

# LAW OF CRIMES

## COURSE OBJECTIVES:

This course is designed to understand the meaning of crime and the essential principles of criminal liability by a study of a range of offences under the Indian Penal Code 1860. It further aims to empower students to understand the fundamentals of criminal jurisprudence and analyze the various elements of the crime. The students will be equipped to understand the principles of culpability and punishment. The students will be well versed with the general scheme of the Indian Penal Code 1860 and be able to grasp the various terms and terminology used in the Indian Penal Code 1860. The students will be prepared to analyze the ingredients of various offences and study the punishments prescribed thereto. They will be able to identify the general exceptions under the penal law and understand the principles of joint criminal liability.

इस पाठ्यक्रम को भारतीय दंड संहिता 1860 के तहत अपराधों की एक श्रृंखला के अध्ययन द्वारा अपराध के अर्थ और अपराधिक दायित्व के आवश्यक सिद्धांतों को समझने के लिए डिज़ाइन किया गया है। इसका उद्देश्य छात्रों को अपराधिक न्यायशास्त्र के मूल सिद्धांतों को समझने और विभिन्न तत्वों का विश्लेषण करने के लिए सशक्त बनाना है। अपराध का छात्रों को अपराधीता और दंड के सिद्धांतों को समझने के लिए सुसज्जित किया जाएगा। छात्र भारतीय दंड संहिता 1860 की सामान्य योजना से अच्छी तरह वाकिफ होंगे और भारतीय दंड संहिता 1860 में प्रयुक्त विभिन्न शर्तों और शब्दावली को समझने में सक्षम होंगे। छात्रों को विभिन्न अपराधों की सामग्री का विश्लेषण करने और दंड का अध्ययन करने के लिए तैयार किया जाएगा। इसके लिए निर्धारित वे दंड कानून के तहत सामान्य अपवादों की पहचान करने और संयुक्त अपराधिक दायित्व के सिद्धांतों को समझने में सक्षम होंगे।

## COURSE OUTCOMES:

After completing this course, the student will be able to:

1. Identify the various components of criminal culpability and an offence.
2. Appreciate the fundamentals of Criminal Jurisprudence.
3. Appreciate the fundamentals of culpability and the various kinds of punishment.
4. Understand criminal terms and terminology as per the Indian Penal Code.
5. Understand the extent and operation (jurisdiction) of the Indian Penal Code.
6. Identify various crimes from the point of view of the requirements of substantive criminal law.
7. Identify the punishment prescribed for various offences from a micro perspective as per IPC.
8. Appreciate and understand the aspects of joint criminal liability.
9. Identify whether a given case is covered under any of the general exceptions.

## **MODULE 1:**

### **1.1 History of Criminal law**

Difference between civil and criminal law

### **1.2 Concept of Crime, Components of Crime and Criminal Liability**

### **1.3 Theories and Kinds of Punishment**

(Includes IPC Chapter III: Sections 53 to 75)

### **1.4 Capital Punishment**

### **1.5 Stages of Crime**

### **1.6 Theories of Negligence**

### **1.7 Introduction to Cyber Crimes**

## **1.1 History of Criminal law**

Like in each edified society, in India as well, a criminal equity framework developed. Financial and political conditions winning during various periods of the historical backdrop of India impacted its advancement. In like manner, the targets of the criminal equity and techniques for its organization changed every once in a while and starting with one time of history then onto the next. To suit the changing conditions the rulers acquainted new strategies and procedures with implement law and control equity.

The Indian Criminal Justice System as we know today isn't a modern development. It finds its origin from ancient times. There existed unique methods to deal with the criminals, with each state having its own different and unique mode of punishment and justice. The Judicial framework manages the organization of the laws through the organization of the courts. The framework gives the apparatus to the settling of the questions because of which the wronged Party moves toward the courts. Nothing annoys in the human heart more than an agonizing feeling of bad form. No general public can permit a circumstance to develop where the impression prevails of there being no change for complaints.

The Criminal Justice System alludes to the organizations of the government accused of implementing the law, mediating wrongdoing, and rectifying criminal lead. The criminal equity framework is an instrument of social control which includes that the society considers a few practices so risky and damaging that it either carefully controls their event or bandits them by and large. It is the activity of the organizations of equity to forestall these practices by securing and rebuffing offenders or deflecting their future events.

The criminal equity framework is lumbering, costly, and aggregately lamentable. The poor can never arrive at the sanctuary of equity due to substantial costs engaged with obtaining entrance and the persona of lawful ethos. The order of courts, with a great many interests, puts lawful equity past the range of poor people. Making the legitimate cycle costlier is an aberrant disavowal of equity to the individuals and this hit hard on the refuse of the world in the public arena. The lawful framework has lost its believability for the more fragile segment of the network.

## **The judicial system in ancient India**

**Justice S. S. Dhavan said "India has the world's oldest judiciary. No other judicial structure has a more ancient and exalted pedigree".**

The administration of justice was not a part of the state's responsibilities in the early days. In Vedic literature, we do not see references to any judicial organization. The aggrieved party used to sit before the accused house in order to get its false relief and not travel until his (aggrieved party) arguments were resolved. The tribe and clan assemblies performed subsequent justice and the legal process was thus very clear. But the king eventually came to be called the root of justice with the expansion of the duties of the state and also the development of the royal powers, and a more or less complex system of judicial administration came into being. Knowledge regarding the well-developed judiciary is given to us by the Dharma Shastra's, Niti Shastras and even the Arthashastra. The King is the

head of the fountain of justice, according to this literature, and he was expected to spend a few hours per day in adjudication.

The primary responsibility of the king is the protection of his subjects, which entails the prosecution of the wrongdoer. In several ruling dynasties of ancient India, judicial structures for civil and criminal cases were essential features. The definition of sin was the norm by which crime was to be established, while civil wrongs applied largely to conflicts occurring over money. The Manusmṛti or “Laws of Manu,” Sanskrit Manusm-ti, also known as Mānava-dharmaśāstra, is the most significant and earliest metrical work written by the ancient sage Manu of Hinduism’s Dharmaśāstra textual tradition, which prescribes ten essential rules for Dharma observance: patience (dhṛiti), forgiveness (kshama), piety or self-control (dama), integrity (asteya), sanctity (asteya) (krodha). (krodha). (krodha). (krodha). “Nonviolence, truth, non-coveting, purity of body and mind, control of senses are the essence of Dharma,” Manu further writes. Consequently, not only the person but all in society are regulated by dharmic rules.

### Grounds of Litigation and different kinds of Law

Grounds for lawsuits and various forms of law:

These eighteen ‘Titles of Law’ or ‘Grounds for Lawsuits’ given by Manu refer to the reasons on which litigation may also be brought “(1) Non-payment of debts; (2) deposits; (3) selling without ownership; (4) partnership; (5) non-payment of gifts; (6) non-payment of salaries; (7) violation of contract; (8) termination of purchase or purchase; (9) disputes between herdsmen and owners; (10) non-payment of salaries; boundary dispute law; (11) verbal assault; (12) physical assault; (13) theft; (14) violence; (15) sexual crimes against herdsmen; (10) non-payment of salaries”.

- **Different kinds of laws:** In compliance with rules which fall under one or another of the following four heads, justice was administered, namely:
  - Sacred law (Dharma)
  - Secular Law (Vyavahara)
  - Custom and (Chaitra)
  - Royal

### Types of Court in Ancient India

Ancient India has the highest quality of any ancient nation in terms of the jurisdiction of the judiciary, learning, honesty, impartiality, and equality, and these expectations have not been surpassed until today; that the Indian judiciary consisted of a hierarchy of judges with the Court of the Chief Justice (Praadvivaka) at the top, granting each higher court the right to review it, That the accused could not be punished in criminal trials unless his guilt was proven consistent with law; that the trial consisted of 4 stages in civil cases such as several modern trials, complaint, reply, hearing and decree; that Indian jurisprudence was familiar with doctrines such as res adjudicata (prangn yaya); that each one trials, civil jurisprudence That the decrees of all courts except the King be open to challenge or revision consistent with fixed principles; that the central obligation of the Court was to strive to do justice “without favor or fear,” was heard by a bench of several judges and barely by a judge sitting alone.

The courts, as given by Kat’yayana Smṛithi, are divided into six according to their hierarchy.

1. **Kula (Family council)** – The Mitakshara has described the Kula as consisting of a group of relations, relative or distant. In ancient India, the Kula, or joint families, were often very large. The elders used to try to resolve it whenever there was a disagreement between two members. This informal body of family elders was called Kula.
2. **Shreni (Council of trade or profession)** – The matter was brought to Shreni court when the attempt at family arbitration failed. The word Shreni, was used to describe the guild courts that were a prominent feature of ancient India’s commercial life from 500 B.C. Sreni had four or five members of their own executive committees and it is possible that they may also have served as the Sreni court to resolve the disputes between their members. This was an

assembly of people including betel sellers, weavers, shoe makers, etc. who followed a specific occupation.

3. **Gana (Assembly of village)** – This was a large assembly of elders in the village or grama who are accepted by the people of the area as learned, impartial and having integrity.
4. **Adhikrita (Court appointed by the King)** – These are the courts authorized by the King for delivering the justice in which persons who are well versed in the Sutras and Smritis are appointed as judges. These kinds of courts were of varied types as consistent with their jurisdiction. they're (I) Pratishtitha which was established at a specific village or town. (ii) Apratishtitha was a mobile court which would assemble during a particular place to undertake a selected case as called upon by the King. (iii) Mudrita was the next level court which was authorized to use the royal seal.
5. **Sasita (Kings Court)** – It was the highest court of law in the Kingdom. It was presided over by the King himself. There was a chief Justice called Pradvivaka and a group of Judges called Sabhyas to aid and assist the King.
6. **Nripa (King himself)** – The King was the Supreme authority in the adjudication legal process and he was guided by the principles of Dharma, which he could not override.

### Courts and their Jurisdiction

**Kula, Shreni and Gana** could trial all the civil and criminal disputes except for an offence of violence (Sahasa). The cases involving violence are to be tried by the *Adhikrita* a court appointed by the King. Corporal punishments are to be decided by the *Sasita* (Kings Court) but to be finalized by the King himself. A decision rendered by the *Kula* can be reviewed by the *Shreni* and a decision by *Shreni* can be reviewed by the *Gana*. Likewise, the decision of a *Gana* can be reviewed by the *Adhikrita* courts. The Law Commission in its Fourteenth Report had said: Ancient authors have defined the hierarchy of courts as having existed in the distant past, but later works by writers such as Narada, Brihaspathi and others seem to suggest that normal courts may have existed on a sizable scale. Thus the hierarchy of courts was considered to have existed in ancient India with certain elements of authoritative ladder of review power over the courts below.

#### Judicial Procedure

In ancient times, the courts operated on a well-laid procedural framework. If anyone has been harmed by others, he may file a *Pratijna* (plaint) with the court. Plaintiff was the *vadin*, and the defendant was *prati vadin*. *Dharma kosa* gives the evidence of the plaintiff that it should be unambiguous. The parties can produce the witness and in the absence summons to the witness was ordered by the Judge. The presumption of evidence was cast on the person alleging the crime. *Jayapatra* contains all the documents of victory, it usually contains brief statements about the plaintiff and they are in written form and judges should not be biased regarding their statements. In criminal justice system, kings and his officers usually take cognizance on their own.

The Mahabharata states that 'punishment preserves Dharma, Artha and Kama,' and is well acknowledged in Sastras *Dhanda Neeti*. The judgment should be delivered in a way that guarantees confidence and trust in the judiciary. To correct the wrong doer, a deterrent is always needed. The penalties were categorized as (1) *Vagdanda*-admonition; (2) *Dhigdanda*-censorship; (3) *Dhanadanda*-fine; (4) *Angaccheda* – mutilation; (5) *Vadhadanda* – Death penalty.

### Importance of Jury

If they are not followed by a jury of three, five or seven jurors called *sabhyas*, then the king and chief justice could not begin a court's trial. It was expected that they were unbiased and fearless. A juror who remained quiet was condemned. And if it was in contrast to that of the king, they should voice their view. A variety of prominent jurists contend that the king or judge ought to be directed by the jury's judgment, and the king exercised his right to settle the case according to his own opinion only when the jurors did not come to a definitive decision.

As they were well versed in Dharmashastras, these sabhyas were usually Brahmins. There's no need, however, regarding knowledge of sacred law when the case (the party to the dispute) involved conflicts between farmers, merchants and forest dwellers. The authors of Dharmashastra themselves proposed that the cases be tried with the aid of the jurors chosen from the castes or the occupations of the parties themselves. Sukra refers to the practice of appointing recognized agents in the law courts to defend a case when a party was himself unable to do so owing to his preoccupation or ignorance of the law. Such agents were known as Niyogins and they were expected to guard the interests of their parties very carefully. Their fee varied from six to half percent, according to the value of the property. If they colluded with the other party, they were punished by the state.

The sentences in vogue were fines, incarceration, banishment, mutilation and death penalty. Fines were the most widespread and punishment also varied with the accused's race. The prison service was under the charge of an official named Sannidhata, and Bandhanagaradhyaksha was the name of the jailor. In separate wards, male and female inmates were held.

### **Administration of Justice during Vedic and Early Vedic Period**

Naman was believed to be the fountain of justice in ancient India as the lord of Dharma and was entrusted with the sole authority of the administration of justice and his primary responsibility was to protect his subject's rights. The King's Court was the highest court, and the Chief Justice's court was next to it (Pradvivaka). There was, thus, a hierarchy of judges. Village councils (Kulani) deal with basic civil and criminal disputes in villages. The courts were watched over at a higher level in cities and districts by government officials under the King's jurisdiction to execute justice. Trade guilds were permitted to exert effective authority over their members in order to deal with problems between members of the craft community, merchants, etc. There were also existing family courts. Civil disputes among family members were resolved by Puga assemblies organized by groups of families in the same village. Minor criminal offences were dealt with in villages by judicial councils, while serious

### **Administration of Justice during Mauryan Times**

The king was the head of justice, the fountainhead of the laws, and he ruled on all matters of significant consequence. Mostly in towns and villages presided over by pradesika, mahamatras, and rajukas, there were separate courts. Two types of courts have been established: dharmastheya dealing with civil matters and kantakasodhana dealing with criminal cases. At least one court and one police head office have been developed in all major towns and headquarters. Petty cases in the villages were decided in their panchayats by the village elders. The Hindu Code of Law, as envisaged in the shastras, has been administered in civil proceedings. There was reliance on the facts of credible people. Punishment was very severe, even for small offences like evasion of government's taxes, giving false evidence, causing injury to artisans, ordinary theft, etc. In all of these cases, the body has been mutilated. Eighteen kinds of torture have happened, including seven whippings. The penal code was really relevant.

The criminal code was very harsh and enforced strictly. The idea was to set a precedent for others and prevent them from wrongdoing. Megasthenes is all praise "for the Mauryan law and order". He reports that "There were few crimes; murders and thefts were almost unknown, people rarely locked their doors and the state guaranteed the safety of life and property."

### **Guptas Times**

The Gupta Empire was not only imposing because of the vastness of its structure but also benevolent. It had constitutional checks in the form of Council of Ministers and higher officials of the states. The whole administration was often guided by judiciously interpreted freedom of constitutional uses. Under the Guptas, the judicial administration was much more developed than in the initial periods. During this period, a number of law books were compiled for the first time. And there were well defined civil and criminal rules. Chief judicial officer was called 'Mahadandnayak'. but the chief judge was KING/ SAMRAT. The King was the state's highest legal body and therefore determined the

conflicts. His decisions were absolute, but the king alone could not continue the judicial governance of such a large empire. He was also aided in the discharge of his judicial duties by a number of judges.

The court was divided into four classes: kings court, poog, shreni, kulik. We have already discussed types of courts. The penalty was very mild during the Gupta period. Punishments such as capital punishment and traumatic amputation have seldom been awarded. During the Gupta reign, the criminal laws were not as extreme as in the Maurya period. criminal cases were taken before the central court, typically kept under the King or Royal Authority. The method of appeal was exercised and the highest body of appeal was the Monarch. The lack of lawyers was one critical trait of the ancient Indian legal system. Another noteworthy characteristic was that it was often chosen for a bench of two or three judges to conduct justice rather than for a single person to be the sole justice administrator.

### **Relevance of old Justice System in Present Times**

Ancient India kept the highest standard of any antiquity. The capacity, learning, honesty, impartiality and freedom of the judiciary have not been overcome and these expectations have not been surpassed till now, the Indian judiciary consisted of a hierarchy of judges at the top of the Court of the Chief Justice (Praadvivaka), Each higher court is given the right to review the decision of the lower Courts; the cases is basically decided in line with same principle of natural justice concepts, that in criminal trials the accused could not be punished unless his guilt was proved according to law; that in civil cases the trial consisted of four stages like any modern trial – plaint, reply, hearing and decree; that such doctrines as *res judicata* (*prang nyaya*) were familiar to Indian jurisprudence; cases were resolved by the panel of several judges unlike today, and no case was resolved singly by any judge.

### **The judicial system in modern India**

The legal framework gave by the Constitution of India is involved in the three kinds of courts. At the top, it is Supreme Court, at the centre the High Courts and at the base the subordinate Courts notwithstanding the Constitution, there are different laws and rules which direct the structure, force, and locale of these courts. Here conversation is given of the apparent multitude of three kinds of courts.

### **The role of the Supreme Court**

The Supreme Court in India was established through an enactment passed in pre-independent India, with the introduction of the Regulating Act, 1773. the first Supreme Court started its function as a court of record at Calcutta, and therefore the 1st judge Sir Elijah Impey was appointed. The court was established to resolve the disputes in Bengal, Orissa, and Patna. Consequently, in 1800 and 1834, the King George-III established the opposite two

### **Supreme Courts in Bombay and Madras.**

However, soon after the enactment of the Indian supreme court Act, 1861, the Supreme Courts in Calcutta, Bombay, and Madras were consequently abolished and therefore the courts in Calcutta, Bombay, and Madras resumed its functioning as the supreme court. In 1935, the British Parliament enacted the govt of India Act, 1935, after a resolution was gone by the Joint committee, which was headed by Lord Linlithgow.

The Government of India Act, 1935, led to the establishment of the court in India, which has vested more judicial power than the supreme court with original, appellate, and advisory jurisdiction. After independence, the Constitution of India was adopted on 26th January 1950, and therefore the court of India resumed functioning because of the Supreme Court of India on 28th January 1950, which was presided by Hon'ble Justice Harilal Jekisundas Kania.

As per article 124(1) of the Constitution, there should be a Supreme Court in India that will be presided by the judge of India with additional seven Judges until the parliament passes precedent for increasing the number of Judges. However, currently, there are 34 judges within the Supreme Court, and therefore the current judge of India is Justice Sharad Arvind Bodbe.

## The role of the High Court

As per the Indian Constitution, Articles 214-231 deals with the provisions of High Courts in India. It provides for separate supreme courts for separate states but consistent with the 7th constitutional amendment act an equivalent high court is often the court for quite one state present, we've 21 high courts within the country, which incorporates 3 common high courts.

## Constitution and composition of High courts

All the high courts comprise of a Chief Justice and several other judges, who are determined by the President of India from occasionally. Article 217 deals with the appointment of judges and state that every judge of the high court shall be appointed by the President of India by a warrant under his hand & seal after primary consultation with the Chief Justice of India, the Governor of the state.

The powers and jurisdiction of the high court are often classified under the following heads:

**1. Original Jurisdiction-** it means an applicant can directly attend high court and not through appeals. This power is employed within the following matters:

- a. Disputes arising out of concerning members of Parliament and state legislature.
- b. concerning marriage, law, admiralty divorce, contempt of court, etc.
- c. Enforcement of fundamental rights (Supreme Court also has this power).
- d. Cases transferred from another court to itself which involves an issue of law.

**2. Writ Jurisdiction-** Article 226 states that the High Court shall have power throughout the territories about which it exercises jurisdiction to issue to a person or authority including in appropriate cases, any government, within those territories directions, orders, or writs.

**3. Appellate Jurisdiction-** It is said that the high court is that the primary court of appeal i.e. it's the power to listen to the appeals against the judgment of the subordinate courts within its territories. This power is often classified into 2 categories-Civil jurisdiction and Criminal jurisdiction In civil cases its jurisdiction includes the orders and judgments of the district courts, additional district courts, and other subordinate courts.

In criminal cases, its jurisdiction includes judgments concerning sessions courts and extra sessions court. These cases should be involving imprisonment for quite 7 years, confirmation of any death sentence awarded by session court before execution

**4. Power of Superintendence** – The high court has this power over all courts and tribunals except those handling the soldiers functioning within the state. Hence within the exercise of this power, it's going to:

- e. involve return from such courts.
- f. May issue general rules and prescribe forms for regulating the practice and proceedings of such courts.
- g. Prescribe the shape during which books and accounts are being kept by the officers of any court.
- h. Settle fees payable to the sheriff clerks, officers and legal practitioners.

The constitution doesn't place any restriction on this power of superintendence over the subordinate courts, it's not only using appeal by the person, it is often suo motto. it's of the character of revision because it verifies the sooner judgments. In this regard, it is considered as a special function because the Supreme Court has no similar power vis a vis the High Court.

**5. Control over Subordinate Courts** – This point is simply an extension of the above-mentioned supervisory and appellate jurisdiction. It states that the high court can withdraw a case pending before any subordinate court if it involves the substantial question of law. The case is often disposed of itself or solve the question of law and return to an equivalent court. within the second case, the opinion rendered by the supreme court would be binding on the subordinate court. It also deals with matters concerning posting promotion, the grant of leave, transfer, and discipline of the members therein. during this regard, it appoints officers and servants to be made by the chief justice or such other judge of high court as the chief justice may direct.

**6. Court of Record** – It involves the recording of judgments, proceedings, and acts of high courts to be recorded for the perpetual memory. These records can't be further questioned in any court. supported this record it's the power to punish for the contempt of court either with simple imprisonment or with fine or both.

**7. Review** – This power of the high court includes the facility to look at the constitutionality of legislative and executive orders of both central and state governments. it's to be noted that the word review is not anywhere mentioned in our constitution but Article 13 and 226 explicitly provide the high court with this power.

**8. Extension of jurisdiction of the high court to Union Territories** – Parliament by law may extend the jurisdiction of a high court to or exclude the jurisdiction of a high court from any union territory.

### **The role of district courts**

Chapter VI under Part 4 of the Constitution of India consists of the provisions regarding the creation of the subordinate courts in the country. Below the supreme court, there's the Court of District Judge which is the top court among subordinate courts. The appointment, posting, and promotion of District Judge are made by the Governor of the concerned State in consultation with the concerned supreme court. As regards eligibility for the post of the District Judge, a person not already within the service of the Union or the State shall only be eligible to be appointed as District Judge if he has been for not less than seven years an Advocate or a Pleader and is usually recommended by the concerned High Court.

Appointments of a person apart from District Judges to the judicial service of the State shall be made by the Governor of the State following rules made by him therein behalf after consultation with concerned State Public Service Commission and with the concerned supreme court. As regards control over subordinate courts, including the matters of posting, promotion, leave, etc., the concerned supreme court is vested with the power to possess control over subordinate courts but the supreme court is to exercise the control following the conditions of service under the law applicable regarding subordinate courts.

The Governor may by public notification direct the appliance of the provisions of Chapter VI of the Constitution and thus the principles made there under on any class or classes of magistrates within the concerned State subject to any exception or modification.

### **Codification of laws**

The first plan to modify the Muslim law of crime was initiated by Cornwallis in 1790. Lord Cornwallis divested the Nizam of any authority over the Nizamat. He abrogated crucial Muslim laws formulated by Abu Hanifa that illogically maintained that a murdered wasn't responsible for punishment if the crime was committed by strangling, drowning, poisoning, or with a weapon which wasn't made from iron. it had been also declared that the kin of the deceased didn't have any right to remit the sentences of the offender.

The government in 1791 also abolished the punishment of mutilation and imprisonment and hard labour were substituted in its place. Cornwallis desired the abolition of the rule under which a murderer wasn't held susceptible to execution if he committed by drowning poisoning etc. The Muslim law didn't permit a Hindu to testify against Muslims accused this law was now abolished.

As some confusion existed on certain points within the law of homicide the law was restated in 1797 through regulation for the aim of regulation was to try to away finally with all operations of the desire of the heirs. just in case of murder it had been laid down that a prisoner convicted of willful murder was to be punished with none regard to the heirs of the person killed. Another innovation made at that point was to substitute imprisonment for blood money, In cases where under the Muslim law, an individual convicted of homicide was susceptible to pay blood money the court of the circuit was to commute the fine to imprisonment for such period as it is considered adequate for the offence.

Regulation XIV of 1791 was a crucial measure which was inspired by humanitarian and benevolent spirit as it granted relief to the person already in prison on account of their inability to pay blood money. Regulation 17 of 1797 severe punishment was prescribed with a view to the offence.

Several changes were made to the legal code 1799-1802 by the govt of Lord Wellesley. consistent with Regulation of 1799 not was any murder to be justifiable and altogether cases of murder the offenders were to be punished by death. The regulation 18 of 1801 laid that a private convicted of getting deliberately and maliciously intended to murder an individual and accidentally killed another individual was to be susceptible to suffer death. Regulation 16 of 1802 had abolished the criminal and disgusting and inhuman practice of sacrificing young and innocent children and declared infanticide punishable as willful murder susceptible to a sentence of death.

The process of altering and adapting the Muslim law of crimes continued the process of giving punishments for perjury and forgery were enhanced through the introduction of Regulation II of 1807. Exemplary punishments were prescribed for Dacoity through Regulations VIII of 1808 because the crime has increased enormously. By Regulations XVII of 1817, the law relating to Adultery was revised. The necessity for four competent male witnesses was rigorously insisted upon and the presumptive proof wasn't regarded sufficient to warrant a conviction for the offence. The regulation laid down that conviction for the offence of adultery might be supported confessions, creditable testimony or circumstantial evidence. the utmost punishment to be inflicted for the offence was fixed at thirty-nine stripes and imprisonment with the hard labour of up to seven years. Married women weren't to be prosecuted on such charges.

After 1833, an All India Legislature was created and thru subsequent reforms through the years led to the enactment of the Indian legal code in 1860. During the amount from 1833-1860, changes were made within the legal code and therefore the important ones included that thugs came to be punished with imprisonment for all times with the hard labour, the status of slavery was declared to be non-recognizable in any court of the corporate, dacoits came to be punished with transportation for all times, or with imprisonment for any shorter term with hard labour. it's going to even be mentioned punishments prescribed for offences by British Administrators were very severe initially, intending to suppress crime. But as society stabilized, and law and order situation improved, and incidence of crime lessened, liberalizing tendencies set in and therefore the rigours of punishment were somewhat mitigated

**The Indian Penal Code, 1860**

The government in Britain in 1833 appointed a commission referred to as the “Indian Law Commission” to discuss the jurisdiction, powers and rules of existing courts and to form reports setting forth the results of the inquiries and suggesting reforms. The law commission works on the Anglo-Indian Codes from 1834 to 1879 and one among the foremost important contributions of the primary Law Commission was the Indian penal code, submitted by Macaulay in 1837 and passed into law in 1860. Another important law that was codified was the code of criminal procedure.

**Difference between civil and criminal law**

S.no	Parameters	Civil Law	Criminal Law
h	<b>Meaning</b>	Civil law deals with acts related to individuals to which harm caused can be repaid by compensation or monetary relief.	Criminal law deals with a crime that causes damage to a person which is an offence against society as well. The relief of crime committed is to charge the person with Imprisonment.
l	<b>Liability</b>	It creates a private	It creates a liability for the

		liability against an individual or an organisation.	preparator against society and the victim.
	<b>Punishment</b>	Justice is given by providing monetary relief against the damages in most cases.	Justice is given by providing the accused imprisonment for a term or fine or both.
t	<b>Triable</b>	Cases under Civil law are triable under Civil Court or equivalent tribunals.	Cases under Criminal law are tried under Criminal Court or Sessions Court.
	<b>Objective</b>	Objective of Civil law is dispute resolution between Individuals	Objective of Criminal law is providing justice to the victim by punishing the accused.
	<b>Procedural Law</b>	Code of Civil Procedure, 1908	Code of Criminal Procedure, 1973
g	<b>Gravity of offences</b>	Less grave than Criminal	More grave than Civil
	<b>Filing of the case</b>	In Civil Cases the aggrieved party files the case	In Criminal Cases, the government files on behalf of the victim
r	<b>Registration</b>	Normally in Civil Cases, the case can be directly filed to the Court.	In Criminal Cases, the case needs to be registered in the police office before the court directly
	<b>Infringement</b>	Infringement of private rights	Infringement of public rights
	<b>Branches</b>	Corporate law, Family law, Property law, Media law, Sports law etc.	No diversion as such
.	<b>Examples of Acts</b>	Negligence, Invasion of privacy, Trespass etc.	Murder, Rape, Kidnapping, theft etc.

When it had been first passed in 1861, the Code of Criminal Procedure fiercely guarded “privileges” or “rights” as they were alternatively described as and made the law both a symbolic and an actual marker of imperial power The code secured the legal superiority of “European-born British subjects “by reserving to them special privileges like the proper to a jury trial with a majority of European jurors, amenability only to British judges and magistrates, and limited punishments, all this while maintaining and displaying European power and prestige.

## 1.2 Concept of Crime, Components of Crime and Criminal Liability

### *Concept of Crime*

The definition of Crime is beautifully quoted by Lord William Blackstone, an eminent English jurist of eighteenth-century A.D. that, “ Crime as an act committed or omitted in violation of public-law either forbidding or commanding it”. In this definition, Lord Blackstone has emphasized crime as the harm or injury carried out on the community at large.

Early ideas about crime were either linked to religion or property. Immoral acts, moralities and sacrilege was considered sins (which was equivalent to crime) and was primarily dealt with by the church. Besides this, the church also maintained law and order, discipline and probity.

### **Ingredients of Crime**

There are four elements or ingredients which are necessary for the commission of crime:

#### **Human Being**

The first ingredient required for a crime is that the unlawful act must be done by a human. In ancient times, when criminal law was dictated by the concept of retribution, punishments were imposed on humans as well as animals for causing any harm. For e.g. often horses or cows were killed for causing harm to human beings like kicking a man or destroying property.

This concept was not considered much logical consequently discarded. The rules of crime and criminal jurisprudence have been amended time and time again for refinement. Now, the first ingredient of crime is a human being. It is mandatory that the human being or person must be under a legal duty to act in a specific manner and should be fit for rewarding punishments. Further, Section 11 of Indian Penal Code (IPC) 1860 elaborates on this concept and states that the word “person” aside from a human being may include a Company or Association or body of persons, whether incorporated or not. Therefore, the word “person” may include artificial or juridical persons as well.

#### **Mens Rea (Guilty Mind)**

The second significant ingredient of the crime is mens rea or evil mind or intentions. This is based on the maxim, “actus non facit reum nisi mens sit rea” which means guilty acts and guilty intentions together comprise crime. Every crime requires a mental element or ingredient which is considered as the basic principle of criminal liability. Therefore, no person can be punished in a criminal proceeding unless it can be shown that he had a guilty mind.

#### **Actus Reus (Guilty Act or Omission)**

The third essential ingredient of crime is Actus Reus or Guilty Act. This term (Actus Reus) was first used by Prof.Kenny. Actus Reus is the manifestation of Mens Rea in the external world. It denotes the act done by a person in furtherance of his mens rea or guilty intention. In criminal law, along with mens rea, it's important to prove the actus reus of the accused in order to convict him for an offence.

Injury

The fourth requirement for the commission of crime is Injury. This injury could be to a specific person or society as a whole. Section 44 of Indian Penal Code (IPC) 1860, describes that the injury caused should be done illegally by the offender and could be to the body, mind, reputation or property of the person.

### **Classification of Crime**

Almost every legal system divides crimes into several categories for various purposes connected with the working of the court. The Common Law primitively divides crime into two

Categories:

#### **Common law**

##### **Felonies(गुंडागर्दी)**

In this type, the crimes are generally heinous and of grave nature. These types of crimes are mostly punished with death and confiscation of the perpetrator's land and goods to the crown. At the outset, the police have even the power to arrest a person on basis of mere suspicion that he/she had committed the offence.

### **Misdemeanor's (तुच्छ जुर्म)**

In this type, the crimes are mostly trivial and small ones. These types of crimes are generally punishable by fines or imprisonment. Herein, the police have no right or power to arrest a person on basis of mere suspicion or doubt.

In the early nineteenth century, theft was considered a felony regardless of the amount stolen. On the other hand, fraud or deception was considered as misdemeanour irrespective of how serious it was. Thus, there was no distinction with regard to the gravity of the offence committed. This discrepancy could be attributed to the fact that the growth of law at the time was sluggish and stagnant. However, in the late 1960s, the above-mentioned system was amended to provide a distinction between such offences and make the law more effectual and justifiable.

### **Indian law**

The Criminal Procedure Code (Cr.P.C.) classifies all the crimes into two categories:

1. cognizable offences; and
2. non-cognizable offences.

First Schedule of the Cr.P.C. gives the classification of the offenses of the IPC into Cognizable(हस्तक्षेप-योग्य ) and Non-Cognizable(गैर संज्ञेय) categories:

### **Cognizable(हस्तक्षेप-योग्य )**

A Cognizable offense or case is defined as the one which an officer-in-charge of a police station may investigate without the order of a magistrate and effect arrest without a warrant. The Police have a direct responsibility to take immediate action on the receipt of a complaint or of credible information in such crimes, visit the scene of the crime, investigate the facts, apprehend the offender and arraign him before a Court of law having jurisdiction over the matter.

### **Non-Cognizable(गैर संज्ञेय)**

Non-Cognizable crimes are defined as those which cannot be investigated by police without the order of a competent magistrate. The Police do not initiate an investigation in Non-Cognizable crimes except with magisterial permission.

### **Measurement of Crimes**

Evaluating the extent of crime actually committed is a quite complicated and arduous task. Statistical data for recorded crime don't generally provide a precise picture, because they are affected by variable factors like the willingness of the victim to report a crime. It is quite obvious that officially reported crimes are only a small fraction of actual crimes committed. The public opinion of crime is largely acquired from the print media and digital media as the media mostly focuses on serious and sensational crimes which result in public's distorted perception. Another precise view is mostly provided by the comprehensive stats of crime that are gathered and published by the government departments like The National Crime Records Bureau (NCRB) which provides annual data related to crime in the country. Similarly, the Federal Bureau of Investigation (FBI) publishes crime stats annually which is known as Uniform Crime Reports.

However, it is known that a lot of crimes go unreported and as a result the data often gets distorted. Other factors accounting for the distortion is the magnitude to which police resources are aimed towards the investigation of one kind of crime rather than another, specifically with regard to "Victimless Crimes" such as possession of drugs. These types of crimes are not revealed unless the police gather their efforts to look into them.

Additionally, another factor that can have a noteworthy effect on the evident statistical incidence of a specific type of a crime is a change in the willingness of a victim to report the crime to the police. Victims frequently fail to report the crime due to various reasons: lack of awareness, lack of trust and lack of confidence to report the crime.

## Approaches to Crime

Crime is a relative and dynamic concept which keeps on changing with the passage of time. Consistent with the perspective of taking crime as an ordinary and unavoidable part of life, there are often very few expectations that reactions to crime will affect future criminality. The approaches to crime have been different in different stages of human civilization and had been distinct in dissimilar societies. The mental outlook towards crime has always been pronounced by extreme emotions and sentiments shown by society and its people.

There are various approaches to crime. They are mentioned below:

1. Traditional Approach
2. Modern Approach
3. Sociological Approach
4. Psychological Approach
5. Legal Approach

From the above-mentioned approaches to the crime, only three have been discussed below.

## Sociological Approach to Crime

Environmental determinants like physical, social, economical, cultural and political may shape the behavior and attitude of people. Meager social, physical and family environment may lead the person to strengthen his intentions towards the crime. Living in poverty and destitution, lack of social support and pessimistic familial background may increase the possibility of occurrence of criminal acts in the society. Furthermore, unemployment, illiteracy and lack of awareness add to the risks of criminal acts. Crime can be the repercussion of defective social structure and persons living in those societies may learn criminal acts because of socialization.

The Strain Theory given by Merton in 1938 is based on a socio-structural outlook. According to this theory, the social structure within the society can give rise to criminal acts in society. When people experience stress or strain in their lives, they start to behave like criminals to reduce the negativity from their lives. On the basis of general Strain Theory, two general types of strain or stress can lead to committing of criminal acts by a person:

1. i) when someone prevents an individual from achieving his goals;
2. ii) when someone takes valuable things owned by an individual.

The goals mentioned above could be money, status or autonomy from adolescents. If there are limited ways to achieve these goals, people will stick to committing criminal acts even by using illegal ways. Moreover, if anything which is precious to an individual is snatched away, it is likely that he will go to all extent to restore it, even if he has to take up unlawful means.

Most of the recent Sociological theories concentrate on the bigger social environment like communities. Researchers and analysts try to comprehend why some societies have a higher crime rate than others. These questions further gave rise to the Social Disorganization Theory. This theory is defined as the inability of members of a particular community or society to achieve shared values. These societies or communities have poor living standards, finite resources, residential instability, family disruption, population density, and ethnic diversity. These situations may halt public integration and further increase in criminal activities.

## Psychological approach to Crime

Due to the collaboration of Psychology and Criminology, new fields and disciplines emerged in the field of education like Forensic Psychology, Legal Psychology and Criminological Psychology. Psychological researchers try to scrutinize the effect of individual differences, personality characteristics and psychological strands of criminal acts while criminologists try to analyze the causes and reasons of an individual's criminal acts. This is the prime reason why psychological theories are created to analyze the behaviour of the offender.

Psychodynamic Trait Theory given by Sigmund Freud in the late 1800s has proved to be an effective approach in the history of crime studies and research. According to this theory, childhood experiences forge the future interpersonal relationships of persons. Id, ego and superego affect the behavior of persons. Id is the primeval part that controls our requirements for food, desires, sleep and other fundamental instincts. The Ego controls Id by setting up limits and due to Superego, people judge the situation, reflecting the morality and rules of society. This idea supports that the criminal is possessed with Id dominated personality and behaviour. If the ego doesn't control id, the person will behave like a criminal. These persons have some communicational and social complications which result in the happening of crime.

Various psychologists also found the effects of empathy and altruism on the approaches to crime. Empathy is an emotional and cognitive capacity to perceive the feelings and agony of others. While altruism is an active concern for others welfare. Studies proved that the lower level of empathy and altruism causes greater anti-social behavior and criminal acts. Moreover,

impulsiveness and negative sentimentality are other influenced personality traits and characteristics which may increase criminal acts due to the fact that impulsive person act and behave without thinking of consequences while a negative sentimentality trait can't control their behavior. Behavioral Psychology, on the other hand, claims that people learn their behaviours through punishments and rewards. Thus, the criminal activities may increase with reinforcements and decrease with punishments and retribution.

### **Legal Approach to Crime**

During most of the time when the sphere of criminology was being developed, people supposed that crime was a behavior that had been judged to be a violation of the criminal law. This concept was clearly expressed by an eminent criminologist, Paul Tappan in 1947 when he noticed that " crime is an intentional act in violation of Criminal Law which includes( statutes, case laws, acts) committed without defence or excuse and penalized by the state as a felony or misdemeanor". Obviously, in this approach crime is factually easy to fathom, but it suffers from the relativity of criminal law and the operation of the criminal justice system. Explanations and clarification of crime would have to be relative to the legal system and historical period and could not have a standing of scientific explanations.

A powerful legal system and target hardening may decrease the rate of crime in a society. Especially, the efficacy of laws and punishments may decrease criminal acts. The fair legal system shapes and outlines the decision-making process of potential criminals positively.

### **Components of Crime**

A Crime is an unlawful Act punished by the state or any lawful authority. A crime or an offence is an act which is harmful not only to the person but also to the community, society or state. Such acts are forbidden and punished by law.

Every crime violates the law but every violation of the law does not commit a crime. Greed, anger, jealousy, revenge or pride are the main reason for committing a crime.

The elements of a crime should be legal in nature (must be in law), Actus Reus (human conduct), causation (human conduct must cause harm), harm (to some other/thing), concurrence (state of mind and human conduct), Mens rea (state of mind and guilty), Punishment.

The essential ingredient of crime blameworthy condition of mind. Its absence cannot make a person liable.

### **Stages of Crime:**

- 1) The intention is the first stage of a crime.
- 2) Preparation is the second stage of crime.
- 3) The third stage is an attempt. It is direct movement of an Act towards execution of an Act after preparation of the plan.
- 4) The fourth stage is the accomplishment

## **Act to be Voluntary**

Crime is the product of our own choice and our own independent will. The Act should be voluntary. The Act done by a person must be of conscious choice to constitute a voluntary Act for which he is held criminally liable. The voluntary Act is an Act that does not fully result from independent will are committed with extreme indifference to inhuman life. A conscious person who loaded a gun at others will typically be held liable for any harm that results during accidental discharge because loading the gun is treated as a voluntary activity.

## **Fundamental elements of a crime**

To establish criminal liability, crime can be broken down into elements which a prosecution must prove beyond a reasonable doubt. There are basically four elements of a crime are as follows:

### **1) Human being: Section 11**

Human being must commit wrongful Act to fulfill first element of a crime that means any non living thing or animals are not considered in the category of a person or a human being whereas in ancient times when criminal law was closely dominated by the idea of ritter bit theory punishment was also inflicted on animals for the injury caused by them. For Example, if a dog bites anyone he is punished a horse was killed for kicking a man but in Indian Penal Code if animal cause injury we do not make animal liable but the owner is held liable for such injury so the first element of crime is human beings who must be given appropriate punishment and should be under legal obligation to held criminally liable. 'Person' is defined in Section 11 of Indian Penal Code which includes company, association or body of persons whether incorporated or not. The word person includes artificial or juridical persons. He is a legal entity created by law which is not a natural person such as corporation created under state statute. It is a legal entity having a distinguished identity and legal rights and obligation under the law.

### **2) Mens rea or Guilty intention**

The second element is derived from the famous maxim Actus Non-Facit Reum Nisi Mens Sit Rea. This maxim is divided into two parts. The first part-

1. a) mens rea (guilty mind);
2. b) Actus reus ( guilty act ).

It means the guilty intention and guilty Act together constitute a crime. It comes from a maxim that no person can be punished in a proceeding of criminal nature unless it can be shown he has a guilty mind. The second element is Mens rea which can be explained in various forms a guilty mind; a guilty or wrongful purpose; a criminal intent, guilty knowledge and willfulness all constitute the same thing that mens rea.

Motive and Intention are both aspects in the field of law and justice both are very important. They are also associated with the purpose of proving or disproving a particular case or crime Wrong motive with guilty intention is necessary to prove criminal liability.

### **3) Actus reus or illegal Act or omission**

It is the Latin term used to describe a criminal Activity. It is commonly defined as a criminal activity that was the result of voluntarily bodily movement. This describes a physical Activity that harms another person or damages property. In other words, due to guilty or wrongful intention, some overAct or illegal omission must take place. There are two types of Actus reus first is commission and the second one is an omission. The commission is as a criminal activity that was the result of voluntarily body movement. This describes a physical Activity that harms a person or property. Against human body includes physical assault, murder, hurt, grievance, hurt etc & property includes theft, decoity, extortion etc.

The omission is another form of Actus reus as an Act of criminal negligence. An omission could be falling to warn others that you have created a dangerous situation, for eg. not feeling an infant who has been left in your care or not completing a work-related task which resulted in an accident.

#### 4) Injury under Section 44

The fourth requirement of a crime is injury should be caused to another person or to society at large. According to Section 44 of Indian Penal Code, 1860 the injury is defined as any harm illegally caused to any person in body, mind, reputation or property by another person. Elements of crime are a set of facts that must be proven to convict a defendant of a crime. Criminal elements are sets forth in criminal statutes or cases in jurisdictions that allow for common law crimes.

#### Actus Reus

##### Meaning

It is a Latin term for the guilty Act. The Act you need to commit an offence. It must be a voluntary Act. Actually doing something eg taking a bracelet in a theft. It is not an involuntary Act. An example of an involuntary Act given in the case of Hill vs Baxter was someone losing control of a car because they are attacked by a swarm of bees or because they have a heart attack.

Actus reus is such a result of human conduct as law seeks to prevent. It should be prohibited by law. It is a physical aspect of the crime. There are basically two main components of criminal law is Actus Reus and Mens Rea.

Actus Reus is the wrongful Act or task committed by a person and Mens Rea is the state of mental aptitude behind such Acts. Mens rea is a term from which a famous Latin maxim Actus Non-Facit Reum Nisi Mens Sit Rea had been derived. Actus Non-Facit Reum Nisi Mens Sit Rea further explains as to how Mens Rea is applicable in committing an offence or a crime. It states that if a guilty mind or intent is accompanied by a wrongful Act then only the person will be held liable. This maxim is used to determine whether an Act committed by a person is an offence or crime or not. Severe penal Actions are required for crimes committed with specific intentions and not for unanticipated or unintentional Acts. However, no breach of law cannot be unpunished. To differentiate between intentional and unintentional criminal Act this legal maxim is established so that the type of punishment can be decided accordingly. There can be no crime and no suit for damages can arise without a guilty Act.

#### General Principles Of Actus Reus

The general rule of Actus Reus is no liability for failing to Act unless at the time of failure to Act the defendant was under a legal duty to take positive action.

**The duty arises from statute-** Children and young person Act, 1933 (UK), omission culpable by people over the age of 16 failing to look after a child under 16.

**The duty arises from a contract-** Failure to perform the contractual duty in question can perform the basis of criminal liability.

**The duty owed to family members-** R VS Gibbons and proctor 14 Crapp-man and his wife were guilty of murder by failing to feed the man daughter.

A Mere omission to Act cannot be lead to criminal liability unless a statute specifically provides or a common-law imposes a duty on it. Moral duty should be distinguished from the legal duty of an Act.

#### Causation in Crime

Causation doctrine can be boiled down to the question of whether the defendant illegal Action was an operative and substantial cause of harm which resulted. The question which the court asked was 'but for'. 'But For' defendant Action, the harm has occurred. For example, Albert poisoning victoria when victoria dying of a heart attack before the poison takes effect to put events in another way around however it does make a difference shooting the life of someone with terminal illness causing their death because without the illegal conduct they would not have died at the time and in those circumstances.

