 2660 ; *AP Ramoji Rao, Chairman Ramoji Group of Companies v State of AP*, AIR 2006 SC 3384 [LNIND 2006 SC 820] : (2006) 8 SCC 321 [LNIND 2006 SC 820] - proceedings quashed since the accused agreed to give a clarification in the TV channel as the news item was not the intended in any manner to defame or harm the reputation of the Chief Minister or his entourage of ministers and officials.
172. *Vedurumudi Rama Rao v Chennuri Venkat Rao*, 1997 Cr LJ 3851 .
173. *Darusing Durgasing v State of Gujarat*, 1999 Cr LJ 1620 : AIR 1999 SC 1028 [LNIND 1999 SC 136] .
174. *Valmiki Faleiro v Mrs. Lauriana Fernandes*, 2005 Cr LJ 2498 .
175. *Jeffrey J Diermeier v State of WB*, (2010) 6 SCC 243 [LNIND 2010 SC 512] : (2010) 3 SCC(Cr) 138.
176. *KM Mathew v KA Abraham*, 1998 Cr LJ 327 (Ker).
177. *Subhiksha Trading Services Ltd v Azim H Premji*, 2011 Cr LJ 2769 (Mad).
178. *Shiv Kumar Agarwal v State of Meghalaya*, 2013 Cr LJ 421 .
179. *Shiv Kumar Agarwal v State of Meghalaya*, 2013 Cr LJ 421 .
180. *Abhijit Pawar v Hemant Madhukar Nimbalkar*, AIR 2017 SC 299 [LNIND 2016 SC 614] : (2017)3 SCC 528 [LNIND 2016 SC 614] .
181. *Bir Chandra Das v Anil Kumar Sarkar*, 2011 Cr LJ 3422 (Cal).

## THE INDIAN PENAL CODE

### CHAPTER XXI OF DEFAMATION

#### [s 501] Printing or engraving matter known to be defamatory.

**Whoever prints<sup>1</sup> or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.**

#### COMMENT.—

The offence under this section is a distinct offence from the one under section 500. The person printing or engraving defamatory matter abets the offence. This section makes such abetment a distinct offence. Where the content of any news item carried in a newspaper is defamatory as defined under [section 499 IPC, 1860](#), the mere printing of such material 'knowing or having good reason to believe that such matter is defamatory' itself constitutes a distinct offence under [section 501 IPC, 1860](#).<sup>182</sup>

#### [s 501.1] Ingredients.—

This section requires two things:—

1. Printing or engraving any matter.
2. Knowledge or reason to believe that such matter is defamatory.

**1. 'Prints'.—**The publisher of a newspaper in which defamatory matter is printed is liable under section 500. If he is also the printer of the newspaper, the case would be covered by this section. But his liability under section 500 would in no way be affected.<sup>183</sup> In a case, where the Editor/owner of magazine published defamatory statements containing imputations without due care and attention and without making any attempt of verification before publication and the same was not published in good faith. The court held that the charges framed against the accused under section 500, 501 and 502 read with [section 34 IPC, 1860](#), stand proved.<sup>184</sup>

<sup>182</sup>. *Mohammed Abdulla Khan v Prakash K*, AIR 2017 SC 5608 .

<sup>183</sup>. *Ramesh Chander*, AIR 1966 Punj 93 .

<sup>184</sup>. *B R K Murthy v State Of AP*, 2013 Cr LJ 1602 (AP). See also *Editor, Deccan Herald v M S Ramaraju*, 2005 Cr LJ 2672 (Kar).

## **THE INDIAN PENAL CODE**

### **CHAPTER XXI OF DEFAMATION**

#### **[s 502] Sale of printed or engraved substance containing defamatory matter.**

**Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.**

#### **COMMENT.—**

This section supplements the provisions of the previous section by making the seller of defamatory matter punishable under it.

#### **[s 502.1] Ingredients.—**

This section requires two essentials:—

1. Selling or offering for sale any printed or engraved substance.
2. Knowledge that such substance contains defamatory matter.

## THE INDIAN PENAL CODE

### CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

#### [s 503] Criminal intimidation.

Whoever threatens another with any injury<sup>1</sup> 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.

#### COMMENT.—

The offence of criminal intimidation requires either a person or another in whom he is specially interested to be threatened. There must be an intent to cause alarm to the former by a threat to him of injury to himself or to the latter. The intent itself might be complete, though it could not be effected. But the existence of the interest seems essential to the offence, as also and equally to the attempt to commit the offence, since otherwise the attempt would be to do something not constituting the offence.<sup>1</sup>

#### [s 503.1] Ingredients.—

- (1) Threatening a person with any injury.
  - (a) to his person, reputation or property or;
  - (b) to the person or reputation of any one in whom that person is interested.
- (2) The threat must be with intent;
  - (a) to cause alarm to that person, or
  - (b) to cause that person to do any Act which he is not legally bound to do as means of avoiding execution of such threat; or
  - (c) to cause that person to omit to do any act which that person is legally entitled to do as means of avoiding execution of such threat.

Therefore, intention must be to cause alarm to the victim and whether he is alarmed or not is really of no consequence. But material has to be brought on record to show that intention was to cause alarm to that person.<sup>2</sup>

**1. 'Threatens another with any injury'.—**The gist of the offence is the effect which the threat is intended to have upon the mind of the person threatened, and it is clear that

before it can have any effect upon his mind it must be either made to him by the person threatening or communicated to him in some way. The threat referred to in this section must be a threat communicated or uttered with the intention of its being communicated to the person threatened for the purpose of influencing his mind.<sup>3</sup> The threat must be one which can be put into execution by the person threatening. It is not necessary that the injury should be one to be inflicted by the offender; it is sufficient if he can cause it to be inflicted by another; and the infliction of it could be avoided by some act or omission that the person threatening desires. Punishment by God is not one which a person could cause to be inflicted or the execution of which he could avoid.<sup>4</sup>

A threat, in order to be indictable, must be made with intent to cause alarm to the complainant. Mere vague allegation by the accused that he is going to take revenge by false complaints cannot amount to criminal intimidation.<sup>5</sup>

### **[s 503.2] Criminal intimidation and Extortion.—**

Criminal intimidation is analogous to extortion. In extortion the immediate purpose is obtaining money or money's worth; in criminal intimidation, the immediate purpose is to induce the person threatened to do, or abstain from doing, something which he was not legally bound to do or omit.

### **[s 503.3] Threat of injury to reputation.—**

The accused took indecent photographs of a girl and threatened her father, in letters written to him with publication of the photographs unless "hush money" was paid to him. The Supreme Court held that the accused was guilty of criminal intimidation and not of attempt to commit extortion.<sup>6</sup> Where the head master of a school threatened a lady-teacher that until she signed certain papers in blank he would spoil her modesty, the Supreme Court held that this offence as well as that of extortion were made out.<sup>7</sup> Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section.<sup>8</sup>

### **[s 503.4] Person informed about threatened injury to another must be interested in him.—**

A threat to commit suicide is not within the section unless the other person be interested in the person giving the threat.<sup>9</sup>

1. *Mangesh Jivaji*, (1887) 11 Bom 376, 379, 380.

2. *Amulya Kumar Behera v Nabaghana Behera*, 1995 Cr LJ 355 (Ori).

3. *Gunga Chunder sen v Gour Chunder Banikya*, (1888) 15 Cal 671 , 673. See *SS Sanyal v KVR. Nair*, 1987 Cr LJ 2074 , when the charge-sheeted employee met the chairman of the company, the latter remarked to him : "your days are numbered," it was not an intimidation in the context because the purpose must have been to tell him that his service was not going to last beyond numbered days.
4. *Doraiswamy Ayyar*, (1924) 48 Mad 774.
5. *Govind*, (1900) 2 Bom LR 55 .
6. *Romesh Chandra Arora*, (1960) 1 SCR 924 [LNIND 1959 SC 177] .
7. *Chander Kala v Ram Kishan*, AIR 1985 SC 1268 [LNIND 1985 SC 166] : 1985 Cr LJ 1490 : (1985) 4 SCC 212 [LNIND 1985 SC 166] . See also *Anuradha v State of Maharashtra*, 1991 Cr LJ 410 .
8. *Manik Taneja v State of Karnataka*, (2015) 7 SCC 423 [LNIND 2015 SC 35] .
9. *Nubi Buksh v Must. Oomra*, (1866) PR No. 109 of 1866. See also *Kolla Srinivas v State of AP*, 2005 Cr LJ 2440 (AP).

## THE INDIAN PENAL CODE

### CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

#### [s 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.**

#### COMMENT.—

This section provides a remedy for using abusive and insulting language. Abusive language which may lead to a breach of the public peace is not an offence. There must be an intentional insult. Insult may be offered by words or conduct. If it is by words, the words must amount to something more than mere vulgar abuse.<sup>10</sup> Mere breach of good manners does not constitute an offence under this section.<sup>11</sup> If the insult is of such a nature that it may give provocation which might rouse a man to act either to break the public peace or to commit any other offence, the offence is committed.<sup>12</sup>

In judging whether a particular abusive language comes within the mischief of [section 504, Indian Penal Code, 1860 \(IPC, 1860\)](#), the Court has to see what would be the effect of the language used in ordinary course of events and not how the complainant actually behaved on being abused. Merely because a man of cool temperament did not react violently or break the peace it does not follow that no offence was committed by the accused.<sup>13</sup> In the absence of actual words used by the accused or even a gist of it in the complaint it is not possible to say if the case falls within the ambit of section 504 (IPC, 1960), and as such the charge has to be quashed.<sup>14</sup> Thus where the only allegation in the complaint was that when the complainant resisted the attempts by the accused to evict her forcibly from the land in her tenancy, the accused persons abused her in filthy words, the complainant not disclosing the actual words used by the accused or that she was provoked by the insulting abuse, the accused were not summoned.<sup>15</sup>

#### [s 504.1] Ingredients.—

This section requires two essentials:—

1. Intentionally insulting a person and thereby giving provocation to him.
2. The person insulting must intend or know it to be likely that such provocation will cause him to break the public peace or to commit any other offence.<sup>16</sup>

Mere hurling of abuses in absence of any allegation that such abuses were given intending or knowingly that such an action would provoke the aggrieved person to break public peace or to commit an offence does not fall within the definition of the offence as prescribed under section 504, (IPC, 1860). A bare reading of the section does not leave any room for doubt that the intentional insult which is given by the accused should be clothed with the intention or knowledge that such an insult would provoke the aggrieved person to commit breach of public peace or to commit an

offence.<sup>17</sup> Section 504 refers to intentional insult with intent to provoke breach of peace.

In order to attract the ingredients of an offence under section 504 of the (IPC, 1860), it would be necessary that actual words used or supposed to have been used should be mentioned in the complaint/written report, otherwise it would be extremely difficult for the Court to decide whether or not the words used amounted to an intentional insult.<sup>18</sup>

### **[s 504.2] Sections 499 and 504.—**

The difference between an offence under this section and defamation lies in the fact that in defamation, publication to the prosecutor alone is not sufficient, as such an imputation could not be said to harm the reputation of the person; but under this section this would complete the offence.

10. *Pukh Raj v State*, (1953) 3 Raj 983 .

11. *Abraham v State*, AIR 1960 Ker 236 [LNIND 1960 KER 34] .

12. *Mohammed Sabad Ali v Thuleswar Borah*, (1954) 6 Ass 274.

13. *K Veerangaiah*, 1976 Cr LJ 1690 (AP).

14. *Prem Pal Singh*, 1981 Cr LJ 1208 (HP).

15. *Jodh Singh v State of UP*, 1991 Cr LJ 3226 (All).

16. Restated in *Jodh Singh v State of UP*, 1991 Cr LJ 3226 (All). Sanction to prosecute a public servant under this section would be needed only when his act in question is a part of his official duty, and not when he abuses or insults a person who is in police lock-up. *Abani Ch Biswal v State of Orissa*, 1988 Cr LJ 1038 (Ori).

17. *Abdul Majid v State of Rajasthan*, 2012 Cr LJ 4392 (Raj); *Prakash Chandra Bafna v Oba Ram*, 2011 Cr LJ 416 (Raj)-using vulgar and filthy language against complainant when he went to his office to ask reason for not permitting him to mark his presence in register- held, not part of official duty and sanction is not necessary to prosecute him.

18. *Shiv Sundar Bharti v State of Bihar*, 2017(1) Crimes 351 (Pat) : 2016 Cr LJ 4761 (Pat).



# THE INDIAN PENAL CODE

## CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

[s 505] Statements conducing to public mischief.

- <sup>19</sup>(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, <sup>20</sup> [sailor or airman] in the Army, <sup>21</sup> [Navy or Air Force] <sup>22</sup> 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 tranquillity; 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 [three years], or with fine, or with both.

- <sup>23</sup>(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 <sup>24</sup> [three years], or with fine, or with both.

- <sup>25</sup>(3) Offence under sub-section (2) committed in place of worship, etc.

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

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

### STATE AMENDMENT

**Andhra Pradesh.**—In Andhra Pradesh the offence is cognizable vide G.O. Ms. No. 732, dated 5-12-1991.

## COMMENT.—

This section is aimed at reports calculated to produce mutiny or to induce one section of the population to commit offences against another and to prevent and remove communal and religious tensions. The Supreme Court has held that the provisions of this section are not unconstitutional as being violative of the fundamental right of freedom of speech and expression under [Article 19\(1\)\(a\) of the Constitution](#).<sup>26</sup> Sub-sections (2) and (3) of this section have now been made cognizable offences under the [Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#). Of course, offences under this section and sections 506 and 507, ([IPC, 1860](#)), can be made cognizable offences in specified areas by the State Government by a notification in the official Gazette under [section 10 of the Criminal Law Amendment Act, 1932](#).

A mere threat which causes no alarm to the complainant does not constitute an offence under the section.<sup>27</sup>

### [s 505.1] Sections 153A and 505.—

It is necessary under section 505 that there should be a publication of words or representation intended for promoting feelings of enmity or hatred, but this is not necessary under section 153A. Inciting of the feelings of one group merely without any reference to another group does not attract section 153A or section 505.<sup>28</sup> The Court referred to the decision in *Balwant Singh v State of Punjab*,<sup>29</sup> where the ruling was that *mens rea* is a necessary ingredient for the offence under section 153A. *Mens rea* is an equally necessary postulate for the offence under section 505(2) also as could be discerned from the words "with intent to create or promote or which is likely to create or promote" as used in that sub-section. The Court also referred to the decision in *Sunilakhya Chowdhury v HM Jadwet*,<sup>30</sup> wherein it was held that the words "makes or publishes any imputation" should be interpreted as words supplementing each other. A maker of imputation without publication is not liable to be punished under section 499. The same interpretation is warranted in respect of the words "makes, publishes or circulates" in section 505 ([IPC, 1860](#)) also.

19. Section 505 renumbered as sub-section (1) of that section by Act 35 of 1969, section 3 (w.e.f. 4 September 1969).

20. Subs. by Act 10 of 1927, section 2 and Sch I, for or sailor.

21. Subs. by Act 10 of 1927, section 2 and Sch I, for or Navy.

22. Subs. by A.O. 1950 for of Her Majesty or in the Imperial Service Troops. The words or in the Royal Indian Marine occurring after the words Majesty were omitted by Act 35 of 1934, section 2 and Sch.

23. Ins. by Act 35 of 1969, section 3(i) (w.e.f. 4 September 1969).

24. Subs. by Act 41 of 1961, section 4, for two years (w.e.f. 12 September 1961).

25. Ins. by Act 35 of 1969, section 3(i) (w.e.f. 4 September 1969).

26. *Kedar Nath*, [AIR 1962 SC 955 \[LNIND 1962 SC 21\]](#) .

27. *Amitabh Adhar v NCT of Delhi*, [2000 Cr LJ 4772](#) (Del).

28. *Bilal Ahmed Kaloo v State of AP*, AIR 1997 SC 3483 [LNIND 1997 SC 1060] : 1997 Cr LJ 4091

.

29. *Balwant Singh v State of Punjab*, AIR 1995 SC 1785 [LNIND 1995 SC 1420] : 1995 AIR SCW 2803 : (1995) 3 SCC 214 [LNIND 1995 SC 1420] .

30. *Sunilakhya Chowdhury v HM Jadwet*, AIR 1968 Cal 266 [LNIND 1967 CAL 167] .

## THE INDIAN PENAL CODE

### CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

#### [s 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 <sup>31.</sup> [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.

#### STATE AMENDMENTS

**Uttar Pradesh.**—*The following amendments were made by Notification No. 777/VIII 9-4(2)-87, dated 31-7-1989, published in U.P. Gazette, Extra, Part-4, Section (Kha) dated 2-8-1989.*

"Any offence punishable under section 506, (IPC, 1860), when committed in any district of Uttar Pradesh, shall be notwithstanding anything contained in the [Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#) be cognizable and non-bailable."

**Andhra Pradesh.**—*In Andhra Pradesh the offence is non-bailable if committed in A.P. vide G.O. Ms. No. 732, dated 5-12-1991.*

#### COMMENT.—

Where a person entered the victim's house during midnight armed with a knife and threatened with death anyone who came between himself and the victim, the offence under this section was held to have been made out.<sup>32.</sup> The threat must be real in the sense that the accused means what he says and the victim of the threat should feel threatened actually.<sup>33.</sup> Where the accused made his outburst on a public servant when he was on the way to attend his office saying that he was going to kill him, it was held that it was sufficient to hold that the act will fall under section 506.<sup>34.</sup>

#### [s 506.1] Mere words.—

In order to attract the ingredients of section 506, (IPC, 1860) the intention of the accused must be to cause alarm to the victim. Mere expression of words, without any intention to cause alarm, would not suffice.<sup>35.</sup> In *Amulya Kumar Behera v Nabaghana Behera*,<sup>36.</sup> it was held that intention of the accused must be to cause alarm to the victim and whether he is alarmed or not is of no consequence. However, mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of section 506.

In absence of basic ingredients of the section in the complaint, no case under section 506 (IPC, 1860) can be sustained.<sup>37</sup> Where all the witnesses have stated in specific terms that the accused came prepared and intimidated the complainant and also other witnesses. All the respondents are liable to be convicted for the offence punishable under section 506 of the (IPC, 1860).<sup>38</sup>

Where it was found that that the accused issued no threats to the complainant so as to cause death or grievous hurt, it was held that mere exhortation to his co-accused to finish him, did not amount to threat. His conviction under section 506 was set aside.<sup>39</sup>

Asking a person not to work in a private garden and threatening him to go away from the garden would not satisfy the requirements of the section.<sup>40</sup>

The statements said to have been made against accused six months prior to the death of the deceased with regard to the offence under section 506. (IPC, 1860) cannot be treated as admissible under [section 32\(1\) of the Indian Evidence Act, 1872](#).<sup>41</sup>

### **[s 506.2] Part-I Non-cognizable.—**

Since the part 1 of section 506 is not cognizable, the permission of the Magistrate would be required to try the applicants under said section.<sup>42</sup>

31. Subs. by Act 26 of 1955, section 117 and Sch, for transportation for life (w.e.f. 1 January 1956).

32. *Ghanshyam v State of MP*, 1990 Cr LJ 1017 (MP).

33. *Noble Mohandas v State of TN*, 1989 Cr LJ 669 (Mad). Threatening and giving fist blow to a surgeon of a Government hospital, held offence under the section, *Siyasaran v State of MP*, 1995 Cr LJ 2126 (SC).

34. *Rajendra Datt v State of Haryana*, 1993 Cr LJ 1025 (P&H).

35. *Tammineedi Bhaskara Rao v State of AP*, 2007 Cr LJ 1204 (AP).

36. *Amulya Kumar Behera v Nabaghana Behera*, 1995 Cr LJ 3559 (Ori).

37. *Gorige Pentaiah v State of AP*, 2009 Cr LJ 350 : 2008 (12) SCC 531 [LNINDORD 2008 SC 247]

38. *State of Maharashtra v Tatyaba Bajirao Jadhav*, 2011 Cr LJ 2717 (Bom); *State of HP v Vijay Kumar* 2010 Cr LJ 475 .

39. *Mohinder Singh v State of Haryana*, 1993 Cr LJ 85 (P&H). *Dimpey Gujral v Union Territory* 2013, AIR 2013 SC 518 : Cr LJ 520; *Surat Singh v State*, 2013 (1) Scale 1 [LNIND 2012 SC 837] .

40. *Saraswathi v State of TN*, 2002 Cr LJ 1420 (Mad). *Sanjay Pandey v Chhaganlal J Jain*, 2001 Cr LJ 2127 (Bom).

41. *D Vijay Kumar v State of AP*, 2010 Cr LJ 968 (AP).

42. *Narendra Bhojram Patil v State of Maharashtra*, 2010 Cr LJ 2762 (Bom). See also *Vishwajit P Rane v State of Goa*, 2011 Cr LJ 1289 (Bom), Government of Goa issued a notification declaring offence punishable under section 506 of the (IPC, 1860) committed within State of Goa, as

cognizable and non-bailable. Held, there is no power vesting in the State Government to amend the First Schedule to the [Criminal Procedure Code, 1973](#) (2 of 1974) by issuing a notification.

## THE INDIAN PENAL CODE

### CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

#### [s 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.

#### STATE AMENDMENT

Andhra Pradesh.—*In Andhra Pradesh the offence is cognizable vide G.O. Ms. No. 732, dated 5-12-1991.*

#### COMMENT.—

For a conviction under this section it must be shown that the accused committed criminal intimidation by an anonymous communication.<sup>43.</sup>

<sup>43.</sup> *Doraiswamy Ayyar*, (1924) 48 Mad 774.

## THE INDIAN PENAL CODE

### CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

**[s 508] Act caused by inducing person to believe that he will be rendered an object of 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.

#### COMMENT.—

This section is intended to prevent such practices as *dharna* and *traga*.



## THE INDIAN PENAL CODE

### CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

#### [s 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, <sup>44</sup> [shall be punished with simple imprisonment for a term which may extend to three years, and also with fine].

#### COMMENT.—

If a man intending to outrage the modesty of a woman exposes his person indecently to her or uses obscene words intending that she should hear them or exhibits to her obscene drawing, he commits this offence.

#### [s 509.1] Ingredients.—

This section requires:—

1. Intention to insult the modesty of a woman.
2. The insult must be caused
  - (i) by uttering any word or making any sound or gesture, or exhibiting any object intending that such word or sound shall be heard or that the gesture or object shall be seen by such woman, or
  - (ii) by intruding upon the privacy of such woman.

The burden is on the prosecution to prove that the accused had uttered the words or made the sound or gesture and that such word, sound or gesture was intended by the accused to be heard or seen by some woman. Normally, it is difficult to establish this and, seldom, a woman files complaint and often the wrong doers are left unpunished even if complaint is filed since there is no effective mechanism to monitor and follow up such acts. <sup>45</sup>

#### [s 509.2] Indecent overtures.—

Section 509 (IPC, 1860) criminalises a 'word, gesture or act intended to insult the modesty of a woman' and in order to establish this offence it is necessary to show that the modesty of a particular woman or a readily identifiable group of women has been insulted by a spoken word, gesture or physical act. Clearly, this offence cannot be made out when the complainants' grievance is with the publication of what the appellant had stated in a written form. <sup>46</sup>

The modesty contemplated under section 509 is to be understood as the "womanly propriety of behaviour".<sup>47</sup>.

44. Subs. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 10 (w.e.f. 3 February 2013) for the words "shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

45. *Deputy Inspector General of Police v S Samuthiram*, [AIR 2013 SC 14](#) [[LNIND 2012 SC 755](#)] : [\(2013\) 1 SCC 598](#) [[LNIND 2012 SC 755](#)] .

46. *S Khushboo v Kanniammal*, [AIR 2010 SC 3196](#) [[LNIND 2010 SC 411](#)] : [2010 Cr LJ 2828](#) (SC) : [2010 \(5\) SCC 600](#) [[LNIND 2010 SC 411](#)] .

47. *Aloshia Joseph v Joseph Kollamparambil*, [2009 Cr LJ 2190](#) ; *Maloji Patil v State of Goa*, [2009 Cr LJ 903](#) (Bom); *Santha v State*, [2006 \(1\) Ker LT 249](#) - whether a lady, can be convicted for an offence under section 509 ([IPC, 1860](#))

## THE INDIAN PENAL CODE

### CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

#### [s 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.

#### COMMENT.—

**Ingredients.**—This section requires two things:—

1. Appearance of a person in a state of intoxication in
  - (i) any public place, or
  - (ii) any place which it is a trespass in him to enter.
2. The person so appearing must have conducted himself in such a manner as to cause annoyance to any person.

# THE INDIAN PENAL CODE

## CHAPTER XXIII OF ATTEMPTS TO COMMIT OFFENCES

**[s 511] Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.**

Whoever attempts to commit an offence punishable by this Code<sup>1</sup>. with <sup>1</sup> [imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code<sup>2</sup>. for the punishment of such attempt, be punished with <sup>2</sup> [imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.

### ILLUSTRATIONS

- (a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.
- (b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

### COMMENT.—

Before completion of crime, human mind has to pass four steps as under:—

- (1) Intention to commit;
- (2) Preparation to commit it;
- (3) Attempt to commit it; and
- (4) If the attempt is successful, then crime is complete.

[Section 511 Indian Penal Code, 1860 \(IPC, 1860\)](#) is a general provision dealing with the attempts to commit offences and not made punishable by other specific section. It makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable for life or death.<sup>3</sup>

A person commits the offence of 'attempt to commit a particular offence' when (i) he intends to commit that particular offence; and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence, but must be an act during the course of committing that offence, [section 511, IPC, 1860](#) is attracted.<sup>4</sup> An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the

act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.<sup>5.</sup>

In *Om Prakash's case*<sup>6.</sup> the Supreme Court has clearly held that like [section 511, IPC, 1860](#) in [section 307, IPC, 1860](#) to the act need not be the penultimate act.

