NOTES ON
INDIAN PENAL CODE (IPC)

1. What do you understand by the rule "Nothing is an offence which is done in the exercise of "Private Defense".
Answer:

Introduction:

Self help is the first rule of criminal law. The Indian Penal Code, 1860 has given the right of private defense of body and property to every Individual. Section 96 to 106 of Indian Penal Code states the law relating to the right of Private Defense of person and property.

It is primary duty of the State to protect life and property of citizens. But the fact is that State cannot watch each and every activity of the citizens. There may be situations in which the State cannot help person immediately when his life or property is in danger. In view of this Indian Penal Code has given the right of private defense of body and property of every individual.

Right of Private Defense

In the words of Bentham, "The Right of Private Defense is absolutely necessary for the protection of ones life, liberty and property. "

Section 96 to 106 of Indian Penal Code, 1860 states the law relating to the right of Private Defence of person and property. These provisions under the Indian Penal Code gives authority to a man to use necessary force against wrong doer for the purpose of protecting ones own body and property and also another's body and property when immediate aid from the state machinery is not readily available and in so doing he is not answerable in law for his deeds.

The law of private defense is based on two main principles –

(a) Everyone has right to defend his own body and property and another's body and property.

(b) The Right of Private Defense is not applicable in those cases where accused himself is an aggressive party.

1) Things done in private defence (Section 96) :

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

2) Right of private defence of the body and of property (Section 97) :

Every person has a right, subject to the restrictions contained in Section 99, to defend –

First –
His own body, and the body of any other person, against any offence affecting the human body;

Secondly –

The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

Section 97 of Indian Penal Code divides the right of private defence into two parts. first part deals with the right of private defence of person and second part with the right of private defence of property. The rights of defends is not only to the defence of own body or property but also extend to defending the body and property of any other person. Even a stranger can also defend the person or property of another person and vice versa.

3) Right of private defence against the act of a person of unsound mind, etc. (Section 98) :

When an act which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations

(a) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception,

commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception

Scope :

Section 98 of Indian Penal Code assumes that the right to private defence from its very nature admits of no exception since it is the right of preservation of one's life and property as also another's life and property against the world at large. The right of defence of the body exists against all attackers, whether with or without mens rea.

Right of private defence is available against

(i) Minor;
(ii) Person of unsound Mind;
(iii) Intoxicated Person
(iv) Person having no maturity of understanding
(v) Person acting under misconception.

4) Acts against which there is no right of private defence (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

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

Extent to which the right may be exercised

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation –

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

Explanation -

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

According to Section 99 of Indian Penal Code there is no right of Private defence –

i) against the acts of a public servant acting in good faith and;

ii) against the acts of the those acting under the authority or direction of a public servant.

iii) where there is sufficient time for recourse to public authorities; and

iv) The quantum of harm of that may be caused shall in no case be in excesses.

5) When the right of private defence of the body extends to causing death (Section100) :

The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :

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

Secondly - Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault; (**See.. Difference between Hurt and Grievous Hurt**)

Thirdly - An assault with the intention of committing rape;

Fourthly - An assault with the intention of gratifying unnatural lust;

Fifthly - An assault with the intention of kidnapping or abducting; (**See... Kinds of Kidnapping**)

Sixthly - An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release. **(See.. <u>Difference between wrongful Restraint and Wrongful Confinement</u>**)

Seventhly - An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act. [Inserted by Section 2 of 'The Criminal Law (Amendment) Act, 2013.]

Ingredients

To invoke Section 100 of Indian Penal Code following four conditions must exist.

(1) The person exercising the right of private defence must be free from fault in bringing about encounter.

(2) There must be present an impeding peril to life or of great bodily harm, rape, unnatural lust, kidnapping or abduction, wrongful confinement etc.

(3) There must be no safe or reasonable mode of escape by retreat, and

(4) There must have been a necessity for taking the life.

6) When such right extends to causing any harm other than death (Section 101) :

If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

7) Commencement and continuance of the right of private defence of the body (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

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8) When the right of private defence of property extends to causing death (Section 103) :

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

First - Robbery ;

Secondly - House-breaking by night;

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

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

9) When such right to causing any harm other than death (Section 104) :

If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

10) Commencement and continuance of the right of private defence of property (Section 105)

The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

11) Right of private defence against deadly assault when there is risk of harm to innocent person (Section 106) :

If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration :

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

2. Explain various stages of crime

Answer:

INTRODUCTION

As per the 'criminal justice system' each and every offence which has been explained under the criminal law is to be passed through some stages. Thereafter number of offences which have been occurred in the society in day to day life which affects the society as well as the nation under the criminal law the punishment has been explained for each and every offence depending upon the nature of offence out these offence some of the offences are relating to the human body, human life, property, reputation, state, the public tranquility, against the marriage etc.

Before the commission of these offences each and every offence will passes through the following stage, in other words, we can say that the commission of crime involves the following four stages, namely,

INTENTION – It is the first stage in the commission of crime. According to the legal maxim, "Actus non facit reum nisi mens sit rea" under the criminal law for the purpose to constitute an offence the 'act and 'intention' both are essential and act does not alone constitute the guilt, unless it is done with guilty intention, on the other hand the intention or mens rea alone does not constitute a guilt. So, the act and intention both the essential or should be present to constitute a guilt, offence.

'Intention' means a purpose or desire to commit a particular act which will be the offence, and some consequences will arise from such a particular act.

Under the criminal law the intention behind the commission of an offence is very essential for the commission of each and every offence, there should be an intention to commit such offence, without intention to commit an offence the offence can not be constituted. For Ex. If a person throws a boy from high building or cut off his head, from such act of the person his intention becomes clear that he desired the death of a boy.

However the intention includes the following things

a. Motive – Intention should be distinguished from motive. 'Motive' is the reason or ground of an action, on the other hand intention is a desire to do an act. Intention is the process of will, while the motive is the feeling behind the process will. For Ex. X kills Z in such a case the intention was to cause the death and the motive was to remove the political rivalry, so the motive is ulterior object for which the act is to be done.

We can find the motive of a person by asking why he did that act and also the intention of a person by asking how he did it. Motive is not a basis of 'criminal liability', the criminal law considers only a mans intention and not his motive. Because on some occasion the motive may be good but the intention is illegal. For Ex. If a man steals food in order to feed his starving child, his act amounts to theft, even though the motive behind the act is to save the life of child.

b. Knowledge – Under the criminal law the intention is also distinguishable from the knowledge. Knowledge is the awareness about the consequences of an act. In the commission of an offence the knowledge about the consequences of an act is also essential. Intention and knowledge are merged into each other at the time of commission of an offence. For Ex. X fires on Z, in the consequences of fire Z's death has been caused, in this example X knows very well about the consequences of his fire.

c. Negligence – 'Negligence' is used to denote want of care and precautions, it means that negligence is an act in which there is a want or need of care and precautions, but there is a absence of care and precautions, which a particular or reasonable man would have taken under the particular circumstances of the case. Negligence is a state of mind of a man. In crimes the negligence is not a basis of criminal liability but in few cases the I.P.C., 1860 fixes the criminal liability on the ground of negligence. For Ex. S.304-A causing death by negligence, S.279 rash driving on a public way, punishment is 6 month's imprisonment or 1000 rupees fine or with both.

2.PREPARATION – The second stage in the commission of a crime is a preparation it includes the arrangement or necessary measures for the commission of criminal act. In other words 'preparation is the necessary acts for the commission of an offence. Mere preparation to commit an offence is punishable under the Indian Penal Code, 1860.

1. Waging War – Sec. 122 collecting the arms with intention of waging war against the Govt. of India.
2. 'Section 399' making preparation for the commission of dacoity.
3. Preparation for the making of counterfeiting coin 'Section 233'

Under the 'Criminal law' number of offences have been committed with preparation and in some cases the preparation is an independent offence punishable by Indian Penal Code, 1860. So it is also a important stage of crime.

3. ATTEMPT – The third stage in the commission of crime is an attempt. It is also known as incomplete crime. The term attempt has not been defined in I.P.C., 1860, it only explains about the offence of attempt to commit offences an also provides the punishment for attempt. The stage of attempt comes after the preparation, it is a direct movement in respect of commission of a crime.