The 'But For' doctrine however still involve a lot of potential causes also we also ask for legal causation that is whether the defendant Action is the operative and substantial cause of harm. This is most significant where the Action and inAction of another person or the victim themselves change the normal course of events. This is known as nervous Actus intervenes and a new intervening Act.

Professor hard and honour develop this principle using the distinction between those circumstances that are apart of factual background or conditions and those who are causes. They point out that in order to start a fire u need a drop match, oxygen, and combustion material but we will only the cause of that fire. In this case, oxygen and flammable material are normal ways whereas causes the dropped match is abnormal and in their view, abnormal things can only be causes. The question of what things are abnormal. It was emphasized that only free voluntarily and an informal Act of a third party can be abnormal and break the chain of causation.

In the case of R vs Smith defendant, a soldier got in a fight at an army and stabbed another soldier the injured soldier was taken to a hospital but was dropped twice at route .once their treatment given was described as wrong .they failed to diagnose that his lung was punctured and the soldier died. The defendant was convicted of murder and the appeal contended that if the victim was given correct medical treatment he would not have died. It was held that the stab wound was an operating cause of death and therefore conviction was upheld. In such cases, the court was reluctant to lead the defendant complaints that their victim was have survived if they had received proper medical care.

### **Causa causes (कारण)**

Causa causes literally means the primary cause or the originator of Action. It is the reason for all the causes. Damages that resulted from all the causes are generally referred by causa causes. To get the damages the defendant illegal Act must cause harm that should be proved by the claimant. There is no need to prove the original cause of harm by the defendant. However, while determining the cause of harm the court will consider the proper explanation given by the defendant for the original cause of the harm.

### **Minimal Causation**

#### **Moti Singh v. the State of UP**

Moti Singh and Jagdamba Prasad appellants together with five other persons were convicted by the session judge of Unnao of offences under Section 148, Section 302, read with Section 149 and Section 307. Each of them was sentenced to life imprisonment under Section 302 read with Section 149 of the Indian Penal Code. It was alleged that the accused party members fired with guns and pistols both from inside and outside the room on the other side of passage when the victim party passed along with the passage. The evidence relied on for the conviction of Moti Singh consists of the dying declaration Ex kha 75 of Gaya charan and presumably also of the statements of the prosecution witnesses as HC has not specifically stated so. Again, HC relied on exhibit Kha 75, the alleged dying declaration of Gaya charan as deciding, factor in deciding the number of persons who had taken part in firing from the room and from the platform. The result is that the statement of Gaya charan Ex Kha 75 is inadmissible in evidence. It was a mainstay of the judgment of HC upholding the finding of the session. Appellants were among the persons who had fired from room and platform. It therefore accordingly allowed appeals the order of the HC and acquit Moti Singh and Jagdamba prasad of the offences they were convicted of and hold that Moti Singh and Jagdamba prasad have not been to have taken part in that incident. It was directed that they are released forthwith, if not required to be detained under any process of law. Appeal allowed by the court.

### **Rewarm v. the State of MP**

In this appeal, the conviction was challenged by appellant rewarm. Under sec 302 of the Penal Code for which he has been sentenced to imprisonment for life for committing the murder of this wife. The prosecution case is four children and appellant resided with deceased Gyanwati Bai in the house of Bhurkin Bai. It was found that the appellant was standing close to her and she was lying close to her bed in the pool of bed. Dr Mahajan performed post mortem examination and found numerous incised wounds on the persons of the deceased. As per the report, in the ordinary course of nature to cause death he opined that injury no 5 as written in the report was sufficient. Due to effective medical treatment, Gyanta bai had recovered from the shock. SHRI Datt relied upon a decision of this court in

NOOR Khan vs the state of MP. In that case, the medical evidence was used to refer to the injuries sustained. In the result, the appeal was not allowed and not implemented. Under Section 302 of the Penal Code, the conviction of the appellant Rewaram with a sentence of imprisonment for life is confirmed.

### **Unexpected Interventions**

#### **Harjinder Singh v. Delhi administration**

In this case, a fight took place between Dalip Kumar and Harjinder Singh, appellant near the water tap in front of a tin factory in Zamirwali lane, Delhi. Harjinder Singh was badly injured in the fight and he then left the place holding out a threat that he would teach a lesson to Dalip Kumar. The appellant returned with his brother Amarjit Singh to go away but either these two or Dalip Kumar pulled out of the house into the lane and gave him beating near lamp post in Zamirwali lane. It seems to us that High Courts has not considered whether the third ingredient has been proven in this case or not. In our opinion, the circumstances justify the inference that the accused did not cause to intend the injury. When the appellant struck the deceased with the knife, he must have known that the deceased being than being in a bent position. In these circumstances, he struck the deceased with the knife with the intention to cause an injury likely to cause death was quite legitimate. The appeal is allowed and conviction is altered from Section 302 to Section 304.

### **Mens rea**

An Act becomes a crime when it is committed with evil intention. Evil intention or guilty mind is essential to commit a crime otherwise a person cannot be held liable and punished. Mens rea is based on a well-known maxim. Actus non facit reum nisi mens sit rea which means Act does not make a man guilty unless his intention was so. Earlier in English criminal law, there was no distinction between crime and tort. Criminal law was based on strict liability and punishment in those days was mainly in the form of monetary compensation. Therefore mental element in crime was irrelevant but later bodily punishment came in substitute of damages. Now from here, mens rea got importance. Mental element in crime was recognised as this time With the passage of the time, mens rea become an element in deciding crime. For any criminal liability, the Act should be voluntarily committed. No person can be held liable for an Act done under any fear or compulsion. For example, A points revolver on B and say to open the lock of the house of C. Here B Act is not voluntary but it was against his will. Intention and motive is a different element of a crime Motive may be good or bad but if the Intention is not good then the person is held liable for the crime.

For example, if A steals bread from a shop due to hunger. Here the motive is good but still, he is liable for stealing.

### **R VS PRINCE**

Prince took away a girl below 16 yrs of age from the position of father and against the will of her father. Prince argued that the girl told him that she was of 18 yrs and the intention was bonafide as she was looking like 18 yrs or above. In this case, the court has held that he cannot be given the benefit of the doctrine of mens rea because this is the case of mistake of law, taking away a girl below 16 yrs is unlawful hence he was held guilty.

### **General Principles**

Actus Non-Facit Reum Nisi Mens Sit Rea – An Act does not itself make one guilty unless the mind is also guilty This guilty mind is known as Mens Rea. There are two elements of mens rea first one is intended to do Act and the second one is knowledge of the circumstances that make the Act a criminal offence. Mens rea takes on different types in the different surrounding that is what is evil intent for one type of criminal offence may not be so for another kind. For example, in case of murder intent to goes is mens rea then in case of theft intent to steal is mens rea.

Other Forms of Mens Rea:

- 1) Intention;
- 2) Motive;
- 3) Knowledge;
- 4) Recklessness;
- 5) Negligence.

These all refer to different types of mental aptitude which constitutes mens rea.

### **Mens rea in the Indian Penal Code 1860**

#### **Kartar Singh v. the State of Punjab**

The SC held that statutory penal provision must be read with the elements of mens rea unless a statute either expressly or by necessary implication rules it out.

#### **Intention**

It is the purpose or design for which an Action has been done. The intention is basically Position of mind at a particular time in committing an offence and will of accused to see the effects of his unlawful effect.

#### **Hyam Vs DPP**

D, in order to frighten Mrs booth put burning newspaper in the letterbox of booth house fire spread and two children, died D not meant to kill, but foreseen death or grievous bodily injury as a high probable result D is guilty she knew about the result of her conduct sufficient mens rea for murder. The intention not only means a specific intention but also generic intention. Section 39 of IPC defined term 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 knows or had reason to believe to be likely to cause it.

#### **Intention and Motive**

The motive works as the fuel for the intent. The motive is the reason why someone is going to do something. It is the fountain from which the Actions, spring whereas intent is the goal to which they are directed. Intention means the purpose of doing something motive determines the reason for committing an Act. The intention is the basic element for making a person liable for a crime which is commonly contrasted with motive. The intention is the product of motive in fact motive is not a legal element of a crime. Motive plays a significant role because without an understanding of why people commit certain crimes in the way they do we are left to begin at whether they have done with a good motive or bad.

#### **Knowledge as Mens rea**

Knowledge is the awareness of the consequences of the Act. The term Knowledge is used in Section 307 (attempt to murder) instead of mens rea The knowledge and intention are on the same footing with a guilty mind Therefore knowledge is also component which includes mens rea. Therefore the Indian Penal Code recognizes Mens rea as knowledge.

#### **Om Prakash vs Punjab**

Defendant does not give the food to his wife for several weeks and he is now liable for murder because Act must be done with intent or knowledge of the scarcity of food.

#### **Negligence as Mens rea**

The third form of mens rea is negligence. Negligence is the duty to take care of. In other words, a person when he is negligent if he fails to exercise the duty or caution while performing a lawful Act The concept of reasonable negligence is not defined anywhere. Test of reasonable care depends on the view of the prudent man therefore who is able to fail to take care of reasonable care and if his Actions cause

harm anyone it is called the negligent Actions of a person this negligent Act is considered as a mens rea for criminal liability of a person.

### **Vicarious Liability**

According to the principle of vicarious liability when a person is liable for the wrongful acts done by another person, then that first person is known as vicariously liable for the actions of the second person. Here the relationship between the two of them is a must.

There should be some relationship between A and B then only the liability of A will can arise towards B for doing some Act.

The relationship can be in the form of:

- (a) Principal and agent.
- (b) Partners of the partnership firm.
- (c) Masters and servant.

The principal is liable committed by his agent during the course of employment. The plaintiff has the choice to sue the principal or agent or both of them.

### **The exception to General Rule of Vicarious Liability**

A person who does any wrongful Act through another person (servant/agent) by hiring them and hired person does that wrongful Act in the course of employment.

### **There are two Latin maxim in which Vicarious Liability evolve out:**

**Respondent superior:** Let the master be liable.

**Qui facit per alium facit per se:** Master will be liable for the work of his servant.

### **Criminal Liability**

In our society, a crime often takes place which are against the principle of humanity. A person convicted for a crime has a certain criminal liability. The general principles i.e. Actus reus and Mens rea, play significant role in deciding criminal liability.

### **Crime**

There are lots of evils in our society, one among them is crime. There is no universal accepted definition of crime, however certain acts of an individual or group of people, which harm the people or disturb peace and tranquility of the society can be termed as crimes. The person, who commits a crime, is punished as per law, so that such activities do not repeat in future. In general, following acts can be considered as a crime like attack on public order, abuses or obstructions of public property, causing injuries to public, attacking individuals and annexing their rights, attack upon the property of individuals, or upon rights associated with, etc.

Thus, crime can be of dual nature i.e. civil or criminal. Sometimes, a crime in one country may not be crime in any other country, as crime is decided by the statute of the nation. According to sociologist, a crime can be against human body, property, public place, religion, and family, morals of society and conservation of resources of society.

### **Definitions of Crime**

**According to Sir William Blackstone,** "Crime is an act committed or omitted in Violation of public law forbidding or commanding it."

**According to Sergeant Stephen,** "A crime is a violation of right, considered in reference to the civil tendency of violation as regards the community."

**According to John Gillin,** "An act that has shown to be actually harmful to Society or that is believed to be socially harmful by a group of people that has the power to enforce its beliefs, and that places such an act under the ban of positive penalties."

**According to Prof. SW Keeton,** "A crime today would seem to be any undesirable act, which the State finds most convenient to correct by the institution of proceeding for the infliction of a penalty, instead of leaving the remedy to the discretion of some injured person."

**According to Section 40 of the IPC,** "An offence denotes a thing made punishable by the code."

**According to Halsbury's Law of England,** "A crime is an unlawful act or default which is an offence against the public and renders the person guilty of the act or default liable to legal punishment."

**According to BA Wrotley,** "A crime is an offence against the law, and is usually an offence against morality, against a man's social duty to his fellow being members of society; it renders the offender liable to punishment."

### **Criminal Liability**

When a person do or perform certain act, there can be positive, negative or neutral consequences. A person is liable for consequences of his/her act. In law, criminal liability can be defined as a liability or responsibility of a person, for a crime when he or she has acted with criminal intent, as opposed to acting accidentally or lacking the ability to act deliberately. If liability is proven in court, then one will be sentenced accordingly. In deciding criminal liability, the actus reus and the mens rea play a chief role.

### **General Principles of Criminal Liability**

There are two general principles of criminal liability i.e. Actus reus and Mens rea. These are discussed below:

#### **Actus Reus**

Actus reus is the first general principle of criminal liability. It is a Latin term, which means 'guilty act'. It is also referred as the external element or the objective element of a crime. According to statute, it refers to the act or omission that comprises the physical elements of a crime.

In his criminal law, Glanville Williams stated that "actus reus includes all the external circumstances and consequences specified in the rule of law as constituting the forbidden situation."

Therefore, we can say that it include everything except mental element. It consists of both positive and negative elements.

The characteristics and constituents of actus reus are decided by the criminal law of the country, that's why they vary from one country to another. Definition of crime, as adopted by the law plays a very significant role in deciding requirement of actus reus.

### **Principle of Actus Reus in the Indian Penal Code, 1860**

Offences related with the principle of actus reus, in the Indian Penal Code are as follows:

**Place:** Section 441 to 462 of the IPC, deals with the various offences related with places, which include criminal trespass, house trespass and breaking, dishonestly breaking open respectable containing property, etc

**Time:** Section 456 to 458 of the IPC contains offences of lurking trespass or house-breaking by night in order to commit an offence. Such offence fall in category of actus reus in respect of both place and time.

**Person:** Section 359 to 374 of the IPC contains offences of kidnapping and abduction, procuring of minor girls etc, such offence is actus reus in respect of the person.

**Consent:** The offences which take place without consent are also included in actus reus. Example of such offences is rape, non-consensual penetration, etc.

**Possession:** Possession of stolen property constitute the actus reus (Section 410 to 412 of IPC) and mere possession of certain things amount to actus reus of the offence under Section 233 to 235, 257, 242, 243, 259 and 266 of IPC.

**Preparation:** Actus reus also includes preparation to commit an offence under Section 122, 126 and 399 of IPC.

## **Mens Rea**

Mens rea is another general principle of the criminal liability. It is a Latin word which means 'guilty mind', just opposite of actus reus. In Laymen language, it can be defined as a mental element of a person's intention to commit a crime. Mental condition is one of the basic ingredients for committing a crime. Therefore, we can say that mens rea is motive force behind the criminal act. The degree of mens rea varies from one crime to another. In the cases of murder, forcible sexual assault, stealing property, homicide, etc, there was intention in the mind of culprit to commit these offences.

The doctrine of mens rea is based on the latin maxim actus non facit reum nisi mens sit rea, which means 'the act does not make one guilty unless the mind is also guilty'. According to this maxim, physical action is not sufficient to constitute a crime. Moreover, propounder of mens rea has acknowledged that every person has the capacity to choose between right and wrong. An Individual can utilize his wisdom and prudence to choose the right direction. After making choice, he has to take responsibility for the same. Human beings are born free and they have freedom to act freely.

## **Principle of Mens Rea in the Indian Penal Code, 1860**

The Indian Penal Code does not explicitly mention offences related with the principle of mens rea. However, there are certain words used in different offences which indicate element of mens rea. These words are wrongful gain or wrongful loss, dishonestly, fraudulently, reason to believe, criminal knowledge or intention, intentional cooperation, voluntarily, malignantly, wantonly, maliciously, etc. The general exceptions embodied in the Chapter IV of the IPC include acts which, otherwise would constitute an offence, ceases to be so under certain circumstances set out in this chapter.

## **Types of Criminal Liability**

Criminal liability can be categorized into three types i.e. individual, group and constructive liability, which are as follows:

### **Individual Criminal Liability**

An offence or unlawful activity can be committed by an individual or group of individuals. When an individual commit a crime, he/she is responsible for criminal liability of a committed crime.

For example, there are four friends A, B, C and D. They live in a same flat, and study in same college. One day, A beats D because of some issue between them. In this case, A will be liable for unlawful act, B and C will not have any liability. Hence, case of A is perfect example of an individual criminal liability.

### **Group Criminal Liability or Joint Liability**

Group criminal liability is just contradictory to individual criminal liability. In crimes, where two or more people are involved in the commission of crime, in such cases all the people are liable for committing a crime. In group liability, along with direct participant, indirect participants are also caught, though punishment in crime, committed by group, can be same for all or different based on their role in the crime.

Most of the planned or organized crimes come under the category of group criminal liability. In the Indian Penal Code, 1860, provisions regarding group liability have been covered under joint liability. Section 34 to 38 of the IPC, 1860, embodies the principle of joint liability in committing crime.

### **Acts Done by Several Persons in Furtherance of Common Intention (Section 34)**

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

## **Section 35 of the Act**

This section covers 'An act which is criminal by reason of its being done with a criminal knowledge or intention'.

As per the provisions of this section, 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.

### **Effect Caused Partly by Act and Partly by Omission (Section 36)**

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.

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

### **Co-operation by Doing One of Several Acts Constituting an Offence (Section 37)**

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

For example, 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.

### **Persons Concerned in Criminal Act may be Guilty of Different Offences (Section 38)**

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.

For example, A attacks Z under such circumstances of grave provocation that his killing of Z would only be 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.

### **Constructive Liability**

Constructive liability is quite similar to the group or joint liability. It is based on the principle that a person is liable, in law, for the consequences of an act of another, even though he has not done it himself. Many times, it has been found that a person who committed crime was just an instrument, while actual and principal offender was another person. A case of an abetment is perfect example of constructive liability.

In *Alauddin Mian v. State of Bihar* case, explaining the importance of Section 149 of the Indian Penal Code, the Supreme Court has observed that this section creates constructive liability and makes every member of the unlawful assembly, liable for the offence or offences committed in the course of the occurrence, provided that the same was/were committed in prosecution of the common object or was/were such as the members of that assembly knew to be likely to be committed.

In *Rama Pasi and Another v. State of U.P.* case, court held that Section 149 prescribes for vicarious or constructive criminal liability for all members of an unlawful assembly, where an offence is committed by any member of such 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.

Moreover, a person may be constructively liable for an offence under following sections of IPC Under Section 34, Acts done by several persons in furtherance of common intention.

Under Section 121A, being a member of a conspiracy to commit such an offence.

Under Section 141, being a member of an unlawful assembly, the members whereof knew that an offence was likely to be committed. It include to resist the execution of any law, or of any legal progress, to overawe by criminal forces, or show of criminal force, to commit any mischief or criminal trespass, to take any person or property in possession and to compel any person to do what he is not legally bound to do.

### Stages of Crime

Committing a crime is a full-fledged process consisting of several stages, though there are some exceptions to it, when some criminal activities take place immediately on a spot. In premeditated crimes, there are four distinct stages which are as follows: Intention.

It is the first stage in the commission of a crime; it is also referred as the mental and psycho stage. In this stage, person (offender) decides that he has to do some criminal act. Moreover, offender decides the motive and chalks out plan for committing a crime. Many intellectuals name this stage as contemplation stage. No law in world, contain any provision for punishing a person who has generated intention for doing some criminal act, as it is mental concept, which cannot be proved in court.

### Preparation

After intention, stage of preparation comes, which plays an instrumental role in the commission of a crime. In this stage, an offender arranges the necessary resources for the execution of the intentional criminal act.

For example, if a person wants to kill another person, because of any reason, in preparatory stage, that person can make arrangement for weapon, hire people or any other thing depending on his capacity.

Usually, a preparation to commit a crime is not punishable, however in certain cases, it can be punishable, such as preparation to wage war against the government (Section 122), against friendly foreign country (Section 126) and to commit robbery or dacoity (Section 399).

### Attempt

Attempt is the third stage in the commission of crime. It is first explicit stage for committing crime. It can be defined as a direct movement towards the execution of a crime after the stage of intention and preparation.

According to Sir Stephen, an attempt to commit a crime is an act termed with intention to commit it and forming part of a series of acts which could constitute the offence, if it were not interrupted.

### An attempt to crime has been covered in the IPC, in three different ways:

In some cases, punishment for completed offence and their attempt is same, has been provided under Section 121, 124, 124(A), 125, 130, 131, 152, 153(A), 161, 162, 163, 165, 196, 198, 200, 213, 239, 240, 241, 251, 335, 337, 391, 398 and 460.

In many cases, different punishments have been provided for the completed offence and its attempt. Such cases are under Section 302, 304, 307, 308, 392, 393 and 309. Rest of the cases is covered under Section 511.

### Accomplishment(उपलब्धि)

It is the last stage in the commission of crime. This stage is considered to be taken place, when an offender is successful in committing his/her intention. Depending on the situation, if offence is completed, then person will become guilty and if unsuccessful, he will be guilty of his attempt.

## Inchoate(अविकसित) Crime

Crimes are of different types, one among them is inchoate crime. These are also called by names such as preliminary crime, inchoate offence and incomplete crimes. It can be defined as an act or omission taken towards committing a crime or acts that constitute indirect participation in a crime. Earlier inchoate crime was considered as a minor crime, but now it is considered as a serious crime. There are actions which may not be a crime in and of itself, however actions may act as a purpose of furthering or advancing a crime.

## Types of Inchoate Crime

Inchoate crime is categorized into three types viz. abetment, criminal conspiracy and attempt, which are discussed below:

## Abetment(बहकाव)

In simple words, abet means to encourage or assist to do something wrong, especially in the context of committing a crime. Abetment includes help, co-activity and support within its ambit. Many times, a person does not want to do certain criminal acts, however under the influence or abetment by another person, that person can commit crime.

In the case of Sanju v. State of Madhya Pradesh, the honorable Supreme Court defined abet as meaning to aid, to assist or to give aid, to command, to procure, or to Counsel, to countenance, to encourage or to set another one to commit.

Generally, a person who has committed it is liable for it, but principle of abetment emphasizes that one who helped criminal or provided him assistance, can also be held liable. Provisions Related to Abetment in the IPC, 1860.

Following sections of the IPC are related with the abetment. Abetment of a Thing (Section 107)

### A person abets the doing of a thing, who:

instigates any person to do that thing, or engages with one or more other 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 intentionally aids, by any act or illegal omission, the doing of that thing.

For example: A, a public officer, is authorized by a warrant, from a Courts of Justice to apprehend Z. B knowing that facts 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.

### Abettor (Section 108)

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. 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.

For example, A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

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.

For example, 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.

### **Section 109 of the Act**

This section deals with 'Punishment of abetment, if the act abetted is committed in consequence and where no express provision is made for its punishment'. As per the provisions of this section, 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. For example, 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.

### **Section 110 of the Act**

This section deals with 'Punishment of abetment, if person abetted does act with different intention from that of abettor'. As per the provisions of this section, 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.

### **Liability of Abettor when One Act Abetted and Different Act Done (Section 111)**

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. 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.

For example, 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.

### **Abettor when Liable to Cumulative Punishment for Act Abetted and for Act Done (Section 112)**

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.

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

### **Section 113 of the Act**

This section deals with 'Liability of abettor for an effect caused by the act abetted different from that Intended by the abettor'. As per the provisions of this section, when an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect provided, he knew that the act abetted was likely to cause that effect.

For example, 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.

#### **Abettor Present When Offence is Committed (Section 114)**

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.

#### **Section 115 of the Act**

This section deals with 'Abetment of offence punishable with death or imprisonment for life, if offence is not committed'. As per the provisions of this section, whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

If act causing harm be done in consequence, 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.

For example, 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 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.

#### **Section 116 of the Act**

This section deals with Abetment of offence punishable with imprisonment, if offence be not committed. As per the provisions of this section, 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.

For example, 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.

#### **Abetting Commission of Offence by the Public or by more than Ten Persons (Section 117)**

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.

For example, 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.

#### **Concealing Design to Commit Offence Punishable with Death or Imprisonment for Life (Section 118)**

Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design, if offence is committed, be punished with

imprisonment of either description for a term which may extend to seven years, or, if the offence is 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.

For example, 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.

### **Concealing Design to Commit Offence Punishable with Imprisonment (Section 120)**

Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall if the offence is 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 is not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

### **Criminal Conspiracy**

A criminal conspiracy is a common inchoate crime. It can be defined as a secret pact or agreement between two or more people to commit an unlawful act or to accomplish a lawful end by unlawful means. According to criminal law, a person can be convicted for planning a conspiracy even if the actual crime was never committed.

For example, A is enemy of businessman B, A plans to kill B, A buys weapon and start following person B to find right moment to kill him. A can be charged with conspiracy to commit murder of B, regardless of whether the killing itself is ever attempted or completed.

In order to punish a person for criminal conspiracy, there should be sufficient evidence to show that two or more than two people were in agreement to commit a crime.

### **Provisions related to Criminal Conspiracy in the IPC, 1860**

Following sections of the IPC are related with the criminal conspiracy

#### **Definition of Criminal Conspiracy (Section 120A)**

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 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.

#### **Punishment of Criminal Conspiracy (Section 120B)**

Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 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. [Section 120B (1)]

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. [Section 120B (2)]

## Attempt

The Supreme Court, in *Koppula Venkat Rao v. State of Andhra Pradesh*, observed that: "The word 'attempt' is not itself defined, and must, therefore, be taken in its ordinary meaning. 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 failing short of actual consummation, and possessing, except for failure to consummate, all the elements of the substantive crime".

There are some tests upheld by courts of India for distinguishing attempt to commit an offence from the stage of preparations. A few of them are the Proximity Rule, Doctrine of Locus Poenitentiae and the Equivocally Test.

Provisions related to Attempt in the IPC, 1860  
Following sections of the IPC are related with the attempt

### Section 511 of the Act

This section deals with 'Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment'.

As per the provisions of this section, whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with 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.

### Section 121 of the Act

This section deals with "Waging, or attempting to wage war, or abetting waging of war, against the government of India".

As per the provisions of this section, whoever wages wa; against the (Government of India), or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine.

### Waging War Against any Asiatic Power in Alliance with the Government of India (Section 125)

Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the Government of India or attempts to wage such war, or abets the waging of such war, shall be punished with 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.

### Abetting Mutiny, or Attempting to Seduce a Soldier, Sailor or Airman from his Duty (Section 131)

Whoever abets the committing of mutiny by an officer, soldier, sailor or airman in the Army, Navy or Air Force of the Government of India or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.

### Attempt to Murder (Section 307)

Whoever does any act with such intention of 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 10 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 imprisonment for life or to such punishment as is hereinbefore mentioned.

### **Attempt to Commit Culpable Homicide (Section 308)**

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.

### **Attempt to Commit Robbery (Section 393)**

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.

## **1.3 Theories and Kinds of Punishment (Includes IPC Chapter III: Sections 53 to 75)**

### **Theories of punishment**

Punishment. A term which is inherent to criminal justice. It is only because of the term punishment, that certain acts are classified as 'crimes'. Down the lane of the history of the society, we have seen that without punishments, it would have sometimes been impossible to tame the barbaric, as well as primitive tendencies of the public. It was the weapon named 'punishment', that the rulers used against their subjects in order to maintain a fear in the minds of the public regarding the capacities and powers of their rulers. Punishments sometimes were also given as an insult to someone else. However, the most common punishment from which all of us are familiar is the scolding or mild beating that we get from our parents. In that case, what are the theories of punishment actually in case of serious crimes? How did they develop? What are the pros and cons of the various ways of punishing people? Do the Hindu scriptures too depict any form of the punishments mentioned hereinafter? Through this paper, we will try to answer all such questions and understand how far are the various Theories of Punishment applicable in the present era. The theories of punishment are as follows:

- RETRIBUTIVE THEORY.
- DETERRENT THEORY.
- PREVENTIVE THEORY.
- INCAPACITATION THEORY.
- COMPENSATORY THEORY.
- REFORMATIVE THEORY.
- UTILITIRIAN THEORY.

Let us have a look at each one of them in detail.

### **Retributive Theory of punishment**

The Retributive Theory of Punishment, or the 'Theory of Vengeance', as many people in the society would perceive it as, is the most basic, yet inconsiderate theory of inflicting a penal sentence over a perpetrator. It is based on a very small doctrine, namely the doctrine of *Lex talionis*, which if translated, means '*an eye for an eye*'. Now, if looked at from the perspective of very serious and heinous offences, like the Delhi gang rape case, people may feel that it is better to inflict such retributive punishments, so as to ensure that a deterrent is set across the society, in order to prevent such crimes in the near future.

However, we forget to understand sometimes that always having a retributive approach will render the society one with a primitive system of justice, where the Kings or the Judges were considered to be the supreme beings and were provided with the stature of God Himself (hence the address *My Lord*) and thus, collapse the very concepts of the representatives being 'servants'. Before we move on to a deeper understanding of the Retributive Theory, we need to understand two very important doctrines. Let us have a look at them both.

### **Doctrine of Societal Personification and the Doctrine of Correctional Vengeance:**

- Doctrine of Societal Personification can be stated as-

*'When a member of the society is subjected to a very heinous crime, as a result of which, the whole society, as if it were a natural person, considers the offence to be inflicted upon itself, comes to the defence of that person either by way of demanding justice or by conducting the same on its own, the society is said to be personified.'*

A very self-explanatory doctrine. To be put simply, it means that the society, whenever a heinous crime of an extreme form is committed, assumes the form of a natural person and behaves in a collective manner so as to get justice.

Eg: The country-wide protests for the Delhi gang rape case, the current Hathras rape case, etc.

- Doctrine of Correctional Vengeance maybe stated as-

*'When the society, in a fit to get justice, demands the concerned authorities to inflict vengeful (as painful as the original act, or even more) punishments upon the victim for creating a deterrent, it is said to exhibit correctional vengeance.'*

The above definition, too, is quite self-explanatory in its nature. Now that we have understood these two doctrines, we have a basic idea about what really is retributivism or retributive justice. Let us now have a closer look upon the same.

### **Understanding Retributive Theory of Punishment:**

'The concept of retributive justice has been used in a variety of ways, but it is best understood as that form of justice committed to the following three principles:

1. that those who commit certain kinds of wrongful acts, paradigmatically serious crimes, morally deserve to suffer a proportionate punishment;
2. that it is intrinsically morally good—good without reference to any other goods that might arise—if some legitimate punisher gives them the punishment they deserve; and
3. that it is morally impermissible intentionally to punish the innocent or to inflict disproportionately large punishments on wrongdoers.'

The above three principles clarify the needs for retributive justice even further. We may understand retributive justice in this manner. The place where both Criminal Law as well as Moral Law meet, is the place where mostly the retributive punishments are generated.

In fact, although people may classify punishments into seven different types, but in reality, every punishment, indeed, is retributive in nature. It is very interesting to see that the damages claimed under Torts, or the remedies sort for environmental violations, maybe compensatory, but at their hearts, are retributive in nature. Then why aren't they labelled as retributive, instead? Well, the answer to the question is simple. Retributive punishments are somewhat vengeful in their nature (an eye for an eye). They may not be vengeful always, but maybe merely morally vengeful. When we say this, it means that although the punishment is not literally the thing that was originally done by the perpetrator, is still acts as a vengeance by virtue of its seriousness.

E.g: If a person rapes someone, capital punishment maybe given as a retributive measure. If we literally give the person back what he did, i.e., sex, then it would be pleasurable rather than torturing for him. Now that we have understood briefly that how exactly the retributive punishment works, let us now move on to understand the ways in which Retributive Theory is displayed in the Hindu texts and scriptures.

### **Retributive Theory and the Hindu Scriptures:**

The Hindu scriptures, particularly the *Ramayana*, *Mahabharata* and the *Durga Saptashati*, are primarily based on Retributive Theories but also, depict the ways in which one should proceed while applying them.

**Ramayana-** In the *Ramayana* the whole story began from retribution itself. *Lakshmana* cut the nose of *Raavan's* sister, because of which he kidnapped *Sita*. In order to rescue her and also to avenge her kidnapping, *Ram* went to kill *Raavan*. But, the major difference between the application of the retributive punishment between the two was that *Raavan* did not even give *Ram* a chance to repent for his younger brother's act, but, *Ram* gave several chances to *Raavan* to correct his act.

**Mahabharata-** *Mahabharata*, once again, is a very good example of how retributive punishment should be inflicted. The *Pandavas* had not started-off with the war right away. They had sent *Shri Krishna* as their messenger of peace a number of times to the *Kauravas*, but, they did not give in. *Mahabharata*, especially *Shrimad Bhagvad Geeta*, talks about the time when the retributive mode should be used. As we all know that *Arjun* was about to leave the battlefield as he was too scared to go against his own relatives, it was *Krishna* who said that 'when all other paths close down, only then war is to be resorted to. Because if then the person refuses to fight, then it will inflict gross injustice upon the society at-large.'

**Durga Saptashati-** In this too, Goddess *Durga* warns the various demons, i.e. *Mahishasur* and *Shumbh-Nishumbh*, repeatedly, before starting a killer spree upon them.

Now, let us move on to see some important case laws regarding this theory of punishment.

#### Case Laws:

1. **Nirbhaya Judgement-** This case is indeed the first and foremost case to be mentioned, while talking about retributive justice in India. In this Judgement, the Supreme Court sentenced four out of six felons involved in the extremely heinous Delhi gang rape case to death, much to the delight of the society, as they had committed an extremely gruesome, as well as morally unimaginable crime.
2. **Anwar Ahmad v/s. State of Uttar Pradesh and Anr.-** In this case, the convicted had already undergone a six month imprisonment term, before being officially convicted by the Court. The Court held that since the convict had been convicted and also, the required 'blemish' had also been imposed upon him, it was not necessary to sentence him again in the name of 'retributive punishment', as it would inflict a very big loss upon the family as well.
3. **Sri Ashim Dutta Alias Nilu vs State of West Bengal-** In this case, it was observed that both deterrent and retributive punishment aim at prevention of the recurrences of the offences by others passing exemplary punishment for a particular offence. But the civilization and the societies are progressing rapidly. There is advancement of science and technology. The literate people and the experts in different branches of knowledge started thinking in a different way. Eye for an eye, and tooth for a tooth are no more considered as the correct approach towards the criminals. Such principle may perpetuate the rule of the Jungle but cannot ensure the rule of law.

#### Pros and Cons:

##### Pros-

1. Acts as a strong deterrent.
2. Helps in giving moral justice to the victim.
3. Instils the feeling of trust within the society, towards the judiciary.

##### Cons-

1. Sometimes, may become disproportionate with the seriousness of the crime.
2. Society develops feelings of vengeance and destructive tendencies follow.
3. The State may become autocratic in its functioning, using the punishment to torment people.

#### Deterrent Theory of punishment

In Deterrent theory of punishment, the term "DETER" means to abstain from doing any wrongful act. The main aim of this theory is to "deter" (to prevent) the criminals from attempting any crime or repeating the same crime in future. So, it states that deterring crime by creating a fear is the objective; to set or establish an example for the individuals or the whole society by punishing the criminal. That simply means, according to this theory if someone commits any crime and he/she is punished by a

severe punishment, then, it may result maybe that the people of the society will be or may be aware of the severe punishments for certain kinds of crimes and because of this fear in the minds of the people of the society, the people may stop from committing any kind of crime or wrongful act. Here I used the phrase “*may stop*” instead of “*will stop*”. That means, there is a probability of committing any crime or repeating the same crime.

The deterrent theory of punishment is utilitarian in nature. For a better understanding we can say like, ‘The man is punished not only because he has done a wrongful act, but also in order to ensure the crime may not be committed.’ It is best expressed in the word of Burnett, J who said to a prisoner: “*Thou art to be hanged not for having stolen a horse, but in order that other horses may not be stolen*”.

Through making the potential criminals realize that it doesn’t pay to commit a crime, the deterrent theory hopes to control the crime rate in the society.

### **Jurisprudential School of Thought:**

The deterrent theory can be related to the sociological school of Jurisprudence. The sociological school creates a relationship between the society and law. It indicates law to be a social phenomenon, with a direct and/or indirect connection to society. One of the main aim of the deterrence is to establish an example for the individuals in the society by creating a fear of punishment.

### ***Now most important question is arrived at; “Who established this deterrent theory of punishment?”***

The concept of deterrent theory can be simplifying to the research of philosophers such like Thomas Hobbes (1588-1678), Cesare Beccaria (1738-1794), Jeremy Bentham (1748-1832). These social contract thinkers provided the foundation of modern deterrence in criminology.

In the *Hobbesian* view, people generally pursue their self-interests, such as material gain, personal safety and social reputation and make enemies, not caring if they harm others in the process. Since people are determined to achieve their self-interests, the result is often conflict and resistance without a fitting Government to maintain safety. To avoid, people agree to give up their egocentricity as long as everyone does the same thing, approximately. This is termed as “Social Contract”. According to this social contract, he stated that individuals are punished for violating the social contract and deterrence is the reason for it to maintain the agreement between the State and the people, in the form of a social contract workable.

According to *Cesare Beccaria*, while discussing about punishments, the proportion of the crime and punishments should be equal for it to serve as a deterrence or have a deterring value.

According to *J. Bentham*, who is known as the founder of this theory, a hedonistic conception of man and that man as such would be deterred from crime if punishment were applied swiftly, certainly, and severely. But being aware that punishment is an evil, he says, if the evil of punishment exceeds the evil of the offence, the punishment will be unprofitable; he would have purchased exemption from one evil at the expense of another.

From the deterrent theories of Thomas Hobbes, Cesare Beccaria and J. Bentham, we came to know that the theory of deterrence consists of 3 major components. They are as follows:

- **Severity:** It indicates the degree of punishment. To prevent crime, criminal law must emphasize penalties to encourage citizen to obey the law. Excessively severe punishments are unjust. If the punishment is too severe it may stop individuals from committing any crime. And if the punishment is not severe enough, it will not deter criminals from committing a crime.
- **Certainty:** It means making sure that punishments must happen whenever a criminal act is committed. Philosopher Beccaria believed that if individuals know that their undesirable acts will be punished, then they will refrain from offending in the future.
- **Celerity:** The punishment for any crime must be swift in order to deter crime. The faster the punishment is awarded and imposed, it has more effect to deter crime.

Therefore, deterrence theorists believed that if punishment is severe, certain and swift, then a rational person will measure the gain or loss before committing any crime and as a result the person will be deterred or stopped from violating the law, if the loss is greater than the gain.

According to Austin's theory, "Law is the command of the Sovereign". In his imperative theory, he clearly declared three important things, which are as follows:

1. **Sovereign.**
2. **Command.**
3. **Sanction.**

Austin's question is that 'Why do people follow the rule?'. He believes that people will follow the law because people have a fear of punishments. On the basis of his beliefs, we can see a small example over here: When people are biking, they wear a helmet as per biking rules. Now, we can assume that some people wear helmets genuinely to save themselves from road accidents but on the other hand, some people wear helmets because of escaping fines or in fear of cancellation of their biking licence. So, in that case, they know that if they bike rashly or disobey the biking rules they will be punished by giving huge a amount of fine or their biking licence will be cancelled. So here we can say that the purpose of the deterrent theory is successful and applied also.

Now, if we go back a little earlier in time, in our *Hindu Scriptures* we also see that there were several punishments like public hanging, not only that but also people were immersed in hot oil or water. Most penal systems made use of deterrent theory as the basis of sentencing mechanism till early 19th century.

- In England, punishments were more severe and barbaric in nature to restrict same crime in the future. At the time of 'Queen Elizabeth I', deterrent theory of punishment was applied for restricting future crimes, even for too little crimes like 'pickpocketing'.
- In India also, inhuman punishments are granted.

But, if we discuss or follow this theory in today's context, then, it will be very clear that "deterrent theory" is not applicable at all or it may not be useful enough to prevent or to deter crimes by creating a fear in the minds of people. We have a very recent example of why deterrent theory is not successful in the case of "Nirbhaya Rape Case, 2012". This case is the foremost case to be mentioned while talking about deterrent theory of punishment. In this judgement, the Supreme Court sentenced four out of six offenders involved in the extremely heinous Delhi gang rape case to death. Now, the most important questions are-

- Whether the death sentence to the culprits will act as a deterrent?
- Will the number of crimes against women in our society drop down permanently?
- Specifically, in Nirbhaya judgement, is the aim of deterrent theory fulfilled?

The answers are 'no'. According to deterrent theory, the main objective is 'to deter crime, by creating a fear or establishing an example to the society.' Now, death penalty is a severe punishment. In the Nirbhaya case, the Court gave death sentence to the four convicts for committing gang rape. We can say that it is a great example for future offenders who will think about committing a crime like rape in future. So, according to this theory, after Nirbhaya judgment crimes like rape should not happen. But they are happening till now. Day-by-day, rape cases are increasing in our society.

In Nirbhaya gang rape judgement, it's being suggested that justice has finally been served to "India's Daughter" and though the decision came after a staggering seven years, it will help to secure the safety of women and prevent rape cases in the future. But it seems to further, as starting of the year 2020 has seen a slew of rape cases continue unabated. As an example, we can see for a recent gang rape case which was happened at Hathras, Balrampur, on 1st October 2020. So, simply we can see that there is no improvement through severe punishments also. "Death penalty does not act as a deter to rape cases"- This is the actual message we have understood. So that's why we can say that in today's generation there is no major implication of 'Deterrent Theory of Punishment'.

## **Preventive Theory of punishment**

Preventive theory of punishment seeks to prevent prospective crimes by disabling the criminals. Main object of the preventive theory is transforming the criminal, either permanently or temporarily. Under this theory the criminals are punished by death sentence or life imprisonment etc.

### **Philosophical View of Preventive Theory:**

Utilitarian's such as Bentham, Mill and Austin of England supported the preventive theory of punishment due to its humanizing nature. Philosophy of preventive theory affirms that the preventive theory serves as an effective deterrent and also a successful preventive theory depends on the factors of promptness. The proponent of this theory held that the aim of punishment is to prevent the crimes. The crimes can be prevented when the criminal and his notorious activities are checked. The check is possible by disablement. The disablement may be of different types. Confining inside the prison is a limited form of disablement, that is temporary and when it is an unlimited form of disablement, that is permanent. It suggests that imprisonment is the best mode of crime prevention, as it seeks to eliminate offenders from society, thus disabling them from repeating the crime. The death penalty is also based on this theory. This theory is another form of deterrent theory. One is to deter the society while another is to prevent the offender from committing the crime. From an overall study, we came to know that there are three most important ways of preventive punishment, they are as follows:

- By creating the fear of punishment.
- By disabling the criminal permanently or temporarily from committing any other crime.
- By way of reformation or making them a sober citizen of the society.

### **Case Laws:**

1. Dr. Jacob George v state of Kerala: In this case, the Supreme Court held that the aim of punishment should be deterrent, reformatory, preventive, retributive & compensatory. One theory preferred over the other is not a sound policy of punishment. Each theory of punishment should be used independently or incorporated on the basis of merit of the case. It is also stated that "every saint has a past & every sinner has a future". Criminals are very much a part of the society so it is a responsibility of the society also to reform & correct them and make them sober citizens of the society. Because the prevention of crime is the major goal of the society and law, both of which cannot be ignored.
2. Surjit Singh v State of Punjab: In this case, one of the accused, a policeman entered the house of the deceased with the intention to commit rape but failed to do so as the sons of the deceased shouted for help. Another accused suggested the policeman to kill the deceased. The accused was held liable under section 450 of the Indian Penal Code. While on the contrary, the death penalty or capital punishment is more of a temporary form of disablement.

### **Incapacitation Theory of punishment**

#### **Meaning:**

The word "**incapacitation**" means 'to prevent the offence by punishing, so that the future generation fears to commit the criminal act.' Incapacitation happens either by removing the person from the society, either temporarily, or permanently, or by some other method, which restricts him due to physical inability. One of the most common way of incapacitation is incarceration of the offenders, but in case of severe cases, capital punishments are also applied. The overall aim of incapacitation is preventing or restraining the danger in the future.

#### **Definition:**

*"Incapacitation refers to the restriction of an individual's freedoms and liberties that they would normally have in society."*

#### **Purpose of Incapacitation Theory:**

One of the primary purposes of this theory is removing the sufficiently dangerous persons from the society. The risk that is found to be posed by the offenders are largely a matter of inception. Therefore, if one country treats one offence in one way, another country will treat the same offence in a different way. For example, in the U.S., they use incarceration to incapacitate offenders at a much higher

rate, than in other countries. It has been seen that unlike the other theories of punishments like deterrence, rehabilitation and restitution, the theory of incapacitation simply rearranges the distribution of offenders in the society so that the rate of crime decreases in the society. The main aim of the theory of incapacitation is to dissuade others from the offenders in the past, so that it is not followed by the future generation.

**Application of the theory:**

The theory of incapacitation gets reserved only for those people who are either sentenced to prison or to life imprisonment. Yet, it also includes things like being supervised by the departments within the community, like probation and parole.

**Origin:**

The theory of incapacitation was originated in Britain, during the 18th and the 19th centuries, where the convicted offenders were often transported to places like America and Australia. Later in the 21st century, the theory was changed to some extent, where the offenders were to remain in the primary method of incapacitation which was found in most of the contemporary penal systems. Therefore, the theory usually takes the form of imprisonment, which is considered to be the best the form of incapacitation, rather than other methods of incapacitation.

***So, can incapacitation reduce crime?***

According to a study conducted by The University of Chicago, it has been proven that the crime rates can be prevented by 20 per cent. Also, it has been seen that if other theories are applied like Retributive Theory, Compensatory Theory, etc., then they lay down a fairly stringent application of putting the criminal behind the bars for at least 5 years. Also, it can happen to increase the population of the prison if the rest of the theories are applied. If a small number of high-rate offenders commit a disproportionately large amount of crime, targeting limited prison resources on these offenders should achieve increased crime control without increasing prison populations unreasonably. This policy will depend on the degree of the crime committed and whether the criminal is early in his carrier.

Compensatory Theory of punishment

**Definition:**

The main look out in the law of crimes is to penalize the criminal, and/or to seek his reformation and rehabilitation with all the resources and goodwill available through the Courts and other Governmental and non-Governmental organizations. It must be seen that the criminals should get proper judgement for their crimes so caused and the harassment caused to the victim and towards their family members and property. The victims in a crime can be compensated on mainly two grounds, namely-

1. A criminal who had inflicted an injury against the person (or group of persons), or the property must be compensated for the loss caused that has caused to the victim, and
2. The State that has failed to provide safety towards its citizens, must receive compensation for the loss caused.

Compensation is the true essence of deterrent, reformatory and a necessary contribution of retribution.