### **[s 511.1] Essentials.—**

In every crime, there is first intention to commit it; second, preparation to commit it; third, 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 the law punishes the person attempting the act. An 'attempt' is made punishable, because every attempt, although it fails of success, must create alarm, which, of itself, is an injury, and the moral guilt of the offender is the same as if he had succeeded.

A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence, if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence—the act need not be the penultimate act towards the commission of the offence but it must be an act during the course of committing that offence.<sup>7.</sup>

**(1) Intention.**—Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice.<sup>8.</sup> The will is not to be taken for the deed, unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and affecting it. In an attempt to commit an offence, there must be intention to commit the crime combined with doing of some act adopted to, but falling short of its actual commission.<sup>9.</sup>

**(2) Preparation.**—Preparation consists in devising or arranging the means or measures necessary for the commission of an offence.<sup>10.</sup>

### **[s 511.2] Removal of rice bags from *godown* in order to sell them.—**

A Government stockist removed 80 bags of rice from a *godown* in his charge and concealed them in a room with a view to sell them and appropriate the sale proceeds. It was held that the act of the stockist amounted only to preparation and therefore, he was not guilty of any offence.<sup>11.</sup>

### **[s 511.3] Running towards well for committing suicide.—**

A woman ran to a well stating she would jump into it, and she was caught before she could reach it. It was held that she could not be convicted of an attempt to commit suicide as she might have changed her mind before jumping into the well.<sup>12.</sup>

**(3) Attempt.**—Attempt is the direct movement towards the commission after the preparations are made.<sup>13.</sup> In *State of Maharashtra v Mohd. Yakub*,<sup>14.</sup> reported in the Apex Court considered the definition of 'attempt to commit crime' as the last proximate act which a person does towards the commission of an offence, the consummation of the offence being hindered by circumstances beyond his control. It was observed by the Apex Court that what constitutes an "attempt" is a mixed question of law and fact, depending largely on the circumstances of the particular case. "Attempt" defies a precise and exact definition. Broadly speaking, all crimes which consist of the commission of affirmative acts are preceded 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 preparations to commit it. The third stage is reached when the culprit takes deliberate overt steps to commit the offence. Such overt act or step in order to be 'criminal' need not be the penultimate act towards the commission of the offence. It is sufficient if such act or acts were deliberately done, and manifest a clear intention to commit the offence aimed, being reasonably proximate to the consummation of the offence.

The test for determining whether the acts constitute attempt or preparation 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. But where the thing done is such as, if not prevented by any extraneous cause, would fructify into commission of an offence, it would amount to an attempt to commit that offence.<sup>15.</sup> An attempt to commit an offence does not cease to be an attempt merely because after the attempt is made and before the actual completion of the offence the offender may be able to prevent its completion by doing some other act in pursuance of a changed intention.<sup>16.</sup>

An accused is liable for attempt where his failure to commit an offence is not due to any act or omission of his own, but to the intervention of some factor independent of his own volition.<sup>17.</sup> Where misrepresentations had been made and money obtained from the persons sought to be cheated by misrepresentations, there is an attempt to cheat and not merely a preparation for committing that offence.<sup>18.</sup>

#### **[s 511.4] Distinction between 'preparation' and 'attempt'.—**

There is a distinction between 'preparation' and 'attempt'. Attempt begins where preparation ends. A person commits the offence of attempt to commit a particular offence when accused (i) intends to commit a particular offence, (ii) he having made preparation and with the intention to commit an offence, (iii) does an act towards its commission, such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence.<sup>19.</sup>

**1. 'Offence punishable by this Code'.—**No criminal liability can be incurred under the Code by an attempt to do an act, which if done will not be an offence against the Code.<sup>20.</sup>

The expression "whoever attempts to commit an offence" in this section can only mean "whoever intends to do a certain act with the intent or knowledge necessary for the commission of that offence".<sup>21.</sup>

### **[s 511.5] Impossible offence.—**

An attempt is possible, even when the offence attempted cannot be committed; as when a person, intending to pick another person's pocket, thrusts his hand into the pocket, but finds it empty. That such an act would amount to a criminal attempt appears from the illustrations to this section. But in doing such an act, the offender's intention is to commit a complete offence, and his act only falls short of the offence by reason of an accidental circumstance which has prevented the completion of the offence. It is possible to attempt to commit an impossible theft and so offend against the Code because theft is itself an offence against the Code, and may therefore, be attempted within the meaning of the Code. At the same time it is necessary to show that the means adopted are apparently suitable for the fulfilment of the design.<sup>22</sup> Thus where a man threatens the life of another with a child's pop gun using a cork as a projectile<sup>23</sup> or tries to pick the pocket of a man who is well beyond the reach of his hand, no attempt either to commit murder or to steal can be said to have been committed as the means adopted are impossible of achieving the designed purpose. Similar would be the case in regard to absolutely impossible acts. Thus where the act is such that it is incapable of commission, e.g., trying to steal from an empty room or an empty pocket or trying to kill a person by shooting at a bulge in a bed thinking it to be the enemy, no criminal attempt can be said to have been committed.<sup>24</sup> In the *IPC, 1860*, however, trying to steal from an empty pocket would still constitute an attempt as Illustration (b) to [section 511, IPC, 1860](#) specifically says so. Though in England too this happened to be the law previously<sup>25</sup> the position has materially changed after the decision of the House of Lords in *Haughtons* case.<sup>26</sup> It is felt that the law in India should be changed on this score at least to bring about a uniformity of approach to this question of attempt so far [sections 307 and 511, IPC, 1860](#) are concerned especially, after the decision of the Supreme Court in the case of *Om Prakash's* case,<sup>27</sup> has held that under both these sections the act need not be the last proximate act.

### **[s 511.6] Attempt to cheat.—**

The accused applied to the Patna University for permission to appear at the MA Examination in English as a private candidate representing that he was a graduate having obtained his BA degree three years earlier and that he had been teaching in a certain school. In support of his application, he attached certain certificates purporting to be from the Headmaster of the School and the Inspector of Schools. The University authorities gave the accused permission to appear at the examination. Later on, finding that the certificates were false and that the accused was not a graduate and was not a teacher, the University authorities withdrew the permission. The Supreme Court held that the accused was guilty of attempting to cheat and that the moment the accused dispatched his application to the University, he entered the realm of attempting to commit the offence of cheating.<sup>28</sup> Where the accused made an alteration in his own affidavit under the honest belief that it was necessary for customs' clearance, the Supreme Court set aside the conviction under section 420 read with this section.<sup>29</sup>

The offence of attempting to cheat may be committed even though the person attempted to be cheated does not believe in the representations made to him and is not misled by them but only feigns belief in order to trap the offender.<sup>30</sup>

### **[s 511.7] Outraging Modesty of a Woman and attempt to Rape (sections 354 and 511 read with section 376).—**

In between complete rape and attempt to commit rape there is a rare area covered by [section 354 of IPC, 1860](#), i.e., assault or criminal force to woman with intent to outrage her modesty or indecent assault. The dividing line between attempt to commit rape and indecent assault is not only thin but also is practically invisible. For an offence of attempt to commit rape, prosecution is required to establish that the act of the accused went beyond the stage of preparation. In a given case, where the prosecutrix was made naked and her cries attracted her uncle who came to the spot and then the accused fled away, it was held that it was not a case of attempt to commit rape but was one under [section 354 of IPC, 1860](#).<sup>31</sup>.

### **[s 511.8] 'Attempt could be a minor offence'.—**

It is true that there was no charge under [section 376](#) read with [section 511, IPC, 1860](#). However, under [section 222 of the Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#) when a person is charged for an offence he may be convicted of an attempt to commit such offence although the attempt is not separately charged.<sup>32</sup>.

**2. 'Where no express provision is made by this Code'.—**The section does not apply to cases of attempts made punishable by some specific sections of the Code. The attempts specifically provided for are:—

Section 121, attempt to wage war against the Government of India. Section 124, attempt wrongfully to restrain the President and other high officials with intent to induce or compel them to exercise or refrain from exercising any of their lawful powers. Section 125, attempt to wage war against the Government of any Asiatic Power in alliance or at peace with the Government of India. Section 130, attempt to rescue State prisoners or prisoners of war. Section 196, attempt to use as the evidence known to be false. Sections 198, 200, attempt to use as true a certificate or declaration known to be false in a material point. Section 213, attempt to obtain a gratification to screen an offender from punishment. Sections 239 and 240, attempt to induce a person to receive a counterfeit coin. Section 241, attempt to induce a person to receive as genuine counterfeit coin which, when the offender took it, he did not know to be counterfeit. Sections 307 and 308, attempts to commit murder and culpable homicide. Section 309, attempt to commit suicide. Sections 385, 387 and 389, attempt to put a person in fear of injury or accusation in order to commit extortion. Section 391, conjoint attempt of five or more persons to commit dacoity. Sections 393, 394 and 398, attempts to commit robbery. Section 460, attempt by one of many joint house-breakers by night to cause death or grievous hurt.

1. Subs. by Act 26 of 1955, section 117 and Sch, for transportation for life (w.e.f. 1 January 1956).

2. Subs. by Act 26 of 1955, section 117 and Sch, for certain words (w.e.f. 1 January 1956).

3. *Pawan Kumar v State of Haryana*, [2010 Cr LJ 2077](#) (P&H).

4. *I K Narayana v State of Karnataka*, [2013 Cr LJ 874](#) (Kant).

5. *Koppula Venkat Rao v State of AP*, [AIR 2004 SC 1874](#) [[LNIND 2004 SC 301](#)] : [2004 Cr LJ 1804](#) (SC).



6. *Om Prakash*, 1961 (2) Cr LJ 848 (SC).
7. *Abhayanand*, AIR 1961 SC 1698 [LNIND 1961 SC 202] ; *Om Prakash*, 1961 (2) Cr LJ 848 (SC).
8. James Fitzjames Stephen, *General View of the Criminal Law of England*, 2nd Edn, p 69; *Koppula Venkat Rao v State of AP*, AIR 2004 SC 1874 [LNIND 2004 SC 301] : 2004 Cr LJ 1804 : (2004) 3 SCC 602, the Supreme Court explained why attempt has been characterized as crime.
9. *Damodar Behera v State of Orissa*, 1996 Cr LJ 344 (Ori).
10. Quoted with approval from Mayne's Criminal Law in *Peterson's case*, (1876) 1 All 316 , 317 and in *Padala Venkatasami*, (1881) 3 Mad 4, 5; *Ashaq Hussain*, (1948) Pak LR 155.
11. *Bhagwat v State*, (1948) 28 Pat 92.
12. *Ramakka*, (1884) 8 Mad 5.
13. Quoted with approval from Mayne's Criminal Law in *Peterson*, (1876) 1 All 316 , and in *Padala Venkatasami*, (1881) 3 Mad 4.
14. *State of Maharashtra v Mohd. Yakub*, AIR 1980 SC 1111 [LNIND 1980 SC 99] : (1980) 3 SCC 57 [LNIND 1980 SC 99] .
15. *Tustipada Mandal*, (1950) Cut 75.
16. *Haricharan v State*, AIR 1950 Ori 114 [LNIND 1949 ORI 25] (SB).
17. *Mangeram v Lal Chhatramohansingh*, (1950) Nag 908.
18. *Bashirbhai*, (1960) 3 SCR 554 [LNIND 1960 SC 126] : 62 Bom LR 908.
19. *State of Maharashtra v Mohd. Yakub*, AIR 1980 SC 1111 [LNIND 1980 SC 99] : (1980) 3 SCC 57 [LNIND 1980 SC 99] .
20. *Mangesh Jivaji*, (1887) 11 Bom 376, 381; *Ram Charit Ram Bhakat v Chairman, Rajshahi District Board*, (1938) 1 Cal 420 .
21. *Om Prakash*, AIR 1962 SC 1782 .
22. *Mohinder Singh*, 1960 Cr LJ 393 (Punj).
23. *Ibid.*
24. *Haughton v Smith*, (1975) AC 476 Per House of Lords : (1973) 3 All ER 1109 : (1974) 2 WLR 607 ; see also *Neilson* (1978) RTR 232 .
25. *Ring*, (1892) 61 LJ MC 116.
26. *Haughton*, *supra*.
27. *Om Prakash*, 1961 (2) Cr LJ 848 (SC).
28. *Abhayanand*, AIR 1961 SC 1698 [LNIND 1961 SC 202] ; see also *Sudhir Kumar*, 1973 Cr LJ 1798 (SC); *State of Maharashtra v Mohd. Yakub*, 1980 Cr LJ 793 (SC).
29. *Kapoor Chand Maganlal Chanderia v State (Delhi Admn)*, 1985 SCC (Cr) 441 : (1985) Supp SCC 268 .
30. *Bashirbhai*, 62 Bom LR 908 : (1960) 3 SCR 554 [LNIND 1960 SC 126] .
31. *Tukaram Govind Yadav v State of Maharashtra*, 2011 Cr LJ 1501 (Bom); *State of MP v Babulal*, AIR 1960 MP 155 [LNIND 1959 MP 49] ; *Rajesh Vishwakarma v State of Jharkhand*, 2011 Cr LJ 2753 (Jha); *Pawan Kumar v State of Haryana*, 2010 Cr LJ 2077 (P&H).
32. *Pandharinath v State of Maharashtra*, (2009) 14 SCC 537 [LNIND 2009 SC 1378] .

# THE INDIAN PENAL CODE

## SUMMARY

THE draft of the [Indian Penal Code](#) was prepared by the First Indian Law Commission when Macaulay was the President of that body. Its basis is the law of England freed from superfluities, technicalities and local peculiarities. Suggestions were also derived from the French [Penal Code](#) and from Livingstone's Code of Louisiana. The draft underwent a very careful revision at the hands of Sir Barnes Peacock, Chief Justice, and puisne Judges of the Calcutta Supreme Court who were members of the Legislative Council, and was passed into law in 1860. Though it is principally the work of a man who had hardly held a brief, and whose time was devoted to politics and literature, yet it is universally acknowledged to be a monument of codification and an everlasting memorial to the high juristic attainments of its distinguished author.

### **Objects of penal legislation.**

The legitimate objects of penal legislation are the selection of those violations of right which are sufficiently dangerous to the good order of society to justify and require the infliction of punishment to repress them, and the adaptation of the degree of punishment to the purpose of repressing such violations.

### **Crime.**

A crime is an act of commission or omission, contrary to municipal law, tending to the prejudice of the community, for which punishment can be inflicted as the result of judicial proceedings taken in the name of the State. It tends directly to the prejudice of the community, while a civil injury tends more directly and immediately to the prejudice of a private right. The true test between a crime and a civil injury is that the latter is compensated by damages, while the former is punished. The State is supposed to be injured by any wrong to the community and is, therefore, the proper prosecutor. Many crimes include a tort or civil injury; but every tort does not amount to a crime, nor does every crime include a tort. Conspiracy, conversion, private nuisance, wrongful distress, etc., are merely torts. Assault, false imprisonment, false charge, defamation, etc., are all crimes as well as torts. Forgery, perjury, bigamy, homicide, etc., are crimes but not torts.

The great difference between the legal and the popular meanings of the word crime is that whereas the only perfectly definite meaning which a lawyer can attach to the word is that of an act or omission punishable by law, the popular or moral conception adds to this the notion of moral guilt of a specially deep and degrading kind. By a criminal, people in general understand a person who is liable to be punished, because he has done something at once wicked and obviously injurious in a high degree to the common interest of society. Criminal law is, however, confined within very narrow limits and can be applied only to definite overt acts or omissions capable of being distinctly proved, which acts or omissions inflict definite evils, either on specific persons or on the community at large.<sup>1</sup>

By criminal law is now understood the law as to the definition, trial and punishment of crimes, i.e., of acts or omissions forbidden by law which affect injuriously public rights, or constitute a breach of duties due to the whole community. Criminal law includes the

rules as to the prevention, investigation, prosecution and punishment of crimes. It lays down what constitutes an offence, what proof is necessary to prove it, what procedure should be followed in a court, and what punishment should be imposed.

In criminal law the general principle is that there must be some guilty condition of mind in every offence. This is designated by the expression *mens rea*. It is however in the power of the Legislature to enact that a man may be convicted of an offence although there was no guilty mind. Where a statute requires a mental state to be proved as an essential element of a crime, the burden is on the prosecution to prove it. The absence of *mens rea* really consists in an honest and reasonable belief entertained by the accused of the existence of facts, which, if true, would make the act charged against him innocent.

The authors of the Code observe:—"We cannot admit that a [Penal Code](#) is by any means to be considered as a body of ethics, that the Legislature ought to punish acts merely because those acts are immoral, or that, because an act is not punished at all, it follows that the Legislature considers that act as innocent. Many things which are not punishable are morally worse than many things which are punishable. The man who treats a generous benefactor with gross ingratitude and insolence deserves more severe reprehension than the man who aims a blow in a passion, or breaks a window in a frolic; yet we have punishments for assault and mischief, and none for ingratitude. The rich man who refuses a mouthful of rice to save a fellow-creature from death may be a far worse man than the starving wretch who snatches and devours the rice; yet we punish the latter for theft, and we do not punish the former for hard-heartedness."<sup>2</sup>.

Criminal law forms generally a part of the public law not variable in any one of its parts by the volition of private individuals and it is not necessarily deprived of its effect merely by the possible culpability of the individuals who may be the sufferers by the breach. The maxim *ex turpicausa non oritur actio* is not a sufficient excuse for a man who acts in opposition to the provisions of a penal statute. If a man, for instance, gives a spurious sovereign to a person for losing a bet, and the latter sues the former, he cannot succeed for a breach of contract.

### **Presumption of innocence.**

In criminal cases the presumption of law is that the accused is innocent. The burden of proving every fact essential to bring the charge home to the accused lies on the prosecution. The evidence must be such as to exclude every reasonable doubt of the guilt of the accused. The evidence of guilt must not be a mere balance of probabilities, but must satisfy the Court beyond all shadow of reasonable doubt that the accused is guilty. In matters of doubt it is safer to acquit than to condemn, since it is better that several guilty persons should escape than one innocent person suffer. Unbiased moral conviction is no sufficient foundation for a verdict of guilty, unless it is based on substantial facts leading to no other reasonable conclusion than that of guilt of the accused. No man can be convicted of an offence where the theory of his guilt is no more likely than the theory of his innocence.

Under [section 105 of the Indian Evidence Act, 1872](#), it is incumbent on the accused to prove the existence of circumstances (if any) which bring the offence charged within any exception or proviso contained in the [Indian Penal Code, 1860 \(IPC, 1860\)](#), and the court shall presume the absence of such circumstances. But if it is apparent from the evidence on record whether produced by the prosecution or defence, that a general exception would apply, then the presumption is removed and it is duty of the court to consider whether the evidence proves to the satisfaction of the court that the accused comes within the exception.

## Limitation.

Previously there was no limitation to prosecute a person for an offence as "*Nullum tempus occurit regi*" (lapse of time does not bar the right of the Crown) was the rule. And as a criminal trial was regarded as an action by the government, it could be brought at any time. It would be odious and fatal, says Bentham, to allow wickedness, after a certain time, to triumph over innocence. No treaty should be made with malefactors of that character. Let the avenging sword remain always hanging over their heads. The sight of a criminal in peaceful enjoyment of the fruit of his crimes, protected by the laws he has violated, is a consolation to evil-doers, an object of grief to men of virtue, a public insult to justice and to morals. The Roman law, however, laid down a prescription of 20 years for criminal offences as a rule. There is no period of limitation for offences which fall within the four corners of [IPC](#).

An entire Chapter captioned "Limitation For Taking Cognizance of Certain Offences" (Chapter XXXVI) has been added to the [Criminal Procedure Code, 1973 \(Cr PC, 1973\)](#) to prevent taking of cognizance after certain periods in offences not punishable with imprisonment for a term exceeding three years. Thus, [section 468 of Cr PC, 1973](#) lays down:

- (1) Except as otherwise provided elsewhere in this Code no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.
- (2) The period of limitation shall be—
  - (a) six months, if the offence is punishable with fine only;
  - (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
  - (c) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.
- (3) \*\*\*\*\*

A [Constitution](#) Bench of the Supreme Court in *Mrs. Sarah Mathew v The Institute of Cardio Vascular Diseases*,<sup>3</sup> held that the period of Limitation starts from the date of Complaint, not from date of Cognizance.

As opposed to the Benthamian concept of no limitation to criminal prosecutions, the modern concept is that the accused shall not be kept under a perpetual threat for any length of time and right to have a speedy trial should be regarded as one of his basic human rights. In keeping with this spirit the new [Criminal Procedure Code](#) has further made provisions in sub-section (5) of [section 167, Cr PC, 1973](#), for the stoppage of investigation in Summons Cases, if the investigation is not concluded within six months from the date on which the accused was arrested.

## Master's liability for servant's act.

The master is liable for the tortious acts of his servants done in the course of his employment and for the master's benefit, but in criminal law he who does the act is liable except where a person who is not the doer, abets or authorizes the act. There are, however, certain exceptions to this principle.

1. *Statutory liability.*—A statute may impose criminal liability upon the master as regards the acts or omission of his servants. Licence cases form a class by themselves in

which the master is generally held responsible.

2. *Public nuisance*.—The owner of works carried on for his profit by his agents is liable to be indicted for a public nuisance caused by acts of his agents in carrying on the works.

3. *Neglect of duty*.—If a person neglects the performance of an act which is likely to cause danger to others, and entrusts it to unskilful hands he will in certain cases be criminally liable.

**1. Vicarious liability.**—[Indian Penal Code, 1860](#), save and except some matters does not contemplate any vicarious liability on the part a person. (Exceptions to this rule include section 34, 149, etc.)

**2. Corporate Criminal Liability.**—A company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the fact that the corporation cannot commit a crime, the generally accepted modern rule is that a corporation may be subject to indictment and other criminal process although the [criminal act](#) may be committed through its agent. The majority in the [Constitution](#) bench held that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment is mandatory imprisonment and fine. The corporations can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary *mens rea* for the commission of criminal offences.<sup>4</sup>

## Scheme.

The following tabular statement gives an outline of the scheme of [IPC, 1860](#).—

### *General Provisions*

1. Territorial operation of the Code (c. I).
2. General Explanations (c. II).
3. Punishments (c. III).
4. General Exceptions (c. IV).
5. Abetment (c. V).
6. Conspiracy (c. VA).
7. Attempts (c. XXIII).

### *Specific Offences*

- |                        |    |  |
|------------------------|----|--|
| 1. Affecting the State | .. | State (c. VI).<br>Army, Navy and Air Force (c. VII).<br>Public tranquillity (c. VIII).<br>Public servants conduct of (c. IX).<br>Contempt of authority of (c. X).<br>Public Justice (c. XI). |
|------------------------|----|--|

2. Affecting the common wealth	.. Public health, safety, decency, and morals (c. XIV). Elections (c. IXA). Coin and Government Stamps (c. XII). Weights and Measures (c. XIII). Religion (c. XV). Contract of Service (c. XIX). Marriage (c. XX). Homicide, murder, abetment of suicide, causing miscarriage, injuries to unborn children, exposure of infants, hurt (simple and grievous), wrongful restraint
3. Affecting the human body	.. and confinement, criminal force, assault, kidnapping, abduction, slavery, selling or buying minor for prostitution, unlawful labour, rape, unnatural offence (c. XVI). Theft, extortion, robbery, dacoity, criminal misappropriation, criminal breach of trust, receiving stolen property, cheating, fraudulent deeds and dispositions of mischief, criminal trespass (c. XVII), documents (forgery), property property marks, currency and bank notes (c. XVIII). Defamation (c. XXI).
4. Affecting corporeal or incorporeal	Intimidation, insult and annoyance (c. XXII).
5. Affecting reputation	

### **Date and extent of operation. Chapter 1.**

The [IPC, 1860](#), came into operation on 1 January 1862. It takes effect throughout India except the State of Jammu and Kashmir. For every act or omission contrary to the provisions of the Code a person is liable to punishment under it (sections 1 and 2). Every person is made liable to punishment under the Code without distinction of nation or rank. A foreigner, who enters the Indian territories and accepts the protection of Indian laws, virtually submits himself to their operation. The [Penal Code](#) does not exempt anyone from the jurisdiction of criminal Courts, but the following are exceptions to this principle:—

- (1) The Sovereign.
- (2) Foreign Sovereigns.

- (3) Ambassadors.
- (4) Alien enemies
- (5) Foreign army.
- (6) Men-of-war.

The courts in India are prohibited from issuing a process against the President of India or the Governor of a State. ([Article 361 of Constitution](#))

### **Territorial jurisdiction.**

The territorial jurisdiction of criminal courts will extend into the sea as far as 12 nautical miles.

*Leading case:—R v Kastya Rama*

### **Extra-territorial operation.**

An offence committed *outside* India may, however, be tried as an offence committed *in* India under the following circumstances:—

1. By virtue of any Indian law (**section 3**).
2. When such offence is committed by
  - (1) any citizen of India in any place without and beyond India,
  - (2) any person on any ship or aircraft registered in India wherever it may be (**section 4**).

Where an offence is committed *beyond* the limits of India but the offender is found *within* its limits he may be (I) extradited; or (II) tried in India.

### **Extradition.**

(I) Extradition is the surrender by one State to another of a person desired to be dealt with for crimes of which he has been accused or convicted and which are justiciable in the courts of the other State. Whether an offender should be handed over pursuant to a requisition is determined by the domestic law of the State on which requisition is made. In India, the procedure is to be found laid down in the [Extradition Act, 1962](#).<sup>5</sup>

### **Intra-territorial trial.**

(II) The Courts in India are empowered to try offences committed out of India either on (A) Land or (B) High Seas or (C) Aircraft.

### **Land.**

(A) By virtue of [sections 3 and 4 of IPC, 1860](#), and [section 188 of Cr PC, 1973](#), local courts can try offences committed outside India.

When the consequence of an act committed by a foreigner outside India if ensued in India, he can be tried in India.<sup>6</sup>

### **High seas: Admiralty Jurisdiction.**

(B) The jurisdiction to try offences committed on the high seas is known as Admiralty jurisdiction. It is founded on the principle that a ship on the high seas is a floating island belonging to the nation whose flag she is flying.