According to 'Sir Stephen' an attempt to commit a crime is an act done with intention to commit an crime an attempt constitute an offence if there is no any interruption. In other words we can say that, attempt is a direct movement towards the commission of an offence after the preparation has been made.

Under the I.P.C. 1860 the punishment has been specifically provided for the attempt to commit an offence. Following are the offences of attempt.

1. **Section 307 – Attempt to commit murder.**
2. **Section 308 – Attempt to commit culpable homicide.**
3. **Section 309 – Attempt to commit suicide.**
4. **Section 393 – Punishment for attempt to commit robbery.**

For Ex. X intends to murder Z and buys a gun and holds it. In such a case. X is not yet guilty for the offence of 'attempt to commit murder'. If X fires the gun at Z he is guilty of an offence of attempt to commit the murder.

4.COMMISSION – It is the last stage of commission of crime. it is also known as accomplishment. In this stage the offender goes beyond all the three stages of crime i.e. the intention, preparation, attempt and he has entered in the last stage of an offence. After this stage or at this stage the offence has been completed in all the respects.

As per the criminal law the illegal omission to do an act is also included in the word commission.

For Ex.- X fires at Z with an intention to kill him. If Z dies X is guilty of murder. If Z is injured, X is guilty of attempt to commit murder.
Therefore, all above these are the stages of crime and every offence will passes through these four stages.

3. Define Culpable Homicide. When Culpable Homicide amounts to Murder.

Answer:

In general the term ‘Culpable Homicide’ means unlawful killing which is not classified as murder due to the guilty intention or ‘mens rea’ being absent. It is a term used in Scottish law and amongst several countries where the English Common Law system of Justice is administered. The concept of Culpable Homicide has been discussed with the help of relevant cases.

Homicide is the highest order bodily injury that can be inflicted on a human body. It has from earliest times been considered most heinous offences. The word comes from Latin where **‘homo’** means ‘man’ and **‘cide’** means ‘I cut’. Thus homicide means the killing of a man by man. The homicide may be lawful or unlawful. Culpable homicide means death through human agency punishable by law. All murders are culpable homicide but all culpable homicide is not murder. So practically there is no difference between culpable homicide and murder. The question that arises is whether an **offence is a ‘murder’ or ‘culpable homicide not amounting to murder’.**

Culpable Homicide/ Manslaughter

The crime of manslaughter is termed as Culpable Homicide. It is a term in the law of Scotland and England that covers a number of criminal homicides equivalent to manslaughter in legal criminal jurisdictions.

Section 299 of the Indian Penal Code deals with Culpable Homicide and it is stated as follows – “Whoever causes death by doing an act with the intention of causing death , or with the knowledge that he is likely by such act to cause death, commits the offence of Culpable Homicide.”

The Penal Code has first defined Culpable Homicide simpliciter (Section 299, I.P.C) termed as manslaughter under English law which is genus, and then murder (Section 300, I.P.C) which is species of homicide

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

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

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

Culpable Homicide – Essential Elements:

Culpable Homicide is the first kind of unlawful homicide as defined in Section 299, I.P.C it purports to define and explain as to when an act of causing death constitutes Culpable Homicide. The important elements are:-

1) Causing of death of a human being.
2) Such death must have been caused by an act

i. With the intention of causing death; or
ii. With the intention of causing such bodily injury as is likely to cause death; or.
iii. With the knowledge that the doer is likely by such an act to cause death.

Lawful Homicide

Lawful homicide will set the culprit free. It may further be classified into:-

1. Excusable homicide, and
2. Justifiable homicide

Unlawful Homicide

Homicide is unlawful when the death is caused by an intentional act, or by an intentional act, or by an intentional omission amounting to culpable negligence in discharging one's duty or accidentally by an unlawful act.

Section 299 of The Indian Penal Code – Culpable homicide

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

The important elements of culpable homicide are:-

1. Causing death,
2. By doing an act,
3. The act of death must be done:-

- With the intention of causing death,
- With the intention of causing such bodily injury as is likely to cause death, or
- With the knowledge that such act is likely to cause death.

There are two classes of culpable homicide:

1. **Culpable Homicide Amounting to Murder:** It is known as simple murder.
2. **Culpable homicide not amounting to Murder:** There is necessarily a criminal or knowledge in both. The difference does not lie in quality, it lies in the quantity or degree of criminality closed by the act. In murder, there is greater intention or knowledge than in culpable homicide not amounting to murder.

Circumstances For Culpable Homicide

Causes Death: In order to hold a person liable under the impugned Section there must be causing of death of a human being as defined under Section 46 of the Code. The causing of death of a child in the mother's womb is not homicide as stated in Explanation 3 appended to Section 299, I.P.C. But the person would not be set free. He would be punishable for causing miscarriage either under Section 312 or 315 I.P.C depending on the gravity of the injury. The act of causing death amounts to Culpable Homicide if any part of that child has been brought forth, though the child may not have breathed or been completely born. The clause 'though the child may not have breathed' suggests that a child may be born alive, though it may not breath (respire) , or it may respire so imperfectly that it may be difficult to obtain clear proof that respiration takes place. Causing of death must be of a living human being which means a living man, woman, child and at least partially an infant under delivery or just delivered.

By Doing An Act With The Intention Of Causing Death: Death may be caused by a hundered and one means, such as by poisioning, drowning,striking,beating and so on and so forth. As explained under Section 32, I.P.C the word 'act' has been given a wider meaning in the Code in as much as it includes not only an act of commission, but illegal omissions as well and the word 'illegal' is applicable to everything which is an offence or which is prohibited by law, or which is prohibited by law, or which furnishes ground for civil action (s.43). Therefore death caused by illegal omission will amount to Culpable Homicide.

i. **Death caused by effect of words on imaginations or passions:** The authors of the Code observe : " The reasonable course, in our opinion , is to consider speaking as an act, and to treat A as guilty of voluntary Culpable Homicide, if by speaking he has voluntarily caused Z's death, whether his words operated circuitously by inducing Z to swallow a poison or throwing Z into convulsions."

c) **With The Intention Of Causing Such Bodily Injury as is likely to cause death:** . The word 'intention' in clause (a) to Section 299, I.P.C has been used in its ordinary sense, i.e., volitional act done without being able to forsee the consequence with certitude. The connection between the 'act' and the death caused thereby must be direct and distinct; and though not immediate it must not be too remote. If the nature of the

connection between the act and the death is in itself obscure, or if it is obscured by the action of concurrent causes, or if the connection is broken by the intervention of subsequent causes, or if the interval of time between death and the act is too long, the above condition is not fulfilled. Where a constable fired five shots in succession at another constable resulting in his death, it was held that it would be native to suggest that he had neither intention to kill nor any knowledge that injuries sufficient to kill in ordinary course of nature would not follow. His acts squarely fell in clauses 2,3 and 4 of s.300, I.P.C i.e Culpable Homicide amounting to murder.

With the knowledge that he is likely by such act to cause death : 'Knowledge' is a strong word and imports ceratinity and not merely a probability.If the death is caused under circumstances specified under Section 80, the person causing the death will be exonerated under that Section. But, if it is caused in doing an unlawful act, the question arises whether he should be punished for causing it. The Code says that when a person engaged in the commission of an offence, without any addition on account of such accidental death. The offence of Culpable Homicide supposes an intention, or knowledge of likelihood of causing death. In the absence of such intention or knowledge, the offence committed may be grievous hurt, or simple hurt. It is only where death is attributed to an injury which the offender did not know would endanger life would be likely to cause death and which in normal conditions would not do so notwithstanding death being caused, that the offence will not be Culpable Homicide but grievous or simple hurt. Every such case depends upon the existence of abnormal conditions unkown to the person who inflicts injury. Once it is established that an act was a deliberate acct and not the result of accident or rashness or negligence, it obvious that the offence would be Culpable Homicide.

e) **Death Caused of Person Other Than Intended:** To attract the provisions of this Section it suffices if the death of a human being is caused whether the person was intended to be killed or not. For instance, B with the intention of killing A in order to obtain the insured amount gave him some sweets mixed with poison. The intended victim ate some of the sweets and threw the rest away which were picked up by two children who ate them and died of poisoning. It was held that B as liable for murder of the children though he intended to kill only A.