**Case Laws:**

- In the landmark case of *DK Basu v. State of West Bengal* the Apex Court held that a victim who is under the custodial right, has every right to get compensated as her Right to Life, which is under Article 21 of the Constitution, has been breached by the officer of the State.
- In *State of Gujarat and Anr. v. Hon'ble High Court of Gujarat*, Justice Thomas had held that, "The Reformatory and reparative theories deserve serious consideration, where the victim(s) of crime or his family members should get compensated from the wages that is earned in prison

by the criminal.” The Court suggested that the particular State should enact a comprehensive legislation in respect of his compensation payable to victim of a crime.

### **Reformative Theory of punishment**

The idea of the Reformative Theory is hypothesis. As per this hypothesis, the object of discipline ought to be the change of the crook, through the strategy for individualization. It depends on the humanistic rule that regardless of whether a wrongdoer perpetrates a wrongdoing, he doesn't stop to be a person. In this way, an exertion ought to be made to change him/her during the time of his/her detainment. For example, he may have executed bad behaviour under conditions which may never happen again. Hence an effort should be made to transform him during the hour of his confinement. The object of order should be to accomplish the moral difference in the liable party. He ought to be told and perform some craftsmanship or industry during the hour of his confinement with the objective that he may have the alternative to start his life again after his conveyance from jail.

### **History of the Theory:**

The human development has consistently been administered under the standard of an incomparable force. The job and type of pre-eminent force has changed throughout a long term. Beginning from the primitive type of Government to the present just, republican and different types of Governments, the obligation of the incomparable authority has changed a lot. The idea of discipline has additionally changed like the idea of State duty throughout the long term. The idea of discipline relied upon the premise of religion and the organization of the Kings. During old occasions, the idea of discipline was retributive premise, where the hoodlums were given uncouth type of discipline. Afterward, over the entry of ages, the significance of common liberties expanded which in essence cleared path for the replacement of Retributive hypothesis by Reformatory and Rehabilitative hypotheses. Under the Reformative and Rehabilitative hypotheses, the blamed are given such structures for discipline which would change them and keep them from perpetrating such wrongdoings.

The theory of punishment being followed in India with the goal to change the crooks as opposed to rebuffing them isn't that compelling in avoidance of the event of violations in India. The essential idea of law isn't to be static, but to be dynamic in nature. At exactly that point the law will have the option to be successful in all fields of the general public.

### **The Main Purpose Reformative Theory:**

The reason for this hypothesis of discipline is to make the criminal languish over his bad behaviour. Here the motivation behind the discipline is profoundly customized and rotates around the mental outlet of the person in question or his family. The primary reason might be accomplished to parole and probation, which have been acknowledged as current procedures of improving the guilty parties all around the globe. Consequently, the backers of this hypothesis legitimize imprisonment not exclusively to separate hoodlums and kill them from society. Not many of the advanced reformative procedures of discipline are essentially concocted for the treatment of guilty parties as per their mental attributes, for example, probation, parole, uncertain sentence, exhortation and pardon. The reformative techniques have demonstrated to be valuable in the event of adolescent misconduct, first wrongdoers and ladies. Sex cases additionally appear to react well to the reformative strategy for discipline. All the more as of late, the reformative hypothesis is in effect widely utilized as a technique for treatment of intellectually denied wrongdoers.

### **Criticism:**

1. Reformative theory anticipates better framework and offices in jail, legitimate co-appointment between various control and diligent exertion on their part to shape criminals. It requires gigantic ventures which poor nation can't bear the cost of.
2. A great many guiltless individuals who have high respects for law are finding hard to get fundamental courtesies hypothesizes moral avocation for giving better offices inside jail.

3. Also, the soundness of the hypothesis is more towards motivators for the commission of wrongdoing instead of counteraction.
4. Transformation can work out on those individuals who can be improved, there are individuals who can't be changed like bad-to-the-bone lawbreaker, profoundly instructed and proficient hoodlums.
5. This theory disregards possible wrongdoers and people who have submitted wrongdoing however not inside the arms of law. Further, it ignores the cases of survivors of violations.
6. Degenerate social ecological is liable for wrongdoing yet not person duty, is the way of thinking of reformative which is difficult to process. In any case, it is out of line to excuse the honourable idea of reconstruction as a complete disappointment. All know about the occasions where untalented, uninformed and evidently hopeless lawbreakers have created aptitudes in jail, which have changed them into profoundly valuable people.

### **Utilitarian Theory of punishment**

The utilitarian hypothesis of discipline tries to rebuff guilty parties to debilitate, or “hinder,” future bad behaviour. Under the utilitarian philosophy, laws ought to be utilized to amplify the joy of society. Since wrongdoing and discipline are conflicting with bliss, they ought to be kept to a base. Utilitarian's comprehend that a wrongdoing-free society doesn't exist, yet they attempt to incur just as much discipline as is needed to forestall future violations.

The utilitarian hypothesis is “consequentialist” in nature. It perceives that discipline has ramifications for both the wrongdoer and society and holds that the all-out great created by the discipline ought to surpass the absolute malevolence. At the end of the day, discipline ought not be boundless. One delineation of consequentialism in discipline is the arrival of a jail detainee experiencing an incapacitating sickness. In the event that the detainee's demise is fast approaching, society isn't served by his proceeded with restriction since he is not, at this point fit for carrying out wrongdoings.

Under the utilitarian way of thinking, laws that indicate discipline for criminal leads ought to be intended to dissuade future criminal direct. Discouragement works on a particular and an overall level. *General discouragement* implies that the discipline ought to keep others from carrying out criminal acts. The discipline fills in as an illustration to the remainder of society, and it advises others that criminal conduct will be rebuffed. *Explicit discouragement* implies that the discipline ought to keep similar individual from perpetrating violations. Explicit prevention works in two different ways. Initially, a guilty party might be placed in prison or jail to truly keep her from perpetrating another wrongdoing for a predefined period. Secondly, this crippling is intended to be undesirable to such an extent that it will demoralize the guilty party from rehashing her criminal conduct.

### **Does Utilitarian Theory Support Death Penalty:**

The apparent seriousness of capital punishment, there has been an exceptional debate encompassing the issue. Rivals of capital punishment pronounce that it is savage and harsh thus the administration ought to get rid of it. Then again, its allies keep up that capital punishment is a fundamental type of discipline that ought to be utilized on the most horrible guilty parties in the public eye. The exceptionally captivated discussion on capital punishment has kept on existing for quite a long time. Moral hypotheses can be utilized to concoct an answer for this exceptionally dubious issue. Morals figure out what is the correct strategy in a given circumstance. Various strong moral hypotheses have been proposed by researchers and scholars throughout the long term. This paper will utilize one of the most broadly applied moral hypotheses, which is utilitarianism, to exhibit that capital punishment is for sure legitimized.

### **Review of the Utilitarian Theory:**

From a utilitarian viewpoint, activities that advance the satisfaction of the larger part in the public arena ought to be sought after while those that prevent this bliss ought to be evaded. The

utilitarian hypothesis can be applied to the issue of the death penalty since this type of discipline produces both positive and negative results.

### **Net Benefits:**

The principal significant advantage offered by capital punishment is that it assumes a huge discouragement job. The most significant objective of the criminal equity framework is to debilitate individuals from taking part in wrongdoing.

This is accomplished by joining disciplines to violations with the goal that an individual sees the benefits of taking part in unlawful activities as being exceeded by the results. In that capacity, an ideal society would be one where nobody is rebuffed since the danger of discipline shields everybody from taking part in wrongdoing. Capital punishment is the most extreme discipline and its accessibility is probably going to dissuade individuals who probably won't be frightened by long jail sentences.

From a utilitarian point of view, the prevention job is moral since it adds to the general satisfaction of the general public. At the point when crooks are deflected from participating in wrongdoing, the general public is more secure and individuals appreciate the harmony and security in their networks.

Another huge advantage offered by capital punishment to the general public is that it prompts the perpetual debilitation of the indicted individual. Not at all like different types of discipline which just confine a portion of the opportunities of the guilty party, capital punishment removes his life.

### **Types/Kinds of punishments under the Indian penal code, 1860 (sections 53 to 75)**

The stage of punishment is the final process of the criminal jurisprudence system. The well-known fundamental tenet of the criminal law is that a person is considered innocent until proven guilty. The nature of proof requires that the evidence before the court must prove beyond reasonable doubt the guilt of the person who has been accused of the various offences.

**Principle for sentencing** – In every criminal case, two aspects have to be borne in mind – the heinousness or enormity of the crime and based on the circumstance under which the accused has committed the crime. Concerning maximum imprisonment, the same can be awarded only with the discretion of the judge who will consider the totality of the circumstances before imposing the punishments which should be appropriate and just. Motives as well will play a vital role in determining the sentence.

The following are the theories of Punishment, which have evolved over time –

1. **Deterrent theory** – The act that takes away the power of committing injury is called incapacitation, is in the form of remedy operated by the fear should be the main object of the punishment which is called deterrent theory
2. **Preventive theory** – Even utilitarian's like Bentham advocated the preventive remedies which tend to prevent offences[1].
3. **Retributive theory** – Retributive theory is based on rights, desert and justice[2]. The guilty deserve to be punished, and therefore there must be no moral consideration relevant to punishment that outweighs the offender's criminal desert is the philosophy of retributive theory[3].
4. **Reformative theory** – The object of punishment has been considerably under the process of changes from the last centuries because of the Welfare State concept. In Criminal Law we must reduce the brutalities of punishment is today's philosophy of law[4].

The following are the types of punishments under the Indian penal code provided under sections 53-60

1. Death
2. Imprisonment for life
3. It has been repealed by act 17 of 1949

4. Imprisonment with two descriptions – Rigorous (Hard labour), Simple Labour
5. Forfeiture of property
6. Fine

Let us understand in detail the type of punishments imposed by the courts on the accused for the crime they have committed under IPC.

### 1. **Death Sentence**

- The death sentence is the harshest form of punishment under the Indian Penal Code, it involves judicial killing or taking the life of the accused as a form of punishment.
- Capital punishment is provided for the following offences – a) Treason as in waging, attempting or abetting war against the government of India (section 121), b) criminal conspiracy to commit an offence punishable by death (section 132), c) Abetment of mutiny committed (section 132), d) Perjury resulting in the conviction and death of an innocent person (section 195A) e) threatening or inducing any person to give false evidence. F) murder, g) abetment of suicide by a minor or an insane person or intoxicated person h) attempted murder by a life convict I) kidnapping for ransom j) causing death or resulting in a vegetative state of a rape victim k) committing rape on a girl under the age of 12 L) committing gang rape on a girl under 12 years M) repeat offenders N) Dacoity accompanied with murder.
- The constitutional validity of Sec 303: *Rajendra Prasad v State of Uttar Pradesh*[5] – when the supreme court concludes that the accused is guilty of murder then the state through the prosecutor should be called upon court and state whether the extreme penalty is called for.
- Under Sec 354(3) CrPC: The court has to give a special reason to explain why it came to this conclusion. This provision was introduced in the year 1973 which was in contrast to the earlier provision which made the death penalty the rule.
- Sec 366 CrPC: Once the sessions Court award the death penalty, the Court has to submit the same to the HC for confirmation. The second level of review of the evidence is made.
- Cases where the death penalty was confirmed – *state of Tamil Nadu v Nalini*[6] – 26 persons accused of being involved in the conspiracy to assassinate the former prime minister of India, Rajiv Gandhi. In *Jai Kumar v state of Madhya Pradesh*[7] – Jai Kumar was sentenced to death for killing his sister-in-law who was pregnant and her eight-year-old daughter because she did not give him enough food.
- Case laws where the death sentence was commuted to life imprisonment – *Om Prakash v State of Haryana*[8] – where an army man killed seven members of a rival family. *Kishori v state of Delhi*[9] – large scale death of Sikhs due to the assassination of then prime minister Indira Gandhi by two Sikh men.
- *Lehna State of Haryana* [10]: when the collective consciousness of the community is so shocked that it would expect the holders of judicial power to impose the death penalty.
- *Bachan Singh the State of Punjab*[11].(Constitutional Bench) The Bench held that: A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done in the rarest of rare cases when the alternative option is unquestionably foreclosed. 'Rarest of rare' principle hence evolved in this case.

### 2. **Imprisonment for life**

- Section 53 secondly talks about imprisonment for life which means the sentence of imprisonment running throughout the remaining period of a convict's natural life unless it's commuted or remitted by the competent authorities.
- *In Gopal Vinayak vs the state of Maharashtra*[12], as regards the nature of imprisonment it has been held to be rigorous imprisonment and not simple imprisonment. This was held in *KM Nanavati vs the State of Maharashtra*[13] and also in *Naib Singh vs the State of Punjab*[14] in which the court held that imprisonment for life meant rigorous.

- The accused awarded life imprisonment, therefore, has to be retained in jail for the rest of his life. Even a state act equates life imprisonment with imprisonment for 20 years a convict does not entitle to an automatic release on expiry of the term of imprisonment including remission.
- The view reiterated in *State of Madhya Pradesh vs. Ratan Singh*, [15]. The supreme court held that it was the direction of the government to choose to exercise its discretion to remit either the whole or a part of the sentence under section 401 (equivalent to section 432 of the present Cr.P.C).

### 3. It has been repleaded (दोहराया )by the law

#### 4. **Imprisonment with two descriptions – Rigorous (Hard labour), Simple Labor**

- When it comes to rigorous imprisonment, unlike the simple version the prisoners are put to hard labour such as grinding corn, digging the earth, drawing water, construction of roads and dams, cutting the firewood, bowing wool etc.
- However, in the Simpler version, the prisoner is merely confined in jail and is not put to any kind of work.
- Some offences are made punishable by both rigorous and simple imprisonment under the Indian penal code. Only a trial court has the jurisdiction to award the form of punishment for the convict. Some sentences can be wholly or partly rigorous or simple.
- Minimum wages for prisoners – the *State of Gujarat vs. Honorable High Court of Gujarat* [16] when there is rigorous imprisonment is accompanied with hard labour, these prisoners are entitled to wages for the work done by them as it is a matter of right which have to be paid as it would strengthen the dignity of convicts and penal jurisprudence.

#### 5. **Forfeiture of Property** –

- The punishment of forfeiture of property is ancient, section 53 fifthly deals with forfeiture of property as a form of punishment. This principle has been ceased to be a punishment except in three types of offences
- 1<sup>st</sup> In cases where the offender commits depredation or make preparations for committing depredations against the government of India will be punished with forfeiture of the property mentioned under section 126.
- 2<sup>nd</sup> receiving any property taken in the commission of war or depredation is punished with forfeiture of property which is elaborated under section 127.
- 3<sup>rd</sup> if any public servant unlawfully buying or purchasing property in his name or another's name is punished with the same elaborated under section 169.
- In *Shoba Suresh Jumani v appellate tribunal* [17] – the supreme court held that section 61 and 62 which was repealed in 1921 is required to be re-introduced in the law for having the deterrent effect on those who are bent upon to accumulate wealth at the cost of society misusing their power or post.

#### 6. **Fine**

- Fine is a forfeiture of money by way of penalty, in sections 137,155,171-177,278,283,294,154,157 of the Indian penal code are offences that carry fine as the sole punishment. Some offences fines are imposed as an alternative punishment. Some offences fines are imposed as an additional punishment.
- Concerning the amount of fine, it will be imposed individually and not collectively. The amount of fine should not come unduly harsh.
- In *Philip Bhimsent Anid v. State of Maharashtra* [18], The accused has been convicted and sentenced to life imprisonment and was also ordered to pay a fine and as since the offender was only 19 years old and a house servant, he was unable to pay the fine, the court, therefore, reduced the fine amount.

- There is certain imprisonment that is imposed due to default in payment of the fine, when the same is paid the imprisonment will be terminated.
- *Shahejadkhan Mahebubkhan Pathan v state of Gujarat* [19] Where a substantial term of imprisonment is inflicted an excessive fine should not be imposed except in exceptional cases. *Shantilal v state of Madhya Pradesh* [20] – The court held that the amount of fine should not be harsh or excessive.

## 1.4 Capital Punishment

Capital punishment also known as death penalty, is the legal practice in India in which a person is put to death by state for serious crimes. It is legal but rarely voted and also a highly debated matter in India. Execution is not always carried out, because of the possibility of commutation to life imprisonment. Since 1995 it has been used only five times on Auto Shankar in 1995, Dhananjay Chatterjee in 2004, Ajmal Kasab in 2012, Afzal Guru in 2013 and Yakub Memon in 2015.

Capital punishment breaches the human rights as it violates the right to life which happens to be the most basic of all human rights. Eighty four countries banned the use of capital punishment and the number of countries using this practice is declining. Being a civilised state India should abolish the Capital punishment as there is no credible evidence that it deters crime more effectively than life imprisonment and other punishments.

This paper analyses the constitutional validity and circumstances under which it may be granted with the help of some admissible cases and the rarest of rare doctrine prescribed by Supreme Court in Bachan Singh case. This paper culminates by perceiving that Indian judiciary always recedes from implementation of capital punishment as there are other alternative modes of punishment.

### Introduction

Capital punishment is a government sanctioned practice whereby a person is put to death by the state as a punishment for the gravest of crimes such as: murder, acts of terrorism, gang rape, etc. Terminating the life of a criminal would never terminate the crime itself. Thus, it is often argued that if we execute a criminal then there would be no difference between us and the criminal.

A majority of countries in the world has now abandoned the use of the death penalty. But the world has not yet formed a consensus against its use. The most populous country in the world, China, executes thousands of people every year, and the most powerful country, the United States, uses it regularly.<sup>1</sup> Eighty-four countries retain the use of capital punishment. However, the number of countries employing the death penalty is declining and it is possible that worldwide opinion and pressure will gradually influence all countries to abandon this practice.

### History of capital punishment

Capital punishment is a method of punitory punishment as old as civilization itself. It is a lawful castigation of death as a punishment and since ancient times, it has been used for a wide variety of offences. Both the Greeks and Romans invoked the death penalty for a wide variety of offences.

Socrates and Jesus were perhaps the most famous people ever criticized for a capital crime in the ancient period. Hammurabis code, a code of laws developed by king of one of the first empire, dates back from the third or second millennium before Christ. This code claims that retribution, an eye for an eye and a life for a life, is justice. In Anglo American law the death penalty has been a customary response to certain kinds of offences.

### Evolution of Capital Punishment In India

At independence in 1947, India retained the 1861 Penal Code which provided for the death penalty for murder. During the drafting of the Indian Constitution between 1947 and 1949, several members of the Constituent Assembly expressed the ideal of abolishing the death penalty, but no such provision was incorporated in the Constitution. Private members bills to abolish the death penalty were introduced in both houses of parliament over the next two decades, but none of them was adopted.

It has been estimated that 3000 to 4000 executions occurred between 1950 and 1980. Information on the numbers of persons sentenced to death and executed from 1980 to the mid- 1990s is harder to measure. It is estimated that two or three persons were hanged per year.<sup>5</sup>

In the Bachan Singh judgment of 1980, the Supreme Court ruled that the death penalty should be used only in the rarest of rare cases, but what defines rarest of the rare is not clear.

### **The Rarest of The Rare Doctrine**

In 1973 to 1980, the legislative dictate has changed from death sentence being the norm to becoming an exception, and necessarily to be accompanied by reasons. *Bachan Singh vs. State of Punjab*,<sup>7</sup> was a landmark in the escalating debate on the question of the compatibility of the death sentence with Art. 21 of the Constitution. The Supreme Court while holding the validity of the death penalty expressed the opinion that a real and abiding concern for the dignity of human life postulates resistance for taking a life through laws instrumentality. That ought not to be done save in the rarest of rare cases, when the alternative option is unquestionably foreclosed.

However, the Court declined to formulate any aggravating or mitigating factors as it would fetter judicial discretion, but held that a murder diabolically conceived and cruelly executed may attract extreme penalty. It is not possible, the court opined, to feed numerous imponderable circumstances in an imperfect and undulating society. But what are those rarest of rare occasions is the dilemma.

What appears as brutal and gruesome, to one judge may not appear to be so to another. For example, in one case the murder of wife and two children with the motive of leading life with the paramour could not convince Krishna Iyer, J. for death penalty, while Sen, J. wondered what else could be a fit case for death penalty than the one at hand.<sup>13</sup> It is submitted that if the difference in perception is so glaring among two judges of the highest court in the country what is relative position among very large number of sessions judges in the country.

### **A. Significance And Extent**

The doctrine rarest of the rare cases is based on Gandhian theory, i.e., hate the crime not the criminal. And thus, from this quotation, we can interpret the significance and extent of Death Penalty. And if we go through the deep study of it, we find that the court wants to say that the death penalty should be awarded rarely and only in such cases which are heinous, affecting the humanity and are brutal.

The problem of Death Penalty is not very acute in respect of death sentences awarded by criminal courts in cases of general course of nature because death penalty is being awarded in very few cases of murder and in most of the cases of murder the alternative penalty of life imprisonment is awarded.

There is also one other characteristic of death penalty that is revealed by a study of the decided cases and it is that death penalty has a certain class complexion or class bias in as much it is largely the poor and the down trodden who are the victims of this extreme penalty.

We would hardly find a rich person going to the gallows whoever has money to hire the services of great talents, has a reasonable chance of escaping the gallows though he has really committed a murder. It is only the poor, the resource less people who have nobody to support them, who usually go to the gallows. The death penalty in its operation is declaratory. Capital punishment Death penalty as pointed out by warden Duffly is a privilege of the poor.

Keeping the above points in the view the Apex Court propounded the doctrine of rarest of rare.

### **B. Judicial Discretion And The Circumstances of The Accused**

The decision in *Jagmohan Singh v. State of U.P*<sup>19</sup> involved a failed challenge to the constitutionality of the death penalty. Its importance lies in the fact that it highlighted the need for noting special reason when imposing death sentences. *Bachan Singh v. State of Punjab*<sup>20</sup>, which followed, was landmark decision, which despite affirming the constitutionality of the death penalty diluted the scope of its imposition substantially by introducing the test of rarest of the rare case.

It was held that:

...for persons convicted of murder, life imprisonment is a rule and death sentence is an exception. A real and abiding concern for dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when alternative option is unquestionably foreclosed.

The present position regarding Capital Punishment, as one might suppose of any system of law with pretensions of being considered civilised, is to use it sparingly as possible- i.e. in Rarest Of Rare cases and this is the system as it stands in India. To have it in the statute book, but to use it as rarely, is the compromise that the Courts, and we as a nation, adopt. In a relatively recent case *Panchhi v. State of U.P*, the Court observed: Brutality of the manner in which a murder was perpetrated may be a ground but not the sole criterion for judging whether the case is one of the rarest of rare cases.

The death sentence is not a rule but an exception. Mr M. Hidayatullah, the former Chief Justice of the Supreme Court, observed that the doctrine of the Rarest of Rare evolved in Indian Jurisprudence for use specifically with regard to the death sentence is capable of discounting the possible errors and abuse of the sanction

### Constitutionality of The Death Sentence

Indian constitution is an amalgam of many constitutions, i.e., the constitution of America, Britain and Japan. It should not surprise anyone, therefore, that the main provisions of the constitution of India guaranteeing the right to life has been lifted from the American and the Japanese constitutions. It may be added here that what we have borrowed is the form or style of expression and not the right itself. The right to life is not the something that constitutions create or even confer. The constitution only recognises this inalienable and indispensable right.

The constitutional provision is therefore, only evidentiary value. Allan Gledhill has given an interesting statement regarding it, which is: In some of the older countries the right to life and liberty receives more effective protection from constitutional conventions than they do in countries with constitutions elaborating the right. The degree of personal liberty enjoyed by the average Indian is not remarkably less than that enjoyed by a citizen of any other parliamentary democracy.

With the on-going debate as to whether the death penalty should be abolished or not, the question of constitutionality of this sentence repeatedly comes into the spotlight. The basic question that comes to the mind of many peoples is how something can be so brutal, barbaric, uncivilised, inhumane, and cruel or degrading, be constitutional. Justice Krishna Iyer observed in *Rajendra Prasads* case.

It is fair to mention that humanistic imperatives of Indian Constitution, as paramount to punitive strategy of Penal Code, have hardly been explored by courts in this field of life or death at the hands of the law. The main focus of our judgment is on this poignant gap in human rights jurisprudence within the limits of Penal Code, impregnated by the Constitution.

To put it pithily, a world over voicing the worth of the human person, a cultural legacy charged with compassion an interpretative liberation from colonial callousness to life and liberty, a concern for social justice as setting the sights of individual justice, interact with the inherited text of the Penal Code to yield the goals desiderated by the Preamble and Articles 14, 19, and 21. Yet, Article 21 of the Constitution states, No person shall be deprived of his life or personal liberty except according to procedure established by law.

### A. Constitutional Powers Of The Supreme Court In Matters Relating To Death Sentence

Accordingly, the Supreme Court of India, considering the Constitution of India, regards the use of capital punishment as a legitimate penalty in certain of the most extreme criminal cases.

In *Bachan Singh v. State of Punjab*, the constitutional bench of the Supreme Court discussed at length the question of whether the provision of death penalty as an alternative punishment for murder is violation of Article 19 and 21 of the Constitution. In this judgment, Justice P.N Bhagwati gave his minority judgment observing that the death penalty is violation of Article 19 and 21 of the Constitution. While the four judges in majority agreed otherwise. *Machhi Singh and others v. State of Punjab*, is considered as a landmark judgment on the subject of the death penalty.

The Apex Court while discussing the aggravating and mitigating circumstances laid down the principles which would serve as guideline to the courts while deciding the sentence to be awarded in murder cases. *Mithu v. State of Punjab* is a historical judgment of the full bench of the Supreme Court, wherein the court declared Section 303 of the IPC as unconstitutional and violative of Article 14 and 21 of the Constitution.

It held that:

We Strike down Section 303 of the Penal Code as unconstitutional and declare it void. It is needless to add all cases of murder will now fall under Section 302 of the Penal Code and there shall be no mandatory sentence of death for the offence of murder. Therefore Supreme Court has a constitutional power in matters relating to death penalty.

## **B. Constitutional Powers Of The President And The Governor In Matters Relating To Death Sentence**

After all the remedies under the judicial system are exhausted, a person on death row has the last remedy to knock at the doors of the first citizens of the country and seek pardon in the form of mercy petition which must be addressed by the convict either through authorised representative or himself from the prison. The Constitution under Article 72 and 161 confers the power on the President and the Governors, respectively, to suspend, remit or commute sentences in certain cases.

The mercy jurisdiction of the President and the Governors to reduce or rescind punishment becomes operative only after the courts have delivered conviction and passed sentence. Also, the power under Article 72 and 161 bear an onus for the President and Governors to act fairly and reasonably. The power of President under Article 72 is wider than that of Governor in the sense that the President has exclusive powers to grant pardon in case of death sentence and court martial.

In a petition of *Kuljeet Singh alias Ranga v. Lt. Governor of Delhi*, seeking to declare that the President had transgressed his executive power to grant clemency in exercise of the power under Article 72 of the Constitution, by refusing to grant clemency to him, the Supreme Court- after discussing the power of the President to commute the sentence of death – dismissed the petition.

In *Mohinder Singh v. State of Punjab*, the Supreme Court held that while the mercy petition is pending before the President of India, the Supreme Court has no jurisdiction to hear any application for stay on execution as it is not maintainable. The President of India has to be approached for a stay of execution.

It is true that the ambit of capital punishment may be found fundamentally under Article 21 of the Constitution, it is also true that many countries have such provisions in their constitutions or in their law, which allow for the use of death penalty. It is certainly true that the majority of these countries and the vast majorities of the worlds democratic countries have abolished the death penalty in law. Constitutional challenges come in many forms to the death penalty, however, and it is clear that challenges regarding its constitutional validity are not limited to death penalty right to life under Article 21

of the Constitution of India. As former Chief Justice of India P.N Bhagwati stated that: Death penalty does not serve any social purpose or advance any Constitutional value and is totally arbitrary and unreasonable so as to be violative of Articles 14, 15, 21 of the Indian Constitution.....

For the time being, however, despite profound concerns regarding the constitutional validity of the death penalty, it has been held as constitutional by the Supreme Court, as already discussed above.

It is from this basis that the judiciary of India manage its imperfect application, and from this basis, too, which any analysis any challenge of that application must proceed.

### **Conclusion**

In the issues related to the administration of capital punishment, some very important developments in the capital sentencing law have turned the balance in favour of the capital convicts substantially. First, in Swamy Shraddananda case, the court has emphasised the availability of sentences other than the life sentence and death penalty.

### **The Court held that:**

....if the Courts option is limited only to two punishments, one is a sentence of imprisonment, and other is death sentence, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact lawfully belong to the court.

Thus Court expanded the range of alternative option which needs to be exhausted before opting for death sentence and the Supreme Court gave the judgment in favour of convict in terms of a Bachan Singh case<sup>35</sup> – that ought not to be done save in rarest of rare cases when alternative option is unquestionably foreclosed.

A study of death sentences after the Swamy Shraddananda case<sup>36</sup> reveals that many cases which normally would have resulted in award of death sentences to the prisoners, have got the benefit of various alternative option between the minimum sentence of 14 years to a sentence of full life.<sup>37</sup> Moreover, Indian Jurisprudence on death penalty is not oblivious to the development in international law as also worldwide trends on the issue.<sup>38</sup>

The Supreme Court in Bariyar <sup>39</sup> referred to the international trends in the following terms:

Although these questions are not under consideration and cannot be addressed here and now, we cannot help but observe the global move away from death penalty. Latest statistics show that 138 nations have now abolished the death penalty in either law or practice. We are also aware that on 18th Dec. 2007, the United Nations 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.

Recently, the Apex Court in **Vodafone International Holdings B.V v. Union of India** stated that certainty is integral to the Rule of Law. In a case involving the imposition of death penalty, the courts cannot continue to judge under uncertainty. The normative standards in this behalf must be finally settled leaving the uncertainty into oblivion, which is the least judiciary can do. Therefore we can say that, Indian judiciary is moving away from the implementation of capital punishment as there is a greater emphasis on alternative modes of punishment and the international legal developments which are against the such punishments.

### **1.5 Stages of Crime**

A crime is defined as the commission of an act that is prohibited by law, or an omission of an act that is obligated by the law. In other words, crime may be defined as the disobedience of law. Another important aspect of a crime is that it affects the public interest, rather than the rights of a single individual, which shall be a part of civil law.

In India, criminal law is operated through substantive as well as procedural law. The substantive law includes the Indian Penal Code, 1860 (the Code), and the procedural law includes the Code of Criminal Procedure, 1973 (Cr.P.C.). These laws implicitly and also various cases have enunciated that in the commission of a crime, there exist four stages. The same forms the scope of the present article and has been discussed hereafter.

### **Stages of crime**

The stages of crime or elements of a crime include intention, preparation, attempt and accomplishment. The constitution of a crime includes all the elements. Some of these elements are even punishable before the accomplishment of the crime. All the stages can be explained further as follows:

### **Intention**

The fundamental elements of a crime are '*mens rea*' and '*actus reus*', the former being the intention to commit a crime and the latter being the act done in furtherance of the intention. The criminal liability of a person shall be decided only when he or she has a *mala fide* intention. It is the direction of conduct towards the objects chosen upon considering the motive which suggests the choice. Mere intention shall not constitute a crime, as it is almost impossible to know the intentions of a person. As the famous saying goes "*the devil himself knoweth not the intention of a man*". Since it is hard to know the intentions of a man, a criminal liability at this stage cannot be drawn.

#### **Mens rea**

Mens rea literally means guilty mind. This basically implies that a person committing the crime is mindful of his/her actions and knows that accomplishment of that act would result in a crime. To simplify, the intention of the person committing a crime should be mala fide. Further, mens rea can be further divided into four levels depending upon the degree of intent of committing the crime. These four levels are:

1. **Negligence:** This is the least and in fact the mildest form of mens rea where the person is negligent of his/her actions and does not ensure reasonable care in his/her act/omission.
2. **Recklessness(लापरवाही):** This is of a slightly higher amplitude than negligence where the person can anticipate the crime which may arise out of the act/omission but did not expect or intended the same and acts negligently.
3. **Knowledge:** The third level is knowledge where the person is associated with the risks that may occur on his act/omission and still continues with such act/omission. Here, he/she is not negligent.
4. **Intent:** This is of the highest amplitude where the person intentionally carries out an act or omits something in order to commit the crime.

#### **Actus reus**

Actus reus is the act or omission on part of the person which causes a crime and involves some physical activity. It is imperative to note that not just an act but an omission can also be a crime. For example, non-payment of taxes or maintenance is a crime.

To know more about these two elements, check out this [article](#).

#### **Preparation**

The next stage of a crime is preparation. It can be understood as an act in furtherance of the *mala fide* intention of a person. It is an act that shall be a means to the attempt and accomplishment of the crime. In the previous illustration, if A purchases a weapon legally and carries it with himself, it shall amount to the preparation of the crime.

#### **Reasons why preparation is not punishable**

The general rule under the law is that the preparation of a crime shall not be punishable. The reason behind the general rule is that it is nearly impossible to prove that the accused made the preparation to execute the crime. Apart from this, the test of *locus poenitentiae* is applied in cases where the culpability of preparation is in question. The test provides that a person has an opportunity to withdraw from his act before he actually commits the intended crime. The test has been further explained in the subsequent sections.

Exceptions in which criminal liability may be imposed

Exceptions to the general rule that a person cannot be held criminally liable for the preparation of an act have been provided under the Code. These exceptions include:

1. **Preparation to wage a war against the Government of India** – Section 122 of the Code provides that collection of arms, ammunition, or associating with people with an intention to wage a war against the State shall be a punishable offence with imprisonment for a term that may not exceed ten years, and such the offender shall also be liable for fine.
2. **Counterfeiting coins** – Section 233, Section 234, and Section 235 of the Code provide the punishment for counterfeiting any coin, including an Indian coin and the possession of any counterfeit coin. These provisions also provide punishment for the preparation of producing or using a counterfeit coin.
3. **Manipulation of the weight of the coins** – Section 244, Section 246 and Section 247 of the Code provide the punishment for altering or diminishing the weight of any coin. In these circumstances, even the preparation to commit such crimes is punishable.
4. **Counterfeiting Government stamps** – Section 255 of the Code provides that “*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 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.*” In addition to this, the provision also criminalises the possession (Section 256) and selling (Section 257) of counterfeiting Government stamps.
5. **Preparation to commit a dacoity** – Section 399 of the Code provides that “*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.*”
6. **Possession of forged documents** – Section 474 of the Code provides the punishment for the possession of forged documents. The intention behind the provision is to prevent any type of fraud that may occur by using such forged documents.

These offences are punishable at the stage of preparation due to the gravity of the outcome of the crime, if committed.

### Attempt

There exists a very thin line of distinction between the preparation of a crime and an attempt to commit the same. It may be defined as an action in furtherance of the intention and preparation of a person to commit a crime. Thus, an attempt to commit a crime is often termed “*preliminary crime*”. An attempt to commit a crime is punishable under the Code. It has been provided under various provisions for specific crimes. However, in case of the absence of punishment for an attempt to commit a particular crime, Section 511 of the Code comes into the picture. Some of the specific provisions of the Code under which an attempt to commit a crime have been enumerated hereunder:

- Section 121 – Attempt to wage a war;
- Section 131 – Attempt to seduce a soldier, sailor or airman from his duty;
- Section 307 – Attempt to murder;
- Section 308 – Attempt to culpable homicide;
- Section 309 – Attempt to suicide;
- Section 326B – Attempt to throw suicide;
- Section 356 – Attempt to commit theft;
- Section 357 – Attempt to wrongfully confine a person;
- Section 393 – Attempt to commit robbery;
- Section 397 – Robbery or dacoity with an attempt to cause death or grievous hurt;

Circumstances under which attempt becomes impossible

In the 19th century, English law established that an attempt to commit an impossible act shall not be punishable. Cases of the early 19th century were decided on the notion that an attempt cannot be made on a crime that cannot be committed. Thus, where a pickpocket thrusts his hand in an empty pocket of a person, he shall still not be held liable.

However, the courts found the notion to be illogical and unreasonable in the later part of the 19th century, and hence, overruled the judgements. This was the first time an attempt to commit an impossible act was made punishable.

Section 511 of the Code particularly provides that any attempt to commit an impossible act is punishable. The illustrations provided under the provision are indicative of the same. Thus, under the Indian Penal Code, an attempt to commit an impossible act is punishable.

### **Difference between preparation and attempt**

The difference between the preparation and attempt to commit a crime is a crucial one. It can determine the criminal liability of a person. The prime difference between the two is the fact that whether the act that has already been finished during the stages of crime, has an impact on the victim. If it has an impact, it is considered to be an attempt, otherwise, it is considered to be mere preparation. The Courts in various cases have attempted to differentiate between the two through various tests, which shall be discussed hereunder.

### **Tests for determining an attempt to commit a crime**

- **Proximity (निकटता) rule** – The proximity rule provides that in cases where the accused accomplishes a series of acts in furtherance of his intention to commit a crime, the liability shall be decided upon the proximity with the completion of the Act.
- **Locus Poenitentiae (तपस्या का स्थान)**– The doctrine of locus poenitentiae provides that where a person withholds himself from the actual commission of the crime, it would amount to mere preparation. The doctrine was propounded after analysing that a person has a reasonable opportunity to withdraw himself from committing the crime.
- **Equivocality Test (समानता परीक्षण)** – The Equivocality test states that when an act of a person can prove beyond reasonable doubt the likeliness of committing the crime, it shall constitute as an attempt to commit the crime rather than mere preparation.

### **Accomplishment (उपलब्धि)**

The accomplishment of a crime is when an attempt to commit a crime is successfully executed. Every person shall be liable for the act, offence or crime that he commits or accomplishes. The provisions of the Code provide for specific punishments for various crimes in the country.

### **Stage at which liability commences**

The above discussion reveals how these four stages of crime decide the criminal liability of an accused. Undisputedly, at the level of accomplishment, the criminal liability of a person shall arise. Nevertheless, the above discussion reveals how the liability can commence even at the stage of the attempt and in some cases, even at the stage of preparation. Usually, in such instances, the crime committed is very serious and poses a threat to society. Hence, the main object of ascertaining liability at such stages is to create a deterrent effect in the minds of people and prevent them from committing such heinous crimes.

### **Judicial Pronouncements (न्यायिक घोषणाएँ)**

#### **Asgarali Pradhania v. Emperor (1933)**

In this case, the Calcutta High Court, while distinguishing between an attempt to commit an offence and its preparation, was of the opinion that not every act done by the accused can constitute an attempt to commit the said offence. The facts of the case included the accusation of an attempt to cause a miscarriage of his ex-wife. The Court held that if the accused, with an intention to administer a drug which shall cause a miscarriage, administers any harmless substance instead, he shall not be liable for the attempt to cause miscarriage. However, if the failure of the accused is caused by someone else, it shall result in the contrary.

### **Madan Lal v. State of Rajasthan (1986)**

In this case, the convict was sentenced to rigorous imprisonment for two years when found guilty of attempting to commit rape of the victim under Section 376 read with Section 511 of the Code. The facts of the case included three prime witnesses, who found the convict laid down naked on the victim, who was also found naked, and the mouth of the victim was covered by the convict's hand. It was established the convict himself removed his clothes and that of the victim and had an intention to rape the victim.

The Court, while analysing the stage of attempt, held that *"It is the stage beyond preparation and it precedes the actual commission of the offence. An attempt to commit an offence is not meant to cover only the penultimate act towards the completion of an offence but it also covers all those acts or series of acts which travel beyond the scope of preparation and exhibit a definite intention and determination to commit a particular offence. It need not be an act which just precedes the last act on the happening of which the offence itself is committed but it covers all those acts or series of acts which may precede the penultimate act towards the commission of that offence."*

### **State of Madhya Pradesh v. Narayan Singh (1989)**

In this case, the Hon'ble Supreme Court held that the commission of an offence involves four stages; i.e. intention, preparation, attempt and commission. The first two stages of these offences would not attract culpability, however, the last two stages would attract it. In this case, the respondents were trying to export fertilisers without a permit from Madhya Pradesh to Maharashtra. Hence, the act was considered to be an attempt of the offence rather than just preparation.

### **Nasim v. Senior Superintendent of Police (2002)**

This case is related to cow slaughter which attracts criminal liability as per UP Prevention of Cow Slaughter Act, 1955. The petitioner, in this case, was found to be holding a knife, 38cm in length, and to be sitting on the top of a cow with all of its legs tied. The instant petition was filed for quashing an FIR registered under Section 3 and Section 8 of the impugned Act. Relying upon the *Narayan Singh case (1989)* as discussed above, the Hon'ble Allahabad High Court held that preparation had been done by the petitioner and he would have moved to the third stage i.e. attempt had he not been stopped. Resultantly, he had criminal liability as attempt and accomplishment of crime would have attracted liability under the said Act.

### **Mathivanan v. the State of Tamil Nadu (2021)**

In this case, the Madras High Court reiterated that the first and the second stage (intention and preparation) are generally not culpable, whereas the third and the fourth stage (attempt and accomplishment) are culpable. However, exceptions to this general notion are the offences under Section 122 and Section 399 of the Code.

Commenting on Section 122 of the Code, the Court opined that *"To wage war would require several steps and crossing of stages. There has to be mobilisation of men as well as accumulation of arms and ammunition. That would require a concerted effort. Each individual who is a party to the conspiracy to wage war may be allotted a particular task. One may be tasked with collecting men, another with arms and the third with ammunition. The expression "otherwise prepares" in this context should not be construed on the application of the principle of 'ejusdem generis'. A person may be engaged in fund-raising. Another may be responsible for providing reinforcements. Some may be engaged in making logistical arrangements. Some may be engaged in the intellectual front. There could be several dimensions. All of them would fall within the scope of "otherwise prepares". But as already held, when it comes to application of the provision to concrete facts, courts will apply a higher threshold."*

### **Satvir Singh v. State of Punjab (2001)**

In this case, the appellants were accused of abetting an attempt to commit suicide, which was done by the wife of the primary appellant. The issue before the court was whether it was whether, in an

episode of an attempt to suicide made by a person due to harassment by another, the person harassing such person shall be liable for an attempt to abet the commission of suicide. The Court answered in negative, stating that an attempt to abet shall only be punishable if the said offence has been committed, hence providing successful abetment. In case the said offence has not been committed, the abettor shall not be held liable.

### **Abhayanand Mishra v. State of Bihar (1961)**

In this case, the appellant was a candidate appearing in an entrance examination of the Patna University for the course of M.A. in English. In his application form, the appellant had provided that he was a graduate and was also teaching in certain schools after his graduation. However, the University, only after dispatching his admit card for the examination, found the information to be forged. He was convicted by the lower court and the High Court under Section 420 read with Section 511 of the Code. Under the appeal before the Hon'ble Supreme Court, the contention of the appellant was that it was mere preparation to commit fraud and not an attempt. The Court rejected the argument and held that when the appellant submitted the forged information, it constituted preparation to commit fraud, and when the said forged documents were dispatched, it amounted to an attempt. The court reiterated that an attempt may not be seen as only the penultimate act, rather, it means any act in furtherance of the preparation.

### **1.6 Theories of Negligence (Liability)**

Negligence is as a basis of legal liability negligence like intention is another significant form of mens rea it is also important part of a crime.

#### **Meaning**

- Negligence means to neglect the Duty or Carelessness.
- A legal duty to take care.
- Breach of that duty; and.
- Consequential damage to the plaintiff.

#### **Definition**

- Salmond: - Negligence is culpable carelessness.
- Winfield :- “the breach of a legal duty to take care which results in damage undesired by the defendant to the plaintiff”.
- Justice willes: - it is the absence of such care as it was the duty of the defendant to use.
- Puolus: - Magna negligentia culpaest, magna culpa dolus est.
- Pollock:- Negligence is not actionable unless the duty to be careful exists.
- Katillwail Watson :- Fraud imports design and purpose , negligence that you are acting carelessly and without that design.

#### **Essential element of negligence**

1. Duty - The defendant owed a legal duty to the plaintiff under the circumstances;
2. Breach - The defendant breached that legal duty by acting or failing to act in a certain way;
3. Causation - It was the defendant's actions (or inaction) that actually caused the plaintiff's injury;

4. Damages - The plaintiff was harmed or injured as a result of the defendant's actions.

### **Theories of Negligence (लापरवाही के सिद्धांत)**

1. **Subjective theory of negligence** -the theory so propounded by Salmond means that negligence is culpable carelessness. Though it is not equivalent to thoughtfulness or inadvertence, nonetheless it is an attitude of indifference. Accordingly, “negligence essentially consists in the mental attitude of undue indifference with respect to one’s conduct and its consequences”. A man may be held liable on the basis of negligence if he sufficiently does not desire to avoid a particular consequence. Professor Winfield who strongly supported Salmond view, also stated that negligence its other signification is merely a stste of mind, inadvertence to some duty.

2. **Objective theory of negligence**- According to this theory advocated by sir Federick Pollock “negligence is the contrary of diligence and no one describes it as the state of mind”. this theory postulates that negligence is an objective fact .it is not an attitude of mind or a form of mens rea at all, but to particular standard of conduct. It is breach of duty of not taking care , and to take care means to take precautions against the harmful results of one’s action and to refrain from unreasonably dangerous kinds of act.

### **Defenses**

- Act of god.
- Inevitable accident.
- Contributory negligence

### **Cases**

Lord Atkin in Donoghue v. Stevenson, put it thus: “You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then, in law, is my neighbor? The answer seems to be persons who’re closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I’m directing my mind to the acts or omissions which are called in question.”

Whitt v. Silverman If someone creates a hazardous situation through his own action or inaction and can reasonably foresee a later injury, a breach may be proven from the circumstances without resorting to a statute or contract.

### **Damages for Injuring People**

Where the negligence causes personal injuries, a plaintiff may seek damages from the wrongdoer for:

1. past and future medical expenses.;
2. past and future lost wages;
3. pain and suffering;
4. mental anguish;
5. Inconvenience;
6. the loss of the capacity for the enjoyment of life;

### **1.7 Introduction to Cyber Crimes**

India as we all know is the second most populous country in the world with population around 138 cores and out of which millions and millions of internet subscribers. According to telecom regulatory Authority of India in March 2021 there are about 825.30 million active subscribers in India.

With their average data consumption over 20 GB a month. This is all possible because of accessibility of internet and cheaper rates in India.

It is surprising to know that the first ever cybercrime was recorded in the year 1820. It is believed and argued that cyber or digital crime in India started since 2005.

### **What is cyber space?**

Cyber space can be considered as a realm of interconnected computers or to be more specific, a network of electronic devices that is used to store transmit or modify data over the net. It generally involves a widespread network of electronic devices throughout the globe that works interconnected Lee to share information and as well to receive it they use TPC or IP protocol in order to perform communication and to have data over the air. Cyberspace is a virtual world in itself with millions of users.