The jurisdiction extends over—

- (1) Offences committed on Indian ships. Such offences may be committed:
  - (a) on the high seas or in rivers, below the bridges, where the tide ebbs and flows, and where great ships go; or
  - (b) at a spot where the municipal authorities of a foreign country might exercise concurrent jurisdiction.
- (2) Offences committed on foreign ships in Indian territorial waters.
- (3) Pirates.

[Section 18 of IPC, 1860](#), defines India as the territory of India excluding the state of Jammu and Kashmir. These territorial limits would include the territorial waters of India.<sup>7</sup> By The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 80 of 1976, extend of India's Territorial waters was statutorily fixed at 12 nautical miles.

All the High Courts in India have inherent admiralty jurisdiction and can invoke the same for the enforcement of a maritime claim.<sup>8</sup> Admiralty jurisdiction was vested in the mofussil courts by 12 & 13 Vic. c. 96, and [section 686 of the Merchant Shipping Act, 1958](#). The investigation/enquiry under Part XII of the [Merchant Shipping Act, 1958](#), cannot be held to be a substitute for a proper investigation into an alleged crime if the same has been committed.

### **Aircraft.**

(C) The provisions of [IPC, 1860](#), are made applicable to any offence committed by any person on any aircraft registered in India, wherever it may be.

Indian courts cannot try foreigners who are in India for offences committed by them outside India.

### **Laws not affected by the Code.**

The [IPC, 1860](#), does not affect the provisions of (1) any act for punishing mutiny and desertion by officers, soldiers, sailors or airmen, in the service of the Government of India;



(2) any special or local law (section 5).

An offence expressly made punishable by a special or local law will be punishable under the Code. But if the Legislature in framing the special or local law intended to exclude the operation of the Code, no prosecution under the Code would lie. However, a person cannot be punished both under the Code and the special law for the same offence.

## **General Explanations. Chapter II.**

In chapter II, the leading terms used in the Code are defined and explained and the meanings, thus, announced are steadily adhered to throughout the subsequent chapters.

General exceptions are part of the definition of every offence contained in [IPC, 1860, section 6](#), but the burden to prove their existence lies on the accused.

The Supreme Court has explained some of the categories of "public servants" ([section 21](#)).

The definition is not exhaustive. A person may be a public servant under some other statute. *Naresh Kumar Madan v State of MP*, Leader of opposition in the Assembly is not a public servant. *Sushil Modi v Mohan Guruswamy*.

*Leading cases:—K Veeraswami v UOI Lakshminan Singh v Naresh Ashok Marketing Ltd v PNB.*

Imitation of foreign currency is an offence within the meaning of "counterfeit" ([section 28](#)).

*Leading case:—State of Kerala v Mathai Verghese*

An act includes an illegal omission save where the contrary appears from the context. Where the causing of an effect in an offence if it is caused either by an act or by an omission, the causing of that effect partly by an act and partly by an omission is the same offence ([section 36](#)). When an offence is committed by several persons committing different acts, each person intentionally committing one of those acts, either singly or jointly with others, commits the offence ([section 37](#)).

## **Joint offenders.**

Where a [criminal act](#) is committed jointly by several persons the following principles will apply:—

1. When the act is done in *furtherance of the common intention* of all, each of such persons is liable for it in the same manner as if it were done by him alone ([section 34](#)).

Mere presence does not create a presumption of complicity. A person not cognizant of the intention of his companion to commit murder is not liable for murder, though he has joined his companion to do an unlawful act. There must be (i) a pre-arranged plan or a preconcert and (ii) in offences involving physical violence participation if section 34 is to apply; both these factors must be established against the accused before he can be held liable under the section. Common intention or meeting of minds to bring about a particular result may well develop on the spot itself as between a number of persons. Joint responsibility was inflicted upon the sub-inspector (SI) in charge of a

police station where two police constables beat a person to death, though the SI himself had done no beating. *Amar Singh v HP*. It is not necessary that all must come together. *State of MP v Mansingh*. The Supreme Court examined the effect of mere presence at the place of occurrence. *State of UP v Sohruntia*.

**Leading cases:—***Barendra Kumar Ghose v Mahub Shah; Hari Om v State of UP; Suresh v State of UP*.

The Supreme Court has reiterated that there could rarely be direct evidence of common intention. *Jhinku Nai*.

2. When the act is only criminal by reason of its being done with a criminal knowledge or intention, each is liable only to the extent of his own knowledge or intention (**section 35**).

A person assisting the accused who actually performs the act must be shown to have the particular intent or knowledge. If an act which is an offence, without reference to any criminal knowledge or intention on the part of the doer, is done by several persons, each of them is liable for the offence.

3. Where several persons are engaged or concerned in the commission of a **criminal act**, they may be guilty of different offences by means of that act (**section 38**). *Yunus v State*, 1995 Cr LJ 3205 (Del), where common intention was found only up to the stage of causing hurt, though the end result of the crime was murder.

Section 34 deals with acts done with a common intention, section 38, with acts done with different intentions.

An act done under compulsions of survival, such as putting up huts on public-footpaths, cannot be regarded as voluntary. (**section 39**)

**Leading case:—***Olga Tellis v Bombay MC*

### **Punishment. Chapter III.**

The punishments to which offenders are liable are:—

1. Death.
2. Imprisonment for life.
3. Imprisonment :
  - (i) Rigorous (i.e., with hard labour);
  - (ii) Simple;
  - (iii) Solitary.
4. Forfeiture of property.
5. Fine (**section 63**).

Imposition of proper and appropriate sentence is a bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused received appropriate sentence. The sentence must be accorded to the gravity of the offence (section 53) *Gurumukh Singh v State of Haryana*, AIR 2009 SC 2697 [LNIND 2009 SC

847] . The Supreme Court explained guidelines for sentencing policy in *State of MP v Babu Nath*, AIR 2009 SC 1810 [LNIND 2008 SC 2471] .

Labour taken from prisoners must not be of obnoxious nature and payment must not be less than the applicable minimum wage. *Gurdev v HP*, 1992 Cr LJ 2542 (HP).

In addition to these there is punishment of detention in reformatories or Borstal Schools in the case of juvenile offenders (Act VIII of 1897 and other local Acts).

## Death.

1. Sentence of death may be commuted without the consent of the offender by the appropriate Government for any other punishment (section 54). The punishment of death *may* be awarded in the following cases:—

- (1) Waging war against the Government of India (**section 121**).
- (2) Abetting mutiny actually committed (**section 132**).
- (3) Giving or fabricating false evidence upon which an innocent person suffers death (**section 194**).
- (4) Murder (**section 302**).

Capital punishment should be confined to rarest of rare cases.

*Leading cases:—Bachan Singh. Machhi Singh. Munwar Harun Shah. Triveniben v State of Gujarat Madhu Mehta v UOI.*

### **Swamy Shraddananda (2) v State of Karnataka; Santosh Kumar Bariyar v State**

- (5) Abetment of suicide of a minor, or an insane or an intoxicated person (**section 305**).
- (6) Attempt to murder by a person under sentence of imprisonment for life, if hurt is caused (**section 307**).
- (7) Dacoity accompanied with murder (**section 396**).

Sentence of death *may* be awarded where a person who is under sentence of imprisonment for life commits murder (**section 302**).

Section 303 has been struck down by the Supreme Court as void and unconstitutional being violative of both [Articles 14](#) and [21](#) of the [Constitution](#). *R Rathinam v UOI*. This decision was subsequently reversed in *Gain Kaur v State of Punjab*.

*Leading cases:—Mithu. Bhagwan Bax Singh.*

Causing death in custody by third degree methods should merit deterrent punishment.

*Leading case:—Gauri Shanker Sharma v State of UP.*

## Imprisonment for life.

2. The appropriate Government may commute, without the consent of the offender, a sentence of imprisonment for life to imprisonment not exceeding 14 years (section 55).

In calculating fractions, imprisonment for life is reckoned as equivalent to 20 years (section 57).

*Leading case:—Gopal Vinayak Godse v State of Maharashtra.*

Imprisonment for life must be inflicted for being a 'thug' (**section 311**).

### **Imprisonment.**

3. In every case in which sentence of imprisonment for life shall have been passed, the appropriate government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding 14 years (section 55);

The lowest term of imprisonment actually named for a given offence, viz., misconduct by a drunken person, is 24 hours (section 510); but the minimum is unlimited except in two cases:—

(1) If at the time of committing robbery or dacoity the offender uses a deadly weapon or causes grievous hurt, or

(2) If while committing this offence he is armed with a deadly weapon, he is punished with imprisonment for not less than seven years (**sections 397 and 398**).

Sentence of imprisonment may be, in certain cases, wholly or partly rigorous or simple (**section 60**). But in two cases the imprisonment must be rigorous:—

(1) Giving or fabricating false evidence with intent to procure conviction for a capital offence (**section 194**).

(2) House-trespass to commit an offence punishable with death (**section 449**).

There are 12 offences that are punishable with simple imprisonment only.

The courts are expected to properly operate the sentencing system. The court should impose such sentence for proved offences as will serve as a deterrent for their commission by others. The socio-economic status, prestige, race, caste of the accused or victim are irrelevant considerations in the policy of sentencing. *State of Karnataka v Krishnappa* (**section 53**).

### **Solitary confinement.**

Solitary confinement may be inflicted for offences punishable with rigorous imprisonment. The offender may be kept in solitary confinement for any portion or portions of his term of imprisonment, not exceeding *three* months in the whole. But the solitary confinement must not exceed—

one month, if the term of imprisonment does not exceed six months;

two months, if the term of imprisonment exceeds six months but does not exceed one year;

three months, if the term of imprisonment exceeds one year (**section 73**).

In executing a sentence of solitary confinement, such confinement must not exceed 14 days at a time, with intervals between the periods of solitary confinement of not less duration than such period; and when the imprisonment awarded exceeds three months, the solitary confinement must not exceed seven days in any one month of the whole imprisonment awarded with intervals between the periods of solitary confinement of not less duration than such period (**section 74**).

A sentence of solitary confinement for more than three months cannot be passed even if a person is convicted at one trial of more than one offence. Such confinement is awarded for offences under the Code only. Even then it cannot be awarded where imprisonment is not part of the sentence or where the imprisonment is in lieu of fine. It may be awarded in a summary trial. Solitary confinement must be imposed at intervals. A sentence inflicting solitary confinement for the whole imprisonment is illegal, though not more than 14 days are awarded.

### **Forfeiture.**

4. The punishment of forfeiture of the property of the offender has been abolished except in the following cases:—

(1) Where a person commits depredation on the territories of any power at peace with the Government of India, he is liable, in addition to other punishments, to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired thereby (**section 126**).

(2) Where a person receives property taken as above mentioned or in waging war against any Asiatic Power at peace with the Government of India, he is liable to forfeit such property (**section 127**).

(3) A public servant, who improperly purchases property, which, by virtue of his office, he is legally prohibited from purchasing, forfeits such property (**section 169**).

5. Fine is awarded as a sentence by itself in the following cases:—

### **Fine.**

(1) A person, in charge of a merchant vessel, negligently allowing a deserter from the Army, Navy or Air Force to obtain concealment in such vessels is liable to a fine not exceeding Rs. 500 (**section 137**).

(2) The owner or occupier of land, on which a riot takes place or an unlawful assembly is held, and any person having or claiming any interest in such land, and not using all lawful means to prevent such riot or unlawful assembly, is punishable with fine not exceeding Rs. 1,000 (**section 154**).

(3) The person for whose benefit a riot has been committed not having duly endeavoured to prevent it (**section 155**).

(4) The agent or manager of such person under like circumstances (**section 156**).

(5) Illegal payments in connection with an election (**section 171-H**).

(6) Failure to keep election accounts (**section 171-I**).

(7) Voluntarily vitiating the atmosphere so as to render it noxious to the public health is punishable with fine of Rs. 500 (**section 278**).

(8) Obstructing a public way or line of navigation is punishable with fine not exceeding Rs. 200 (**section 283**).

(9) Committing of public nuisance not otherwise punishable is punishable with fine not exceeding Rs. 200 (**section 290**).

(10) Whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear from doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of a ticket, lot, number, or figure, in any such lottery, not being a State lottery or a lottery authorised by the State Government, is punished with fine not exceeding Rs. 1,000 (**section 294A**).

The general principal of law running through sections 63–70 is that the amount of fine should not be harsh or excessive. *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171].

### **Imprisonment in default of fine.**

The following provisions regulate the character and duration of the sentence of imprisonment in default of payment of fine:—

Where an offender is sentenced to a fine, the court may direct that the offender shall in default of payment suffer a term of imprisonment, which imprisonment may be in excess of any other imprisonment to which he may have been sentenced for the offence, or to which he may be liable under a commutation of sentence (**section 64**).

If the offence be punishable with *imprisonment as well as fine* such imprisonment must not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence (**section 65**); such extra imprisonment may be of any description to which the offender might have been sentenced for the offence (**section 66**).

*Leading case:—Ramjas v State of UP.*

If such imprisonment is within the prescribed limits, it is not to be added to the substantive punishment.

*Leading case:—P Balaraman v State of TN.*

When the offence is punishable with *fine only* such imprisonment must not exceed

two months when the amount of the fine does not exceed Rs. 50;

four months when the amount does not exceed Rs. 100, and for

any term not exceeding six months in any other case (**section 67**).

The imprisonment in such cases must be simple only.

Such imprisonment terminates—

(1) upon payment of the fine (**section 68**); or

(2) before the expiration of the term of imprisonment fixed in default of payment, if such a proportion of the fine be paid, or levied, that the term of imprisonment suffered

in default of payment is not less than proportional to the part of the fine still unpaid (**section 69**).

Fine may be levied within six years, or at any time during the term of imprisonment if it be longer than six years; the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts (**section 70**). The limitation starts from the date of sentence of conviction by the trial Court: *Palakdhari Singh*.

An offender who has undergone full term of imprisonment inflicted in default of payment of fine is still liable for the amount of fine. The Bombay High Court has laid down that *movable* property of the offender can alone be distrained and sold for the recovery of fine. But the Calcutta High Court has held that a suit can be brought to recover fine by the sale of *immovable* property of the offender.

The Government may commute a sentence of

### **Commutation of sentence.**

(1) *death*, for any other punishment;

(2) *imprisonment for life*, for imprisonment for not more than 14 years (**sections 54, 55**).

The Government may commute without the offender's consent sentence in cases of *death and imprisonment for life*.

### **Limit of punishment of offence made up of several offences.**

(1) Where an offence is made up of parts, each of which constitutes an offence, the offender is not punished for more than one offence unless expressly provided.

(2) Where an offence falls within two or more separate definitions of offences; or where several acts of which one or more than one would, by itself or themselves, constitute an offence, constitute when combined a different offence, the offender is not punished with a more severe punishment than the court which tries him could award for any one of such offences (**section 71**).

*Leading cases:—Roshan Lal; Puranmal.*

The results of combination of [section 220, Cr PC, 1973](#), with this section have been enumerated at p 48.

### **Doubt as to nature of offence.**

Where it is doubtful as to of which of the several offences a person is guilty, he is punished for the offence for which the lowest imprisonment is provided (**section 72**).

### **Previous conviction.**

A person convicted by a Court in India of any offence

- (a) relating to Coin and Government Stamps (Chapter XII), or
- (b) against property (Chapter XVII)

punishable with imprisonment for a term of *three* years or upwards shall be subject to imprisonment for life, or to imprisonment for 10 years, if he is again guilty of any offence punishable under either of those Chapters with like imprisonment for the like term (**section 75**).

The offender is subject to increased punishment on the ground that the punishment undergone has had no effect in preventing a repetition of the crime. The subsequent offence must also be punishable with not less than *three* years' imprisonment. If the subsequent offence is committed by a person *previously* to his being convicted of the first offence he cannot be subjected to enhanced punishment. Attempts not specifically made offences within Chapters XII and XVII are not governed by this provision. The previous conviction of an accused for an offence under these Chapters cannot be taken into consideration at a subsequent conviction for abetment of an offence under those Chapters.

**3. Overlapping provisions.**—The fact of overlapping provisions about one or more offence, does not rule out trial under any one of them. The case did not fall within the Custom Act, 1962. It could not prevent trial under applicable provision of [IPC, 1860](#). *M Natarajan v State*, (2008) 8 SCC 413 [[LNIND 2008 SC 1093](#)].

#### **General Exceptions. Chapter IV.**

The following acts are not offence under the Code:—

1. Act of a person bound by law to do a certain thing (**section 76**).
2. Act of a Judge acting judicially (**section 77**).
3. Act done pursuant to an order or a judgment of a court (**section 78**).
4. Act of a person justified, or believing himself justified, by law (**section 79**).
5. Act caused by accident (**section 80**).
6. Act likely to cause harm done without criminal intent to prevent other harm (**section 81**).
7. Act of a child under seven years (**section 82**).
8. Act of a child above seven and under 12 years but of immature understanding (**section 83**).
9. Act of a person of unsound mind (**section 84**).
10. Act of an intoxicated person (**section 85**).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (**section 87**).
12. Act not intended to cause death done by consent of the sufferer (**section 88**).



13. Act done in good faith for the benefit of a child or an insane person or by the consent of the guardian (**section 89**).

14. Act done in good faith for the benefit of a person without consent (**section 92**).

15. Communication made in good faith to a person for his benefit (**section 93**).

16. Act done under threat of death (**section 94**).

17. Acts causing slight harm (**section 95**).

18. Acts done in private defence (**sections 96–106**).

1. Act done by a person bound, or by mistake of fact believing himself bound, by law (**section 76**).

The general exception contained in section. 76–106 have the effect of converting an offence into a non-offence. They are of universal nature. They apply to the definition of every offence. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] .

The maxim *respondent superior* has no application to cases where an offence is committed by a subordinate official acting under the orders of his superior. The official is bound to exercise his own judgment and unless the actual circumstances are of such a character that he may have reasonably entertained the belief that the order was one which he was bound to obey, he will be responsible for his act.

*Leading cases:—State of WB v Shew Mangal Singh. R v Latifkhan.*

2. Act of a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law (**section 77**).

A Judge will be protected where he is acting judicially and not ministerially. If he acts without *jurisdiction* and without *good faith*, he would be responsible.

3. Act done pursuant to the judgment or order of a Court of Justice while such judgment or order remains in force, and the person doing the act in good faith believes that the Court has jurisdiction although it has not (**section 78**). This section differs from the preceding section on the question of jurisdiction. It protects officers acting under the authority of a judgment or order of a court even though the court has no jurisdiction, provided the officer believed in good faith that the Court had jurisdiction.

4. Act done by a person 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 to do it (**section 79**).

Mistake is a slip made by chance. It is not mere forgetfulness. Under sections 76 and 79 the mistake should be one of fact and not of law. An honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent act, is a good defence. An alleged offender is deemed to have acted under that state of facts which he, in good faith and on reasonable grounds, believed to exist when he did the act alleged to be an offence. *Ignorantia facti doth excusat*, for such an ignorance many times makes the act itself morally involuntary. But if an act is clearly a wrong in itself, and a person, under a mistaken impression as to facts which render it criminal, commits the act, then he is guilty of an offence.

Mistake of law is no defence because every person of the age of discretion is bound to know the law, and presumed to do so. If a person infringes the statute law of the country through ignorance or carelessness he abides by the consequences of his error.

The maxim *ignorantia juris non excusat* admits of no exception in its application to criminal offences. Even a foreigner who cannot reasonably be supposed in fact to know the law of the land is not exempted. Similarly, ignorance of a statute newly passed will not save a person from punishment.

**Leading cases:—R v Prince. R v Tolson. R v Esop. Bhawoo v Mulji. Mayer Hans George. Raj Kapoor v Laxman.**

Mayne deduces the following five rules, showing the extent to which ignorance of an essential fact may be pleaded as a defence, from the judgments in *Prince's* case.

(a) Where an act is in itself plainly criminal, and is more severely punishable if certain circumstances co-exist, ignorance of the existence of such circumstances is no answer to a charge for the aggravated offence.

(b) Where an act is *prima facie* innocent and proper, unless certain circumstances coexist, then ignorance of such circumstances is an answer to the charge.

(c) Even in the last named case, the state of the defendant's mind 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.

(d) Where an act which is itself wrong is, under certain circumstances, criminal, a person who does the wrong act cannot set up as a defence that he was ignorant of the facts which turned the wrong into a crime.

(e) Where a statute makes it penal to do an act under certain circumstances, it is a question upon the wording and object of the particular statute whether the 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.

5. Accident. This must have been caused—

- (1) without criminal knowledge or intention,
- (2) in the doing of a lawful act,
  - (i) in a lawful manner,
  - (ii) by lawful means, and
  - (iii) with proper care and caution (**section 80**).

An 'accident' is something that happens out of the ordinary course of things.

6. Act done with the knowledge that it is likely to cause harm but done in good faith and without any criminal intention to cause harm, for the purpose of preventing, or avoiding, other harm to person or property (**section 81**).

### **Mens rea**

It is a maxim of English law that *actus non facit reum, nisi mens sit rea* (the intent and act must both concur to constitute a crime). A crime is not committed if the mind of the person doing the act in question be innocent. The above maxim has undergone a modification owing to the greater precision of modern statutes. Crimes are now more accurately defined by statutes than before. It has become necessary to look at the object of each Act that is under consideration to see whether and how far knowledge is

of the essence of the offences created. In three cases *mens rea* is not an essential ingredient in an offence:

- (1) cases not criminal in real sense, but which, in the public interest, are prohibited under a penalty;
- (2) public nuisances; and
- (3) cases criminal in form but which are only a summary mode of enforcing a civil right.

The above maxim has little application to offences under [IPC, 1860](#), in its purely technical sense because the definitions of various offences expressly contain an ingredient as to the state of mind of the accused. Under the Code, therefore, *mens rea* will mean one thing or another according to a particular offence. The guilty mind may be a dishonest mind, or a fraudulent mind, or a rash or negligent mind, and so forth.

It may be observed that criminal law has nothing to do with motives of offenders. Intention is quite different from motive. A person may do an act with a very high and laudable motive but if his act amounts to a crime he will be guilty. Where some Hindus removed cows from the possession of some Mohammedans to prevent the cows from being slaughtered, they were held guilty of theft.

Whether a person can for self-preservation inflict harm on others is discussed at p 64. Such acts will not exempt the offender from the full severity of law. It is murder to kill another to save one's own life.

*Leading cases:—R v Dudley (or Mignonette case). South Wark London Borough Council v Williams.*

7. Act done by a child under seven years (**section 82**); or by a child above seven and under 12 years, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct (**section 83**).

*Leading case:—Hiralal.*

8. Act done by a person who, at the time of doing it, by reason of *unsoundness of mind*, is

- (1) incapable of knowing the nature of the act, or
- (2) that he is doing what is either wrong or contrary to law (**section 84**).

The 'unsoundness of mind' may be temporary or permanent, natural or supervening. But it must affect the cognitive faculties of the mind. If the offender is conscious that the act was contrary to law and one which he ought not to do, he is punishable. The act to be not punishable must be such as would have been excused by law, if the facts had been as the person of unsound mind supposed. Distinction has to be made between legal insanity and medical insanity. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774].

*Leading cases:—R v M'Naughton. R v Lakshman. R v Sakharan. Dahyabhai. S W Mohammad. Ahamadulla.*

The doctrine of irresistible criminal impulse was not accepted by the Calcutta High Court.

9. Act done by a person who, at the time of doing it, by reason of intoxication, is

- (1) incapable of knowing the nature of the act; or

(2) 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 (**section 85**).

If an intoxicated person commits an offence requiring a particular intent or knowledge, he is dealt with as if he had that intent or knowledge, unless the thing which intoxicated him was administered to him without his knowledge or against his will (**section 86**).

*Drunkenness* is one thing and the disease to which it may lead is a different thing. If a man by drunkenness, brings on a state of disease which causes such a degree of madness, even for a time, which would relieve him of responsibility if it had been caused in any other way, then he would not be criminally responsible.

*Leading cases:—Basdev. Director of Public Prosecutions v Beard. Davis.*

10. Act not intended, and not known, to be likely to cause death or grievous hurt, done by consent of the person, above 18 years to whom harm is caused (**section 87**).

Ordinary games, such as fencing, boxing, football and the like are protected by this section.

11. Act not intended, and not known to be likely to cause death, done in good faith by consent of the person to whom harm is caused for his benefit (**section 88**).

Surgical operations are protected under this section.

12. Act done in good faith for the benefit of a person under 12 years, or of an insane person, by or by the consent of his guardian. This exception does not extend to:—

(1) Intentional causing, or attempting to cause, death.

(2) The doing of anything which the doer knows to be likely to cause death, except to prevent death or grievous hurt, or to cure any grievous disease or infirmity.

(3) Voluntary causing, or attempting to cause, grievous hurt (except as above).

(4) The abetment of any offence, to the committing of which it would not extend (**section 89**).

A consent to be a true one must not have been given—

(1) by a person under fear of injury;

(2) by a person under a misconception of fact;

(3) by a person of unsound mind, and the person obtaining the consent knows or has reason to believe this;

(4) by a person who is intoxicated, and who is unable to understand the nature and consequence of that to which he gives his consent;

(5) by a person under 12 years of age (**section 90**).

An honest misconception by both the parties, however, does not invalidate the consent.

*Leading case:—Williams.*

Sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause to the person giving the consent (**section 91**), e.g., causing

miscarriage, public nuisance, offences against public safety, etc.

13. Act done in good faith for the benefit of a person, even without consent, if it is impossible for him to give consent, or is incapable of giving it, and there is no guardian from whom it is possible to obtain it in time for the thing to be done with benefit (**section 92**). This exception is subject to the same provisos as section 89, with the difference that it will not extend to causing hurt except to prevent death or hurt.

14. A communication made in good faith, although causing harm to the person to whom it is made, if it is for his benefit (**section 94**), e.g., communication in good faith by a surgeon to a patient that in his opinion he cannot live.

