LAW OF CRIMES (INDIAN PENAL CODE)

UNIT-I General

1. Concept of crime
2. Distinction between crime and other wrongs
3. McCauley's draft based essentially on British notions
4. Salient features of the I.P.C.
5. IPC: a reflection of different social and moral values
6. Applicability of I.P.C.- territorial and personal

UNIT-II Element of Criminal Liability

1. Person definition - natural and legal person
2. Mens rea- evil intention
3. Recent trends to fix liability without mens rea in certain socio- economic offences
4. Act in furtherance of guilty intent- common object
5. Factors negativing guilty intention
6. Definition of specific terms

UNIT-III Group liability

1. Common Intention
2. Abetment
3. Instigation, aiding and conspiracy
4. Mere act of abetment punishable
5. Unlawful assembly
6. Basis of liability
7. Criminal conspiracy
8. Rioting as a specific offence

General Exceptions :

9. Mental incapacity
10. Minority
11. Insanity
12. Medical and legal insanity
13. Intoxication
14. Private defence-justification and limits
15. When private defence extends to causing of death to protect body and property
16. Necessity
17. Mistake of fact
18. Offence relating to state
19. Against Tranquility
20. Contempt of Lawful Authority

UNIT-IV Offences against human body

1. Culpable homicide
2. Murder
3. Culpable homicide amounting to murder
4. Grave and sudden provocation
5. Exceeding right to private defence
6. Hurt - grievous and simple
7. Assault and criminal force
8. Wrongful restraint and wrongful confinement- kidnapping- from lawful guardianship, outside India
9. Abduction

Offences Relating to Marriage

1. Theft 2. Robbery, Dacoity 3. Cheating 4. Extortion 5. Mischief 6. Criminal misrepresentation and criminal breach of trust 7. Offences relating to Documents and properties.

Unit-V Types of Punishment

1. Death
2. Social relevance of capital punishment
3. Imprisonment- for life, with hard labour, simple imprisonment
4. Forfeiture of property
5. Fine
6. Discretion of court in awarding punishment
7. Minimum punishment in respect of certain offences

LAW OF CRIMES (INDIAN PENAL CODE)

UNIT-I GENERAL

1. CONCEPT OF CRIME

CRIME denotes an unlawful act punishable by a state. The term "crime" does not, in modern criminal law, have any simple and universally accepted definition, though statutory definitions have been provided for certain purposes. The most popular view is that crime is a category created by law; in other words, something is a crime if declared as such by the relevant and applicable law. One proposed definition is that a crime or **offence** (or **criminal offence**) is an act harmful not only to some individual or individuals but also to a community, society or the state ("a public wrong"). Such acts are forbidden and punishable by law. The notion that acts such as murder, rape and theft are to be prohibited exists worldwide. What precisely is a criminal offence is defined by criminal law of each country. While many have a catalogue of crimes called the criminal code, in some common law countries no such comprehensive statute exists.

The state (government) has the power to severely restrict one's liberty for committing a crime. In modern societies, there are procedures to which investigations and trials must adhere. If found guilty, an offender may be sentenced to a form of reparation such as a community sentence, or, depending on the nature of their offence, to undergo imprisonment, life imprisonment or, in some jurisdictions, execution.

Usually, to be classified as a crime, the "act of doing something criminal" (actus reus) must – with certain exceptions – be accompanied by the "intention to do something criminal" (mens rea).

While every crime violates the law, not every violation of the law counts as a crime. Breaches of private law (torts and breaches of contract) are not automatically punished by the state, but can be enforced through civil procedure.

2. DISTINCTION BETWEEN CRIME AND OTHER WRONGS

Differences between Tort and a Crime

TORT	CRIME
Tort is tried in Civil Courts	Crimes are tried in Criminal Courts
A person who commits Tort is a 'tortfeasor'	A person who commits Crime is a 'Criminal' or 'Offender'
The remedy of tort is unliquidated damages or other equitable relief to the injured	The remedy is to punish the offender
Tort litigation is compoundable	Criminal cases are not compoundable except in case of exceptions as per Section 320 Cr.PC of IPC

3. MCCAULEY'S DRAFT BASED ESSENTIALLY ON BRITISH NOTIONS

Indian Penal Code (IPC) is the main criminal code of India. It is a comprehensive code intended to cover all substantive aspects ofcriminal law. The code was drafted in 1860 on the recommendations of first law commission of India established in 1834 under the Charter Act of 1833 under the Chairmanship of Thomas Babington Macaulay. It came into force in British India during the earlyBritish Raj period in 1862. However, it did not apply automatically in the Princely states, which had their own courts and legal systems until the 1940s. The Code has since been amended several times and is now supplemented by other criminal provisions. Based on IPC, Jammu and Kashmir has enacted a separate code known as Ranbir Penal Code (RPC).

After the departure of the British, the Indian Penal Code was inherited by Pakistan as well, much of which was formerly part of British India, and there it is now called the Pakistan Penal Code. Even after the independence of Bangladesh (Formerly known as East Pakistan) from Pakistan (Formerly known as West Pakistan), it continued in force there. It, the Indian Penal Code, was also adopted by the British colonial authorities in Burma, Ceylon (now Sri Lanka), the Straits Settlements (now part of Malaysia), Singapore and Brunei, and remains the basis of the criminal codes in those countries.The Ranbir Penal Code applicable in that state of Jammu and Kashmir of India, is also based on this Code.

The draft of the Indian Penal Code was prepared by the First Law Commission, chaired by Thomas Babington Macaulay in 1834 and was submitted to Governor-General of India Council in 1837. Its basis is the law of England freed from superfluities, technicalities and local peculiarities. Elements were also derived from the Napoleonic Code and fromEdward Livingston's Louisiana Civil Code of 1825. The first final draft of the Indian Penal Code was submitted to the Governor-General of India in Council in 1837, but the draft was again revised. The drafting was completed in 1850 and the Code was presented to the Legislative Council in 1856, but it did not take its place on the statute book of British India until a generation later, following the Indian Rebellion of 1857. The draft then underwent a very careful revision at the hands of Barnes Peacock, who later became the first Chief Justice of the Calcutta High Court, and the future puisne judges of the Calcutta High Court, who were members of the Legislative Council, and was passed into law on 6 October 1860. The Code came into operation on 1 January 1862. Unfortunately, Macaulay did not survive to see his masterpiece come into force, having died near the end of 1859

4. SALIENT FEATURES OF THE I.P.C.

Objective of the Indian Penal Code

The objective of this Act is to provide a general Penal Code for India. Though this Code consolidates the whole of the law on the subject and is exhaustive on the matters in respect of which it declares the law, many more penal statutes governing various offences have been created in addition to this code.

The Indian security system has been one that has gone through a lot of tests and examinations throughout the time. This is due to the political as well as the social situation of the country. India is a land of diverse cultures and traditions and it is a place where people from various religions as well as ethnic backgrounds live together.

Indian Penal Code Format

The Indian Penal code has a basic format, it's a document that lists all the cases and punishments that a person committing any crimes is liable to be charged. It covers any person of Indian origin. The exceptions are the military and other armed forces, they cannot be charged based on the Indian Penal Code. They have a different set of laws under the Indian Penal Code as well.

The Indian Penal Code has its roots I the times of the British rule in India, formulating in year 1860.Amendments have been made to it in order to incorporate a lot of changes and jurisdiction clauses. One such amendment is the inclusions of section 498-A.The total number of sections contained in the Indian Penal Code are five hundred eleven. All these sections pertain to a

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

The Indian judicial system is one that has evolved into a stable and fair system of detention and penalizing, after being tested well for several years. The judiciary of the country is a body of people who are given the task of execution of the laws made by the government, that is, the judiciaries of a country are its law enforcers. However, the judicial representatives cannot assess the cases of crimes or misconduct on their own perceptions or rules. There has to be a single system or a document that acts as a standard to all the decision making process and the penalizing norms. Such a document exists in all countries and in case of India, it is referred to as The Indian Penal Code. The Indian Penal Code is applicable to all the citizens of India who commit crimes or actions suggesting misconduct in the Indian territory. The document is applicable to ships as well as aircrafts within the Indian seas or the airspace as well.

Indian penal code is the skeleton of the Indian criminal justice system.

There are certain questions that are frequently asked by a layperson for basic understanding of rights for example,

1. What exactly Indian Penal code is?
2. How and when did it originate?
3. What is its applicability?
4. How does it work?
5. To what extend it helps the law enforcement agencies?
6. What is modus operandi of judges while applying the relevant sections?

These questions are answered as follows-

Indian Penal Code is a document that has been formulated to counter crimes of various natures and breach of law. IPC traces its roots to the British colonial rule in India.IPC covers any Indian citizen or a person of Indian origin with the exceptions to any kind of military or the armed forces crimes, which are handled by a dedicated list of armed force acts.

The most important feature of the Indian Penal Code is the impartial nature of judgments promoted by the document. The Indian Penal Code does not include any special favors for any special person at some position. Thus, the Indian Penal Code stands alike for government employees, as for a common man, and even for a judicial officer. This builds up the faith of the common citizens in the law making and enforcing bodies in the country and prevents any sort of corruption or misuse of power on the part of the people in power.

All in all, the Indian Penal Code of the present day has done away with almost all its flaws and has evolved into a modern law enforcing document that takes into consideration the humane side of the personalities of culprits as well. This has escalated and improved the Indian system of Law to greater heights and has led to a firm respect for it in every citizen of the country.

Importance of The Penal Code

Indian Penal Code is a very important set of regulation which is very important for the system to be operated in a proper way. It is the main criminal code of India. They are various offences that are made under this law. The Indian Penal Code includes all the relevant criminal offences dealing with offences against the state, offenses for public, offences for armed forces, kidnapping, murder, and rape. It deals with offense related to religion, offences against property and it has an important section for offences for marriage, cruelty from husband or relatives, defamation and so on so forth. This was a general over view of the structure of Indian Penal Code. It is not only important for India

but every country should have an Penal Code in order for its system to be operated in a systematic way. This document majorly covers all the basic offences which are highlighted in the society.

5. IPC: A REFLECTION OF DIFFERENT SOCIAL AND MORAL VALUES

Values

Values are the rules by which we make decisions about right and wrong, should and shouldn't, good and bad. They also tell us which are more or less important, which is useful when we have to trade off meeting one value over another. It is beliefs of a person or social group in which they have an emotional investment (either for or against something).

Morals

Morals have a greater social element to values and tend to have a very broad acceptance. Morals are far more about good and bad than other values. We thus judge others more strongly on morals than values. A person can be described as immoral, yet there is no word for them not following values.

IPC reflects different social and moral values while defining the crime and its punishments.

6. APPLICABILITY OF I.P.C.- TERRITORIAL AND PERSONAL

Personal Jurisdiction

Section 2 of the Indian Penal Code says that every person irrespective of his/her rank, nationality, caste or creed shall be liable for an offence committed in India and of which he is found guilty. It expends to foreign nationals also.

Eg: Adultery is not an offence in America, but is an offence under Section. 497 of the Indian Penal Code.

Exceptions

The following persons are always exempted from the jurisdiction of Criminal Courts as certain rights and privileges are conferred on them.

1. Foreign Soverigns
2. Ambassadors
3. Alien enemies
4. Foreign Army
5. Warships
6. President and Governors.

President and Governors of the Country are exempted from Jurisdiction of Criminal Courts under Article 361 of the Indian Constitution.

Territorial Jurisdiction

A person shall be liable for an offence committed over/throughout the territory of the State. Territory includes land and sea comprising of territorial waters.

CONCLUSION

The Indian Penal Code was passed in the year 1860. However, it came into effect from January 1, 1862. The Indian Penal Code applies to the whole of India except for the state of Jammu & Kashmir. It contains 23 Chapters and 511 Sections. Before the Indian Penal Code came into effect, the Mohammedan Criminal Law was applied to both Mohammedans and Hindus in India.

******

UNIT-II ELEMENT OF CRIMINAL LIABILITY

1. PERSON DEFINITION - NATURAL AND LEGAL PERSON

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

2. MENS REA- EVIL INTENTION ,
5. FACTORS NEGATIVING GUILTY INTENTION

INTRODUCTION:

As a general rule, unless a person has committed the necessary ''actus reus'', he cannot be found guilty; nevertheless there are some exceptions. Now, it is apt to see that '' mens rea, in Anglo-American law, criminal intent or evil mind. In general, the definition of a criminal offense involves not only an act or omission and its consequences but also the accompanying mental state of the actor...[1]''

The concept of mens rea developed in England during the latter part of the common-law era (about the year 1600) when judges began to hold that an act alone could not create criminal liability unless it was accompanied by a guilty state of mind.

Crimes involving mens rea are of two types, (i) crimes of basic intent and (ii) crimes of specific intent. In the former clause of crimes, the mens rea does not go beyond the actus reus. In the second, it goes beyond the contemplation of prohibited act and foresight of its consequence has a purposive element. Legal mens rea means the mental element necessary for the particular crime, and this mental element may be either intention to do immediate act or bringing about the consequence or (in some crimes) recklessness as to such act or consequence. In a different and more precise language, the mens rea means intention or recklessness as to the element constituting actus reus. These two concepts, intention and recklessness, hold a key to the understanding of large part of criminal law, some crimes require intention and nothing else will do, but some can be committed either intentionally or recklessly. Some crimes require particular kind of intention or knowledge.

The Apex Court in the case of Director of Enforcement vs. M.C.T.M.Corporation Pvt. Ltd.- observed thus : "Mens rea" is a state of mind. Under the criminal law, mens rea is considered as the "guilty intention" and unless it is found that the accused had the guilty intention to commit the crime he cannot be held guilty of committing the crime."

The concept of mens rea is aptly described by Their Lordships of Apex Court in the case of Nathulal vs. State of Madhya Pradesh - . In para no.4 of the judgment Their Lordships observed thus : "The law on the subject is fairly well settled. It has come under judicial scrutiny of this Court on many occassions. It does not call for a detailed discussion. It is enough to restate the principles. Mens rea is an essential ingredient of a criminal offence. Doubtless a statute may exclude the element of mens rea, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded mens rea. The mere fact that the object of the

statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of an offence. Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the objection of the statute would otherwise be defeated[2]."

Mens rea: Latin term for "guilty mind"; guilty knowledge or intention to commit a prohibited act. Also: "a particular state of mind such as the intent to cause, or some foresight of, the results of the act or the state of affairs." (R v Daviault [1994] SCR 63 at para. 74) Many serious crimes require the proof of *mens rea* before a person can be convicted. In other words, the prosecution must prove not only that the accused committed the offence (actus reus) but that he (or she) did it knowing that it was prohibited; that their act (or omission) was done with an intent to commit the crime. A maxim rich in tradition and well known to law students is actus non facit reum, nisi mens sit rea or "a person cannot be convicted and punished in a proceeding of a criminal nature unless it can be shown that he had a guilty mind". Not all offences require proof of *mens rea* such as many statutory or regulatory offences[3].

As long back as 1895. Wright J. observed in Sherras v.De Rutzen."There is a presumption that mans rea, an evil intention of knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subjectmatter with which it deals, and both must be consi- dered."

***Mens Rea*: Is it required in all cases?**

Considering the question of requirement of mens rea, the Hon'ble Supreme Court in Gujarat Travancore Agency v. Commissioner of Income-tax, Kerala **observed:** ...In the case of a proceeding under Section 271(1)(a), however, it seems that the intention of the Legislature is to emphasise the fact of loss of revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection, the terms in which the penalty falls to be measured are significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea, it is generally sufficient to prove that a default in complying with the statute has occurred. In para 13, In Commissioner Central Excise vs Kc Alloys And Steel Castings which was decided on 3 August, 2006, it was held that '' It may also be noticed that though, normally, element of mens rea is mandatory requirement before penalty can be imposed but it is not always so required.''

In **Deepa And Ors. vs S.I. Of Police, And Anr.** it was held that ''Normally a charge must fail for want of mens rea but there may be offences where mens rea may not be required. But actus reus must always exist. Without it there cannot be any offence. Mens rea can exist without actus reus, but if there is no actus reus there can be no crime. Even if mens rea is there, no conviction could be had without actus reus without which there cannot be a crime. For example a man may intend to marry during the lifetime of his wife and enter into a marriage believing that he is committing the offence of bigamy. Mens rea is there. But if unknown to him his wife died before he married again, in spite of the mens rea there cannot be an offence of bigamy.

In 'Lal Behari v. State (E)', **it was held by the Hon'ble Bench of Allahabad High court that no mens rea is required for an offence of contempt of court; what was meant is that no criminal intention or motive behind the deliberate doing of an act is required.**

CONCLUSION:

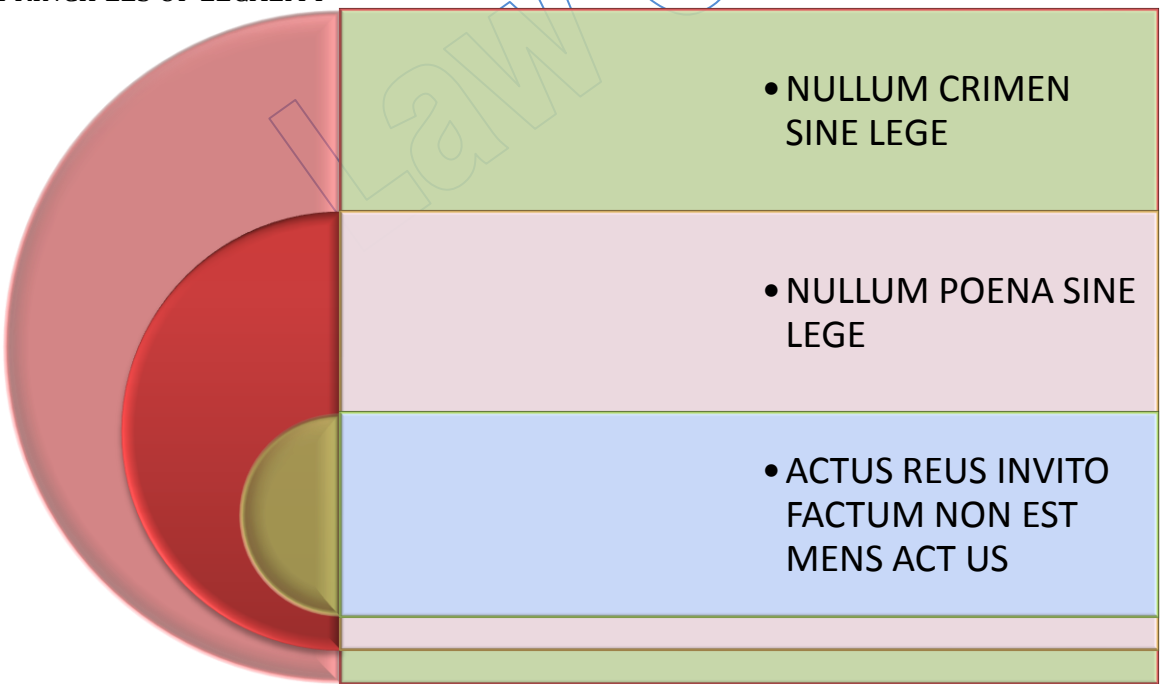
Mens rea was an essential ingredient of an Offence. An application of the rule of construction to this principle meant that there was no presumption that mens rea was excluded form statutory

offences. Under common law "It is a sound rule to construe a statute in conformity with the common law rather than against it, except where and so far the statute is plainly intended to alter the course of the common law. Let me conclude this article with observation of the Hon'ble Full Bench of Andhra Pradesh High Court, in Additional, Commissioner, Income Tax v. Durga Pandari Nath Tulijayya & Co., where it was observed as under:- "The doctrine of mens rea is of common law origin developed by Judge-made law. It has no place in the Legislator's law. It has no place in the Legislator's law where offences are defined with sufficient accuracy.... Mens rea is an essential ingredient of an offence. However, it is a rule of construction. If there is a conflict between the common law and the statutory law, it has always been held that it is a sound rule to construe a statute in conformity with the common law. But it cannot be postulated that statute cannot alter the course of the common law. The parliament, in exercise of its constitutional powers makes statutes and in exercise of those powers it can affirm, alter or take away the common law altogether. Therefore, if it is plain from the statute that it intends to alter the course of the common law, then the plaint meaning should be accepted. The existence of mens rea as an essential ingredient of an offence has to be made out by the construction of the statute."