f) **Death Caused Inadvertently without Intention While Doing an Unlawful Act:** It has been clearly stated in I.P.C that a person will not be liable for Culpable Homicide, if he causes the death of a person while doing an unlawful act, provided he did not intend to kill or cause death by doing an act that he knew was likely to have that effect. On the other hand, under English law, if a person whilst committing an unlawful act accidently kills another, he would be liable for manslaughter or murder according to whether his act constituted a felony or misdemeanour.

g) **Consent is not a defence to Manslaughter:** The House of Lords in R v Walker held that the respondent a truck driver carrying illegal immigrants will be criminally responsible for involuntary manslaughter, if the act results in death, even if the victim has consented to take such risk engaged in some joint unlawful activity. In this case the defendant, truck driver (a Dutch national) drove a lorry from Rotterdam (Netherlands) to Zeebrugge (United Kingdom). The lorry had been loaded with a refrigerated container in which 60 Chinese (illegal immigrants) had been hidden to conceal the illegal human cargo behind a load of tomatoes. The container was sealed apart from a small air vent which was closed for 5 hours prior to the ferry crossing to Dover to preserve secrecy. On disembarkation at Dover (in England) the customs officers examined the container and discovered the bodies of 58 immigrants, who had suffocated to death. Wacker was charged with 58 offences of manslaughterand conspiracy to facilitate the entry of illegal entrants into United Kingdom. Applying the doctrine of negligence(ex turpi causa non oritur actio) for causing death of the victims the trial convicted and sentenced the respondent to 6 years imprisonment for each the manslaughter charges to run concurrently and eight years imprisonment for the conspiracy to facilitate entry of illegal immigrants with a total of 14 years. This decision was upheld by the House of Lords as well.

Section 300 of The Indian Penal Code – Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.— If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.— If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.— If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(*a*) *A* shoots *Z* with the intention of killing him. *Z* dies in consequence. *A* commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Case Laws

Mitigating circumstances — When offence is gruesome and has been committed in a calculated, cold-blooded and diabolical manner, the age of accused may not be a relevant factor, **Shabnam vs State of U.P.,** (2015) 6 SCC 632.

Delhi December 16, 2012 Gang Rape in Bus Case — In this case of brutal, barbaric gang rape, unnatural sex and assault leading to death of victim, principles of balancing of aggravating and mitigating circumstances, applied and death sentence confirmed even though there were many mitigating factors, **Mukesh vs State (NCT of Delhi),** (2017) 6 SCC 1.

Distinction between Culpable Homicide and murder

According to Sir James Stephen, the definition of culpable homicide and murder are the weakest part of the code, as they are defined in forms closely resembling each other and times it becomes difficult to distinguish between the two 'as the causing of death' is common to both. However, the difference between culpable homicide is real though very fine and based upon a very subtle distinction of the intention and knowledge involved in these crimes. The true difference lies in the degree, there being the greater intention or knowledge of the fatal consequences in the one case than the other.

The distinction between sections 299 and 300 was made clear by Melvil J. in **Reg. vs Govinda** [1876 ILR Bom 342]. In this case the accused had knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the

closed fist, producing extraversion of blood on the brain and she died in consequence, either on the spot, or very shortly afterwards, there being no intention to cause death and the bodily injury not being sufficient in the ordinary course of nature to cause death. **The accused was liable for culpable homicide not amounting to murder.**

Murder or culpable homicide not amounting to murder

Whenever a court is confronted with the **question whether the offence is 'murder' or 'culpable homicide not amounting to murder'**, on the facts of a case, it will be convenient for it to approach the problem in **three stages.**

The question to be considered at the **first stage** would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in S. 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of S. 3000, Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' contained in S. 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of S. 304, depending, respectively, on whether the second or the third clause of S. 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in S. 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the first part of S. 304, Penal Code. Ingredients of Ss. 299 and 300 compared clause by clause, **State of A.P. v. Rayavarapu Punnayya**, (1976) 4 SCC 382; ***Jaswant Singh* v. *State of Kerala,*** AIR 1966 SC 1874 and ***Veera Singh* v. *State of Punjab***, AIR 1958 SC 465, *followed*.

4. Explain the offence "Theft 'and when the Theft transform into Robbery

Answer:

What is Theft?

Theft has been defined under **Section 378** of the Indian Penal Code, 1860.

It says that whoever intends to take dishonestly any moveable property out of the possession of any person without that person's consent and moves it, he is said to have committed a theft.

For example: If A, is employed by Z and entrusted by Z with the care of Z's cash, dishonestly runs away with that cash, without Z's consent. A has committed theft.

In the case of *Pyare Lal Bhargava v. State Of* Rajasthan*[1]*, a government employee took a file from the government office and presented it to a certain Mr. A and brought it back in two days later. It was held that permanently taking away the property was not necessarily required, even temporary movement with a dishonest or malicious intention is enough and will amount to theft.

The essentials of theft are:

- There must be a dishonest intention to take the property. If the intention of the offender is not to cause a wrongful loss/gain then even if the property is taken away without consent the act would not amount to theft.
- The property must be moveable, i.e., it must not be attached to the earth.[2] As soon as the property is severed from earth, it is capable of becoming the subject of theft. **For example:** A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree to such taking, he has committed theft.[3]
- The property must be taken out of the possession of another. A thing which is in possession of nobody cannot be the subject of theft.
- The property must be taken away without consent.
- Physical movement of the property is a must; however it is not necessary that it is moved directly. **For example:** If the accused cuts the string that ties the necklace owing to which the necklace falls, it would be held that he has caused sufficient movement of the property as required for it to amount to theft.

Punishment for Theft

The punishment for theft is given under **Section 379** of the Indian Penal Code, 1860. By this section, any person who commits theft shall be punished with imprisonment of up to three 3 years or with fine or with both.

What is Extortion?

Extortion has been defined under **Section 383** of the Indian Penal Code, 1860.

According to the code, any person who intentionally puts another in fear of injury and thereby dishonestly induces him/her to deliver any property or any valuable security or anything signed or sealed which can be converted into a valuable security is said to have committed extortion.

For example: If A threatens B that he will keep B's child in wrongful confinement and kill him unless B delivers to him Rupees 1 lakh. A has committed extortion.

The essentials of extortion are:

1. The person committing the offense intentionally puts the victim in fear of injury. The fear of injury must be to such an extent that it is capable of unsettling the mind of the victim and making him give his property, as in the above-stated example.

2. The person committing the offense must dishonestly induce the victim so to put in fear to part with his (the victim's) property.

In *R. S. Nayak v. A. R. Antulay[4],* A.R. Antulay, a chief minister, promised the sugar cooperatives whose cases were pending before the government for consideration that their cases would be looked into if they donated money. It was held that fear of injury or threat must be used for extortion, and since in this case, there was no fear of injury or threat it would not amount to extortion.

Punishment for Extortion

Punishment for extortion, which is similar to that of theft, has been given under **Section 384** of The Indian Penal Code, 1860. By this section any person who commits extortion shall be punished with imprisonment of up to three 3 years or with fine or with both.

Robbery

Robbery is defined by the Black's Law Dictionary as the felonious act of taking the personal property in the possession of another from his person or immediate presence

against his will accomplished using force and fear, with an intention of permanently depriving the true owner of the thing in question.

According to Section 390 of the Indian Penal Code, 1860 *"in all robbery there is either theft or extortion."*

When Theft is Robbery

Theft is robbery when in order to commit theft or while committing theft, or while carrying away or attempting to carry away property obtained by theft, the offender voluntarily causes or attempts to cause to any person death, subject him/her to wrongful restraint or cause hurt or induce fear of instant death, instant wrongful restraint or causing instant hurt.

Thus, theft becomes robbery when the following conditions are satisfied;

- When the offender voluntarily causes or attempts to cause:
    - Death, wrongful restraint or hurt or
    - Fear of instant death, instant wrongful restraint or instant hurt.
- And the above act(s) is done
    - While committing the theft
    - To commit the theft
    - While carrying away the property obtained by theft or
    - While attempting to carry away property obtained by theft.