15. Act [except (a) murder, and (b) offence against the State punishable with death] done under threats which, at the time of doing it, reasonably cause the apprehension of *instant death*; provided the doer did not of his own accord, or from an apprehension of harm short of death, place himself in the situation by which he became subject to such constraint (**section 94**). Fear of grievous hurt is not a sufficient justification. Mere menace of future death will not be sufficient.

No one can plead the excuse of necessity or compulsion as a defence to an act otherwise penal except as provided by this section.

*Leading cases:—R v Deoji. R v Latifkhan. R v Maganlal.*

16. Act causing such a slight harm that no person of ordinary sense and temper would complain of it (**section 95**).

This section deals with those cases which come within the letter of the penal law but not within its spirit. It is based on the maxim *de minimis non curatlex* (the law does not take account of trifles).

### **Private defence.**

17. Act done in exercise of the right of private defence (section 96). Every person has a right, subject to certain restrictions, to defend,

(1) his own body and the body of any other person against any offence affecting the human body;

(2) 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 any of such offences (**section 97**).

(3) against an act, which would otherwise be a certain offence, but is not that offence, by reason of the doer being of unsound mind, a minor, an intoxicated person, or a person acting under a misconception of fact (**section 98**).

The right of private defence is a defence right. It is neither a right of aggression nor of reprisal. *Thankachan v State of Kerala*, (2008) 17 SCC 760 . The right is available not only to the person put in danger but also to any member of the society who rises to the occasion with a spirit of rescue. Such a samaritan gets no legal right against the person rescued. *Kashi Ram v State of Rajasthan*, (2008) 3 SCC 55 [LNIND 2008 SC 187]

## Exceptions to the right of private defence.

There is no right of private defence against the following acts:—

- (1) An act which does not reasonably cause 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.
- (2) Same as above if done by the direction of a public servant.
- (3) Cases in which there is time to have recourse to the protection of public authorities (**section 99**).

*Leading Cases:—Amjadkhan. Jaidev.*

The right of private defence does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence (*ibid*).

## Defence of body.

The right of private defence of the *body* extends to the causing of death or any other harm to the assailant under the following circumstances:—

- (1) An assault causing reasonable apprehension of death.

In this case if the defender be so situated that he cannot exercise the right without risk of harm to an innocent person, he may even run that risk (**section 106**).

- (2) An assault causing reasonable apprehension of grievous hurt.
- (3) An assault with the intention of committing rape.
- (4) An assault with intention of gratifying unnatural lust.
- (5) An assault with intention of kidnapping or abducting.
- (6) An assault with the intention of wrongfully confining a person under circumstances which may cause him to apprehend that he will be unable to have recourse to the public authorities for his release.
- (7) "Seventhly.—An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act" (**section 100**).

*Leading case:—Vishwanath.*

Subject to the above restrictions, the right of private defence of body extends to the causing of any harm short of death (**section 101**).

It 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 (**section 102**).

## Defence of property.

The right of private defence of *property* extends to the causing of death or any other harm to the assailant under the following circumstances:—

- (1) Robbery.
- (2) House-breaking by night.
- (3) Mischief by fire to building, tent, or vessel, used as human dwelling or for custody of property.
- (4) Theft, mischief, or house-trespass, reasonably causing the apprehension of death or grievous hurt (**section 103**).

Subject to the above restrictions, the right of private defence of property extends to the causing of any harm short of death (**section 104**). It commences when a reasonable apprehension of danger to the property commences and continues against—

- (1) Theft, till
  - (a) the offender has affected his retreat with the property, or
  - (b) the assistance of the public authorities is obtained, or
  - (c) the property has been recovered.
- (2) Robbery, as long as
  - (a) the offender causes or attempts to cause to any person death, or hurt, or wrongful restraint, or
  - (b) the fear of instant death, or of instant hurt, or of instant personal restraint continues.
- (3) Criminal trespass or mischief as long as the offender continues in the commission of criminal trespass, or mischief.
- (4) House-breaking by night, as long as the house-trespass, which has been begun by such house-breaking, continues (**section 105**).

All the provisions relating to private defence from section 96 to section 106 have to be read together in order to have a proper grasp of the scope and limitations of this right.

*Leading case:—Munney Khan v State.*

Excessive use of the right of private defence is a matter which can be determined only on the facts of each case. It necessitates a combined view of subjective and objective factors.

*Leading case:—Yogendra Morarji.*

Mere verbal exchanges, however hot or abusive, do not create the right of private defence.

*Leading case:—Jai Chand v State.*

There is no right of private defence in a free fight.

*Leading case:—Sikhar Bahera v State of Orissa.*

An aggressor has no right of private defence.

Leading case:—*Dhananjai v State of UP*, AIR 1996 SC 556 .

## Abetment, Chapter V.

There are three kinds of abetment dealt with in the Code. A person abets the doing of a thing, who

- (1) instigates any person to do that thing; or
- (2) 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 the conspiracy and in order to the doing of that thing; or
- (3) intentionally aids, by any act or illegal omission, the doing of that thing.

An abettor can be convicted, except in some cases, even where the principal culprit stands acquitted.

Leading cases:—*Hardhan Chakrabarty v UOI* *Faguna Kedar Nath v State of Bihar* *Jamuna Singh v State of Bihar*.

Abetment is separate and independent offence. *Kishori Lal v State of MP*, (2007) 10 SCC 297 .

The law of abetment is adapting itself to the social malaise of dowry which leads to suicides by married women.

Leading cases:—*Gurbachan Singh v Satpal Singh*. *Brij Lal v Prem Chand*.

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 (**section 107**).

Leading Cases:—*Pratima Datta*. *Shri Ram*.

It is not necessary that the person incited should have a *mens rea* corresponding to that of the inciter *DPP v Armstrong*.

An abettor is a person who abets

- (a) the commission of an offence, or
- (b) 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 (**section 108**).

It should be noted that—

- (1) Abetment of an illegal omission may amount to an offence (*ib.*, **Explanation 1**).
- (2) It is not necessary that the act abetted should be committed (*ib.*, **Explanation 2**).
- (3) The person abetted need not be capable of committing an offence, nor have any guilty intention or knowledge (*ib.*, **Explanation 3**).
- (4) The abetment of an abetment is an offence (*ib.*, **Explanation 4**).



(5) It is not necessary in abetment by conspiracy that the abettor should concert the offence with the person abetted (*ib.*, **Explanation 5**).

(6) A person will be guilty of abetment who abets the commission of any act *without* and *beyond* India which would constitute an offence if committed in India (**section 108A**).

If the act abetted is committed but no express provision is made for its punishment, then it shall be punished with the punishment provided for the offence abetted (**section 109**).

If a person abetted does the act with a different intention or knowledge from that of the abettor, the latter will be punished as if the act had been done with his intention or knowledge (**section 110**). The liability of the person abetted is not affected by this section.

If the act done is different from the one abetted, the abettor is still liable for it, if it is a probable consequence of the abetment, and committed under the influence of the abetment (**section 111**). The liability is the same where the effect produced is different from that intended by the abettor (**section 113**).

The abettor is liable to cumulative punishment for the act abetted and for the act done if the latter is a distinct offence (**section 112**).

If the abettor is present when the offence abetted is committed, he is deemed to have committed such act or offence (**section 114**).

Mere presence will not render a person liable. He must be sufficiently near to give assistance, and he must participate in the act, no matter whether he is an eye-witness to the transaction or not. Presence during the whole transaction is not necessary (*ibid*). Lending encouragement and assistance would amount to abetment even if the abettor was not present at the place where the killing took place. *R v Cook*. A constable who kept watch while the head constable was committing rape inside their police station, was held liable as an abettor. *Ram Kumar v State of HP*.

If an offence punishable with death or imprisonment for life is abetted and no express provision is made for the punishment of such abetment, then the offender will be punished with imprisonment extending to seven years if the offence is not committed; but if an act causing harm is done in consequence, the imprisonment shall be extended to 14 years (**section 115**). If in such a case the offence is punishable with imprisonment, then the offender is punishable with imprisonment which may extend to one-fourth part of the longest term provided for that offence (**section 116**). If in the above case the abettor or person abetted be a public servant whose duty it is to prevent such offence, the imprisonment may extend to one-half of the longest term provided for the offence (*ibid*).

Abetting commission of an offence by the public or by more than ten persons is punishable with imprisonment extending to three years (**section 117**).

There are three sections which punish concealment of a design to commit offences by persons other than the accused, viz., sections 118, 119 and 120.

### **Criminal conspiracy. Chapter VA.**

Criminal conspiracy is now a substantive offence under the Code. It was formerly punishable only as a species of abetment. It arises when two or more persons agree to do or cause to be done—

(a) an illegal act; or

(b) an act which is not illegal, by illegal means.

Such an agreement may be to commit an offence. But if it is not so, it is necessary that some *overt act* besides the agreement is done by one or more parties to such agreement in pursuance thereof (**section 120A**) *SC Bahri v State of Bihar*, (Supreme Court). It is difficult to prove conspiracy by direct evidence, *Hina Lal Harilal*. If the offence conspired to is punishable with death, imprisonment for life or rigorous imprisonment for two years or upwards, the offender is punishable in the same manner as an abettor: but in any other case, he is liable to be punished with rigorous imprisonment for six months, or fine, or both (**section 120B**). Conspiracy has to be treated as a continuing offence.

A single person can be tried and convicted for the offence. It is not necessary that conspirators must be known to each other or that every one of them should have taken part in each and every act done in pursuance of the conspiracy. A wife joining her husband with knowledge that he was involved in a conspiracy with others was held to be equally guilty. *R v Charstny*.

**Leading cases:—Mirza Akbar. Bhagat Ram. Bhagwandas. V C Shukla. Kehar Singh Krishan Lal Pradhan Vinayak**

## **Offences against the State. Chapter VI.**

Offences against the State may be classified as follows:—

- I. Waging war against the Government of India.
  - II. Assaulting high officers.
  - III. Sedition.
  - IV. Waging war against a Power at peace with the Government of India.
  - V. Permitting or aiding the escape of a State prisoner.
- I. Waging war against the Government of India.**
1. Waging or attempting to wage war, or abetting waging of war (**section 121**).
  2. Conspiring to commit, within or without India, offences punishable by section 121 (**section 121A**).
  3. Collecting men, arms, or ammunition, or making any other preparation with a view to waging such war (**section 122**).
  4. Concealing a design to wage war with intent to facilitate waging of such war by any act or illegal omission (**section 123**).
- II. Assaulting the President, or the Governor of any State, with intent to compel or restrain the exercise of any lawful power (**section 124**).**

### **Sedition.**

- III. A person commits sedition who,**

(1) by words (spoken or written), or by visible representation,

(2) brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards,

(3) the Government established by law in India (**section 124A**).

It should be noted that—

(1) 'Disaffection' includes disloyalty and feeling of enmity (*ibid.*, **Explanation 1**).

(2) Comments expressing disapprobation of the measures of Government to obtain their alteration, without exciting hatred, contempt, or disaffection, do not constitute this offence (*ibid.*, **Explanation 2**).

(3) Comments expressing disapprobation of the administrative actions of Government, without exciting hatred, contempt, or disaffection, do not constitute this offence (*ibid.*, **Explanation 3**).

Under the [Constitution](#), criticism of the Government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press unless it is such as to undermine the security of or tend to overthrow the Government. This section is not *ultra vires* the [Constitution](#).

Anyone who uses in any way words or printed matter for the purpose of exciting disaffection, be he the writer of those words or not, is liable. Publication of some kind is necessary. The successful exciting of feelings of disaffection is placed on the same footing as the unsuccessful attempt to excite them.

The law does not excuse the publication in newspapers of seditious writing copied from other papers. The editor of a paper is liable for seditious letters appearing in the paper.

*Leading cases:—R v Bal Gangadhar Tilak. R v Jogendra Chandra Bose (or Bangobasi case). Romesh Thappar. Kedar Nath.*

**IV.** Waging war against a Power at peace with the Government of India.

1. Waging, attempting to wage, or abetting the waging of such war against the Government of any Asiatic Power at peace with the Government of India (**section 125**).

2. Committing, or preparing to commit, depredation on the territories of any Power at peace with the Government of India (**section 126**).

3. Receiving any property, knowing the same to have been taken in the commission of any of the offences mentioned in the two last preceding sections (**section 127**).

**V.** Permitting or aiding the escape of a State prisoner.

1. Public servant voluntarily allowing a prisoner of State or war, in his custody, to escape (**section 128**).

2. Public servant negligently suffering a prisoner of State or war in his custody, to escape (**section 129**).

3. Aiding the escape, or rescuing, or attempting to rescue or harbouring, or concealing or resisting the recapture, of such prisoner (**section 130**).

## **Army, Navy & Air Force offences. Chapter VII.**

No person, subject to Articles of War, is subject to punishment under this Code for any offence relating to the Army, Navy and Air Force defined in this Chapter (**section 139**).

This Chapter is framed in order that persons, not military, who abet a breach of military discipline, should not be liable under the military penal law but under the Code.

The following offences relating to the Army, Navy and Air Force find place in the Code:  
—

1. Abetting mutiny, or attempting to seduce any officer, soldier, sailor, or airman, from his allegiance or duty (**section 131**).
2. Abetment of mutiny, if mutiny is committed in consequence (**section 132**).
3. Abetment of an assault by an officer, soldier, sailor or airman, on his superior officer, when in the execution of his office (**section 133**).
4. Abetment of such an assault if the assault is committed (**section 134**).
5. Abetment of the desertion of an officer, soldier, sailor, or airman (**section 135**).
6. Knowingly harbouring deserter (**section 136**).
7. Concealment of deserter from Army, Navy or Air Force of the Government of India concealed on board a merchant vessel through negligence of master or person in charge of the vessel though he is ignorant of such concealment (**section 137**).
8. Abetment of act of insubordination by an officer, soldier, sailor, or airman, the act abetted being actually committed in consequence of the abetment (**section 138**).
9. Wearing the garb, or carrying any token resembling any garb or token used by a soldier, sailor or airman with the intention that it may be believed that the wearer is a soldier, sailor or airman (**section 140**). The gist of the offence is the intention of the accused. Merely wearing a soldier's dress without the specific intention is no offence, e.g., actors put on soldier's garb while acting on the stage.

There are six sections in the Code dealing with false personation—

1. Personation of a soldier (**section 140**).
2. Personation of a public servant (**section 170**).
3. Wearing the garb or carrying the token used by a public servant (**section 171**).
4. Personation of a voter at an election (**section 171D**).
5. Personation for the purpose of an act or proceeding in a suit or prosecution (**section 205**).
6. Personation of a juror or assessor (**section 229**).

## **Public tranquillity. Chapter VIII.**

Offences against public tranquillity hold a middle place between the State offences on the one hand and crimes against person and property on the other. They are four:

- I. Unlawful Assembly. different
- II. Rioting.
- III. Promoting enmity between classes.
- IV. Affray.

### **Unlawful assembly.**

I. An 'unlawful assembly' is an assembly of five or more persons, if their common object is

1. To overawe by criminal force—
  - (a) the Central or any State Government, or
  - (b) the Parliament, or
  - (c) the Legislature of any State, or
  - (d) any public servant in the exercise of his lawful power.
2. To resist the execution of law or legal process.
3. To commit mischief, criminal trespass, or other offences.
4. By criminal force—
  - (a) to take or obtain possession of any property, or
  - (b) to deprive any person of any incorporeal right, or
  - (c) to enforce any right or supposed right.
5. By criminal force to compel any person—
  - (a) to do what he is not legally bound to do, or
  - (b) to omit what he is legally entitled to do (**section 141**).

[Six months, or fine, or both. If armed with a deadly weapon, two years, or fine, or both (**sections 143, 144**).]

The assembly must consist of five or more persons. It is immaterial whether the common object is in their minds when they come together, or whether it occurs to them afterwards. There must be some present and immediate purpose of carrying into effect the common object. A meeting for deliberation only is not an unlawful assembly. Persons maintaining their own right or supposed right against the aggression of other people do not commit this offence. Common object means same or similar object; it is not necessary to have a preconcert or prior meeting of minds.

An assembly not unlawful when it assembled may subsequently become an unlawful one (**section 143, Explanation**). Illegal acts of one or two members do not change the lawful character of an assembly. Similarly, a lawful assembly does not become unlawful merely because the members know that their assembly would be opposed and a breach of the peace would be committed.

Whoever, being aware of facts which render an assembly an unlawful one, intentionally joins it, or continues in it, is a member of that assembly (**section 142**). Persons may have associated themselves with a mob from perfectly innocent motives, but if the

mob becomes an unlawful assembly, and they take part in its proceedings, they will be liable. Every such member is deemed guilty of an offence committed in prosecution of the common object. There must be nexus between the common object and the offence committed.

*Leading case:—Allauddin Mia.*

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 said assembly, is guilty of that offence (**section 149**). This section prevents the accused from putting forth the defence that he did not with his *own* hand commit the offence committed in prosecution of the common object. Common object does not mean common intention. All will be guilty of any offence done in prosecution of the common object, though there was no common intention to commit the offence as a means to the end. But members of an unlawful assembly may have a community of object only up to a certain point and beyond that they may differ in their objects.

*Leading cases:—R v Sabedali; Dalip Singh; Khudiram; Mushakhan; Beatty v Gillbanks.*

The common object may develop at the spot itself.

*Leading case:—Vithal Bhimshah Kali.*

Other cognate offences—

1. Joining an unlawful assembly armed with a deadly weapon (**section 144**).
2. Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (**section 145**).
3. Hiring of persons to join an unlawful assembly (**section 150**).
4. Harboursing persons hired for an unlawful assembly (**section 157**).
5. Being hired to take part in an unlawful assembly (**section 158**).

Persons, who are engaged or hired to do any of the acts which make an assembly unlawful, are likewise punished (*ibid*).

## **Riot.**

II. When (1) force of violence is used, (2) by an unlawful assembly or by any member thereof, (3) in prosecution of the common object, every member is guilty of rioting (section 146). [Two years or fine, or both. If armed with a deadly weapon, Three years, or fine, or both (section 148).]

Riot is an unlawful assembly in a particular state of activity. To constitute the offence of rioting it must be proved:

- (1) that the accused, being five or more in number, formed an unlawful assembly;
- (2) that they were animated by a common unlawful object;
- (3) that force or violence was used by the unlawful assembly or any member of it; and

(4) that such force was used in prosecution of the common object.

If the common object of an assembly is not illegal, it is not rioting even if force is used by a member of it. If persons lawfully assembled for any purpose suddenly quarrel they do not commit riot.

Other cognate offences—

1. Rioting with deadly weapons (**section 148**).
2. Hiring or conniving at hiring of persons to join unlawful assembly (**section. 150**).
3. Assaulting or obstructing a public servant in the suppression of a riot (**section. 152**).
4. Malignantly or wantonly giving provocation with intent to cause riot (**section. 153**).

*Liability of persons who provide space*

Liability of persons who own, occupy, or have an interest in land, is governed by the following provisions:

(1) The owner, or any person having or claiming an interest in land upon which an unlawful assembly is held, or riot is committed, is punishable with Rs. 1,000 fine, if he or his agent (a) knowing of the offence do not give the earliest notice thereof at the nearest police station; or (b) believing the offence likely to be committed do not use any lawful means to prevent it; or (c) in the event of the offence taking place do not use all lawful means to disperse the unlawful assembly or suppress the riot (**section 154**).

(2) Where a riot is committed on behalf of a person who is the owner or occupier of land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which caused the riot, such person is liable to a fine, if he or his agent having reason to believe that the riot is likely to be committed, or the unlawful assembly causing the riot is likely to be held, fails to use all lawful means for preventing the riot, or for suppressing and dispersing the same (**section 155**).

Under similar circumstances, the agent or manager is punishable likewise (**section 156**).

### **Promoting enmity, etc.**

**III.** (a) Promoting disharmony or enmity or hatred or ill-will between different religious, racial, language, caste or community groups on grounds of religion, race, language, caste or community, or

(b) Committing act which is prejudicial to the maintenance of harmony or disturbing public tranquillity,

by words or signs, or visible representations, or otherwise [Three years, or fine, or both].

(c) Committing offence as stated in paras (a) and (b) in a place of worship or in any assembly engaged in religious worship or ceremonies (**section 153A**). [Five years and fine].

(d) Knowingly carrying arms in any procession or organizing, or holding taking part in ant mass drill mort mass training with (**section 153AA**) [Six months and fine.]

Leading cases:—**Babu Rao Patel. Varsha Publications Pvt Ltd. Nand Kishore Singh. Chandanmal Chopra.**

### **Affray.**

**IV.** When (1) two or more persons, (2) by fighting in a public place, (3) disturb the public peace, they commit an affray (**section 159**). [One month or Rs. 100, or both (**section 160**).]

The word 'affray' is derived from the French word *affraier*, to terrify. An 'affray' is an offence against the public peace because it is committed in a public place and is likely to cause general alarm and disturbance. 'Public place' is a place where the public go, no matter whether they have a right to go or not. No quarrelsome or threatening words will amount to an affray.

An 'affray' differs from a 'riot'.

- (1) An affray cannot be committed in a private place, a riot can be.
- (2) An affray is committed by *two or more* persons, a riot by *five or more*.
- (3) A riot is more severely punishable than an affray.

Persons other than the actual rioters are punishable in respect of riot in the following cases:—

- (1) Owner or occupier of land on which an unlawful assembly is held (**section 154**).
- (2) The person for whose benefit a riot is committed (**section 155**).
- (3) The agent of owner or occupier for whose benefit a riot is committed (**section 156**).
- (4) One who knowingly harbours, in any house or premises under his control, any persons being or about to be hired or employed as members of an unlawful assembly (**section 157**).
- (5) One who is engaged, or hired, or offers to be hired, to do or assist in doing any of the acts specified in s. 141, as making an assembly unlawful (**section 158**).

### **Offences by or relating to public servants. Chapter IX.**

Chapter IX deals with offences by or relating to public servants. They are as follows:—

Note: Sections 161 to 165A have been repealed by the [Prevention of Corruption Act](#) (vide, amendment of 1988).

1. Whoever being, or expecting to be, a public servant
  - (i) accepts or obtains, or agrees to accept, or attempts to obtain, any *gratification other than legal remuneration*,
  - (ii) as a reward for
    - (a) doing or forbearing to do any official act, or
    - (b) showing or forbearing to show favour or disfavour to any person in



the exercise of his official functions, or

- (c) rendering or attempting to render any service or dis-service to any person, with the Central or any State Government or Parliament or the Legislature of any State, or a public servant,

is guilty of taking illegal gratification (**section 161**). [Three years, or fine or both.] It is essential that the gratification should be obtained "as a motive or reward".

*Leading cases:—Mahesh. Maha Singh. R S Nayak v A R Antulay.*

2. Taking a gratification in order by corrupt or illegal means to influence a public servant (**section 162**). [Three years, or fine or both.]
3. Taking a gratification for the exercise of personal influence with a public servant (**section 163**). [One year's simple imprisonment, or fine, or both.]
4. Public servant abetting either of the two last mentioned offences (**section 164**).
5. Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant (**section 165**).
6. Abetting a public servant in committing an offence under section 161 or section 165 (**section 165A**).
7. Public servant knowingly disobeying law with intent to cause injury to any person (**section 166**).
9. Public servant disobeying direction under law (**section 166A**).
10. Punishment for non-treatment of victim (**166B**).
8. Public servant framing or translating a document in a way which he knows or believes to be incorrect, intending to cause injury to any person (**section 167**).
9. Public servant unlawfully engaging in trade (**section 168**).
10. Public servant unlawfully buying or bidding for property (**section 169**).
11. Personating a public servant, and doing or attempting to do an act in such assumed character under colour of office (**section 170**).
12. Wearing a garb or carrying a token used by a public servant with fraudulent intent (**section 171**).

### **Offences relating to elections. Chapter IXA.**

Chapter IXA deals with offences relating to elections. It seeks to make punishable, under the ordinary penal law, bribing, undue influence, and personation, and certain other malpractices at elections. It applies to membership of any public body where the law prescribes a method of election. Persons guilty of malpractices are debarred from holding positions of public responsibility for a specified period. The following are deemed to be offences under this chapter:—

1. Giving or accepting gratification with the object of exercising any electoral right (**section 171B**). Gratification includes treating, i.e., giving of food, drink, entertainment or provisions (**section 171E**).

2. Interfering with the free exercise of any electoral right (clause 1), threatening any candidate or voter, or any person in whom he is interested, with injury of any kind; or inducing any candidate or voter to believe that he or any person in whom he is interested will become an object of Divine displeasure or of spiritual censure (clause 2) (**section 171C**).

Something more than a mere act of canvassing would be necessary: *Charan Lal Sahu v Giani Zail Singh*.

3. Personation at an election (**section 171D**).

4. Publishing false statements in relation to the personal character or conduct of any candidate (**section 171G**).

5. Illegal payments in connection with an election (**section 171H**).

6. Failure to keep election accounts (**section 171I**).

### **Contempt of the authority of public servants. Chapter X.**

Chapter X deals with contempt of the lawful authority of public servants. It contains those provisions which are intended to enforce obedience to the lawful authority of public servants.

The following provisions relate to wilful omission or evasion of the performance of a public duty:—

1. Absconding to avoid service of a summons, notice, order or other proceeding from a public servant (**section 172**).

'Absconding' here means simply hiding. The section does not speak of a warrant.

2. Preventing service of summons or other proceeding, or removing the same from any place to which it is lawfully affixed, or preventing the making of any proclamation under due authority of publication thereof (**section 173**).

3. Non-attendance, in obedience to a summons, notice, order, or proclamation proceeding from a public servant in person or by agent, or having attended, departing before it is lawful to depart (**section 174**).

4. Non-appearance in response to a proclamation under **section 82** of Act 2 of 1974 (**section 174A**)

[Failure by person released on bail or bond to appear in court is an offence under **section 229A**.]