3. RECENT TRENDS TO FIX LIABILITY WITHOUT MENS REA IN CERTAIN SOCIO- ECONOMIC OFFENCES

There are two stages of mind which constitutes mensrea and they are intention and recklessness.
Recklessness- The conduct where by the actor does not desire harmful consequence but nonetheless foresees the possibility and consciously takes the risk.
Commissioner of IT Patiyala vs M/S Patra Dass Raja Ram Beri Rohtak 1982 –
Mensrea means guilty mind.It may also include recklessness relating to circumstances and consequences of an act which comprises the actus reus.
• Director of Enforcement Vs.Metm Corporation Pvt Ltd AIR 1996
Mensrea is a state of mind. Mensrea considers as the guilty mind until the proved the guilty intention of accused, he cannot be guilty of committing the crime.

PRINCIPLES OF LEGALITY –



MENSREA and NEGLIGENCE

Assistant commission v.M/S velliappa Textile Mills LTD.2003

Mensrea and negligence are both fault elements which provide a basis for imposition of liability in criminal cases. Mensrea focuses on the mental state of the accused.

Mensrea means Knowledge of the wrong fulness of the act .Its importance is reflected in the common law principle – Actus non facit reus nisi mens sit rea. An act does not make a guilty man unless his intention were so.

--In the earliest times trials were held on fundamental presumption that a man must almost in every case can be deemed to have intended to do what he had done.

--Older English criminal law started with strict Liability and no difference between.crime and tort- and had to pay compensation (money)

--But later on bodily punishment came as a substitute of the payment of damages . It was then that importance of mensrea or mental attitude of person, at the commission of crime was realized. With the passage of time the requirement of mensrea as an essential element of a crime has firmly taken its roots.

OBJECT OF MENSREA

The object of law is always to punish a person with a guilty mind. It does not want to put behind bars an innocent person who may have had the misfortune of being involved in an incident.(To protect innocent person)

MENSREA and STATUTARY OFFENCES /DEVLOPMENT

Mensrea is important for every crime defined in the statute even where it is not expressly mentioned as an ingredient has been discussed in a number of cases both English and Indian.

R.Vs PRINCE 1875 and QUEEN Vs.TOLSON 1889

BOTH ARE LAND MARK JUDGEMENTS-In R.vs.Prince Held -It is proved that the girl was in the possession of her father ad that he look her knowingly that he trespassed on the father's rights and had no colour of excuse for so doing .

Excuse was he believed bonafidely she was 18 years old but in actualty proved she was 14 yr old QUEEN Vs TOLSON 1889.

Jury found that at the time of second marriage she in good faith and on reasonable grounds believed her husband to be dead.

-held that –bonafide belief on reasonable grounds in the death of the husband at the time of second marriage afforded a good defense of the indictment and that the conviction was wrong.

The Supreme court in many cases has held mensrea to be an essential element of every crime unless it has been specifically excluded by the statue creating the offence.
For example-Position of mensrea in India has been explained and highlighted by the Supreme Court in the following cases-
STATE OF MAHARASTRA Vs.M.N.GEORGE 1965.
Nathu Lal Vs State of M.P. 1966.
Kartar Singh v.state of Punjab.1994
Assistant commissioner Vs M/S.vellippa Textiles 2004
Guljog industries Vs CTO Commercial Tax Officer 2007
State of Rajsthan Vs Shera Ram 2012.
S.C. has held that mensrea is a essential ingredient of every offence. But however statute creating the offence may exclude it. But it is a sound rule of interpretation adopted in England and also accepted in India to interpret a statutory provision
47th report of law common of India- desirable the mensrea may be excluded –

MENSRA IN I.P.C-1860-
The General term mensrea as such does not figure in the IPC Inspite of the fact that it remains as integral and important part of every crime embodied in I.P.C.
Indian law being codified uses specific terms indicating a specific type of mensrea required for the particular offence. Every definition in I.P.C starts with the word such as-intentionally (37) or knowingly (Section 35) ,Voluntarily(Section 39) ,dishonestly (Section 24) or fraudulently(u/s.25), Malignantly (153 and 270),Wantonly(153)
Maliciously (219 and 220),Wrongful gain or wrongful loss.(sec23),Reason to believe(16)
All these words reflecting blame worthy mental condition of a particular kind of mensrea
For example-Chapter 16 – affecting human body in chapter 16. It is intention, knowledge, rashness, negligent voluntarily which denotes mensrea.
Where as offences relating to property in chapter 17 it is dishonestly fraudulently which signifies mensrea.

RECENT TRENDS TO FIX CRIMINAL LIABLITY IN SOCIO-ECONOMICS OTHER WITHOUT MENSREA
47TH Report of law on trial and punishment of socio economic offences of tax evasion , profiteering ,adulteration of food, corruption etc. for effective handling of socio economic offences .The commission suggested changes in criminal liability.
Mensrea presumed
113A –evidence –shifts on 498.A of I.P.C which deals with cruelty etc.
Presumption of mensrea in specific offences
Sec 10-of Essential Commodities Act,1955
Sec 138-A Customs Act,1962
Sec 20-Prevention of corruption Act1988 Provide presumption of mensrea fixing criminal Liability.on Proof Actus reus.

4. ACT IN FURTHERANCE OF GUILTY INTENT- COMMON OBJECT

SECTION 34: ACTS DONE BY SEVERAL PERSONS IN FURTHERANCE OF COMMON INTENTION- According to Section 34, when a criminal act is done by several persons in furtherance of 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.

II. **OBJECT OF SECTION 34:-** Section 34 lays down only a rule of evidence and does not create a substantive offence. This section is intended to meet cases in which it may be difficult to distinguish between the acts of the individual members of a party or to prove exactly what part was taken by each of them in furtherance of the common intention of all. This section really means that if two or more persons intentionally do a thing jointly, it is just the same as if each of them has done it individually. The reason why all are deemed guilty in such cases is that the presence of accomplices gives encouragement, support and protection to the person actually committing an act.

III. **ELEMENTS OF SECTION 34:** To attract the application of Section 34, the following conditions must be satisfied:-

1. **Some Criminal Act: -** 'Criminal act' used in section 34 does not refer to individual acts where a crime is committed by a group of persons. Where a crime is committed by several persons in furtherance of common intention of all of them, each of them doing some act, similar or diverse, big or small shall be liable for that act. 'That act' refers to the 'criminal act' used in section 34 which means the unity of criminal behaviour which results in something for which an individual would be punishable if it were all done by himself alone in an offence.

2. **Criminal Act Done By Several Persons: -** The criminal act in question must have been done by several persons i.e. by more than one person. The number of wrong doers should be at least two. Most importantly, if the criminal act was fresh and independent act springing wholly from the mind of the doer, the others are not liable merely because when it was done they were intending to be partakers with the doer in a different criminal act.

3. **Common Intention:-** The words "in furtherance of the common intention of all" were added to section 34 after words 'persons' in 1870 the idea for which, possibly, was derived from the following passage of the Privy Council's judgment:

"Where parties go with a common purpose to execute a common intention, each and everyone becomes responsible for the acts of each and every other in execution and furtherance of their common purpose, as the purpose is common so must be the responsibility." [Ref. Ganesh Singh v. Ram Raja, (1869) 3 Beng LR (PC) 44, 45]

The expression 'common intention' means unity of purpose or a pre-arranged plan; it has been given various meanings which are as follows-

- Common intention implies a pre-arranged plan, prior meeting of minds, prior consultation in between all the persons constituting the group [Ref. Mahboob Shah v. Emperor, AIR 1945 PC 118]
- Common intention means the mens rea necessary to constitute the offence that has been committed [Ref. As per DAS, J., in Ibra Akanda v. Emperor, AIR 1944 Cal. 339].
- It also means evil intent to commit some criminal act, but not necessarily the same offence which is committed [Ref. As per WANCHOO, J., in Saidu Khan v. The State, AIR 1951 All 21 (F.B.)].
- Common intention implies a pre-arranged plan. Pre-arranged plan means prior concert or prior meeting of minds. Criminal act must be done in concert pursuant to the pre-arranged plan. Common intention comes into being prior to the commission of the act in point of time.
- Where there is no indication of premeditation or of a pre-arranged plan, the mere fact that the two accused were seen at the spot or that the two accused fired as a result of which one person died and two others received simple injuries could not be held sufficient to infer common intention [Ref. Ramachander v. State of Rajasthan, 1970 Cr.L.J. 653].
- However, common intention may develop on the spot as between a number of persons and this has to be inferred from the act and conduct of the accused, and facts and circumstances of the case [Ref. **Kripal Singh v. State of U.P**., AIR 1954 SC 706].

4. **Participation In The Criminal Act:-** The participation in a criminal act of a group is a condition precedent in order to fix joint liability and there must be some overt act indicative of a common intention to commit an offence. The law requires that the accused must be present on the spot during the occurrence of the crime and take part in its commission; it is enough if he is present somewhere nearby.

The Supreme Court has held that it is the essence of the section that the person must be physically present at the actual commission of the crime. He need not be present in the actual room; he can for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape, but he must be physically present at the scene of the occurrence and must actually participate in the commission of the offence some way or other at the time crime is actually being committed.

The first leading case on the point is Barendra Kumar Ghosh v. King Emperor, AIR 1925 PC 1 (also known as Shankari Tola Post Office Murder Case).

IV. **COMMON OBJECT:-** Section 149, like Section 34, is the other instance of constructive joint liability. Section 149 creates a specific offence. It runs as under:

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

V. **ELEMENTS OF SECTION 149:-** The essence of offence under Section 149 is assembly of several (five or more) persons having one or more of the common objects mentioned in Section 141 and it could be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence. Section 149 creates joint liability of all members of an

unlawful assembly for criminal act done by any member in prosecution of the common object of the said assembly. So the essential ingredients of Section 149 are:
1. There must be an unlawful assembly, as defined in Section 141;
2. Criminal act must be done by any member of such assembly;
3. Act done is for prosecution of the common object of the assembly or such which was likely to be committed in prosecution of the common object;
4. Members have voluntarily joined the unlawful assembly and knew the common object of the assembly.
5. Mere presence and sharing of common object of the assembly makes a person liable for the offence committed even if he had no intention to commit that offence.

VI. **SCOPE OF SECTION 149:-** The Section is divided into two parts-
1.**In Prosecution Of The Common Object:-** The words "in prosecution of the common object" show that the offence committed was immediately connected with the common object of the unlawful assembly of which accused were members. The act must have been done with a view to accomplish the common object of the unlawful assembly.

2. **Members Knew To Be Likely:-** The second part relates to a situation where the members of the assembly knew that the offence is likely to be committed in prosecution of the common object. A thing is likely to happen only when the situation is like "it will probably happen" or "may very well happen". The word 'knew' indicates a state of mind at the time of commission of an offence, knowledge in this regard must be proved. The word 'likely' means some clear evidence that the unlawful assembly had such a knowledge.

VII. **DIFFERENCE BETWEEN COMMON INTENTION AND COMMON OBJECT:-** The difference between common intention and common object may be stated as under:
1. Under Section 34 number of persons must be more than one. Under Section 149 number of persons must be five or more.
2. Section 34 does not create any specific offence but only states a rule of evidence. Section 149 creates a specific offence.
3. Common intention required under Section 34 may be of any type. Common object under Section 149 must be one of the objects mentioned in Section 141.
4. Common intention under Section 34 requires prior meeting of minds or pre-arranged plan, i.e. all the accused persons must meet together before the actual attack participated by all takes place. Under Section 149, prior meeting of minds is not necessary. Mere membership of an unlawful assembly at the time of commission of the offence is sufficient.
5. Under Section 34 some active participation is necessary, especially in a crime involving physical violence. Section 149 does not require active participation and the liability arises by reason of mere membership of the unlawful assembly with a common object.

VIII. **COMMON INTENTION MAY ALSO DEVELOP ON THE SPOT: EXCEPTION TO THE GENERAL RULE-** Generally, it is said that, "a common object may develop on the spot but a common intention cannot". But, in certain circumstances common intention also may develop suddenly on the spot and such common intention may be inferred from the facts and circumstances of the case and conduct of the accused persons. Following cases are illustrative on this point-In **Kripal Singh v. State of U.P.**, AIR 1954 SC 706; the Supreme Court held that a common intention may develop on the spot after the offenders have gathered there. A previous plan is not necessary. Common intention may be inferred from the conduct of the accused and the circumstances of the case.

6. DEFINITION OF SPECIFIC TERMS

Section- 6 to 52A of IPC
*****

UNIT-III
GROUP LIABILITY

1. COMMON INTENTION

'Common intention' and 'Common object '.

Definition of Common intention :-

Common intention means common sense principle that if two or more persons intentionally do a thing jointly it is just the same as if each of them had done it individually . If two or more persons combine in injuring another in such a manner that each person engaged in causing must know that the result of one of them . Everyone must be taken to have intended the probable and natural results of the combination of acts in which he joined . All become guilty of the principal offence . The leading feature of common intention is participation in action. Common intention implies acting in concert and existence of a pre-arranged plan . It is enough to have the same intention independently of each other for fastening constructive liability for the act of another.

The doctrine of constructive liability lays down the principle of joint liability in the doing of a criminal act . The essence of that liability can be found in the existence of common intention animating the offender leading to the doing of a criminal act in furtherance of common intention. This Constructive Liability or joint liability is embodied in section 34 of the Indian Penal Code as common intention.

ESSENTIAL INGREDIENTS OF COMMON INTENTION

more than one person

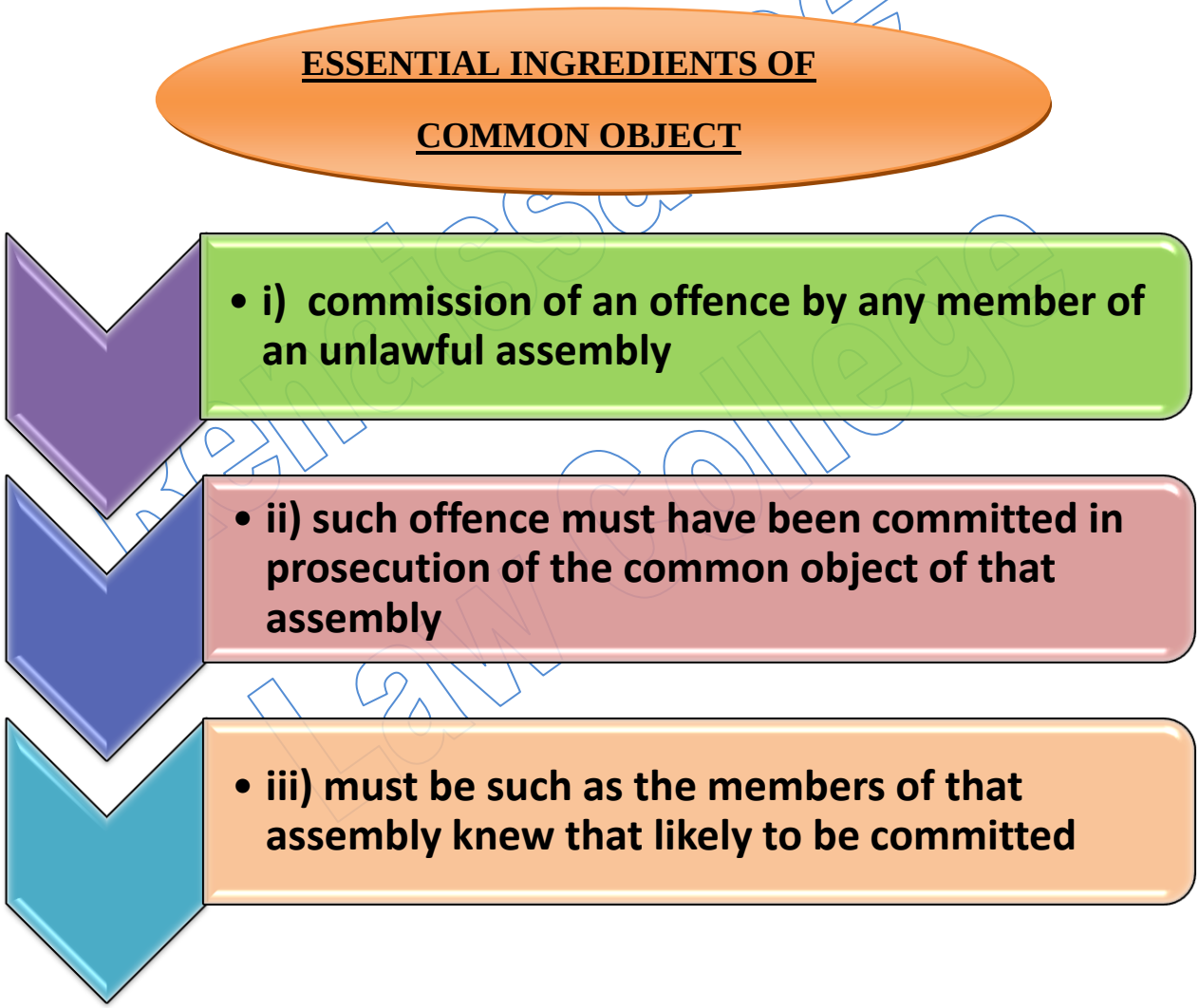
- i) common intention to commit an offence

more than one person

- ii) participation in commission of the offence

Definition of Common object :-

Common object means combination of several persons , united for the purpose of committing a criminal offence , and that consensus of purpose is itself an offence distinct from the criminal offence which these persons agree and intend to commit . Whether the object is in their minds when they come together , or whether it occurs to them afterwards is not material . But it is necessary that the object should be common to the persons who compose the assembly , that is , that they should all be aware of it . It seems also that there must be some present and immediate purpose of carrying into effect the common object . It is also an example of constructive liability . In order to prove common object , it is necessary to establish connection between those who take an active part in the crime . Common object is incorporated in section 141 or unlawful assembly .