For example:

A holds Z down and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and by committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

When Extortion is Robbery

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

Thus, extortion becomes robbery when the following conditions are satisfied;

1. When a person commits extortion by putting another in the fear of instant death, wrongful restraint or hurt

2. Then the offender induces the person under such fear to deliver the property at that very instant; then and there.
3. The offender is in the near presence of such a person put in fear at the time of extortion.

For Example:

A meets Z and Z's child on the high road. A takes the child and threatens to fling it down a precipice unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is present. A has therefore robbed Z. [6]

However, if A obtains property from Z by saying, "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such; but it would not be robbery unless Z is put in fear of the instant death of his child.

Punishment for Robbery

The punishment for robbery is given under **Section 392** of the Indian Penal Code, 1860. By this section, any person who commits robbery shall be punished with rigorous imprisonment which may be extended up to ten years and shall also be liable to pay a fine.

If the robbery is committed on the highway between sunset and sunrise, then the period of imprisonment may be extended up to 14 years.

Further, under **Section 393** the punishment for an attempt to commit robbery is enshrined. According to this section, anyone who attempts to commit robbery shall be punished with rigorous imprisonment for up to seven years and also be liable for a fine

When Robbery becomes Dacoity

When five or more people commit or attempt to commit a robbery, it is known as dacoity. It is an aggravated form of robbery. The main difference between robbery and dacoity is the number of participants in the crime. Dacoity is defined under **Section 391** of the Indian Penal Code, 1860.

Every member of the gang is punished in dacoity whether or not he takes the active part in it. And the punishment for dacoity is given under **Section 395** according to which the offenders will be punished with rigorous imprisonment of up to 10 years and a fine.

Basis	Theft	Extortion	Robbery	Dacoity
Consent	The moveable property is taken away without the consent of the owner.	Consent is obtained wrongfully by coercion.	The property is taken without consent.	There is no consent, or it is wrongly obtained.
Subject Matter	It is of moveable property.	It may be either of movable or immovable property.	Robbery may be committed on the immovable property only when it is in the form of extortion.	It maybe is committed on immovable property only when it is in the form of extortion
Number of Offenders	Theft is committed by one or more persons.	Extortion also can be committed by one or more persons.	It can be committed by one or more persons.	To commit dacoity, there must be five or more offenders involved.
orce/Compulsion	There no element of force or compulsion.	This element does exist on the person being put in fear of injury.	Force/compulsion may or may not be used.	Force/compulsion may or may not be used.
Element of Fear	The element of fear is absent in cases of theft.	The element of fear is present in cases of extortion.	The element of fear exists only when the robbery is in the form of extortion.	The element of fear could exist in cases of dacoity.
Delivery of Property	The property is not delivered by the victim.	There is the delivery of property.	If robbery is committed in the form of theft, then there is no delivery of property by the victim.	Similarly, if dacoity is committed in the form of theft, then there is no delivery of property by the victim.
Punishment	Given under Section 379 of the IPC. Imprisonment up to 3 years or fine or both.	Given under Section 384 of the IPC. Imprisonment up to 3 years or fine or both.	Given under Section 392 of the IPC. Rigorous imprisonment up to ten years and fine. If robbery is committed on a highway between sunset and sunrise, then the period of imprisonment can be extended up to 14 years.	Given under Section 395 of the IPC. Rigorous imprisonment up to 10 years and fine.

5. Define Rape and Explain the recent changes brought about to make the law more stringent in this regard
Answer:

Rape is a type of sexual assault usually involving sexual intercourse or other forms of sexual penetration carried out against a person without that person's consent. The act may be carried out by physical force, coercion, abuse of authority, or against a person who is incapable of giving valid consent, such as one who is unconscious, incapacitated, has an intellectual disability or is below the legal age of consent.

The term *rape* is sometimes used interchangeably with the term *sexual assault.*[4]

Section 375 in The Indian Penal Code
1[375. Rape.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

(First) — Against her will.

(Secondly) —Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) —With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly) — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) — With or without her consent, when she is under sixteen years of age. Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

(Exception) —Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.]

Recent Development

In Chairman, Railway Board Vs. Chandrima Das, a practicing Advocate of the Calcutta High Court filed a petition under Article.226 of the Constitution of India against the various railway authorities of the eastern railway claiming compensation for the victim (Smt. Hanufa Khatoon)- a Bangladesh national- who was raped at the Howrah Station, by the railway security men. The High Court awarded Rs.10 lacs as compensation.

This case highlighted the adverse effect of gang rape which was performed as a sovereign function and hence, was awarded compensation

In Sakshi v. Union of India, the judges sought refuge behind the strict interpretation of penal statutes and the doctrine of state decisis - a view that any alteration [in this case, of the definition of rape] would result in chaos and confusion, it directed the Law Commission of India to respond to the issues raised in the petition. The Law Commission, under the chairmanship of Justice P. Jeevan Reddy, responded by saying that the 156th Law Commission Report had dealt with these issues. The Supreme Court, however, agreed with Sakshi that the 156th Report did not deal with the precise issues raised in the writ petition. In August 1999, it directed the Law Commission to look into these issues afresh.

After detailed consultations with the organisations, the Law Commission released its 172nd Report on the Review of Rape Laws, in 2000. The Law Commission recommended changing the focus from rape to `sexual assault', the definition of which goes beyond penile penetration to include penetration by any part of the body and objects, taking into account cunnilingus and fellatio.

The 172nd Law Commission report had made the following recommendations for substantial change in the law with regard to rape

1. ‘Rape’ should be replaced by the term ‘sexual assault’.
2. ‘Sexual intercourse as contained in section 375 of IPC should include all forms of penetration such as penile/vaginal, penile/oral, finger/vaginal, finger/anal and object/vaginal.
   In the light of Sakshi v. Union of India and Others ‘sexual assault on any part of the body should be construed as rape.
3. Rape laws should be made gender neutral as custodial rape of young boys has been neglected by law.
4. A new offence, namely section 376E with the title ‘unlawful sexual conduct’ should be created.
5. .Section 509 of the IPC was also sought to be amended, providing higher punishment where the offence set out in the said section is committed with sexual intent.

6. Marital rape: explanation (2) of section 375 of IPC should be deleted. Forced sexual intercourse by a husband with his wife should be treated equally as an offence just as any physical violence by a husband against the wife is treated as an offence. On the same reasoning, section 376 A was to be deleted.
7. Under the Indian Evidence Act (IEA), when alleged that a victim consented to the sexual act and it is denied, the court shall presume it to be so

In recent case State of U.P. v. Chhotey Lal, Highlighting the difference between 'will' and 'consent', the court said that a nod for sexual relations obtained by a man on the false pretext would not amount to a 'legal or valid' consent to save him from punishment for rape. Even if there were mutual consent, if the consent is based on a false pretext made by the man then the consent would stand as null and void and the intercourse be termed as rape.

Another aspect for defining the concept of rape is compromise, it is always noticed in india that Society has a faith on compromise even in crime. This sometimes adversely affect the judgment of the commission of the crime. There have been a number of past cases where the Supreme Court has reversed High Court decisions reducing sentences under this provision for not giving suitable reasons.

Enhanced sentences were introduced by amendment in 1983, whereby the Legislature indicated that it considers aggravated rape (including gang rape) deserving of higher punishment. It is also pertinent to note at this stage that in earlier cases the Supreme Court has ruled that the term "adequate and special reasons"

he change in rape laws in 1983 improved the situation to a great extent. Among other things, the punishment for rape was made more severe. Before, the punishment prescribed under section 376 of the IPC provided for a maximum sentence of life imprisonment but there was no minimum limit.Thus,in theory a rapist could get away with a sentence of say, just one month.

In 1983 although the legislature failed to increase the maximum sentence to capital punishment as was vehemently demanded by women's organizations, it prescribed a minimum sentence of seven years imprisonment. Every rapist on being found guilty thereafter bad to undergo a minimum imprisonment of sevenyears.Besides ,an important provision, section 376(2) was added to the IPC which introduced the concept of some special kinds of rape and prescribed a minimum of ten years for these cases

These included:

- Rape by a police officer within the premises of a police station;
- Rape by a public servant of his junior while taking advantage of his official position; Rape by an official in a jail or remand home of an inmate;
- Rape by someone on the staff of a hospital of a woman in the hospital;
- Rape of a pregnant women;
- Rape of a girl under 12 years of age end gang rape

women,if the victim states in court that she did not consent,then the court shall presume that she did not consent and the burden of proving consent shall shift to the accused.
was a major reform in the law.