The attendance must be in a place in India. The summons should be specific in its terms as to the title of the Court, the place at which, the day, and the time of the day when the attendance is required. A verbal order is quite sufficient. Mere affixing of summons to a house is not enough; personal service must be attempted.

4. Intentional omission to produce or deliver up any document to a public servant by person legally bound to produce such document (**section 175**).

5. Intentional omission to give, or furnish, at the time and in the manner aforesaid by law, any notice or information to a public servant (**section 176**).

6. Section 202, though not appearing in this Chapter, punishes intentional omission to give information of offence by person bound to inform.

7. Intentional omission to assist public servant in the execution of his duty when bound by law to give assistance (**section 187**).

A person refusing to give true information to a public servant will be liable under the following circumstances:—

1. Refusing on oath or affirmation to state the truth when required by a public servant legally competent to require it (**section 178**).

The penalty of the section would not be attracted where the refusal to take oath would be justifiable: *Kiran Bedi and Inder Singh v Commission of Inquiry*.

2. Refusing by a person *legally bound* to state the truth, to answer any question, demanded of him by a public servant authorized to question (**section 179**).

A person examined under **section 161** of Cr PC is now legally bound to state the truth.

*Leading case:—Nandini Sathpathy.*

3. Refusing to sign any statement made by the party when required by a public servant legally competent to require that he shall sign it (**section 180**).

A person giving false information to a public servant is liable in the following cases:—

1. Furnishing, as true, information which the person furnishing same, being legally bound to furnish, knows or has reason to believe to be false [six months simple imprisonment, Rs. 1,000 fine]. If the information respects the commission of an offence, or prevention of it, or the apprehension of an offender—two years' imprisonment or fine (**section 177**).

2. False statement on oath to a public servant, or person authorised to administer oath, by a person legally bound to state the truth on the subject in question (**section 181**).

This section refers to cases in which the false statements are made to any public servant in proceedings *other than judicial*. Section 191 refers to judicial proceedings.

3. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

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

(b) to use the lawful power of such public servant to the injury or annoyance of any person (**section 182**).

4. Section 203, though not appearing in this chapter, punishes the giving of false information respecting an offence.

The following provisions deal with obstructing or disobeying a public servant:—

1. Resistance to the taking of property by the lawful authority of a public servant (**section 183**).

2. Obstructing the sale of property offered for sale by the lawful authority of a public servant (**section 184**).

3. Illegal purchase or bid for property, offered for sale by the authority of a public servant, on account of any person, whether himself or any other, who is under a legal incapacity to purchase that property at such sale, or bid for such property not intending to perform the obligation thereby, incurred (**section 185**).

4. Obstructing a public servant in the discharge of his public functions (**section 186**).

5. Intentional omission to assist public servant in the execution of his duty when bound by law to give assistance (**section 187**).

6. Knowingly disobeying an order 'promulgated by a public servant lawfully empowered to promulgate it' (**section 188**). [If such disobedience tends to cause obstruction or injury to any person lawfully employed, then the punishment is simple imprisonment for one month, or Rs. 200 fine, or both. If it causes riot or affray, or danger to human life, health or safety, then with imprisonment of either description for six months, or Rs. 1,000 fine, or both].

For violation of a curfew order under [section 144 Cr PC, 1973](#), only a prosecution under [section 188, IPC, 1860](#), can be launched in an appropriate case but no "shoot to kill" order is justified merely on that account.

Three things are necessary—

- (1) A *lawful* order promulgated by a public servant,
- (2) *knowledge* of the order and disobedience of it, and
- (3) the adverse result that is likely to follow from such disobedience.

Disobedience *per se* of an order promulgated under [section 144 Cr PC, 1973](#), is not an offence and that it is necessary to prove that the disobedience would have tended to have certain results mentioned in [section 188 IPC, 1860](#).

*Leading cases:—Saroj Hazra. Jayantilal.*

7. Threat of injury to a public servant, or to any person in whom such public servant is believed to be interested in order to induce such public servant to do or refrain from doing an official act (**section 189**).

8. Threat of injury to induce any person to refrain from applying for protection to a public servant (**section 190**).

Chapter XI treats offences relating to false evidence and public justice.

A person is said to give 'false evidence', if he

### **False evidence. Chapter XI.**

- (1) being legally bound by an oath, or by an express provision of law to state the truth; or
- (2) being bound by law to make a declaration upon any subject;
- (3) makes any statement which is false; and

(4) which he either knows or believes to be false, or does not believe to be true (**section 191**).

If the Court has no authority to administer an oath, or if it has no jurisdiction at all, the proceedings will be without jurisdiction. Oath or solemn affirmation is not a condition precedent to this offence. The false statement need not be material to the case. It is not limited to evidence before a Court of Justice, but covers any statement made, under oath or otherwise, in pursuance of a legal duty to make it. A false allegation in a written statement amounts to this offence. Illegality of a trial does not purge perjury committed in that trial. An accused is not liable if he gives false answers to questions put by the Court.

A person is said to 'fabricate false evidence' if he

### **Fabricating false evidence.**

(1) causes any circumstance to exist; or

(2) makes any false entry in any book or record; or

(3) makes any document containing a false statement;

(4) intending that such circumstance, *false entry or false statement* may appear in evidence in (a) a judicial proceeding, or (b) a proceeding taken by law before a public servant or an arbitrator; and

(5) may cause any person, who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion;

(6) touching any point material to the result of such proceeding (**section 192**). [If evidence is given or fabricated for the purpose of being used in any stage of a judicial proceeding, seven years and fine; in any other case, three years and fine (**section 193**).]

This section refers to judicial proceedings. Section 181 refers to any proceeding before a public servant. The definition of 'judicial proceeding' in [Cr PC, 1973](#), is not applicable to sections 192 and 193.

Intention is the gist of the offence of fabricating false evidence.

The false evidence must be *material* to the case, though it may not be so under section 191. If no erroneous opinion could be formed touching any point material to the result of a proceeding there is no fabrication.

As soon as the false evidence is *fabricated* the offence is complete. Actual use of such evidence is not necessary. Such use is punishable under section 196. The fabricated evidence must, however, be admissible evidence. The offence cannot be committed before a public servant not authorized to hold an investigation.

Where a person makes two contradictory statements he can be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of those contradictory statements is false. *KTMS Mohd v UOI*, (Supreme Court).

Persons accused of giving or fabricating false evidence should be tried separately and not jointly.

An accused person who fabricates evidence to escape punishment is not liable under this section, unless he contemplates injury to someone else.

The aggravated forms of these two offences are—

1. Giving or fabricating false evidence with intent to procure conviction of a capital offence (**section 194**).
2. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with imprisonment for life or imprisonment (**section 195**).
3. Threatening or inducing any person to give false evidence (**section 195A**).

The following offences are punishable in the same manner as the giving of false evidence:—

1. Issuing or signing any certificate required by law to be given or signed or by law made evidence of any fact knowing or believing that such certificate is false in any material point (**section 197**).
2. Using as true a certificate known to be false in a material point (**section 198**).
3. False statement made in any declaration which touches any material point and which is by law receivable as evidence (**section 199**).
4. Using as true any such declaration known to be false in any material point (**section 200**).
5. Causing disappearance of evidence of the offence or giving false information to screen offender. The punishment is linked with the type of offence of which the evidence is destroyed. (**section 201**).
6. Intentional omission to give information by the person who is bound to inform (**section 202**).
7. Giving false information in respect of an offence which has been committed (**section 203**).

Destruction or secreting or obliteration of a document to prevent its production in evidence in a court is punishable (**section 204**).

There are two offences in this chapter dealing with false personation.

### **Personation**

1. Falsely personating another, and in such assumed character making any admission or statement, or confessing judgment or causing any process to be issued or becoming bail or security, or doing any other act in any suit or prosecution (section 205).

Any fraudulent gain or benefit to the offender is not necessary.

The Calcutta High Court has held that a person commits this offence even if he personates a purely imaginary person. The Madras High Court, following English precedents, has held to the contrary.

2. Personating a juror or assessor. (**section 229**).

The following provisions deal with the abuse of process of court:—

## **Abuse of process of Court.**

1. Fraudulent removal or concealment of property to prevent its seizure as forfeiture or in execution of a decree (section 206).
2. Fraudulent claim to property to prevent its seizure as forfeiture or in execution (**section 207**).
3. Fraudulently suffering a decree for a sum not due (**section 208**).
4. Fraudulently or dishonestly making a false claim in court (**section 209**).
5. Fraudulently obtaining a decree for a sum not due or causing a decree or order to be executed against any person after it has been satisfied (**section 210**).

The fact that the satisfaction of a decree is of such a nature that the court executing the decree cannot recognize it, does not prevent the decree-holder from being convicted of this offence.

6. False charge of an offence.

This has four ingredients:—

- (1) Instituting or causing to be instituted any criminal proceedings, or
- (2) Falsely charging any person with having committed an offence,
- (3) Knowledge that there is no just or lawful ground for it,
- (4) Doing as above with intent to cause injury to any person (**section 211**). [Two years, or fine, or both. If criminal proceedings, be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, then the punishment is seven years and fine.]

Criminal law may be put in motion—

- (1) by giving information to the police, or
- (2) by lodging a complaint before a Magistrate.

A false charge to the police in respect of a *cognizable* offence amounts to institution of criminal proceedings. But as the police have no power to take any proceedings in *non-cognizable* cases without orders from a Magistrate, a false charge of such offence made to the police is not an institution of criminal proceedings but merely a false charge. No such distinction exists when a false charge of any offence is made before a Magistrate.

*Leading cases:—R v Karim Buksh. R v Jijibhai. Santosh Singh.*

For a false charge of offence of a serious nature severe punishment is provided. According to the Calcutta and the Madras High Courts, in such cases it is not necessary that criminal proceedings should be instituted, the charge should merely relate to a serious offence; whereas the Allahabad High Court has held that criminal proceedings should have been actually instituted.

*Leading cases:—R v Karim Buksh(Cal). R v Nanjunda Row(Mad). R v Bisheshar(All).*

The bringing of a vexatious charge is not an offence under this section. The compounding of the offence alleged to have been committed is no bar to a prosecution

under this section. The person aggrieved may sue in a civil suit for damages for malicious prosecution instead of instituting criminal proceedings.

There is a difference between section 182 and section 211.

Bombay High Court.—Under section 182 proof of (1) malice, and (2) want of reasonable and probable cause, except so far as they are implied in the act of giving false information, is not necessary; under section 211 such proof is absolutely required (*Raghavendra v Kashinathbhat*).

Calcutta High Court.—Prosecution for a false charge may be under either of these sections. But if the false charge is of a serious nature, section 211 should be applied (*Sarada Prosad Chatterjee*).

Allahabad High Court.—Where a specific false charge is made, the proper section to apply is section 211. An offence under section 182 is complete when false information is given to a public servant although the latter takes no steps towards the institution of criminal proceedings (*Jugal Kishore; Raghu Tiwari*).

Patna High Court.—It follows the view of the Calcutta High Court.

Punjab.—The former Chief Court of the Punjab followed the view of the Bombay High Court.

### **Screening an offender.**

1. Causing disappearance of evidence of an offence or giving false information to screen the offender (section 201).

An offence should have been actually committed to render a person liable. An offender himself causing the disappearance of evidence can be held liable under this section.

2. Taking gift to screen an offender from punishment (**section 213**).

3. Offering gift or restoration of property in consideration of screening an offender (**section 214**).

Taking any gratification on account of helping any person to recover any moveable property of which he has been deprived by any offence under this Code is punished unless the person taking gift uses all means in his power to cause the offender to be apprehended (**section 215**).

### **Harbouring an offender.**

1. Harbouring or concealing a person knowing him to be an offender with the intention of screening him from legal punishment (**section 212**).

2. Harbouring or concealing an offender who has escaped from custody, or whose apprehension has been ordered (**section 216**).

3. Knowingly harbouring any persons who are about to commit, or have committed, robbery or dacoity (**section 216A**).

The following provisions deal with offences against public justice committed by public servants:—



## Offences by public servants.

1. Public servant knowingly disobeying a direction of law with an intent to save any person from punishment or any property from forfeiture (**section 217**).
2. Public servant, charged as such with the preparation of a record or other writing, framing it incorrectly with intent to cause loss or injury to the public or any person, or to save any person from punishment or property from forfeiture (**section 218**).
3. Public servant in a judicial proceeding corruptly or maliciously making any report, order, verdict, or decision, knowing that it is contrary to law (**section 219**).
4. Public servant corruptly or maliciously committing any person for trial, or keeping any person in confinement knowing that he is acting contrary to law (**section 220**).

The Supreme Court analysed the requirements of this section in *Suryamoorthy v Govindaswami*.

5. Public servant intentionally omitting to apprehend, or suffering to escape, any person when legally bound to apprehend or keep him in confinement (**section 221**).
6. Same as above, when such person is under sentence or lawfully committed to custody (**section 222**).
7. Public servant legally bound to keep in confinement a person charged with, or convicted of, any offence, negligently suffering him to escape (**section 223**).
8. Public servant omitting to apprehend or suffering to escape from confinement any person in cases not otherwise provided for (**section 225A**).

Resisting the law is punishable in the following cases:—

1. A person resisting or obstructing the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted; or escaping or attempting to escape from legal custody (**section 224**).
2. Resisting or obstructing lawful apprehension of another person for an offence, or rescuing or attempting to rescue him from legal custody (**section 225**).
3. Resistance or obstruction to lawful apprehension, or escaping or rescuing from legal custody in cases not otherwise provided for (**section 225B**). Violation of condition of remission of punishment (**section 227**).

## Contempt of Court.

A person is guilty of contempt of Court if he intentionally offers any insult or causes any interruption to any public servant, while he is sitting in any stage of a judicial proceeding (**section 228**). [Six months' simple imprisonment, or Rs. 1,000, or both.]

A person who prints or publishes the name or discloses the identity of the victim of a rape case and other sexual offences under sections 376A, 376B, 376C or 376D without due authorisation or permission of the court shall be punishable with imprisonment of either description for a term which may extend to two years and shall also be liable to fine (**section 228A**).

This section, however, does not apply to the publication of the judgment of any High Court or the Supreme Court (**Explanation to section 228A**).

## Coin and Stamps. Chapter XII.

Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign power in order to be so used. Old coins not used as money are not coins under this definition.

Indian coin is—

(1) metal stamped and issued—

- (a) by the authority of the Government of India,
- (b) in order to be used as money;

(2) Metal which has been so stamped or issued shall continue to be Indian coin notwithstanding that it may have ceased to be used as money (**section 230**).

Following are the various offences relating to coin:—

1. Counterfeiting coin or Indian coin (**sections 231, 232**).
2. Making, mending, buying, or selling, or disposing of any die or instrument for counterfeiting coin or Indian coin (**sections 233, 234**).
3. Being in possession of any instrument or material for the purpose of using the same for counterfeiting of coin or Indian coin (**section 235**).
4. Abetting in India, counterfeiting of coin out of India (**section 236**).

Abetment must be completed in India.

5. Importing or exporting of a counterfeit coin or Indian coin (**sections 237, 238**).
6. Delivery to another of a coin or Indian coin possessed with the knowledge that it is counterfeit (**sections 239, 240**).
7. Delivery to another of a counterfeit coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit (**section 241**).
8. Possession of a counterfeit coin or Indian coin by a person who knew it to be counterfeit when he became possessed thereof (**sections 242, 243**).

Possession must be with intent to defraud.

9. Any person employed in a mint causing a coin to be of different weight or composition from that fixed by law (**section 244**).
10. Unlawfully taking from a mint any coining instrument or tool (**section 245**).
11. Fraudulently or dishonestly diminishing the weight or altering the composition of any coin or Indian coin (**sections 246, 247**).
12. Altering appearance of any coin or Indian coin with intent that it shall pass as a coin of different description (**sections 248, 249**).
13. Delivery to another of a coin or Indian coin possessed with the knowledge that it is altered (**sections 250, 251**).

There must be both possession with knowledge and fraudulent delivery.

14. Possession of an altered coin or Indian coin by a person who knew it to be altered when he became possessed thereof (**sections 252, 253**).

15. Delivery to another of an altered coin as genuine, which, when first possessed, the deliverer did not know to be altered (**section 254**).

The following offences relate to Government stamps:—

1. Counterfeiting or performing any part of the process of counterfeiting a government stamp (**section 255**).

2. Possession of an instrument or material for the purpose of counterfeiting a government stamp (**section 256**).

3. Making, buying, or selling any instrument for the purpose of counterfeiting a government stamp (**section 257**).

4. Sale of a counterfeit government stamp (**section 258**).

5. Possession of a counterfeit government stamp (**section 259**).

6. Using as genuine a government stamp known to be counterfeit (**section 260**).

7. Fraudulently affecting any writing from a substance bearing a Government stamp or removing from a document the stamp used for it, with intent to cause loss to the Government (**section 261**).

8. Using a government stamp known to have been before used (**section 262**).

9. Fraudulently erasing from a government stamp any mark denoting that the same has been used, or selling or disposing of a stamp from which such a mark has been erased (**section 263**).

10. Possession of a fictitious stamp or of any die, plate or instrument for making any fictitious stamp (**section 263A**).

### **Weights and measures. Chapter XIII.**

The following offences relate to weights and measures:—

1. Fraudulent use of false instruments for weighing (**section. 264**).

2. Fraudulent use of a false weight or measure or using any weight or measure of length or capacity, as a different weight or measure from what it is (**section 265**).

3. Possession of any instrument for weighing, or of any weight or measure of length or capacity, knowing it to be false, intending that the same may be fraudulently used (**section 266**).

4. Making, selling, or disposing of any false instrument for weighing or any false weight or measure of any length or capacity in order that the same may be used or knowing that it is likely to be used as true (**section 267**).

### **Nuisance. Chapter XIV.**

### **A person is guilty of public nuisance who does**

(1) any act, or is guilty of an illegal omission; and

(2) such act or omission causes

(a) any common injury, danger, or annoyance (i) to the public, or (ii) to the people in general who dwell or occupy property in the vicinity; or

(b) any injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right (**section 268**).

Nuisance is either (1) public, or (2) private. The former is an offence against the public as it affects the public at large, or some considerable portion of public. It depends in a great measure upon the number of houses and the concourse of people in the vicinity; and the annoyance or neglect must be of a real and substantial nature. Public nuisance cannot be excused on the ground that the act complained of is inconvenient to a large number of the public. Acts which seriously interfere with the health, safety, comfort, or convenience of the public generally, or which tend to degrade public morals, have always been considered public nuisance. A brew-house, glass-house, or swine-yard, may be a public nuisance if it is shown that the trade is such as to render enjoyment of life and property uncomfortable. Public nuisance can only be the subject of one indictment, otherwise a party might be ruined by a million prosecutions. No prescriptive right can be acquired to maintain a public nuisance.

Private nuisance is anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another, and not amounting to trespass. It is an act affecting some particular individual or individuals as distinguished from the public at large. It is in the quantum of annoyance that public nuisance differs from private. Private nuisance cannot be a subject of indictment but a ground of a civil action for damages, or injunction, or both.

The following offences affect public health:—

1. Negligent or malignant act likely to spread infection of any disease dangerous to life (**sections 269, 270**). The Supreme Court considered under this section the position of a person suffering from HIV (AIDS) X v Z.

2. Wilful disobedience to a quarantine rule (**section 271**).

3. Adulteration of food or drink intended for sale so as to make it noxious (**section 272**).

4. Selling, offering or exposing for sale, as food or drink, any article which has been rendered or has become noxious or unfit for food or drink (**section 273**).

5. Adulteration of drug so as to lessen its efficacy, change its operation or render it noxious (**section 274**).

6. Knowingly selling or causing to be used for medicinal purposes any adulterated drug (**section 275**).

7. Selling, or offering or exposing for sale, or issuing from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation (**section 276**). Possession has been taken to be evidence of intention (*sabapathie*).

In the States of West Bengal and Uttar Pradesh offences under **sections 272, 273, 274, 275 and 276 IPC, 1860**, have by virtue of local amendments been made cognizable,

non-bailable and punishable with imprisonment for life (see COMMENT under **section 272**).

8. Voluntarily corrupting or fouling the water of a public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used (**section 277**).

9. Voluntarily vitiating the atmosphere so as to make it noxious to the public health (**section 278**). Carrying such material without proper protection and dumping it at some place, though temporarily, constituted offences. *Durham County Council v Peter Connors Industrial Services* and *R v Metropolitan S Magistrate*.

The following offences relate to public safety:—

1. Rash or negligent driving or riding on a public way so as to endanger human life, or to cause hurt or injury to any other person (**section 279**).

Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do.

There is a distinction between a rash act and a negligent act. Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow but with the hope that they will not. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow. As between rashness and negligence, rashness is a graver offence.

*Leading cases:—Bhalchandra. Padmacharan Naik.*

2. Rash or negligent navigation of a vessel (**section 280**).

3. Exhibiting any false light, mark, or buoy, intending or knowing it to be likely to mislead any navigator (**section 281**).

4. Conveying a person by water for hire in a vessel overloaded or unsafe (**section 282**). Hijacking and threat to blow up an aircraft have been considered under this section (*R v Mason*).

5. Causing danger, obstruction, or injury to any person in a public way or public line of navigation (**section 283**).

6. Rash or negligent conduct with respect to any poisonous substance so as to endanger human life, or to be likely to cause hurt or injury to any person (**section 284**).

7. Rash or negligent conduct with respect to any fire or combustible matter (**section. 285**).

8. Rash or negligent conduct with respect to any explosive substance (**section. 286**).

9. Rash or negligent conduct with respect to any machinery in the possession or under the charge of the offender (**section. 287**).

10. Negligence with respect to pulling down or repairing buildings (**section. 288**).

11. Negligence with respect to any animal (**section. 289**).

Acts of public nuisance other than those mentioned above are punishable under the general section (**section. 290**). A person cannot continue a public nuisance after injunction to discontinue (**section. 291**).

Offences against public morals and decency are:—

1. (a) Selling, letting to hire, distributing, or publicly exhibiting or circulating any obscene book, pamphlet, paper, drawing, painting, representation or figure or any obscene object; or
- (b) importing, exporting, or conveying any obscene object for any of the above purposes; or
- (c) taking part in or receiving profits from any business conducted for the abovementioned purposes; or
- (d) advertising that any person is engaged in any of the abovementioned acts, or that any obscene object can be got from that person; or
- (e) attempting to do any act which is an offence under this section (**section. 292**).

*Leading cases:—Ranjit Udeshi. Samaresh Basu v Amal Mitra. Raj Kapoor v Laxman. Mahajan Singh v Commr. of Police.*

2. Selling, letting to hire, distributing, exhibiting, or circulating to any person under the age of 20 years any obscene object referred to above, or attempting to do so (**section. 293**).

A book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object is deemed obscene if it is lascivious or appeals to the prurient interest or if its effect taken as a whole is such as tends to deprave and corrupt persons who are likely to see, read or hear the matter.

3. Causing annoyance to others by—

- (a) doing any obscene act in any public place; or
- (b) singing, reciting, or uttering any obscene song, ballad or words, in or near any public place (**section 294**).

(4) Keeping any office, or place, for the purpose of drawing any lottery not being a state lottery or a lottery authorised by the State Government (**section 294A**).

Whoever publishes any proposal to pay any sum, or to deliver any goods, on drawing of any ticket, lot or number, in a lottery is also punished (*ibid*). [Fine up to Rs. 100.]

An agreement for contributions to be paid by lot, or a transaction requiring skill for winning prizes is not a lottery. Transactions in which prizes are decided by chance amount to lottery.

## **Offences relating to religion. Chapter XV.**

Chapter XV treats of offences relating to religion. They are as follows:—

1. Injuring or defiling a place of worship, or any object held sacred by any class of persons, with intent to insult the religion of any class of persons (**section 295**).
2. Deliberate and malicious acts intended to outrage religious feelings of any class, by insulting its religion or religious belief irrespective of the fact whether the religious belief in question is rational or irrational. (**section 295A**).

*Leading cases:—Shalibhadra Shah. Nandkishore Singh. Chandanmal Chopra. T Parameswaran v District Collector.*

3. Voluntarily disturbing a religious assembly lawfully engaged in the performance of religious worship or religious ceremonies (**section 296**).

4. Trespassing in a place of worship or burial place, offering any indignity to corpse, or disturbing persons performing funeral ceremonies, with intent to wound the feelings, or insult the religion of any person or with the knowledge that the feelings of any person are likely to be wounded (**section 297**).

5. Uttering any word or making any sound in the hearing of that person, or making any gesture in the sight of that person, or placing any object in the sight of that person (**section 298**).

### **Offences affecting human body. Chapter XVI.**

Offences against the person are—

- (1) Unlawful homicide.
  - (a) Culpable homicide.
  - (b) Murder.
  - (c) Homicide by rash or negligent act.
  - (d) Suicide.
  - (e) Being a Thug.
- (2) Causing miscarriage.
- (3) Exposure of infants and concealment of births of children.
- (4) Hurt and grievous hurt.
- (5) Wrongful restraint.
- (6) Wrongful confinement.
- (7) Criminal force.
- (8) Assault. prostitution.
- (9) Kidnapping.
- (10) Abduction.
- (11) Slavery.
- (12) Selling or buying a minor for prostitution.
- (13) Forced labour.
- (14) Rape and other sexual offences.
- (15) Unnatural offence.

Culpable homicide, the genus, and murder, the species, are defined in very close resembling terms.

## Culpable homicide.

A person commits murder (**section 300**) culpable homicide if he causes death by doing an act— (**section 299**) if he causes death by doing an act—

(1) with the intention of causing death; or  
(2) with the intention of causing such bodily injury as is *likely* to cause death;

(3) with the knowledge that he is *likely* by such act to cause death.

[Imprisonment for life; or 10 years and fine, if the offence comes under clause 2. If it comes under clause 3, then 10 years, or fine, or both— (**section 304**).]

(1) with the intention of causing death; or  
(2) with the intention of causing such bodily injury as the offender *knows to be likely* to cause death of the person to whom the harm is caused; or

(3) with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is *sufficient in the ordinary course of nature to cause death*; or

(4) with the knowledge that it is *so imminently dangerous* that it must *in all probability* cause death, or such bodily injury as is likely to cause death.