Difference between Common intention and Common object :-

Common intention (Sec. 34)	Common object (Sec. 149)
i) Common intention requires prior concert and common meeting of minds before the commission of crime as well as an element of participation in action .	i) Common object may develope at the spot after the assembly gathers and does not require prior concert and common meeting of minds before the commission of crime.
ii) In common intention , the act must be the result of a pre-arranged plan .	ii) In common object , no such pre-arranged plan is required . If the offence is committed in prosecution of the common object , every member of such assembly is liable for the offence though the offender did not intend to commit it or did not participate in it's commission .
iii) In common intention , the number of persons is immaterial.	iii) In common object , five or more persons are required to form the unlawful assembly.
iv) Common intention enumerates the principles of constructive liability , without creating any substantive offence .	iv) common object creates a specific substantive offence .
v) The common intention need not be one of specified type only.	v) Common object must be one of the seven types mentioned in section 141.
vi) In a charge U/S 34 of IPC active participation of the offender is required .	vi) But in a charge of common object the liability arises by reason of the membership of the unlawful assembly and there may be no active participation at all in the commission of the offence.

2. ABETMENT

4. MERE ACT OF ABETMENT PUNISHABLE

A person abets the doing of a thing who: —
(1) instigates any person to do that thing, or
(2) engages with one or more other person or persons, in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or
(3) Intentionally aids by any act or illegal omission, the doing of that thing.

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

Illustration:
A, a public officer, is authorised to arrest Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby wilfully causes A to arrest C. Here B causes by instigation the arrest of C.
Explanation II:
Whoever does anything either before or at the time of commission of that act, in order to facilitate the commission of that act (Section 107).

3. INSTIGATION, AIDING AND CONSPIRACY

'Abetment of Instigation'
A person abets the doing of a thing who instigates any person to do that thing. When is a person said to instigate the doing of a thing? A person instigates the doing of a thing who, by—
(i) Willful misrepresentation, or
(ii) Willful concealment of a material fact (which he is bound to disclose), voluntarily (i) causes or procures, or (ii) attempts to cause or procure the doing of a thing.
The illustration to Explanation (I) elucidates the meaning. The Explanation (I) does not define instigation. It only explains that wilful misrepresentation or wilful concealment may in certain circumstances amount to instigation but it neither defines nor limits the forms which instigation may take.
The word "instigate" means to goad or urge forward or to provoke, incite, urge or encourage to do an act, person is said to instigate another, to an act when he actively suggests or estimates him to the act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragements.
Thus, where a person gives to an unlawful assembly a general order to beat, it is a case of a direct instigation. The instigation would be indirect when instead of such an order a person raises a slogan "Allah O Akbar" or "Jai Bajrang Bali" or says, "Cowards die many times before their death, the valiant die but once" will intend to provoke.
A instigates B to commit a crime not by saying so but by harping upon the wrongs he has suffered; it is indirect instigation.
Instigation implies knowledge of the criminality of an act. Illustration to Explanation is an example of instigation by wilful misrepresentation. Instigation by wilful concealment takes place where there is some duty cast obliging a person to disclose fact.
The mere omission to bring to the notice of the higher authorities, offences committed by other persons does not amount to abetment of those offences. It may form the foundation for disciplinary action against him in a departmental way.
Mere failure to prevent the commission of an offence is not by itself an abetment. The law does not require that instigation should be in a particular form or that it should be only in words and may be by conduct; for instance a mere gesture indicating 'beat' or a mere offering of money by an arrested person to the constable who arrests him may be regarded as instigation, in one case to beat and in the other to take a bribe.
An advice can become an instigation only if it is found that it was an advice which was meant actively to suggest or stimulate commission of an offence. To ask a person as a mere threat to really fire a gun without intending that he should really fire it, is not to instigate him to fire the gun.
The threat would become instigation only if it is found that in the event of the threat having no effect the gun should in fact be fired. Mere presence is not instigation. Silent approval, if it has the effect of inciting or encouraging the offence would amount to abetment of the offence. For example, where a woman prepared herself for suttee.
X and Y followed her to the funeral pyre and stood by her repeating Ram, Ram and thereby actually connived and countenanced the act. They were held guilty of abetment. Instigation by letter is

complete when its contents become known to the addressee. There is no instigation if letter containing the incitement never reaches to addressee, but in such case attempt to abet would be completed.
In a case of abetment by instigation it is immaterial whether the person instigated commits the offence or not. Considering the definition of abetment, as given in Section 109 of the Code, the instigation must have reference to the thing that was done and to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation.

7. CRIMINAL CONSPIRACY

Section 120-A of the I.P.C. defines 'conspiracy' to mean that when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated as "criminal conspiracy.
No agreement except an agreement to commit an offence shall amount to a criminal conspiracy, unless some act besides the agreement is done by one or more parties to such agreement in furtherance thereof.
Section 120-B of the I.P.C. prescribes punishment for criminal conspiracy. It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements:
(1) agreement
(2) between two or more persons by whom the agreement is effected; and
(3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished.

4. MERE ACT OF ABETMENT PUNISHABLE

Section 109 :- Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment :-
Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this code for the punishment of such abetment, be punished with the punishment provided for the offence.
Explanation :- An act of offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.
Scope :- Under this section the abettor is liable to the same punishment which may be inflicted on the principal offender, (1) if the act of the later is committed in consequence of the abetment, and (2) no express provision is made in the CODE for the punishment of such an abetment. This section lays down nothing more than that if the CODE has not separately provided for the punishment of an abetment an as such then it is punishable with the punishment provided for the original offence.
Facts to be established for abetment:-
(a) that abetment was made either by instigation, conspiracy or aiding; and
(b) that act or offence abetted or committed

5. UNLAWFUL ASSEMBLY

Unlawful assembly is a legal term to describe a group of people with the mutual intent of deliberate disturbance of the peace. If the group are about to start the act of disturbance, it is termed a rout; if the disturbance is commenced, it is then termed a riot. In Britain, the offence was abolished in 1986.
Section 144 of the Criminal Procedure Code (CrPC) of 1973, empowers a magistrate to prohibit an assembly of more than ten people in an area. According to sections 141-149 of the Indian Penal Code (IPC), the maximum punishment for engaging in rioting is rigorous imprisonment for 3 years and/or

fine. Every member of an unlawful assembly can be held responsible for a crime committed by the group. Obstructing an officer trying to disperse an unlawful assembly may attract further punishment. The section was used for the first time in 1861 by the British Raj, and thereafter became an important tool to stop all nationalist protests during the Indian independence movement, and its use in independent India remains controversial as little has changed. It is often used to prevent protests or demonstrations, even the law doesn't use the terms, though it does mention "riot". The issue was further highlighted following the protests in the aftermath of the 2012 Delhi gang rape. When in December, 2012, a special executive magistrate imposed prohibitory orders around India Gate, a popular location for public protests, under the section for up to six months. In January 2013, the Delhi High Court issued a notice to Delhi Police in this regard as it found the orders contrary to the fundamental rights of citizens.

6. BASIS OF LIABILITY

On basis of Individual and group/joint liability

7. CRIMINAL CONSPIRACY- Section 120A of Indian Penal Code gives definition as to what constitutes criminal conspiracy- "when two or more persons agree to do, or cause to be done,-

· An illegal act, or

· An act which is not illegal by means, such an agreement is designated as criminal conspiracy provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

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

The definition simply means that when two or more persons agree to do some illegal act or agree to do a legal act by illegal means then that amounts to criminal conspiracy. The act is only which has been agreed by the parties earlier and not any other act. The term illegal has been defined in the Indian Penal Code in section 43- " the word illegal is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be legally bound to do whatever is illegal in him to omit."

When the IPC was enacted, it had only two provisions through which conspiracy was made punishable. One provision was the abetment by conspiracy and other was special offences which require more than 2 persons for committing them. When the IPC was amended in the year 1870, the law of conspiracy was widened by the insertion of section 121A which is waging war or attempting to wage war against government of India. In the year 1913 when Indian Criminal Law Amendment Act came, then chapter V-A was added in the Indian Penal Code and thus adding two sections i.e. section 120A and section 120B.

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

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

The main essence of conspiracy that is embodied in section 120A of Indian Penal Code is the unlawful agreement and ordinarily the offence is complete when the unlawful agreement is framed. It is not necessary that there should be some overt act in furtherance of the agreement made and it is not at all necessary that the object for which the conspiracy was made should be achieved.

Section 120-B :- Punishment of criminal conspiracy :-
Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment of 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.
Whoever is a party to 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.

Scope :- The punishment for a criminal conspiracy is more severe if the agreement is one to commit a serious offence, it is less severe if the agreement is to commit an act, which although illegal, is not an offence punishable with death, imprisonment for life or rigorous imprisonment for more than two years.
This section applies to those who are the members of the conspiracy during the continuance. Conspiracy has to be treated as a continuing offence and whoever is a party to the conspiracy during the period for which he is charged is liable under this section.

FACTS TO BE ESTABLISHED FOR CONSPIRACY:-

a) that there was an existence of a design to commit an offence

b) that such offence was punishable with imprisonment.

c) that accused concealed existence of such design.

i) by his act or illegal omission or

ii) by his knowingly making false representation.

d) that he did voluntarily

e) that he thereby intended to facilitate, or know that he would thereby facilitate commission of such offence.

Hon'ble Supreme Court in case of Noor Mohammad -versus- State of Maharashtra, reported in AIR 1971 SC 885, has discussed about the distinction between section 34, 109 and 120-B of IPC in the following words,

"Section 34 embodies the principle of joint liability in the doing of a criminal act, the essence of that liability being the existence of a common intention. Participation in the commission in the offence in furtherance of common intention invites its application. Section 109 on the other hand may be

attracted even if the abettor is not present when the offence abetted is committed provided he has instigated the commission of the offence or has engaged with one or more other person in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally added the commission of an offence by an act or illegal omission. Criminal conspiracy differs from other offences in that mere agreement is made an offence even if no step is taken to carry out the agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude then abetment by conspiracy as contemplated by section 107 of I.P.C. A conspiracy from its very nature is generally hatched in secrets. It is therefore extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But like other offences, criminal conspiracy can be proved by circumstantial evidence"

8. RIOTING AS A SPECIFIC OFFENCE

A **riot** is a form of civil disorder commonly characterized by a group lashing out in a violent public disturbance against authority, property or people. Riots typically involve vandalism and the destruction of property, public or private. The property targeted varies depending on the riot and the inclinations of those involved. Targets can include shops, cars, restaurants, state-owned institutions, and religious buildings.

Riots often occur in reaction to a perceived grievance or out of dissent. Historically, riots have occurred due to poor working or living conditions, governmental oppression, taxation or conscription, conflicts between ethnic groups, (race riot) or religions (sectarian violence, pogrom), the outcome of a sporting event (football hooliganism) or frustration with legal channels through which to air grievances.

While individuals may attempt to lead or control a riot, riots typically consist of disorganized groups that are frequently "chaotic and exhibit herd behavior."[1]However, there is a growing body of evidence to suggest that riots are not irrational, herd-like behavior, but actually follow inverted social norms.

Types :

A police riot is a term for the disproportionate and unlawful use of force by a group of police against a group of civilians. This term is commonly used to describe a police attack on peaceful civilians, or provoking peaceful civilians into violence.

A prison riot is a large-scale, temporary act of concerted defiance or disorder by a group of prisoners against prison administrators, prison officers, or other groups of prisoners. It is often done to express a grievance, force change or attempt escape.

In a race riot, race or ethnicity is the key factor. The term had entered the English language in the United States by the 1890s. Early use of the term referred to riots that were often a mob action by members of a majority racial group against people of other perceived races.

In a religious riot, the key factor is religion. The rioting mob targets people and properties of a specific religion, or those believed to belong to that religion.

Student riots are riots precipitated by students, often in higher education, such as a college or university. Student riots in the US and Western Europe in the 1960s and the 1970s were often political in nature. Student riots may also occur as a result of oppression of peaceful demonstration or after sporting events. Students may constitute an active political force in a given country. Such riots may occur in the context of wider political or social grievances.

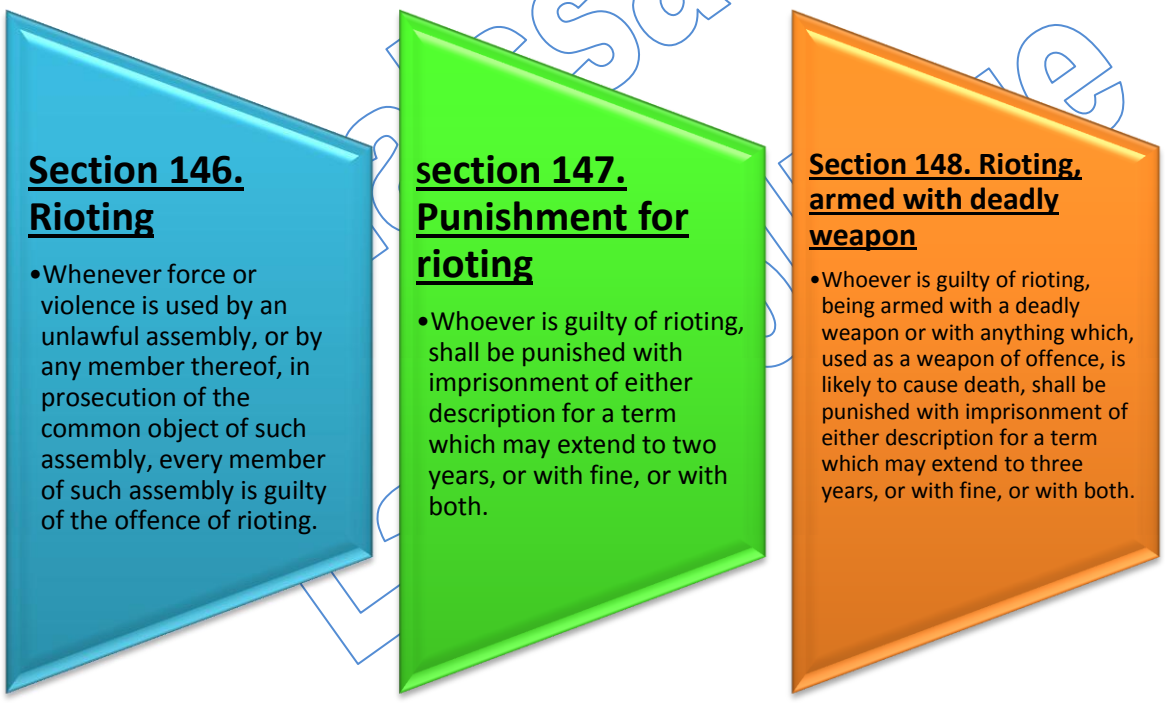
Urban riots are riots in the context of urban decay, provoked by conditions such as discrimination, poverty, high unemployment, poor schools, poor healthcare, housing inadequacy and police brutality and bias. Urban riots are closely associated with race riots and police riots.

Sports riots such as the Nika riots can be sparked by the losing or winning of a specific team. Fans of the two teams may also fight. Sports riots may happen as a result of teams contending for a championship, a long series of matches, or scores that are close. Sports are the most common cause of

riots in the United States, accompanying more than half of all championship games or series. Almost all sports riots occur in the winning team's city.[5]
Food and bread riots are caused by harvest failures, incompetent food storage, hoarding, poisoning of food, or attacks by pests like locusts. When the public becomes desperate from such conditions, groups may attack shops, farms, homes, or government buildings to obtain bread or other staple foods like grain or salt, as in the 1977 Egyptian Bread Riots.

Riot Control and Laws
Risk of arrest
A high risk of being arrested is even more effective against rioting than severe punishments. As more and more people join the riot, the risk of being arrested goes down, which persuades still more people to join. This leads to a vicious circle, which is typically ended only by sufficient police or military presence to increase the risk of being arrested.

India
In India, rioting is an offence under the Indian Penal Code (IPC).



GENERAL EXCEPTIONS :
9. MENTAL INCAPACITY
Section 84 of Indian Penal code is the primary legislation dealing with the criminal responsibility of mentally ill persons in india. This law is based on Mc Naughten Rules enacted in England. In this paper an attempt has been made to discuss this section in detail. . Key words: Mentally ill; criminal responsibility; section 84 IPC; Mc Naughten Rules. Introduction: In law responsibility means liability 'to punishment.' This concept of responsibility is fundamental to our view of man as a free, intentional being, and is said to form the basis of criminal codes and punishment systems." A person can be held liable for any act he commits, only if he does it with his wish and free will. It is considered that motive is a must for a criminal act. A mere commission of act does not prove a person guilty.

Law recognize the concept "actus non facit reum, 'nisi mens /sitrea", and "amens ne sine mente" i.e. the physical act alone does not make a person guilty; the mental' component in the form of evil intent (guilty mind) is equally important.'' , Plea of mental illness or unsoundness of mind is usually brought forward by defence in order to save his client from capital punishment.' The law presumes every individual at the age of discretion, to be sane and to possess a sufficient degree of reason to be responsible for his criminal acts, unless the contrary is proved to the satisfaction of the court.