### **What is cybercrime?**

Cybercrimes or digitalized crimes can be considered as the crimes that are committed using electronic devices namely smart phones or interconnected computers. There can be variety of motives to commit a cybercrime such as sexual exploitation prime fraud or even vengeance. With the time the number of cybercrime cases in India are as well increasing with an exponential number. This number is proportionate to the number of subscribers that are increasing day by day. The Ministry of home affairs reported around 51,000 cybercrime cases in the year 2020

### **Types of cybercrimes:**

There are numerous types of cybercrimes, and are some of the most common forms of Cybercrimes:

#### **Distributed denial of Service Attack**

This type of attack that is distributed denial of service attack is a malpractice and an attempt to disturb the normal inflow of the targeted server, service, and network by overcrowding the target with floods and floods of traffic. This attack causes inconvenience, hanging of servers, failure in showing results etc.

#### **Phishing**

Fishing is a kind of cybercrime in which the victim or the target is approved by way of sending spam emails, telephonic calls, SMSes by someone who impersonated himself to be a legitimate person or organization in order to gain your personal information. They usually send such message that requires to fill in your details like, bank information or social medial passwords in order to access the information. This is done to gain unlawful access of your personal accounts and to commit frauds and withdraw money.

#### **Spamming**

The act of spamming is a cybercrime which involves sending of unwonted and requested bulk message via email ID or two in individual. There are various types of spamming such as engine spamming, blogs spamming, ad spamming, social spamming etc. It disturbs the administrator of a website.

#### **Hacking**

It is an act of first identifying a backdoor into others' computer in order to gain unlawful and unauthorized access to the data inside such computer. This back door is exploited to gain access to the computer.

### **Cross Site Scripting**

Cross-Site Scripting (XSS) assaults are a kind of instillation, in which mischievous scripts are introduced into otherwise trustworthy websites. XSS assaults happens while an attacker uses a web application to direct mischievous code, usually in the form of a browser side script, to a different end user. Failings that lead these assaults to thrive are fairly prevalent and occur wherever a web application uses input from a user within the output it creates without certifying or encrypting it.

### **Identity Theft**

This is an act of stealing personal information of a targeted individual and later using such information to impersonate him/her. With the help of the acquired information the offender pretends to be the targeted person in order to commit fraud, or violate laws being the victim.

### **Piracy Violation and IPR Infringement**

Most people download movies, games and other digital content from websites and providers such as TORRENT which is pirated material. Pirated material is such material which is not free to use for all and is distributed freely by third party and not the actual developer of such material. Similar offenders also use the trademark and goodwill of other famous companies in order to commit fraud against people.

### **Brute Force Attacks**

In this type of cyber security attack the assaulter tries and testes various types of alphabetic and numerical combination until it finds the correct password to the victims account.

### **Malware**

This can be considered as a wide term used for various types of viruses or program that are designed to access the information of the victim without his knowledge and consent.

### **Trojans**

Trojans can be considers as CURSE IN DISGUIES, as on face it may appear to be a useful software for the benefit of the user but in actuality is built to cause damage to the users device.

### **What are the Cybercrime Legislation in India?**

Internet today is a necessity more than ever. Moreover, this pandemic situation due to Coronavirus has led almost every work online. With this online traffic more than ever cybercrimes has also skyrocketed. Some of the examples of this cybercrime is replicating Bank credit cards, KYC frauds dark web, pornography, cyber terrorism etc.

The cybercrimes are penalized under the information technology act 2000 and the Indian penal code. The IT act deals with cybercrime and electronic frauds. This act lays down definitions for various cybercrimes and as well the punishment for it. The main objective of this legislation is the protection of common man from cybercrimes and two ensure proper governance banking and commerce throughout the internet.

**Some of the Crime under the Information Technology Act can be noted as follows: Chapter XI of the information Technology Act deals with Offences and some of the common offences committed under this Act are as follows:**

### **Section 65:**

The section 65 of IT act deals with tampering of computer source documents. Which is penalized for three years of imprisonment and a fine that may go up to 2 lakhs. Considering an example for it a

telecom company was held guilty for tampering with the serial number of mobile phones of a X company so that the mobile phone only works with their company SIM card.

**Section 66:**

Section 66 of IT act deals with hacking of computer systems and or unauthorized and unapproved use of computer network and system. This is penalized for a fine up to 5 lakh rupees and or imprisonment that may go up to 3 years. Considering an example for this : and if a hacker hacked into a network service provider and change the passcode of persons authorized to use our service so as to deny the axis such act is criminalized under section 66 of IT act.

**Section 66C:**

Section 66C of the IT act deals with identity theft by using password or biometrics even digital signatures to execute fraud on others and to impersonate the victim. Considering the example for this : the criminal via unfair means obtain the login ID and password of the victim of a e-commerce account or a bank account and transfers the money to his account this is illegal and unlawful. Such transfer is unauthorized and is criminalized in the IT act under section 66C.

**Section 66D:**

Section 66D Deals with cheating by personating using computer resource. It is a punishable offence with up to 3 years of imprisonment and fine me go up to 1 lakh. Consider the example as follows : a criminal impersonates himself to be someone else on the internet and induces the victim to transfer money maliciously can be found guilty under the IT act under section 66D.

**Section 66E:**

Section 66E of the IT act deals with capturing stills of unauthorized areas, making it public or sharing without the consent of the person is an offence under the IT act. The penalty for such an offence can be imprisonment up to 3 years or a fine that may go up to 2 lakh rupees.

**Section 66F:**

Section 66F of the IT act covers cyber terrorism. Cyber terrorism can be considered as politically driven agenda that uses information technology to cause severe anguish and widespread distress and anxiety in the society. This is an office if found guilty can be imprisoned for life. An example for this can be considered as follows , The stock exchanges of India that is BSE and NSE where is threatened that their cyber security will be shattered and a terror attack was to be apprehended upon these stock exchanges, the attacker was caught and was penalized under this section of IT act.

**Section 67:**

Section 67 of the IT act deals with publication of obscene material or nudity on E-platforms. Any person found guilty can be imprisoned for up to 5 years and a fine that is up to 10 lakh. Example for this: the accused leaked nude and obscene photos of the victim when the victim refused to marry the accused, he was held guilty under section 67 of the IT act.

**Some of the development in the INDIAN PENAL CODE 1860, which led to recognition of crimes in the electronic mode as well are as follows-**

**Section 379:**

Section 379 of the Indian penal code deals with punishment for theft. The punishment for such crime can be imprisonment up to 3 years and or fine. The enlarged view of this section as well includes the cybercrime committed using stolen devices or computers.

**Section 420:**

Section 420 of the Indian penal code deals with fraud or cheating. Fraud or cheating and maliciously causing someone to deliver a property. Some of the common cybercrimes such as fake websites, Ponzi schemes, and online misleading ads are punishable under the section of IPC. This crime can land you in jail for up to 7 years of imprisonment and or fine.

#### **Section 463:**

Section 463 of the Indian penal code deals with making or developing invalid documents and false electronic records this crime as well can land you in jail for a term of up to 7 years and/or fine.

#### **Section 468:**

Section 468 of the Indian penal code deals with forgery. The act of committing forgery with an intent of cheating will attract this section of IPC, an example for this is email spoofing and it is punishable offence with the quantum of imprisonment up to 7 years and or fine.

#### **Some Cases:**

- **Yahoo v. Akash Arora (1999)** here the accused used the domain and trademark YahooIndia.com and permanent injunction was sought. It was one of the earliest case of cybercrime in India.
- **NASSCOM v. Ajay sood & ors. (2005)** here the defendants were headhunters and recruiter used the name of NASSCOM (NASSCOM) of on the biggest and reputed software association) and sent various mails for fetching personal information from individuals. This was a case of Phishing.
- **State of Tamil Nadu v. Suhas Katti. (2004)** here the accused used to send obscene and defamatory material to a divorced lady. He was convicted under section 67 of the IT Act.
- **Kalandi Charan Lenka v. The State of Odisha:**  
here the accused anonymously sent various messages of damaging character, the accused stalked and created fake account of the victim. He morphed the victims face in compromising pictures. He was convicted under S.354 D of IPC for cyber stalking.

#### **How to protect yourself from Cybercrimes?**

##### **Better Passcode for your Accounts:**

When most of us talk about password we think of alphanumeric combination that is easily remembered by us and it is related to us in some or the other ways. Hence we go for major events in our life such as our birthday, marriage anniversary etc. These kind of memorable events of our life are easy to remember but are easily decoded as well. This may cause you seizure to your privacy and pose you at financial risk.

A password should be Lengthy enough so that it would be hard to guess and short enough that you should remember it, it should be a combination of alphabets both small and capital and a combination of numbers and symbol as well.

For example:

**XaV1\_bařB such a combination is difficult to decode and will keep you safe.**

##### **Keeping Software updated regularly:**

Keeping software updated regularly keeps your risks at bay. It is very important for one to keep the software up-to-date as it prevents and removes any loopholes and back those in the previous software and tightens the security. Any available and most likely used exploits are passed in every new software update that ensures your security and your privacy is not compromised, so it is very important for one to promptly keep software is up-to-date.

##### **Lucrative pops = High risk:**

**Cautious! This add looks so lucrative, but how am I getting this? How is it so relevant to my interest?**

When you browse through the internet you may find very attractive pop-ups and ads, but beware most of these ads are scams and are frauds. Internet uses AI based algorithm to show you are

relevant ads and to make them look more appealing to you. Try to avoid such ads as they might be fraudulent and misleading. Many a times while you are browse internet there appear a pop-up that asks you to enter your ID and password to proceed forward this is a red flag you should clearly go back and not enter to such ads. Moreover nowadays fraudulent activities of sending emails that asks you to fill your ID password are very prevalent, Beware a genuine Business will never ask you to fill ID password through emails. One has to be vigilant while surfing the internet.

**Use Good VPN service:**

Secure yourself with a good VPN service. VPN stands for virtual private network. What a VPN does is it encrypts all the information until it reaches its desired destination that means if any you are a victim of a cyber-assault, the assaulter won't be able to reach you. Using a VPN whenever you are at a public network will keep you safe from cyber-attacks. With a VPN you are ensured that you are not being tracked or traced and you can browse the internet safely.

**Keeping Social Profiles not so Social:**

Though it may sound weird but, posting everything and anything on social media that is somewhat private to you may pose you to a security risk. Posting something like your birthdate, your dog's name, major events of your life, makes you predictable and makes your password easier to crack. Cyber attackers look for such information out of your social media accounts. Thus limiting the extent to which what you post on social media can help you safeguard yourself from cyber-attacks.

**Using Good Anti-Virus Software:**

It is always a good idea to have antivirus and net protector installed in your PC. It is not only ensures that your PC is free of any virus but also regulates and protects your activities online. Antivirus constantly checks for any malicious codes or activities within your PC also keeping it updated regularly will ensure that your PC is free of any risk. Net protector on the other hand monitor your online activities and notify you if they sense any malicious or fraudulent activity or application that you might end up entering into. Both of these work together to make your online and offline experience flawless and free from cyber-attacks.

**Do Not:**

1. Do not open attachments from spam Emails.
2. Do not click on links from Spam Emails and untrusted websites.
3. Do not give out personal information unless you are 100% sure.

**MODULE 2:**

**2.1 Extent and Operation -**

IPC Chapter I: Sections 1 – 5

**2.2 General Explanations**

IPC Chapter II: Sections 6 - 52

**2.3 General Exceptions**

IPC Chapter IV: Sections 76 - 106

**2.4 Abetment**

IPC Chapter V: Sections 107 120

**2.5 Criminal Conspiracy**

IPC Chapter V-A: Sections 120 A & B

**2.6 Attempts**

IPC Chapter XXIII: Section 511

**1. Unlawful Assembly, Gang Rape and Dacoity from point of view of Joint criminal liability**

**2.1 Extent and Operation -**

IPC Chapter I: Sections 1 – 5

**Preamble—**

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

**Section 1: Title and extent of operation of the Code.—**

This Act shall be called the Indian Penal Code, and shall extend to the whole of India except the State of Jammu and Kashmir.

**Section 2: Punishment of offences committed within India.—**

Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India.

**Section 3: Punishment of offences committed beyond, but which by law may be tried within, India.—**

Any person liable, by any Indian law, to be tried for an offence committed beyond 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 India.

**Section 4: Extension of Code to extra-territorial offences.—**

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

(1) any citizen of India in any place without and beyond India;

1. any person on any ship or aircraft registered in India wherever it may be.

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

*Explanation.—*In this section—

1. the word “offence” includes every act committed outside India which, if committed in India, would be punishable under this Code;

1. 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);

**Section 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.

**IMPORTANT CASE LAWS**

**1. Jurisdiction of the Indian Penal Code**

***Central Bank of India v. Ram Narain, AIR 1955 SC 36 :***

*“4. The sole question for determination in the appeal is whether on a true construction of Section 188 of the Criminal Procedure Code, and Section 4 of the Indian Penal Code, the East Punjab Government had power to grant sanction for the prosecution of Ram Narain for offences committed in Pakistan before his migration to India.*

*13. .... we are of the opinion that the decision of the High Court that Ram Narain could not be tried in any court in India for offences committed in Mailsi in November 1947, is right and that the Provincial Government had no power under Section 188 of the Criminal Procedure Code, to accord sanction to his prosecution.”*

**2.2 General Explanations**

IPC Chapter II: Sections 6 – 52

**SECTION 6–** Definition in the code to be understood subject to exceptions-

Every definition, penal provision and illustration of all the offences covered under this code should be read as a subject to the relatable exceptions, mentioned in chapter IV- General Exceptions.

This section imposes restriction in validating the applicability of offences, without being bothered about chapter IV, by declaring definitions to be a subject to general exception (ch. IV).

*Highlights:*

- Basically, section 6 is immunity from criminal liability for an offender if he or she does not fall under any provision of chapter IV.
- Instead, of mentioning exceptions repeatedly, it was better to have separate chapter for it. (One single exception would be applicable to more than one offence committed by a single category of offender. Example- children under 7 years of age cannot commit offence like murder, etc)
- This section is to be read as a subject to chapter IV provisions (section-76 to 106).

**SECTION 7**– Sense of expression once explained-

Every expression talked about in this Code, is confirmed with chapter II.

**SECTION 8**– Gender-“he”, use for any person, male or female.

**SECTION 9**– Number- Unless contrary appears from context, words importing:

- The singular number include the plural number and
- The plural number include the singular number.

**SECTION 10**– “Man”, “Women”

- Man- male human being of any age.
- Woman- female human being of any age.

*Highlight*

- Principal significance lies in word “of any age”.
- Thus, women includes infant female (section 354, IPC- assault or criminal force to women with intent to outrage her modesty).

**SECTION 11**- “Person”-

Any company or association or body of persons, whether incorporated or not.

*Highlight*

- Effect of this section, with expression-
- Any company, whether incorporated or not,
- Any association of persons, whether incorporated or not and
- Anybody of persons, whether incorporated or not.
- Criminal liability of corporations- Those corporations may be:
- Either corporate sole (one person or entity construed by law as an artificial juridical person) or
- Corporations, in aggregate (eg. Companies).
- Officers of corporations-
- Positive effect of section 11- [Syndicate Transport Co. (1963) 66 Bom LR 197]

Corporations may be criminally liable. Section 11 is safeguard when a corporation tends to become victim of an offence, lead offender sentence to imprisonment.

Negative effect of section 11- [Girdharilal V Lal chand 1970 Cr. LJ 987 (Raj.)]

Corporation can be punished, only if offence is punishable with fine.

- Criminal liability of Directors and officers: Technically, offenders is a corporation, director may be liable (on addition to the criminal liability of the corporation), under-

1. Section 107 and 108, IPC- If directors or officers tend to be participants in the offence amounts to abatement.

2. Some special Acts- Directors and other officers could be charged of affairs of corporation for conduct of affairs declared criminally liable unless they can prove that the offence was committed without their knowledge or they exercised all due diligence to prevent the commission of that offence.

3. Criminal liability of partners:

[Sham Sundar V State of Haryana, (Judgment dated 21 August, JT 1989(3) SC 523

Supreme Court held, reference to section 10 of the Essential Commodities Act, 1955, only a partner liable and responsible for conducting, the business of the firm could be convicted unless he proves the contravention took place without her knowledge or the exercised all due diligence tom prevent such contravention.

**SECTION 12**– “Public”-

Includes any class of public or any community, any company, whether incorporated or not.

**SECTION 14**– “Servant Government”-

Any officer or servant:

1. Continues appointment or
2. Get employed in India by or under the authority of Government.

**SECTION 17- "Government"**

1. The Central Government or
2. Government of the State.

**SECTION 18- "India"**

Territory of India excluding the State of Jammu and Kashmir.

*Highlights:*

1. Relatable to section- 108A, 121A, 359, 360, etc of this Code and intended to be connoted by those sections, where territorial effect is crucial element.
2. This section is not Indian as political entity, but geographical territory.
3. It would have been more expressive it began something like this, "India" in relation to the territory.

**SECTION 19- "Judge"**

Not only every person officially designated as judge or who is one of a body of persons if empowered by law to give judgments (given below), but also every person empowered by law, to give-

1. Any legal proceeding, civil or criminal or
2. Definitive judgment by law to give in any legal proceedings, civil or criminal or
3. Definitive judgment or judgment which, if confirmed by some other authority, would be definitive.

*Highlights*

Judge OR not?

- A collector exercising jurisdiction, in suit under 10 of 1859, is judge.
- A magistrate exercising jurisdiction in respect of charge on which he has power to sentence to fine or imprisonment, with or without appeal, is judge.
- A member of panchayat, power under Regulation- VII, 1810 of Madras Code to try and determine suits, is judge.
- A magistrate exercising jurisdiction in respect of charge on which he has power only to committee for trial to another court, not a judge.

**SECTION 20- "Court of Justice"**

When the following person judicially-

1. A judge, who is empowered by law to act judicially alone and
2. A body of judges, empowered by law to act judicially as a body.

*Highlights*

A panchayat acting under Regulation VII, 1816 of Madaras, having power to try and determine suit, is a court of Justice.

**SECTION 21 "Public Servant"**

A person falling under any of the below description-

- Every commissioned officer in Military, Navy or Air Force of India ;
- Every judge or any person empowered by law to discharge my adjudicatory functions by himself or member anybody of person;
- Every officer of Overt (not hidden or open) of Justice (including liquidator, receiver or commissioner) whose duty is:
  - to investigate or report any matter of law or fact,
  - to make, authenticate or keep any document,
  - to administer any oath,
  - to interpret or preserve order in court,
  - specially authorized by court of justice to perform any of such duties.
- Every jury man, assessor or member of panchayat (assisting Court of Justice or public servant);
- Every arbitrator or other person (referred for decision or report by any Court of Justice or other competent one);
- Every person, holding any office by virtue (empowered to keep any person in confinement);

- Every person of the Government, under duty of-
- Preventing offences or
- Giving information of offences or
- Bringing offenders to justice or
- To protect public health, safety or convenience;
- Every officer, whose duty on behalf of the Government is to-
- Take, receive, keep or expand any property,
- Make survey, assessment or contract,
- Execute any revenue process,
- Execute any revenue process,
- Investigate or report any matter affecting the pecuniary interest of Government,
- Prevent infringement of any law for pecuniary interest of Government;
- Every person, whose duty as an officer is to-
- Take, receive, keep or expend any property,
- Make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district,
- Make, authenticate or keep any document for ascertaining of the right of the people of any village, town or district;
- Every person (as miscellaneous)-
- In service or pay of the Government or remuneration by fees or commission for performance of any public duty by the Government,
- In service or pay of local authority, a corporation established by or under a central, provincial or state Act or Government company (section 617 of the Companies Act, 1956 (1 of 1956).

#### *Highlight*

- A Municipal Commissioner is a public servant.
- Public servants mentioned in section 34, may be appointed by Government or not.
- A public servant may be under legal defect in his right to hold the situation.
- “Election” denotes selecting members of a Legislative, municipal or other public authority.
- Public servant OR not-
- Bank employee- Certain specific bank employee, if legislature wants.
- Banks- Nationalized bank’s employee is a public servant, being employee of a Government company or Corporation controlled by Government of India.
- President and Secretary of cooperative society- Not a public servant.
- Private Medical Practitioner- Not public servant even if their names are included in panel of doctors.
- Surveyor- Surveyor of Insurance claim does not fall under this section.
- MP- Public servant under section (2) of Prevention of Corruption Act, 1988.
- MLA – Not a public servant
- Minister – Are public servant as they:
- Receive ‘pay’, an expression wider than salary.
- Appointed by the Governor (Article 164 and 167 of the Constitution of India)
- Perform public functions.
- Co-operative societies- These are not owned or controlled by the state. Their officers are not public servants, not even those on deputation from Government.

#### **SECTION 22– “Movable Property”**

Corporate Property of every description, except-

1. Land and thing attached to the earth and
2. Things fastened to anything which is attached to the earth.

#### **SECTION 23 – “Wrongful gain”**

- “Wrongful gain”-gain by unlawful means of property to which person gaining is legally entitled.
- “Wrongful loss”- Loss by unlawful means of property to which person losing it is legally entitled.
- Gaining wrongfully – Person said to gain wrongfully, when retains as well as acquired wrongfully

• Losing wrongfully – Person said to loss wrongfully, when kept out as well as deprived wrongfully.

**SECTION 24**-“Dishonestly”-Anything done with an intent of causing wrongful gain to one and wrongful loss to another.

*Highlight*

Concealment amounts to dishonesty.

**SECTION 25**- “Fraudulent”- Anything said with an intent to defraud, not anything else.

*Highlight*

1. Pecuniary advantage or harm is unnecessary (fraudulent need not to be dishonest)
2. Fraud requires deceiving, but not wrongful gain or loss.
3. No fraud, if neither deceived, nor dishonesty.

**SECTION 26**- “Reason to believe”- There is ‘reason to believe’, only if there is sufficient cause to believe it.

**SECTION 27**- Property in possession of wife, clerk or servant

When wife, clerk or servant is in account of that person.

*Highlight*

1. Clerk or servant- Person temporarily employed, on particular occasion in capacity of clerk or servant.
2. ‘On account to that person ‘- Being accountable to that person (to whom they are accountable), not being property in control of them (here, wife specifically)
3. Possession in English Criminal Law- Possession requires mental element.”A person cannot be said to be in possession of some article which he or she does not realize in or may in her handbag, room, etc, over which he has control”.

**SECTION 28**- “Counterfeit”- To create resemblance, with an intent to deceive.

*Highlight*

1. Resemblance or imitation does not need to be exact.
2. Until a person is proved counterfeiting, he is presumed to be deceived as if resemblance has been an issue of his own deception.

**SECTION 29**- “Document”-

1. Letter, figure or marks express matter (materialistic content like, terms and conditions) upon a substance (actual matter over which terms and conditions are made).
2. When those letter, figure or mark, is later on used as evidence, whether it is intently created to be evidence later on or not, is called document.

*Highlight*

- Immaterial facts-
- Substance of document or
- Means of expression (letter or figure or mark) or
- Intent to create evidence, to be later on presented in Court of Justice.
- Writing expressing terms of contract, may be used as evidence of the contract, is document. For example-
- Cheque upon a banker,
- Power of attorney,
- Map or plan, intended to be used as evidence,
- Directions or instructions in writing.
- Letter or figure or marks, is deemed to be expressed for this Act, as what has been explained about it in the mercantile or other usage, whether it itself express it or not. Example- negotiable instrument is construed for “Pay to the holder” agenda, according to mercantile usage. So whether it is been mentioned over it or not, still be impliedly taken that way, for the purpose of this section also.

**SECTION 29A**-“Electronic record”- In accordance with section 2 (1) (t) of the Information Technology Act, 2000.

**SECTION 30**-“Valuable security”-

An alleged document which tends to acknowledge any person, of his legal liability against it or legal right, which is being created, extended, transferred, retreated, released or extinguished through it.

*Highlight*

- Example- bill of exchange, when endorsement intends to transfer the right within.
- Essential conditions of valuable security, is generating legal right or legal liability.
- Exception: “release” through document, because it asserts (declares) rights, not abandon (release) rights.
- Applicability under this Act: Offences against-
- Human body (section 329- 331, 347, 348),
- Property (section 420)
- Documents (section 467, 471)
- Conflict of being valuable security OR not-
- Unregistered document (which is not fully effective until registered), is not valuable security in strict sense but allegedly valuable security, so falls-
- Under section 467 (forgery of valuable security) and
- Even amounts to an offence of cheating depending upon the conduct.
- Exception of section 467- An alleged document is a copy of valuable security.

**SECTION 31**-“A will”- A testamentary document.

*Highlight*

Comparing section 31, IPC with section 2(h) of Indian succession Act (39 of 1925).

‘Legal declaration, when testator intends to declare his desire regarding his property, to be carried into effect even after his death.

- Forgery of will- Liability under section 467, IPC.

**SECTION 32**- words referring to acts include Illegal omissions

- In code, words referring to ‘act’ done, also means of offender undergoing illegal omission.
- Exception- any contradictory intention of the circumstance.
- “act”- Under jurisprudence, any even subject to human will
- Act provides with-
- Its origin in some mental or bodily activity of door,
- Its circumstances and
- Its consequences.
- Omission will be subject to code, if act committed will be illegal. But omission needs not to be intentional. That’s why, an intentional omission does not concern the code because then it would be a conscious illegal conduct.
- Conditional conduct:
- Care:
- Omission to take care is punishable, if there is duty to take care.
- Exception- omission to ct with care is excused, if that act was product of ‘mental blackout’.
- Volunteer:
- Conduct not punishable if, influenced by: Fits or sleep walking
- Holmes said “an act is always a voluntary muscular contraction and nothing else”.

**SECTION 33**- “Act”, “omission”

1. “Act”- even involves series of acts, as single act.
2. “Omission”- even involves series of omissions, as single omission.

*Highlight*

1. A single positive act.
2. Series of acts.
3. Single illegal omission.
4. Series of illegal omissions.

**SECTION 34**- Acts done by several persons in furtherance of common intention

Criminal act conducted by several persons, with common intention to each of them, each of such person will be liable in the same manner, as of it has been conducted by him alone.

*Highlights*

**Principle-**

As the intention is common the liability should also be common

*Relevant cases-*

Ganesh singh V Ram Rafie (1869) S3 Bom. LR (Privycouncil) 44, 45

B.N.Sirkantiah V State, AIR 1958 SCD 672

Viswanth Sghanthamallappa Dhule V State of Karnataka , AIR 1998 SC 24

**Nature of liability-**

Liability of each one involved, as participation in the criminal act with common intention, not a liability as abettor (helper) but as a principal (authoritarian).

*Relevant case-* Nga Aung Thein, 1935 ILR 13 RANG (210)

**Essentials-**

2 essentials, absence of one could fail to prove a person guilty:

Participation in the act (participant of an offence)

Common intention.

*Relevant cases-*

Inderjity V State, 1986 CVr. LHJ 966(Del)

Dasrathal V State of Gujrat, 1979 Cr LJ 1078 (SC)Applicability of-

**Applicability-**

**Importance of common intent:**

The court has to take recourse(help) of this section even if not mentioned, when the assistant( attacker) is found to be involved with accused due to common intent.

*Relevant case-* Dhanna V State of Madhya Pradesh< AIR 1996 SC 2478

*Cumulative effect:*

If cumulative effect of injuries, seems sufficient as an ordinary course to cause death.

*Relevant case-* State of Assam V Siba Prasad Bora 1985 Cr LJ 43(Gau)

Labha singh V State of Punjab AIR 1998 SC 323

**Pre-meeting of mind (common intent):**

There must be pre-arranged plan and meeting of minds, such if it develops on the spot. So, to come up with their common intent, it is relevant to be bothered about accused preceding and following occurrence.

*Relevant case-* Domu Chopali V State 1986(2) Cr. LC 261(Orissa)

**Heat of the moment conduct:**

When accused, acted in heat of moment and was on bail for years, sentence reduced from (RI) Regorious Imprisonment of 3years to 1.5 years.

*Relevant case-* Rajendra Prasade V State of Bihar AIR 1987 SC 1335

**Surrender, not sufficient:**

If appellat surrenders along with accused before police, does not satisfy meeting of minds and so, section 34 cannot cover such situation.

*Relevant case-* Rangaswami V State of Tamil Nadu AIR 1989 SC 1137

**Common intent of accused:**

An offence committed is product of common intent of 2 or more accused, everyone is guilty.

*Relevant case-*State of Punjab V Surjit Singh AIR 1987 SC 1045

**Accused guilt:**

Conviction will justified if there is no inference except having an accused with guilt.

*Relevant case-* Basanti V State of Himachal Pradesh AIR 1987 SC 1572

***Suspicion, is no proof:***

Suspicion against accused, cannot take place of proof.

*Relevant case*– Basanti V State of Himachal Pradesh AIR 1987 SC 1572

***Every accuse, indulge in overt act, not necessary:***

To convict a person to vicarious liability under section 34 or 149, it is not necessary for them to indulge in overt act.

*Relevant case*– Rambilas Singh V State of Bihar AIR 1989 SC 1593

*Common intent, at spurt (sudden or speedy) of moment:*

Common intent is to establish, by processing their shared intention, even if it is result of spurt of the moment.

*Relevant case*- Maqsoodan V State of Uttar Pradesh AIR 1983 SC 126

***Sharing of common intent–***

*Common intent gets inferred:*

If second accused, secured the deceased and first accused stabbed him.

*Relevant case*-

Bachitar singh V State ( Delhi Administration) AIR 1998 SC 246

*Some accused committed assault on deceased, all of accused cannot be held liable for conviction:*

*Relevant case*– Dukhmochan Pandey V State of Bihar AIR 1998 S 40

***Benefit of doubt–***

*Once intent proved, conduct of others not:*

Intent of one accuse is proved, but others conduct is not yet proved. Benefit of doubt in such case reduced sentence to 5 years.

*Relevant case*– Ranapartap V State of Haryana, AIR 1983 SC 680

*Witness's description, doesn't tally accused:*

Accused lead the case, entered house, armed with gun, participated in murder of deceased.

*Relevant case*– Lokpal Singh V State Madhya Pradesh AIR 1985 SC 891

***Appellant's involvement as participant in crime:***

Appellant participation in crime, in manner that looted properties were distributed among them.

*Relevant case*-Mukund Kundu Mishjra V State of Madhya Pradesh AIR 1997 SC 2622

*Evidence of eye witness, cannot prove participation in an offence and cannot be turned off under benefit of doubt:*

All accused are acquitted as evidence of eye witness, did not prove their participation in the offense of murder. Main accused cannot be given benefit of doubt on the same ground. Benefit of doubt cannot be given by proving an eye witness totally false and absolutely unreliable.

*Relevant case*– Jarnail singh V State of Punjab AIR 1996 SC 755

**SECTION 35**– when such an act is criminal by reason of it's being done with a criminal knowledge or intention

Each of such persons who join in the act with such knowledge or intention is liability for the act in the same manner as if the act is done by him alone with the knowledge or intention.

**SECTION 36**– Effect caused partly by act and partly by omission

Where an offence is, when someone by an act or by an omission causing effect or attempt to cause that effect, in case, cause of effect or attempt to cause that effect is partly by an act and partly by an omission, it is even an offence.

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

**SECTION 37**– Co-operation by doing one of several acts constituting an offence.

Offence committed through several acts, wherever intentionally co-operates in commission of offences by doing any one of those act either singly or jointly with any other person, has said to commit that offence.

**SECTION 38**– Persons concerned in criminal act may be guilty of different offences.

When several persons are engaged or concerned in commission of criminal act, everyone could be guilty of different offences by means of that act.

*Example:*

A and B, killed Z; Under grave provocation that it would only amount to culpable homicide, will only be guilty of culpable homicide.

B- Having ill will towards Z and without any subject to provocation, killed Z, will be guilty of murder.

**SECTION 39**- "Voluntarily"- A person is said to cause an effect "voluntarily"-

- If he intended to cause it and
- At time of employing means, he knows or reasonable believe in causing it.

*Highlight*

Sense of guilt, of the cause, doesn't matter if above give conditions are fulfilled.

**SECTION 40**- "Offence" –

Denotes a thing made punishable by this code;

Under section 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word 'offence', is this punishable under the special or local law is punishable under such law with imprisonment for a term of 6 months or upwards, whether with or without fine.

**SECTION 41**– "Special law"- Applicable to a particular subject .

**SECTION 42**– "Local law"- applicable only to, particular part of India.

**SECTION 43**"Illegal", "Legally bound to do"-

- "Illegal"- everything which is offensive, prohibited by law or furnished ground for a civil action.
- "Legally bound to do"- a person illegal to omit something, doesn't matter what exactly.

**SECTION 44**– "Injury"-

Any harm illegally caused to any person in-

- Body or
- Mind or
- Reputation or
- Property.

**SECTION 45**- "Life"-

Explained by word "Life", as life of a human being is life unless anything contrary appears from the circumstances.

**SECTION 46**– "Death"-

Explained by word "Death", as death of a human being is death unless anything contrary appears from the circumstances.

**SECTION 47**- "Animal"- Any living creature, other than human being.

**SECTION 48**– "Vessel"- Anything made for conveyance (process for transportation) of human being, or property by water.

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

**SECTION 50**– "Section"- It denotes one of those portions of a chapter of this code which are distinguished by prefixed numeral figures.

**SECTION 51**- "Oath"-

It includes:

- A solemn affirmation substituted by law for an oath or
- 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 Court of Justice or not.

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

**SECTION 52 A**- "Harbor"

To evade apprehension, when a person is:

- Supplied with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance or
- Assisting with above mentioned things or not.

### **2.3 General Exceptions**

IPC Chapter IV: Sections 76 – 106

In another landmark judgment, the Supreme Court criminalized sex with a minor wife aged between 15 and 18 years. The court overturned an exception in rape law which allowed a husband to have sex with his wife aged 15 years and above regardless of consent, including punishment. NGO Independent Thought filed a PIL in court which paved the way for this ruling and this rule will be applicable even in the case of Muslim Personal law. Criminal law deals with such type of cases in India which are assorted in different sections depending upon their nature.

The Criminal law covers various punishments which vary from case to case. But it is not always necessary that a person gets punished for a crime which he/she had committed. The Indian Penal Code (IPC), 1860 recognizes defences in Chapter IV under “General Exceptions”. Section 76 to 106 covers these defences which are based on the presumption that a person is not liable for the crime committed. These defences depend upon the circumstances prevailing at that point of time, mens rea of person and reasonability of action of that accused.

#### **Object of Chapter IV**

Every offence is not absolute, they have certain exceptions. When IPC was drafted, it was assumed that there were no exceptions in criminal cases which were a major loophole. So a separate Chapter IV was introduced by the makers of the Code applicable to the entire concept.

In short, the object of Chapter IV includes:

- Exceptional circumstances in which an individual can escape liability.
- Making Code construction simpler by removing the repetition of criminal exceptions.

Burden of Proof

- Generally, Prosecution has to prove its case beyond reasonable doubt against the accused.
- Before the enforcement of the Indian Evidence Act 1882, the prosecution had to prove that the case does not fall under any exception, but section 105 of Evidence act shifted the burden on the claimant.
- But in exceptions, as per Section 105 of Evidence Act, a claimant has to prove the existence of general exception in crimes.

The fabric of Chapter IV

- Section 6 of IPC

“Throughout this code, every definition of offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to exceptions contained in the chapter titled General Exceptions”.

#### **The General Exceptions are divided into 2 categories:**

- Excusable Acts
- Judicially Justifiable Acts

<b>Excusable Acts</b>	<b>Justifiable Act</b>
A mistake of Fact under section 76 and 79.	An act of Judge and Act performed in pursuance of an order under Section 77 and 78.
Accident under Section 80.	The necessity under 81.
Infancy – Section 82 and 83.	Consent under Section 87 – 89 and Section 90 and 92.
Insanity – Section 84.	Communication under Section 93.
Intoxication – Section 85 and 86.	Duress under Section 94.

	Trifles under Section 95.
	Private Defence under Section 96 – 106.

**Excusable Acts**

An Excusable Act is the one in which though the person had caused harm, yet that person should be excused because he cannot be blamed for the act. For example, if a person of unsound mind commits a crime, he cannot be held responsible for that because he was not having mens rea. Same goes for involuntary intoxication, insanity, infancy or honest mistake of fact.

A mistake of Fact under Section 76 and 79

Under Section 76: Act done by a person bound or by mistake of fact believing, himself to be bound by law is included. Nothing is an offence which is done by a person who is or by reason of a mistake of fact, not by mistake of law in good faith believes himself, to be, bound by law to do such act. It is derived from the legal maxim "*ignorantia facti doth excusat, ignorantia juris non excusat*".

- Example: If a soldier firing on a mob by the order of his officer in conformity through the command of the law, then he will not be liable.

Under Section 79: Act done by a person justified or by mistake of fact believing, himself justified, by law is included. 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 mistake of law in good faith, believes himself to be justified by law, in doing that particular act

- Example: A thought Z to be a murderer and in good faith and justified by law, seizes Z to present him before authority. A has not committed any offence.

**Case law for Section 79**

In Kiran Bedi v. Committee of Inquiry, petitioner refused to be deposed to the beginning of the inquiry as she believed that she could be deposed only at the end of the inquiry

**Accident under Section 80**

Includes an Accident committed while doing a lawful act. Nothing is an offence which is done by accident or misfortune, 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.

- Example: Suppose M is trying to shoot a bird with a gun but unfortunately the bullet reflected from the oak tree causing harm to N, then, M will not be liable.

**Case law for Section 80**

In King Emperor v. Timmappa, a division bench held that shooting with an unlicensed gun does not debar an accused from claiming defence under Section 81 of IPC. The appeal of acquittal was dismissed and the order of trial magistrate was upheld. The court was of the opinion that there is no reason why sentence awarded under Section 19(e) of the Indian Arms Act should be enhanced. The respondent was liable under the provision but no more. He just borrowed a gun for few minutes to kill as he thought a wild animal might attack him and his partners. The application was dismissed regarding enhancement of sentence.

**Infancy – Section 82 and 83**

Section 82: It includes an act of a child below seven years of age. Nothing is an offence which is done by a child under seven years of age.

- Suppose a child below seven years of age, pressed the trigger of the gun and caused the death of his father, then, the child will not be liable.

Section 83: It includes an act of a child above seven and below 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 yet attained sufficient maturity of understanding to judge the nature and repercussions of his conduct during that occasion.

- Example: Suppose a child of 10 years killed his father with a gun in the shadow of immaturity, he will not be liable if he has not attained maturity.

### **Case law for Section 83**

In *Krishna Bhagwan v. State of Bihar*, Patna High Court upheld that if a child who is accused of an offence during the trial, has attained the age of seven years or at the time of decision the child has attained the age of seven years can be convicted if he has the understanding and knowledge of the offence committed by him.

### **Insanity - Section 84**

Act of a person of unsound mind. Nothing is an offence which is done by a person who at that time of performing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

- Example: A, who is insane or unsound, killed B with a knife, thinking it to be a fun game, will not be liable for B's death as he was not aware of the nature of act and law. he was incapable of thinking judiciously.

### **Case law for Section 84**

In *Ashiruddin Ahmed vs. State*, the accused Ashiruddin was commanded by someone in paradise to sacrifice his own son, aged 4 years. Next morning he took his son to a Mosque and killed him and then went straight to his uncle, but finding a chowkidar, took the uncle nearby a tank and told him the story. The Supreme Court opined that the accused can claim the defence as even though he knew the nature of the act, he did not know what was wrong.

### **Intoxication - Section 85 and 86**

Section 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 involuntarily without his will or knowledge.

- Example: A drank alcohol given by a friend thinking it to be a cold drink. He became intoxicated and hit a person on driving his car back home. He will not be liable as alcohol was administered to him without his will and knowledge.

Section 86: Offence requiring a particular intent or knowledge committed by one who is intoxicated. This applies to cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in 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.

- Example: A person intoxicated, stabs another person under influence of alcohol which was administered to him in the party against his knowledge or will, will not be liable. But if that person had stabbed that person under voluntary intoxication, then he will be liable.

### **Case law for Section 86**

In *Babu Sadashiv Jadhav case*, the accused was drunk and fought with the wife. He poured kerosene and set her on fire and started extinguishing the fire. The court held that he intended to cause bodily injury which was likely to cause death under section 299(20 and sentenced him under section 304, Part I of code).

### **Justifiable Acts**

A justified act is one which would have been wrongful under normal conditions but the circumstances under which the act was committed makes it tolerable and acceptable.

Act of Judge and Act performed in pursuance of an order under Section 77 and 78

Section 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.

- Example: Giving Capital Punishment to Ajmal Kasab was done under the judicial powers of judges.

Section 78: Act done pursuant to the Judgement or order of the 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 no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the court had such jurisdiction.

- Example: A judge passing an order of giving lifetime jail punishment, believing in good faith that the court has jurisdiction, will not be liable.

### **Necessity under 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 is done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

- Example: A Captain of a ship turned the direction of the ship of 100 people in order to save their lives, but harming the life of 30 people of a small boat, without any intention or negligence or fault on his part. He will not be liable because necessity is a condition in which a person causes small harm to avoid great harm.

### **Case law for Section 81**

In *Bishambher v. Roomal*, 1950, the complainant Bishambhara had molested a girl Nathia. Khacheru, Mansukh, and Nathu were accused related to father of the girl. The Chamars were agitated and determined to punish Bishambher. Rimal Singh, Fateh Singh, and Balwant Singh intervened and tried to bring a settlement. They collected a panchayat and the complainant's black was blackened and given shoe beating. It was found by the court that accused had intervened in good faith but the panchayat was having no authority to take such a step.

### **Consent under Section 87 – 89 and Section 92**

Section 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 which is likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or to be intended by the doer to cause, to any person, above 18 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 that risk of harm.

- Example: A and E agreed to fence each other for enjoyment. This agreement implies the consent of each other to suffer harm which, in the course of such fencing, may be caused without foul play and if A while playing fairly hurts E, then A, has committed no offence.

### **Case law for Section 87**

In *Poonai Fattmah v. Emp*, the accused who professed to be a snake charmer, induced the deceased to believe him that he the power to protect him from any harm caused by the snake bite. The deceased believed him and got bitten by the snake and died. The defence of consent was rejected.

Section 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.

### **Case law for Section 88**

In *R.P Dhanda V. Bhurelal*, the appellant, a medical doctor, performed an eye operation for cataract with patient's consent. The operation resulted in the loss of eyesight. The doctor was protected under this defence as he acted in good faith.

**Section 89:** Act done in good faith for the benefit of a child or insane person, by or by consent of the 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

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

**Section 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,

1. if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or
2. 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
3. Consent of children, the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

### **Case law for Section 90**

In *Jakir Ali v. State of Assam*, it was proved beyond doubt that the accused had sexual intercourse with the victim on a false promise of marriage. The Gauhati High Court held that submission of the body by a woman under fear or misconception of fact cannot be construed as consent and so conviction of the accused under sections 376 and 417 of the Indian Penal Code was proper.

Section 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.

### **Communication under Section 93**

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

- Example: A doctor in good faith tells the wife that her husband has cancer and his life is in danger. The wife died of shock after hearing this. The doctor will not be liable because he communicated this news in good faith.

### **Duress under Section 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 done by a person compelled to do it under 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 reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

- Example: A was caught by a gang of dacoits and was under fear of instant death. He was compelled to take gun and forced to open the door of house for entrance of dacoits and harm the family. A will not be guilty of offence under duress.

### **Trifles under Section 95**

Act causing slight harm is included under this section. 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.

#### **Case law for Section 95**

In *Mrs. Veeda Menezes v. Khan*, during the course of exchange of high tempers and abusive words between appellant's husband and the respondent, the latter threw a file of papers at the former which hit the appellant causing a scratch on the elbow. SC said that the harm caused was slight and hence, not guilty.

### **Private Defence under Section 96 – 106**

Section 96: Things done in private defence.

Nothing is an offence in which a person harms another person in the exercise of private defence.

Section 97: Right of private defence of body and property.

Every person has a right to private defence, provided under reasonable restriction under Section 99.

1. Protecting his body or another person's body, against any offence in which there is a danger to life.
  2. Protecting his or another person's movable or immovable property, against any offence like theft, robbery, mischief or criminal trespass or an attempt to commit theft, robbery, mischief or criminal trespass.
- Example: A father, in order to protect the life of daughter from the attack of a thief, shoots him in his leg. But the father will not be liable as he was protecting the life of his daughter.

#### **Case law for Section 97**

In *Akonti Bora v. State of Assam*, the Gauhati High Court held that while exercising the right of private defence of property the act of dispossession or throwing out a trespasser includes right to throw away the material objects also with which the trespass has been committed.

Section 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.

- Example: A attempts to kill Z under influence of insanity but A is not guilty. Z can exercise private defence to protect himself from A.

Section 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 color 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.
- The harm caused should be proportional to that of imminent danger or attack.

#### **Case law for Section 99**

In *Puran Singh v. State of Punjab*, the Supreme Court observed that where there is an element of invasion or aggression on the property by a person who has no right of possession, then there is obviously no room to have recourse to the public authorities and the accused has the undoubted right to resist the attack and use even force, if necessary.

Section 100: When the right of private defence of the body extends to causing death.

- Assault causing reasonable apprehension of death.
- Reasonable apprehension of grievous hurt.
- Committing rape
- Unnatural lust
- Kidnapping or abducting
- Wrongfully confining a person in which that person reasonably apprehends the assault and not able to contact public authority.
- Act of throwing or attempting to throw acid, causing apprehension in the mind that assault will cause grievous hurt.

### **Case law for Section 100**

In *Yogendra Morarji v. State*, the SC discussed in detail the extent and limitations of the right of private defence of the body. There must be no safe or reasonable mode of escape any retreat for the person confronted with imminent peril to life or bodily harm except by inflicting death.

Section 101: When such rights extend 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.

### **Case law for Section 101**

In *Dharmindar v. State of Himachal Pradesh*, that onus of proof to establish the right of private defence is not as onerous as that of a prosecution to prove its case. Where the facts and circumstances lead to a preponderance of probabilities in favor of the defence case it would be enough to discharge the burden to prove the case of self-defence.

### **Section 102: Commencement and continuance 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; it continues as long as such apprehension of danger to the body continues.<sup>1</sup>

- Example: A, B, and C were chasing D to kill him in order to take revenge, but suddenly they saw a policeman coming from another side. They got afraid and turned back to run. But D shoots B in his leg, even when there was no imminent danger of harm. D will be liable as there was no apprehension of death or risk of danger.