Capital punishment, or imprisonment for life, and fine—(**section. 302**).

An offence cannot amount to murder unless it falls within the definition of culpable homicide; but it may amount to culpable homicide without amounting to murder. All acts of killing done with the intention to kill, or to inflict bodily injury sufficient to cause death, or with the knowledge that death must be the most probable result are *prima facie* murder; while those committed with the knowledge that death will be a likely result are culpable homicide not amounting to murder. Where the act is not done "with the intention of causing death" (clause 4, section 300) the difference between culpable homicide and murder is merely a question of different degrees of probability that death would ensue. It is culpable homicide where death must have been known to be a *probable* result. It is murder where it must have been known to be *the most probable* result. If an injury is deliberately inflicted, in the sense that it is not accidental or unintentional, and the injury, objectively speaking, is sufficient to cause death in the ordinary course of nature and death results, the offence is murder (clause 3, section 300).

**Leading cases:—State of AP v R Punnayya. R v Govinda. R v Idu Beg. R v Gora Chand Gopee. Virsa Singh.**

**English case.—"Likely".**—The accused was convicted of an offence of behaving in a manner likely to endanger the safety of an air craft by the persistent use of his mobile telephone in mid-flight. His appeal against conviction failed because the word "likely" was correctly construed in its statutory context as meaning "a real risk not to be ignored." (*R v White house*).

Death caused by an act, for example, setting a house on fire, done with foresight that someone may die, but without any intention of that kind, has been held by an English Court to be not murder but only culpable homicide. Foresight is not the same thing as an intention. Foresight may only be an evidence of intention.

**Leading case:—R v Nadrick.**

Other circumstances may also prove intention. For example, a married woman burning in the kitchen and her husband and others not at all coming up to her, held by the



Supreme Court to be evidence of intention. *Subedar Tewari v State of UP*.

Where death is caused by poison, the earlier legal propositions, one of which required that the accused must be shown to have possessed poison of the kind in question, have now been revised.

Death in police custody is not capable by itself of creating an inference of murder. *State v Balkrishna*.

**Leading case:—*Bhupinder Singh v State of Punjab*.**

Death caused by the effect of words on the imagination or the passions of a person amounts to culpable homicide. If a person engaged in the commission of an offence causes death by pure accident, he shall suffer only the punishment provided for the offence, without any addition on account of the accidental death. Culpable homicide presupposes an intention, or knowledge of likelihood, of causing death. In the absence of these elements, even if death be caused, the offence will be that of hurt or grievous hurt, e.g., death caused by kicking a person suffering from a diseased spleen.

A person who causes bodily injury to another who is labouring under a disease or bodily infirmity, and thereby accelerates the death of that other is guilty of homicide (**Explanation 1**). Similarly, where death is caused by bodily injury, the person who causes such injury is guilty of this offence, although by resorting to proper remedies and skilful treatment death might have been prevented (**Explanation 2**). The causing of the death of a child in the mother's womb is not homicide. But it is 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 (**Explanation 3**).

If death is caused by the voluntary act of the deceased resulting from fear of violence on the part of the offender, the offence will be murder. For instance, if four or five persons were to stand round a man, and so threaten him and frighten him as to make him believe that his life was in danger, and he were to back away from them and tumble over a precipice to avoid them, the persons threatening him will be guilty of murder.

Where the attack was aimed at one person but it fell upon another resulting in the latter's death, it was held that under the doctrine of transfer of malice, the attacker would be guilty of murder. *Nagaraj v State*, (2006) Cr LJ 3724 (Mad—FB); *Rahimbux v State of MP*, (2008) 12 SCC 270 [LNIND 2008 SC 2798] .

The punishment for murder is either death or imprisonment for life and also fine. The Supreme Court has, in a long course of decisions, made it an established principle that the normal punishment for murder is life imprisonment and that "death" should be awarded in "rarest of rare cases". Examples of such rarest of rare cases are:

**Leading cases:—*Kehar Singh v State (Delhi Administration)*. *Lichhmadevi v State of Rajasthan*.**

An abnormal delay in executing a death sentence has been recognised as a ground for converting death sentence into life imprisonment.

**Leading cases:—*Bachan Singh v State of Punjab* *Triveniben v State of Gujarat* *Madhu Mehta v UOI*.**

The Supreme Court has noted serious changes which have taken place in the state of the society since the categories for award of death sentence were laid down. Because of such changes, there should be some flexibility in the application of the categories. *Swami Shraddananda v State of Karnataka*, (2008) 13 SCC 767 [LNIND 2008 SC 1488] .

The Supreme Court has also taken opportunities to explain the impact of the special State-wise enactments for punishment of children *vis-a-vis* IPC, 1860: *Bhoop Ram v State of UP*.

There is no difference in the liability of the offender if the injury intended for one falls on another by accident (**section 301**).

### **Exceptions.**

Culpable homicide is not murder in the following cases:—

### **Provocation.**

1. Grave and sudden provocation depriving the offender of the power of self-control, provided that the provocation is not—

- (a) sought or voluntarily provoked by the offender as an excuse;
- (b) given by anything done in obedience to the law or by a public servant in the lawful exercise of his powers;
- (c) given by anything done in the lawful exercise of the right of private defence.

Provocation resulting from abusive language has been considered to be grave enough. Female infidelity is a common cause of provocation.

An English decision allowed even a self-induced provocation to be taken into account for recording a finding of manslaughter: *R v Johnson*.

The longer the gap between the provoking incidents, less likely the defence of provocation is to succeed. The loss of self-control need not be immediate. The mental state of accused at the time of the incident may be taken into account for determining whether the response was the result of the loss of self-control: *R v Ahluwalia*; *Dhandayuthan v State*.

### **Private defence.**

2. If the offender, in the exercise in good faith of the right of private defence of person or property, exceeds it, and causes death without premeditation and without intending more harm than is necessary.

### **Public servant.**

3. If the offender being a public servant or aiding a public servant exceeds his legal powers and causes death by an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty, and without ill-will towards the deceased.

### **Sudden fight.**

4. If it is committed, without premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel, and without the offender having taken undue advantage, or acted in a cruel or unusual manner.

The fight should not have been pre-arranged.

### **Consent.**

#### **5. When the deceased, being above the age of 18 years, suffers death or takes the risk of harm with his own consent.**

Where any of the five exceptions applies, the offence will be punishable under the first part of section 304.

The special category of murder enshrined in section 303 under the heading "punishment for murder by life-convict" has been declared by the Supreme Court to be unconstitutional.

*Leading case:—Mithu*

The result is that all murders are now punishable under section 302.

Culpable homicide which does not amount to murder is punishable under section 304 for a term extending to 10 years, if the act by which death is caused is done with the intention of causing death or by causing such bodily injury as is likely to cause death. The same section in its second paragraph, popularly known as Part II, provides that the accused causing death may be punished with imprisonment extending to 10 years or fine or both, if the act is done without intention to cause death or such bodily injury as is likely to cause death, but with only knowledge that it is likely to cause death (**section 304**).

The nature of the intention has to be gathered from the kind of weapon used, the part of the body hit, the amount of force employed, and attending circumstances. *Manubhai Atabhai v State of Gujarat*, (2007) 10 SCC 358 [LNIND 2007 SC 822].

For distinction between section 304 and section 304-A, see Supreme Court decision noted of p 615.

### **Death by negligence.**

Causing the death of any person by doing any rash or negligent act not amounting to culpable homicide is punishable (section 304A). [Two years and fine.]

*Criminal rashness* is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, or knowledge that injury will probably be caused.

*Criminal negligence* is acting without the consciousness that the illegal and mischievous effect will follow but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had he would have had the consciousness.

If death results from injury *intentionally* inflicted this section does not apply. Death should have been the direct result of the rash and negligent act and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causacausans*; it is not enough if it is *causa sine qua non*.

## **Dowry death.**

An unnatural death of a woman within seven years of marriage, whether by burns or injury or otherwise, taking place in the background of cruelty or harassment for dowry, is called a "dowry death". Whoever is guilty of causing such death is punishable for a term not less than seven years and which may extend to imprisonment for life. The ingredients of section 304-B offence have been stated by the Supreme Court in *Shanti v State of Haryana* (**section 304-B**).

*Leading cases:—R v Nidamarti Nagabhushanam. R v Ketabdi Mundal. Bhalchandra. Syed Akbar.*

The expression "soon before" as occurring in the section has been construed by the Orissa High Court in *Keshab Chand Pandit v State*, (1995) Cr LJ 175 (Ori), and also by the Supreme Court in *Yashoda v State of MP*, (2004) 3 SCC 98 [LNIND 2004 SC 155] . *Deen Dayal v State of Up*, (2009) 11 SCC 157 [LNIND 2009 SC 19] .

The Supreme Court has observed that death "otherwise than in normal circumstances" would mean that the death was not in the usual course but apparently under suspicious circumstances if it was not caused by burn or bodily injury. Death of a woman by suicide occurring within seven years of marriage cannot be described as occurring in normal circumstances. (*Rajayyan*). The court has to analyse the facts and circumstances leading to the victim's death to see whether there is proximate connection between the cruelty or harassment for dowry demand and death. *State of Rajasthan v Jaggu Ram*, (2008) 12 SCC 51 [LNIND 2007 SC 1514] . *Kailash v State of MP*, (2006) 12 SCC 667 [LNIND 2006 SC 803] ; *Dhian Singh v State of Punjab*, (2004) 7 SCC 759 .

**Suicide.**—There are two provisions regarding abetment of suicide:—

(1) Abetment of suicide of a child or an idiot or an insane or a delirious or an intoxicated person (**section 305**).

(2) Abetment of suicide by any person (**section 306**). There can be abetment of suicide through dowry demand.

## **Attempts.**

Attempts to destroy life are of three kinds:—

1. Attempt to murder, i.e., doing an act with such intention or knowledge, and under such circumstances that if the doer by that act caused death he would be guilty of murder (**section 307**). [Ten years and fine. If hurt is caused, then imprisonment for life or 10 years. If the offender is under sentence of imprisonment for life, then death.]

The Bombay High Court held that there may be an attempt under section 511 which does not come under this section. It is not intended to exhaust all attempts to commit murder which can be punished under the Code (*R v Cassidy*). But the Allahabad High Court has laid down that section 511 does not apply to attempts to commit murder which are fully and exclusively provided for by this section (*R v Niddha*).

The Supreme Court held that a person commits an offence under this section when he has an intention to commit murder and in pursuance of that intention he does an act towards its commission irrespective of the fact whether that act is the penultimate act or not (*Om Prakash*); *Samersimbh Umedsinh Rajput v State of Gujarat*, (2007) 13 SCC 83 [LNIND 2007 SC 1450] .

*Leading case:—State of Maharashtra v Balaram Bama Patil.*

In the matter of suicide by a married woman in the circumstances specified in the amendments, the burden of proving that her in-laws had not abetted the suicide has been put upon them.

*Leading case:—Gurbachan Singh v Satpal Singh. Brij Lal v Prem Chand.*

There must be proof of the fact that the death in question was due to suicide.

*Leading case:—Wazir Chand v State of Haryana.*

2. Attempt to commit culpable homicide, i.e., doing an act with such intention or knowledge, and under such circumstances, that, if the doer by that act caused death, he would be guilty of culpable homicide not amounting to murder (**section 308**). [If hurt is caused, then seven years, or fine, or both; in other cases three years, or fine, or both.]

3. Attempt to commit suicide.— An act towards the commission of this offence should have been done (**section 309**). [One year, or fine, or both.] The act must have been done in the course of the attempt, otherwise no offence is committed.

Criminologists feel that an attempt to commit suicide being the manifestation of a diseased condition of mind, this section should be deleted from the Code; as such a person requires sympathy and treatment rather than condemnation and punishment. The Supreme Court ruled that the section was unconstitutional and, therefore, void *P Rathinam v UOI*. This decision was subsequently **reversed** by another Supreme Court decision *Gian Kaur v State of Punjab*. The section is thus back to its honourable position in the Code as a measure to dissuade people from horrifying the society by attempting self-demolition. See also [section 115 of the Mental Healthcare Act, 2017](#), which lays down that notwithstanding anything contained in [section 309 of IPC, 1860](#), any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.

## **Thug.**

A 'thug' is a person who has been

(1) habitually associated with any other or others for the purpose of committing—

(a) robbery, or

(b) child stealing,

(2) by means of, or accompanies with, murder (**section 310**). [Imprisonment for life and fine (**section 311**).]

## **Miscarriage, exposure of children, etc.**

The following offences relate to birth and exposure of children:—

1. Voluntarily causing a woman with child or quick with child to miscarry, otherwise than in good faith for the purpose of saving the life of the woman (**section 312**) and without her consent (**section 313**).

The [Medical Termination of Pregnancy Act, 1971](#), provides for the termination of pregnancy under several other circumstances mentioned in that Act and these sections should now be read subject to those provisions.

2. Causing the death of a woman by an act done with intent to cause miscarriage (**section 314**). *Jacob George v State of Kerala*.

3. Doing an act without good faith with intent to prevent a child being born or to cause it to die after birth (**section 315**).

4. Causing the death of a quick unborn child by an act amounting to culpable homicide (**section 316**).

5. Exposure and abandonment of a child under 12 years by parent or persons having care of it (**section 317**).

6. Concealment of birth by secret disposal of dead body (**section 318**).

Whoever causes (1) bodily pain, (2) disease, or (3) infirmity, to any person is said to cause hurt (**section 319**).

### **Hurt.**

A person voluntarily causes hurt, if he does any act

(a) with the intention of thereby causing hurt to any person, or

(b) with knowledge that he is likely thereby to cause hurt (**section 321**). [One year, or fine up to Rs. 1,000, or both (**section 323**).]

Acts which will amount to hurt may amount to assault. But hurt may be caused by many acts which are not assaults, for instance, a person who mixes poison and places it on the table of another, or conceals a scythe in the grass on which another is in the habit of walking, or digs a pit in a road intending that another may fall into it, will be guilty of hurt and not assault.

### **Grievous hurt.**

The following kinds of hurt are designated as 'grievous':—

1. Emasculation.

2. Permanent privation of the sight of either eye.

3. Permanent privation of the hearing of either ear.

4. Privation of any member or joint.

5. Destruction or permanent impairing of the powers of any member or joint.

6. Permanent disfiguration of the head or face.

7. Fracture or dislocation of a bone or tooth.

8. Any hurt which endangers life, or which causes the sufferer to be, during the space of 20 days, in severe bodily pain, or unable to follow his ordinary pursuits (**section 320**).

A seller of arrack who mixed with it a dangerous substance was awarded maximum punishment which was possible under the section. *EK Chandrasenan v State of Kerala*, AIR 1995 SC 1066 [LNIND 1995 SC 88].

Voluntarily causing grievous hurt is voluntarily causing hurt, intending it or knowing it likely to be grievous (**section 322**). [Imprisonment for seven years and fine (**section 325**).]

The following are aggravated forms of the above two offences:—

1. Voluntarily causing hurt (**section 325**), or grievous hurt (**section 326**), by an instrument used for shooting, stabbing, or cutting or which used as a weapon of offence is likely to cause death; or by fire or any heated substance or poison, or any explosive or deleterious substance, or by means of any animal, Voluntarily causing grievous hurt by use of acid (**section 326A**). [Voluntarily throwing or attempting to throw acid is also made an offence by introducing **section 326B**.]
2. Voluntarily causing hurt (**section 327**), or grievous hurt (**section 329**), to extort from the sufferer or anyone interested in him, property or valuable security; or to constrain him to do anything illegal; or to facilitate the commission of an offence.
3. Causing hurt by administering poison or any stupefying, intoxicating, or unwholesome drug, with intent to commit or facilitate the commission of an offence (**section 328**).
4. Voluntarily causing hurt (**section 330**), or grievous hurt (**section 331**), to extort from the sufferer or anyone interested in him, a confession or any information which may lead to the detection of an offence; or to constrain the restoration of property, or the satisfaction of any claim.
5. Voluntarily causing hurt (**section 332**), or grievous hurt (**section 333**), to a public servant in the discharge of his duty, or to prevent or deter him from so discharging it. Humiliation and abuse of the head master and other teachers of a Government school after entering the premises was held to be covered by the section. *Madhudas v State of Rajasthan*.

Hurt or grievous hurt caused on grave and sudden provocation is not severely punished (**sections 334 and 335**). Rash or negligent acts which endanger human life or the personal safety of others are made punishable even though no harm follows (**section 336**); and if hurt or grievous hurt is caused by such acts the punishment will be more severe (**sections 337 and 338**).

### **Wrongful restraint.**

Wrongful restraint is (1) voluntarily obstructing a person, (2) so as to prevent him from proceeding in any direction, (3) in which he has a right to proceed. There must be the right to proceed *Vijay Kumari v SM Rao*, (SC). The word "voluntarily" connotes direct physical restraint. There should be a restriction on the normal movement of a person. *Keki Harmusji Gharda v Mehervan Rustom Irani*, (2009) 6 SCC 475 [LNIND 2009 SC 1276] (**section 339**). [One month, or Rs. 500, or both (**section 341**).]

The slightest unlawful obstruction to the liberty of a person to go lawfully when and where he likes to go is punishable.

## **Wrongful confinement.**

Wrongful confinement is (1) wrongfully restraining a person, (2) in such a manner as to prevent him from proceeding beyond certain circumscribing limits (**section 340**). [One year, or Rs. 1,000 or both (**section 342**).]

Wrongful confinement is a form of wrongful restraint. Wrongful restraint keeps a man out of a place where he wishes to be. Wrongful confinement keeps a man within limits out of which he wishes to go, and has a right to go.

In wrongful confinement there must be a total restraint, not a partial one. If a man merely obstructs the passage of another in a particular direction, leaving him at liberty to stay where he is or to go in any other direction if he pleases, he cannot be said thereby to confine him wrongfully. Detention through the exercise of moral force, without the accompaniment of physical force or actual conflict, is sufficient. But there must be voluntary obstruction to the person alleged to be confined so as to prevent him from proceeding in any direction. Malice is not necessary. The period of confinement is immaterial except with reference to punishment.

*Leading cases:—Bird v Jones. Dhanial v Clifford. Austin v Dowling.*

The Court can award compensation for false imprisonment in cases where the victim gains his freedom through Court order. *Poonam v SI of Police; Paothing v State of Nagaland.*

The following are aggravated forms of this offence:—

1. Wrongful confinement for three or more days (**section 343**).
2. Wrongful confinement for ten or more days (**section 344**).
3. Wrongful confinement of a person knowing that a writ for his liberation has been issued (**section 345**).
4. Wrongful confinement is secret so as to indicate an intention that the confinement of such person may not be known to any person interested in that person or to any public servant (**section 346**).
5. Wrongful confinement for the purpose of extorting any property or valuable security, or constraining person to do anything illegal or to give any information which may facilitate the commission of an offence (**section 347**).
6. Wrongful confinement for the purpose of extorting confession or information which may lead to the detection of an offence, or compelling restoration of any property or valuable security or the satisfaction of any claim or demand (**section 348**).

## **Force.**

A person is said to use force to another,

- (1) if he causes motion, change of motion, or cessation of motion to that other, or
- (2) if he causes to any substance such motion, or change of motion or cessation of motion as brings that substance into contact (a) with any part of that other's body, or (b) with anything which that other is wearing or carrying, or (c) with anything so situated that such contact affects that other's sense of feeling; provided that he does so in any of the three following ways:—



- (i) By his own bodily power.
- (ii) By disposing any substance in such a manner that the motion or change of motion, or cessation of motion takes place without any further act on his part, or on the part of any other person.
- (iii) By inducing any animal to move, to change its motion, or to cease to move (**section 349**).

### **Criminal force.**

A person uses 'criminal force' to another if

- (1) he intentionally uses force to any person,
- (2) without that person's consent,
- (3) in order to the committing of any offence, or
- (4) intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause, injury, fear, or annoyance to the person to whom the force is used (**section 350**). [Three months, or Rs. 500, or both.]

### **Assault.**

A person commits an 'assault', if he

- (1) makes any gesture or any preparation,
- (2) intending or knowing it to be likely,
- (3) that such gesture or preparation will cause any person present to apprehend,
- (4) that he is about to use criminal force to that person (**section 351**). [Three months, Rs. 500, or both (**section 352**).]

An assault is something less than the use of criminal force, the force being cut short before the blow actually falls. An assault is included in every use of criminal force. Mere words do not amount to an assault, but the words which the party threatening uses at the time may give his gestures such a meaning as may make them amount to an assault (**Explanation**).

Assault or criminal force on grave provocation is not severely punishable. [One month, or Rs. 200 fine, or both (**section 358**).] The provocation should not be voluntarily sought, or it should not have been given by anything done in obedience to the law or done by a public servant in the lawful exercise of his powers, or done in the lawful exercise of the right of private defence.

*Leading cases:—Cama v Morgan. Stephen v Myres. Awadesh Mahato.*

An 'assault' differs from an 'affray'—

- (1) An 'assault' may take place anywhere, whereas an 'affray' must be committed in a public place.

(2) An 'assault' is regarded as an offence against the person of an individual, whereas an 'affray' is regarded as an offence against the public peace.

The following are aggravated forms of the offence of 'assault' and 'use of criminal force':—

1. Assaulting or using criminal force to deter a public servant from the discharge of his duty (**section 353**).

2. Assaulting or using criminal force to a woman with intent to outrage her modesty (**section 354**). The [Criminal Law Amendment Act](#) introduced some new offences against women;

(a) Sexual harassment (**section 354A**)

(b) Assault or use of criminal force to woman with intent to disrobe (**section 354B**)

(c) Voyeurism (**section 354C**)

(d) Stalking (**section 354D**)

Knowledge that modesty is likely to be outraged has been held to be sufficient to constitute the offence without any deliberate intention to do so. *Raju Pandurang Mohale v State of Maharashtra*, (2004) 4 SCC 371 [LNIND 2004 SC 194]. Police officers committing cruelty upon a woman-worker who came into the police station along with other workers have been held liable to pay her compensation. The Government was ordered to pay out of their salary.

*Leading cases:—People's Union of Democratic Rights v Police Commissioner, Delhi Police; Rupan Deol Bajaj v Kanwar Pal Singh Gill*

3. Assaulting or using criminal force with intent to dishonour a person otherwise than on grave provocation (**section 355**).

4. Assaulting or using criminal force in attempting to commit theft of property carried by a person (**section 356**).

5. Assaulting or using criminal force to any person, in attempting wrongfully to confine that person (**section 357**).

## **Kidnapping.**

Kidnapping is of two kinds:

(I) Kidnapping from India, and

(II) Kidnapping from lawful guardianship (**section 359**). [Seven years and fine.]

### **I. Whoever**

(1) conveys any person beyond the limits of India,

(2) without the consent (a) of that person, or (b) of some person legally authorised to consent on behalf of that person,

is said to kidnap that person from India (**section 360**).

**II. Whoever** (a) takes, or (b) entices

(1) any minor (a) under 16 years of age, if a male, or (b) under 18 years of age, if a female, or

(2) any person of unsound mind,

(3) out of the keeping of the lawful guardian of such minor or person of unsound mind,

(4) without the consent of such guardian,

is said to kidnap such minor or person from lawful guardianship (**section 361**).

These sections protect children of tender age from being kidnapped or seduced for immoral purposes, as well as protect the rights of parents and guardians having the custody of minors or insane persons.

The persons kidnapped must be *taken* out of the possession of the parent by any means, forcible or otherwise: and the consent of the person kidnapped does not lessen the offence.

The offence of kidnapping is complete when the minor is actually taken from lawful guardianship (*R v Nemai Chatteraj*; *R v Ram Dei*; *Nanhak Sao v King-Emperor*). Kidnapping from guardianship is not a continuing offence.

It is no defence that the accused did not know that the person kidnapped was under 18 or believed that she had no guardian. Anyone dealing with such person does so at his peril. The period of detention is immaterial.

The circumstance that the act of the accused was not immediate cause of the girl leaving her father's place is no defence if he had at an earlier stage solicited her or induced her to take this step (*Varadrajan*).

*Leading cases:—T D Vadgama. Sachindra Nath.*

### **Abducting.**

A person is said to 'abduct' another if he

(1) by force compels, or

(2) by any deceitful means induces,

any person to go from any place (**section 362**).

'Abduction' differs from 'kidnapping'—

(1) In 'abduction' the removal of the person need not be from the protection of the lawful guardian.

(2) The element of force or fraud existing in 'abduction' is absent in kidnapping.

(3) In 'abduction' the age of the person abducted is immaterial, in 'kidnapping', the person must be under 16, if a male, and under 18, if a female.

(4) Abduction is a continuing offence. Kidnapping is not a continuing offence.

The following are aggravated forms of the offence of 'kidnapping' or 'abducting':—

1. Kidnapping or maiming a minor for purposes of begging (**section 363A**).

2. Kidnapping or abducting in order to murder (**section 364**). *Badshan v State of UP*, (2008) 3 SCC 681 [LNIND 2008 SC 310].

2a. Kidnapping for ransom, etc., (**section 364-A**) *Suman Sood v State of Rajasthan*, (2007) 5 SCC 634 [LNIND 2007 SC 647], statement of ingredients.

3. Kidnapping or abducting with intent secretly and wrongfully to confine a person (**section 365**).

4. Kidnapping or abducting a woman to compel her to marry any person against her will, or to force or seduce her to illicit intercourse (**section 366**).

*Leading case:—Ramesh.*

Punishment followed where the offence was established by other evidence, though the body of the young widow who was subjected to gang rape was not traceable.

*Leading case:—Arun Kumar v State of UP.*

5. Inducing a woman to go from any place, by means of criminal intimidation or abuse of authority or any method of compulsion, in order that she may be forced or seduced to illicit intercourse (*ibid*).

6. Inducing a minor girl under the age of 18 years to go from any place or to do any act with the intention or knowledge that she will be forced or seduced to illicit intercourse (**section 366A**).