A mentally ill person is not punished for his crime, as he is devoid of free will, intelligence and knowledge of the act. Burden of proving this unsoundness of mind lies entirely on defence. It does not mean that prosecution is free' from all responsibilities. Case is to be proved by prosecution beyond reasonable doubt and then only plea of unsoundness of mind is entertained. If case cannot be proved then accused is out rightly acquitted. If defence can prove that accused was of unsound mind at the time of committing the offence-then his responsibility diminishes. Depending upon the condition and nature of offence, the accused can be sent to prison, psychiatric hospital, any other place of safe custody or he may be acquitted. Concept behind this provision is that as such this person was not in complete control of mind at the time of offence so he should not be punished. Moreover, he need not be punished as punishment is already given to him by nature.

This provision can be dangerous sornetimes as all criminals will plead defence of insanity in order to escape capital punishment. So, there should be a check guard for feigned insanity. On the other hand, society must be protected against the attacks of a mentally ill person.

In such cases we should be aware about the responsibilities of mentally ill in criminal matters. A clear understanding of law in this subject is mandatory. This subject raises various issues like: Are all mentally ill persons acquitted for any crime they commit?

What is the amount of mental illness necessary in this regard for acquittal?

Legally what is the borderline between sanity and' insanity? Are there any provisions for punishing or restraining mentally ill persons?

Are there any provisions to safeguard society from such individuals? These issues are discussed in Indian Penal Code under section 84. This sections deals with act of a person with unsound mind.

Mc Naughtem Rule:

Section 8 IPC is based on Mc Nauqhten's rules of 1843 in England. Mr. Daniel Mc Naughten, while labouring under delusion of persecution killed Mr. Edmund Drummond; private secretary of British Prime Minister Mr. Robert Peel in mistake for later. It was shown that Mc Naughten had transected a business shortly before act and had shown no signs of insanity. Defence put forth the plea of insanity and accused was acquitted. Due to adverse public reaction, the House of Lords decided to probe into subject. Accordingly, some questions were put before a bench of 14 judges in House of Lords. From the answers given some rules were framed towards determination 'of criminal responsibility of insane and were called Mc Naughten rules.4,6 It states that "in order to establish a defence on the grounds of insanity, it must be clearly proved that at . the time of committing the act (or making the omission), the accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he knew what he was doing, that he did not know it was wrong."

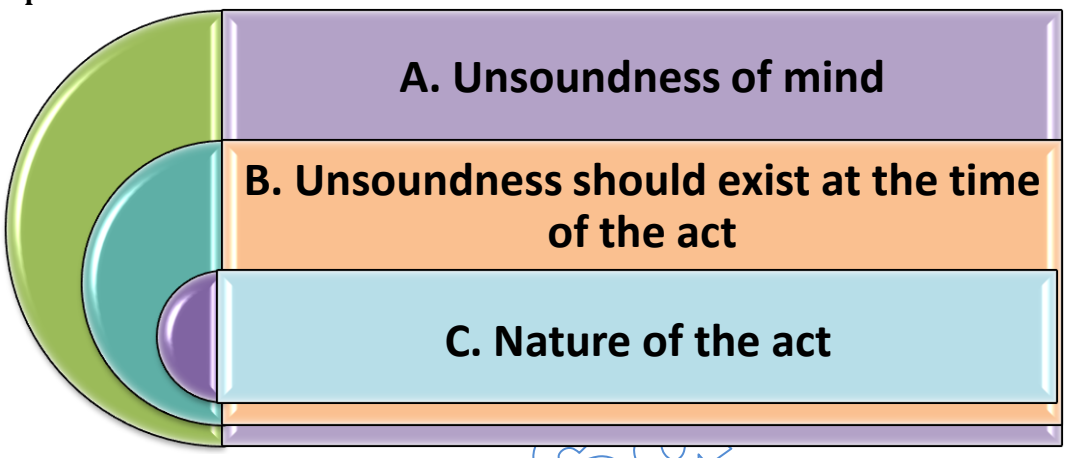
Section 84 of Indian Penal Code:

Based on this law was drafted section 84 of Indian Penal Code, which says "nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law".

To be exempted under this section only proof of insanity is not enough. It should be clearly proved that: Unsoundness of mind existed at the time of offence. This unsoundness was of such a degree

Which rendered him incapable of knowing the nature of the act. . Even if he knew the nature of the act he did not know that it was wrong or against the law.

Explanation:



If accused did not know the nature of the act he was committing then he is not responsible for it., Similarly, if he knew the nature of the act but-did not know whether it was wrong or contrary to the law he is not liable. On the other hand if the person did not know the nature of the act but knew that it is wrong as contrary to law he is held responsible.

Criticism of Section 84:

This Section is still based on outdated Me Naugliten rules of 1843. Even the country, which had formulated then had brought some changes in them. Firstly, this Section considers unsoundness of mind to be equivalent to disorders of cognition. The other forms of mental illness does not hold good for plea. Various disorders of mind, which certifies him to be mentally III, might affect his working to such an extent that he might loose control over his actions. Lots of crimes are committed in a fit of anger or emotion. Just after committing the act person may realize what he has done. But at that particular moment emotions have controlled his actions. His cognitive functions might be absolutely normal.

Secondly, it considers such unsoundness to exist at the time of act. Here again no consideration is given to condition prior to the act. Proper assessment of his pre act status or conditions leading to' cause of act may help to figure out reasons for his act. Preqnancy and child birth can lead to psychosis in women due to excessive stress and strain. In this situation she can commit offence of infanticide. Here although her consciousness is clear and there is no impairment .of cognition yet her emotional imbalance have led her to commit the offence. If she is tried under Section 84 she will be convicted. This is an injustice to such females.

Thirdly, it is mandatory fort a person to be acquitted under this action that he is unaware of nature of act and or, its legality. Sometimes a person knows the illegality of his act but then also in fit of anger, emotions as delusions he might commit some crime. In such situations, conditions like irresistible impulse, obsessive-compulsive disorder, delusion, emotions, fits of anger can offer a ground for medical insanity but will not constitute a legal ground for acquittal. A depressed person may be driven by his mental illness to commit suicide, but he may kill his dependent relatives (e.g. mother) before the act of suicide. If he Is caught before killing himself he will be punished. As according to Section 84 he is liable, as he knows the nature as well as legal status of his act. Thus, it can be said that medical proof of insanity is not legal proof for acquittal.

Although it may be hazardous to consider emotional aspects of crime as basis for acquittal. As every criminal will plead them as defence and people will .be left with no logically secure place short of total abandonment of criminal responsibility." But we should not look only at these small number of cases. Though some criminals might be acquitted wrongly but no non-guilty should be punished. The question of person's capacity to resist temptation and of a person's responsibility is beyond easy understanding; they lie buried in his consciousness into which no human being can enter.

Suggestions:

Although section 84 tries to deal fairly with mentally ill offender but sometimes there may be false acquittals or convictions. So, there is need for incorporating wider concepts like emotions; pre act situations etc. Scope of legal insanity is to be widened to incorporate some more aspects of medical insanity. Stress should be on removing the crime and not the criminal.

Most of such criminals are emotionally unstable and are .usually undeterred by punishments' so care should be taken to improve and support them and not to punish them. Other than this the family of such persons suffers from guilt and social stigma. They should be supported and care should be taken to not to let entire family suffer because of one Individual.

On the other hand, these criminals should not be let free in larger interests of society but may be detained in psychiatric hospitals and proper assessment of their mental status is to be made to avoid any false acquittals or convictions. Provision should be made for examination by a psychiatrist in all such cases and fate of individual should not depend only on discretion of one judge. Judge may be bound by law to give a particular judgment. Opinion of doctor should be mandatory.

Proper analysis of this act has to be made and attempts should be made to modify it. In foreign countries lot of cases have been decided on such issues and consideration have been given to pleas of irresistible impulse. Doctrine of diminished responsibility has become a latest issue in giving decisions. We should also keep us update of these advancements and should' incorporate neswer provisions for a free and fair trial.

10. MINORITY

Apart from the various acts concerning children, The Indian Penal Code (IPC) also has a list of offences against children. According to the sections 82 and 83 of the IPC a child who commits a crime and is below the age of seven is not considered to have committed a crime. A child who is between the ages of seven and twelve and is deemed to have immature understanding about the consequences of his/her actions is also considered incapable of committing a crime.

Section 315 and 316 discusses the offence of foeticide and infanticide. If a person commits an act with the intention of preventing the child from being born alive or an act that results in the death of the child after birth, that person is committing foeticide/infanticide as long as they do not do it in the interest of the mother's health or life. If a person does an act that amounts to culpable death which results in the quick death of an unborn child, he will be charged with culpable homicide. Section 305 states that it is a crime for any person to abet the suicide of a child, i.e. a person who has not completed eighteen years of age.

Section 317 states that is it a crime against children, if their mother or father expose or leave a child in a place with the intention of abandonment. This does not prevent the law from pursuing further if the abandonment results in the death of the child. The parents would then be charged with culpable homicide or murder.

There are a number of sections in the IPC that discuss kidnapping and abduction. Section 360 states that kidnapping from India is the defined as the conveyance of a person beyond the borders of India without their consent. 361 states that if a male minor of not yet sixteen and female minor of not yet eighteen is taken from their lawful guardians without their consent it is termed kidnapping from lawful guardianship. Section 362 defines abduction as compelling, forcing or deceitfully inducing a

person from a place. Section 363-A states, it is a crime to kidnap or maim a minor for the purpose or employment of begging. If a person if found employing a minor for begging, and that person is not the legal guardian of the child, it is assumed that the child has been kidnapped for the purpose of employment in begging. Section 364 states that any person who kidnaps another for the purpose for murdering or disposing of in a way that will lead to murder is punishable by law. Section 364-A defines ransom kidnapping as any person who kidnaps another to threatens to harm or kill that person in an attempt to get the government, or any other foreign or state organisation to do or not do any act. Section 365 discusses kidnapping to secretly or wrongfully confine someone. Section 366 states it is a crime to force or compel or abuse a woman to leave a place in order to force her to marry or seduce or illicit sexual intercourse from her by the kidnapper or another person. 366A specially outlines such a crime being committed against a minor girl who has not attained eighteen years of age. Section 367 states it is a crime to kidnap a person in order to cause them grievous hurt, place them in slavery, or subject them to the unnatural lust of a person. Section 369 is a specific crime of kidnapping a child under 10 years of age in order to steal from them.

Sexual offences against children are also covered in the IPC. Section 372 discusses the selling of a child (below the age of eighteen) for the purpose of prostitution or to illicit intercourse with any person, or knowing that it is likely that the child is being sold for such a purpose. Section 372 states it is a crime to buy a child for the purpose of prostitution or to illicit sex from any person.

Section 376 discusses the offence of rape. Under this section a man who rapes his wife, who is not below twelve years old is given a lesser punishment. The section also discusses special circumstances of rape such as rape committed by a civil servant or police man, rape of a pregnant woman, gang rape or rape of a child below the age of twelve.

11. INSANITY,
12. MEDICAL AND LEGAL INSANITY

INSANITY IN MEDICAL TERMS

Medically, insanity has not been comprehended to the general acceptance level. Unsoundness of mind is the current and accepted notion of insanity by the medical experts. "Doctors with experience of mental disease contended that insanity does not only, or primarily affect the cognitive or intellectual faculties, but affects the whole personality of the patient, including both the will and emotions. Medical conception of insanity can be defined as a mental abnormality due to various factors existing in varying degrees. In wider connotation, it includes idiocy, madness, lunacy, mental derangement, mental disorder and every other possible form of mental abnormality known to medical science. It recognizes sudden and uncontrollable impulse driving a man to kill or to cause injury within the scope of insanity. However the legal concept of insanity widely differs from that of the medical concept. The scope of the meaning of insanity in medical terms is much wider when compared to its legal meaning.

INSANITY IN LAW

Insanity or unsoundness of mind is not defined in any act. It means a disorder of the mind,which impairs the cognitive faculty; that is, the reasoning capacity of man to such an extentas to render him incapable of understanding consequences of his actions. It means that theperson is incapable of knowing the nature of the act or of realising that the act is wrong or contrary to law.

There are 3 kinds of person who may be said to be *non compos mentis* (not of sound mind)

(1) An idiot – an idiot is one who from birth had defective mental capacity. This infirmity in him is perpetual without lucid intervals;

(2) One made so by illness – by illness, a person is made non compos mentis. He is, Therefore, excused in case of criminal liability, which he acts under the influence of this disorder;

(3) A lunatic or a madman – lunatics are those who become insane and whose incapacity might be or was temporary or intermittent. A lunatic is afflicted by mental disorder only at certain period and vicissitudes, having intervals of reason;

13. INTOXICATION

There are three kinds of abnormal person's viz., Persons of unsound mind, persons heavily drunken and minors. These persons do not form the rational thinking, and do not know the nature of the acts they are doing, and do not know their affects and legal consequences.

Chapter-IV (General Exceptions) of the Indian Penal Code, 1860 exonerates such persons if their unsoundness of mind, inability of forming rational knowledge of the acts done by them is proved.

Act done under the influence of heavy intoxication (not voluntarily) is a defence to the wrong-doer. Sections 85 & 86 of Chapter-IV explain the provisions pertaining to the wrongful acts done under the influence of intoxication.

All England Report in its Annual Review 1989 observed: "Alcoholism may constitute a disease provided it has damaged the brain to an extent as to grossly impair the ability to make rational judgments and emotional responses.

A killing attributable to alcoholism is one thing but a killing attributable to the taking of alcohol is quite another and a line must be drawn between the two though it may be a fine one in some cases.

The taking of alcohol inevitably impairs judgment and the ability to control the emotion because of the effect it has on the brain but the transient effects of alcohol cannot be accounted a "disease"."

Drunkenness is no excuse. However, delirium tremens (an affection of the brain caused by alcoholic excess) caused by drinking (not voluntarily) differs from drunkenness in the eye of the law.

Because it produces certain degree of madness, incapacity to know the nature of the act whether it is right or wrong. Hence under certain unavoidable circumstances, the act of heavily drunkard person is excused from criminal responsibility."

Sec. 85. Act of a person incapable of judgment by reason of intoxication caused against his will:

Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law:

Provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Sec. 86. Offence requiring a particular intent or knowledge committed by one who is intoxicated:

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

Ingredients:

The ingredients of Sections 85 and 86 are that a person will be exonerated from liability for an act done while in a state of intoxication, if he, at the time of doing it, by reason of intoxication, was,—

(a) Incapable of knowing the nature of the act; or

(b) That he was not in a state of mind to know that the act was either wrong or contrary to law; and

(c) That the thing which intoxicated him was administered to him without his knowledge or against his will;

(d) And that voluntary drunkenness is not excuse for the commission of a crime.

(e) Burden of proof lies upon the accused.

Basudev vs. State (1956 AIR SC 488)
Brief Facts:
The accused was a retired Jamedar, attended a marriage party, in which he drank liquor heavily. He wanted to sit in a chair, in which a boy already sat. The accused asked him to stand so that he would sit in it.
The boy refused. The accused became annoyed, and shot the boy with his pistol. The boy died on the spot. Thereafter, the accused walked to the police station and surrendered him.
The accused pleaded that he was heavily intoxicated. The prosecution contended that the defence of intoxication should not be available to the accused, because he took excess liquor voluntarily, and also at the time of doing the act, he stood independently.

Judgment:
The trial Court held that standing, arguing and shooting at the time of incidence, and walking to the police station himself without the help of any body, and surrendering himself to the police show that the accused did not loose his state of mind.
He was aware what he was doing. The trial Court convicted him for the offence of murder. The High Court and Supreme Court also confirmed the conviction.

14. PRIVATE DEFENCE-JUSTIFICATION AND LIMITS 15. WHEN PRIVATE DEFENCE EXTENDS TO CAUSING OF DEATH TO PROTECT BODY AND PROPERTY

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

Section 96 – Nothing is an offence which is done in the exercise of the right of private defence. It makes the acts, which are otherwise criminal, justifiable if they are done while exercising the right of private defence. Normally, it is the accused who takes the plea of self defence but the court is also bound take cognizance of the fact that the accused aced in self defence if such evidence exists.
In Section 97 through 106, IPC defines the characteristics and scope of private defence in various situations.

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

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

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

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

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

Section-98. Right of private defense 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 defense against that act which he would have if the act were that offence.

Restrictions on right to private defence

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

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

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

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

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

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

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

1.when an act is done by a public servant or upon his direction and the act

1. is done under colour of his office
2. the act does not cause the apprehension of death or grievous hurt
3. is done under good faith
4. the act is not wholly unjustified

2. when the force applied during the defence exceeds what is required to for the purpose of defence.
3. when it is possible to approach proper authorities

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

Right to private defence of body up to causing death

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

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

First - such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault.
Second - such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault.
Third - An assault with the intention of committing rape.
Fourth - An assault with the intention of gratifying unnatural lust.
Fifth - As assault with the intention of kidnapping or abducting.
Sixth - An assault with the intention of wrongfully confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

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

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

To be able to extend this right up to causing death, the apprehension of grievous hurt must be reasonable. In case of **Sheo Persan Singh vs State of UP 1979**, the driver of a truck drove over and killed two persons sleeping on the road in the night. People ahead of the truck stood in the middle of the road to stop the truck, however, he overran them thereby killing some of them. He pleaded right to private defence as he was apprehensive of the grievous hurt being caused by the people trying to stop him. SC held that although in many cases people have dealt with the errant drivers very seriously, but that does not give him the right of private defence to kill multiple people. The people on the road had a right to arrest the driver and the driver had no right of private defence in running away from the scene of accident killing several people.

Yogendra Morarji vs State of Gujarat 1980 is an important case in which SC observed that when life is in peril the accused was not expected to weigh in golden scales what amount of force does he need to use and summarized the law of private defence of body as under –

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

Section-101. When such right extends to causing any harm other than death

If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defense 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.

Duration of the right of private defence of body

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

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

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

Right to private defence of property up to causing death

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

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

First – Robbery

Secondly - House breaking by night

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

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

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

Duration of the right of private defence of property

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

Section 105 - The right of private defence of the property commences as soon as a reasonable apprehension of danger to the property commences. It continues -
in case of theft - till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained or the property has been recovered.
in case of robbery - as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instance hurt or of instance personal restraint continues.
in case of criminal trespass - as long as the offender continues in the commision of criminal trespass or mischief.
in case of house breaking by night - as long as the house, trespass which has been begun by such house breaking, continues.