### **Section 103: When the right of private defence of property extends to causing death.**

1. Robbery;
  2. House-breaking by night;
  3. Mischief by fire committed on any building, tent or vessel, building, tent or vessel used as a human dwelling, or a place for the custody of property;
  4. 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.
- Example: C Attempts to stab D maliciously while committing burglary in D's house. There is a reasonable apprehension in the mind of D that C will hurt him grievously, so in order to save himself and property, C throttled D with a knife in his chest, causing Death. C will not be liable.

### **Case law for Section 103**

In *Mohinder Pal Jolly v. State*, the deceased worker and some of his colleagues were shouting slogans for demands outside the factory. Some brickbats were also thrown by them which damaged the property of the owner who fired two shots from outside his office room, one of which killed the deceased worker. The court held that it was a case of mischief and the accused will not get the defence of this section.

Section 104: When such right extends to causing 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.

- Example: If A has committed criminal trespass in order to annoy B or hurt him, then B will have the right to harm A in proportional manner, not causing death of the person.

#### **Case law for Section 104**

In *V.C Cheriyan v. State*, the three deceased along with other persons had illegally laid a road through private property of the church. A criminal case was pending against them. The three accused belonging to church put up barricades across this road. The deceased was stabbed by accused and Kerela HC held that private defence does not extend to causing the death of a person in this case.

#### **Section 105: Commencement and continuance of the right of private defence of property.**

The right of private defence of the property commences when:

- A reasonable apprehension of danger to the property commences. The right of private defence of property against theft continues until 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
- As long as the fear of instant death or
- Instant hurt or
- 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.

- Example: Suppose a thief into the house of an individual, and attempts to hurt him instantly with a knife, then that individual has the right to act in private defence and harm that thief to save life and property.

#### **Case law for Section 105**

In *Nga Pu Ke v. Emp*, paddy sheaves belonging to the accused were removed illegally by a person. Accused attacked the cartmen and that cartmen jumped off the carts and ran away leaving sheaves. The accused still chased him and attacked him leading to death. The court held him as guilty of offence.

Section 106: Right of private defence against deadly assault when there is a risk of harm to innocent person.

If in the exercise of private defence against an assault, a person causes apprehension of death, in which defender has no choice but harming an innocent person, his right will extend to that running of risk. 4

- Example: C is attacked by a mob who attempts to murder him. He cannot exercise his right to private defence without firing on the mob. In order to save himself, he is compelled to hurt innocent children while firing so C committed no offence as he exercised his right.

#### **2.4 Abetment(उकसाना)**

IPC Chapter V: Sections 107 120

Provoking, encouraging and aiding anyone for doing any criminal act which is punishable by law is known as abetment. This article talks about chapter V of Indian Penal Code, 1860 i.e Abetment. Criminal Law in itself is very clear while imparting any kind of punishment and holding anyone liable under any kind of offences.

Chapter V of Indian Penal Code, 1860 is the first offence which starts in Indian Penal Code, 1860 stating that the mastermind behind the commission of offence should not be set free on the mere ground that the actus reus has not been done by the person behind the offence committed or yet to be committed. The concept of abetment has widened the scope of criminal law to incorporate these criminal intention and penalize them according to the provision laid down under chapter V of Indian Penal Code, 1860.

**There are four stages of crime which is read as below:**

1. For any offence being committed or instigates other for their commission there should be a human being, Human being plays an important role in any kind of criminal act being done by himself or either made other to do so and be liable for the same.
2. Intention and knowledge plays an important role in any criminal act being done by human being. However a non-criminal behavior as simple as buying a knife for household use becomes criminal when there is any kind of criminal intention behind getting the knife. None of the act can be considered itself a crime if done with guilty mind.
3. After the formation of an intention mere execution is necessary which is followed by actus reus. i.e. the act done in return of the intention formed causing injury to others.
4. Last stage is the offence itself which is the result of any kind of criminal intention and criminal act punishable under law. Eg: Murder, Rape, Robbery, etc.

So, in middle of the above four stages abetment may take place. i.e. at the very initial stage of planning where the intention is developed by one person but the act is done by other as a result of instigation for the commission of an offence. Abetment is a substantive offence where the commission of offence is not considered, one is held liable for mere instigating, conspiring and aiding other for the commission of the offence.

**Meaning of Abetment: (Section-107)**

Section 107-120 of Indian Penal Code 1860, talks about abetment. According to section 107 which explains the meaning of abetment, in general to abet means to instigate, to help, to encourage to put in execution his criminal intention. Abetment consists of three acts which are laid down in section 107:

**Abetment by instigation:** In common it is said that one can motivate other in two possible ways which is motivating one for good cause and motivating other for bad cause which is abetment by instigation and hence, held liable for such instigation irrespective of the act abetted be committed or not. A person instigates the doing of a thing who by willful misrepresentation, or willful concealment of a material fact which he is bound to disclose, voluntarily causes or procure, or attempt to cause or procure a thing to be done. This is known as abetment by instigation.  
**Illustration:** A, a public officer, is authorized by a warrant by court of justice to apprehend Z. B, knowing that fact that C is not Z, willful representation to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

**Abetment by conspiracy:** Abetment by conspiracy involves engaging with one or more person in any conspiracy for the doing of that thing, if an act or illegal omission takes in pursuance of that conspiracy. Abetment by conspiracy is only said to be done when there is conspiracy done between two or more person for commission of a criminal act, if act committed will amount to abetment by conspiracy, if the same is not committed will amount to conspiracy and will be punishable under section 120A and not for abetment by conspiracy.

**Abetment by aid:** The third kind of abetment is abetment by intentionally aiding (by an act or illegal omission) the doing of any criminal offence. Explanation 2 to section 107 clarifies that a person is said to aid the doing of an act, who either prior to or at the time of commission of an offence, does anything in order to facilitate the commission of that act.

Illustration: A priest performed the wedding ceremony of a marriage man with an unmarried woman. Here priest is liable for intentionally aiding and is liable for abetment by aid.

### **Who Is Abettor?**

Section 108 of Indian Penal Code, 1860 talks about abettor, a person who abets an offence, who abets either the commission of an offence, or either the commission of an act which would be an offence, if committed by a person capable by law with the same intention or knowledge as that of the abettor.

### **Five propositions as to Abetment, contained in section 108 of IPC, which are as follows:**

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. Thus if a public servant is guilty on an illegal omission of duty made punishable by the code, and a private person instigates him he abets the offence of which public servant is guilty, although the abettor, being a private person, could not himself have been guilty of the offence.

To constitute the offence of abetment, it is not necessary that the act abetted is committed or not. The offence of abetment depends upon the intention of the person who abets, and not upon the actual act done by the person abetted.

Illustration: A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

To constitute the offence of abetment, it is not necessary that the person abetted should be capable by law of committing an offence, or have the same guilty intention or knowledge as that of the abettor. Abetment is a substantive offence irrespective of the criminal intention or knowledge to be the same as that of abettor, mere instigation to commit a criminal offence is necessary and does not consider the abettee to whom abettor abets to do an act, either capable by law or not.

Illustration: A with a guilty intention, abets a child or a lunatic person 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.

When the abetment of an offence is 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 commits that offence in consequence of B instigation. B is liable to be punished for the offence with the punishment for murder and as A instigates B to commit the offence, A is also liable for the same punishment.

To constitute the offence of abetment by conspiracy, 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 will be liable.

Section 108A talks about when a person abets an offence within the meaning of this code who in India, abets the commission of any act beyond India which would be liable for an offence if committed in India.

### **Punishment For Abetment Under Indian Penal Code, 1860:**

From section 109 to section 120 of Indian Penal Code, 1860 deals with punishment for abetment which are as follows:

Section 109: Punishment of abetment if the act abetted is committed in consequences, and where no express provision is made for its punishment:

If a person abets an offence, and the act abetted is committed in consequences of the abetment where no expressed provision is made under this code for the punishment of such abetment, be punished with the punishment provided for the offence with is abetted and committed.

Whereas in some case of abetment the express provision is made for the punishment. It is to be made clear that an act or offence is said to be committed in the consequences of abetment, when it is committed in consequences of instigation, or in pursuance of conspiracy, or with aiding, which constitute the abetment. According as offence abetted is cognizable or non- cognizable, bailable or non-bailable, triable by court and non -compoundable.

Illustration:

A instigates B to give false evidence B under the instigation of A commits an offence. Here A is guilty of abetting the offence, and is liable for same offence as of B.

A offers a bribe to B , a public servant, as a reward of showing some official favour to A. B accepts the bribe A has abetted the offence and is liable for the offence defined in section 161 of IPC.

**Section 110: Punishment of abetment if person abetted does act with different intension from that of the abettor:**

This section laid down the provision for punishment of abettee i.e the person abetted, if does the act with different knowledge or intension from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act has been done with the same intension and knowledge of the abettor. The person abetted for the commission of an offence and commit and act cannot take a defense mere on the ground that the act done in the consequences of the abetment is done with different intension and knowledge from that of abettor, he will be equally liable for the punishment. According as offence abetted is cognizable or non- cognizable, bailable or non-bailable, triable by court and non- compoundable.

**Section 111: Liability of the abettor when one act abetted and different act done:**

When an act abetted and a different act is done, the abettor is liable for the act done in the same manner as if abetted directly, provided that the act done was likely to be caused as a course of offence abetted, and was committed under the influence of instigation, or with aid, or with pursuance of conspiracy which constitute the abetment. And if any act done which is not the probable consequences of abetment, the abettor is hereby not liable for any different kind of offence committed. According as offence abetted is cognizable or non- cognizable, bailable or non- bailable, triable by court and non compoundable.

Illustration: A instigate a child to put poison into the food of Z, and give him the poison for that purpose. The child in consequence of the instigation, by mistake put the poison into Y food which was kept just next to that of Z which result in death of Y. Here A is liable in the same manner and the same extent as if he has abetted the child to poison Y, because child is acting under the influence of abetment.

**Section 112: Abettor when liable to cumulative punishment for act abetted and for act done:**

Section 112 is an extension of section 111 of Indian Penal Code. According to section 111 if the offence committed is different from that of act abetted but it is in probable consequences of the abetment, done under the influence of instigation or aiding for the commission of an act. The abettor is held liable of the act in the same manner as if abetted directly.

Further it is said that the word cumulative used here in this section states that the act abetted and act done in pursuance of abetment exceeds in nature and thereby causing additional act resulting in additional offence of that abetted. Abettor is liable for the additional offence, if that offence is result of the probable consequence of abetment.

**Section 113: liability of abettor for an effect caused by the act abetted different from that intended by the abettor:**

Intension and knowledge plays an important role in any criminal act done or abetted. If an act abetted with different intension causing different effect as a result, abettor will be liable of the effect cause, on the ground that he knew that the act abetted was likely to cause such effect. Although intension is different from the act caused but one will be liable for the effect mere on the ground of knowledge.

The major difference between section 111 and section 113 is that section 111, says that when one act abetted and difference act is committed and in section 113, the act abetted and committed is same but the effect cause is different. According as offence abetted is cognizable or non- cognizable,ailable or non-ailable, triable by court and non- compoundable.

**Section 114: Abettor present when offence is committed:**

This section states that whenever any person who is absent would liable to be punished as an abettor, is present when the act or offence is being committed in consequences of the abetment for which he would be punishable, the law will resume that the abettor himself has committed such offence and act. And the abettor will be liable to be punished for the offence committed and not for the abetment of offence. According as offence abetted is cognizable or non- cognizable,ailable or non-ailable, triable by court and non- compoundable.

**Terms Of Punishment Provided In Section 115, 116, 117, 118, 119, 120 Of Indian Penal Code, 1860:**

Section 115: abetment of offence punishable with death or imprisonment for life- if offence not committed:

If offence not committed in consequences of abetment.	7 years of imprisonment +Fine
If act causing harm be done in consequences	14 years of imprisonment +Fine

**Section 116: abetment of offence punishable with imprisonment- if offence be not committed:**

Offence not committed in consequences of abetment	of the longest term of punishment provided for the offence / fine /both.
If abettor be a public servant whose duty id to prevent offence.	of the longest term of punishment provided for the offence / fine /both.

**Section 117: Abetting commission of offence by the public or by more than ten persons:**

Any person who abets the commission of offence by the public generally or by any number or class of person exceeding ten, shall be punished with imprisonment for the term which may extent to three years, or fine or both. According as offence abetted is cognizable or non- cognizable,ailable or non-ailable, triable by court and non- compoundable.

**Punishment for Concealing Designs Or Plans To Commit Offence:**

Section 118,119 and 120 of Indian Penal Code,1860 laid down the provision for punishment of concealing the design voluntarily by any act or illegal omission which lead to the commission of an offence be punishable under these sections.

**Section 118: concealing design to commit offence punishable with death or imprisonment for life:**

If offence committed in consequences of abetment	7 years of imprisonment/ fine
If offence not committed in consequence of	3 years of imprisonment/Fine

abetment	
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**Section 119: Public servant concealing design to commit offence which it is his duty to present:**

If offence committed in consequences of abetment	of the longest term of punishment provided for the offence / fine /both.
If offence not committed in consequence of abetment	of the longest term of punishment provided for the offence / fine /both.
If offence committed which is punishable with death or imprisonment for life	10 years of imprisonment.

**Section 120: concealing design to commit offence punishable with imprisonment:**

If offence committed in consequences of abetment	of the longest term of punishment provided for the offence / fine /both.
If offence not committed in consequence of abetment	1/8 of the longest term of punishment provided for the offence / fine /both.

Case Laws:

**SheoDail Mal, 1894:**

This case held that instigation may be direct or it may be through letter. Where A writes a letter to B instigating thereby to murder C, the offence of abetment by instigation is complete as soon as the contents of letter becomes now to B.

**Queen vs Mohit:**

A women prepared herself to become suttu in the presence of the accused persons. They followed her upto the pyre and stood by her step sons crying Ram Ram. One of the accused also admitted that he told the women to say Ram Ram. It was held that all those that followed her to the pyre and stood by her crying Ram Ram would be guilty of abetment as they actively abetted her.

**Pandala Venkatasami 1881:**

It was held that if a person prepares, in conjunction with others a copy of an indented false document and buys a stamp paper for the purpose of writing such a false document and also ask for information as to fact to be inserted in such false document, he would be guilty for abetment of forgery because these are the acts done to facilitate the commission of the offence.

**2.5 Criminal Conspiracy**

IPC Chapter V-A: Sections 120 A & B

Conspiracy means a combination of two or more persons for unlawful purposes. It is an agreement between two or more persons to commit an illegal act. Criminal conspiracy is a substantive offence under the Indian Penal Code, 1860(I.P.C.). Generally, the accused is charged with the offence of criminal conspiracy along with the charge of some other substantive offence under the I.P.C. or any other law. Chapter V-A of the I.P.C. as inserted in 1913 deals with the offence of criminal conspiracy. In this article, an attempt is made to analyze the substantive offence of criminal conspiracy with the help of relevant case laws.

**Section 120A of the I.P.C. defines criminal conspiracy as an agreement of two or more persons to do or cause to be done:**

- I. An illegal act, or;
- II. An act that is not illegal by illegal means.

Section 43 of the I.P.C. defines the term 'illegal' as everything that is an offence or is prohibited by law or furnishes ground for a civil action.

The Proviso attached to Section 120A provides that a mere agreement to commit an offence shall amount to criminal conspiracy and no overt act or illegal omission is required to be proved. Such overt act is necessary only when the object of the conspiracy is the commission of an illegal act not amounting to an offence. It is immaterial whether the illegal act is the ultimate object of such agreement or is merely incidental to that object.

### Essentials of Criminal Conspiracy

The essentials of this section can be outlined as:

1. There should be an agreement between two or more persons.  
There must be an agreement between two or more persons. If the conspirators commit several offences in accordance with the criminal conspiracy, all of them shall be liable for the offences, even if some of them did not actively participate in the commission of the crimes.
2. Such an agreement should be done:
  - To do an illegal act
  - To make a person liable for the criminal conspiracy, the agreement must be to do any act which is either forbidden by law or is opposed to the law.
  - Or to do a legal act by illegal means When any act is done even though it is lawful but done by illegal means, it constitutes criminal conspiracy.
3. The agreement may be expressed or implied or partly expressed and partly implied.
4. As soon as the agreement is made, the conspiracy arises, and the offence is committed.
5. And, the same offence is continued to be committed so long as the combination persists.

The Supreme Court has outlined the above mentioned essential ingredients of criminal conspiracy in *R Venkatkrishnan vs CBI*.

### Critical Analysis

The main object behind the introduction of Section 120A and 120B to the Code, appears to be an attempt to curb criminal thoughts before they take the form of a concrete criminal act, detrimental to the society at large. According to Section 43 of the Code, an 'illegal' act under the Indian Penal Code would imply the commission of an offence, or of an act forbidden by law, or of an act which lays ground for a civil liability to arise. For the establishment of the offence of criminal conspiracy, the existence of an agreement between the parties is a *sine qua non*. This agreement may be express or implied, the important factor is *consensus ad idem*, i.e., meeting of minds.

The agreement must be read as a whole and the object ascertained. It is not necessary that more than one person must always be convicted for the offence of criminal conspiracy, it is sufficient if the court is convinced that more than two or persons were actually involved in the conspiracy. The offender might join the conspiracy from the start itself or at any time before the completion of the objective of the agreement, irrespective of the time of joining, each party to the offence would be held equally responsible. A criminal conspiracy is said to persist as long as the parties to the agreement continue to act in furtherance of the objects of the agreement.

### Proof Of Conspiracy

The offence of criminal conspiracy can be proved by either direct or circumstantial evidence. A conspiracy is usually hatched in a secret and private setting which is why it is almost impossible to produce any affirmative evidence about the date of the formation of the criminal conspiracy, the

persons involved in it or the object of such conspiracy or how such object is to be carried out. All of this is more or less a matter of inference.

It was believed that agreement or meeting of minds is the one of the main evidence to prove the conspiracy under this section & also it is one of the hardest one to prove because as we all known to the fact that offender by himself does not agree to a fact that he is involved with someone It is only matter of circumstances that one can prove that there is a meeting of minds or an agreement between those two. Hence, criminal conspiracy is based on circumstantial evidence in most of the cases there is no direct evidence to prove the same.

Also, point to be noted that there is no conspiracy between husband & wife because they are considered as the one person.

### **Section 10 of Indian Evidence Act, 1872**

Section 10 of the Indian Evidence Act contains the principle that once a conspiracy to commit an illegal act is proved, an act of one conspirator becomes the act of another. Section 10 deals with the admissibility of evidence in a conspiracy case. It provides that anything said, done or written by any one of the conspirators in respect of their common intention is admissible against all the conspirators for proving the existence of the conspiracy or that any such person was a party to the conspiracy. However, the following conditions are to be satisfied before such fact can be admitted:

1. There should be reasonable ground to believe that two or more persons have conspired to commit an offence or an actionable wrong.
2. Anything said, done or written by any one of them about their common intention will be evidence against the others provided it is said, done or written after the time when such intention was first formed by any one of them.

### **Punishment of Criminal Conspiracy**

Punishment for criminal conspiracy is contained under section 120B of the Indian Penal Code. The punishment for Section 120A (criminal conspiracy) depends upon the nature of the offence. If the agreement is to commit a serious offence, the punishment is more severe.

Where a person conspires to commit an offence that is punishable either by death or by imprisonment of life or by rigorous imprisonment for a term of two years or above, and no express provision is made in the Code for its punishment, then he will be liable for punishment in the same manner as if he had abetted such an offence. Abet means to encourage or assist someone in doing a crime.

If the conspiracy exists between two or more persons to commit an offence which is not mentioned above, that is, offences which are not punishable with death, imprisonment for life or rigorous imprisonment for a term of two or more than two years, such a person will be punished with the imprisonment of either description for a term not exceeding six months, or with fine, or with both.

### **Case Laws**

#### **Parveen Vs State Of Haryana (2021) Sc**

The brief facts of the case are: Four accused were being escorted by the police from the Central Jail, Jaipur by train to be produced in the Court of CJM, Bhiwani. On reaching the Railway Station Nangal Pathani, four young boys entered their compartment, attacked the police party and tried to rescue the accused.

The accused, who were in custody also tried to escape and an attempt was also made to snatch the official carbine. It was alleged that one of the accused fired upon the Head Constable, who got injured and later succumbed to his injuries. One accused was apprehended and the other three fled. The accused were charged under offences Sections 224, 225, 332, 353, 392, 307, 302, 120-B of the IPC and for certain offences under the Arms Act.

The accused were held guilty by the Sessions Court and on appeal, the High Court of Punjab and Haryana confirmed their conviction. The appellant Parveen @ Sonu filed an appeal in the Supreme Court.

The Hon'ble Supreme Court held that it is not safe to hold a person guilty for offences under Section 120B I.P.C. in absence of any evidence to show a meeting of minds between the conspirators for the intended object of committing an illegal act. The Court ordered the acquittal of the appellant and held that it is not safe to maintain the conviction of the accused on the alleged confessional statements of the co-accused in absence of any other corroborative evidence.

### **Kehar Singh And Others Vs State (Delhi Administration) (1988) Sc**

The Hon'ble Supreme Court, in this case, has held that the most important ingredient of the offence of conspiracy is an agreement between two or more persons to do an illegal act. Such an illegal act may or may not be done in pursuance of the agreement, but the very agreement is an offence and is punishable.

### **Major E.G. Barsay Vs The State Of Bombay (1962) Sc**

In this case, it was held that an agreement to break the law constitutes the gist of the offence of criminal conspiracy under Section 120A IPC. The parties to such an agreement are guilty of criminal conspiracy even if the illegal act agreed to be done by them has not been done. The Court also held that it is not an ingredient of the offence of criminal conspiracy that all the parties should agree to do a single illegal act and a conspiracy may comprise the commission of several acts.

### **Param Hans Yadav Vs State Of Bihar, 1987**

In this case, it was observed that it is difficult to support the charges of conspiracy with direct evidence the only way by which the one can prove is criminal conspiracy the prosecution has to establish the link between the different chain events.

### **State Of Tamil Nadu Vs Nalini**

This is commonly known as the Rajiv Gandhi assassination case. In this case, it was held that knowledge about conspiracy would not make an accused a conspirator. It was held that also to provide the harbour to the main accused didn't show the sufficient evidence that person is in the conspiracy you have to prove that there is a meeting of minds between the parties.

### **Hiralal Harilal Bhagwati Vs Cbi**

It was believed that to set up the charges of conspiracy first you have to establish that there is an agreement between the parties.

### **Ram Narain Popli Vs C.B.I. (2003) Sc**

In this case, the Supreme Court held that mere proof of the agreement between two or more persons to do an unlawful act or an act by unlawful means is enough to convict the parties for criminal conspiracy under Section 120B.

### **Poulterer's Case (1611)**

In this case, the criminal aspect of conspiracy was developed for the first time by the Star Chamber and conspiracy was recognized as a substantive offence.

**Brief facts of the case are:** One Walters along with other defendants imputed a false charge of robbery on Stone and did everything possible to ruin his family's reputation. Rumors were spread that Stone was a gentleman thief and a knave. However, Stone had an alibi and brought some 30 people to attest that he was in London on the day the alleged robbery took place. The jury found an ignoramus and

Stone was discharged. Thereafter, Stone brought an action before the Star Chamber to clear himself of the imputations leveled against him and vindicate his reputation. The defendants attempted to settle the matter out of court and also tried to persuade Stone to drop the suit. However, when the process started, the defendants accused Stone of barratry and also intimidated some of his witnesses. The court held that the mere presence of conspiracy among the defendants, irrespective of whether Stone was falsely indicted or acquitted is the gist of the offence and can be considered a crime.

### **Bimbihar Pradhan Vs State Of Orissa, 1956**

In this case, the Supreme Court held that one person could also be convicted for the offence of conspiracy. It is sufficient that the court proves that two or more than two persons were actually involved in the criminal conspiracy. Where the prosecution proves that two or more persons were connected in a conspiracy and they could not be caught, one alone can still be convicted.

### **Mulcahy Vs R. (1868)**

The House of Lords, in this case, stated that "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. So long as such a design rests in intention only it is not indictable...." Thus, two or more persons must agree to carry it into effect and the very plot is an act in itself punishable for a criminal object or the use of criminal means.

### **Tapandas Vs State Of Bombay (1955) Sc**

In this case, the appellant along with three others was charged with the offence under Section 120B read with Sections 471 and 420 I.P.C. for conspiracy to use forged documents. The Trial Court acquitted all the accused, but the High Court, in appeal reversed the acquittal of the appellant and convicted him for the substantive offence as well as for criminal conspiracy. In appeal, the Supreme Court held that it is a matter of common sense that one person alone can never be held guilty of criminal conspiracy for the simple reason that he cannot conspire. It was held that the appellant could not be convicted under Section 120B when his alleged co-conspirators were acquitted of that offence. When all the alleged co-conspirators have been acquitted, the accused alone cannot be held guilty for conspiracy unless it can be proved that he conspired to commit an offence not only with the co-accused but with some third person(s) who has not been tried, because he is minor or is absconding.

### **Leo Roy Frey Vs Supdt. Distt. Jail (1958) Sc**

The Hon'ble Supreme Court, in this case, held that the conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy. A conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed.

### **B.Narsimha Rao Vs Govt. of A.P**

In this case, the appellant was convicted of an offence of criminal conspiracy along with seven others. However, he alone was charged with offences under Ss. 120-B, 409 and 471, IPC under section 5(1)(c) and 5(1)(d) read with section 5(2) of the prevention of corruption Act, 1947. Simultaneously, all the other co-conspirators were acquitted by the Trial Court and the High Court. In the end, the Supreme Court acquitted the accused on the facts that there had to be another person to communicate with and carry out the agreement and that a single person can never be accounted for conspiracy.

### **The State Of Andhra Pradesh Vs Subbaiah, 1961**

The Supreme Court in the above case contended that "where the matter has gone beyond the stage of mere conspiracy and offences are alleged to have been committed in pursuance thereof the accused can be charged with the specific offences alleged to have flown out of the conspiracy along with the charge of conspiracy. The court observed, "Conspiracy to commit an offence is itself an offence and a person can be separately charged with respect to such a conspiracy".

## State (Delhi Admn) Vs V.C. Shukla

In the above case the court observed that:

To prove a criminal conspiracy which is punishable under S. 120-B of IPC, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. This envisages that there must be a meeting of minds resulting in an ultimate decision taken by the conspirators regarding the commission of an offence. It is true that in most cases it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

## 2.6 Attempts

### IPC Chapter XXIII: Section 511

Whoever attempts to commit an offence punishable by this Code with [imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with [imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.

Illustrations

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

## 1. Unlawful Assembly

### Right to Assemble

**Article 19 (1)(B) of the Constitution of India 1949**, lay down that '*All citizens shall have right to assemble peaceably and without arms.*' That means citizens of India has been given freedom to assemble and organize a public gathering or even processions on their own will. But this right to assemble is subject to *reasonable restriction* by the state in the interest of sovereignty and integrity of India or public order under *clause 3 of Article 19 of the Constitution of India 1949*. Thus, an appropriate authority can prohibit holding up of a public meeting, in a case where they are of the opinion that doing so is necessary for maintaining public peace and tranquility(शांति).

### Dispersal of Unlawful Assembly

In **Babulal Parate v. State of Maharashtra**[1], the Hon'ble Supreme Court while observing that right 'to hold public meeting' and to 'take out public processions' vests under Article 19 (1) (b) of the Constitution of India, stated that:

***"Public order has to be maintained in advance in order to ensure it and, therefore, it is competent to a legislature to pass a law permitting an appropriate authority to take anticipatory action or place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining public order."***

Hence, to put reasonable restriction over the *freedom to assemble* granted under article 19 (1)(B), sections 129 and 130 of the Code of Criminal Procedure, 1860 talks about *the dispersal of assemblies*.

According to *Section 129 of Cr.P.C* any unlawful assembly or any assembly of five or more persons likely to cause a breach of public peace may be dispersed by command of any Executive Magistrate or

an officer in charge of a police station or a police officer, not below the rank of a sub-inspector, by use of *civil force*.

According to Section 130 (1) of Cr.P.C, If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Executive Magistrate of the highest rank who is present may cause it to be dispersed by the armed forces.

After going through above two sections i.e. 129 and 130 of Cr.P.C one obvious question which arises to the mind of the reader that:

### **What is an Unlawful Assembly?**

An assembly may turn unruly and which may cause *injury* to person, property or public order. Such an unruly assembly is termed as 'Unlawful Assembly.' In **Moti Das v. State of Bihar**,<sup>[2]</sup> it was held that 'an assembly, which was lawful to start with, became unlawful the moment one of the members called on the others to assault the victim and his associates, and in response to his invitation all the members of the assembly started to chase the victim while he was running.'

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

#### Essentials to constitute an Unlawful Assembly<sup>[3]</sup>

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

- There must be an assembly of five persons.
- The assembly must have a common object and
- The common object must be to commit one of the five illegal objects specified in the section.

#### **1) There must be an assembly of five persons**

The Supreme Court of India has upheld invariably in a number of cases such as **Dharam Pal Singh v. State of Uttar Pradesh**<sup>[4]</sup> that;

*"WHERE ONLY FIVE NAMED PERSONS HAVE BEEN CHARGED FOR CONSTITUTING AN UNLAWFUL ASSEMBLY, AND ONE OR MORE OF THEM ARE ACQUITTED, THE REMAINING ACCUSED (WHO ARE LESS THAN FIVE) CANNOT BE CONVICTED AS MEMBERS OF UNLAWFUL ASSEMBLY, UNLESS IT IS PROVED THAT THE UNLAWFUL ASSEMBLY, BESIDES CONVICTED PERSONS CONSISTED OF SOME OTHER PERSONS AS WELL WHO WERE NOT IDENTIFIED AND SO COULD NOT BE NAMED."*

#### **2) The assembly must have a common object**

The law does not declare a mere assemblage of men, however large it is, as illegal unless it is inspired by an illegal common object. In the case of **Sheikh Yusuf v. Emperor**,<sup>[5]</sup> the court said that; "the word 'object' means the purpose or design to do a thing aimed at and that the object must be 'common' to the persons who comprise the assembly." A Common Object is where all or minimum five member of the assembly possesses and shares one object.

#### **3) The common object must be to commit one of the five illegal objects specified in the section**

As stated earlier, an assembly of five or more persons is designated as an unlawful assembly, if the common object of the persons composing that assembly is any one of the following five objects declared illegal under section 141, IPC:

1. To overawe Government by criminal force.
2. To resist the execution of law or legal process.
3. To commit an offence.
4. forcible possession or dispossession of any property; or
5. To compel any person to do illegal acts.

*i) To overawe government by criminal force:* 'Overawe' means to create fear in mind of another person. That is when a public procession tends to overawe government by the use of force, like what the Stone Pelters do at parts of Kashmir to protest against the government, such an assembly is termed as an unlawful assembly.

ii) *To resist the execution of law or legal process*: Resistance by an assembly to a legal process or execution of law, for example, executing a court's judgment or order comes under execution of law, Hence, restraining the arrest in case of Baba Ram Rahim in Haryana was an illegal act by people and government decided for dispersion of unlawful assembly under section 144 of the Code of Criminal Procedure, 1973.

iii) *To commit an offence*: Where an assembly of 5 or more persons having a common object of performing an act which is prohibited by law or forms an offence under Indian Penal Code or other special or Local Laws, such an assembly would be an unlawful assembly.

iv) *Forcible possession or dispossession of any property*: Where a criminal force is used by an assembly to deprive a person of enjoyment of the right to way or right to use of water or any other incorporeal right that the person is enjoying and in possession of. Or to obtain possession of any property or to impose such rights, the above acts are prohibited under *clause 4* of section 141 of the Indian Penal Code, 1860.

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

### **What is Section 144 of the Code of Criminal Procedure?**

Section 144 gives the "*Power to issue order in urgent cases of nuisance or apprehended danger*".

This section gives power to a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the state government in this behalf to issue orders in the case where he has sufficient ground to take action and for immediate prevention or speedy remedy is desirable against the apprehended danger.

The *object* of section 144 is to pass an immediate order in advance to prevent any apprehended danger or to immediately give a remedy in case of emergency. Preservation of peace and tranquillity in society is the prime purpose of the state government; hence, the government specially empowers executive magistrates under 144 to take immediate action in case of emergency and to provide an immediate remedy in the following three situations mention under clause 1 of section 144 of the Code of Criminal Procedure:

To Prevent;

1. Obstruction, annoyance or injury to any person lawfully employed.
  2. A danger to human life, health or safety, or
- Disturbance of the public tranquillity or a riot or an affray.

### ***Prohibition of the right to assemble is not absolute***

In the case of *Dr. Anindya Gopal Mitra v. State*,<sup>[6]</sup> it was held that the amount of power vested under the magistrate under section 144 is to suspend the exercise of the right on particular occasions and not to prohibit it absolutely. In this case, police commissioner refused to give permission to a political party (BJP), to hold public meetings by prohibiting it under section 144 of the Cr.P.C., the Hon'ble Calcutta High Court; quashed the order passed by the police commissioner and said that 'the holding of meetings could not be totally prohibited, but necessary restrictions may be imposed and preventive measures may be taken.'

### ***Duration of applicability of section 144***

According to clause 4 of section 144 of the Cr.P.C. 'No order under this section shall remain in force for more than two months from the date of issuance, provided the state government, if of the opinion that it is necessary to do in case of emergency to prevent danger to human life, health or safety or to prevent a riot, than the state government may order the magistrate to make order to extend the period of applicability of section 144, not more than the period of six months.

As this section confers full power to magistrate to take certain action to apprehend danger in case of emergency, the Magistrate should apply his mind to see whether the matter is of such nature

which requires an order under this section, as otherwise a matter to disperse unlawful assembly creating public nuisance can be dealt with under section 133 of Cr.P.C

### ***Difference between section 144 and section 133 of the Cr.P.C***

Cases of ordinary public nuisance are covered under section 133; while, cases of urgency are covered by section 144. Further, under the latter, the very urgency of the case demands the laying aside of the usual formalities and preliminaries to the making of an order. While, under section 133, the Magistrate acts on the report of a police officer or other information; there is no such requirement under section 144.[7]

### **Who all are liable to be penalised for being a Part of an unlawful assembly?**

#### ***Section 142 of Indian Penal Code***

Whoever, being aware of facts that makes any assembly an unlawful assembly, intentionally joins that assembly or continues in it, is said to be the member of that unlawful assembly.

In the above section, to become a member of an unlawful assembly there should be a presence of knowledge and intention on part of the person joining such assembly.

#### **Punishment for Unlawful Assembly**

i) *Under Section 143 of I.P.C.* 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.

ii) *Under Section 144 of I.P.C.* whoever joins unlawful assembly armed with a deadly weapon which is likely to cause death; shall be punished with imprisonment for two years, or fine or both.

iii) *Under Section 145 of I.P.C.* whoever joins or continue to be in unlawful assembly, knowing it has been commanded to disperse, shall be punished with imprisonment for 2 years, or fine, or both.

iv) *Under Section 149 of I.P.C.* where an assembly commits an offence than every member of that unlawful assembly, who knew such offence is likely to be committed, will be guilty of that offence. And be punished for the term same as for the offence.

### **\*Gang Rape from point of view of Joint criminal Liability**

Is there any difference between laws relating to Rape and Gang Rape?

The offence of rape and gang rape are punishable under the Indian Penal Code and separate punishment has been provided for them. A gang rape is committed by more than one person on a woman while a rape is committed by one man. The punishment provided for the offences are as follows:

**Section 376 of the IPC** states that if the rape is committed by persons listed below, they shall be punished with rigorous punishment of not less than 10 years, but can 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.

- Police officer within the limits of the police station.
- A police officer in the premises of any station house.
- A police officer on a woman in the police officer's custody.
- Public servant on a woman's in his custody.
- Member of the armed forces.
- Any person in the management of the jail, remand home etc. on inmate of such place.
- Staff/management of the of a hospital on a woman in that hospital.
- By a person who is in a position trust or authority or control or dominance towards a woman on such woman.
- During communal or sectarian violence.
- On a pregnant woman
- On a woman less than 16 yrs of age
- On a woman incapable of giving consent

- On a mentally or physically disabled woman
- Who causes grievous bodily harms or endangers the life of a woman.
- Who commits rape repeatedly on the same woman.

If any other person commits rape on any woman, he shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

**Section 376A** says if a person commits an offence which is punishable under section 376 which causes the death of the women or causes the women to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than 20 years, but may extend to imprisonment for life or with death.

### **Gang Rape**

**Section 376D** prescribes punishment for gang rape and says where a woman is raped by a group of persons, then they shall be punishable with rigorous punishment of not less than 20 years, but may extend to life imprisonment, 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.

Let's have a look at how far the judiciary has gone to interpret the various legislation related to rape and laid down landmark judgments where no law was prescribed.

Judicial stand on rape prior to 2000

Judiciary has played an important role in protecting the rights of the women and have tried to interpret laws in consonance with international treaties and Conventions.

Till 2002, the judiciary was not so proactive in convicting the rapists and the sexual history of the women was the primary factor considered while the verdict was given. The same was reflected when the Hon'ble Supreme Court acquitted the accused based upon the sexual history of the victim in the Mathura Case. The court presumed that the victim gave her consent because she was habitual of the sexual intercourse and the vagina of the admit could admit two-fingers very easily.

But due to widespread protests and open letter to the Supreme Court by some intellectuals, led to an amendment in the Criminal Act. This amendment said that if a victim says that she did not give the consent, then the Court shall assume the same.

How is the quantum of punishment is decided in rape cases?

- For Rape Cases
- For Gang Rape Cases

### **RAPE CASES**

#### **Capital Punishment in Rape Cases:**

#### **Rameshbhai Chandubhai Rathod vs State of Gujarat**

In the instant case, the victim who had not seen even ten summers in her life is the victim of sexual assault and animal lust of the accused appellant. She was not only raped but was murdered by the accused appellant.

*Imposition of the 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 meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.*

The plea that in a case of circumstantial evidence death should not be awarded is without any logic. If the circumstantial evidence is found to be of an unimpeachable character in establishing the guilt of the accused, that forms the foundation for conviction. That has nothing to do with the question of sentence as has been observed by this Court in various cases while awarding death sentence. The mitigating circumstances and the aggravating circumstances have to be balanced. The plea of learned counsel for the appellant that the conviction is based on circumstantial evidence and, therefore, the death sentence should not be awarded is clearly unsustainable.

The case at hand falls in the rarest of rare category. The circumstances highlighted establish the depraved acts of the accused and they call for only one sentence i.e. death sentence.

*As dealing with sentencing, courts have thus applied the "Crime Test", "Criminal Test" and the "Rarest of the Rare Test", the tests examine whether the society abhors such crimes and whether such crimes shock the conscience of the society and attract intense and extreme indignation of the community. Courts have further held that where the victims are helpless women, children or old persons and the accused displayed depraved mentality, committing crime in a diabolic manner, the accused should be shown no remorse and death penalty should be awarded.*

### **Dhananjay Chatterjee Alias Dhana vs State Of West Bengal**

A security guard raped and murdered a school girl in Kolkata in 1990 in retaliation for his transfer on her complaint made earlier. The apex court while awarding the death sentence to the accused observed that the state in which the body of the deceased was found, it is obvious that a most heinous, cold blooded, inhuman type of barbaric rape and murder was committed on a helpless girl.

In our opinion, *the measure of punishment in a given case must depend upon the **atrociousness of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim.** Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals.*

*"Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering the imposition of appropriate punishment."*

### **Bantu vs State of Uttar Pradesh**

The victim aged about five years was not only raped but was murdered in a diabolic manner. The Court awarded extreme punishment of death, holding that for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed must be delicately balanced by the Court in a dispassionate manner.

### **Life imprisonment in Rape Cases:**

#### **State vs Deepak Dogra, 2013**

The boy established the sexual relations with the victim on the false pretext that he will marry her later. He performed an invalid marriage when the girl complained of him to the police when he refused to marry her and she was pregnant with his child.

In the present case, the act of the convict is most deplorable, both legally and morally. It is time for the realization that certain category of sexually depraved behaviour is totally unacceptable in the Indian Socio- Legal System which seeks to protect the chastity the first virtue of a woman and such behaviour can prove to be costly as has happened in the present case.

**Keeping in view the ghastly and inhuman act of the convict, a substantive and stern sentence is required to be imposed upon the convict so that it is not only in commensuration with the gravity of the crime but also serves as an example for the others who might also venture on the same forbidden path. The convict does not deserve any leniency.**

The Court cannot and should not give such a licence to those who keep on looking for opportunities to exploit the sentiments and vulnerability of Indian girls who perceive marriage as a

pious bonding and not as a union of two bodies. Allowing such persons to go scott free after exploiting poor and helpless girls in this manner could not have been the intention of the legislature which considered rape to be such heinous as to attract imprisonment up to life. In view of the above discussion, the conviction imposed on the appellant herein is confirmed. However, the sentence of life imprisonment is modified to RI for 10 years with a fine of Rs 1000, in default, to further undergo RI for one month.

### **Punishment for more than 10 years but less than life imprisonment in Rape Cases:**

#### **Santosh vs State Of Uttar Pradesh**

The accused committed rape on a girl belonging to scheduled caste. **The accused was awarded life imprisonment. An appeal was filed for the same in the apex court. The accused was 25 years of age at the time of the incident and the only bread earner of the family. It was his first guilt and hailed from a very poor family.**

**The apex court considered all the above factors and reduced the sentence to 12 years. The court said that in such case the appropriate sentence cannot be more than 12 years.**

### **Punishment for less than 10 years in rape Cases:**

#### **The State Of Punjab vs Gurmit Singh & Ors**

A 10th class student was abducted and raped by four young men aged 21-24 years. The accused were acquitted by the trial court and appeal was filed against the same. The apex court while reversing the judgment said *that as far as the sentence is concerned, the court has to strike a balance. In this case, the occurrence took place more than 11 years ago. The respondents were aged between 21-24 years of age when the offence was committed. We are informed that the respondents have not been involved in any other offence after they were acquitted by the trial court, more than a decade ago. All the respondents, as well as the prosecutrix, must have married and settled down in life. These are some of the factors which we need to take into consideration while imposing an appropriate sentence on the respondents.*

In this case, we have, while convicting the respondents, imposed, for reasons already set out above, the sentence of 5 years R.I. with fine of Rs. 5000/- and in default of payment of fine further R.I. for one year on each of the respondents for the offence under Section 376 IPC. Therefore, we do not, in the instant case, for those very reasons, consider it desirable to award any compensation, in addition to the fine already imposed, particularly as no scheme also appears to have been drawn up as yet.

#### **State of Maharashtra vs Chandraprakash Kewal Chand Jain**

A girl who was newly married was raped by one policeman twice while his husband was kept separate from her. He not only raped her but also threatened her that if she opens her mouth, then he will burn her and her husband alive. Trial court-sentenced the respondent to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.1,000, in default to suffer rigorous imprisonment for 6 months.

**On the question of sentence we can only say that when a person in uniform commits such a serious crime of rape on a young girl in her late teens, there is no room for sympathy or pity. The punishment must in such cases be exemplary.** We, therefore, do not think we would be justified in reducing the sentence awarded by the trial court which is not harsh.

#### **Om Prakash vs State of Uttar Pradesh**

The victim was in court because her husband was facing challan proceedings. She was 6 months pregnant. The accused came to attend the same and tried to rape her when he found her alone in the Zila Parishad. Although no evidence of rape was found, the accused was given a seven years sentence only on the basis of the statement of the victim and eyewitnesses.

The trial court had awarded 10 years punishment to the accused considering that there was “full possibility” that the accused was aware of her pregnancy. But the apex court reduced the punishment to

7 years because no evidence was brought to the court that the accused actually had the knowledge about her pregnancy.

## **GANG RAPE CASES**

### **Capital Punishment(मृत्यु दंड ) in cases of Gang Rape**

#### ***Shakti Mills Rape Case***

A 22-year old photojournalist was brutally raped by 5 men including a minor when she was clicking pictures of a worn out mill called Shakti Mills in Mumbai. Awarding death penalty to the three, the court said,

*If this is not the case where death sentence prescribed by law is not valid, which is?"* the judge asked.

I am constrained to hold that the **mitigating circumstances like young age of accused, their socio-economic conditions and non-existing chances of their reformation, pale into insignificance in the light of the aggravating circumstances. Hence this case, without any doubts, falls into the category of the "rarest of rare."** Therefore, if the object of punishment is to be achieved, then here in the case, only maximum punishment will send the message to the society and also to similar like minded persons. To show leniency or mercy in the case of such heinous crime and on the accused who have shown no repentance or remorse after exhibiting extreme depraved mentality would be a travesty of justice. This Court cannot do so.

#### ***The Nirbhaya Case (2012)***

This case hardly requires any facts to be stated as it is still fresh in the consciousness of the nation. A paramedical student was tortured by six men to such an extent that an iron rod was shoved into her vagina and her intestines, abdomen, and genitals were damaged severely. They threw her out of the bus in the wintery night.

One of the accused was juvenile and was sent to a reform facility for three years. One of the accused committed suicide in the jail and rest were given the death penalty.

The court observed that "Question of awarding sentence is a matter of discretion and has to be exercised on consideration of circumstances aggravating or mitigating in the individual cases... protection of society and deterring the criminal is the avowed object of law...while determining sentence in heinous crimes, Judges ought to weigh its impact on the society and impose adequate sentence considering the collective conscience or society's cry for justice. While considering the imposition of appropriate punishment, courts should not only keep in view the rights of the criminal but also the rights of the victim and the society at large."

### **Life imprisonment in Gang Rape Cases:**

#### **Mohan Lal & Anr vs State Of Punjab**

A student was forcibly raped by her teachers including the Director of Education of Punjab state. The trial court imposed 10 years of imprisonment on the accused and fine of Rs.2000/- and Rs. 3,000/- respectively, and in default of payment of fine, to undergo further rigorous imprisonment for one year and six months respectively. But an appeal was filed by the accused. The Supreme Court while agreeing with the trial court stated that **so far as the conviction is concerned, as it was a case of gang rape by teachers of their student, the punishment of 10 years rigorous imprisonment imposed by the trial court is shocking, considering the relationship between the parties. It was a fit case where life imprisonment could have been awarded to all the accused persons.**

### **Punishment for less than 20 years in Gang Rape Cases:**

#### **Baldev Singh & Ors vs State Of Punjab**

The prosecutrix (अभियोक्त्री) was gang raped and beaten by the accused when she was going to her house. **All the three appellants were convicted and sentenced to 10 years rigorous**

imprisonment. The High Court upheld the sentence. The appellants had already gone for 2 years imprisonment. The accused and prosecutrix and the appellant are married (not to each other) and the prosecutrix has two children also. The incident is now 14 years old and it was stated before the court that both the parties have entered into a compromise. Therefore, the accused should be acquitted. The apex took all the above listed factors into consideration and reduced the sentence of the accused to that much which the accused had already undergone.