In continuation to amendment various special provision section-376A, 376B,376C and 376D were added to the IPC

8. Explain the different types of punishments under the Indian Panel Code

Answer:

Punishments to which offenders are liable Under Section 53 are –

First – Death;

Second – Imprisonment for life;

Third clause has been omitted by Act 17 of 1949, section – 2;

Fourthly – Imprisonment, which is of two descriptions, namely:-

Rigorous, that is, with hard labour;

Simple;

Fifthly – Forfeiture of property;

Sixth – Fine.

Criminal Conspiracy Explained – Indian Penal Code

Punishments Under Indian Penal Code

Deterrent theory – the main objective of this theory is to make the wrong-doer an example to others and prevent the wrong- doer himself from committing wrong again. Petty crimes like theft were punished with death or mutilation of parts. This theory has been criticized because of its harsh, severe and inhuman punishments.

Preventive theory – Objective of this punishment is prevention of crime by disabling the offenders by death, exile.

Retributive theory – This theory of revenge prevailed in primitive society. The person wronged was allowed to revenge against the wrong-doer. It is not a remedy and an eye for an eye makes the whole world blind.

Reformative theory – Reformation of criminals is the main objective of this theory. Teach and make them better human beings and preventing further crime is the sole aim of reformative theory.Indian system of justice follows Reformative theory.

Multiple Approach theory – Perfect system of justice involves various aspects and punishment should be based on degree of wrong and situation suggest this theory.

1) Introduction

Section 53 to 75 of the Indian Penal Code 1860 deals with the scheme of Punishment. Section 53 of the Indian Penal Code prescribes five kinds of punishments

2) Punishment Meaning :

Punishment is a process by which the state inflicts some pain to the persons or property of person who is found guilty of Crime. In other words punishment is sanction imposed on an accused for the infringement of the established rules.

3) Object

The Object of Punishment is to protect society from mischievous and undesirable elements by deterring potential offenders, by preventing the actual offenders from committing further offences and by reforming and turning them into law abiding citizens.

Punishments under the Indian Penal Code

Section 53 of the Indian Penal Code prescribes five kinds of punishments are as follows :

a) Death

b) Imprisonment for life

c) Imprisonment, which is of two descriptions, namely -

(1) Rigorous, that is with hard labour

(2) Simple

d) Forfeiture of property

e) Fine.

a) Death :

Death Penalty or capital Punishment is the most serious nature of punishment. Some countries abolished it. A death sentence may be awarded under the Indian Penal Code in the following cases -

i) Waging, or attempting to wage war, or abetting waging of war, against the Government of India . (Section. 121)

ii) Abatment of mutiny, if mutiny is committed. (Section 132)

iii) Giving or fabricating false evidence upon which an innocent person suffers death (Section. 194)

iv) Murder (Section 302)

v) Abetment of suicide of a minor, or insane or intoxicated person (305)

vi) Attempt to Murder by a person under sentence of imprisonment for life, if hurt is caused (Section 307).

vii) Kidnapping for ransom etc. (Section 364A)

viii) Dacoity with murder (Section 369)

b) Imprisonment for life -

Life Imprisonment means a sentence of imprisonment running throughout the remaining period of a convict's natural life (till death). But in practice it is not so. According to Section 55 of Indian Penal Code, in every case in which sentence of imprisonment for life shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years. Section 57 states that in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.

K.M. Nanavati v. State of Maharashtra, (AIR 1962 SC 605)

In this case supreme court held that imprisonment for life means rigorous imprisonment for life and not simple Imprisonment

c) Imprisonment - Rigorous and Simple :

i) Rigorous Imprisonment -

Imprisonment may be rigorous with hard labour. such as digging earth, cutting wood etc**.**

According to Section 60 of I.P.C in every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple or that any part of such imprisonment shall be rigorous and the rest simple.

The Indian Penal Code prescribes imprisonment as punishment for -

(1) Giving or fabricating false evidence with intent to procure conviction of capital offence (Section 194)

(2) House-trespass in order to commit offence punishable with death (Section 449)

ii) Simple Imprisonment :

Simple imprisonment is imposed for small offences like wrongful restraint, defamation etc. In case of simple imprisonment the convict will not be forced to do any hard manual labour. There are some offences which are punishable with simple imprisonment are as follows :

1) Refusing to take oath (Section 178)

2) **Defamation** (Section 500)

3) Wrongful restraint

4) Misconduct by a drunken person, etc (Section 510)

Solitary Confinement

Solitary Confinement means keeping a prisoner thoroughly isolated from any kind of contact with the outside A harsh and hardened convict may be confined in a separate cell to correct his conduct. Court can award this punishment only when the offence is punishable with rigorous imprisonment.

Solitary confinement may be imposed subject to the following restrictions

(a) Solitary confinement should not exceed three months of the Substantive term of imprisonment

(b) It cannot be awarded where imprisonment is not part of the substantive sentence.

(c) It cannot be awarded for the whole of term of imprisonment

(d) It cannot also be awarded where imprisonment is in lieu of fine.

According to Section 74 of I.P.C in no case the sentence of solitary confinement be awarded more than fourteen days at a time. and it must be imposed at intervals.

d) Forfeiture of property -

Forfeiture of property means taking away the property of the criminal by the State. Forfeiture of property is now abolished except in the case of following offences :

1) Committing depredation on territories of Power at peace with the Government of India(Section 126)

2) Receiving property taken by war or depredation mentioned in sections 125 and 126 (Section 127).

e) Fine

The Courts may impose fine as sole imprisonment or alternative or it may be imposed in addition to the imprisonment. The Indian Penal Code , 1860 prescribes fine along with imprisonment in respect of certain offences. In default of fine, imprisonment may be imposed.

9. Explain briefly the law relating to acceptance of illegal Gratification by public servant.

Answer:

Section 7 - Public servant taking gratification other than legal remuneration in respect of an official Act.-

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than [1][three years] but which may extend to [1][seven years] and shall also be liable to fine.

Explanations.—

(a)" Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will when serve them, be may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) " Gratification." The word' gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) " Legal remuneration." The words" legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) " A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

10. Explain the fundamental principle "Mens rea"under criminal Law

Answer:

A crime has been charged. The defendant pleads not guilty. What must the government prosecutor prove? Why?

There are basic principles underlying the prosecution of a crime. A crime is composed of elements. These elements include a mental state, prohibited action and lack of legal justification. Each of these elements must be proven by the government beyond a reasonable doubt. If any element is not proven, the person charged must be found not guilty.

***Mens Rea*, The Guilty Mind**

An element of every crime (with the exception of *"strict liability"), is a state of mind. This state of mind is referred to as *mens rea*. This is Latin for "guilty mind". *Mens rea* is the defendant's state of mind when he engages in prohibited conduct.

The primary source in most American jurisdictions for defining *mens rea* is the American Law Institute's Model Penal Code. The code sets four standards. Guilt can be attributed to an individual who acts "purposely," "knowingly," "recklessly," or "negligently." Statutes give additional definition to these concepts and set forth which mental state applies to a particular crime.

When someone acts consciously to cause a particular result, he acts "purposely". An act is done "knowingly" when the actor is aware that his conduct has a high probability of a specific result. When an individual disregards an unjustifiable risk an action is done "recklessly". If someone has grossly deviated from the standard of care of a reasonable person he has acted "negligently".

***Actus Reus*, The Criminal Act**

There is no punishment for thinking about a criminal act. A crime must have an *actus reus*, Latin literally for a bad act. A defendant has committed the *actus reus* of an offense if he has done some act that is an action prohibited by law. Most crimes consist of a defined set of actions that together are prohibited.

It is not a crime to carry an item around a store. It is not a crime to walk out of a store. It may be a crime to walk out of a store, with an item, and not pay for it. The act of walking

out of the store without paying for an item is the *actus reus*. For it to be a crime, it must be done knowingly. The *actus reus* and the *mens rea* must take place together.