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

16. NECESSITY

Chapter-IV of the Indian Penal Code, 1860 contains Sections from 76 to 106. These Sections provide the provisions for General Exceptions. The actor, if commits any of the offences under the circumstances and exceptions mentioned in Chapter-IV, is excused from criminal liability. Punishment shall not be imposed upon him. One of such General Exceptions is the Doctrine of Necessity and Compulsion, which is explained in Section 81.

Introduction:

When there are two dangers causing two harms in front of a person, under unavoidable circumstances, he is put to face them; he is excused to commit less harm.
In such circumstances, he knows what he is doing. He is compelled to do willful wrong-doing. Law excuses him for such willful wrong-doing. If he does the same thing in the ordinary circumstances, definitely the law punishes him. This is called the Doctrine of Necessity and Compulsion or Jus necessitates.
This is explained in the famous maxim "Necessitas non habet legem". It means: "Necessity knows no laws".

Circumstances/Examples:

(i) Self-preservation:

A and B are drowning in the sea clinging to a plank which can support only one. There would be no mercy or love on the opposite person. Each thinks to save his own life. In such circumstances, might is right.
The strongest person throws the weaker person and occupies the plank to save his own life. The person who succeeds to throw another and saves his own life cannot be punished under the penal law.
(ii) In a shipwrecked sailors are driven in the cyclone. 30 Days passed. Due to hungry and thirsty, one or two of them died. The remaining persons kill of the co-sailor and drink the blood and eat the flush to survive them. The law excuses them.

(iii) Fire is spreading. To stop the spreading of fire, if someone pulls down a hut or house, he is excused.

(iv) Right of Private Defence:
If A attacks against the person or property of B, or if A attempts to commit rape against C, B can kill A to protect his person and property and also C can kill A to protect her chastity.
Hobbes in his Leviathan writes: "If a man by the terror of present death be compelled to do a fact against the law, he is totally excused; because no law can oblige a man to abandon his own preservation."
Lord Bacon says: "Necessity is of three sorts: necessity of conservation of life; necessity of obedience; and necessity of the act of God or a stranger."
The Law of Jus necessitates (Necessity knows no laws) is defined and explained in Section 81 IPC, with one Explanation and two illustrations, which runs:

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

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

Ingredients of Section 81:
1. The circumstances shall compel wrong-doer to do such a criminal act and the wrong-doer shall not have criminal intention.
2. The wrong-doer shall have to do that act with an intention to prevent other harm.
3. The act must be justified under the circumstances. It is a question of fact. Killing a weak beggar, or an old woman, who enter into the house and eats food, is not justifiable under this doctrine.
4. The wrong-doer must act in good faith.

Principle:
When, on a sudden and extreme emergency one or the other of two evils is inevitable, it is lawful so to direct events that the smaller only shall occur, appended to Section 81 explain this principle.

17. MISTAKE OF FACT

Sections 76 and 79 of Chapter-IV (General Exceptions) of the Indian Penal Code, 1860 explain the provisions about "Mistake of Fact" and "Mistake of Law". These provisions are based upon the common law maxim "Iqnorantia facti doth excusat; Ignorantia juris non excusat." (Ignorance of fact is an excuse, but ignorance of law is not excused.)
Mistake of fact is a good defence in criminal law, which is explained in two Sections 76 and 79. Both of these Sections are included in General Exceptions (Chapter-IV).

Meaning of Mistake:
An unconscious ignorance or forgetfulness of a fact, past or present, material to the contract, or a belief in the present existence of a thing material to the contract, which does not exist; some intentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence; in a legal sense, the doing of an act under an erroneous conviction, which act, but for such conviction would not have been done.

Mistake of fact:
A mistake which takes place when some fact which really exists is unknown; or some fact is supposed to exist which really does not exist.

Mistake of law:
A mistake of law occurs when a person having full knowledge of facts comes to an erroneous conclusion as to their legal effect.

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

Illustrations:
(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.
(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

Ingredients:
1. "Mistake of fact and not by reason of a mistake of law":
This phrase in the Section means that a mistake of fact is excusable, but a mistake of law is not excusable. It is the duty of every citizen of the land to know the law of the land, and to behave accordingly. If a person says, "I do not know the law and due to not knowing the law, I did the offence." It is not excusable.
However, if a person did a wrongful act by a mistake of fact with a good faith and honest belief that he was bound to do, he may be excused. It is presumed that everyone knows the law of the land.

Hale writes:
"Ignorance of the municipal law of the Kingdom, or of the penalty thereby inflicted upon offenders, does not excuse any, that is of the age of discretion and compos mentis, from the penalty of the breach of it; because every person of the age of discretion-and compos mentis is bound to know the law and presumed so to do."
2. "Good faith":
The words "good faith" means "the act done with due care and attention". They also include the genuine belief of the person. The burden of proof lies upon the person who wants to take the shelter of good faith.
3. "In good faith believes him to be bound by law":
This phrase means that the accused should be in good faith and he must be under confidence that he was bound by law to do that act.
This Section is mainly intended to safeguard the subordinates, who are compelled to follow the superior's orders, illustrations (a) and (b) appended to Section 76 also reveal the same. This Section does not give protection to those people who act against the law, i.e., mistake of law.

State of West Bengal vs. Shiv Mangal Singh (1981 CrLJ 1683)
Brief Facts:
While the police were patrolling in the outskirts of the town in the night, some armed people attacked them, and an Assistant Commissioner of Police was badly injured.
The Deputy Commissioner of Police ordered firing against the unknown persons. Two persons were died. The Court held that the police were protected under Section 76, being they were bound to protect law and order.

It does not mean that every superior officer's firing order is protected by Sec. 76 or 79. The order must be given in good faith, and to protect the peace, law and order.
The subordinate officers should feel that the order given is given in good faith. Torturing the innocent persons, under trial prisoners, lock-up deaths, etc., is not protected under Sec. 76.
Recently a police tour went into forest nearby Adilabad District searching Naxalites. It was alleged that the superior officer of searching party ordered the police constable to squeeze the milk from a Tribal woman to know whereabouts of the Naxalites. It was criticized by the Press and Assembly. This kind of superior orders is not protected under Sec. 76.
Section 76 IPC is also applicable to private persons, who help the police or other officers. Sec. 42 of Cr.P.C. empowers the private persons to arrest a person suspected to have committed non-bailable offence, and to apprehend such person and to handover him to the nearest police station.

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

Illustration:
A sees Z commit what appears to A to be a murder. A, in the exercise to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence though it may turn out that Z was acting in self- defence.
Distinction between Ss. 76 and 79: There is a slight difference between these two Sections. In Section 76, the person is bound by law; whereas in Section 79, the person is justified by law Under Sec. 76, the person is bound by a legal obligation, whereas under Sec. 79, the person is supposed to have legal justification. Both the Sections require good faith

State of Orissa vs. Khora Ghasi (1978 CrLJ 1305)
Brief Facts:
The accused-an agriculturist was guarding his maize field lying on a Manche (specially constructed in the agricultural fields). He observed that one animal was moving in his field. He cried. Inspite of his crying, he observed that some animal was moving in the field and coming towards him.
He fired his gun. In fact, it was not an animal, but a person, who was hiding there. The Court held that the accused was protected under Sec. 79 and also 80 (Accident).

Exemption to the Judges and Judicial Officers
There is a separate statute "the Judicial Officers Protection Act, 1850" giving protection to the judicial officers while they are acting judicially. Besides this Act, Section 77 IPC provides exemption to the Judges from criminal process and Section 78 IPC provides exemptions to the persons whose act is in pursuance to the judgment or order of the Court. These two Sections run:—

Sec. 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.

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

18. OFFENCE RELATING TO STATE

CHAPTER VI of IPC

OF OFFENCES AGAINST THE STATE

121. Waging, or attempting to wage war, or abetting waging of war, against the Government of India.- Whoever, wages war 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.

A joins an insurrection against the Government of India. A has committed the offence defined in this section .

Punishment- Imprisonment for life, or imprisonment for 10 years and fine- Cognizable- Non-bailable- Triable by Court of Session- Non- compoundable.

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

Punishment- Imprisonment for life, or imprisonment for 10 years and fine- Cognizable – Non-bailable- Triable by Court of Session – Non- compoundable.

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

Punishment- Imprisonment for 10 years and fine- Cognizable – Non-bailable- Triable by Court of Session – Non- compoundable.

124. Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power.- Whoever, with the intention of including if including or compelling the President of India, or the Government of any State, to exercise or refrain from exercising in any manner any of the lawful posers of such President or Governor,

assault or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by mans of criminal force or the show of criminal force, or attempts so to overawe, such President or Governor, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment- Imprisonment for life, or imprisonment for 7 years and fine- Cognizable – Non- bailable – Triable by Court of Session- Non- compoundable.

124A. Sedition.- Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India. shall be punished with imprisonment for life, to which fine by law in India, shall be punished with imprisonment for life , to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added , or with fine.

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

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

Explanation 3.- Comments expressing disapprobation of the administrative or other action of attempting to excite haltered, contempt or disaffection, do not constitute an offence under this section .

Punishment- Imprisonment for life and fine, or life and fine, or imprisonment for 3 years and fine, or fine- Cognizable- Non- bailable-Triable by Court of Session-Non-compoundable.

125. Waging war against any Asiatic power in alliance with the Government of India.- Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the 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.

Punishment- Imprisonment for life, or imprisonment for 7 years and fine- Cognizable – Non- bailable – Triable by Court of Session- Non- compoundable.

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

Punishment- Imprisonment for life and fine, or life and fine, or imprisonment for 7 years and fine, or fine- Cognizable- Non- bailable-Triable by Court of Session-Non-compoundable.

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

Punishment- Imprisonment for life and fine, or life and fine, or imprisonment for 7 years and fine, or fine- Cognizable- Non- bailable-Triable by Court of Session-Non-compoundable.

128. Public servant voluntarily allowing prisoner of State or war to escape -Whoever, being a pubic servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to then years, and shall also be liable to fine.

Punishment- Imprisonment for life and fine, or life and fine, or imprisonment for 10 Years and fine, or fine- Cognizable- Non- bailable-Triable by Court of Session-Non-compoundable.

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

Punishment- Simple Imprisonment for 3years and fine- Cognizable- Non- bailable-Triable by Court or Session- Non- compoundable.

130 Aiding escape of , rescuing or harbouring such prisoner.- Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to offer any resistance to the recapture of such prisoner, shall be punished with [1][imprisonment for life], or with imprisonment of either description for a term which may extend to then years, and shall also shall also be liable to fine.

19. AGAINST TRANQUILITY

CHAPTER VIII of IPC

OF OFFFENCES A GAINST THE PUBLIC TRANQUILLITY

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

First.- To overawe by criminal force, or show of criminal force, 1[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or
Second.- To resist the execution of any law, or of any legal process; or
Third.- To commit any mischief or criminal trespass or other offence; or
Fourth.- By means of criminal force , or show of criminal force , to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment.
Fifth. - By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.
Explanation.- An assembly which was not unlawful when it assembled. May subsequently become an unlawful assembly.

142. Being member of unlawful assembly.- Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it , is said to be a member of an unlawful assembly.
143. Punishment .- Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
Punishment-Imprisonment for 6 months ,or fine or both- Cognizable- Bailable-Triable by Magistrate- Non- compoundable.

144. Joining unlawful assembly armed with deadly weapon.- Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member os an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
Punishment-Imprisonment for 2 years, or fine or both - Cognizable- Bailable-Triable by any Magistrate- Non- compoundable.

145. Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.- Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
Punishment-Imprisonment for 2 years, or fine or both - Cognizable- Bailable-Triable by any Magistrate- Non- compoundable.

146. Rioting.- Whenever force or violence is used by an unlawful assembly, or by any member thereof , in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.
147. Punishment for rioting.- Whoever is guilty of rioting , shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
Punishment-Imprisonment for 2 years, or fine or both - Cognizable- Bailable-Triable by any Magistrate- Non- compoundable.

148. Rioting, armed with deadly weapon.- Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both **.**
Punishment-Imprisonment for 3 years, or fine or both - Cognizable- Bailable-Triable by any Magistrate of the first class- Non- compoundable.

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.- If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of th same assembly, is guilty of that offence.
Punishment-The same as for the offence –According as offence is Cognizable of non –cognizable – According as offence is bailable or non- bailable -Triable by court by which the offence is triable - Non- compoundable.

150. Hiring, or conniving at hiring, or persons to join unlawful assembly.- Whoever hires or engages or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly , and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment , in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.
Punishment-The same as for a member of such assembly, and for any offence committed by any memters of such assembly- Cognizable–According as offence is bailable or non- bailable -Triable by court by which the offence is triable - Non- compoundable.

151. Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.- Whoever knowingly joins or continues in any assembly of five or ,ore persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
Explanation.- If the assembly is an unlawful is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.
Punishment-Imprisonment for 6 months ,or fine or both- Cognizable- Bailable-Triable by any Magistrate- Non- compoundable.

152. Assaulting or obstructing public servant when suppressing riot,etc.-Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray , or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to there years, or with fine, or with both.
Punishment-Imprisonment for 3 years, or fine or both - Cognizable- Bailable-Triable by any Magistrate of the first class- Non- compoundable

153. Want only giving provocation with intent to cause riot – if rioting be committed- if not committed.- Whoever malignantly, or want only , by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed , shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine. Or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
Para I. Punishment-Imprisonment for 1 years, or fine or both - Cognizable- Bailable-Triable by any Magistrate of the first class- Non- compoundable
Para II. Punishment-Imprisonment for 6 month , or fine or both - Cognizable- Bailable-Triable by any Magistrate of the first class- Non- compoundable

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

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on ground of religion , race, place of birth, residence, language, caste or fallings or enmity, hatred or ill- will between different religious, racial, language or regional groups or castes or communities, or

(b) Commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities ,or

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

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

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

Para I. Punishment-Imprisonment for 3 years, or fine or both - Cognizable-Non- bailable-Triable by any Magistrate of the first class- Non- compoundable

Para II. Punishment-Imprisonment for 5 years, or fine or both - Cognizable-Non- bailable-Triable by any Magistrate of the first class- Non- compoundable

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

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

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

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being member if any religious , racial,language or regional group or cast or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill- will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1) , in any place of worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall be liable to fine.]

Para I. Punishment-Imprisonment for 3 years, or fine or both - Cognizable-Non- bailable-Triable by any Magistrate of the first class- Non- compoundable.

Para II. Punishment-Imprisonment for 5 years, or fine or both - Cognizable-Non- bailable-Triable by any Magistrate of the first class- Non- compoundable

154. Owner or occupier of land on which an unlawful assembly is held.-Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe to is likely to be committed, do not give the earliest notice thereof in his or their Power to the principal officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.
Punishment-Fine of 10,000 rupees Non- Cognizable-Bailable-Triable by any Magistrate - Non-compoundable.

155. Liability of person for whose benefit riot is committed .- Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land, respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot , or who has accepted or derived any benefit there from , such person shall be punishable with fine, if he or his agent or mangaer having reason to beliveve that such riot was likely to be committed or that he respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.
Punishment-Fine- Non- Cognizable-Bailable-Triable by any Magistrate - Non- compoundable.

156. Liability of agent of owner or occupier for whose benefit riot is committed.- Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes p lace, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine,if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to e committed, or that the all lawful means in his power to prevent such riot or assembly form taking place and for suppressing and dispersing the same.
Punishment-Fine- Non- Cognizable-Bailable-Triable by any Magistrate - Non- compoundable.

157. Harbouring persons hired for an unlawful assembly.- Whoever harbours, receives or assmbles, in any house or premises in his occupation or charge, or under his control any persons, knowing that such persons have been hired, engaged or employed , or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either desecription for a term which may extend to six month s, or with fine, or with both.
Punishment-Fine- Non- Cognizable-Bailable-Triable by any Magistrate - Non- compoundable**.**

158. Being hired to take part in an unlawful assembly or riot.- Whoever is engaged or offers or attempts to be haired or engaged, to do or assist in doing any if tge acts specified in Section 141, shall be punished with imprisonment of either description for a term which may extend to six months , or with fine, or with fine, or with both.
Or to go armed.- and whoever, being so engaged or hired as aforesaid, goes armed or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offences is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Para I. Punishment-Imprisonment for 6 months , or both- Cognizable-Bailable-Triable by any Magistrate - Non- compoundable.
Para II. Punishment-Imprisonment for 2year , or both- Cognizable-Bailable-Triable by any Magistrate - Non- compoundable.

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

160. Punishment for committing affray.- Whoever commits an affray, shall be punished with imprisoment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.
Punishment-Imprisonment for one months , or fine of 100 rupees, or both- Cognizable-Bailable-Triable by any Magistrate - Non- compoundable.

20. CONTEMPT OF LAWFUL AUTHORITY

CHAPTER X of IPC== OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS
172. Absconding to avoid service of summons or other proceeding.- Whoever absconds in order to avoid being served with a summons, notice or order , proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month , or with fine which may extend to five hundred rupees, or with both;
or, if the summons or notice or order is to attend in person or by agent , or to produce a document or an electronic record in a Court of justice, with simple imprisonment for a term which may extend to six months , or with fine which may extend to one thousand rupees, or with both.
Para I. Punishment- Simple imprisonment for 1 months , or fine of 500 rupees or both- Cognizable-Bailable-Triable by any Magistrate - Non- compoundable.
Para II. Punishment-Simple imprisonment for 6months , or fine of 1000 rupees or both-Non - cognizable-Bailable-Triable by any Magistrate - Non- compoundable.