7. Importing a girl under 21 years of age from a foreign country or from the State of Jammu and Kashmir with intent or knowledge that she will be forced or seduced to illicit intercourse (**section 366B**).

8. Kidnapping in order to subject a person to grievous hurt, slavery, or unnatural lust (**section 367**).

9. Wrongfully concealing or confining a kidnapped or abducted person (**section 368**).

10. Kidnapping or abducting a child under 10 years with intent to steal movable property from the person of such child (**section 369**).

Offences dealing with trafficking

1. Trafficking of person (**section 370**)

2. Exploitation of a trafficked person (**section 370A**)

3. Habitually importing, exporting, removing, buying, selling, trafficking or dealing in slaves (**section 371**).

### **Sale of minor for immoral purposes.**

Two provisions relate to selling or buying of persons under 18 years of age for immoral purposes:—

1. Selling, letting to hire, or otherwise disposing of any person under the age of 18 years for the purpose of (a) prostitution, or (b) illicit intercourse, or (c) for any unlawful and immoral purpose, or (d) knowing it to be likely that such person will at any age be used for such a purpose (**section 372**).

2. Buying, hiring, or otherwise obtaining possession of such person for a like purpose (**section 373**).

When a girl under 18 years is disposed of to, or is obtained possession of by, a prostitute or a brothel-keeper, the person disposing of or obtaining possession of such girl shall be presumed to have disposed of her or obtained possession of her, for prostitution (**Explanation 1, sections 372 and 373**).

"Illicit intercourse" means sexual intercourse between persons not united by marriage, or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasimartial relation (**Explanation 2, sections 372 and 373**).

### **Unlawful labour.**

Unlawfully compelling any person to labour against his will [One year or fine, or both (**section 374**).]

### **Sexual offences**

As introduced by the Criminal law (Amendment Act), 2013—A man is said to commit "rape" if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:—

**First.**—Against her will.

**Second.**—Without her consent.

**Third.**—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

**Fourth.**—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

**Fifth.**—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

**Sixth.**—With or without her consent, when she is under 18 years of age.

**Seventh.**—When she is unable to communicate consent.

*Leading cases:*—**Rameswar. Bhoginbhai. Rafique.**

It is a crime against basic human rights violative of [Article 21 of the Constitution](#). The courts should deal with such offence sternly and severely. The victim's testimony can be acted upon without corroboration in material particulars. *Aman Kumar v State of Haryana*, (2004) 4 SCC 379 [LNIND 2004 SC 184].

For the purposes of this section, "vagina" shall also include *labia majora* (**Explanation-1**). Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act (**Explanation-2**).

A medical procedure or intervention shall not constitute rape (**Excep.1**).

Sexual intercourse or sexual acts by a man with his own wife, the wife not being under 15 years of age, is not rape (**Excep. 2**). See *Independent Thought v UOI*, where the Supreme Court held that sexual intercourse with girl below 18 years of age is rape regardless of whether she is married or not. The Supreme Court held that Exception 2 to [section 375, IPC, 1860](#), is to read down as, "Sexual intercourse or sexual acts by man with his own wife, wife not being 18 years, is not rape".

*Leading cases:*—**Balwant Singh v State of Punjab Arun Kumar v State of UP. Promod Mehta v State of Bihar.**

Indecent assault upon a woman does not amount to an attempt to commit rape unless the Court is satisfied that the accused was determined to gratify his passion at all events, and in spite of all resistance.

*Leading case:*—**Rameshwar(see comments under section 354).**

### **Other Rape related offences**

Causing death or resulting in persistent vegetative state of victim (**section 376A**)

Sexual intercourse by husband upon his wife during separation (**section 376B**)

Sexual intercourse by a person in authority (**section 376C**)

Gang rape (**section 376D**)

Punishment for repeat offenders (**section 376E**)

The circumstances in which the corroboration of the testimony of the victim of a rape would be necessary have been explained by the Supreme Court in *State of Maharashtra v CK Jain*.

The mitigating circumstances which would enable the Court to award less than 10 years' imprisonment have been explained by the Supreme Court in *State of Haryana v Prem Chand*, with this caution that though the conduct of the prosecutrix in the facts and circumstances of the case may be taken into account, her general character or reputation would neither be an aggravating factor, if good, nor a mitigating factor, if bad.

The need for proper identification of the offender and that of promptitude in filing FIR have also been explained.

Leading cases:—*Harpal Singh v State of HP; R v Chance*.

### **Unnatural offence.**

Unnatural offence is having (1) carnal intercourse, (2) against the order of nature, (3) with any man, woman or animal (section 377).

Leading case:—*Navtej Singh Johar v UOI* (holding that consensual carnal intercourse among adults in private space, does not in any way harm public decency or morality).

### **Offences against property. Chapter XVII.**

The following are the offences against property dealt with in Chapter XVII:—

1. Theft.
2. Extortion.
3. Robbery.
4. Dacoity.
5. Criminal misappropriation of Property.
6. Criminal Breach of Trust.
7. Receiving stolen property.
8. Cheating.
9. Fraudulent deeds and dispositions of Property.
10. Mischief.
11. Criminal trespass.

The above offences may be grouped in three classes:—

- (1) Offences dealing with deprivation of property (**sections 378–424**).
- (2) Offences dealing with injury to property (**sections 125–440**).
- (3) Offences dealing with violation of rights of property in order to the commission of some other offence (**sections 441–462**).

### **Theft.**

A person is said to commit theft who

- (1) intending to take dishonestly,
- (2) any movable property,
- (3) out of the possession of any person,
- (4) without that person's consent,

(5) moves that property, in order to such taking (**section 378**). [Three years, or fine, or both (**section 379**).]

A thing attached to the earth can be the subject of theft when separated from the earth. A person moving an obstacle which prevented a thing from moving is said to cause it to move. A person causing an animal to move is said to move whatever is thereby moved by the animal. The owner's consent may be express or implied (**Explanations**).

The intention to take dishonestly must exist at the time of the moving of the property. If the act is not done *animofurandi*, it will not amount to theft. The test is: Is the taking warranted by law? It is not necessary that the taking should be of a permanent character, or that the accused should have derived any profit. Property removed in the assertion of a contested claim does not constitute theft. A *bona fide* claim of right rebuts the presumption of dishonesty. But a creditor removing a debtor's property to enforce payment is liable. A person taking dishonestly his own property out of the possession of another is guilty of this offence. Thus, the person from whose possession the property is taken may not be the owner. If one of the joint owners takes exclusive possession of joint property dishonestly he would be guilty of theft. The least removal of the thing from its place is sufficient for the offence. It does not matter whether the property remains within its owner's reach or not.

*Leading cases:—Ramratan, K N Mehra, Chandi Kumar v Abanidhar Roy, R v Nagappa, R v Shri Churn Chungo, Ram Ekbal.*

The following are aggravated forms of the offence:—

1. Theft in any building, tent, or vessel, used as a human dwelling or for the custody of property (**section 380**).
2. Theft by a clerk or a servant, of property in possession of his master (**section 381**).
3. Theft after preparation made for causing death, hurt, or restraint, or fear of death, hurt, or restraint to any person, in order to the committing of such theft or the effecting of such escape afterwards, or the retaining of property taken by such theft (**section 382**). Knowledge acquired by those who forced their entry into a house that there was only one old man inside and he suffered from a weak heart would be sufficient for conviction, though they left without taking away anything and the man died behind them, his heart giving way.

*Leading case:—R v Watson.*

## **Extortion**

A person commits 'extortion' if he

- (1) intentionally puts any person in fear of any injury
  - (a) to that person, or
  - (b) to any other, and thereby
- (2) dishonestly induces the person so put in fear
- (3) to deliver to any person any
  - (a) property, or



- (b) valuable security, or
- (c) anything signed or sealed, which may be converted into a valuable security (**section 383**). [Three years, or fine, or both (**section 384**).]  
Putting any person in fear of injury in order to commit extortion [Two years, or fine, or both (**section 385**).]

The inducement to part with the property should be dishonest, i.e., with intent to cause wrongful gain or loss.

The 'fear' in extortion must be such as to unsettle the mind of the person on whom it operates and to take away from his acts that element of free voluntary action which alone constitutes consent. The terror of a criminal charge or of loss of an appointment amounts to a fear of injury. 'Fear' must precede the delivery of property. Thus, wrongful retention of property obtained without threat will not amount to extortion, even though subsequent threats are used to retain it.

'Theft' differs from 'extortion':—

(1) In 'theft' the property is taken without the owner's consent; in 'extortion' the consent is obtained by putting a person in fear of any injury to him or any other. In theft element of force does not arise.

(2) 'Theft' can only be committed of movable property; 'extortion' may be committed of immovable property as well.

The following are aggravated forms of extortion:—

1. Extortion by putting a person in fear of death, or grievous hurt to that person or to any other (**section 386**).

2. Putting or attempting to put any person in fear of death, or grievous hurt to himself or any other in order to commit extortion (**section 387**).

3. Extortion by threat of accusation of an offence, punishable with death or imprisonment for life, or 10 years' imprisonment, or of having attempted to induce any other person to commit such offence (**section 388**).

4. Putting or attempting to put any person in fear of such accusation as is mentioned above in order to commit extortion (**section 389**).

Robbery. 'Robbery' is an aggravated form of either theft or extortion. In all 'robbery' there is either theft or extortion.

Theft is 'robbery' if—

(1) in order to the committing of the theft, or in committing the theft, or

(2) in carrying away, or attempting to carry away, property obtained by the theft,

(3) the offender, for that end, voluntarily causes, or attempts to cause, to any person

(a) death, hurt, or wrongful restraint, or

(b) fear of instant death, instant hurt, or instant wrongful restraint.

Extortion is 'robbery' if the offender, at the time of committing the extortion, is

(1) in the presence of the person put in fear, and

(2) commits the extortion by putting that person in fear of instant death, instant hurt, or instant wrongful restraint to that person, or to some other person, and

(3) by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted (**section 390**). [Ten years and fine. If the robbery is committed on the highway between sunset and sunrise, then 14 years (**section 392**). Attempt, seven years and fine (**section 393**). If hurt is caused, imprisonment for life, or 10 years and fine (**section 394**).] The offender is said to be *present* if he is near enough to put the other in fear.

An accidental injury by a thief will not convert his offence into robbery. Similarly, if hurt is caused to avoid capture, while retreating without any property, the offence will not amount to robbery, e.g., throwing stones to avoid pursuit.

Belonging to a wandering gang of persons associated for the purpose of habitually committing theft or robbery is made punishable (**section 401**).

### **Dacoity.**

When (1) five or more persons conjointly commit, or attempt to commit, a robbery, or

(2) 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' (**section 391**). [Imprisonment for life or 10 years (**section 395**).]

If any one of the dacoits commits murder in committing dacoity, every one of them shall be punished with death, or imprisonment for life, or rigorous imprisonment extending to 10 years and fine (**section 396**). It does not matter whether a particular dacoit was inside the house where the dacoity was committed, or outside the house, so long as the murder is committed in the commission of the dacoity. It is not necessary that the murder should be committed in the presence of all. It is, however, necessary that murder should be committed in course of the commission of dacoity. Thus, while the dacoits were returning after an attempt to commit dacoity without any booty due to stiff opposition of the villagers and one of the dacoits to facilitate retreat killed one of the villagers by shooting, it was held that as dacoity had ended the moment the dacoits took to their heels without any booty the murder was an individual act of the dacoit who fired the fatal shot and other dacoits could only be held liable for an offence under [section 395, IPC, 1860](#), and not under section 396.

*Leading case:—Shyam Behari.*

Preparation to commit dacoity is punishable (**section 399**). and so is either belonging to a gang of dacoits (**section 400**), or assembling for the purpose of committing dacoity (**section 402**).

Aggravated forms of robbery and dacoity are—

(1) Offender using any deadly weapon at the time of committing robbery or dacoity or causing or attempting to cause death or grievous hurt to any person (**section 397**).

For the purpose of this section it is not necessary that the weapon should be actually used. Mere carrying of the weapon causes a psychological sense of insecurity and fear and this would constitute enough use within the meaning of this section.

*Leading case:—Phool Kumar.*

This section only applies to the offender who actually uses a deadly weapon, or causes grievous hurt.

(2) Attempt to commit robbery or dacoity when armed with a deadly weapon (**s 398**).

### **Criminal misappropriation.**

A person commits 'criminal misappropriation' if he

(1) dishonestly misappropriates or converts to his own use

(2) any movable property (**section 403**). [Two years, or fine, or both.]

The offence is committed though the misappropriation be only temporary. The finder of property is not guilty if he takes it to protect it or to find the owner; but he is guilty, if he appropriates it knowing the owner, or having the means of discovering him, or before using reasonable means to discover him, or not believing it to be his own property, or not believing in good faith that the owner cannot be found (**Explanations 1 and 2**).

This offence 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. Thus, retention of money by a servant authorized to collect it from a person may be criminal misappropriation even though he retains it on account of wages due to him.

A person retaining money paid by mistake will be guilty of criminal misappropriation. But there can be no criminal misappropriation of things which have actually been abandoned.

*Leading cases:—Bhagiram v Abar Dome. R v Sita. Romesh Chunder v Hiru Mondal.*

'Theft' is distinguished from 'criminal misappropriation'—

(1) In 'theft' the property is taken out of the possession of another person and the offence is complete as soon as the offender moves the property. In 'criminal misappropriation' there is no invasion of another's possession. The property is often innocently got into possession.

(2) In 'theft' the dishonest intention must precede the act of taking; in 'criminal misappropriation' it is the subsequent intention to convert or misappropriate the property that constitutes the offence.

There is a difference between 'criminal misappropriation' and 'cheating'. In 'criminal misappropriation' as in 'criminal breach of trust', the original reception of property is legal, the dishonest conversion takes place subsequently. In 'cheating' deception is practised to get possession of the thing.

Dishonest misappropriation of property possessed by a deceased person at the time of his death is an offence (**section 404**).

### **Criminal breach of trust.**

A person commits 'criminal breach of trust', if he

- (1) being in any manner entrusted with (a) property, or (b) any dominion over property;
- (2) dishonestly (a) misappropriates, or (b) converts to his own use, that property; or
- (3) dishonestly (a) uses, or (b) disposes of, that property;
- (4) in violation (a) of any direction of law prescribing the mode in which such trust is to be discharged, or (b) of any legal contract, express or implied, which he has made touching the discharge of such trust; or
- (5) wilfully suffers any other person so to do (**section 405**). [Three years, or fine, or both (**section 406**).]

The property may be movable or immovable.

'Criminal misappropriation' differs from 'criminal breach of trust'—

- (1) In the former the property comes into the possession of the offender by some casualty, and he afterwards misappropriates it; in the latter the offender is lawfully entrusted with property and he dishonestly misappropriates it or wilfully suffers any other person to do so.
- (2) 'Criminal breach of trust' only applies to conversion of property held by a person in a fiduciary capacity; 'criminal misappropriation', to property coming into possession of the offender anyhow.
- (3) 'Criminal misappropriation' can only be of movable property. 'Criminal breach of trust' can be of any property, movable or immovable.

The following are aggravated forms of criminal breach of trust:—

1. Criminal breach of trust by a carrier, wharfinger, or warehouse-keeper (**section 407**).
2. Criminal breach of trust by a clerk or servant (**section 408**).
3. Criminal breach of trust by a public servant, banker, merchant, factor, broker, attorney or agent (**section 409**).

The Supreme Court has laid down that the offence is not wiped off by reason of the fact that the money in question has been returned or accounted for.

*Leading case:—Viswanath v State of J&K.*

### **Stolen property.**

'Stolen property' is—

- (1) property the possession whereof has been transferred by (a) theft, (b) extortion, or (c) robbery;
- (2) property criminally misappropriated;
- (3) property in respect of which criminal breach of trust has been committed.

It is immaterial whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it ceases to be stolen property (**section 410**). [Receiving or obtaining stolen property

knowing it to be such is punishable with three years, or fine, or both (**section 411**).] A person who is found to be in the possession of property shortly after an offence, is presumed to be criminally mixed up with the transaction. The Supreme Court has explained the meaning of the term "recent possession" in this connection.

*Leading case:—Earabhadrapa v State of Karnataka.*

This section does not apply to the actual thief when theft is committed in India.

If stolen goods are restored to the possession of the owner and he returns them to the thief for the purpose of enabling him to sell them to a third person, they are no longer stolen goods; and the third person cannot be convicted of receiving them although he received them knowing them to be stolen.

'Dishonest retention' of property is distinguished from 'dishonest reception' of it. In the former offence the dishonesty supervenes after the act of acquisition of possession, while in the latter dishonesty is contemporaneous with such act. Thus a person cannot be convicted of 'receiving' if he has no guilty knowledge at the time of receipt. But he is guilty of 'retaining' if he subsequently knows or has reason to believe that the property was stolen. Neither the thief, nor the receiver of stolen property, commits the offence of retaining such property dishonestly merely by continuing to keep possession of it.

Property into or for which the stolen property has been converted or exchanged is not stolen property, e.g., proceeds of a stolen cheque, or the change given for a stolen currency-note. But an ingot made out of stolen ornaments still retains its character as stolen property.

*Res nullius* cannot be the subject of receiving, e.g., a bull let loose as a part of religious ceremony and belonging to no one is not the subject of theft.

If articles belonging to different persons are received at one time, the conviction will be only for one act of receiving and not separate convictions.

The following are aggravated forms of this offence:—

1. Dishonestly receiving property stolen in the commission of a dacoity (**section 412**).
2. Habitually dealing in stolen property (**section 413**).
3. Voluntarily assisting in concealing or disposing of, or making away with, stolen property (**section 414**).

### **Cheating.**

A person is said to 'cheat' if he

- (1) by deceiving any person;
- (2) fraudulently or dishonestly induces the person so deceived;
- (3) to deliver any property to any person; or
- (4) to consent that any person shall retain any property; or
- (5) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not deceived; and which

(6) act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property (**section 415**).

Dishonest concealment of facts is a deception (**Explanation**).

[One year, or fine, or both (**section 416**).]

Like 'extortion', cheating is committed by the wrongful obtaining of a consent. The difference is that, in the former the consent is obtained by intimidation, in the latter, by deception.

'Cheating' also differs from 'theft'

(1) In the former the property obtained by deception may be movable or immovable, in the latter, it must be movable.

(2) In 'theft' the property is taken without the consent of the owner, in 'cheating' the owner's consent is obtained by deception.

It is not necessary that cheating should be committed in express words if it can be inferred from all the circumstances attending the obtaining of property. But it is necessary that a person should be deceived. If a person knows what the deception is and acts on it, the person practising deception will be guilty of attempt to cheat but not of cheating. The offence will be committed even if the person deceived is other than the one on whom the deception is practised. Similarly, it is not necessary that there should be an intent to deceive any particular individual. If a false prospectus or balance-sheet is issued to the public, or to a section of the public, the persons issuing it will be guilty of cheating although there was no intent to deceive any one in particular (**R v Ross**).

The person to whom the property is delivered may not be *participes criminis*. Property obtained by cheating does not fall within the definition of stolen property.

Mere puffing will not amount to this offence (**R v Bryan**, the *Elkington spoon case*).

*Leading cases:—R v Abbas Ali. R v Appasami. R v Soshi Bhushan. Bashirbhai.*

If the deception is in regard to a future event, then there must be evidence of an intention to cheat when the deception was made. Mere failure to carry out a promise is not enough. A man may intend to fulfil his promise, but subsequently he may change his mind.

The following are aggravated forms of cheating:—

1. Cheating with knowledge that wrongful loss may thereby be caused to a person whose interest the offender is bound to protect (**section 418**).

2. Cheating by personation (**sections 416, 419**).

3. Cheating and thereby dishonestly inducing the person deceived to deliver any property to any person, or to make, alter, or destroy a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security (**section 420**). Provisions of the section.

A person is said to 'cheat by personation' if he cheats

### **Cheating by personation.**

(1) by pretending to be some other person, or

(2) by knowingly substituting one person for another, or

(3) by representing that he or any other person is a person other than he or such other person really is (**section 416**).

It is immaterial whether the individual personated is a real or imaginary person (**Explanation**). [Three years, or fine or both (**section 417**).]

As soon as a man by words, act, or sign, holds himself out as a particular person with the object of passing himself off as that person, and exercising the right which that person has, he has personated him. For instance, if A represents himself to be B at an examination, or represents himself to be of a particular caste which he is not, or gives a false description of his position in life, he commits this offence.

### **Fraudulent deeds and dispositions.**

The following provisions relate to fraudulent deeds and dispositions of property:—

1. Dishonest or fraudulent removal or concealment or transfer of property to prevent distribution among creditors (**section 421**).

2. Dishonestly or fraudulently preventing from being made available for creditors a debt or demand due to the offender or to any other person (**section 422**).

3. Dishonestly or fraudulently signing, executing or becoming a party to any instrument which purports to transfer or charge any property and which contains any false statement as to the consideration for such transfer or charge or as to the person or persons for whose benefit it is intended to operate (**section 423**).

4. Dishonestly or fraudulently concealing or removing any property of the offender or of any other person or assisting in the concealment, or removal thereof, or dishonestly releasing any demand or claim to which the offender is entitled (**section 424**).

A person commits 'mischief' if he

### **Mischief.**

(1) with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to (a) the public or (b) any person;

(2) causes (a) the destruction of any property, or (b) any such change in any property, or in the situation thereof, as destroys or diminishes its value or utility, or affects it injuriously (**section 425**).

The offender need not intend loss or damage to the owner. The property may belong to the offender, or to him jointly with others (**Explanation**). [Three months, or fine or both (**section 426**).]

A man may commit mischief on his own property to cause wrongful loss to some person. If a person does any act amounting to mischief in the exercise of a *bona fide* claim or right he cannot be convicted of this offence. An act done through negligence will never amount to mischief. Mischief cannot be committed in respect of a *res nullius*, e.g., killing a bull which was set free.

The aggravated forms of mischief are as follows:—

1. Committing mischief, and thereby causing damage to the amount of Rs. 50 (**section 427**).
2. Mischief by killing, poisoning, rendering useless, or maiming any animal of the value of Rs. 10 (**section 428**).
3. Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow or ox or any other animal of the value of Rs. 50 or upwards (**section 429**).

This offence is similar to that created under [section 50 of the Wild Life Protection Act, 1972](#). The two enactments are, therefore, not likely to attract the doctrine of double jeopardy.

*Leading case:—State of Bihar v Murad Ali Khan.*

4. Mischief by injury to works of irrigation or by wrongfully diminishing the supply of water for agricultural purposes or for food, or drink, or cleanliness (**section 430**).
5. Mischief by injury to public road, bridge, river or channel, so as to render it impassable or less safe for travelling or conveying property (**section 431**).
6. Mischief by causing inundation or obstruction to public drainage attended with damage (**section 432**).
7. Mischief by destroying, or moving or rendering less useful a light house or sea-mark or by exhibiting false lights (**section 433**).
8. Mischief by destroying, moving, or rendering less useful any land-mark fixed by the authority of a public servant (**section 434**).
9. Mischief by fire or explosive substance with intent to cause damage to the amount of Rs. 100 or upwards or where the property is agricultural produce—Rs. 10 or upwards (**section 435**).
10. Mischief by fire or explosive substance with intent to destroy any building used as a place of worship, or human dwelling, or as a place for the custody of property (**s. 436**).

What is a new development under the section, the Madras High Court allowed public interest litigation under the section and compelled the State to pay compensation to the victims of a riot to whom the State did not provide any protection at the material time nor prosecuted the offenders afterwards.

*Leading case:—R Gandhi v UOI.*

11. Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden (**section 437**).
12. Mischief or attempt to commit mischief with fire or any explosive substance (**section 438**).
13. Intentionally running a vessel aground or ashore with intent to commit theft or misappropriation of property (**section 439**).
14. Mischief committed after preparation made for causing to any person death, hurt, or wrongfully restraint, or fear of death, hurt, or wrongful restraint (**section 440**).

A person commits 'criminal trespass' if he



### **Criminal trespass.**

- (1) enters into or upon property in the possession of another;
- (2) with intent to commit an offence; or
- (3) to intimidate, insult, or annoy any person in possession of such property; or
- (4) having lawfully entered into or upon such property unlawfully remains there;
  - (a) with intent to intimidate, insult, or annoy any such person, or
  - (b) with intent to commit an offence (**section 441**). [Three months or Rs. 500, or both (**section 447**).]

Trespass can only be committed in respect of corporeal property. The essence of the offence is the intention with which it is committed. The causing of such annoyance, intimidation or insult must be the main aim of the entry (*Mathri*). It is not necessary that the intention must be to annoy a person who is actually present at the time of the trespass (*Rash Behari*). A person entering on the land of another in the exercise of a *bona fide* claim of right will not be guilty though the claim is unfounded. But if the entry is made with *intent to annoy* it does not matter whether it was made under a claim of right. The annoyance must be such as would affect an ordinary man, not what would specially and exclusively annoy a particular individual of a queer temperament.

The property must be in the actual possession of a person other than the trespasser. It is *de facto* and not *de jure* possession that is necessary. The person in possession may be an individual or a corporate person.

The entry must be to commit an offence as defined in **section 40**, and not any unlawful act. Thus entering an exhibition building without a ticket does not amount to criminal trespass. Slum dwellers upon public land cannot be equated with a trespasser under these sections. Their action has been described by the Supreme Court to be not voluntary, but one due to compulsion of circumstances.

*Leading case:—Olga Tellis v Bombay MC.*

### **House-trespass.**

A person commits 'house-trespass' if he

- (1) commits criminal trespass
- (2) by entering into, or remaining in
  - (a) any building, tent, or vessel used as a human dwelling, or
  - (b) any building
    - (i) used as a place of worship, or
    - (ii) as a place for the custody of property (**section 442**).

Introduction of any part of the trespasser's body is sufficient (**Explanation**). [One year, or Rs. 1,000, or both (**section 448**).]