Related: On the Job Eye Injuries or Loss of Vision

Concurrence of *Mens Rea* and *Actus Reus* Required

In the example above, it is possible that a person was without a shopping cart, arms full and for convenience used a pocket to hold an item. He pays for all the other goods and forgets about what is in his pocket, leaving the store. There has been no crime. There was an *actus reus*, but there was no mental state to commit the bad act existed as he left the store.

Mens rea and *actus reus* must exist simultaneously. Thinking about committing a crime without doing so cannot be punished. Doing a prohibited act without having criminal intent is not criminal. The action and intent must take place together.

The existence of a concurrence of *mens rea* and *actus reus* is decided by the fact finder, either a judge or a jury. This is done by presentation of evidence, either direct or circumstantial.

Legal Excuse: The Affirmative Defense

A person can commit a prohibited act with the mental state required by law and still not be guilty of a crime. This is because there was a legal excuse or justification. This is known as an affirmative defense.

Some affirmative defenses are:

- Insanity
- Entrapment
- Self defense
- Defense of others
- Necessity
- Duress
- Involuntary intoxication

Beyond a Reasonable Doubt

For the government to prove that someone is guilty of a crime, it must be shown beyond a reasonable doubt:

- A prohibited act (*actus reus)*
- The defined mental state (*mens rea)*

- There was no legal excuse

The procedure involved in charging criminal activity and conducting criminal prosecutions is discussed in the Felony Process. The principles for finding criminal liability apply to any crime whether it is a felony or a misdemeanor.

*Strict liability applies generally in relatively minor offenses. An example would be a speeding ticket. All the government need show is the speed limit, the car's speed and who was driving. The driver's knowledge of the limit and the speed are not needed for a finding of guilt.

11. All murders are Culpable –Homicide bust all Culpable – Homicide are not murder. Discuss

Answer:

All Murders are culpable Homicides. But all Culpable Homicides Are not Murder?

In the scheme of the Penal Code, **culpable homicide** is genus and **murder** its specie. All murder is culpable homicide but not vice- versa.

Section 299 and Section 300 IPC deal with the definition of Culpable Homicide and murder.

The word comes from Latin where homo means man and cide means I cut. Thus homicide means the killing of a man by man. The homicide may be lawful or unlawful. Culpable homicide means death through human agency punishable by law. All murders are culpable homicide but all culpable homicide is not murder. So practically there is no difference between culpable homicide and murder. The question that arises is whether an offence is a murder or culpable homicide not amounting to murder? Lawful homicide will set the culprit free. It may further be classified into:-

Excusable homicide and Justifiable homicide.

Homicide is unlawful when the death is caused by an intentional act. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(A) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(B) A knows Z to be behind a bush. B does not know it. A, intending to cause or knowing it to be likely to cause Zs death induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(C) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B or to cause death by doing an act that he knew was likely to cause death.

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

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

Explanation 3 - the causing of the death of a child in the mothers 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.

The important elements of culpable homicide are:-

Causing death-With the intention of causing death,

By doing an act- With the intention of causing such bodily injury as is likely to cause death, or

The act of death must be done: - With the knowledge that such act is likely to cause death.

culpable homicide not amounting to Murder: There is necessarily a criminal or knowledge in both. The difference does not lie in quality; it lies in the quantity or degree of criminality closed by the act. In murder, there is greater intention or knowledge than in culpable homicide not amounting to murder.

Section 300 of the Indian Penal Code – Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-
If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-
If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-
If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Delhi December 16, 2012 Gang Rape in Bus Case - In this case of brutal, barbaric gang rape, unnatural sex and assault leading to death of victim, principles of balancing of aggravating and mitigating circumstances, applied and death sentence confirmed even though there were many mitigating factors, Mukesh vs State (NCT of Delhi), (2017) 6 SCC 1.

Distinction between Culpable Homicide and Murder

According to Sir James Stephen, the definition of culpable homicide and murder are the weakest part of the code, as they are defined in forms closely resembling each other and times it becomes difficult to distinguish between the two as the causing of death is common to both. However, the difference between culpable homicides is real though very fine and based upon a very subtle distinction of the intention and knowledge involved in these crimes. The true difference lies in the degree, there being the greater intention or knowledge of the fatal consequences in the one case than the other.

The distinction between sections 299 and 300 was made clear by Melvil J. in **Reg. vs Govinda** [1876 ILR Bom 342]. In this case the accused had knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extraversion of blood on the brain and she died in consequence, either on the spot, or very shortly afterwards, there being no intention to cause death and the bodily injury not being sufficient in the ordinary course of nature to cause death. The accused was liable for culpable homicide not amounting to murder.

Murder or culpable homicide not amounting to Murder

The difference between these two offences is a difference of degree not of form. The degree of intention or knowledge determines the nature of the offence, whether it is murder or culpable homicide.

Where the degree of such intention or knowledge stands at zero, the act causing such death shall be deemed to be negligence and it shall amount to neither murder nor culpable homicide not amounting to murder

.

Every act causing death is not murder, indeed it may be an offence even lesser than culpable homicide, such as, hurt or any injury through negligence. All acts, causing death are not necessarily murder or culpable homicide, though all acts, amounting to murder or culpable homicide cause death.

The Supreme Court has expressed its regret that the distinction between murder and culpable homicide not amounting to murder is often lost sight of resulting in undue

liberality in favour of undeserving culprits and emphasized that except in cases covered by the five exceptions mentioned in Section 300 of the Penal Code culpable homicide is murder if the act by which the death is caused is done with the intention of causing death, or if the act falls within any of the three clauses of Section 300, namely, 2ndly, 3rdly, and 4thly. Where the accused brought to the police station was beaten by the constables with the intention to cause such bodily injury as the constables knew would cause his death, the injuries would fall under clause 2ndly of Section 300.

The distinction between murder and culpable homicide, between the grave and simple forms has been well set out in the well-known leading case of Reg. v. Govinda The accused knocked his wife down, put one knee on her chest, struck her two three violent blows on the face with a closed fist causing extravasation of blood resulting in her death. The issue was whether the offence disclosed by the facts was murder or culpable homicide.

Section 299 of IPC

A person commits culpable homicide, if the act by which the death is caused is done- Subject to certain exceptions culpable homicide is murder, if the act by which the death is caused is done-

- With the intention of causing death;
- With the intention of causing such bodily injury as is likely to cause death

Section 300 of IPC:

- With the intention of causing death;
- With the intention of causing such bodily knows to be likely to cause the death of the person to whom the harm is caused;
- With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;
- With the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.

12. Explain the meaning ,nature and reason for the defense ,relating to the right of private defense

Answer:

IPC Section 96 to 106 of the penal code states the law relating to the right of private defence of person and property.

The provisions contained in these sections give authority to a man to use necessary force against an assailant or wrong-doer for the purpose of protecting one's own body and property as also another's body and property when immediate aid from the state machinery is not readily available and in so doing he is not answerable in law for his deeds. Section 97 says that the right of private defence is of 2 types:

(i) Right of private defence of body,

(ii) Right of private defence of property.

Body may be one's own body or the body of another person and likewise property may be movable or immovable and may be of oneself or of any other person. Self-help is the first rule of criminal law. The right of private defence is absolutely necessary for the protection of one's life, liberty and property. It is a right inherent in a man. But the kind and amount of force is minutely regulated by law. The use of force to protect one's property and person is called the right of private defence.

Nature of The Right

It is the first duty of man to help himself. The right of self-defence must be fostered in the Citizens of every free country. The right is recognised in every system of law and its extent varies in the inverse ratio to the capacity of the state to protect life and property of the subject(citizens). It is the primary duty of the state to protect the life and property of the individuals, but no state, no matter how large its resources, can afford to depute a policeman to dog the steps of every rouge in the country. Consequently this right has been given by the state to every citizen of the country to take law into his own hand for their safety. One thing should be clear that, there is no right of private defence when there is time to have recourse to the protection of police authorities. The right is not dependent on the actual criminality of the person resisted. It depends solely on the wrongful or apparently wrongful character of the act attempted, if the apprehension is real and

reasonable, it makes no difference that it is mistaken. An act done in exercise of this right is not an offence and does not, therefore, give rise to any right of private defence in return

PC Section 96. Things done in private defence:

Nothing is an offence, which is done in the exercise of the right of private defence.