173. Preventing service of summons of summons or other proceeding or preventing publication thereof .- Whoever in any manner intentionally prevents the serving on himself, or on any other person, or any summons, notice or order, proceeding from any public servant legally competent , as such public servant , to issue such summons , notice or order,
or intentionally prevents the lawful affixing to any place such summons , notice or order,
or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed,
or intentionally prevents the lawful making of any proclamation, under the authority of any public servant leally competent, as such public servant , to direct such proclamation to be made.
Shall be punished with simple imprisonment for a term which may extend to one month , or with fine which may extend to five hundred rupees, or with fine which may extend to five hundred rupees , or with both;
Or , if the summons, notice, order or proclamation is to be produced or delivered up to a Court of justice , with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees , or with both.
Para I. Punishment- Simple imprisonment for 1 month, or fine of 500 rupees, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.
Para II. Punishment- Simple imprisonment for 6 month, or fine of 1, rupees, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

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

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

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

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

Para I. Punishment- Simple imprisonment for 1 month, or fine of 500 rupees, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

Para II. Punishment- Simple imprisonment for 6 month, or fine of 1,000 rupees, or both-Non-cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

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

or , if document or electronic record is to be produced or delivered up to a court justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Para I. Punishment- Simple imprisonment for 1 month, or fine of 500 rupees, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

Para II. Punishment- Simple imprisonment for 6 month, or fine of 1,000 rupees, or both-Non-cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

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

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

Para I. Punishment- Imprisonment for 6 month, or fine of 1,000 rupees, or both-Non- cognizable – Bailable-Triable by and Magistrate –Non- compoundable.

Para II. Punishment- Simple imprisonment for 2 years, or fine,or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

178. Refusing oath or affirmation when duly required by public servant to make it.- Whoever refuses to bind himself by an oath [1][or affirmation] to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself by a public servant legally competent to require that he shall so bind himself , shall be punished with fine which may extend to one thousand rupees , or with both.

Punishment- Simple imprisonment for 6 month, or fine of 1,000 rupees, or both-Non- cognizable – Bailable-Triable by the court in which the offence is committed, subject to the provisions of Chapter XXVI; if not commited in a court, any Magistrate –Non- compoundable.

179. Refusing to answer public servant authorised to question.- Whoever , being legally bound to state the truth on any public servant, refuses to answer any estion demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant , shall be punished with simple imprisonment for a term which may extend to six months , or with fine which may extend to one thousand rupees, or with both.
Punishment- Simple imprisonment for 6 month, or fine of 1,000 rupees, or both-Non- cognizable –Bailable-Triable by the court in which the offence is committed, subject to the provisions of Chapter XXVI; if not commited in a court, any Magistrate –Non- compoundable.

180. Refusing to sign statement.- Whoever refuse to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement , shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.
Punishment- Simple imprisonment for 3 month, or fine of 500 rupees, or both-Non- cognizable –Bailable-Triable by the court in which the offence is committed, subject to the provisions of Chapter XXVI; if not commited in a court, any Magistrate –Non- compoundable.

181. False statement on or affirmation to public servant or person authorised to administer an oath or affirmation.- Whoever, being legally bound by an oath or affirmation to state the truth on any subject to any public servant or other servant or other person as aforesaid, touching the subject, any believe to be true , shall be punished with imprisonment of either description for a term which may extend to three years, and also be liable to fine.
Punishment-Imprisonment for 3 years and fine -Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

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

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

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

shall be punished with imprisonment of either description for a term which may extend to six month , or with fine which may extend to one thousand rupees , or with both.
Punishment- Imprisonment for 6 month, or fine of 1,000 rupees, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

183. Resistance to the taking of property by the lawful authority of a public servant.- Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant ,as such , shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees , or with both.
Punishment- Imprisonment for 1month, or fine of 500 rupees, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

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

185. Illegal purchase or bid for property offered for sale by authority of public servant.- Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other , whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding , shall be punished with imprisonment of either description for a term which may extend to one month, or with which may extend to two hundred rupees, or with both.

Punishment- Imprisonment for 3 month, or fine of 200 rupees, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

186. Obstructing public servant in discharge functions. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

Punishment- Imprisonment for 3month, or fine of 500 rupees, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable

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

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

Para I. Punishment-Simple imprisonment for 1 month, or fine of 200 rupees, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

Para II. Punishment- Simple imprisonment for 6 years, or fine of 500, or both-Non- cognizable – Bailable-Triable by and Magistrate –Non- compoundable.

188. Disobedience to order duly promulgated by public servant.- Whoever, knowing that , by an order promulgated by an order promulgated by a public servant lawfully whoever , knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

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

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

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

Para I. Punishment-Simple imprisonment for 1 month, or fine of 200 rupees, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

Para II. Punishment- Simple imprisonment for 6 months , or fine of 1,000, or both-Non- cognizable – Bailable-Triable by and Magistrate –Non- compoundable.

189. Threat of injury to public servant.- Whoever holds out any threat of injury to any public servant , or to any person in whom he believes that public servant to be interested, for the purpose of inducing that exercise of the public factions of such public servant , shall be punished with imprisonment of either description for a term which may extend to two year, or with fine, or with both.

Punishment-Imprisonment for 2 years, or fine,or of 200 rupees, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

******

UNIT-IV OFFENCES AGAINST HUMAN

1. Culpable homicide
3. Culpable homicide amounting to murder

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

Section 299 of IPC defines Culpable Homicide as follows –

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

Illustrations -

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

Explanation 1 - A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2 - Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented.

Explanation 3 - The causing of the death of child in the mother's womb is not homicide. But it may amount to Culpable Homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Based upon the above definition, the following are the essential elements of Culpable Homicide-

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

    Or the act must have been done with the knowledge that such an act may cause death - When a person does an act which he knows that it has a high probability to cause death, he is responsible for the death which is caused as a result of the act. For example, A knows that loosening the brakes of a vehicle has a high probability of causing death of someone. If B rides such a bike and if he dies, A will be responsible for B's death. In **Jamaluddin's case 1892**, the accused, while exorcising a spirit from the body of a girl beat her so much that she died. They were held guilty of Culpable Homicide.

    Negligence - Sometimes even negligence is considered as knowledge. In **Kangla 1898**, the accused struck a man whom he believed was not a human being but something supernatural. However, he did not take any steps to satisfy himself that the person was not a human being and was thus grossly negligent and was held guilty of Culpable Homicide.

Murder (When Culpable Homicide amounts to Murder)

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

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

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

Illustrations -

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

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

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

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

CULPABLE HOMICIDE	MURDER
A person commits Culpable Homicide if the act by which death is caused is done -	**Subject to certain exceptions , Culpable Homicide is Murder if the act by which death is caused is done -**
INTENTION	
(a) with the intention of causing death; or	1. with the intention of causing death; or
(b) with an intention to cause	2. with an intention to cause such bodily injury as the offender

such bodily injury as is likely to cause death.	knows to be likely to cause death of the person to whom the harm is caused. 3. with an intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in ordinary course of nature to cause death.
KNOWLEDGE	
(c) with the knowledge that such an act is likely to cause death.	4. With the knowledge that the act is so imminently dangerous that it must in all probability cause death.

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

Situations where Culpable Homicide does not amount to Murder

Section 300 also specifies certain situations when the Murder is considered as Culpable Homicide not amounting to Murder. These are –

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

Exception I - Culpable Homicide is not Murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos -

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

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

Exception 2 - Culpable Homicide is not Murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

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

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

Explanation-It is immaterial in such cases which party offers the provocation or commits the first assault.

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

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

4. GRAVE AND SUDDEN PROVOCATION

Grave and sudden provocation: Culpable homicide is not murder if the offended, who deprived of the self control by grave and sudden provocation, causes the death of a person, who gave the provocation or causes the death of any other person by mistake or accident. Thus for the first exception following things are necessary :-

a) There must be provocation.
b) Provocation must be grave and sudden.
c) By reason of such provocation the offender have been deprived of the power of self control.
d) The death must be of that person who gave the provocation or any other person by mistake or accident.

ILLUSTRATION: Y gives grave and sudden provocation to A. A on this sudden provocation fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z who is near him but out of sight. A kills Z here, A has not committed murder but merely culpable homicide.

Ajit Singh v/s State l991 : In this case the accused found his wife and a neighbours in a compromising position and shot both of them dead. It was held that he was acting under provocation and is liable for sudden provocation.

5. EXCEEDING RIGHT TO PRIVATE DEFENCE

RIGHT OF PRIVATE DEFENCE;- For the application of this exception the following conditions must be fulfilled :-

A. Act must be done in good health.
B. Act must be done in exercise of the right of private defence of person or property.
C. The person doing the act must have exceeded in his right given to him by law and thereby caused death.
D. The act must be done without premeditation and without any intention of causing more harm then was necessary for the purpose of such defence.

ILLUSTRATION:- Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. A believing in good faith that he can by no other mean, prevent himself from being horsewhipped shoots Z and kills. A has not committed murder but culpable homicide.

Bahadur Singh v/s State 1993 :The complainant party assaulted the accused person who were also armed with sharp weapons like Gandasa by the use of which death caused. It was held they had excluded their right of private defence in good faith and so exception N's was available to them.

6. HURT - GRIEVOUS AND SIMPLE

Hurt generally means injury on the body of a person. It is such an injury which causes bodily pain or disease or infirmity or fracture or disfigurement of face etc.

KINDS OF HURT

There are two kinds of Hurt:-

1. Simple Hurt.
2. Grievous Hurt.

1. Simple Hurt :- simple hurt is defined under section 319 of IPC whereas the grievous hurt has been defined under section 320. Simple hurt causes simple injury with simple bodily pain, while grievous hurt causes serious injury and serious pain in the body too.

DEFINITION OF SIMPLE HURT:

Section 319 says that," whoever causes bodily injury or pain or disease or infirmity by an act to any other person, such act is called simple hurt.

Section 319 contains the following ingredients:-

a) Bodily Pain:- The words show that there must be some pain in the body of a person. It means mental paid does not come under bodily pain. Any such injury which causes pain on any external part of body comes under simple hurt.

b) Disease : Disease means any illness. By such act which creates weakness and if a man comes into contract of any disease then it will come under simple hurt.

c) Infirmity:- Infirmity means by illness. By such act which creates weakness in the body, comes under simple hurt.

d) To any other Person : The hurt must be caused to any other person not to himself. In this way, in a simple hurt there is no need of physical contact. A hurt may be caused by any mean or method. Such hurt must cause bodily pain or disease or infirmity. Such hurt must be caused to another person and not to himself.

e) Section 319 does not show that there must be direct physical contact with another person for committing simple hurt.

2. Grievous Hurt : There are various kinds of grievous hurt which have been defined in section 320 in IPC. Thus a hurt is more than a slightly causing harm as defined in section 95 of IPC and less the culpable homicide. If the hurt results into death land fulfils the conditions of section 299 then it becomes culpable homicide, otherwise it grievous hurt.

The grievous hurt can be classified/designated as under :-

a. Emasculation : The destruction of private organ of a human being is known as emasculation. Any injury which makes a person incapable for functioning of the private organ, person comes under grievous hurt.

b. Permanent privation of the sight of either eye if there is privation or separation or destruction either eye of a person, is grievous hurt.

c. Permanent privation of the hearing of either ear. Similarly the destruction or separation of either ear is grievous hurt. Here the power of hearing must be affected. The eye and ears are the main functional organs of a human being. They have is an important role in the life.

d. Privation of any member or joint: Privation of any member or joint also comes under grievous hurt.

e. Destruction or permanent loss of the power of any member or joint:- If there is destruction of any member of joint of the body then it is also a grievous hurt or if any member or joint fails to work properly then also it will comes under grievous hurt.

f. Permanent disfiguration of the head or face :- Permanent disfiguration of the head or face means to cause such an injury on the head or face that they look bad or head becomes crucial.
g. Fracture or dislocation of Bone or tooth:- When any bone or tooth is dislocated it means they loss their original place. Fracture of any bones comes under grievous hurt.
h. When there is an such hurt which endangers to life or which causes paid continuously for a period of 20 days.
Endanger to life mean there must be death from such hurt. If the death is caused by grievous then it will not be culpable homicide or murder because there is no intention to cause death. So any hurt to create danger to life is also called grievous hurt.

Who was guilty in the exemplary/given cases :
In the case of Palani Goudon v/s Emperor Madras. It was held by a full bench of the Madras High Court that the accused was guilty of either murder or culpable homicide not amounting to murder. However Their Lordship held that on the facts found the accused could not be convicted either of murder or culpable homicide, he could of course be punished both of his original assault on his wife and for his attempt to create false evidence by hanging her. He was convicted under section 326 Of IPC.
PUNISHMENT FOR SIMPLE & GRIEVOUS HURT:
Section 323 : Punishment for voluntarily causing hurt is one year or fine or with both.
Section 325: For voluntarily causing grievous hurt, the punishment is 7 years with fine.
Section 326: Whoever except the case provided for by sec.335 voluntarily causes grievous hurt by means or any instrument for shooting or cut or any instrument which is used as a weapon of offence is likely to cause death or by means of fire. Punishment imprisonment of life, it is ten years with fine.

DIFFERENCE BETWEEN SIMPLE HURT AND GRIEVOUS HURT

SIMPLE HURT	GRIEVOUS HURT	
1. Simple hurt is defined in sec	Grievous hurt defined in sec.320.	319.
2. In simple hurt injury is commi -tted on the external part of the body.	There may be injury of external or internal part of the body causing bodily pain.	
3. Simple hurt is a form of simple Injury.	Grievous hurt is a serious form of hurt.	
4. The types of injury are bodily Pain, disease, infirmity etc.	Important organs of the body like eye, Ear, joints, face dislocation or broken	
5. Punishment is of one year or fine.	Punishment is of seven years with Fine.	

7. ASSAULT AND CRIMINAL FORCE

Force

A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the following 3 ways:

a. by his own bodily power;
b. by disposing any substance in such a manner that the motion, or change or cessation of motion, takes place without any further act on his part, or on the part of any other person;
c. by inducing any animal to move, to change its motion, or to cease to move.

Criminal force

Whoever intentionally uses force to any person, without that person's consent, in order to cause the committing of any offence, or intending by the use of such force illegally to cause, or knowing it to be likely that by the use of such force he will illegally cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations

a. A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z, and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

Assault

Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation

Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations

a. A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

Punishment for using criminal force otherwise than on grave and sudden provocation

Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment for a term which may extend to 3 months, or with fine which may extend to $500, or with both.

Explanation

Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence; or if the provocation is given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant; or if the provocation is given by anything done in the lawful exercise of the right of private defense. Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

Assault or criminal force in attempting wrongfully to confine a person

Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to 1,000, or with both.

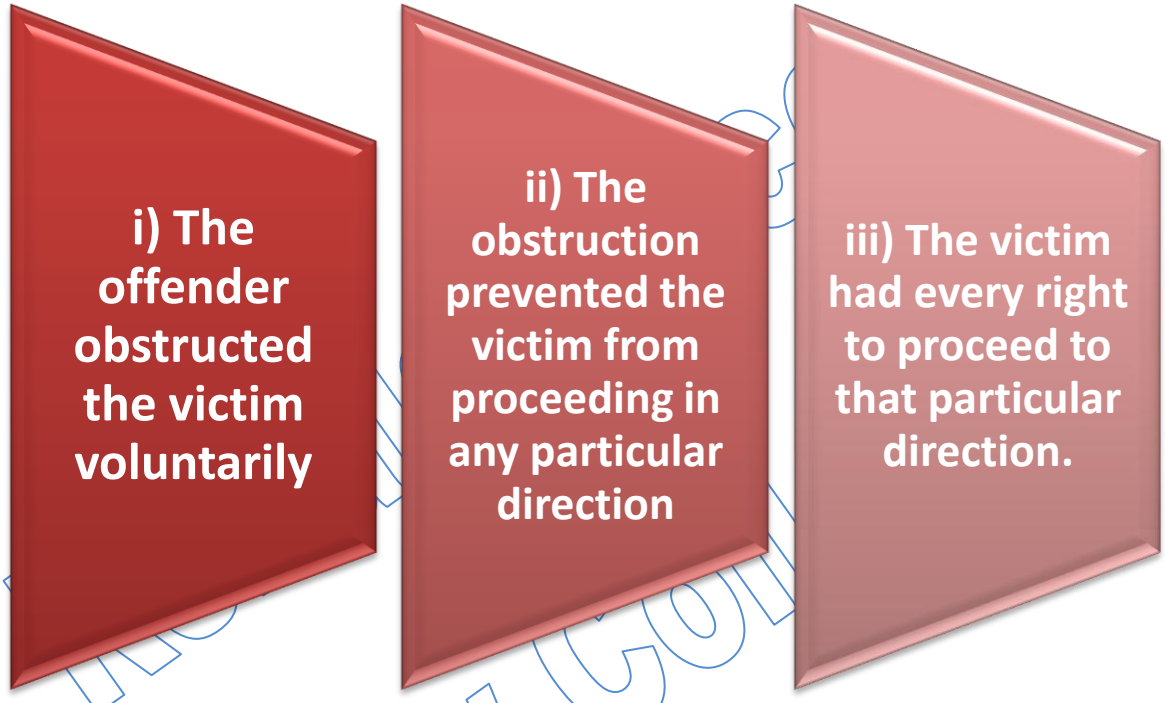
8. WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT

Definition of wrongful restraint :-

The offence of wrongful restraint is defined by section 339 of the Indian Penal Code . According to this section whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed , is said wrongfully to restrain that person . But there is one exception to this offence . The obstruction of a private

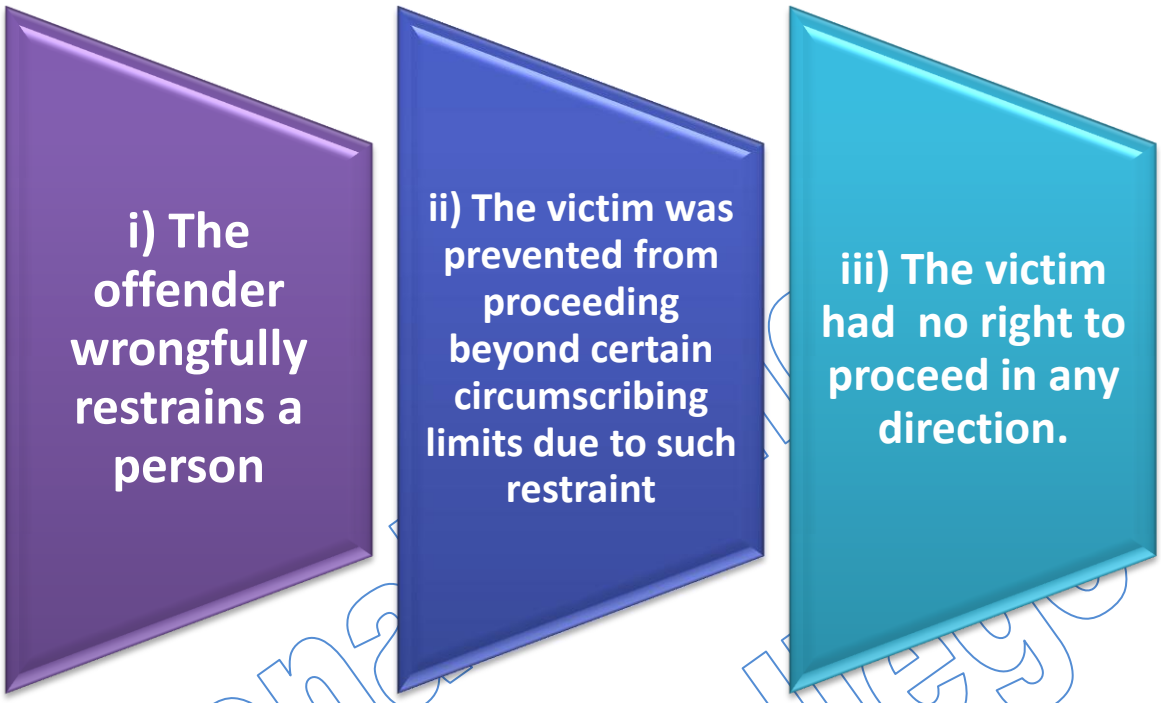
way over land or water which a person in good faith believes himself to have a lawful right to obstruct , is not an offence within the meaning of this section .