In this case, the sentence awarded by the court was less than the punishment prescribed in the statute.

### ***Shimbhu & Anr v. State Of Haryana***

The victim in this present case was gang raped by the accused. The Additional Sessions Judge convicted the accused and awarded them 10 years rigorous imprisonment. The High Court upheld the same. The accused filed an appeal and the learned counsel on behalf of the appellant contended that the accused should be awarded lesser punishment as there has been a compromise between the parties. But the court rejected these contentions and held that rape is a non-compoundable offence and cannot be considered a leading factor in reducing the punishment. Because there might be a possibility that the victim has been pressurized for the compromise.

**By the Criminal Law Amendment, 2013, the proviso which said that in exceptional circumstances, the punishment may be reduced, has been deleted in the wake of the rising of crimes against women. Though this deletion does not affect the discretionary powers given to the judiciary.**

The court has warned the subordinate courts and the High courts again and again in the words: *This is yet another opportunity to inform the subordinate Courts and the High Courts that despite stringent provisions for rape under Section 376 IPC, many Courts in the past have taken a softer view while awarding sentence for such a heinous crime. This Court has in the past noticed that few subordinate and High Courts have reduced the sentence of the accused to the period already undergone to suffice as the punishment, by taking aid of the proviso to Section 376(2) IPC. The above trend exhibits stark insensitivity to the need for proportionate punishments to be imposed in such cases.*

### **Acquittal of the accused due to lack of evidence:**

#### ***Mahmood Farooqui vs State (Govt Of NCT Of Delhi)***

The victim alleged that she was forcefully gang raped by the accused in the veranda of a community hall. But no semen was found on the clothes of any of the accused. The community hall where the rape has been alleged to be committed is a crowded place and also the time when rape is alleged to be committed was during Ganpati festival.

The court disbelieved the story of the prosecution because in the circumstances as stated by the prosecutrix, it was difficult to believe that the appellant accused could have been successful in committing upon the victim girl one after the other. The accused appellant were acquitted under section 376 but convicted under section 511 of the IPC.

### **Can A Woman Be Charged For Gang Rape?**

The rationale given by the High court in *Priya Patel vs State of M.P.*[14] was that though a woman could not commit rape **but if a woman facilitated the act of rape, she could be prosecuted for gang rape.** The High Court was of the view that though a woman may not commit rape, but if a woman facilitates the act of rape, Explanation-I to Section 376(2) comes into operation and she may be prosecuted for gang rape. The rule is based on the principle of common intention as provided in section 34 of the IPC.

The apex court in the same case in appeal held that, after a reading of Section 375 of the IPC, rape may be committed only by man. The explanation to Section 376 (2) merely indicates that when one or more persons act in furtherance of their common intention to rape a woman, each person of the group must be deemed to have committed gang rape. The person included both men and women.

### \* **Dacoity from point of view of Joint criminal Liability**

Aggravated form of robbery not only includes robbery but it also includes theft and serious injuries to the victim. When five or more than five persons commit or attempt to commit a robbery that is known as dacoity. It is more of an aggravated form of robbery and generally, the robber is armed with deadly weapons.

Dacoity is defined under Section 391 of the IPC and the punishment for it is defined under Section 395 of the IPC. The only difference between robbery and dacoity is a number of participants. Section 395 punishes every member of the group in dacoity whether that person takes an active part or not. The punishment under this section is imprisonment up to 10 years with fine.

### **Dacoity**

According to the dictionary of oxford, dacoity means an act of violent robbery which is committed by an armed gang. There is only one factor which differentiates dacoity from robbery and that is the number of offenders. One person can also commit a robbery and more than 1 person can also commit robbery. But when 5 or more than 5 commit a robbery it is termed as dacoity.

Section 391 of the Indian Penal Code defines robbery. It says that when 5 or more than 5 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”.

### **Essential Ingredients**

In order to commit dacoity, there are 3 essentials which must be there. These essentials are:

- There should be at least five or more than five persons;
- They should conjointly commit or attempt to commit dacoity;
- They should have dishonest intention.

### **Sentence for Dacoity**

Punishment for dacoity is defined under Section 395 of the Indian Penal Code, 1860. This section says that a person who commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which can be extended to ten years, and shall also be liable to pay the fine. This offence is cognizable, non-bailable, and non-compoundable in nature.

The State vs Sadhu Singh and Ors in this case, four and one kurda Singh was involved in committing a dacoity. They all were armed with deadly weapons such as rifles and pistols. They committed a robbery at the house of Gharsiram. They injured Gharsiram, Jugalkishore, Sandal and Jugalkisore. The dacoits, in this case, tried to take a wristwatch and a shawl of one person but as they were villagers the dacoits were not able to take anything with them. When dacoits started running from the villagers they received a hot chase from them and in return dacoits shot a fire. As a result, dharna, one of the villagers died but the villages captured one of the dacoits. In this case, the dacoits were charged under Section 395 of the Indian Penal Code.

### **Aggravated form of Dacoity**

Aggravated form of dacoity is defined under Section 396 of the Indian Penal Code, 1860. Under Section 396 aggravated form is defined as dacoity with murder. It says that if anyone of five or more than five persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death and shall also be liable to fine.

The ingredients of Section 396 are:

- The offence of dacoity must be committed with the joint act of the accused persons;
- Murder must be committed in course of the commission of the dacoity.

If anyone of the five or more persons who are committing robbery commit murder while committing dacoity then, every one of them will held liable for murder even if some of them did not participate in

committing the murder. Under Section 396 of the IPC, it is not necessary to prove whether the murder was committed by a single person or it was committed by all of them. It is also not necessary to prove the common intention. The prosecution is only required to prove that the murder was committed while committing the dacoity. If the prosecution successfully proves that the murder was committed while committing dacoity, then all of the members will be punished under Section 396 of the IPC.

If the offenders are running and while chasing them if one of the dacoits kill someone then the other members of the gang can not be held guilty under Section 396 of the IPC. In one of the landmark case laws i.e. Laliya v state of Rajasthan it was observed that whether the murder is a part of dacoity or not, it totally depends on the circumstances of that time.

The court decided that the attention has to be paid on these points before coming to a conclusion. These points are:

- Whether the dacoits retreated or not and the murder was committed while retreating or not?
- What is the time interval between the attempt of murder and dacoity?
- What is the distance between the places where they attempt to murder and attempt to dacoity was committed?

In one of the cases i.e. in Shyam Behari v. State of Uttar Pradesh, the dacoit killed one of the victims, who had caught the robber's associate in an attempt to commit dacoit. The robber was convicted under Section 396 of IPC because any murder committed by the dacoits during their fight would be treated as murder.

### **Offences Connected with Dacoity**

Before committing any offence intention plays a very important role in it. Under criminal law, the intention is known by Mens Rea. Mens rea means guilty of Mind. For every criminal offence, there should be Mens rea on the part of the offender. If put in other words it means that there has to be intention to commit a crime. The term "Intention" has not explicitly defined under the Indian Penal Code, 1860 But under IPC Section 34 of it deals with common intention.

Section 34 of IPC defines acts done by several persons in furtherance of common intention. This section says that "when a criminal act is done by several persons in furtherance of the common intention of all, every such person is liable for the act in the same manner as if it were done by him alone."

This section requires a particular criminal intention or knowledge and the act should be committed by more than one person. Everyone who joins the act with the knowledge of the consequences, all of them should be made liable under this section.

### **Preparation to Commit Dacoity**

Section 399 of the Indian Penal Code, 1860 has talks about preparation to commit dacoity. It says that 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.

### **Assembling for the Purpose of Committing Dacoity**

Assembling for purpose of committing dacoity is defined under Section 402 of the Indian Penal Code. It says that whoever, at any time after the passing of the 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.

### **Belonging to Gangs of Dacoits**

Belonging to gangs of dacoits is defined under Section 400 of the IPC. It says that anybody who at any time after the passing of this act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity will be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

### **Judicial Pronouncements**

#### **Arjun Ganpat Sandbhor vs state of Maharashtra**

In this case, a truck driver was killed and the truck was taken away by the dacoits. This incident took place in darkness. The evidence of the son of the deceased, who was in the truck at the time when the accident took place was not free from doubt. He admitted at that time that he used to have forgetting tendency. Test identification parade was not held according to guidelines prescribed under Criminal Manual. In the view of the totality of the evidence the accused was entitled to acquittal.

#### **Md Imamuddin & Anr. vs. State of Bihar**

In this case, the plea was to reduce the punishment for dacoity. Some of them were accused to commit dacoity in a running train. They were sentenced to undergo rigorous imprisonment for seven years and two years for respective offences. The accused remained in custody for a substantial amount of time, about 50 per cent of the punishment. Their punishment was reduced to half and which they have already passed the time in imprisonment.

## MODULE 3:

### 3.1 Offences against the State

IPC Chapter VI: Sections 121 – 130

### 3.2 Offences relating to Army, Navy & Air force

IPC Chapter VII: Sections 131 – 140

### 3.3 Offences against public tranquillity

IPC Chapter VIII: Sections 141– 160

### 3.4 Offences relating to public servants

IPC Chapter IX: Sections 166 – 171

### 3.5 Contempt of Lawful Authority of Public Servants

IPC Chapter X: Sections 172 – 190

### 3.6 False Evidence and Offences against public justice

IPC Chapter XI: Sections 191 – 229A

### 3.7 Offences relating to coin and government stamps

IPC Chapter XII: Sections 230 –263A

### 3.8 Offences relating to weights and measures

IPC Chapter XIII: Sections 264 – 267

### 3.9 Offences affecting the human body

IPC Chapter XVI: Sections 299 – 377

### 3.1 Offences against the State

#### IPC Chapter VI: Sections 121 – 130

All crimes are seen as offences against the state or the government, some of them against the state's existence, such as treason, sedition, and rebellion.

The offences against the state lie under chapter VI of Sections 121-130 in the Indian Penal Code. The purpose of these sections is to ensure the state's safety. It can be protected by giving severe punishments in case of offences against the state, such as life in prison or capital punishment.

All states or countries have this same right of self-preservation as their main subjects. Crimes such as waging war or treason against the government lie under Section 121, assaulting high-rank officers like the president or governor lie under Section 124, and indulging in the escape of a state prisoner or a prisoner of war lies under Sections 128 to 130.

#### Waging war

Waging war is an attempt to fulfil any purpose of public nature through violence. It occurs when several people assemble and rise against the state to attain any object of general nature by force or violence. To commit an offence against the state, the purpose and the intention are taken into consideration and not be murdered or forced.

Sections 121 to 123 of the Indian Penal Code deal with waging war against the government. The following are considered as offences that need to be proven to constitute an offence against the government under Section 121:

- Wage war
- Attempted to wage a war
- Abetted the waging of war

The preparation of war against the government lies under Section 122 of the Indian Penal code, and the essentials are:

- The confiscation of arms or men from the accused person
- Getting ready to wage war against the state or government
- A war must be started against the state

Section 123 deals with the secrecy of design to wage war, and the essentials of Section 123 are:

- Proof of a method or design that is prepared in order to wage war against the government.
- The act should be done in secrecy to start the war.
- The person should be aware of the secrecy or the design of the war.

Section 124-A deals with sedition. Sedition is the attempt made by meetings, speeches, or publications to disturb the state's peace, which does not amount to treason. As per Section 124-A, the following are the two essentials of sedition:

- Bringing or attempting to get hatred or disaffection towards the government established by law in India.
  - Such acts or attempts can be carried out by words, science, or visible representation.
- The punishment for sedition under Section 124-A is life imprisonment, to which the state can also add a fine, or imprisonment up to 3 years to which a fine can be added, or with only a fine.

### **Waging war against a power**

Waging war against or attacking any Asiatic Power in union with the Government of India lies under Section 125 in the Indian Penal Code. In this scenario, the accused person should have waged war against the state or provoked the waging of war. The punishment for anyone violating this section is life imprisonment, or imprisonment for seven years, or a fine in some cases. The essentials of Section 125 are:

- An Asiatic state with an international influence.
- This state should be other than India.
- The state should be in alliance with the Government of India.

### **Assault on high-ranking officials**

Under Section 124 Indian Penal Code, assaulting high-ranking officials, such as the president or the governor, etc., should have been done in order to compel the governor or any high officials to stop them from using their lawful powers. The essentials of Section 124 are:

- The offender should have attacked a high-ranking official of the state.
- The offender should have restrained any high-ranking officials of the state wrongly.
- The offender attempted to attack the high-ranking officials of the state.
- The high-ranking officials of the state should be instigated by the accused person in order to compel them to use their lawful powers in an unlawful way.

### **Escape of a state prisoner or a prisoner of war**

Offences against the state in Sections 128 – 130 of the Indian Penal Code include the escape of a prisoner of war or a state prisoner. A state prisoner is a person whose imprisonment is necessary to maintain the peace and security of the state from internal disturbances and foreign hostility.

#### **The essentials of Section 128 are:**

- The offender should be a public servant of the state.
- The prisoner should be a person who has committed a crime against the state or should be a war prisoner.
- The accused person should have custody of the prisoner.
- The accused servant should have helped the prisoner to escape.

#### **The essentials of Section 129 are:**

- Offenders should be public servants, necessarily when committing the offence.
- The prisoner should be in the custody of the offender.
- The prisoner of state should be rescued or have escaped.
- Such an escape or rescue should be due to the negligence of the accused person.

#### **The essentials of Section 130 are:**

- The liable person should knowingly aid or attempt to help, rescue, or conceal the prisoner of state or war.
- The person should be in prison.
- The act should be done knowingly by the person accused.

**3.2 Offences relating to Army, Navy & Air force  
IPC Chapter VII: Sections 131 – 140**

Chapter VII of Indian Penal Code, 1860 deals with offences committed by civilians in relation to officers in Army, Navy and Airforce of the Government of India. The main objective of this chapter is to maintain discipline and order in the Armed Forces of the Union.

In most of the countries across the globe, the defence personnel are governed by their own special laws. But if they commit serious offences (like murder) they can be tried by civil or criminal courts. However, the Military Court does not have the power to exercise jurisdiction if the offence is committed by a civilian. Similarly, as per Section 139 of the code, persons who are subject to court-martial will not be dealt with under the code. The special laws which govern them in India are:

- The Army Act, 1950 (46 of 1950);
- The Indian Navy (Discipline) Act, 1934 (34 of 1934); and
- The Indian Air Force Act, 1950 (45 of 1950).

The correlation between Indian Penal Code, 1860 & Army Act, 1950 can be studied under the following table:

<b>Sr. no.</b>	<b>Indian Penal Code, 1860</b>	<b>Army Act, 1950</b>
1.	Sections 131 & 132 punishes abetment of mutiny and attempt to seduce any officer, soldier, sailor or airman in the Government of India.	Mutiny is a capital offence under <u>Section 37</u> . Section 37(e)-mutiny, includes any endeavours to seduce such personnel from duty.
2.	Sections 133 & 134 makes abetment of assault by any officer, soldier, sailor or airman on any superior officer in the execution of his duty punishable.	Under <u>Section 40</u> such assault is punishable for a term up to 14 years.
3.	Sections 135 & 136 talks about abetment of desertion and harbouring a deserter.	Under <u>Section 38</u> , deserting and aiding deserters punishable for imprisonment up to 7 years.
4.	Section 138 punishes for an act of insubordination by an officer, soldier, sailor or airman.	An act of insubordination is punishable with 7 years of imprisonment under <u>Section 42</u> .

**Offences Relating to the Army, Navy and Air Force**

The classification of offences which are committed by civilians in relation to the Army, Navy and Air Force governed by the Indian Penal Code which can be studied in the following manner:

**Abetment of Mutiny(विद्रोह का उकसाना)**

Section 131 states that any person who abets the commission of mutiny by an officer, soldier, sailor or airman in the Army, Navy or Airforce or attempts to seduce an officer, soldier, sailor or airman from his allegiance or his duty, such person shall be liable to be punished with life imprisonment or imprisonment up to 10 years and shall also be liable to fine.

This section has two parts. First part makes abetment of mutiny punishable and the Second part makes an attempt of seduction punishable. It would in this way create the impression that Section 131 applies to situations where mutiny isn't committed as a result of the abetment. The offence contemplated under Section 131 is an abetment which is not followed by actual mutiny, or which, supposing actual mutiny follows, is not the cause of that mutiny.

It was observed by the court that the offence of mutiny consist in extreme subordination as if a soldier resists by force, nor if a number of soldiers rise against or oppose their military superiors, such acts proceedings 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.

Under Section 132, If mutiny is committed as a consequence of such abetment by any officer, soldier, sailor or airman in the Army, Navy or Airforce then, such a person will be punished with death or life imprisonment or with imprisonment which may extend up to 10 years and also with fine. Both Sections 131 & 132 must be read together.

Section 131, mentions that “officer”, “soldier”, “sailor” or “airman” will include any person who is subject to the Army Act, 1950; the Indian Navy (Discipline) Act, 1934; the Air Force Act, 1950. This explanation was not there originally and was inserted by an amendment of Act 27 of 1870 and was amended by Act 10 of 1927.

### **Abetment of Assault by an Officer on a Superior Officer**

Section 133 states that any person who abets any officer, soldier, sailor, or airman in the Army, Navy or Air Force of the Government of India to assault any superior officer who is in the execution of his office shall be punished with imprisonment for a term which may extend up to 3 years and shall also be liable to fine. Section 134 provides that if an assault is committed as a result of such abetment then such person shall be punished with imprisonment for a term which may extend to 7 years and also with fine.

Sections 133 and 134 deals with abetment of assault of any officer, soldier, sailor, or airman on a superior officer. Under Section 133, only abetment of an assault is punishable while Section 134 punishes the abetment of an assault when such assault is committed as an outcome of such abetment.

### **Abetment of Desertion**

Under Section 135, any person who makes an abetment of desertion of any officer, soldier, sailor, or airman in the Army, Navy or Air Force of the Government of India, shall be punished with imprisonment for 2 years or with fine or with both. Section 135 does not recognize whether abetment of desertion is successful or not. The desertion abetted does not need to happen. Mere abetment is made punishable.

### **Harbouring deserter**

Section 136 states that if any person who knows or has reason to believe that any officer, soldier, sailor, or airman in the Army, Navy or Air Force of the Government of India has deserted, harbours such officer, soldier, sailor, or airman, he shall be punished with imprisonment which may extend to 2 years or with fine or with both. The exception is given only to a wife.

This Section implies that if any person gives harbour (shelter) to an official who has deserted Army, Navy or Air Force working under the head of Government of India (with the exception of the individuals who are relied upon to so), he shall be punished. The crux of this Section is concealment of the deserter to prevent his apprehension.

Section 137 punishes the master or person in charge of a merchant vessel on board of which a deserter has concealed himself, even though he is ignorant of such concealment. But, some lack of care or maintenance of discipline has to be made out. The penalty is for a sum not exceeding 500 rupees. However, in this Section, the word ‘penalty’ is used, rather than the word ‘fine’. The object apparently is to restrict the court from imposing a sentence on the accused. The term ‘Harbour’ has been defined under Section 52 A of the code.

### **Abetment of an Act of Insubordination**

Insubordination implies refusal to obey orders. Section 138 states that any person who knows it to be an act of insubordination abets any officer, soldier, sailor or airman in the Military, Naval, or Air

Service of the Government of India in his act of insubordination. He shall be held liable and shall be punished with imprisonment which may extend to 6 months or with fine or both if an act is committed in consequence of such abetment. Section 138 says that any person who abets an officer in his act of insubordination shall be punished only if the act is committed as a result of such abetment.

**Wearing Garb**

Section 140 states that any person who not being a soldier, sailor or airman in the Military, Naval, or Air Service of the Government of India wears a garb or wears a dress which carries a token belonging to any such soldier, sailor or airman with the intention that it may be believed that he is such a soldier, sailor or airman. Such person is liable to be punished with imprisonment up to 3 months or with fine which may extend to 500 rupees or both.

This Section forbids any person from misleading others by wearing such garb and giving an impression that he is a soldier. The intention of the accused wearing the garb of a soldier is of inducing others to believe that he is in service at the present time. Simply wearing a uniform or carrying a token without any specific intention is no offence. For instance, Actors put on costumes of various defence service personnel for their role.

**Classification of Offences**

<b>Section &amp; Definition under IPC</b>	<b>Punishment</b>	<b>Cognizable/ Non-cognizable</b>	<b>Bailable/ Non-bailable</b>	<b>Triable by</b>
<b>S.131-</b> Abetment of mutiny & attempt of seduction of any officer, soldier, sailor or airman.	Life imprisonment/ imprisonment of 10 years and with fine.	Cognizable	Non-bailable	Court of Session.
<b>S.132-</b> Abetment of mutiny, if mutiny is committed in consequence of such abetment.	Death/Life imprisonment/ imprisonment of 10 years and with fine.	Cognizable	Non-bailable	Court of Session.
<b>S.133-</b> Abetment of an assault by any officer, soldier, sailor, airman on superior office.	Imprisonment of 3 years and also with fine.	Cognizable	Non-bailable	Magistrate of First Class.
<b>S.134-</b> Abetment of an assault by any officer, soldier, sailor, airman on superior office, if such assault is committed.	Imprisonment of 7 years and fine.	Cognizable	Non-bailable	Magistrate of First Class.
<b>S.135-</b> Abetment of desertion.	Imprisonment of 2 years or fine or with both.	Cognizable	Bailable	Any Magistrate.
<b>S.136-</b> Harboursing deserter.	Imprisonment of 2 years or fine or with both.	Cognizable	Non-bailable	Any Magistrate.
<b>S.137-</b> Deserter concealed on board merchant vessel.	Penalty of Rs.500.	Cognizable	Non-bailable	Any Magistrate.
<b>S.138-</b> Abetment of an act of insubordination.	Imprisonment of 6 months or fine or with both.	Cognizable	Bailable	Any Magistrate.
<b>S.140-</b> Wearing garb or carrying token belonging to soldier, sailor, airman.	Imprisonment of 3 months or a fine of Rs. 500 or with both.	Cognizable	Bailable	Any Magistrate.

## Proposals for Reform

The Fifth Law Commission Report suggested certain reforms to be made under Chapter VII of the Indian Penal Code. Few recommendations are discussed as follows:

- The commission recommended that this chapter should not be confined only to Army, Navy and Airforce but should apply to all the armed forces in the Union of India. Accordingly, it proposed to change the heading of the chapter from offences relating to Army, Navy and Airforce to offences relating to Armed Forces. The commission also suggested that the terms 'Army', 'Navy', 'Air Force' should be comprehensively defined under a new Section 130A.
- The commission proposed to revise Section 131, the commission propounded that the punishment of life imprisonment given in cases where mutiny is not committed in consequence of abetment or where it is only an attempt to seduce an officer is 'unduly heavy'. It proposed that, if any person abets the committing of mutiny by any officer of the defence service personnel, and if mutiny is committed as a consequence of such abetment be punished with death, or life imprisonment or rigorous imprisonment of 14 years and also with fine. In any other case, the punishment should be imprisonment of 10 years and fine.
- Section 135 does not differentiate between cases when the abetment of desertion happens and when the desertion takes place as a consequence of abetment. Accordingly, the commission recommended that under Section 135 where the offence of desertion actually happens, the punishment to be increased up to 5 years.
- It recommended that existing Section 137 be omitted because the Section 'does not appear to be of any consequence'.
- It proposed to add Section 138A and Section 138B to this chapter, which relates to offences of 'inciting mutiny or other act of insubordination' and 'dissuasion from enlisting and instigating to mutiny or insubordination after enlistment to armed forces' respectively, punishable with simple or rigorous imprisonment for a term extending up to 3 years or with fine or with both.
- The commission proposed to increase the punishment in case of abetment in an act of insubordination when abetment is successful, from imprisonment for 6 months to extend it for a term up to 2 years.
- The commission also suggested to revise Section 140, in order to increase the punishment from imprisonment of 3 months to extend it for a term up to 6 months and also with an unlimited fine.

These recommendations of the Fifth Law Commission were given effect in the Indian Penal Code (Amendment) Bill, 1978. The Fourteenth Law Commission supported the proposed changes and even affirmed the substance of the 1978 Bill. Yet, these recommendations have not been converted into statutory provisions as the Amendment Bill passed in the Lok Sabha in 1978 lapsed, due to its dissolution.

## 3.3 Offences against public tranquillity

### IPC Chapter VIII: Sections 141- 160

Offences against public tranquillity under Indian Penal Code 1860 include rioting, unlawful assembly, affray, promoting enmity between groups, and disturbing religious, racial or social harmony.

Offences against public tranquillity: Offences against public tranquillity refer to a range of criminal acts that disturb the peaceful conduct of public life. These offenses are defined in the Indian Penal Code (IPC), which is the main criminal code of India. The IPC has specific provisions to deal with various forms of public disturbances, ranging from riots to affrays. In this article, we will discuss the provisions related to offences against public tranquillity under the Indian Penal Code.

### Examples of Offences Against Public Tranquillity

Following are the types as well as the examples of the Offences Against Public Tranquillity. The viewers can go through the list to know what all is covered under the Offences Against Public Tranquillity.

### **Rioting (Section 146 of IPC)**

Rioting is an offense that occurs when three or more persons assemble together with a common objective of causing violence or damage to property. The IPC defines rioting as an offense under Section 146. The section states that anyone who participates in a riot can be punished with imprisonment for up to two years, or with a fine, or with both.

### **Unlawful assembly (Section 141 of IPC)**

Unlawful assembly is an offense that occurs when five or more persons assemble together with a common objective of committing a crime. The IPC defines unlawful assembly as an offense under Section 141. The section states that anyone who participates in an unlawful assembly can be punished with imprisonment for up to six months, or with a fine, or with both.

### **Promoting enmity between different groups (Section 153A of IPC)**

Promoting enmity between different groups is an offense that occurs when a person deliberately promotes disharmony, feelings of enmity, hatred, or ill-will between different religious, racial, linguistic, or regional groups. The IPC defines promoting enmity as an offense under Section 153A. The section states that anyone who promotes enmity between different groups can be punished with imprisonment for up to three years, or with a fine, or with both.

### **Outraging religious feelings (Section 295A of IPC)**

Outraging religious feelings is an offense that occurs when a person deliberately insults or attempts to insult the religious beliefs or feelings of any class of citizens. The IPC defines outraging religious feelings as an offense under Section 295A. The section states that anyone who outrages religious feelings can be punished with imprisonment for up to three years, or with a fine, or with both.

### **Affray (Section 159 of IPC)**

Affray is an offense that occurs when two or more persons engage in a public fight that disturbs the peace. The IPC defines affray as an offense under Section 159. The section states that anyone who engages in affray can be punished with imprisonment for up to one month, or with a fine, or with both.

### **Punishment for Offences Against Public Tranquillity**

Under the Indian Penal Code (IPC), Offences Against Public Tranquillity are listed under Chapter VIII, Sections 141 to 160. The following is a list of these offences along with the corresponding punishment as per the IPC:

Section 141: Unlawful assembly – Imprisonment for six months, or fine, or both.

Section 142: Being a member of an unlawful assembly – Imprisonment for six months, or fine, or both.

Section 143: Punishment for unlawful assembly – Imprisonment for six months, or fine, or both.

Section 144: Power to issue order in urgent cases of nuisance or apprehended danger – Imprisonment for up to three years, or fine, or both.

Section 145: Joining or continuing in unlawful assembly, knowing it has been commanded to disperse – Imprisonment for up to two years, or fine, or both.

Section 146: Rioting – Imprisonment for up to two years, or fine, or both.

Section 147: Punishment for rioting – Imprisonment for up to two years, or fine, or both.

Section 148: Rioting, armed with a deadly weapon – Imprisonment for up to three years, or fine, or both.

Section 149: Every member of unlawful assembly guilty of offence committed in prosecution of common object – Imprisonment for up to six months, or fine, or both.

Section 150: Hiring, or conniving at hiring, of persons to join an unlawful assembly – Imprisonment for up to six months, or fine, or both.

Section 151: Knowingly joining or continuing in an assembly of five or more persons after it has been commanded to disperse – Imprisonment for up to six months, or fine, or both.

Section 152: Assaulting or obstructing a public servant when suppressing a riot, etc. – Imprisonment for up to two years, or fine, or both.

Section 153: Wantonly giving provocation with intent to cause riot – Imprisonment for up to one year, or fine, or both.

Section 153A: Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. – Imprisonment for up to three years, or fine, or both.

Section 153B: Imputations, assertions prejudicial to national-integration – Imprisonment for up to five years, or fine, or both.

Section 154: Owner or occupier of land on which an unlawful assembly is held – Imprisonment for up to six months, or fine, or both.

Section 155: Liability of person for whose benefit an unlawful assembly is held – Imprisonment for up to six months, or fine, or both.

Section 156: Liability of agent of owner or occupier for whose benefit an unlawful assembly is held – Imprisonment for up to six months, or fine, or both.

### **3.4 Offences relating to public servants**

#### **IPC Chapter IX: Sections 166 – 171**

<b>Section</b>	<b>Offence</b>	<b>Punishment</b>	<b>Cognizable or non-cognizable</b>	<b>Bailable or non-bailable</b>	<b>By what court triable</b>
161 IPC	Being or excepting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Imprisonment for 3 years, or fine, or both	Cognizable	Non-bailable	Magistrate of the first class
162 IPC	Taking a gratification in order, by corrupt or illegal means, to influence a public servant.	Imprisonment for 3 years, or fine, or both	Cognizable	Non-bailable	Magistrate of the first class
163 IPC	Taking a gratification for the exercise of personal influence with a public servant.	Simple imprisonment for 1 year or fine, or both.	Cognizable	Non-bailable	Magistrate of the first class
164 IPC	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Imprisonment for 3 years, or fine, or both	Cognizable	Non-bailable	Magistrate of the first class
165 IPC	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding	Imprisonment for 3 years, or fine, or both	Cognizable	Non-bailable	Magistrate of the first class

	or business transacted by such public servant.				
165A IPC	Punishment for abetment of offences punishable under section 161 or section 165.	Imprisonment for 3 years, or fine, or both	Cognizable	Non-bailable	Magistrate of the first class
166 IPC	Public servant disobeying a direction of the law with intent to cause injury to any person.	Simple imprisonment for 1 year or fine, or both.	Non-cognizable	Bailable	Magistrate of the first class
167 IPC	Public servant framing an incorrect document with intent to cause injury.	Imprisonment for 3 years, or fine, or both.	Cognizable	Bailable	Magistrate of the first class
168 IPC	Public servant unlawfully engaging in trade.	Simple imprisonment for 1 year or fine, or both.	Non-cognizable	Bailable	Magistrate of the first class
169 IPC	Public servant unlawfully buying or bidding for property.	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Non-cognizable	Bailable	Magistrate of the first class
170 IPC	Personating a public servant	Imprisonment for 2 years, or fine, or both.	Cognizable	Non-bailable	Magistrate of the first class
171 IPC	Wearing garb or carrying token used by public servant with fraudulent intent.	Imprisonment for 3 months, or fine up to 200 rupees, or both.	Cognizable	Bailable	Magistrate of the first class

### **3.5 Contempt of Lawful Authority of Public Servants**

IPC Chapter X: Sections 172 – 190

#### **CHAPTER X - CONTEMPT OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS**

<b>IPC Section</b>	<b>Offence</b>	<b>Punishment</b>	<b>Cognizable or non-cognizable</b>	<b>Bailable or non-bailable</b>	<b>By what court triable</b>
172 IPC	Absconding to avoid service of summons of other proceeding from a public servant.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate

	If summons or notice require attendance in person, etc., in a Court of Justice.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
173 IPC	Preventing the service of the affixing of any summons of notice, or the removal of it when it has been affixed, or preventing a proclamation.	Simple imprisonment for 1 months, or fine of 500 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
	If summons, etc., require attendance in person, etc., in a Court of Justice.	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
174 IPC	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Simple imprisonment for 1 month or fine of 500 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
	If the order requires personal attendance, etc., in a Court of Justice.	Simple imprisonment for 6 months, or fine or 1,000 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
175 IPC	Internationally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Simple imprisonment for 1 month or fine of 500 rupees, or both.	Non-Cognizable	Bailable	The court in which the offence is committed, subject to the provisions of Chapter XXVI; or, if not committed in a Court, any Magistrate.
	If the document is required to be produced in or delivered to a Court of Justice.	Simple imprisonment for 6 months, or fine or 1,000 rupees, or both.	Non-Cognizable	Bailable	The court in which the offence is committed, subject to the provisions of Chapter XXVI; or, if

					not committed in a Court, any Magistrate.
176 IPC	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Simple imprisonment for 1 month or fine of 500 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
	If the notice or information required respects the commission of an offence, etc.	Simple imprisonment for 6 months, or fine or 1,000 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
	If the notice or information is required by an order passed under sub-section (1) of section 356 of this Code.	Simple imprisonment for 6 months, or fine or 1,000 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
177 IPC	Knowingly furnishing false information to a public servant.	Simple imprisonment for 6 months, or fine or 1,000 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
	If the information required respects the commission of an offence, etc.	Imprisonment for 2 years, or fine, or both.	Non-Cognizable	Bailable	Any Magistrate
178 IPC	Refusing oath when duly required to take oath by a public servant.	Simple imprisonment for 6 months, or fine or 1,000 rupees, or both.	Non-Cognizable	Bailable	The court in which the offence is committed, subject to the provisions of Chapter XXVI; or, if not committed in a Court, any Magistrate.
179 IPC	Being legally bound to state truth and refusing to answer questions.	Simple imprisonment for 6 months, or fine or 1,000 rupees, or both.	Non-Cognizable	Bailable	The court in which the offence is committed, subject to the provisions of Chapter XXVI; or, if

					not committed in a Court, any Magistrate.
180 IPC	Refusing to sign a statement made to a public servant when legally required to do so.	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Non-Cognizable	Bailable	The court in which the offence is committed, subject to the provisions of Chapter XXVI; or, if not committed in a Court, any Magistrate.
181 IPC	Knowingly stating to a public servant on oath as true that which is false.	Imprisonment for 3 years and fine.	Non-Cognizable	Bailable	Magistrate of the First Class
182 IPC	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Imprisonment for 6 months, or fine or 1,000 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
183 IPC	Resistance to the taking of property by the lawful authority of a public servant.	Imprisonment for 6 months, or fine or 1,000 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
184 IPC	Obstructing of property offered for sale by authority of a public servant.	Imprisonment for 1 month, or fine of 500 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
185 IPC	Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorised sale, or bidding without intending to perform the obligations incurred there by.	Imprisonment for 1 month, or fine of 200 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
186 IPC	Obstructing public servant in discharge of his public functions.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate

187 IPC	Omission to assist public servant when bound by law to give such assistance.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, etc.	Simple imprisonment for 6 month, or fine of 500 rupees, or both.	Non-Cognizable	Bailable	Any Magistrate
188 IPC	Disobedience to an order lawfully-promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Cognizable	Bailable	Any Magistrate
	If such disobedience causes danger to human life, health or safety, etc.	Imprisonment for 6 month, or fine of 1000 rupees, or both.	Cognizable	Bailable	Any Magistrate
189 IPC	Threatening a public servant with injury to him or one in whom he is interested, to induce him to do or forbear to do any official act.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Any Magistrate
190 IPC	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Imprisonment for 1 year, or fine, or both.	Non-cognizable	Bailable	Any Magistrate

**3.6 False Evidence and Offences against public justice**  
**IPC Chapter XI: Sections 191 - 229A**

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
193 IPC	Giving or fabricating false	Imprisonment for	Non-	Bailable	Magistrate

	evidence in a judicial proceeding.	7 years and fine.	cognizable		of the first class.
	Giving or fabricating false evidence in any other case.	Imprisonment for 3 years and fine.	Non-cognizable	Bailable	Any Magistrate.
194 IPC	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Non-cognizable	Non-bailable	Court of Session
	If innocent person be thereby convicted and executed.	Death, or as above.	Non-cognizable	Non-bailable	Court of Session
195 IPC	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with imprisonment for life or with imprisonment for 7 years or upwards.	The same as for the offences.	Non-cognizable	Non-bailable	Court of Session.
196 IPC	Using in a judicial proceeding evidence known to be false or fabricated.	The same as for giving or fabricating false evidence	Non-cognizable	According as offence of giving such evidence is bailable or non-bailable.	Court by which offence of giving or fabricating false evidence is triable.
197 IPC	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	The same as for giving or fabricating false evidence	Non-cognizable	Bailable	Court by which offence of giving false evidence is triable
198 IPC	Using as a true certificate one known to be false in a material point.	The same as for giving or fabricating false evidence	Non-cognizable	Bailable	Court by which offence of giving false evidence is triable
199 IPC	False statement made in any declaration which is by law	The same as for giving or	Non-cognizable	Bailable	Court by which

	receivable as evidence.	fabricating false evidence			offence of giving false evidence is triable
200 IPC	Using as true any such declaration known to be false.	The same as for giving or fabricating false evidence	Non-cognizable	Bailable	Court by which offence of giving false evidence is triable
201 IPC	Causing disappearance of evidence of an offence committed, giving false information touching it to screen the offender, if a capital offence.	Imprisonment for 7 years and fine.	According as the offence in relation to which disappearance of evidence is caused is cognizable or non-cognizable.	Bailable	Court of Session.
	If punishable with imprisonment for life or imprisonment for 10 years.	Imprisonment for 3 years and fine.	Non-cognizable	Bailable	Magistrate of the first class.
	If punishable with less than 10 years' imprisonment.	Imprisonment for a quarter of the longest term provided for the offence, or fine, or both.	Non-cognizable	Bailable	Court by which the offence is triable.
202 IPC	Intentional omission to give information of an offence by a person legally bound to inform.	Imprisonment for 6 months, or fine, or both.	Non-cognizable	Bailable	Any Magistrate
203 IPC	Giving false information respecting an offence committed.	Imprisonment for 2 years, or fine, or both	Non-cognizable	Bailable	Any Magistrate
204 IPC	Secreting or destroying any document to prevent its production as evidence.	Imprisonment for 2 years, or fine, or both	Non-cognizable	Bailable	Magistrate of the first class

205 IPC	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Imprisonment for 3 years, or fine, or both.	Non-cognizable	Bailable	Magistrate of the first class
206 IPC	Fraudulent removal or concealment, etc., of property to prevent its seizure as a forfeiture, or in satisfaction, of a fine under sentence, or in execution of a decree.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Any Magistrate
207 IPC	Claiming property without right, or practicing deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Any Magistrate

**(vi) Offences by public servants (sections 217 to 229, IPC).**

[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, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence. Explanation 1.-A statement is within the meaning of this section, whether it is made verbally or otherwise. Explanation 2.-A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know This Chapter (comprising 44 sections: 191 to 229, IPC) relates to giving and fabricating false evidence (sections 191 to 200) and offences against public justice (sections 201 to 229).

**These offences may be discussed under the following sub-heads:-**

- (i) Giving and fabricating false evidence (sections 191 to 200, and 204, IPC);
- (ii) Abuse of process of court (sections 206 to 211, IPC);
- (iii) False personation(वेष धारण) (sections 205 and 211, IPC);
- (iv) Disappearance of evidence and screening any offender (sections 201 to 203, and 214, IPC);
- (v) (v) Harboursing an offender (sections 212, 216 and 216A, IPC); and (vi) Offences by public servants (sections 217 to 229, IPC).

[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, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence. Explanation 1.-A statement is within the meaning of this section, whether it is made verbally or otherwise. Explanation 2.- A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

**3.7 Offences relating to coin and government stamps**

**IPC Chapter XII: Sections 230 -263A**

<b>Section</b>	<b>Offence</b>	<b>Punishment</b>	<b>Cognizable or non-cognizable</b>	<b>Bailable or non-bailable</b>	<b>By what court triable</b>
231 IPC	Counterfeiting, or performing any part of the process of counterfeiting coin.	Imprisonment for 7 years and fine.	Cognizable	Non-bailable	Magistrate of the first class
232 IPC	Counterfeiting, or performing any part for the process of counterfeiting coin.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session
233 IPC	Making, buying or selling instrument for the purpose of counterfeiting Indian coin.	Imprisonment for 3 years and fine.	Cognizable	Non-bailable	Magistrate of the first class
234 IPC	Making, buying or selling instrument of the purpose of counterfeiting Indian coin.	Imprisonment for 7 years and fine.	Cognizable	Non-bailable	Court of Session.
234 IPC	Possession of instrument or material for the purpose of using the same for counterfeiting coin,	Imprisonment for 3 years and fine.	Cognizable	Non-bailable	Magistrate of the first class
	If Indian coin.	Imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session
236 IPC	Abetting, in India, the counterfeiting, out of India, of coin.	The punishment provided for abetting the counterfeiting of such coin within India.	Cognizable	Non-bailable	Court of Session
237 IPC	Import or export of counterfeit coin, knowing the same to be counterfeit.	Imprisonment for 3 years and fine.	Cognizable	Non-bailable	Magistrate of the first class.
238 IPC	Import or export of counterfeit of Indian coin, knowing the same to be counterfeit.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session

239 IPC	Having any counterfeit coin known to be such when it came into possession, and delivering, etc., the same to any person.	Imprisonment for 5 years and fine.	Cognizable	Non-bailable	Magistrate of the first class.
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<b>Section</b>	<b>Offence</b>	<b>Punishment</b>	<b>Cognizable or non-cognizable</b>	<b>Bailable or non-bailable</b>	<b>By what court triable</b>
240 IPC	Same with respect to Indian coin.	Imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session
241 IPC	Knowingly delivering to another any counterfeit coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.	Imprisonment for 2 years, fine, or 10 times the value of the coin counterfeited, or both.	Cognizable	Non-bailable	Any Magistrate.
242 IPC	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Imprisonment for 3 years and fine.	Cognizable	Non-bailable	Magistrate of the first class.
243 IPC	Possession of Indian coin by a person who knew it to be counterfeit when he became possessed thereof.	Imprisonment for 7 years and fine	Cognizable	Non-bailable	Magistrate of the first class.
244 IPC	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Imprisonment for 7 years and fine	Cognizable	Non-bailable	Magistrate of the first class.
245 IPC	Unlawfully taking from a Mint any coining instrument.	Imprisonment for 7 years and fine	Cognizable	Non-bailable	Magistrate of the first class.
246 IPC	Fraudulently diminishing the weight or altering the composition of Indian coin.	Imprisonment for 3 years and fine.	Cognizable	Non-bailable	Magistrate of the first class
247 IPC	Fraudulently diminishing the weight or altering the	Imprisonment for 7 years and fine.	Cognizable	Non-bailable	Magistrate of the first

	composition of Indian coin.				class
248 IPC	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Imprisonment for 3 years and fine.	Cognizable	Non-bailable	Magistrate of the first class
249 IPC	Altering appearance of Indian coin with intent that it shall pass as a coin of a different description.	Imprisonment for 7 years and fine.	Cognizable	Non-bailable	Magistrate of the first class
250 IPC	Delivery to another of coin possessed with the knowledge that it is altered.	Imprisonment for 5 years and fine.	Cognizable	Non-bailable	Magistrate of the first class
251 IPC	Delivery of Indian coin possessed with the knowledge that it is altered.	Imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session.
252 IPC	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	Imprisonment for 3 years and fine.	Cognizable	Non-bailable	Magistrate of the first class
253 IPC	Possession of Indian coin by a person who knew it to be altered when he became possessed thereof.	Imprisonment for 5 years and fine.	Cognizable	Non-bailable	Magistrate of the first class
254 IPC	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	Imprisonment for 2 years or fine, or 10 times the value of the coin.	Cognizable	Non-bailable	Any Magistrate.
255 IPC	Counterfeiting Government stamp.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable	Non-bailable	Court of Session.
256 IPC	Having possession of an instrument or material for the purpose of counterfeiting Government stamp.	Imprisonment for 7 years and fine.	Cognizable	Non-bailable	Magistrate of the first class
257 IPC	Making, buying or selling instrument for the purpose	Imprisonment for 7 years and fine	Cognizable	Non-bailable	Magistrate of the first

	of counterfeiting a Government stamp.				class
258 IPC	Sale of counterfeit Government Stamp.	Imprisonment for 7 years and fine.	Cognizable	Non-bailable	Magistrate of the first class
259 IPC	Having possession of a counterfeit Government stamp.	Imprisonment for 7 years and fine	Cognizable	Non-bailable	Magistrate of the first class
260 IPC	Using as genuine a Government stamp known to be counterfeit.	Imprisonment for 7 years, or fine, or both.	Cognizable	Non-bailable	Magistrate of the first class
261 IPC	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it, with intent to cause a loss to Government.	Imprisonment for 3 years, or fine or both.	Cognizable	Non-bailable	Magistrate of the first class
262 IPC	Using a Government stamp known to have been before fine, used.	Imprisonment for 2 years or fine, or both.	Cognizable	Bailable	Any Magistrate
263 IPC	Erasure of mark denoting that stamps have been used.	Imprisonment for 3 years, or fine, or both.	Cognizable	Bailable	Magistrate of the first class
263A IPC	Fictitious stamps	Fine of 200 rupees	Cognizable	Bailable	Any Magistrate.

**3.8 Offences relating to weights and measures**

**IPC Chapter XIII: Sections 264 - 267**

264 IPC	Fraudulent use of false instrument for weighing	Imprisonment for 1 year, or fine, or both	Non-cognizable	Bailable	Any Magistrate.
265 IPC	Fraudulent use of false weight or measure	Imprisonment for 1 year, or fine, or both	Non-cognizable	Bailable	Any Magistrate
266 IPC	Being in possession of false weight or measures for fraudulent use	Imprisonment for 1 year, or fine, or both	Non-cognizable	Bailable	Any Magistrate

267 IPC	Making or selling false weights or measures for fraudulent use	Imprisonment for 1 year, or fine, or both	Cognizable	Non-bailable	Any Magistrate
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**3.9 Offences affecting the human body**

**IPC Chapter XVI: Sections 299 – 377**

**1. Of Offences Affecting Life ( Section 299 – 311)**

No one has the right to take anyone’s life, which the author(s) believe to be beautiful in fullness. This sub-chapter, probably the most “famous”, given the basal instincts it excites in everyone of us, explains the gravity of fulfilling such treacherous acts. Provisions relating to “homicide” are dealt with spot on, some others are still up for debate.