Right of private defence cannot be said to be an offence in return. The right of self-defence under Section 96 is not absolute but is clearly qualified by Section 99 which says that the right in no case extends to the inflicting of more harm than it is necessary for the purpose of defence. It is well settled that in a free fight, no right of private defence is available to either party and each individual is responsible for his own acts. While it is true that law does not expect from the person, whose life is placed in danger, to weigh, with nice precision, the extent and the degrees of the force which he employs in his defence, it also does not countenance that the person claiming such a right should resort to force which is out of all proportion to the injuries received or threatened and far in excess of the requirement of the case. The onus of proving the right of private defence is upon the person who wants to plead it. But an accused may be acquitted on the plea of the right of private defence even though he has not specifically pleaded it.

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Courts are empowered to exempt in such cases. It must be borne in mind that the burden of proving an exception is on the accused. It is not the law that failure to setup such a defence would foreclose this right to rely on the exception once and for all. It is axiomatic that burden on the accused to prove any fact can be discharged either through defence evidence or even through prosecution evidence by showing a preponderance of

probability. It is true that no case of right of private defence of person has been pleaded by the accused not put forth in the cross-examination to the eye-witnesses but it is well settled that if there is a reasonable probability of the accused having acted in exercise of right of private defence, the benefit of such a plea can still be given to them.

The right of private defence, as the name suggests, is an act of defence and not of an offence. Consequently, it cannot be allowed to be used as a shield to justify an aggression. This requires a very careful weighing of the facts and circumstances of each case to decide as to whether the accused had in fact acted under this right. Assumptions without any reasonable basis on the part of the accused about the possibility of an attack do not entitle him to exercise this right. It was held in a case that the distance between the aggressor and the target may have a bearing on the question whether the gesture amounted to assault. No precise yardstick can be provided to fix such a distance, since it depends upon the situation, the weapon used, the background and the degree of the thirst to attack etc.

The right of private defence will completely absolve a persons from all guilt even when he causes the death of another person in the following situations, i.e

If the deceased was the actual assailant, and

If the offence committed by the deceased which occasioned the cause of the exercise of the right of private defence of body and property falls within anyone of the six or four categories enumerated in Sections 100 and 103 of the penal code.

Thangavel case:

The general proverb or adage that "necessity knows no law" does not find a place in modern jurisprudence. The right of self-preservation is inherent in every person but to achieve that end nothing could be done which militates against the right of another person. In the other words, "society places a check on the struggle for existence where the motive of self-preservation would dictate a definite aggression on an innocent person".

Kamparsare vs Putappa:

Where a boy in a street was raising a cloud of dust and a passer-by therefore chased the boy and beat him, it was held that the passer-by committed no offence. His act was one in exercise of the right of private defence.

dly-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 for criminal trespass.

This Section limits exercise of the right of private defence to the extent of absolute necessity. It must not be more than necessary for defending aggression. There must be reasonable apprehension of danger that comes from the aggressor in the form of aggression. This Section divides the right of private defence into two parts, i.e. the first part deals with the right of private defence of person, and the second part with the right of private defence of property. To invoke the plea of right of private defence there must be an offence committed or attempted to be committed against the person himself exercising such a right, or any other person. The question of the accrual of the right of the private defence, however, does not depend upon an injury being caused to the man in question. The right could be exercised if a reasonable apprehension of causing grievous injury can be established. If the threat to person or property of the person is real and immediate, he is not required to weigh in a golden scale the kind of instrument and the force which he exerts on the spur of the moment. The right of private defence extends not only to the defence of one's own body and property, as under the English law, but also extends to defending the body and property of any other person.

Thus under section 97 even a stranger can defend the person or property of another person and vice versa, whereas under the English law there must be some kind of relationship existing such as father and son, husband and wife, etc., before this right may be successfully exercised. A true owner has every right to dispossess or throw out a trespasser, while the trespasser is in the act or process of trespassing but has not accomplished his mission; but this right is not available to the true owner if the trespasser has been successful in accomplishing possession and his success is known by the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies available under the law. The onus of establishing plea of right of private defence is on the accused though he is entitled to show that this right is established or can be sustained on the prosecution evidence itself. The right of private defence is purely preventive and not punitive or retributive. Once it is held that the party of the accused were the aggressors, then merely because a gun was used after some of the party persons had received several injuries at the hands of those who were protecting their paddy crop and resisting the aggression of the party of the accused, there can be no ground for taking the case out of Section 302, I.P.C., if otherwise the injuries caused bring the case within the definition of murder.

Chotelal vs State:

B was constructing a structure on a land subject to dispute between A and B. A was trying to demolish the same. B therefore assaulted A with a lathi. It was held that A was responsible for the crime of waste and B had therefore a right to defend his property.

Parichhat vs State of M.P:

A lathi blow on his father's head, his son, the accused, gave a blow with a ballam on the chest of the deceased. The court decided that the accused has obviously exceeded his right of private defence.

IPC Section 98. Right of private defence against the act of a person of unsound mind, etc:

When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations:-

Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.
A enters by night a house which he is legally entitled to enter Z, in good faith, taking A for a house breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.
This Section lay down that for the purpose of exercising the right of private defence, physical or mental capacity of the person against whom it is exercised is no bar. In other words, the right of private defence of body exists against all attackers, whether with or without mens rea. The above mentioned illustration are pointing a fact that even if an attacker is protected by some exception of law, that does not diminish the danger and risk created from his acts. That is why the right of private defence in such cases also can be exercised, or else it would have been futile and meaningless.

IPC Section 99. Act against which there is no right of private defence:

There is no right of private defence against an act which does not reasonable 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 reasonable 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 to 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 the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

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

Section 99 lays down that the conditions and limits within which the right of private defence can be exercised. The section gives a defensive right to a man and not an offensive right. That is to say, it does not arm a man with fire and ammunition, but encourage him to help himself and others, if there is a reasonable apprehension of danger to life and property. The first two clauses provide that the right of private defence cannot be invoked against a public servant or a person acting in good faith in the exercise of his legal duty provided that the act is not illegal. Similarly , clause three restricts the right of private defence, if there is time to seek help of public authorities. And the right must be exercised in proportion to harm to be inflicted. In other words , there is no right of private defence :

Against the acts of a public servant; and

Against the acts of those acting under their authority or direction;
Where there is sufficient time for recourse to public authorities; and
The quantam of harm that may be caused shall in no case be in excess of harm that may be necessary for the purpose of defence

.The protection to public servants is not absolute. It is subject to restrictions. The acts in either of these clauses must not be of serious consequences resulting in apprehension of causing death or of grievous hurt which would deprive one of his right of private defence.

To avail the benefit of those clauses (i) the act done or attempted to be done by a public servant must be done in good faith; (ii) the act must be done under the colour of his office; and (iii) there must be reasonable grounds for believing that the acts were done by a public servant as such or under his authority in the exercise of his legal duty and that the act is not illegal. Good faith plays a vital role under this section. Good faith does not

require logical infallibility but due care and caution as defined under Section 52 of the code.

Emperor vs Mammun:

The accused, five in number, went out on a moonlit night armed with clubs, and assaulted a man who was cutting rice in their field. The man received six distinct fractures of the skull-bones besides other wounds and died on the spot. The accused on being charged with murder pleaded right of private defence of their property. Held under Section 99 there is no right of private defence in cases where there is time to have recourse to the protection of the public authorities.

Public prosecute vs Suryanarayan:

On search by customs officers certain goods were found to have been smuggled from Yemen into Indian Territory. In course of search the smugglers attacked the officers and injured them. They argued that the officers had no power to search as there was no notification declaring Yemen a foreign territory under Section 5 of the Indian Tariff Act. It was held, that the officers had acted in good faith and that the accused had no right of private defence.

IPC Section100. When the right of private defence of the body extends to causing death:

The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:--

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

Secondly-Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly-An assault with the intention of committing rape;

Fourthly-An assault with the intention of gratifying unnatural lust;

Fifthly-An assault with the intention of kidnapping or abducting;

Sixthly-An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to

have recourse to the public authorities for his release.