To constitute the offence of WRONGFUL RESTRAINT there must have the following three ingredients :-



Definition of wrongful confinement :-
The offence of wrongful confinement has been defined by section 340 of the Indian Penal Code . According to this section whoever wrongfully restrains any person in such manner as to prevent that person from proceeding beyond certain circumscribing limits , is said wrongfully to confine that person .

The essential ingredients of the offence of WRONGFUL CONFINEMENT are as follows :-



Distinction between wrongful restraint and wrongful confinement ;
i) Offence of wrongful restraint , is the genus , whereas the offence of wrongful confinement is a species . Wrongful confinement is severe form of wrongful restraint .

ii) In the offence of wrongful restraint , the offender obstructs the victim from proceeding to any particular direction towards which he had right to preceed. But in the offence of wrongful confinement , the offender obstructs the victim from proceeding beyond certain circumscribing limits towards which he had right to proceed .

iii) In the offence of wrongful restraint , the restraint is partial , the victim could proceed towards any other direction than towards the direction he was restrained . But In the offence of wrongful confinement , the restraint is total , the victim could not proceed towards any direction.

iv) Wrongful confinement is a more serious offence than wrongful restraint .

8.KIDNAPPING, KIDNAPPING FROM LAWFUL GUARDIANSHIP, OUTSIDE INDIA AND 9. ABDUCTION

Kidnapping and abduction are particular types of offences under the law of crime. Under these offences, a person is taken away secretly or forcible without his consent or without the consent of authorised guardian. Under kidnapping a person is kidnapped from lawful custody. Under section 359 of IPC, there are two types of kidnapping :-

1. Kidnapping from India.
2. Kidnapping from lawful guardianship.

Section 360 : defines that kidnapping from India and section 361 defines that kidnapping from lawful guardian ship. The offence of abduction is defined under section 362 of IPC.

1. KIDNAPPING FROM INDIA:

Section 360 says that whoever conveys any person beyond the limit of India without the consent of that person or of any person legally authorised to consent on behalf of that person, is said to kidnap that person from India. Age limit is immaterial. This has two essentials :

(i) Convey any person beyond the limits of India.

(ii) Such conveying must be without the consent of that person or of the person legally authorised to give consent on behalf of that person.

2. KIDNAPPING FROM LAWFUL GUARDIANSHIP : SEC.361

Sec. 361 says that whoever takes or entices any minor under sixteen years of age if a male or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardianship of such minor or person of unsound mind, without the consent of such guardian is said to kidnap such minor or person from lawful guardianship. The word lawful guardian here mans any person lawfully interested with care or custody of such minor or other person.

3. EXCEPTIONS :- There is one exception of this section, this section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith, believes himself to be entitled the lawful custody of such child unless such act is committed for an immoral or unlawful purpose.

Take or entice away :- Take away or entice away means to induce a person for going to another place. The object of this Sec. Is to protect minor children from being reduced (to corrupt) for improper purpose.

Guadian consent :- The kidnapping must be without the consent of the guardian. The consent may be expressed or implied. Thus, to attract this sec. there must be taking or enticing away any minor or unsound mind person out of lawful guardianship.

ABDUCTION

Section 362 says that whoever by force compels or by any deceitful induces any person to go from any place, is said to abduct that person. This section may read with section 364, 365 and 360.

This section contains two essentials for the offence of abduction :-

1. Forcible compulsion or inducement by deceitful means.
2. The object of such compulsion or inducement must be going of a person from any place. Thus abduction is an offence under sec.362. If by force a person compels or even by fraudulent means induce any other person to go from any place taken is called abduction.

PUNISHMENT FOR KIDNAPPING UNDER SEC. 363 :

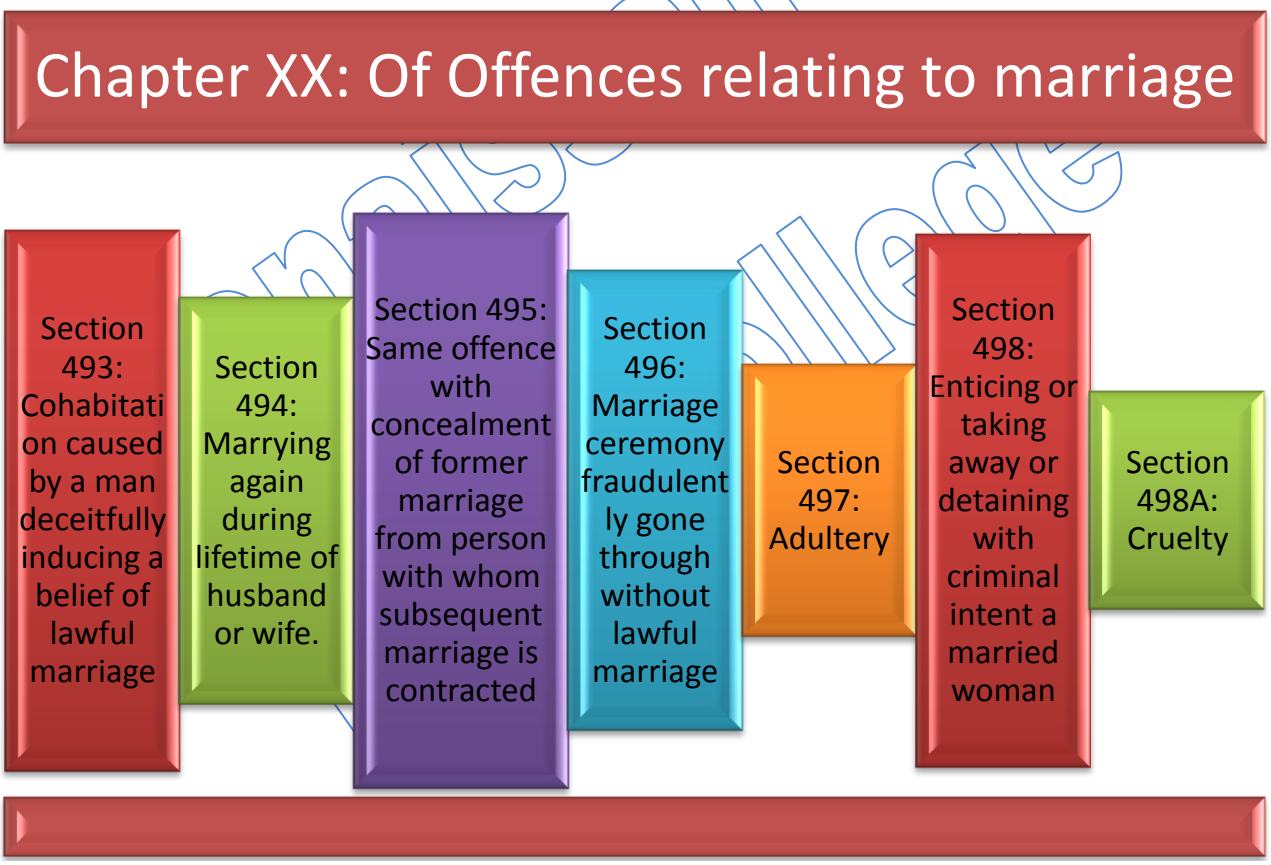
Whoever kidnaps any person from India or from Lawful guardianship shall be punished with imprisonment or either description for a term which may extend to seven years and shall be liable to fine.

DIFFERENCE BETWEEN KIDNAPPING AND ABDUCTION:

	KIDNAPPING	ABDUCTION
1.	It is committed only in respect of A minor under 16 years of age if A male and 18 years of age if a Female, or a person of unsound mind.	It is committed in respect of any person of any age.

2.	In kidnapping consent of the Person enticed is immaterial.	Consent of the person removed, if Freely and voluntarily given, Condones the offence.
3.	In kidnapping the intention of The offender is irrelevant.	In abduction intention is a very Important factor.
4.	It is not a continuing offence. The Offence is completed as soon as The minor is removed from the Custody of his or her guardian.	It is a continuing offence. A person is being abducted both when he is first taken from one Place to and also when he is Removed from one place to Another

Offences Relating to Marriage



1. THEFT

Theft is an offence in which moveable property of a person is taken away without his consent. Such property must be taken away dishonesty. Thus in theft there would be a moveable property. It should be taken dishonestly and without the consent of the owner. Theft has been defined in Section 378 of IPC. Simultaneously the punishment for the commitment of act of theft has also been defined in Section 379 of IPC.

DEFINITION OF THEFT U/S 378 OF IPC

" Whoever intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft."

INGREDIENTS OF THEFT

1. There must be a dishonest intention of a person to take the property.
2. Removal of movable property.
3. Such movable property must be taken away.
4. The property must be taken away from the possession of a person. In other words there must be a possession of that property.
5. Such property must be taken away without the consent of such person.

A. Dishonest Intention:- It is also called as malafied intention which can be representation in the form of mensrea. This mensrea is the base of the theft. The petitioner must prove that a thing was taken away with the dishonest intention.

However intention is a mental element which is difficult to prove but circumstantial evidences are considered for this purpose. The main measurement of dishonest intention is to make a wrongful loss to another person then such act is considered to be done with dishonest intention.

B.Movable Property:- The subject of theft is movable property. Immovable property cannot be stolen. A movable property is a property which is able to move easily or which is not immovable. It means the thing permanently attached to the earth is immovable property, is not the subject of theft. It becomes capable of being the subject of theft when it is severed from the earth.

C. Be taken away out of Possession of another Person:- The property must be in the possession of another person from where it is removed. There is no theft of wild animals, birds or fish while at a large but there is a theft of tamed animals.

ILLUSTRATION :- 'A' finds a ring lying on the road which was in the possession of any person. A by taking it commits no theft, though he may commit criminal misappropriation of property.

D. It should be taken without consent of that person:- The consent may be express or implied and may be given either of the person in possession, or by any person having for that purpose express or implied authority.

PUNISHMENT FOR THE OFFENCE OF THEFT

The punishment for committing theft in Indian Penal Code under section 379 for offence of theft is an imprisonment which may extend to three years or with fine or both.

2. ROBBERY, DACOITY

Section 390 of the Indian Penal Code defines robbery . According to this section robbery is the aggravated form of either theft or extortion because in all robbery there is either theft or extortion.

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

The offence of extortion becomes robbery if , the offender , at the time of committing the extortion , is in the presence of the person put in fear , and commits the extortion by putting that person in fear of instant death or of instant hurt , or of instant wrongful restraint to that person or to some other person , and , by so putting in fear, induces the person so put in fear then and there to deliver up the thing so extorted .

Explanation to the section clarifies that the offender is said to be present if he is sufficiently near to put the other person in fear of instant death or of instant hurt , or of instant wrongful restraint .

Essential ingredients of the offence of robbery are as follows :-

i) Offender committed theft as defined in section 378 in the process ;

ii) Offender caused or attempted to cause to some persons ---
a) fear of death , or hurt or wrongful restraint ,
b) fear of instant death , or of instant hurt or of instant wrongful restraint ,
iii) Offender did such act either ----
a)in order to the committing of the theft , or
b) while committing the theft , or
c) in carrying away or attempting to carry away the property.

In what circumstances robbery amounts to dacoity?
Section 391 of the Indian Penal Code provides that when five or more persons conjointly commit or attempt to commit a robbery , or where the whole number of persons conjointly committing or attempting to commit a robbery , and persons present and aiding such commission or attempt , amount to five or more , every person so committing , attempting or aiding , is said to commit the offence of dacoity.
The offence of robbery takes the character of dacoity when it is committed conjointly by five or more persons . The words conjointly refers to united or concerted action of the persons participating in the transaction .

Essential ingredients of the offence of dacoity are as follows :-
1) The offenders were five or more in number who committed or attemped or aided to commit robbery ;
2) All such persons were acting conjointly .
Usually in case of dacoity , including train dacoity or bus dacoity the offenders are not known to the victims and witnesses though the witnesses or victims get ample opportunity to see them . As such identification of the offenders at the T.I. Parade is very important in a case of dacoity.
If death is caused in course of dacoity, what is the highest punishment?
Section 396 of the Indian Penal Code says that if any one of five or more persons , who are conjointly committing dacoity , commits murder in so committing dacoity , everyone of those persons shall be punished with death , or imprisonment for life , or rigorous imprisonment for a term which may extend to ten years , and shall also be liable with fine .

To constitute this offence the following essential ingredients must remain present .
i) Accused persons were five or more in number who committed the dacoity ;
ii) They were acting conjointly ;
iii) Any one or more of them committed murder ;
iv) And such murder was committed in course of dacoity .
Section 396 speaks about joint liability of the offenders conjointly commiting a dacoity and for the act of murder committed by any one or more of them. To come within the purview of this section , the murder must be committed in course of dacoity or while committing dacoity . Where murder is committed in attempting to escape without carrying away the stolen property , it does not come within the scope of this section but if the murder is committed while carrying away the stolen property , it falls within the purview of this section . So carrying away the stolen property is must for this section to prove that the murder was committed in course of dacoity .

3. CHEATING

Section 415 in The Indian Penal Code
415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any

property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

4. EXTORTION- EXTORTION U/S 383

According to Section 383 of IPC," Whoever intestinally 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 valuable security commits, "Extortion".

ESSENTIALS OF EXTORTION

1. There must be a show of force or threat.
2. Such force or threat should be in the form of fear of injury.
3. Such injury may be for the person who is put under the fear or for any other persons in which the former person has interest.
4. Such force should be shown with a view to take a thing for property or valuable security or sign or seal or a document.
5. There must be dishonest intention.

Thus if the above elements are present then it is an offence of extortion, dishonest intention is also an essential element of extortion. Dishonest intention is measured from the circumstances and facts of each case. Anything taken from a person at the point of pistol is an e.g. of extortion.

ILLUSTRATIONS :-

I) 'A' threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. 'A' has committed extortion.

PUNISHMENT FOR THE OFFENCE OF EXTORTION

A has committed the offence of extortion. Punishment for EXTORTION under section 384 of IPC," Whoever commits extortion, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

5. MISCHIEF

Section 425 in The Indian Penal Code

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

Illustrations

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

(*) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

6. CRIMINAL MISAPPROPRIATION AND CRIMINAL BREACH OF TRUST *Criminal misappropriation of property has been explained under chapter 17 of Indian penal code captioned offences relating to property which extends from section 378 to section 462. Criminal misappropriation of property has been under section 303 and section 304.*

Meaning and definition:

Definition of criminal misappropriation of property has been explained in section 303, it says whoever dishonestly misappropriates or converts to his own use any movable property shall be punished with imprisonment of either description for a term which may extend to two tears or with fine or both.

I**llustration**: A being on friendly terms with Z goes into Z's library in Z's absence and takes away a book without Z's express consent.Here, if A was under the impression that he had Z's implied consent to take the book for book for the purpose of reading it. A has not committed theft. But if A afterwards sells the book for his own benefit he is guilty of an offence under this section.

Ingredients:

The following are the essential requirement of criminal misappropriation:-

i. Dishonest Misappropriation or conversion of property to one's own use.
ii. Such property must be movable.

Dishonest Misappropriation or conversion of property to one's own use:-

The essence of offence under this section is that some property belonging to another which comes into the possession of the accused innocently is misappropriated or converted by the accused to his own use. There must be actual conversion of the thing misappropriated to the accused's own use. Mere retaining of an article found does not amount to criminal misappropriation. The misappropriation need not be permanently, it may be even for a temporary period may be.

Illustration: A took possession of a stray cattle and it was not shown that the cattle was stolen property and he dishonestly retained it, he was liable under this section.

Movable property:-

Only movable property can be the subject matter of an offence under this section.

Explanations;-

Explanation 1: it refers only to those cases where there is a dishonest misappropriation of property and makes it clear that section 403 includes temporary as well as permanent misappropriation of property.

Explanation 2: this explanation makes it clear that thing abandoned cannot form a proper subject of an offence under this section. For constituting an offence under this section property appropriated must be owned by somebody. This explanation requires finder of goods, before appropriating the property found, to make attempt to find the owner, if they have means to do so. the finder of goods must wait for a reasonable time to allow the owner to claim that property, before he appropriates it.

Differences:

The following are the point of differences between criminal misappropriation of property and criminal breach of trust:-

POINT OF DIFFERENCE	CRIMINAL MISAPPROPRIATION OF PROPERTY	CRIMINAL BREACH OF TRUST
Section	403 and 404	405

Acquisition of property	Property comes into the possession of the offender by some casualty and he afterwards misappropriates it.	Offender is lawfully entrusted with the property and he dishonestly misappropriates it or willfully suffers any person so to do.
Character of possession	There is no fiduciary relationship in this offence. The property comes into the possession of the offender any how	There is conversion of property held by a person in a fiduciary capacity.
Nature of possession	It must be of movable property.	Property may be movable or immovable.
Punishment	2 years+ fine	Minimum 3 years + fine and extended punishment for grave criminal breach of punishment i.e. maximum 10 years+ fine.

7. OFFENCES RELATING TO DOCUMENTS AND PROPERTIES.

Chapter-XVIII of the Indian Penal Code explains the provisions about the offences relating to documents and to property marks. This Chapter contains Sees. 463 to 489-E. Of them, secs. 463 to 477-A explain the provisions about "Forgery", "Forged documents", making of false documents and punishments. Sec. 463 defines "Forgery". Sec. 464 explains about making "False Document". Sec. 465 prescribes punishment for forgery.