**2. Of The Causing Of Miscarriage, Of Injuries To Unborn Children, Of The Exposure Of Infants, And Of Concealment Of Births (Section 312 – 318)**

A perpetrator will not ever, before committing a crime (read sin), discriminate on the basis of the age of the innocent if he so has decided to carry out his motive. Thus, to provide support not only to the prudent man who knows his rights, this Chapter brings into consideration infants or even unborn lives and gives prime importance to save their lives, along with the mother.

**3. Of Hurt (Section 319 -338)**

It is very difficult to ascertain the nature of “hurt” caused or suffered by a person. A slight line, demarcating the bodily hurts which are serious and which are slight, is seen everyday parlance. This Chapter draws the attention to the importance of intention, *inter alia*, while dealing with cases specific to the acts constituting hurt.

**4. Of Wrongful Restraint & Wrongful Confinement (Section 339 – 348)**

Independence to move freely is an inalienable right. Take this freedom away from anybody, coupled with a slight use of force, and the person starts questioning his very existence. The basic aim of the provisions contained in this Chapter is to dilute the suffering caused by that curtailment of freedom and to punish the perpetrators, accordingly.

**5. Of Criminal Force & Assault (Section 349 – 358)**

Any force used in pursuance of causing some apprehension/actual injury to the other person and its punishment thereof is dealt here. It is, however, very important to discern the nature of the force used to make sure that proper punishment is meted out.

**6. Of Kidnapping, Abduction, Slavery And Forced Labour (Section 359 – 376)**

The provisions in this Chapter regarding kidnapping as an offence has the ultimate vision to provide security and protection not only to the guardians, but most importantly, to the wards themselves. Not to limit the scope of this Chapter, the clauses on abduction fills the void of age restriction. Similarly, as no one has a ‘for granted’ right over any other person’s life, slavery and forced labour are dealt with emphasised scrutiny. The most infamous provisions regarding the growing menace of rape in the country are enlightened here, too. The above-mentioned provisions are always under the ever watchful eyes of the public and because of this reason, are always in a state of flux

**7. Of Unnatural Offences (Section 377)**

Recent uproar, both at the national and global level has resulted in re-looking and amending some of the contestable tenets of this section. The fact that a great amount of misconception and social ostracism are still the aftermaths goes on to show the infantile stage we are at. Whether the social upheaval, judicial and legislative changes will change anything is to be seen.

#### **MODULE 4:**

##### **4.1 Offences relating to elections**

IPC Chapter I: Sections 171A – 171I

##### **4.2 Offences affecting public health safety, convenience, decency and morals**

IPC Chapter XIV: Sections 268 – 298

##### **4.3 Offences relating to religion**

IPC Chapter XV: Sections 295 – 298

##### **4.4 Offences against property**

IPC Chapter XVII: Sections 378 – 462

##### **4.5 Offences relating to documents and property marks**

IPC Chapter XVIII: Sections 463 – 499E

##### **4.6 Offences relating to marriage**

IPC Chapter XX: Sections 493 – 498

##### **4.7 Cruelty by husband or relatives of the husband**

IPC Chapter XX-A: Section 498A

##### **4.8 Defamation**

IPC Chapter XXI: Section 499

##### **4.9 Criminal Intimidation, Insult and Annoyance**

IPC Chapter XXII: Sections 503 – 505

##### **4.1 Offences relating to elections**

##### **IPC Chapter I: Sections 171A – 171I**

Chapter IXA, Section 171 deals with offenses related to Elections in the Indian Penal Code. Elections in India are no short of a festival and concern the people immensely. This Chapter was introduced by Section 2 of the Indian Elections Offences and Inquiries Act, 1920. It prescribes punishments for offences such as bribery, personation, undue influence, making false statements to malign someone's reputation during elections, etc. The main object of this chapter is to ensure free and fair elections and to allow people to freely practice their voting rights.

## Objective

In terms of political affairs, liberty and equality are the fundamental factors to ensure concerning the concept of free and fair elections. Free and fair elections connote that nobody is influenced while exercising their legal right; that they can make and form decisions on their own, and have their personal choice free from the bondage of another, without any malice or undue influence of another. Elections are crucial to ensure the smooth running of a state and must be carried out in a fair manner. When a person casts his/her vote, he/she is not under any influence or control of a party discipline, religion, sex, language, caste, creed, etc. One is also not bound to corrupt practices such as bribery or using cheap tactics to smear someone's election campaign. Thus, free and fair elections are the epitome of a democratic nation.

## Offences relating to Elections in Indian Penal Code Bribery

As per Section 171B, a person is said to commit bribery when he/she gives gratification to someone with the object of inducing such person with regards to practicing his/her electoral right, or as a reward, after such person has exercised his/ her electoral right after being induced. The person taking such bribe and being induced into practicing his/her electoral right differently is also guilty of the offence of bribery.

For this section, a person is said to give gratification when they offer/attempt to give/ offer or attempt to procure gratification. The person accepting or attempting to get gratification for changing his/her pre-decided course and acting according to the wish of the one giving such gratification shall be said to have received gratification.

A person committing the offence of bribery shall be punished with imprisonment which may extend to one year, or a fine, or both, under the provisions of Section 171E. However, a person bribed by the act of treating shall have to pay a fine only. "Treating" means providing or accepting food, drink, entertainment or provision as gratification.

## Undue influence at an election

Section 171C deals with undue influence at an election. It refers to the voluntary interruption or an attempt to interrupt the free exercise of an electoral right. Interference with the free exercise of an electoral right as per this provision includes-

- Threatening (with injury of any kind) a candidate or a voter or a person in whom a candidate/voter is interested in, or;
- Misleading or attempting to induce a candidate/voter to believe that they, or any person that they are interested in, shall be subjected to Divine displeasure or spiritual censure.

Exercise of a legal right without any mala fide intent to interfere with someone's voting right, declaration of public policy or a promise of public action does not count as interference as per the meaning of this section.

As per Section 171F, undue influence at an election is punishable with imprisonment which may extend to one year, or a fine, or both.

## Personating at an election

Section 171D says that a person attempting to vote twice or vote by using unfair means is guilty of the offence of personation. Each one is to cast their own vote. For example, a person applying for a voting paper by using someone else's name, whether living or dead, or under a fictitious name, or has voted in such an election and wants to vote again is guilty of personation. A person abetting or attempting to procure a voting paper by using any other person for their cause shall also be guilty of the offence of personation.

It is important to note that a person authorized to vote as proxy for an elector under any law which is at force at that time shall not be guilty of this offence.

Personation at an election is punishable with imprisonment which may extend to one year, or a fine, or both as per Section 171F.

### **False statement in connection with an election**

Section 171G states that whoever makes/publishes a statement in public, knowing/believing it to be false or not believing it to be true, and disguising it to be a statement of fact, with an attempt to malign the character or conduct of a candidate to disrupt the result of elections shall be punishable with fine.

### **Illegal payments in connection with elections**

As per Section 171(h), a person responsible for incurring/authorizing expenses to promote their election campaign, which may include holding public meetings, press conferences, advertising, circulars or publications, without any general or special authority in writing of a candidate shall be punishable with a fine which may extend to Rs. 500.

However, if such a person, who has borne expenses not exceeding Rs. 10 without authority manages to obtain authority in writing of the candidate within days from the date on which such expenses were incurred, this provision would not be applicable as such person would be deemed to have acted with the permission of the candidate.

### **Failure to keep election accounts**

As per Section 171(j) of the Code, a person who is responsible for keeping an account for the expenses incurred in connection with an election, as per the law which is in force at that time or as per a rule which has the force of law, when fails to do so, shall be punishable with a fine which may extend up to Rs. 500.

### **Suggested Reforms**

The Fifth Law Commission proposed certain reforms to the currently existing Chapter IX-A of the IPC relating to substantial changes. However, none of these provisions had been taken into account and compiled to date. The reforms include-

- Amending the definition of 'electoral rights'- The current definition is exclusive of the right of a candidate to withdraw his/her candidature from elections. The definition should be modified to include the phrase "to withdraw or not to withdraw" his/her candidature.
- The subclauses related to bribery and its prescribed punishment i.e Section 171B and 171E should be combined as one section for a better understanding.
- The offense of bribery shall be taken seriously and a relatively stringent punishment must be prescribed for it as it certainly interferes, to a large extent, with a smooth and fair election process.
- The definition of undue influence is to be narrowed down and supposed to include violent means of interfering with the free exercise of legal rights.
- Similar to the recommendation of bribery, both subclauses relating to personation i.e. IPC Sections 171D and 171F should be combined for a better understanding.
- The punishment for making false statements must be made more stringent as it may have adverse impacts on the minds of people and the reputation of the candidate. Instead of dismissing with a fine only, imprisonment for a period extending up to 2 years is suggested.
- The commission also deleted Section 171F and 171I as they have become redundant and obsolete.

However, none of these recommendations were taken into account by the legislature or the fourteenth law commission.

### **Landmark Judgments**

***E Anoop v State of Kerala, 2012***

The petitioner had allegedly appeared at the polling station at Mokeri Government U.P. School in Peringalam constituency, and changed his name and presented himself as Kuttikkattu Pavitharan in the polling booth. He did so to obtain a voting paper even though he wasn't the person he claimed to be, nor was he a person belonging to that constituency/booth. The court held him guilty of the offense of personation under Section 171D and 171F.

### ***Iqbal Singh v. Gurdas Singh, 1975***

In this case, the respondent was elected from a constituency in Punjab as a Member of Parliament. The petitioner alleged that a minimum of 15,000 invalid votes had been cast, due to which the respondent had been declared elected, and that the accused had allegedly distributed huge sums of money to Harijans under the pretext of aiding them to construct Dharamshalas, and also gave out several gun licenses as gratification to induce voters to vote for them.

The appellant contended that this gratification was liable to be admitted as the corrupt practice of bribery and that the free legal rights of voters had been influenced and tampered with. The accused failed to establish that 15,000 invalid votes had been cast. According to Rule 56 of Election Rules, a ballot paper devoid of both, the mark and signature of the polling officer shall be invalid. The same was not the case here.

"Gratification", if to be included under bribery, shall only be used to refer to cases where a material advantage is conferred on offering a gift. The license given in this case did not provide any material advantage and hence couldn't be said to be included under bribery. Apart from that, bribery necessitates the existence of bargaining of votes. Since there was no evidence regarding the bargaining of votes in exchange for gun licenses, the issues did not stand ground and the case was dismissed.

### ***Raj Raj Deb vs Gangadhar, 1962***

The respondent was the younger brother of the Raja of Puri in Odisha. The petitioner alleged that the appellant wrongly used this fact to his benefit during election campaigning in the district of Satyapadi, where he said that he was "Chalanti Bishnu" himself, and induced people to vote for him by saying that if they don't do so, they will be displeasing Lord Jagannath himself and every vote given to him was a vote given to Lord Jagannath. He threatened Divine displeasure and spiritual displeasure if his directions were not followed. Apart from that, he was also alleged that the appeals had been made to the villagers to cast their votes on the ground of his caste, Khandayat. He also used Nila Ghakra, which is the religious symbol of Lord Jagannath for his election campaigning.

**The court held it to contravene Section 171F of IPC.**

### ***Veeraghavan v. Rajnikanth, 1997***

The respondent, Mr. Rajnikanth is an established film actor with a massive fan following all over Indian and especially in Tamil Nadu. The petitioner, a lawyer in the Supreme Court has accused him of exercising undue influence over people as on the eve of the election, the respondent presented a tele-campaign presentation where he urged the voters to accept Rs 500 or Rs. 1000 from the petitioner, and still not vote for him.

The issue was whether this would attract IPC Section 171B, which deals with bribery and IPC Section 171C, which deals with undue influence.

The speech, as translated said that the voters of Tamil Nadu couldn't be swayed by these tactics and couldn't be corrupted; therefore, if the opponent offered money as a bargain for votes, do not hesitate and accept it, but still, exercise their legal rights freely as the people of Tamil Nadu could not be bought.

The Court said that the respondent in the speech never advised to demand and receive a bribe. The offending speech wasn't so offending and it had no trace of mandate or imposition of restraint on the voters to refrain from doing what they wished to do. The said sections of IPC were not applicable and the respondent was thereby not guilty of any offense and the case was dismissed.

## **4.2 Offences affecting public health safety, convenience, decency and morals**

**IPC Chapter XIV: Sections 268 – 298**

- Section 268:- Public nuisance
- Section 269:- Negligent act likely to spread infection of disease dangerous to life
- Section 270:- Malignant act likely to spread infection of disease dangerous to life
- Section 271:- Disobedience to quarantine rule
- Section 272:- Adulteration of food or drink intended for sale
- Section 273:- Sale of noxious food or drink
- Section 274:- Adulteration of drugs
- Section 275:- Sale of adulterated drugs
- Section 276:- Sale of drug as a different drug or preparation
- Section 277:- Fouling water of public spring or reservoir
- Section 278:- Making atmosphere noxious to health
- Section 279:- Rash driving or riding on a public way
- Section 280:- Rash navigation of vessel
- Section 281:- Exhibition of false light, mark or buoy
- Section 282:- Conveying person by water for hire in unsafe or overloaded vessel
- Section 283:- Danger or obstruction in public way or line of navigation
- Section 284:- Negligent conduct with respect to poisonous substance
- Section 285:- Negligent conduct with respect to fire or combustible matter
- Section 286:- Negligent conduct with respect to explosive substance
- Section 287:- Negligent conduct with respect to machinery
- Section 288:- Negligent conduct with respect to pulling down or repairing buildings
- Section 289:- Negligent conduct with respect to animal
- Section 290:- Punishment for public nuisance in cases not otherwise provided for
- Section 291:- Continuance of nuisance after injunction to discontinue
- Section 292:- Sale, etc., of obscene books, etc.
- Section 293:- Sale, etc., of obscene objects to young person
- Section 294:- Obscene acts and songs
- Section 294A:- Keeping lottery office

**4.3 Offences relating to religion**

IPC Chapter XV: Sections 295 – 298

295 IPC	Destroying, damaging or defiling a place of worship or sacred object with intent to insult the religion of any class of persons	Imprisonment for 2 years, or fine, or both	Cognizable	Non-bailable	Any Magistrate
295A IPC	Maliciously insulting the religion or the religious beliefs of any class	Imprisonment for 2 years, or fine, or both	Cognizable	Non-bailable	Magistrate of the first class
296 IPC	Causing a disturbance to an assembly engaged in religious worship	Imprisonment for 1 year, or fine, or both	Cognizable	Bailable	Any Magistrate
297 IPC	Trespassing in place of worship or sepulcher, disturbing funeral with intention to wound the feelings or to	Imprisonment for 1 year, or fine, or both	Cognizable	Bailable	Any Magistrate

	insult the religion of any person, or offering indignity to a human corpse				
298 IPC	Uttering any word or making any sound in the hearing or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feeling	Imprisonment for 1 year, or fine, or both	Non-cognizable	Bailable	Any Mag

**4.4 Offences against property**

**IPC Chapter XVII: Sections 378 – 462**

- 1) Theft.
- 2) Extortion.
- 3) Robbery and dacoity.
- 4) Criminal misappropriation of property.
- 5) Criminal breach of trust.
- 6) Receiving stolen property
- 7) Cheating.
- 8) Fraudulent deed and disposition of property.
- 9) Mischief.
- 10) Criminal trespass

**Offenses relating to Property -**

**1) Theft -**

Section 378 to Section 382 of the Indian Penal Code speaks about theft in detail Section 378 of the Code defines Theft and Section 379 provides punishment for Theft. According to Section 378 of the Indian Penal Code, Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft.

**Theft, Punishment for theft (Section 378 to Section 382)**

**2) Extortion -**

Section 383 of the Indian Penal Code defines extortion and Section 384 of the Indian Penal Code provides punishment for extortion. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

**Extortion: Offences against property (Indian Penal Code 1860)**

**3) Robbery and dacoity -**

Section 390 defines Robbery and Section 392 of the Indian Penal Code provides punishment for robbery. Section 391 of the Indian Penal Code, 1860 defines dacoity. Section 395 of the Indian Penal Code prescribes the punishment for dacoity which may be either imprisonment for life or rigorous imprisonment up to 10 years and fine.

**Robbery and Dacoity (Section 390 to Section 402 of the Indian Penal Code)**

**4) Criminal misappropriation of property**

Section 403 and Section 404 of the Indian Penal Code, 1860 deals with Criminal Misappropriation of Property. Section 403 of the Indian Penal code defines criminal misappropriation

and prescribes the punishment for the offence. Section 404 of the Indian Penal Code deals with dishonest misappropriation of a deceased persons property

**Criminal Misappropriation of Property: Offences against Property.**

**5) Criminal breach of trust.**

Section 405 to Section 409 of the Indian Penal Code, 1860 speaks about Criminal Breach of Trust, Section 405 of the Indian Penal Code Defines Criminal Breach of Trust, Section 406 provides punishment for criminal breach of trust. Section 407 Criminal breach of trust by carrier etc, Section 408 Criminal Breach of trust by clerk or servant, Section 409 Criminal breach of trust by a public servant or banker or by merchants or agent.

**Criminal breach of trust (Section 405 to Section 409 of The Indian Penal Code )**

**6) Receiving stolen property**

Section 410 to Section 414 of the Indian Penal Code 1860 deals with Receiving Stolen property. Stolen property is defined under Section 410 of the Code.

**Receiving Stolen Property (Section 410 to Section 414 of the Indian Penal Code 1860)**

**7) Cheating.**

Chapter XVII, Section 415 to Section 420 of the Indian Penal Code, 1860 deals with 'cheating'. Cheating is defined under Section 415 of the Indian Penal Code. Section 415 deals with three types of cheating. Section 417 of the Penal Code prescribes punishment for cheating.

**Cheating: Offences against Property (Section 415 to Section 420 of the Indian Penal Code, 1860)**

**8) Fraudulent deed and disposition of property.**

Chapter XVII, Section 421 to Section 124 of The Indian Penal Code 1860 deals with Fraudulent deed and disposition of property.

**9) Mischief.**

Section 425 to Section 440 of the Indian Penal Code 1860, deals with provision to Mischief. Section 425 of the Indian Penal Code 1860 defines Mischief, Section 426 of the Indian Penal Code, 1860 provides punishment for mischief.

**10) Criminal trespass –**

Section 442 to Section 462 Deals with Criminal Trespass.

**4.5 Offences relating to documents and property marks**

**IPC Chapter XVIII: Sections 463 – 499E**

Section 463:- Forgery

Section 464:- Making a false document

Section 465:- Punishment for forgery

Section 466:- Forgery of record of Court or of public register, etc.

Section 467:- Forgery of valuable security, will, etc.

Section 468:- Forgery for purpose of cheating

Section 469:- Forgery for purpose of harming reputation

Section 470:- Forged document

Section 471:- Using as genuine a forged document

Section 472:- Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467

Section 473:- Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise

- Section 474:- Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it genuine
- Section 475:- Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material
- Section 476:- Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material
- Section 477:- Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security
- Section 477A:- Falsification of accounts
- Section 478:- (Repealed) Trade Mark.
- Section 479:- Property mark
- Section 480:- (Repealed) Using a false trade mark.
- Section 481:- Using a false property mark
- Section 482:- Punishment for using a false property mark
- Section 483:- Counterfeiting a property mark used by another
- Section 484:- Counterfeiting a mark used by a public servant
- Section 485:- Making or possession of any instrument for counterfeiting a property mark
- Section 486:- Selling goods marked with a counterfeit property mark
- Section 487:- Making a false mark upon any receptacle containing goods
- Section 488:- Punishment for making use of any such false mark
- Section 489:- Tampering with property mark with intent to cause injury
- Section 498A:- Counterfeiting currency-notes or bank-notes
- Section 489B:- Using as genuine, forged or counterfeit currency-notes or bank-notes
- Section 489C:- Possession of forged or counterfeit currency-notes or bank-notes
- Section 489D:- Making or possessing instruments or materials for forging or counterfeiting currency notes or bank-notes
- Section 489E:- Making or using documents resembling currency-notes or bank-notes

#### **4.6 Offences relating to marriage**

##### **IPC Chapter XX: Sections 493 – 498**

A generally accepted definition of marriage is that of matrimony or wedlock, which is a culturally recognised social sanction of union between two people. This union helps in establishing rights and obligations between two people coming together in this union, along with their children, and the in-laws.

However, the sacrosanct institution of marriage has been existing through generations and has consumed in itself various distorted versions of the same. To correct them, and subsequently, make sure that no innocent life suffers. Different laws and precedents have been brought in by various courts, with the most illuminating ones being from the Hon'ble Apex Court. Such misbehaviours, namely: adultery, desertion, or cruelty, amongst others, are known to be offences against marriage or matrimonial offences.

Instances of matrimonial offences continue to rise incrementally and remain undisturbed despite the various protective laws made by the legislation, and steps taken by the law and order maintainers of the society. With each passing day, more and more women are added into the list of the victims of these legal offences.

What is worse is that most of these cases go unreported, due to the society's reluctance to acknowledge its morbid parts and victim-shaming. The situation goes further south when that is clubbed with insecurity and an uncertain future. Society, especially women, are made to have little to no faith in the law. They usually get scared of the long, unending legal battles, and get afraid of the massive amount of resources needed to sustain them.

The Burden of Proof (BoP) lies upon the plaintiff urging the offences. Proving said matrimonial offences result in the grounds for divorce and continues to be important in applications in magistrates'

courts for financial relief during and after the marriage. In this article, we shall be discussing several of these legislations and landmark case judgements.

### **Offences relating to Marriage**

Offences pertaining to marriage are provided in Sections 493 to 498, of the Indian Penal Code, 1860 (IPC). These laws deal with the various aspects of a marriage, and their subsequent felonies. The most illuminated of these is Section 498-A, otherwise known as The Cruelty Law. This law, along with The Domestic Violence Act (Passed in 2005), aims to provide substantial protection to female victims of cruelty and domestic violence. With the incrementally increasing cases of such nature, it was observed that such legislation was necessary to ensure that the Fundamental Right to Life and Dignity, entrusted upon each citizen by the Constitution of India, is complied with. Furthermore, cruelty was also made to be a substantial ground for the dissolution of a marriage, too.

Other sections of chapter XX include:

- Mock marriages (Section 493);
- Bigamy (Section 494 and 495);
- Fraud Marriage (Section 496)
- Adultery (Section 497);
- Criminal elopement (Section 498);

### **Cohabitation(सहवास) after deceitfully(छल से) inducing a belief of marriage(विवाह के विश्वास को प्रेरित करना)**

Section 493 is for every man who deceives a woman into having carnal intercourse with him under the pretext that she is married to him. For this, the Indian Penal Code provides for a ten-year jail term, with a fine. This section has been a topic of heated debate amongst lawmakers for a considerable amount of time.

### **Marrying again during lifetime of husband or wife(पति या पत्नी के जीवनकाल में दोबारा शादी करना)**

Section 494 states that marrying again during the lifetime of the spouse is bigamy (read with) Sec 50 of the Evidence Act and Section 198 (1)(c) of CrPC.

However, the section provides for exceptions to Section 494 of IPC, viz:

(a) If the first marriage has been declared void by the following:

- by a court,
- holding competent jurisdiction

(b) If the previous spouse has been continuously absent for a period of seven years and

- not heard of as being alive

-provided that the facts are disclosed to the person with whom the second marriage is contracted.

The aforementioned offence is termed as bigamy. It can be afflicted by either of the spouses on to one another.

For a better understanding of the aforementioned provision, Section 17 of the Hindu Marriage Act and Section 108 of the Evidence Act along with the judgment of the Supreme Court in the landmark judgement of Smt. Sarla Mudgal vs Union Of India & Ors (1995) must be referred to. This case laid down the principles against the practice of solemnizing second marriage by conversion to Islam, with first marriage not being dissolved. The verdict discusses the issue of bigamy, the conflict between the personal laws existing on matters of marriage and invokes Article 44 of the Indian Constitution. It is considered a landmark decision that highlighted the need for a Uniform Civil Code.

### **Concealing the previous marriage before subsequently getting wed**

Section 495 talks about a ten year incarceration period, with fine, for a person who hides their former marriage with someone they are getting married to. It is a non-cognizable, bailable offence, with the trial being carried out by first class Magistrate.

Fraudulent conduction of wedding ceremony without a lawful, genuine marriage

Section 496 provides for a jail term extending up to as long as seven years, along with a fine, for anyone who dishonestly, clubbed with a fraudulent intention, goes through the wedding ceremony, despite knowing that he is not thereby lawfully married.

### Adultery

Earlier, Section 497 gave way for a jail term up to five years, with or without a fine, to a person who had sexual intercourse with the wife of another man without the consent or connivance of that man. If it was not rape, the man would be guilty of the offence of adultery. Meanwhile, in such a case, the wife would not be punishable as an abettor.

It is important to note that this law has since been decriminalized but continues to be strong grounds for divorce.

### Enticing a married woman for illicit sexual relations

Section 498 of the IPC provides for a two-year jail term, with or without a fine, for anyone who takes, or conceals, or detains, or entices away, any woman who is and whom he knows or has reason to believe to be- the wife of any other man, with the intent that she may have illicit intercourse with any person.

The deceit and fraudulent intention should exist at the time of the marriage.

The essential ingredients of Sections 493 and 496 are as follows:

1. the accused must have deceived the woman,
2. as a consequence of which she is led to believe that she is lawfully married to him, though in reality, she is not.

Thereby, mens rea an essential component of both these sections. The words 'deceit', 'dishonestly' and 'fraudulent intention' have been used in Sections 493 and 496 respectively. This means that in both the sections while the man remains aware that they are not married, the woman is cheated on by the man into believing the same to be true.

### Landmark Judgments

In a landmark case of ***Subhransu Sekhar Samantray v. The State (2002)***, the Orissa High Court contended that the statement of the prosecutrix that she had resisted the establishment of sexual relations with the accused, but when he put vermilion on her head and declared her as his wife, and alleged that he would accept her status in his life publicly after getting a job she submitted herself to his advances, is sufficient to constitute an offence under Section 493 of the IPC.

In ***Kashuri v. Ramaswamy (1978)***, the court said, "*the proof of sexual intercourse has to be inferred from the facts and circumstances of a case as direct evidence can rarely be proved*".

When the question about Section 498 arises, a landmark decision is taken to be that of ***Alamgir v. State of Bihar (1958)***, wherein the court said that "*if a man knowingly goes away with the wife of another in such a way to deprive the husband of his control over her, with the intent to have illicit intercourse, then it would constitute an offence within the meaning of Section 498*".

The Apex Court, in the case of ***Mohd. Hoshan vs. State of A.P (2002)*** concluded that the issue of cruelty, by one upon the other is essentially a question of fact, and is quite subjective in nature. The impact of complaints, accusation or taunts on a person amounting to cruelty depends on various factors of the victim, viz: sensitivity, socio-economic background, education etc.

The court further elaborated that mental cruelty varies from person to person- depending on:

- the intensity of the sensitivity,
- degree of courage, and,
- Endurance to withstand such cruelty, and that each case has to be dealt with on an instant case basis.

However, as these reforms have made their way into the legislation over the course of the past two decades, a common criticism witnessed against laws relating to matrimonial offences in India has been

that women misuse these laws. This allegation has often been made by various sectors including the police, politicians and even judges of the High Courts and the Supreme Court.

The allegation of misuse is made particularly against Section 498A and also against the offence of dowry death in Section 304B. The Supreme Court less than a decade ago, in the landmark case of **Sushil Kumar Sharma vs. Union of India and others (2005)**, observed that the object of the provision was to prevent the dowry menace. But many instances have since come to light where the complaints are not in good faith and have been filed with perverse motive.

Sometimes unfavoured, unwanted media coverage adds to the misery. However, the 243rd Law Commission's Report, which came out in August 2012, observed that the misuse of law is not a ground to remove the provision from its efficacy since what is involved is a larger societal interest.

The question, thus involved is which remedial measures must be taken to prevent such abuse of well-intentioned legislation. The constitutionality and intra vires nature of the law definitely isn't a licence for people to harass others for personal vendetta. It thus becomes necessary for the lawmakers to find out methods of how frivolous complaints or allegations can be appropriately dealt with.

Less than a decade ago in another case of **Arnesh Kumar v. the State of Bihar and Anr (2014)** the Supreme Court declared with particular reference to Section 498A, that no arrest should be made immediately in the offences which are allegedly committed by the accused and the offence is cognizable and non-bailable, and went on to lay down crisp guidelines for the police officers to follow relating to the arrests made under the section, due to increase in a number of seemingly false complaints.

#### **4.7 Cruelty by husband or relatives of the husband IPC Chapter XX-A: Section 498A**

In these modern days of equal rights, the antiquated rituals of dowry and female servitude are still revered. Section 498A was added to the Indian Penal Code, 1860 to prevent the threat of dowry and cruelty to women. Section 498A of the IPC protects women's rights and empowers them. Extortion of any kind of property by subjecting a woman to cruelty is criminal under Section 498A of the Indian Penal Code, 1860. On December 26, 1983, the Government of India revised the Indian Penal Code, 1860 (IPC) with the Criminal Law (Second Amendment) Act, 1983, inserting a new Section 498(A) under Chapter XX-A of the Indian Penal Code. The Section was passed in response to the possibility of dowry deaths.

Section 113A of the Indian Evidence Act, of 1872 was inserted by the same Act to enhance the presumption of abetment of suicide by a married woman. The primary goal of Section 498A is to protect a woman who is being mistreated by her husband or his family. It is the sole part of the IPC that criminalises domestic abuse against women.

The author has explored Section 498A of the Indian Penal Code, 1860, in this article by explaining its historical context and elements. The article will also discuss the importance of this Section, as well as its penal measures.

#### **Historical background of Section 498A IPC**

Cruelty instances were frequent earlier as well, with occurrences such as humiliating women and stripping occurring notably among women of lower castes, but no such research on women and marital cruelty was undertaken. Therefore, very little data is accessible before the British Era. Family and marriage have been crucial in both the pre-independence and post-independence movements in India. The women's movement in the 1970s and 1980s emphasized such assaults on women as cruelty inside the family; it also highlighted and attacked the techniques through which the state rejected and ignored instances of cruelty.

Section 498A was enacted in 1983 in response to a great concern about women meddling with the rise in fatalities of young women caused by "accidental kitchen fires." It was later determined that the fatalities were caused by dowry harassment of married women. Furthermore, Section 304B, also

known as “dowry death,” was introduced in IPC in 1986. The present remedies were implemented to reinforce the Dowry Act of 1961. Women have since invoked Section 498A in cases of cruelty and other forms of abuse. Until 2005, this was the sole remedy available. Women found it difficult to report it to the local police station.

Unless they showed proof, the police did not take their cases seriously. To lessen the horrible occurrences, the Government of India adopted the Dowry Prohibition Bill, 1959, on April 24, 1959. The Dowry Prohibition Act of 1961 was passed in a joint session of Parliament and took effect on July 1, 1961. In 1984 and 1986, the Act was revised twice. Certain campaigns, such as the demonstrations against Rameezabee’s rape in Hyderabad in 1978 and their call for a fresh trial of the acquitted officers accused of rape in 1980 in Mathura, as well as the absurd accusations of dowry-related killings, became symbols of a new phase in feminist public protest. There were incidences of violence against women during the colonial period.

With the conclusion of the Emergency in 1977, India’s Women’s Movement entered its second phase. Many fatalities occurred in Delhi around this period, disguised as suicides or accidents. Even during the anti-dowry campaign, feminists linked many forms of violence against women to dowry demands. They were solely focused on spouses’ brutality towards women. As the movement gathered traction, many formerly taboo topics were brought to light and examined. Women began to speak up and share their stories. Many incidences of violence emerged as the campaign progressed throughout the 1980s. Before 1983, there was no specific legislation governing domestic violence. In response to the demands of women’s campaigners for laws against violence, the Indian government gladly altered the criminal Act provisions in 1983 and 1986.

### **Section 498A IPC**

In recent years, marriage disagreements have increased dramatically. In this nation, the institution of marriage is highly cherished. Section 498A was created with the express purpose of combating the threat of harassment a woman could experience from her husband and his family. According to Section 498A, whoever, being the husband or a relative of the husband of a woman, subjects such woman to cruelty must be punished by imprisonment for a term of up to three years and a fine. The term cruelty, as defined under the Act, means;

1. Any intentional behaviour that poses a serious risk to the woman’s life, limb, or health (whether physical or mental) or that is likely to provoke suicidal ideation;
2. Harassing the woman with the intent to coerce her or any person connected to her into satisfying any unlawful demand for any property or valuable security or because she or any connected person failed to satisfy the demand.

### **The concept of cruelty(क्रूरता की अवधारणा)**

Cruelty has been defined broadly to encompass inflicting physical or emotional injury on the woman’s body or health, as well as engaging in acts of harassment to persuade her or her relatives to satisfy any unlawful demand for any property or valued security. One of the components of ‘cruelty’ is creating a circumstance that drives a woman to commit suicide.

In *Kaliyaperumal vs. State of Tamil Nadu (2003)*, cruelty was ruled to be an essential feature of crimes under both Sections 304B and 498A of the IPC. People who have been found not guilty under Section 304B for the crime of dowry death may nevertheless be found guilty under Section 498A of the IPC since the two provisions do not overlap, but each constitutes a separate offence.

The definition of cruelty is provided in the explanation of Section 498A. Section 304B does not define it, but the definition of cruelty or harassment in Section 498A applies to Section 304B as well. The IPC’s Section 498A defines cruelty as an offence when it occurs by itself, but Section 304B defines dowry death as an offence when it happens during the first seven years of marriage. However, Section 498A makes no mention of such a time frame.

In another case, *Inder Raj Malik vs. Sunita Malik (1986)*, It was found that pestering a woman to force her or any associated parties to comply with an unlawful demand for any property or valuable

security falls under the concept of ‘cruelty’. The husband was found guilty of aiding in his wife’s suicide under Section 306 of IPC because the husband had an unlawful connection with another woman and used to beat her, which constituted continuous cruelty as defined by Section 113A of the Evidence Act of 1872.

**Ingredients of Section 498A IPC**

The following elements must be present for an offence under Section 498A to be committed:

1. The woman must be married;
2. She must have experienced abuse or harassment; and
3. The abuse or harassment must have been perpetrated by the woman’s spouse or a relative of her husband.

A cursory examination of this provision reveals that the term ‘cruelty’ encompasses the occurrence of the following act(s):

1. Any deliberate actions that put a woman’s life, limb, or safety in peril or that might force her to commit suicide;
2. A woman’s physical or mental well-being;
3. Harassing a woman if she is being harassed compels her or any other person associated with her to comply with an unlawful demand for any property or valued security.

**Status of offence**

When discussing the status of an offence under this Section, the following points must be considered.

1. The accusation under Section 498A is considered a serious offence and is a non-bailable offence under the law. Bail is the temporary release of a suspect/prisoner in exchange for the provision of security for presence at a later hearing.
2. Because of the egregious nature of the offence, Section 498A is a cognisable offence. Cognisable offences are those in which a police officer has the authority to arrest a person without a warrant.
3. Apart from this, Section 498A is non-compoundable.

<b>Section</b>	<b>Offence</b>	<b>Punishment</b>	<b>Is it cognisable or not?</b>	<b>Is it bailable or not?</b>	<b>What court will hear the case?</b>
<b>498A</b>	Punishment for cruelly treating a married woman.	Three years in jail and a fine.	Cognisable if the officer is provided information about the commission of the offence.	It is not bailable.	First-class Magistrate.

**Observation of the Malimath Committee**

The Home Ministry formed the Justice Malimath Committee in 2000 to look into ways to improve the criminal justice system. Following a thorough examination of Section 498A, it was concluded that the statute had some flaws and recommended revisions. The committee highlighted that Section 498A, being non-bailable and non-compoundable, works against both the husband and wife’s interests because;

1. It presents a significant barrier to the return of marriage connections between the split couple, as such complaints taint partnerships for life.
2. Because the case against the husband/relatives is non-compoundable, the case against them remains, notwithstanding the parties’ reconciliation.
3. Because it is not bailable, it creates severe harassment of husbands and families in the event of spurious allegations.

Concerned about the egregious abuse of this rehabilitative tool, “the crime being non-bailable and non-compoundable causes an innocent person to suffer disgrace and hardship,” the committee proposed making 498A a bailable and compoundable offence.

### **Section 498A and Section 304B IPC**

The Hon’ble Supreme Court dealt with a conviction for dowry death under Section 304B of the IPC in *Smt. Shanti & Anr. vs. State of Haryana, (1990)*. The issue at hand was whether the provisions of Sections 304B and 498A of the IPC were mutually exclusive and whether the appellants’ exoneration from the violation punishable by Section 498-A made any difference at all. Since there was an acquittal under Section 498A of the IPC, the Apex Court examined the above-mentioned provisions in paragraph 4 of the decision. The court did, however, make the following observation that the mere acquittal of the appellants under Section 498A, under these circumstances makes no difference in this case.

These Sections 498A and 304B address two different offences. True, “cruelty” is a common essential in both parts, and this must be proven. The definition of “cruelty” is given in the Explanation to Section 498A. There is no such definition of “cruelty” in Sec. 304B, but given the similarities between both offences, we must assume that “cruelty or harassment” has the same meaning as that given in Sec. 498A, which states that “cruelty” by itself constitutes an offence and is penalised.

As previously stated, “dowry death” is penalised under Sec.304B, and such death must have happened within seven years of the marriage. There is no such term indicated in Section 498A, and the husband or his relative would be responsible for ‘cruelty’ to the wife at any point after the marriage. It should also be noted that a person accused and acquitted under Sec.304B can be convicted under Sec.498A without a charge if such a case is made out. However, from the standpoint of practice and procedure and to avoid technical flaws, it is necessary in such cases to frame charges under both Sections. If the case is established, they can be found guilty under both Sections, but Section 498A does not require a separate sentence because Sec. 304B already provides a substantive sentence for the major offence.

In the case of *Arun Garg v. State of Punjab (2004)*, which was reported much later, this issue was raised once more. The Hon’ble Court concluded that Sections 304-B and 498-A of the IPC are not mutually exclusive. They address a variety of specific offences. Cruelty is a frequent theme in both parts. Cruelty, on the other hand, is an offence and is penalised under Section 498A. Dowry death is punishable under Section 304B, and it must have occurred within seven years of the marriage. Sec. 498A makes no mention of such a time.

Furthermore, if a case is made out, a person prosecuted and acquitted under Section 304B might be convicted under Section 498A without a particular accusation. In the current matter, the learned Session Judge, in addition to condemning the accused to imprisonment for up to ten years under Section 304B, levied a fine of Rs. 2,000. The Supreme Court ruled firmly against the lower court’s ruling, stating that it was not authorised to impose a fee as a penalty under Section 304B.

### **498A IPC and Section 113A of the Indian Evidence Act, 1872**

Section 113A of the Evidence Act, coupled with Section 498A of the Penal Code, 1860, was enacted in 1983 to establish the presumption of abetment of suicide by a married woman. According to the Section, if a woman commits suicide within 7 years of marriage after being exposed to cruelty by her husband or in-laws, it is presumed that such suicide was aided by the husband or the husband’s relatives. In such a circumstance, the husband or his family bears the burden of proving the opposite in court as held in the case of *Pinakin Mahipatray Rawal v. State of Gujarat (2013)*.

### **Section 498A IPC and domestic violence**

The introduction of Section 498A IPC prohibiting cruelty towards married women is crucial to the Domestic Violence Act of 2005 (DV Act). The distinction between 498A and DV Act is that proceedings under the former are governed by the Code of Criminal Procedure, 1973, whilst

procedures under the latter are governed by the Code of Civil Procedure, 1908. Thus, proceedings under IPC 498A and DV Act can go concurrently.

### **Dowry and Section 498A IPC**

Dowry was a customary practice in India's old marriage system, in which riches were handed to the groom's family from the bride's. The Dowry Prohibition Act of 1961 made this practice both socially unacceptable and a criminal offence. The terms 'unlawful demands' bring up the link between 498A and dowry laws.

### **Need for Section 498A IPC**

Male culture has traditionally treated women with harshness. Laws like this assist women in fighting back. Women have the impression that they are being heard. In a country like India, regulations like this are desperately needed –

1. In 2021, there were almost 6.8 thousand recorded dowry death cases in India. As a result, these laws are desperately needed to protect women from maltreatment.
2. Women are constantly coerced, tormented, intimidated, or mistreated to obtain something. Section 498A of the IPC allows women to go to court and punish the perpetrator.
3. In many situations, a woman is subjected to emotional torture as well. No legislation can assist the woman in alleviating her emotional anguish. Acts like this benefit women in a variety of ways.
4. The laws, no matter how misapplied, cannot be removed from the Indian Penal Code. There will be some gaps, but a provision may always be inserted to close them.

### **Section 498A IPC punishment**

All those found guilty will either be sentenced to a term of jail that may last up to three years or will be required to pay a fine under the Section 498A penalty. The Protection of Women from Domestic Violence Act of 2005, the Indian Evidence Act of 1872, and other laws are relevant to this Section of the IPC.

The Indian Evidence Act of 1872 deals with cases where the woman is believed to have died as a result of horrific physical and mental abuse or cruelty as part of the dowry. This Section's application is still valid for another seven years. Therefore, it applies to situations where the wife kills herself or passes away during the first seven years of the marriage. In 498A proceedings, Section 306 of the IPC also has a considerable impact. The punishment for assisting someone in taking their own life is either a fine or a term of jail of any kind that can last up to 10 years.

### **FIR under Section 498A IPC**

If a woman has been wronged, whether it be physical, emotional, or sexual mistreatment, she should not be afraid to seek help from the authorities. Authorities should be contacted in order to get justice, punish the wrongdoers, and protect the victim from future harm inflicted by such a spouse or his family. Aside from engaging a skilled criminal lawyer, the initial step is to submit an FIR. The police should be contacted right away, and an FIR should be filed on behalf of the victim.

If the victim has been seriously injured or is unable to travel to the police station to file a physical or written complaint/FIR, any other friend or family member may do so. If physically attending the police station is not possible, a call to the Police Helpline at 100 should be made. Once such a complaint is filed with the police, he or she must quickly document it in order for the victim to proceed with legal action. A police report, often known as an FIR, is the initial step in taking legal action against the accused or perpetrator.

### Who is eligible to file a complaint under Section 498A of the IPC

A First Information Report (FIR) or complaint under Section 498A IPC is required to initiate criminal proceedings against the husband or his family, according to Section 198A CrPC. The following individuals may file such a complaint:

1. The aggrieved party,
2. The married lady,
3. The aggrieved party,
4. Her mother, brother, sister,
5. father's or mother's brother or sister, and
6. With the court's approval, any individual connected to such a lady by blood, marriage, or adoption.

### The limitation period for filing a 498A complaint

The complaint must be submitted within a specific amount of time. According to Section 468 CrPC, the complaint regarding the violations under 498A must be made within three years of the claimed last incidence of cruelty. When there is a pressing need for justice, the court may grant cognizance of such a crime even after the statute of limitations has expired.

### Section 498A trial and court procedure

As previously indicated, the trial or criminal court procedure begins with the filing of an FIR or a police report. The following is a comprehensive trial procedure:

1. **FIR (First Information Report) / police complaint:** The first step is to submit a First Information Report. This is addressed under Section 154 of the Code of Criminal Procedure. An FIR is the starting point for the entire case.
2. **Officer inquiry and report:** Following the filing of the FIR, the Investigation Officer begins an investigation. Following an appraisal of the facts and circumstances, evidence collecting, individual examination, and other applicable steps, the officer completes and prepares the investigation.
3. **Charge-sheet presentation to Magistrate:** Following that, the police bring the charge sheet before the magistrate. The charge sheet is a list of all of the criminal charges brought against the accused.
4. **Framing of charges/discharge:** After the accused and their attorneys have seen the charge sheet, the court moves on to framing the charges, which entails informing the accused of the offences with which they have been charged them. This is also the stage at which the Magistrate may decide that there is no prima facie evidence to prosecute the accused and discharge him.
5. **Arguments in court and charges framing:** On the scheduled hearing day, the Magistrate hears the arguments from the parties on the charges that have been set before framing them.
6. **Plea of guilty:** Section 241 of the Code of Criminal Procedure, 1973 discusses the plea of guilty. Following the formation of the allegations, the accused is given the opportunity to plead guilty, and it is the judge's responsibility to ensure that the guilty plea was made voluntarily. At his or her discretion, the judge may condemn the accused.
7. **Prosecution evidence:** Following the drafting of the allegations and the accused's plea of not guilty, the prosecution presents the evidence first, bearing the initial burden of proof. Oral and documentary evidence can both be produced. The magistrate has the power to call anybody as a witness or to order the production of any document.
8. **Cross-examination of witnesses by the accused's lawyer:** When prosecution witnesses are called before the court, they are cross-examined by the accused's counsel after examination-in-chief.

9. If the accused has any evidence in his or her defence, it is offered to the Courts at this point. He/she is given this opportunity to strengthen his/her case. However, because the prosecution has the burden of proof, the accused is not compelled to produce evidence.
10. Prosecution cross-examination of witnesses: The accused or his or her lawyer cross-examines prosecution witnesses in court.
11. Evidence/conclusion: If the accused has any evidence, it is presented to the courts at this point. He or she is given this opportunity to bolster his or her argument. The accused, however, is not required to present evidence because the prosecution has the burden of proof.
12. Oral/final arguments: The stage of final arguments is nearing the end of the process. In this case, both sides (the prosecution and the defence) take turns making final oral arguments in front of the court.
13. Court's decision: The Court bases its judgment on the facts and circumstances of the case, as well as the arguments and evidence offered. The Court renders its final judgment after explaining its grounds for acquitting or condemning the accused.
14. **Acquittal or conviction:** If the accused is found guilty, he or she is convicted; if found not guilty, the accused is acquitted.
15. **Hearing to determine the quantum of the sentence if convicted:** If the accused is found guilty and sentenced to jail time, a hearing will determine the quantum, or extent, of the sentence.
16. **Appeal to higher courts:** An appeal to the higher courts is possible if the conditions allow. The person can file an appeal with the High Court and in further stages can file an appeal with the Supreme Court.