The following are aggravated forms of this offence:—

1. House-trespass in order to the commission of an offence punishable with death (**section 449**).
2. House-trespass in order to the commission of an offence punishable with imprisonment for life (**section 450**).
3. House-trespass in order to the commission of an offence punishable with imprisonment (**section 451**).
4. House-trespass after preparation made for causing hurt, assault, or wrongful restraint to any person, or for putting any person in fear of hurt, assault, or wrongful restraint (**section 452**).

### **Lurking house-trespass.**

'Lurking house-trespass' is house-trespass, after taking precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass (**section 443**). [Two years and fine (s. 453).]

Whoever commits lurking house-trespass after sunset and before sunrise is said to commit 'lurking house-trespass' by night (**section 444**). [Three years and fine (**section 456**).]

### **House-breaking.**

A person is said to commit 'house-breaking' if he

- (a) commits house-trespass, and effects his *entrance* into the house, or
- (b) if being in the house for committing an offence, or after committing an offence, *quits* it in any of the following ways—
  - (1) Through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.
  - (2) Through any passage not intended by any person other than himself, or an abettor of the offence, for human entrance, or through any passage to which he has obtained access by scaling or climbing over any wall or building.
  - (3) Through any passage which he, or any abettor of the house-trespass, has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.
  - (4) By opening any lock.
  - (5) By using criminal force, or committing an assault, or by threatening any person with assault.
  - (6) By any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself, or by an abettor of the house-trespass (**section 445**). [Two years and fine (**section 453**).]

House-breaking after sunset and before sunrise is said to be 'house-breaking by night' (**section 466**). [Three years and fine (**section 456**).]

The following are aggravated forms of the offence of lurking house-trespass and housebreaking:—

1. Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment (**section 454**).
2. Lurking house-trespass or house-breaking after preparation made for causing hurt to any person (**section 455**).
3. Causing grievous hurt or attempting to cause death or grievous hurt to any person whilst committing lurking house-trespass or house-breaking (**section 459**).

The following are aggravated forms of the offence of 'lurking house-trespass by night' and 'house-breaking by night':—

1. Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment (**section 457**).
2. Lurking house-trespass or house-breaking by night, after preparation made for causing hurt to any person (**section 458**).

All persons jointly concerned in lurking house- trespass or house-breaking by night are punishable where death or grievous hurt is caused by one of them (**section 460**).

Dishonestly breaking open a receptacle containing property is punishable (**section 461**). The punishment is much more severe when such act is committed by a person who is entrusted with its custody (**section 462**).

Chapter XVIII deals with offences relating to documents and to property marks.

A person commits forgery if he

### **Forgery. Chapter XVIII.**

- (1) makes any false document, or part of a document,
- (2) with intent
  - (a) to cause damage or injury to the public or to any person, or
  - (b) to support any claim or title, or
  - (c) to cause any person to part with property, or
  - (d) to enter into any express or implied contract, or
  - (e) to commit fraud, or that fraud may be committed (**section 463**).

[Three years, or fine or both (**section 465**).] Using as genuine a forged document is punishable likewise (**section 471**).

A person is said to make a false document—

- I. If he dishonestly or fraudulently (a) makes, signs, seals, or executes a document,
- (b) with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed

- (i) 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
  - (ii) at the time at which he knows that it was not made, signed, sealed, or executed.
- Or

II. If he dishonestly, or fraudulently, without lawful authority by cancellation or otherwise,

- (a) alters a document in any material part thereof,
- (b) 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

III. If he dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person

- (a) by reason of unsoundness of mind, or intoxication cannot, or
- (b) by reason of deception practised upon him, does not, know the contents of the document, or the nature of the alteration (**section 464**).

A man's signature of his own name may amount to forgery (**Explanation 1**). But this must have been done in order that it may be mistaken for the signature of another person of the same name. Making 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 that person in his lifetime may amount to forgery (**Explanation 2**). A false document made wholly or in part by forgery is designated 'a forged document' (**section 470**).

It is not an essential quality of the fraud mentioned in the section that it should result in or aim at deprivation of property. The offence is complete as soon as a document is made with intent to commit a fraud. But the false document must appear on its face to be one which, if true, would possess some legal validity or must be legally capable of effecting the fraud intended. A writing, though not legal evidence of the matter expressed, may yet be a document if the parties framing it believed and intended it to be evidence of such matter. It is not necessary that the document should be made in the name of a really existing person.

Counterfeiting a document to support a legal claim will amount to forgery. Antedating a document or inserting a false date in it constitutes forgery.

A general intention to defraud, without the intention of causing wrongful gain or loss to any particular person, is sufficient. There must, however, be a possibility of some person being defrauded. A man may have an intent to defraud and yet there may not be any person who could be defrauded by his act.

If several persons combine to forge an instrument and each takes a distinct part in it, they are nevertheless all guilty.

It will amount to forgery even though the fabricated document purports to be a copy of another document.

Personation at an examination will amount to forgery as well as cheating.

*Leading cases:—R v Abbas Ali. R v Lalit Mohan. R v Shoshi Bhushan. R v Kotamraju. Harnam Singh.*

A document made to conceal a previous fraudulent or dishonest act amounts to forgery. But such falsification is not forgery if it is only for the purpose of concealing a previous negligent act.

The following are aggravated forms of the offence of forgery:—

1. Forgery of a record of a Court of Justice or of a register of births, baptism, marriage or burial, or a certificate or authority to institute or defend a suit or a power of attorney (**section 464**).
2. Forgery of a valuable security or will (**section 467**).
3. Forgery for the purpose of cheating (**section 468**).
4. Forgery for the purpose of harming the reputation of any person (**section 469**).

Other offences relating to documents are:—

1. Making or possessing a counterfeit seal, plate, etc., with intent to commit forgery punishable under section 467 (**section 472**).
2. Same as above when punishable otherwise (**section 473**).
3. Possession of a valuable security or will, known to be forged, with intent to use it as genuine (**section 474**).
4. Counterfeiting a device or mark used for authenticating any document described in **section 467**, or possessing counterfeit marked material (**section 475**).
5. Same as above when the documents are other than those described in section 467 (**section 476**).
6. Fraudulent cancellation, destruction, defacement or secreting, etc., of a will or an authority, to adopt, or a valuable security (**section 477**).
7. Falsification of accounts by a clerk or officer or servant with intent to defraud (**section 477A**).

### **Property-mark.**

A mark used for denoting that movable property belongs to a particular person is called a 'property-mark' (**section 479**).

A person uses a false property-mark

- (1) if he marks any movable property or goods, or any case, package, or other receptacle containing movable property or goods; or
- (2) uses any case, package or other receptacle, having any marks thereon;
- (3) in a manner reasonably calculated to cause it to be believed that the property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong (**section 481**). [One year, or fine, or both (**section 482**).]

The function of a property-mark to denote certain ownership is not destroyed because any particular property on which it is impressed ceases to be of that ownership.

While trade-mark denotes the manufacture of quality of the goods to which it is attached, property-mark, the ownership of them.

The following offences relate to counterfeiting any property-mark used by a person:—

1. Counterfeiting any property-mark used by another (**section 483**).
2. Counterfeiting a mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place or that property is of a particular quality or has passed through a particular office or that it is entitled to any exemption (**section 484**).
3. Making or possession of any instrument for counterfeiting a property-mark (**section 485**).
4. Selling or exposing or possessing for sale or any purpose of trade or manufacture any goods or things with a counterfeit property-mark (**section 486**).
5. Making a false mark upon any receptacle containing goods (unless without intent to defraud) (**section 487**).
6. Making use of any false mark (unless without intent to defraud) (**section 488**).
7. Tampering with property-mark with intent to cause injury (**section 489**).

There are five offences relating to currency-notes and bank-notes.—

### **Currency-notes and bank-notes.**

1. Counterfeiting currency-notes or bank-notes (section 489A)
2. Selling, buying, or using as genuine forged or counterfeit currency-notes or bank-notes knowing the same to be forged or counterfeit (**section 489B**).
3. Possession of forged or counterfeit currency-notes or bank-notes, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine (**section 489C**). Possession and knowledge that the currency notes in question were counterfeit are both necessary. The section is not confined to Indian currency notes alone. *K Hashim v State of TN*, (2005) 1 SCC 237 [LNIND 2004 SC 1142].
4. Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes (**section 489D**). It is not necessary that the machinery for counterfeiting found in possession of the accused should be the whole set required for counterfeiting. *K Hashim v State of TN*, (2005) 1 SCC 237 [LNIND 2004 SC 1142].
5. Making or using documents resembling currency-notes or bank-notes (**section 489E**).

The expression "currency-notes" or "bank-notes" would include such notes of a foreign country. In other words, foreign currency would also be within the mischief of these provisions.

*Leading case:—State of Kerala v Mathai Verghese*, (1986) 4 SCC 746 [LNIND 1986 SC 461].

## **Contract of service. Chapter XIX.**

Chapter XIX treats of criminal breach of contracts of service.

The only case in which the Code now punishes a breach of contract is the following:—

Voluntarily omitting to perform a lawful contract to attend on or supply the wants of a child, or an insane or a sick person, who is incapable of providing for his own safety or of supplying his own wants (**section 491**). [Three months, or Rs. 200, or both.]

Ordinary servants, such as cooks, do not come within the purview of this section.

## **Marriage. Chapter XX.**

Chapter XX deals with offences relating to marriage.

The following two provisions relate to mock or invalid marriages:—

1. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage (**section 493**). [Ten years and fine.]
2. Dishonestly or fraudulently going through a marriage ceremony knowing that no lawful marriage is thereby created (**section 496**). [Seven years and fine.]

The latter offence differs from the former in the fact that in it the ceremony is gone through, which is valid on the face of it but invalid for some reason known to one party, or the other. The former section applies to deception practised by a man on a woman; the latter applies to an offence by a man as well as by a woman.

## **Bigamy.**

A person commits 'bigamy' if that person

- (1) having a husband or a wife living,
- (2) marries in any case in which such marriage is void,
- (3) by reason of its taking place during the life of such husband or wife (**section 494**). [Seven years and fine.] If the former marriage is concealed from the person with whom the subsequent marriage is contracted, the punishment is ten years and fine (**section 495**).

There are two exceptions in which the second marriage is not an offence—

- (1) When the first marriage has been declared void by a Court of competent jurisdiction.
- (2) When the husband or wife has been continually absent or not heard of for seven years, provided that this fact be disclosed to the person with whom the second marriage is contracted.

This section applies to Mohammedan women but not to men of that community and to Hindus, Christians and Parsis of either sex.

The first marriage must be a valid marriage. But a Mohammedan girl has the option, if Shia, to ratify, or if Sunni, to cancel, her marriage on reaching the age of puberty if a person other than her father or grand-father had given her in marriage.

If the marriage is not a valid marriage according to the law applicable to the parties, no question of its being void by reason of its taking place during the life time of the husband or the wife of the person arises and this section does not apply. Admission of marriage by the accused is not evidence of it in a bigamy case; the second marriage as a fact and the essential ceremonies constituting it, must be proved. The Courts are not now so emphatic about proof of ceremonies. *Indu Bhagya Natekar v BP Natekar*.

Conversion of a Hindu wife to Mohammedanism or Christianity does not dissolve her marriage with her Hindu husband and if she marries a Mohammedan or a Christian she commits bigamy.

*Leading cases:—R v Ram Kumari, R v Ganga; R v Millard; Bhaurao Shankar, Kanwal Ram.*

It appears, however, that a Christian cannot by embracing Mohammedanism marry a second time during the lifetime of his first wife. He cannot cast off to the winds a contractual obligation by his own act.

The rigour of the second exception was somewhat modified in *Tolson's* case, which lays down that if the second marriage takes place *within* seven years under a *bona fide* belief based on reasonable grounds that the former consort was dead, no offence would be committed.

### **Adultery.**

A person commits adultery, if he

- (1) has sexual intercourse with a person,
- (2) whom he knows or has reason to believe to be the wife of another man,
- (3) without the consent or connivance of that man,
- (4) such sexual intercourse not amounting to the offence of rape (**section 497**). [Five years, or fine, or both.]

*Leading case:—Joseph Shine v UOI* (holding section 497 unconstitutional).

Taking or enticing away or concealing or detaining a woman, knowing or having reason to believe her to be married, from her husband, in order that she may have illicit intercourse with any man is punishable (**section 498**). [Two years, or fine, or both.]

**Cruelty to married woman.**—Husband or relative of husband of a woman subjecting her to cruelty is liable to be punished with imprisonment for a term which may extend to three years and shall also be liable to fine (**section 498A**). This Chapter [Chapter XX-A] and the section have given a new dimension to the concept of cruelty for the purposes of matrimonial remedies and the type of conduct described in the section will be relevant for proving cruelty. Consequence of cruelty which was likely to drive a woman to commit suicide or to cause grave injury or danger to life or limb or health, whether mental or physical, have to be shown for attracting the section. *Noorjahan v State*, (2008) 11 SCC 55 [LNIND 2008 SC 950]. The basic ingredients of section 498A are cruelty and harassment. *Undavalli Narayana Rao v State of AP*, (2009) 14 SCC 588 [LNIND 2009 SC 1515].



*Leading case:—Wazir Chand v State of Haryana.*

This section has been introduced by [Criminal Law \(Amendment\) Act, 1983](#) (Act 46 of 1983) to combat the vice of dowry deaths. By the same Act section 113A has been added to the [Indian Evidence Act, 1872](#), which enables the Court to draw a presumption regarding abetment of suicide by a married woman if she commits suicide within seven years of her marriage and it is shown that her husband or relative had subjected her to cruelty. A mere demand for dowry is an offence.

Illustrations on the meaning of harassment have been brought in from cases decided under the [English] Protection From Harassment Act, 1997. The various types of conduct which may constitute cruelty has been judicially construed.

## **Defamation. Chapter XXI.**

A person is guilty of 'defamation' if he,

- (1) by words, either (a) spoken, or (b) intended to be read; or
- (2) by signs or visible representations;
- (3) makes or publishes any imputation concerning any person;
- (4) intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person (**section 499**). [Two years simple, or fine, both (**section 500**).]

Defamation may be of a deceased person (**Explanation 1**). It may be concerning a company, an association, or collection of persons (**Explanation 2**). It may be by ironical expressions. It is however necessary to show that this collection of persons is a small determinate body whose identity can be fixed. Advocates as a class cannot therefore be defamed.

The fact of reference to a particular person may be proved by means of the technique of "*innuendo*".

*Leading cases:—Manmohan Kalia v Yash. Asha Parekh v State of Bihar.*

An imputation harms a person's reputation which, in the estimation of others, directly or indirectly, either

- (1) lowers his moral or intellectual character; or
- (2) lowers his character in respect of his caste or calling, or his credit; or
- (3) causes it to be believed that his body is in a loathsome state, or in a state generally considered disgraceful (**Explanation 4**).

The definition in the Code applies to words as well as writings.

The [IPC, 1860](#), makes no distinction between spoken and written defamation.

The defamatory matter must be published, i.e., communicated to a person other than the one defamed. The person who *makes* the imputation intending to harm the reputation of another, as well as the person who *publishes* it are alike guilty. The publisher need not be the maker of the defamatory matter.

The publisher of a newspaper is responsible for defamatory matter appearing in the newspaper whether he knows it or not. But it will be a good justification to plead if such matter is published in his absence and without his knowledge and the temporary management of the paper was in competent hands. A newspaper published at one place and sent to a subscriber at another will be considered to have been published at the latter place.

### **Exceptions.**

Any of the following defences may be set up against a charge of defamation:—

1. Imputation of any truth which the public good requires to be made or published.
2. Opinion expressed in good faith respecting the conduct of a public servant in the discharge of his duties, or his character so far as it appears in that conduct.
3. Opinion expressed in good faith respecting the conduct of any person touching a public question, or his character so far as it appears in that conduct.
4. Publication of a substantially true report of the proceedings of a court.

Such report cannot be published if the court has prohibited it, or where the subject-matter of the trial is obscene or blasphemous.

5. Opinion expressed in good faith respecting the merits of a case decided in a court; or the conduct of a party, witness or agent concerned therein; or the character of such person so far as it appears in such conduct.
6. Opinion expressed in good faith respecting the merits of a performance submitted by the author to public judgment; or respecting the author's character so far as it appears in such a performance.
7. Censure passed in good faith by a person having lawful authority over another.
8. Accusation preferred in good faith to a duly authorized person.
9. Imputation made in good faith by a person for the protection of his interest, or of any other person, or for the public good.

The privilege of judges, counsels, pleaders, witnesses, and parties comes under this exception. So also, as to statements made in pleadings and reports to superior officers.

**JUDGE.**—A Judge cannot be prosecuted for defamation for words used by him whilst trying a case in court even though such words are alleged to be false, malicious, and without reasonable cause (*Rama v Subramanya*).

**COUNSEL OR PLEADER.**—The Madras High Court held in *Sullivan v Norton* that no proceedings can be instituted against a counsel or pleader for uttering words that are defamatory, or are calculated to hurt the feelings of others, or are absolutely devoid of all solid foundation. This case has been doubted in a much later decision in which it was held that in the case of a lawyer good faith is to be presumed until bad faith is proved by proof of private malice when the Court will interfere (*Mir Anwarrudin v Fathim Bai*).

The Bombay High Court has held that so long as an advocate acts on his client's instructions, he has the fullest liberty of speech provided that he did not know or could

not know that they were false. (*Bhaishankar v Wadia*). Where express malice is absent the advocate or pleader is protected (*Re Nagarji; Purshottamdas*).

The Calcutta High Court has held that advocates have no absolute privilege. But unless a counsel or pleader is actuated by improper motives he is protected. If bad faith is proved in putting questions to witnesses he is liable. There must be evidence that he was actuated by improper motives and not by a desire to further his client's interest.

The Patna High Court has held that the privilege is not absolute but qualified and the burden is on the prosecution to prove absence of good faith.

WITNESS.—The Bombay High Court has held in a Full Bench case that relevant statements made by a witness on oath or solemn affirmation in a judicial proceeding are not absolutely privileged on a prosecution for defamation, but are governed by the provisions of this section (*Bai Shanta v Umrao*).

The Calcutta High Court has laid down that such statements should be relevant to the inquiry (*Woolfun Bibi v Jerasat Sheikh*). If a witness voluntarily makes defamatory statements he will be guilty (*Haider Ali v Abru Mia*).

The Madras High Court is of opinion that statements of a witness made in the witness-box are absolutely privileged. If they are false the remedy is by indictment for perjury, and not for defamation (*Manjaya v Shesha Shetti*).

The Allahabad High Court has held in a Full Bench case that a witness can be prosecuted for defamatory statements concerning a person unless he shows that the statements fall under one of the exceptions to this section (*Ganga Prasad*).

The former Chief Court of the Punjab had adopted the view of the Calcutta and the Allahabad High Courts.

The former Nagpur High Court had followed the Bombay, the Calcutta and the Allahabad High Courts and held that a witness is not entitled to absolute privilege (*Chotelal's case*).

PARTY.—The Bombay High Court has held that relevant statements made by an accused are not absolutely protected, but are governed by the provisions of section 499 (*Bai Shanta v Umrao*).

The Madras High Court has held that if an accused puts any question while defending himself, the question cannot be made the subject of a prosecution for defamation (*Hayes v Christian*). Statement in answer to a question by the Court is not absolutely privileged (*Tiruvengada Mudali's case*). If a defamatory statement is made before an officer who is neither a judicial officer nor a court, e.g., a Registration Officer, such a statement is not absolutely privileged. (*Krishnammal's case*).

The Calcutta High Court has ruled in a Full Bench case that a defamatory statement on oath by a party falls within section 499 and is not absolutely privileged (*Satish Chandra Chakravarti v Ram Doyal De*).

The Allahabad High Court holds the view that a suitor is not absolutely privileged.

PLEADING.—Defamatory statements in applications, pleadings and affidavits are not absolutely privileged.

The Bombay High Court has held that statements made in a written statement filed by the accused are not absolutely privileged. According to the Allahabad High Court any statement made in an application in good faith is protected.

The Calcutta and the Patna High Courts have held that defamatory statements in a plaint or an affidavit are not absolutely privileged. But the decisions of the Calcutta High Court are not unanimous on the point whether statements in a complaint to a Magistrate are absolutely privileged or not.

The Madras High Court has in a Full Bench case held that a defamatory statement in a complaint to a Magistrate is not absolutely privileged. (*Triuvengada Mudali's case*).

The former Chief Court of the Punjab had laid down that such statements were not absolutely privileged.

10. Caution intended in good faith for the good of the person to whom it is conveyed or of some person in whom he is interested, or for public good.

### **Other offences.**

The following acts also are made punishable:—

1. Printing or engraving matter known to be defamatory (**section 501**).
2. Sale of printed or engraved substance containing defamatory matter (**section 502**).

### **Criminal intimidation. Chapter XXII.**

A person commits 'criminal intimidation' if he

(1) threatens another with any injury

(a) to his person, reputation or property, or

(b) to the person, or reputation of any one in whom that person is interested,

(2) with intent

(a) to cause alarm to that person, or

(b) to cause that person to do any act which he is not legally bound to do, or omit to do any act which that person is legally entitled to do,

(3) as the means of avoiding the execution of such threat (**section 503**). [Two years, or fine, or both.]

If the threat be to cause (1) death or grievous hurt, (2) the destruction of any property by fire, (3) an offence punishable with death, imprisonment for life, or seven years' imprisonment, then seven years, or fine, or both (**section 506**). [If intimidation is caused by an anonymous communication, then *additional* imprisonment for two years (**section 507**).]

'Criminal intimidation' is closely analogous to 'extortion.' In the former the immediate purpose is to induce the person threatened to do, or abstain from doing, something which he was not legally bound to do or omit; in the latter, the purpose is getting filthy lucre by obtaining property. In 'criminal intimidation' the threat need not produce the effect aimed at nor should it be addressed directly to the person intended to be influenced. If it reaches his ears anyhow the offence is complete.

The following two provisions relate to insult offered to persons other than public servants—

### **Insult.**

(1) Intentional insult with intent to provoke a breach of the peace, or to cause the commission of any offence. (**section 504**).

(2) Uttering any word, or making any sound or gesture, or exhibiting any object, intending to insult the modesty of a woman or intruding upon the privacy of a woman (**section 509**).

### **Statement conducing to public mischief.**

Making, publishing or circulating, any statement, rumour, or report

(1) with intent to cause any officer, soldier, sailor or airman in the Army, Navy or Air Force, to mutiny, or to disregard or fail in his duty, or

(2) with intent to cause fear or alarm to the public whereby any person may be induced to commit an offence against the State or public tranquillity, or

(3) with intent to incite any class of persons to commit any offence against any other class is made punishable (**section 505**). [Three years, or fine, or both.] The offence is not committed if such statement, etc., is *true* and there is no such intent as aforesaid.

Making, publishing or circulating, any statement or report containing alarming news

(1) with intent to create or promote feelings of enmity, hatred or ill will between different groups or communities on grounds of religion, race, place of birth, residence, language, caste or community (**section 505**). [Three years, or fine, or both.]

(2) Aggravated form of the same offence when committed in any place of worship or in any assembly engaged in religious ceremonies (**section 505**). [Five years and fine.]

### **Divine displeasure.**

Act or omission caused by inducing a person to believe that he will be rendered an object of Divine displeasure if he does not do or omit to do the things which it is the object of the offender to cause him to do or omit, is punishable (**section 508**). [One year, or fine, or both.]

### **Intoxication.**

Intoxication alone is not made punishable by the Code. But a person who 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 is liable to punishment (**section 510**). [24 hours, or Rs. 10, or both.]

## Attempts. Chapter XXVIII.

The last chapter deals with attempts to commit offences. Attempting to commit or causing to be committed an offence, punishable by the Code with imprisonment for life or imprisonment, and in such attempt doing any act *towards the commission of the offence is*—where there is no express provision for the punishment of such attempt—punishable with imprisonment provided for the offence, for a term which may extend to one-half of the imprisonment for life or one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both (**section 511**).

Every commission of a crime has three stages—

- (1) intention to commit it;
- (2) preparation for its commission; and
- (3) a successful attempt.

Mere *intention* to commit a crime, not followed by any act, does not constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it or towards maturing and effecting it.

*Preparation* consists in devising means for the commission of an offence. The section does not punish acts done in the mere stage of preparation. Mere preparation is punishable only when the preparation is to wage war against the Government of India (**section 122**), to commit depredations on the territories of any power at peace with the Government of India (**section 126**), or to commit dacoity (**section 399**).

*Attempt* is the direct movement towards the commission after the preparations are made. To constitute the offence of attempt there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence.

It is, however, not necessary to show that it is the last proximate act. It is enough if it is one in a series.

An attempt can only be manifested by acts which would end in the consummation of the offence, but for intervention of circumstances independent of the will of the party. An attempt is punishable even when the offence attempted cannot be committed; as when a person intending to pick another's pocket thrusts his hand into the pocket but finds it empty.

If the *attempt* to commit a crime is successful, then the crime itself is committed; but where the attempt is not followed by the intended consequences, section 511 applies.

*Leading cases:—Abhayanand. Om Prakash. R v Ramsarun. R v Mac Crea. R v Mangesh. R v Peterson. R v Baku.*

2. Note Q, p 174.
3. *Mrs. Sarah Mathew v The Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62 [LNIND 2013 SC 997] .
4. *Standard Chartered Bank v Directorate of Enforcement*, (2005) 4 SCC 530 [LNIND 2005 SC 476] ; *Iridium India Telecom Ltd v Motorola Incorporated*, (2011) 1 SCC 74 [LNIND 2010 SC 1012] .
5. *Abu Salem Abdul Qayoom Ansari v State of Maharashtra*, (2011) 11 SCC 214 [LNIND 2010 SC 858] .
6. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] ; *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] .
7. *BK Wadeyar v Daulatram Rameshwari*, AIR 1961 SC 311 [LNIND 1960 SC 493] .
8. *M V Elisabeth v Harwan Investment and Trading*, AIR 1993 SC 1014 [LNIND 1992 SC 194] .