Sec. 466 explains forgery of record of Court or of public register, etc. Sec. 467 states about forgery of valuable security, will, etc. Sec. 468 explains forgery for purpose of cheating. Sec. 469 states forgery for purpose of harming reputation. Sec. 470 defines forged documents. Remaining Sections, i.e., from Sec. 471 to Sec. 477-A are aggravated forms of forgery.

Meaning:

Forgery is the false making or materially altering with intent to defraud, of any writing which, if genuine, might apparently be of legal affiance, or the foundation of a legal liability.

Tomlin's Law Dictionary: The fraudulent making or alteration of any record, deed, writing, instrument, register, stamp, etc., to the prejudice of another man's right. It is a false making of any written instrument for the purpose of fraud or deceit. It includes every alteration of or addition to a true instrument.

Definition:

Sec. 463. Forgery:

Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury] to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

A. Ingredients:

The essential ingredients of forgery under Sec. 463 are:

1. The making of the false document or part of it:
2. Such making should be with such intention to commit fraud; and

3. By such forgery damage or injury occurs to the public or to any person; and
4. Such act of forgery is done in support of any claim of title.
6. The words in square brackets in Section were substituted by Act 21 of 2000, Sec. 91 and Sch. I, for "Whoever makes any false documents or part of a document with intent to cause damage or injury", w.e.f. 17-10-2000.
B. The gist of the offence under Sec. 463 is that the offender intends to cause damage or injury to the public or to any person with a dishonest intention. There must be deceit or intention to deceive and actual or possible injury caused to some person or persons. It is not necessary that injury or fraud or harm shall occur to the complainant.

C. Noor Ahemad vs. Jagadish Chandra Sen (AIR 1934 Cal. 839)

Brief Facts: The accused tampered the electoral rolls. Thus he caused injury to the public. Voting rights of some of the voters were affected. He was held guilty under this Section.
D. Generally forgery is made in respect of a legal claim or title to property. However it is not limited to a claim to a property only. Forgery may include such other documents, viz., making forgery of a Court summons, forging a discharge certificate on a mortgage deed, etc. The forgery of a copy of an original document is an offence under this Section.

F. G.S. Bansal vs. Delhi Administration (AIR 1963 SC 439)

The accused encashed the post office national saving certificates after making necessary endorsements and signatures of the deceased. He also attested them. The Supreme Court held that the accused was guilty of the offence of forgery under Sec. 463.

Making a False Document

Sec. 464. Making a false document:

A person is said to make a false document or false electronic record,—

First:

Who dishonestly or fraudulently,—
(a) Makes, signs, seals or executes a document or part of a document;
(b) Makes or transmits any electronic record or part of any electronic record;
(c) Affixes any digital signature on any electronic record;
(d) Makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or part of a document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or affixed; or

Secondly:

Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made or executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly:

Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]

Illustrations:

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

Explanation-1:
A man's signature of his own name may amount to forgery.
Explanation-2:
The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.
Explanation-3:
For the purposes of this Section, the expression "affixing digital signature" shall have the meaning assigned to it in clause (d) of sub-section (1) of Section 2 of the Information Technology Act, 2000 (21 of 2000).
Important Points:
A. Section 464 gives an elaborative picture. It also gives seventeen illustrations, three explanations, and three descriptions. The definition of making false document given under Sec. 464 is part of definition of forgery. Both must be read together. The essential Ingredients of Sec. 464 are:
1. That fraudulently signing a document or a part of a document with an intention of causing it to be believed that such document or part of a document was signed by another or under his authority;
2. Making of such a document with an intention to commit fraud or that fraud may be committed;
3. Mens rea must be found in both the Sections 463 and 464. Fraudulently and the intention to commit fraud in these sections give the same meaning.
4. The words in square brackets in Section were substituted by Act 21 of 2000, Sec. 91 and Sch. I, for "Whoever makes any false documents or part of a document with intent to cause damage or injury", w.e.f. 17-10-2000
B. Punishment for forgery:
Sec. 465 says that whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Nature of offence: The offence under this Section is non-cognizable, bailable non- compoundable, and triable by Magistrate of the first class.
C. Attestation of a forged document:
Where a person attests a forged document without knowing the nature of the document he cannot be deemed as an offender. However if a person attests a forged document knowing it to be a forged document, he shall be guilty of offence of forgery under Sec. 464.
E. Forged Document:
Sec. 470 defines: "A false document made wholly or in part by forgery is designated as a forged document".

Problem:
State under what circumstances a person can commit forgery of his own signature? SOLUTION: A man's signature of his own name may amount to forgery. As per Sec. 464, Explanation No. 1. And its illustrations from (a) to (e), it is evident that a man's signature of his own name and may amount to forgery, and he is guilty of offence of forgery of making false document.

CHAPTER XVIII – OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

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

*****

UNIT-V TYPES OF PUNISHMENT

TYPES OF PUNISHMENTS ACCORDING TO IPC

Section 53 of the Indian Penal Code, 1860 prescribes five kinds of punishments.

1. Death Penalty
2. Life imprisonment
3. Imprisonment
    1. Rigorous
    2. Simple
4. Forfeiture of property
5. Fine

Section-53A. **Construction of reference to transportation.—**

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

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

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

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

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

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

1. DEATH

2. SOCIAL RELEVANCE OF CAPITAL PUNISHMENT

3. IMPRISONMENT- FOR LIFE, WITH HARD LABOUR, SIMPLE IMPRISONMENT

4. FORFEITURE OF PROPERTY

5. FINE

Chapter 3 of Indian Penal Code 1860 captioned "Punishment" deals with various kinds of punishments to which offenders are liable under the code. This chapter extends from section 53 to section 75.

Punishment is the suffering in person or property inflicted by the society or the public servants on the offenders who is adjudged guilty of crime under the law. The administration of punishment involves the intention to produce some kind of pain which may be physical or monetary or both. Prof. Hart defines punishment in terms of the following five elements-

i. It must involve pain or other consequent normally considered unpleasant
ii. It must be for an actual or supposed offender for his offence.
iii. It must be for an offence against legal rules.

iv. It must be intentionally administered by human beings other than the offender.

v. It must be imposed and administered by an authority constituted by a legal system against which the offence is committed.

TYPES OF PUNISHMENTS-

i. **Capital punishment (death):** The infliction of death sentence or taking away the offenders life by authority as a punishment for an offence is capital punishment. In India it is awarded in rarest of rare cases. It may be awarded as punishment in the following offences:

a) Waging war against the government of India (section 121).
b) Abetting mutually actually committed(section 132)
c) Giving or fabricating false evidence upon which an innocent person suffers death(section 194)
d) Murder(section 302)
e) Murder by life convicts(section 303)
f) Abetment of suicide of a minor or an insane or intoxicated person(section 305)
g) Dacoity accompanied with murder.(section 396)
h) Kidnapping for ransom(section 364 A)

ii. Transportation for life: In its ordinary connotation imprisonment for life means imprisonment for the whole of the remaining life period of the convicted person's natural life. According to section 57 imprisonments for life shall be reckoned as equivalent to imprisonment for 20 years.

But only for calculating fractions of terms of punishment imprisonment for life shall be reckoned as equivalent to imprisonment for 20 yrs.But otherwise the sentence of imprisonment for life is of indefinite duration.

iii. Imprisonment :

a) **Simple**- it is a punishment in which the offender is confined to jail only and not subjected to any hard labour. The following are some offences which are punishable with simple imprisonment –
   - Wrongful restraint (section 341)
   - Uttering any word or making any sound or gesture with an intention to insult the modesty of a women(section 509)
   - Misconduct in a public place by a drunken person(section 510)
   - Defamation (section 500,501,502)
   - Criminal misappropriation of property(section 403)

b) **Rigorous**-in this case the offender is put to hard labour such as grinding corn,digging,cutting wood etc.In state of Gujarat v/s hon. high court of Gujarat it was held that imposition of hard labour on prisoners undergoing rigorous imprisonment has been held to be legal. The following are some offences which are punishable with rigorous imprisonment –
   - Kidnapping in order to murder (section 364)
   - Robbery(section 392)
   - Dacoity(section 395)
   - House breaking in order to commit offence punishable with death (section 449)

iv. Forfeiture of property: The punishment of absolute forfeiture of all the property of the offender is now abolished by act 16 of 1921.

v. **Fine:** Fine can be simply defined as monetary punishment. Almost all the section related with awarding punishment includes fine as punishment .However section 63 says where n sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive .

6. DISCRETION OF COURT IN AWARDING PUNISHMENT

Punishing criminals is a function of the State. Penologists have formulated several theories that deal with punishments. The four modern theories are:

- Deterrent Theory
- Retributive Theory
- Expiation Theory
- Protective or Preventive Theory
- Reformative Theory

Deterrent Theory

The aim of this theory is to inflict various penalties on the offenders with a view to deterring them from committing crime. This theory also seeks to create a sense of fear in the mind of others with a view to keep them away from committing such crime. The rigor of the punishment acts as a warning to others.

Deterrence fails in the case of hardened criminals because the punishment hardly has any effect on them. This can be said from the fact that many criminals return to prison. They prefer to live in a prison to live a normal life.

The aim of this theory is to be a terror to the evil-doers and a warning to all others who might be tempted to imitate them.

Retributive Theory

'Retributive' means 'punitive; to re-compensate; to payback'.

Retribution is by way of punishment. This theory says that the wrong doer should be given the same punishment as that will be suffered by the victim.

'a tooth for a tooth' and 'an eye for an eye'.

Expiation Theory

'Expiation' means 'compensation'.

According to this theory, a compensation is paid to to the victim on the wrongdoer. The society recognizes the right of the victim. The criminal is punished economically.

Protective or Preventive Theory

This theory says that all criminals should be imprisoned and kept them far away from the normal society without any connection to it. Thus, the society will be protected from the criminals.

This theory feels that protecting the society from criminals is better that curing the minds of the criminals.

Reformative Theory

This theory uses social, economic, physical and psychological methods in bringing about change in the minds of the criminals.

Discretion of court in awarding punishment differs on following basis-

1 Age
2 character
3 Previous conviction
4 condition of offender
5 nature of offence
6 past behavior of offenders

7gender
8 intention
9 Self defence
10 defences taken etc.

Municipal Committee vs. Basakhi Ram 1963
(Delay became the cause of Lesser punishment)

7. MINIMUM PUNISHMENT IN RESPECT OF CERTAIN OFFENCES

In India neither the legislature nor the judiciary has issued structured sentencing guidelines. Several governmental committees have pointed to the need to adopt such guidelines in order to minimize uncertainty in awarding sentences. The higher courts, recognizing the absence of such guidelines, have provided judicial guidance in the form of principles and factors that courts must take into account while exercising discretion in sentencing.

I. Absence of Structured Sentencing Guidelines

Currently India does not have structured sentencing guidelines that have been issued either by the legislature or the judiciary. In March 2003, the Committee on Reforms of Criminal Justice System (the Malimath Committee), a body established by the Ministry of Home Affairs, issued a report that emphasized the need to introduce sentencing guidelines in order to minimize uncertainty in awarding sentences, stating, the Indian Penal Code prescribed offences and punishments for the same. For many offences only the maximum punishment is prescribed and for some offences the minimum may be prescribed. The Judge has wide discretion in awarding the sentence within the statutory limits. There is now no guidance to the Judge in regard to selecting the most appropriate sentence given the circumstances of the case. Therefore each Judge exercises discretion accordingly to his own judgment. There is therefore no uniformity. Some Judges are lenient and some Judges are harsh. Exercise of unguided discretion is not good even if it is the Judge that exercises the discretion. In some countries guidance regarding sentencing options is given in the penal code and sentencing guideline laws. There is need for such law in our country to minimise uncertainty to the matter of awarding sentence. There are several factors which are relevant in prescribing the alternative sentences. This requires a thorough examination by an expert statutory body.

The Committee advised further that, in order to bring "predictability in the matter of sentencing," a statutory committee should be established "to lay guidelines on sentencing guidelines under the Chairmanship of a former Judge of Supreme Court or a former Chief Justice of a High Court experienced in criminal law with other members representing the prosecution, legal profession, police, social scientist and women representative." In 2008, the Committee on Draft National Policy on Criminal Justice (the Madhava Menon Committee), reasserted the need for statutory sentencing guidelines. In an October 2010 news report, the Law Minister is quoted as having stated that the government is looking into establishing a "uniform sentencing policy" in line with the United States and the United Kingdom in order to ensure that judges do not issue varied sentences.

In 2008, the Supreme Court of India, in *State of Punjab v. Prem Sagar & Ors.*, also noted the absence of judiciary-driven guidelines in India's criminal justice system, stating, "in our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts, except for making observations with regard to the purport and object for which punishment is imposed upon an offender, had not issued any guidelines." The Court stated that the superior courts have come across a large number of cases that "show anomalies as regards the policy of sentencing," adding, "whereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where the same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fines." In 2013 the Supreme Court, in the case of *Soman v. State of Kerala*, also observed the absence of structured guidelines:

Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges.

However, in describing India's sentencing approach the Court has also asserted that "the impossibility of laying down standards is at the very core of the Criminal law as administered in India, which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment."

Sentencing procedure is established under the Code of Criminal Procedure, which provides broad discretionary sentencing powers to judges. In a 2007 paper on the need for sentencing policy in India, author R. Niruphama asserted that, in the absence of an adequate sentencing policy or guidelines, it comes down to the judges to decide which factors to take into account and which to ignore. Moreover, he considered that broad discretion opens the sentencing process to abuse and allows personal prejudices of the judges to influence decisions.

II. Crimes and Judicial Sentencing Guidance

In the Supreme Court's judgment in *Soman v. Kerala*, the Court cited a number of principles that it has taken into account "while exercising discretion in sentencing," such as proportionality, deterrence, and rehabilitation. As part of the proportionality analysis, mitigating and aggravating factors should also be considered, the Court noted.

In *State of M.P. v. Bablu Natt*, the Supreme Court stated that "[t]he principle governing imposition of punishment would depend upon the facts and circumstances of each case. An offence which affects the morale of the society should be severely dealt with." Moreover, in *Alister Anthony Pareira v. State of Maharashtra*, the Court held that sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

A. Murder

The punishment for murder under India's Penal Code is life imprisonment or death and the person is also liable to a fine. Guidance on the application of the death sentence was provided by the Supreme Court of India in *Jagmohan Singh v. State of Uttar Pradesh*, where the Court enunciated an approach of balancing mitigating and aggravating factors of the crime when deciding on the imposition of capital punishment. However, this approach was called into question first in *Bachan Singh v. State of Punjab* where the Court emphasized that since an amendment was made to India's Code of Criminal Procedure, the rule has changed so that "the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so." The Court also emphasized that due consideration should not only be given to the circumstances of the crime but to the criminal also. However, more recently the Court in *Sangeet & Anr. v. State of Haryana*, noted that the approach in *Bachan* has not been fully adopted ubsequently, that "primacy still seems to be given to the nature of the crime," and that the "circumstances of the criminal, referred to in *Bachan Singh* appear to have taken a bit of a back seat in the sentencing process." The Court in *Sangeet* concluded as follows:

1. This Court has not endorsed the approach of aggravating and mitigating circumstances in the 1971 case of Bachan Singh. However, this approach has been adopted in several decisions. This needs a fresh look. In any event, there is little or no uniformity in the application of this approach.
2. Aggravating circumstances relate to the crime while mitigating circumstances relate to the criminal. A balance sheet cannot be drawn up for comparing the two. The considerations for both are distinct and unrelated. The use of the mantra of aggravating and mitigating circumstances needs a review.

3. In the sentencing process, both the crime and the criminal are equally important. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing.
4. The Constitution Bench of this Court has not encouraged standardization and categorization of crimes and even otherwise it is not possible to standardize and categorize all crimes.
5. The grant of remissions is statutory. However, to prevent its arbitrary exercise, the legislature has built in some procedural and substantive checks in the statute. These need to be faithfully enforced.

B. Theft

The punishment for theft is up to three years' imprisonment, a fine, or both. No judicial guidance was found regarding sentencing for theft.

C. Manslaughter

Causing death by negligence is punishable by imprisonment of up to two years, a fine, or both. Other crimes similar to manslaughter include punishment for culpable homicide not amounting to murder, addressed in section 304 of the Penal Code:

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with a fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

The Supreme Court looked at the question of sentencing involving sections 304 and 304A in a drunken driving case and found that punishment must be commensurate with the crime and that deterrence was a primary consideration when deciding on the severity of the sentence where rash or negligent driving was involved.

D. Rape

Recent changes have been made to the crime of rape in India's Penal Code. Absent any aggravating factors, the section stipulates a minimum punishment of imprisonment for seven years up to a maximum of life, and a mandatory fine. In situations where certain aggravated situations occur, punishment is for a minimum term of ten years up to a maximum of life imprisonment, and a mandatory fine. The new amended section on rape reads as follows:

Punishment for rape.

376. (*1*) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(*2*) Whoever,—

(a) being a police officer, commits rape—

- (i) within the limits of the police station to which such police officer is appointed; or
- (ii) in the premises of any station house; or
- (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
(g) commits rape during communal or sectarian violence; or
(h) commits rape on a woman knowing her to be pregnant; or
(i) commits rape on a woman when she is under sixteen years of age; or
(j) commits rape, on a woman incapable of giving consent; or
(k) being in a position of control or dominance over a woman, commits rape on such woman; or
(l) commits rape on a woman suffering from mental or physical disability; or
(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
(n) commits rape repeatedly on the same woman,
shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.
In the previous section on the crime of rape, there was a proviso that empowered the Court to award a sentence that was less than the minimum for adequate and special reasons stipulated in the judgment. The Supreme Court provided direction in several cases on how such discretion should be exercised.

E. Trafficking of Persons

The level of punishment under the new trafficking of persons crime set forth in section 370 of the Penal Code depends on the number of persons that have been trafficked, whether the victim was a minor, and whether the assailant was a public official:

- (2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.
- (3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.
- (4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.
- (5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.
- (6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.
- (7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Other sections of the Code may also be used to prosecute traffickers, including sections 366A and 372. Section 5B of the Immoral Trafficking Prevention Act (ITPA) also punishes trafficking in persons with "rigorous imprisonment for a term which shall not be less than seven years and in the event of a second or subsequent conviction with imprisonment for life."

*****