#### **In a case under Section 498A, is bail an option**

When someone has been charged with a crime, the court may issue a written authorization called bail that will let them avoid going to jail. Only the magistrate may issue bail under Section 498A once the police officer has recorded the complainant's FIR. However, as time progressed, the Hon'ble Supreme Court of India issued judgments that gradually restricted the threat arrests made under Section 498A of the IPC.

In the landmark case of *Arnesh Kumar v/s State of Bihar & Another (2014)*, the Supreme Court ruled that no arrest should be made just because the charge is non-bailable and cognizable, and hence it is permissible for police personnel to do so. The fact that the ability to arrest exists is one thing; the rationale for using it is quite another. Aside from the authority to arrest, police personnel must be able to defend their actions. A person cannot be arrested routinely just on a mere accusation of committing an infraction. It is smart and wise for a police officer to make no arrest until reasonable satisfaction is gained after some examination of the veracity of the claim.

Over time, actions have been conducted with the interests of all of society's members in mind. Pre-litigation mediation at Crime Against Women (CAW) Cell/Mahila thana is one of these processes. In spite of the pre-FIR mediation and counselling, the woman has the option of filing the FIR if she so chooses. The FIR cannot be withdrawn by the complainant, but the High Courts have the authority to nullify it under Section 482 of the CrPC.

However, it is better advised to get anticipatory bail once the FIR has been filed. The court may set specific restrictions on the accused when he or she requests anticipatory bail. One of the requirements might be depositing a demand draft in the name of the wife or other dependents as part of maintenance or another obligation. However, when there is a particular provision for wife and child maintenance, conditional anticipatory bail issued under Section 498A would be illegal.

#### **Is it possible to file an appeal in a Section 498A case**

A lower court's/subordinate court's decision or order can be appealed to a higher court using this process. Either party to the dispute before the lower court may file an appeal. The person who is appealing or reversing a decision is known as the appellant, and the court to which the appeal was

submitted is known as the Appellate Court. A party to a case has no inherent right to appeal a court's decision or order to a higher or more superior court. An appeal can be lodged only if it is expressly permitted by law and must be filed in the required manner in the relevant courts. An appeal should also be submitted within a reasonable time frame.

If there are strong reasons for it, an appeal can be filed with a higher court. A district/magistrate court decision can be appealed to the Sessions Court. An appeal from the Sessions Court can be brought to the High Court and from the High Court to the Supreme Court. If the facts warrant, both the wife and the accused may file an appeal. Any individual convicted on a trial before a Sessions Judge or an Additional Sessions Judge, or on a trial before any other court, and sentenced to more than 7 years in jail for himself or another person in the same trial may appeal to the High Court.

### **Issues with Section 498A**

#### **Protection is exclusively available to married women**

Section 498A only protects married women from domestic abuse committed by their husbands or other family members. The definition thus ignores and delegitimizes the regular violence experienced by concubines, girlfriends and fiancés.

#### **Ambiguous definition of cruelty**

The definition of cruelty provided in Section 498A is vague and narrow, and it does not encompass all types of abuse suffered by women. Women's experiences demonstrate that they encounter physical, mental, linguistic, psychological, sexual, and economic assault. Section 498A only addresses aggression against the body and the mind. Due to the significant frequency of sexual violence in marriage and the fact that marital rape is notably not included in the definition of rape under Section 376 of the Indian Penal Code, sexual violence in particular has to be recognised as a form of cruelty.

The difficulty of establishing cruelty "beyond reasonable doubt"

According to Section 498A of the IPC, the spouse and his family must be proven to have been cruel beyond a reasonable doubt, which is a prerequisite of criminal law. When abuse occurs inside the walls of a house, it is incredibly difficult and nearly impossible to demonstrate physical or mental abuse beyond a reasonable doubt.

#### **Misuse of Section 498A**

A breach of this provision, its purposes, and its ambitions is on the rise, with women bringing frivolous false claims against their husbands to get rid of them or just harm the family. Abuse of this Section is on the rise, and well-educated women are fully aware that it is both cognisable and non-bailable, and swiftly operates on the woman's allegation and places the male behind the jail. Like in the case of *Savitri Devi v. Ramesh Chand & Ors (2003)*, the court concluded unequivocally that the provisions had been abused and exploited to the point where they were undermining marriage itself and proving to be detrimental to society as a whole.

The court held that to stop this from happening, legislators and government officials needed to assess the current circumstances and applicable laws. This Section was designed to safeguard married women from dishonest husbands, but it has been abused by a few women, as stated in *Saritha v R. Ramachandran (2002)*, where the court noted the contrary trend and requested the Law Commission and Parliament to make the offence non-cognisable and bailable.

Although making the offence non-cognisable and bailable is opposed by many women's rights organisations, who believe that doing so provides the accused an opportunity to avoid prosecution. However, this would offer the individual a fair opportunity and, more importantly, assist achieve the goals of justice.

Justice must defend the weaker and make sure that the aggrieved person has an opportunity to recoup what is rightfully theirs. When wives accuse their husbands of crimes under Section 498A IPC, which makes the offence non-bailable and cognisable, the man does not have an opportunity to obtain justice as soon as possible if he is innocent, as justice delayed is justice denied. Therefore, the legislators

must submit a suggestion for how to make this Section impartial toward everyone so that those who commit crimes are punished, and those who have been injured receive justice.

They still require rights to function effectively in society but frequently ignore others' rights while their own are protected. Today's educated women must support the idea of equality and demand it, but the tendency is gradually changing. Based on the rights guaranteed to them, women are taking advantage of the fact that they are considered the weaker sex and are abusing the rights of others.

The Supreme Court directives to the police to prevent misuse

From limiting the arbitrary use of the arrest authority under Section 498A of the Indian Penal Code, the Supreme Court issued some much-needed direction in *Arnesh Kumar v. State of Bihar (2014)* when police may arrest without a warrant and related topics. In this case, the petitioner, who was facing arrest in a case brought under Section 498A, filed an SLP before the Supreme Court after his previous attempt to obtain such relief was denied by the high court. The appellant-husband demanded Rs. 8 lakhs, a Maruti automobile, and an air conditioner, among other things, and threatened to remarry if such demands were not satisfied.

To minimise unwarranted arrests of the accused, the Apex Court issued the following required directives in this case to the police:

1. All state governments should direct their police officers not to arrest automatically when a case under Section 498A of the IPC is lodged, but rather to determine the need for arrest based on the standards outlined above in Section 41, Cr. PC.
2. All police officers are given a checklist comprising specific sub-clauses under Section 41(1)(b)(ii).
3. The police officer shall send the legally filed checklist and provide the grounds and documents that led to the arrest when referring/producing the accused before the Magistrate for further detention.
4. Before authorising the detention of the accused, the Magistrate shall read the report given by the Police officer in the conditions mentioned and only after recording its satisfaction would the Magistrate authorise detention.
5. Within two weeks of the day the case was instituted, the decision not to arrest an accused must be sent to the Magistrate with a copy to the Magistrate; this time frame may be extended by the District Superintendent of Police for reasons that must be stated in writing.
6. Within two weeks after the day the case was instituted, the accused must receive notice of their presence under Section 41A of the Criminal Procedure Code. The Superintendent of Police for the District may grant an extension for a cause that must be stated in writing.
7. Failure to comply with the aforementioned directives would subject the Police officers involved to departmental action as well as punishment for contempt of court, which will be brought before a High Court with territorial jurisdiction.
8. Authorising detention without documenting the aforementioned reasons by the Judicial Magistrate concerned is subject to departmental action by the competent High Court.

### **Constitutional validity of Section 498A IPC**

Section 498A of the Indian Constitution protects married women from mistreatment in the marital household. The provision was included in the IPC to protect women from domestic abuse. Even though women are widely mistreated. This is the most hotly discussed portion of the IPC. The number of IPC offences against women has grown over time. The majority of instances have been recorded in Delhi, India. Every year, a large number of crimes are perpetrated against women. Section 498A is unquestionably necessary because, while there may be misuse, genuine cases cannot be avoided on this basis. Measures can be taken to close the loopholes.

In the case of *Inder Raj Malik and others vs. Mrs Sumita Malik (1986)*, it was argued that this Section violated Article 14 and Article 20 (2) of the Constitution. The Dowry Prohibition Act also addresses situations of this nature; hence, the combination of both legislation creates a situation known as 'double jeopardy'. However, the Delhi High Court rejected this argument, ruling that this Section does

not create a scenario of double jeopardy. Section 498A differs from Section 4 of the Dowry Prohibition Act in that the latter punishes just the demand for dowry and no element of cruelty is required, whereas Section 498A deals with the aggravated version of the offence.

It penalises those requests for significant security or property from the wife or her family members that are accompanied by maltreatment against her. Therefore, a person may face charges for both offences covered by Section 4 of the Dowry Prohibition Act. This Section also grants the court broad authority in determining how to interpret the laws' language and how to punish offenders. This Section is not unconstitutional. It does not give courts unbridled authority.

In the well-known case of *Wazir Chand vs. the State of Haryana (1988)*, the facts surrounding the burning death of a newlywed woman did not demonstrate either murder or suicide facilitated by a third party. As a result, the in-laws avoided the clutches of Sections 300 and 306 of IPC, but they were caught in the web of this recently enacted Section for the prevention of dowry harassment. Not to mention the items they continue to demand from the girl's side, the fact that her father removed a significant amount of possessions from her marital home after she passed away indicated that pressure was applied to her in-laws and that it persisted up until her death to obtain additional funds and possessions.

With the growth of modernization, education, financial stability, and newly found independence, the radical feminist has turned 498A into a weapon. Many unlucky spouses and in-laws have fallen victim to their spiteful daughters-in-law.

Most cases in which Section 498A is used turn out to be fake as consistently acknowledged by Indian High Courts and the Supreme Court because they are just blackmail tactics by the wife or her close relatives when faced with a difficult marriage. In most situations, the 498A complaint is followed by a demand for a large sum of money or extortion to settle the issue outside of court.

## 4.8 Defamation

### IPC Chapter XXI: Section 499

Defamation is a procedure for check and balance on the Right to freedom of speech and expression (Article 19). It is a procedure to ensure that nobody harms the reputation of any person or tend to create a wrong opinion of the person who is defamed, in the eyes of the public.

To make you understand what it really is, suppose there are two party members, Meera and Subodh standing for election. Subodh says, "Meera is a corrupt person, I have seen her taking bribes in the past, so do not give her vote". This statement is untrue and harms the reputation of Meera, as no one in the public will give the vote to a corrupt person. This will directly hamper Meera's winning in the election.

To prevent this, provisions regarding Defamation are available in Section 499 to Section 502 of the Indian Penal Code. In this article, we will understand them in detail.

### Analysis of the offence of Defamation

#### Section 499 of the Indian Penal Code talks about defamation. So, what is defamation?

Any person who by spoken or written words, signs or visible gestures creates or publishes any imputation on any person with an intention to harm the reputation of that person. The person making such imputation should have the knowledge or a reason to believe that such imputation will ruin the reputation of the person.

However, there are many exceptions included in this Section. We will discuss them in the approaching topic.

### Reputation

To sue any person it is necessary to establish that real damage or harm has occurred to the reputation of the person. Only speaking or writing the words, picturing or gesturing does not amount to defamation until the reputation of the person has been harmed.

Harm to reputation is the only negative consequence that can arise from the act of defamation.

It could prove harmful to your professional career as well. For example, if someone pointing out to a shopkeeper says that you should not buy groceries from him as he sells low-grade things at a high rate. In this case, if the statement is found to be untrue then the reputation of the shopkeeper is being harmed as this will lead to the shortage of customers coming to his shop.

### **Publication**

For a person to be sued for defamation, it is required that the publication of the words he spoke or wrote must have happened. What does it mean?

It means that damage to the reputation of the person happens when the defamatory words have reached to any third person. Publication means that the third person has read, heard or seen the written, spoken, gestured or pictured defamatory words. If it has not happened then there is no ground to sue for defamation.

### **The distinction between English Law and Indian Law**

An act of defamation can occur in two forms, libel and slander.

**Libel-** it is a kind of defamation that is present in some permanent form such as in writing, printed or a picture.

**Slander-** it is a kind of defamation that is present in an unwritten form such as spoken words, gestures or representation made with hands.

In English law, there is a distinction made between both of the forms under the categories of criminal defamation and civil defamation.

Under criminal law, only libel is an offense and not slander. Whereas in civil law, libel is an offense just like in criminal law but the change here is that slander is also an offense when provided with proof.

In Indian law, both slander and libel are recognized as criminal offenses under Section 499 of IPC. Whereas, in the law of torts libel is actionable per se and slander is actionable. It means in the case of slander there has to be proof of the act of defamation.

### **D.P. Choudhary v. Kumari Manjulata**

In this case, it was published in a newspaper that Manjulata, a 17-year-old girl belonging to a well-known family, eloped with a boy who lived closeby. After this, her reputation got tainted and she suffered a lot of disgrace, as this news was completely false and was published with irresponsibility. Later on, the Court, in this case, ruled out the Rs. 10000, should be provided to the defendant as it amounted to defamation.

### **Forms of Publication**

There are various forms of publication in which the act of defamation can take place, let's look at them.

#### **Direct communication to the Defamed**

If any defamation is made directly to the defamed and is not heard by anybody else, then it is not defamation. It is necessary that any third party hears it through which the reputation of the defamed goes down.

#### **Publication by Repetition**

There is a limited period to sue for defamation. It is maintainable till one year since the act of defamation took place. For a single publication, an action for libel can arise but for repetitive or multiple publications, the action can arise every time the libel is published.

The Limitation Act, 1968 makes the limitation period of the libel on the internet to 1 year. After every publication on the internet, this period will get renewed.

### **Khawar Butt vs Asif Nazir Mir**

This case was decided in the year 2013. The Delhi High Court, in this case, ruled out to set aside the multiple publication rule on the internet and to follow only the single publication rule.

Printed Matters: Liability of editor and others Section 501 of the Indian Penal Code talks about the printing of defamatory things. It says that any person who prints or engraves such a matter which he knows or has reason to believe that such matter is of defamatory nature and hence, will lower down the reputation of the person and bring ridicule and disgrace to his/her character.

This Section checks for the printed defamatory matters and provides the provision for the punishment to the person who printed it. The punishment of a maximum of two years in jail or fine or both is provided under this Section. Now, let's understand what is the provision for the people who further sells the defamatory printed content.

Section 502 of the Indian Penal Code says that any person who sells or offers to sell any printed content that he knows or has reason to believe that it contains defamatory matter will be punished.

The punishment will either be imprisonment which can be extended to a term of two years or could be fine. In some instances, both can be imposed.

Therefore, through both of these Sections, the printing or engraving, selling or offering to sell, such a matter which contains some defamatory content, is a crime and is punishable.

### **Imputations concerning 'Any Person' ('किसी भी व्यक्ति' से संबंधित आरोप)**

In Section 499 of the Indian Penal Code the 'imputation concerning any person', is mentioned. Imputation in general terms means accusation or claim that someone has done something wrong. As far as the term 'concerning any person' is concerned, this means that defamation should be clear enough to point out the person to whom the defamation is intended to be made and if it is published to others then the third person is also able to clearly understand who is defamed by the publication.

### **Intention to Injure**

There has to be a knowledge or reason to believe that the act will certainly cause the defamation of the character of the person. It implies the mens rea of the person, that is the person should have the intention to harm the reputation of the other person.

To win a defamation lawsuit, the defendant should prove that he had honest intentions and no malice, and it was just an honest mistake.

### **Analysis of provisions of Sections 499 and 500, IPC**

The provisions regarding defamation are provided in Section 499 to 502. Section 501 and Section 502 has already been explained earlier in this article. Now, let's understand the provisions contained in Section 499 and Section 500.

Section 499 provides the definition of defamation and all the cases and exceptions of the act of defamation. This is a lengthy Section with explanations and in total 10 exceptions included in it.

Section 500 provides for punishment for the act of defamation.

### **Explanation 1: Defamation of the Dead**

In case, a person defames another person who has passed away or is already dead, by any means that is written, spoken, by gestures or pictures, then, it will be an act of defamation, this act would have harmed the reputation of the person if he would have been still alive, or in case it harms the reputation of the family or close relatives of the deceased.

### **Explanation 2: Defamation of a Company or a Collection of Persons**

If an act is intended to cause harm to a company or association or a group of people, then it will amount to defamation. This means under it companies or associations can slap a defamation suit against an individual.

### **Priya Parameshwaran Pillai v. Union of India and Ors.**

In this case, Priya, a Greenpeace activist, wrote in her blog that the environment is degraded by the power project which was set up by the Essar group. After which a suit of defamation was filed by the Essar group. Priya, in her argument, contended that the private companies should not be given the right to file a defamation suit against an individual. But her contention was set aside by the Court, not allowing any more questions and contentions to be added further. This particular case has its roots in the previous Subramaniam Swamy v. Union of India case. Let us discuss that now.

### **Subramaniam Swamy v. Union of India**

In the year 2014, Dr. Subramaniam Swamy alleged corruption charges on Ms. Jaylathitha. After which Ms. Jaylathitha framed defamation charges on Dr. Subramaniam Swamy. He in return challenged the constitutional validity of Section 499 and Section 500 of the India Penal Code. The court, in this case, upheld the constitutional validity of the offense of criminal defamation. And ruled out that Section 499 and Section 500 of the India Penal Code, impose reasonable restrictions on the right to freedom of speech and expression.

### **Explanation 3: Defamation by Innuendo**

Well, to be able to understand it we must first understand what innuendo in general terms means. Innuendo is a clever way to speak negative sentences in a very sarcastic way, which may appear to be positive at the surface of it. Under Section 499, defaming of any person by innuendo is a form of criminal defamation.

#### **Illustration**

- A says to B, pointing out to C, 'C is a very even-handed person, I have not seen him making any discrimination against G.

This is discrimination as A intended to point at C has a discriminatory person and that he has discriminated in the case of G.

- B asks A, 'do you think someone discriminated?'

A in return pointed at C and said, 'well you know, who can'. This is discrimination as it was said in a sarcastic way while pointing at C.

### **Explanation 4: What is Harming Reputation?**

#### **Defamation is an act by which a person's reputation is harmed, but what is harming reputation?**

According to explanation 4 given in Section 499, the reputation of a person is harmed when the act injures the moral or intellectual character of the person or lowers his credit. It also hampers the reputation if the act lowers down the person's character in the respect of his cast or his calling.

The act of defamation which let the others believe that the body of any particular person is in a detestable condition.

All of these acts are considered to harm the reputation of the person and comes under the offense of criminal defamation.

### **Exceptions provided in Section 499**

As mentioned earlier, there are ten exceptions in this Section. We will now have a look at them one by one.

#### **First Exception: Truth for Public Good**

This exception provides that if any information which is true and for the good of the public at large, then that is not covered under the act of defamation.

Things to be noted here is, first, the information should compulsorily be true. Second, the information should be of a kind that it benefits the public. Also, it is compulsory to publish that information.

### **Second Exception: Fair Criticism of Public Servants**

This exception provides that if an act in which the public servant is criticized for discharging any of his public functions or and the act of criticizing his conduct and character when it appears to be wrong and not otherwise. Then, such an act will not amount to defamation.

#### **Illustration**

If Ramesh mentions that the particular officer Z is very bad at his job, then this is not defamation under the following exception.

#### ***The element of Good Faith-Importance***

It is to be noted that any such comment made or views expressed must be made in good faith. That is, if it is made out of malice or in bad faith, it will be considered as an act of defamation.

#### ***The Opinion must be Fair and Honest***

Any opinion made criticizing the conduct, character or discharge of any functions of a public servant must be fair and honest. Otherwise, it will be considered as an offense of defamation.

### **Third Exception: Fair comment on public conduct of public men other than public servants**

If any person expresses his/her views and opinion on the conduct of any other person who discharges any kind of public functions, he will not be liable for the act of defamation.

The condition in regards to this is that such views and opinions should be made in good faith and with honesty. If it is made otherwise then the act will fall under the offense of defamation.

#### **Illustration**

If there is a meeting taking place which requires the support of the public or if Z applies for a petition against some action or doing of the government.

### **Rights of the Press: Summary of principles governing Rights of Press and Media**

No direct freedom is given concerning the media law, but Article 19 which gives the right to freedom of speech and expression per se provides this freedom to the media. The press is the watchdog of the public, that is why it is necessary to make certain that a positive impact is formed by the public after receiving any news and no negative opinion arises.

The owner, editor, and publisher, all of them in the line, are responsible if any news which defames anyone is published to any third person.

### **Defaming again here means the news which lowers someone's reputation or character.**

#### **Google India Pvt Ltd. v. Visakha Industries**

In this case, an article was published with a caption 'Poisoning the system: Hindustan Times'. In this article, the names of many famous politicians were mentioned which had nothing to do with the Visakha Industries.

The case ruled out that all of it does not amount to defamation. It should be noted that there is a difference of publication on the internet and publications in print media.

### **Fourth Exception: Report of proceedings of Courts of justice**

If any proceedings of the court or the result of any case given by the court are published then that will not amount to defamation. The conditions pertaining to this are such that publication should be true and apt.

### **Fifth Exception: Comment on Cases**

If any person publishes any information regarding the merits of the case or in regard to the conduct of any person who was a witness, in that case, it will not be defamation.

It is important to note, the element of good faith is requisite here.

#### **Illustration**

If A says that B seemed to lie on the witness stand. Here, this condition will fall under the ambit of this exception. But if A says that B was lying on the stand, as I know him as a man who can lie. Here, this will fall out of the exception and will amount to defamation. Why? Because he is applying his knowledge which is not included in the court proceedings.

### **Sixth Exception: Literary criticism**

If any person in good faith expresses his opinion in regards to the performance or character of the author, which the author has submitted to the judgment of the public or viewers, then it does not amount to defamation.

To explain this, the author must have by acts or expressly submitted her/his performance to the judgment of the public. If that is not the case, the act will amount to defamation.

#### **Some examples:**

1. An author of a book who publishes it submits it to the judgment of the public.
2. An actor who does a film submits it to the public to give its judgments.
3. A performer, who performs on the stage in front of the viewers submits it to the judgment of the public.

The thing to be noted is that any opinion which is made should be in consideration of the performance.

#### **Illustration**

X says 'Y must be a man with the wrong mindset'. This will fall under the exception.

But if X says, 'no wonder his book is indecent, for I know him as a man who is indecent himself'. This will not fall under this exception and amount to defamation.

### **Seventh Exception: Censure by One in Authority**

If any person passes censure on the conduct of any other person, then it will not amount to defamation, provided that the person applying censure should have the lawful authority or any authority arising out of a valid contract, over the person on whose matters the censure is applied.

#### **Illustration**

- Any employee being censored by the employer in good faith.
- In good faith, any teacher censures the conduct of a student in front of any other student.

### **Eighth Exception: Complaint to Authority**

If any person who has lawful authority over the other person, accuses him then it will not amount to defamation.

#### **Illustration**

If A in good faith prefers any accusation regarding X to a judge.

If a warden in good faith accuses a hosteller C to the dean of the college.

Kanwal Lal v. the State of Punjab

In this case, it was noted that the defense to fall under exception 8, the publication must be made before the authority of law. The District Panchayat Officer or the Panchayat had no such lawful authority in regards to the provisions of the Punjab Gram Panchayat Act, 1952, in which the Panchayats only had the jurisdiction.

### **Ninth Exception: Imputation for Protection of Interests**

If any accusations or imputations are made on another person in order to protect the interests of oneself, then it is not defamation.

#### **Illustration**

An employee D, who has been told to make a monthly report on the conduct of the employee of that sector, writes about the bad conduct of one employee Z then, he will fall under this exception.

### **Tenth Exception: Caution in Good Faith**

If any caution is made for the good of that person or for the good of the public then it will not amount to defamation.

## **On the Scope of Sections 499 and 500, IPC**

### **Distinction between Libel of Court and Contempt of Court**

This refers to the defamation of the Judge personally and the Contempt of Court. When the judge is personally defamed by any person then he can sue the person on his own personal capacity and not as a judge of the court.

On the other hand, Contempt of Court is the act that hampers the administration of justice and causes disrespect of the court. The Supreme Court and the High Court have the power to punish for contempt of itself under Article 129 and Article 215 of the Constitution, respectively.

In Perspective Publications v. the State of Maharashtra, it was noted that there has to be a distinction made between the libel and Contempt of Court. A test has to be taken to determine what the act constitutes, a disrespect of the judge or the hampering of the due process of the administration of law.

Whether accurate and true report of Assembly Proceedings published in newspapers would amount to Defamation

In Exception 4, it has been mentioned that true and accurate proceedings of the court will not fall under the ambit of defamation in reference to that, let's look at a case.

In Dr. Suresh Chandra Banerjee v. Punit Goala, it was ruled out that, the reports of the proceedings of the Parliament do not fall under the exception 4.

It was discriminatory on the part of the law. Later on, it was changed when Article 361A was introduced by the 44th Amendment Act, in the year 1978.

Under the Parliamentary Proceedings Act which came in the year 1977, protection by law has been given to the publication in newspapers or broadcasts by wireless telegraphy of substantially true reports of any proceedings of either House of Parliament. Further, it is provided that it should be made in good faith.

The publication can take place with the authority given by both Houses of the Parliament under Article 105(2) and by the State Legislature under Article 194(2).

### **Who should in a newspaper be prosecuted for making Defamatory Imputations?**

In the case of the newspaper, generally, people will think that only the editor will be held responsible for publishing defamatory matter but the fact is that the owner, author, editor, or distributor, all can be held liable for the act of defamation. It should be noted that vicarious liability will arise which will make the proprietor of the newspaper liable to pay damages arising out of it.

In the case of Narayan Singh v. Rajmal, the editor of the newspaper was absent and the defamatory matter was published by the sub-editor. The court ruled out that the editor was not responsible as he was absent with no bad intentions.

In the case, Mohammed Koya v. Muthukoya, it was ruled out that the Press and Registration of Books Act, 1867, only recognizes the editor as the legal entity and no one else, in the matter concerning the publishing of matter in a newspaper.

It was further clarified in another case of K.M. Mathew v. K.A. Abraham & Ors, the publisher of a book was charged with the offense of defamation. He moved to the High Court contending that under Section 7 of the Press and Registration of Books Act, 1867, only the editor can be held liable and not the chief editor of the newspaper. The High Court rejected his plea, then he further, sought plea to the Supreme Court that also rejected it.

The rationale of the court was that there can arise a presumption against the editor that he is responsible because he checks and selects the material which is to be published. But this is a matter which can be rebutted and under Section 7 of the Press and Registration of Books Act, the same presumption can also arise for someone else which has to be proved.

### **Defamation of Wife by Husband**

Law considers husband and wife as one and the private communication between them is privileged, according to Section 122 of the Indian Evidence Act, 1872.

In the case of T.J. Ponnen v. M.C Verghese, the husband wrote a letter to his wife containing defamatory matter. The court held that this was under Section 122 of the Indian Evidence Act 1872.

#### 4.9 Criminal Intimidation, Insult and Annoyance

##### IPC Chapter XXII: Sections 503 – 505

The Indian Penal Code, 1860 is the substantive law governing the criminal activities in India. Chapter XXII of the Code, consisting of Section 503-Section 510 provides for offences which fall in the nature of criminal intimidation, intentional insult and annoyance.

The law has an objective of punishing offenders for all kinds of criminal offences but in contemporary times, the law does not entirely mirror the changes that have taken place in society. Although the provisions are relevant and binding, they fail to address the technological advances in today's world. The law is archaic but provides a base for new developments.

##### Criminal Intimidation

The offence of criminal intimidation is defined under Section 503 of the Indian Penal Code, 1860. The provision states that anyone who threatens any other person on the following grounds is liable for criminal intimidation.

1. Threatens injury to his person;
2. Threatens injury to his reputation;
3. Threatens injury to his property;
4. Threatens injury to the person or reputation of anyone in whom the person is interested.

Further, the intention should be to cause alarm to that person; or to make them perform any act which they are not legally bound to do; or to omit any act which they are legally entitled to perform. If they are forced to do all of these acts as a means to avoid execution of such threat, this amounts to criminal intimidation.

The explanation of this section states that a threat to injure the reputation of a deceased person in whom the person threatened is interested is also covered under this section.

**Example:** 'A' for the purpose of inducing B to refrain from filing a complaint against him, threatens to kill B's wife. A is liable to be punished for the offence of criminal intimidation.

The Supreme Court in the case of Vikram Johar vs. State of Uttar Pradesh (2019) has observed that the mere act of abusing a person in a filthy language does not satisfy the essential ingredients of the offence of criminal intimidation. The complaint was that the accused came with a revolver to the complainant's house and abused him in a filthy language. They also attempted to assault him but when the neighbours arrived, they fled from the spot. The Bench held that the above allegations *prima facie* do not constitute the offence of criminal intimidation.

The Tripura High Court in its recent judgment of Shri Padma Mohan Jamatia vs. Smt. Jharna Das Baidya (2019) has observed that the mere use of abusive words/ filthy language and body posture during the speech of a political leader is not included within the ambit of the provisions of criminal intimidation under the IPC.

In the case of Manik Taneja vs. State of Karnataka (2015), the Apex Court held that posting comments about ill-treatment by the police personnel on Facebook Page may not amount to criminal intimidation. In this case, the appellant was involved in a road accident, wherein she clashed with an auto-rickshaw. The passenger of the auto sustained injuries and was subsequently admitted in a hospital. The appellant duly paid all the expenses of the injured and no FIR was lodged.

However, she was called to the police station and was allegedly threatened by the police officers. Aggrieved with the way that she was treated, she posted comments on the Facebook page of Bangalore Traffic Police, accusing the police officer of harsh behaviour and the harassment meted out to her. The Police Inspector filed a case against the appellants for this act and an FIR was registered under Sections 353 and 506 of the IPC. The Bench held that there was no intention on the appellant's part to cause alarm under Section 503 of the IPC.

In *Amitabh Adhar vs. NCT of Delhi (2000)*, it was held that a mere threat does not amount to criminal intimidation. There must be an intention to cause alarm to the person threatened.

In *Shri Vasant Waman Pradhan vs. Dattatraya Vithal Salvi (2004)*, it was held that intention is the soul of criminal intimidation. It needs to be gathered by the surrounding circumstances.

The Orissa High Court, in *Amulya Kumar Behera vs. Nabhagana Behera Alias Nabina (1995)* examined the meaning of the term 'alarm.' The Court held that the mere expression of any word without any intention to cause alarm was not sufficient to be brought under the ambit of Section 506. The Court also observed that this provision is relatively new, and originally terms like 'terror' or 'distress' had been proposed instead of 'alarm.'

The complainant, in this case, argued that he was abused in a filthy language by the accused and if the witnesses had not intervened, he would have suffered more injuries apart from a fist blow from the accused. The complainant admitted that he was not alarmed by the threat given by the accused. Hence, the Court held that since an essential ingredient of the offence was missing, no case could be established.

The Supreme Court elaborated the scope of Section 503, IPC in *Romesh Chandra Arora vs. State (1960)*. In this case, the accused-appellant was charged with criminal intimidation. The accused threatened a person X and his daughter, of injury to reputation by releasing a nude picture of the girl unless money was paid to him. The intent was to cause alarm to them. The Court stated that the aim of the accused was to cause alarm to get the money and to ensure that he did not go ahead with the threat of releasing the damaging photographs on a public platform.

### **The extent of nature of the threat**

It is not necessary that the threat is direct in nature. In *Re A.K. Gopalan vs. The State of Madras, Union of India: Intervener (1950)*, the Court held that if a speaker at a public meeting threatened police officers stationed at Malabar, with injury to their person, property or reputation – then he was liable for committing the offence of criminal intimidation.

In the case of *Anuradha Kshirsagar vs. State of Maharashtra (1989)*, the accused allegedly threatened the female teachers by shouting that the teachers should be caught by their hair, kicked on their waist and pulled out of the hall. The Bombay High Court ruled that these remarks constituted the offence of criminal intimidation.

### **The nature of the injury threatened**

In the case of *Nand Kishore vs. Emperor (1927)*, a butcher who sold beef was threatened that if he indulged in the acts of buying or selling beef, then he would be sent to jail. Further, his living in the municipality was also threatened. The Court held that this amounted to criminal intimidation.

In *Doraswamy Ayyar vs. King-Emperor (1924)*, it was held that the threat of punishment by God could not be included in the ambit of criminal intimidation. If the person who threatens is incapable of putting the threat to execution, then he cannot be held liable for the offence of criminal intimidation.

### **Punishment for criminal intimidation**

The punishment for the offence of criminal intimidation is laid down under Section 506 of the Indian Penal Code, 1860.

The provision is divided into two parts:

1. In simple cases of criminal intimidation, whoever commits criminal intimidation is liable to be punished with imprisonment for a period which may extend to two years, or a fine, or both.

**Classification of the offence:** This part is a non-cognizable, bailable and compoundable offence.

**Triable by: Any Magistrate**

2. If the threat is to cause:

- Death or grievous hurt;
- Destruction of any property by fire;

- To cause an offence to be committed which is punishable with imprisonment up to a term of seven years, life imprisonment or death;
- To attribute unchastity to a woman.

Then in the above-mentioned cases, the prescribed punishment is simple or rigorous imprisonment for a term extending to seven years; or a fine; or both.

The second part of the provision, as compared to the first part, deals with prescribing punishment for graver forms of criminal intimidation.

**Classification of the offence:** This part is a non-cognizable, bailable and non-compoundable offence.

**Triable by: Magistrate of the First Class**

It is important to note that, to attract the second part of this section it is essential that there is a threat of either causing death or grievous hurt.

In *Keshav Baliram Naik vs. State of Maharashtra (1995)*, it was alleged that the accused touched the hand of the prosecutrix, a blind girl, when she was asleep and further proceeded to remove her quilt and insert his hand inside her dress. He threatened to kill her if she disclosed his identity. The Court held this to be a case of criminal intimidation under Part II of the Section, apart from other offences.

In *Ghanshyam vs. State of Madhya Pradesh (1989)*, the accused entered the house at night, armed with a knife. He threatened to kill the residents. This was held to be criminal intimidation under Part II of the provision.

A proposal for reform in criminal law is, to include the threat of suicide with the intention of coercing a public servant to perform an act or omit an act, as a type of criminal intimidation.

**Criminal intimidation by anonymous communication(गुमनाम संचार द्वारा आपराधिक धमकी)**

Section 507 of the Indian Penal Code, 1860 is an aggravated form of intimidation. This section covers instances wherein the intimidator commits the offence anonymously. It has been stated in this section that whoever indulges into the act of criminal intimidation by anonymous communication or takes precautions to conceal his identity or abode, shall be punished with imprisonment which may extend up to two years. This punishment is in addition to the punishment provided for the offence under Section 506 of the IPC, 1860.

**Example:** If a person anonymously writes a letter to a person X, in which he threatens that he will burn X's house, then this is an offence under this Section.

**Classification of the offence:** Bailable, non-cognizable and non-compoundable.

**Triable by:** Magistrate of the First Class

The act caused by inducing a person to believe that he will be rendered an object of the Divine displeasure

Section 508 of the Indian Penal Code, 1860 covers this offence. The essential ingredients of the provision are stated below:

1. Any person who voluntarily either causes or attempts to cause any person to perform acts which the person is not legally bound to do or to omit to do any act which he is legally entitled to do.
2. By the way of inducing or attempting to induce the person.
3. To believe that if he does not perform the acts asked by the offender, then either the person or someone else in whom he has an interest, will become or will be rendered by some act of the offender an object of Divine displeasure.

The punishment is imprisonment for a duration which may extend to one year; or fine; or both.

**Classification of the offence:** Non-cognizable, bailable and compoundable by the person against whom the offence was committed.

**Triable by:** Any Magistrate

**Example 1:** The messages that are forwarded on various social media platforms to share a particular text to twenty other people or abstain from something, otherwise a Divine entity would inflict pain or any other method of divine displeasure, fall into the category of this offence.

**Example 2:** If a person 'A' threatens 'B' that if 'B' does not perform a particular act, then A will kill one of his own children, under such circumstances that the killing would be believed to render B an object of Divine displeasure. In such a case, an offence has been committed by A under this section.

Intentional insult with intent to provoke breach of the peace

Section 504 of the Indian Penal Code, 1860 deals with intentional insult. The provision states that any person who intentionally insults and as a consequence provokes any person, intending or knowing, that it is likely that such provocation will induce the person to break the public peace or indulge into the commission of some other offence, then such person shall be punished with imprisonment which may extend up to two years; or with fine; or both.

**Classification of the offence:** Non-cognizable, bailable and compoundable by the person insulted

**Triable by:** Any Magistrate

In the case of *Fiona Shrikhande vs. State of Maharashtra (2013)*, it was held that the intentional insult must be of such a degree that it should provoke a person to either break the public peace or indulge into the commission of any other offence. Merely abusing does not satisfy the ingredients of the offence.

In *Ramesh Kumar vs. Smt. Sushila Srivastava (1996)*, the Rajasthan High Court held that the manner in which the accused addressed the complainant was *prima facie* such that it depicts that the person was insulted and provoked. The term 'insult' means to either treat with offensive disrespect or to offer an indignity to the person. The inference has to be drawn not solely from words but also from the tone and the manner in which they were spoken.

In the case of *Abraham vs. State of Kerala (1960)*, it was clarified by the Kerala High Court that merely breaching good manners does not fall into the ambit of the section. The essential component of the offence is to figure out the intention of the offender.

In *Philip Rangel vs. Emperor (1931)*, the accused was a shareholder in a bank and had requisitioned a meeting for the shareholders. In the meeting, it was proposed that he should be expelled. The accused reacted to this by uttering abusive words. The Bombay High Court clarified that the words should amount to something more than 'mere verbal abuse.' The language cannot be held to amount to intentional insult if the Court arrives at the conclusion that there was no intention of the accused that the words should be 'taken literally' by those to whom it was addressed.

The Orissa High Court in the case of *Ram Chandra Singh vs. Nabrang Rai Barma (1998)*, the complainant stated that the accused had built a boundary wall over his roof. When the complainant protested, he was abused with filthy language. The Court held that whether mere abuse would amount to an offence under this section is dependent on various factors such as the status of the parties, the nature of abuse and several other factors. The Court held that such words are normally used by the parties in petty quarrels and hence did not amount to an offence under this provision.

It is not essential that there must be an actual breach of peace for the application of this section. The essential element is the intention of the offender to provoke the breach of the peace or he should have knowledge that his provocation is likely to cause the commission of an offence. This principle was observed in the case of *Devi Ram vs. Mulakh Raj (1962)*.

In *Mohammed Ibrahim Maracayar vs. Ismail Maracayar (1949)*, a father who lived in Vellore wrote an insulting letter to his daughter and her husband. The Court held that the reaction of the person insulted does not have to be considered. An intentional insult which would lead to provocation and subsequent breach of the peace would render the offender liable under this section.

**Statements conducing to public mischief**

Section 505 of the Indian Penal Code, 1860 lays down the provision with respect to statements conducive of public mischief.

The provision in its first clause states that any person who makes, publishes or circulates any statement or rumour or report with the intention:

1. To cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or the Air Force of India to mutiny or otherwise disregard or fail in his duty;
2. To cause, or which is likely to cause, fear or alarm to the general public, or to any particular section of the public whereby any person may be convinced to commit an offence against the State or against public tranquillity;
3. To incite, or which is likely to incite, any class or community of persons to commit any kind of offence against any other class or a community.

The perpetrator in all these aforementioned situations will be liable to be punished with imprisonment which may extend up to the duration of three years; or with fine; or both.

**Classification of the offence:** Non-cognizable, non-bailable and non-compoundable

**Triable by:** Any Magistrate

In *Kalicharan Mohapatra vs. Srinivasa Sahu (1959)* the Orissa High Court observed that although the provision is a definite restriction on the freedom of speech and expression, the offence committed should be construed in the favour of the defence. The Court held that legitimate display of grievances by means of publication of pamphlets, which some sections of the public may have against the authorities, cannot be brought under the ambit of this provision. It was held that such an act does not constitute an offence under this Section.

In the case of *Kedar Nath vs. State of Bihar (1962)*, the constitutional validity of Section 505 and Section 124A of the Indian Penal Code, 1860 was called into question. The Apex Court in its judgment said that each constituent element of Section 505 of IPC, 1860 has a reference to and a direct effect on the security of the State and the public order. It declared that Section 505 of IPC, 1860 did not exceed the boundaries of reasonable restriction for the purposes of the right of freedom of speech and expression.

**Statements creating or promoting enmity, hatred or ill-will between classes**

The second clause of Section 505 of the Indian Penal Code, 1860 states that any person who makes, publishes or circulates any statement or report which contains a rumour or alarming news on the following grounds:

1. Religion
2. Race
3. Place of birth
4. Residence
5. Language
6. Caste
7. Community

Such person shall be punished with imprisonment which may extend up to a duration of three years; or is liable to be fined; or both, for creating or promoting, or which is likely to create and promote, feelings of enmity, hatred or ill-will among various religious, racial, linguistic or regional groups or castes or communities.

**Classification of the offence:** Cognizable, non-bailable and non-compoundable

**Triable by:** Any Magistrate

If the aforementioned offence is committed by any person in a place of worship or in any assembly that is engaged in the performance of religious worship or religious ceremonies, then such a person is liable to be punished with imprisonment which may extend to a duration of five years and shall also be liable for paying a fine.

**Classification of the offence:** Cognizable, non-bailable and non-compoundable

**Triable by:** Any Magistrate

The exception to Section 505 of the Indian Penal Code, 1860 states that if a person who publishes or circulates any statement, rumour or report, has some reasonable grounds for believing that such statement, rumour or report is true and he published or circulated it in good faith and without any malice or intention, then it is not an offence under this section. The term good faith has been defined under Section 52 of the Indian Penal Code, 1860. Under this provision, due care and attention are required to constitute good faith.

In Bilal Ahmed Kaloo vs. State of Andhra Pradesh (1997), it was held that publication of the words or expression is a *sine qua non* for establishing an offence under Section 505(2) of the Indian Penal Code, 1860. The Court further stated that the words 'whoever makes, publishes or circulates' cannot be interpreted disjunctively. They are supplementary to each other.

In the case of Manzar Sayeed Khan vs. State of Maharashtra (2007), the Apex Court observed that merely inciting the feelings of one group or community without any reference to some other group or community, cannot be brought under the ambit of Section 505(2). It further emphasized that the effect of words should be judged from the standards of reasonable, strong-minded and courageous men. The perspective of weak and vacillating minds cannot be considered.

### **Word, gesture or act intended to insult the modesty of a woman**

Section 509 of the Indian Penal Code, 1860 lays down the offence of insulting the modesty of a woman through word, gestures or acts.

The provision states that any person who has the intention to insult the modesty of any woman and pursuantly utters any word; or makes any sound or gesture; or exhibits any object, with the intention that such sound or word shall be heard; or such object or gesture is seen by such woman, or if the offender intrudes the privacy of such woman – then such person is liable to be punished with simple imprisonment for a term which may extend to the duration of one year or is liable to be fined; or both. The intention of the offender should be considered. Even if it is not possible to place the exact words on record, if the Court arrives at a finding that the accused had the requisite intention then the offender can be punished for the same.

**Classification of the offence:** Bailable, cognizable and compoundable by the woman who was insulted or whose privacy was intruded, with the permission of the Court.

**Triable by:** Any Magistrate

Article 51(A)(e) of the Constitution of India, 1950 states that all the citizens of the country should strive to renounce practices which are derogatory to the women in India.

In the case of Emperor vs. Tarak Das Gupta (1925), the accused sent a letter to an unmarried nurse, with whom he had no previous acquaintance. The letter contained indecent overtures. The accused was held liable for outraging the modesty of a woman by exhibiting the object. The Court held that it was not necessary that the offender themselves should exhibit the object. An agent, such as the post office, can also be employed for fulfilling this purpose.

In the case of State of Punjab vs. Major Singh (1966), the offender indulged into an act of unnatural lust. He ruptured the hymen and caused a  $\frac{3}{4}$ " tear inside the vagina of a seven and a half months old female child. The Supreme Court, in this case, held that the act of outraging the modesty of a woman was not restricted by the age of the victim. It was also not dependent on the fact that whether the victim knew or was conscious about the acts being performed on her. They held that the accused had committed the offence of outraging the modesty of a woman. Justice Bachawat held that the essence of a woman's modesty is her sex, which a female of tender age also possesses. The crux of the issue is the culpable intention of the offender.

Justice Mudholkar stated that the reaction of the woman is not the sole criteria to see whether an act amounts to outraging the modesty of a woman.

These aforementioned views were reiterated in the case of Mrs Rupan Deol Bajaj & Anr. vs. Kanwar Pal Singh Gill & Anr. (1995). In this case, the complainant held the position of a senior IAS officer of the Punjab Government. It was alleged that, in a party hosted at a colleague's house, the accused herein, who held the post of the Director-General of Police, Punjab slapped her posterior and behaved

indecently with her in front of the gathering. The Apex Court held that the ultimate test for ascertaining if the modesty has been outraged is that – if the actions of the offender could be perceived as such which are capable of shocking the sense of decency of a woman. The Court held the accused guilty of the offence.

In the case of *J.Jaishankar vs. Government of India & Anr. (1996)*, the Apex Court observed that the conviction of the offender under Section 509 of IPC, 1860 involved moral turpitude.

### **Misconduct in public by a drunken person**

Section 510 of the Indian Penal Code, 1860 deals with the offence of misconduct by a drunken person in public.

The provision states that any person who is in a state of intoxication appears in a public place, or in any place which constitutes trespass if he enters it and there if he conducts himself in a manner which may cause annoyance to any person, then such a person is liable to be punished with simple imprisonment for a term which may extend to a period of twenty-four hours or is liable to be fined for a sum which may extend to ten rupees; or both.

**Classification of the offence:** Non-cognizable, bailable and non-compoundable

**Triable by:** Any Magistrate

This provision covers the acts of an intoxicated person who causes annoyance to other people. It is essential to note that the provision governs an intoxicated person who causes annoyance. Mere intoxication is not covered by this provision. The nature of this offence could be that the offender is causing annoyance in public or they refuse to leave a certain place where they do not have a right to enter without the permission of the owner. It is also crucial to note that no *mens rea* is required for this offence.

Further, to analyse this section from a contemporary perspective, it can be observed that the punishment holds no value. Imprisonment for 24 hours is not sufficient. Even the amount of fine imposed on the offenders holds negligible value. It is necessary to revamp the status quo by introducing reforms in criminal law, which address these issues.

*The End*