To invoke the provisions of sec 100, I.P.C., four conditions must exist:

That the person exercising the right of private defense must be free from fault in bringing about the encounter.

There must be present an impending peril to life or of great bodily harm

There must be no safe or reasonable mode of escape by retreat;

There must have been a necessity for taking the life.

Moreover before taking the life of a person four cardinal conditions must be present:
(a) the accused must be free from fault in bringing the encounter;

(b) presence of impending peril to life or of great bodily harm, either real or apparent as to create an honest belief of existing necessity;

(c) no safe or reasonable mode of escape by retreat; and

(d) a necessity for taking assailant's life.

Yogendra Moraji vs. State:

The supreme court through Sarkaria, J. discussed in detail the extent and the limitations of the right of private defence of body. One of the aspects emphasized by the court was that 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. This aspect has create quite a confusion in the law as it indirectly suggests that once should first try to see the possibility of a retreat than to defend by using force which is contrary to the principle that the law does not encourage cowardice on the part of one who is attacked. This retreat theory in fact is an acceptance of the English common law principle of defence of body or property under which the common law courts always insisted to look first as to whether the accused could prevent the commission of crime against him by retreating.

Nand kishore lal case:

Accused who were Sikhs, abducted a Muslim married woman and converted her to Sikhism. Nearly a year after the abduction, the relatives of the woman's husband came and demanded her return from the accused. The latter refused to comply and the woman herself expressly stated her unwillingness to rejoin her Muslim husband. Thereupon the husband's relatives attempted to take her away by force.

The accused resisted the attempt and in so doing one of them inflicted a blow on the head of the woman's assailants, which resulted in the latter's death. It was held that the right of the accused to defend the woman against her assailants extended under this section to the causing of death and they had, therefore, committed no offence.

IPC Section101. When such right extends to causing any harm other than death:

If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in Section 99, to the voluntary causing to the assailant of any harm other than death.

Mohinder Pal Jolly v. State of Punjab:-

Workers of a factory threw brickbats and the factory owner by a shot from his revolver caused the death of a worker, it was held that this section did not protect him as there was no apprehension of death or grievous hurt.

IPC Section102. Commencement and continuance of the right of private defence of the body:

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

For example, one cannot shoot one's enemy from a long distance, even if he is armed with a dangerous weapon and means to kill. This is because he has not attacked you and therefore there is no reasonable apprehension of attack. In other words, there is no attack and hence no right of private defence arises. Moreover the danger must be present and imminent.

Kala Singh case:-

The deceased who was a strong man of dangerous character and who had killed one person previously picked up a quarrel with the accused, a weakling. He threw the accused on the ground, pressed his neck and bit him. The accused when he was free from the clutches of this brute took up a light hatchet and gave three blows of the same on the brute's head. The deceased died three days later. It was held that the conduct of the deceased was aggressive and the circumstances raised a strong apprehension in the mind of the accused that he would be killed otherwise. The apprehension, however, must be reasonable and the violence inflicted must be proportionate and commensurate with the quality and character of the act done. Idle threat and every apprehension of a rash and timid mind will not justify the exercise of the right of private defence.

IPC Section103. When the right of private defence of property extends to causing death:

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

namely;

First-Robbery;

Secondly-House-breaking by night;

Thirdly-Mischief by fire committed on any building, tent or vessel, which building, tent of vessel is used as a human dwelling, or as a place for the custody of property; Fourthly-Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

IPC Section 103 provides the right of private defence to the property whereas IPC Section 100 is meant for exercising the right of private defence to the body of a person. It justifies homicide in case of robbery, house breaking by night, arson and the theft, mischief or house trespass which cause apprehension or grievous harm. If a person does not have possession over the property, he cannot claim any right of private defence regarding such property. Right to dispossess or throw out a trespasser is not available to the true owner if the trespasser has been successful in accomplishing his possession to his

knowledge. This right can be only exercised against certain criminal acts which are mentioned under this section

Mithu Pandey v. State:

Two persons armed with 'tangi' and 'danta' respectively were supervising collection of fruit by labourers from the trees which were in the possession of the accused persons who protested against the illegal act. In the altercation that followed one of the accused suffered multiple injuries because of the assault. The accused used force resulting in death. The Patna High Court held that the accused were entitled to the right of private defence even to the extent of causing death as the forth clause of this section was applicable.

Jassa Singh v. State of Haryana:

The Supreme court held that the right of private defence of property will not extend to the causing of the death of the person who committed such acts if the act of trespass is in respect of an open land. Only a house trespass committed under such circumstances as may reasonably caused death or grievous hurt is enumerated as one of the offences under Section 103.

Section104 IPC. When such right extends to causing any harm other than death:

If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong -doer of any harm other than death.
This Section cannot be said to be giving a concession to the accused to exceed their right of private defence in any way. If anyone exceeds the right of private defence and causes death of the trespasser, he would be guilty under Section 304, Part II. This Section is corollary to Section 103 as Section 101 is a corollary to Section 100.

V.C.Cheriyan v. State:

The three deceased person along with some other person had illegally laid a road through the private property of a Church. A criminal case was pending in court against them. The three accused persons belonging to the Church put up barricades across this road with a view to close it down. The three deceased who started removing these barricades were stabbed to death by the accused. The Kerela High Court agreed that the Church people had the right of private defence but not to the extent of causing death of unarmed deceased person whose conduct did not fall under Section 103 of the Code.

Section105. Commencement and continuance of the right of private defence of property:

The Right of private defence of property commences when a reasonable apprehension of danger to the property commences. The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint of as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.
The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

This right can be exercised if only there is no time to have recourse of public authorities. As soon as the trespass is accomplished successfully the true owner of the property loses right of private defence to protect property. No right of private defence to protect property is available to a trespasser when disputed land is not at all in possession of him.

Section106. Right of private defence against deadly assault when there is risk of harm to innocent person:-

If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person his right or private defence extends to the running of that risk.

Illustration

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

This section removes an impediment in the right of private defence. The impediment is the doubt in the mind of the defender as to whether he is entitled to exercise his right even when there is a possibility of some innocent persons being harmed by his act. The Sections says that in the case of an assault reasonably causing an apprehension of death, if the defender is faced with such a situation where there exists risk of harm to an innocent person, there is no restriction on him to exercise his right of defence and he is entitled to run that risk.

Conclusion

To justify the exercise of this right the following are to be examined:-

#The entire accident
Injuries received by the accused
Imminence of threat to his safety
Injuries caused by the accused
Circumstances whether the accused had time to recourse to public authorities.

Right of private defence is a good weapon in the hand of every citizen to defend himself. This right is not of revenge but toward the threat and imminent danger of an attack. But people can also like misuse this right. Its very difficult for court to find out whether this right had been exercised in good faith or not

13. Explain the term "Kidnapping " and distinguish it with Abduction.

Answer:

Section 359 to 369 of the code have made kidnapping and abduction punishable with varying degree of severity according to nature and gravity of the offence. The underlying object of enacting these provisions is to secure the personal liberty of citizens, to give legal protection to children of tender age from being abducted or seduced for improper purposes and to preserve the rights of parents and guardians over their wards for custody or upbringing.

Kidnapping

The word "kidnapping" has been derived from the word 'kid' meaning child and 'napping' to steal. Thus the word literally means "child stealing". Kidnapping under the code is not confined to child stealing. It has been given wider connotation as meaning carrying away of a human being against his/her consent, or the consent of some person legally authorised to accord consent on behalf of such person.

Kidnapping, according to **Walker,**[1] is the common name for the common law offence of carrying away, or secreting, of any person against his will, or against the will of his lawful guardians. It may be constituted by false imprisonment, which is total restraint of a person and his confinement without lawful authority or justification

Section 359 in The Indian Penal Code – Kidnapping.

Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship.

Section 360 in The Indian Penal Code – Kidnapping from India.

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

Section 361 in The Indian Penal Code – Kidnapping from lawful guardianship.

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 guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

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

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

To constitute an offence under this section the following conditions must exist –

1. There must be taking or enticing of a minor, or a person of unsound mind;
2. Such minor must be under 16 years of age, if a male, or under 18 years of age, if a female;
3. Taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind; and
4. Taking or enticing must be without the consent of such guardian.

The courts have formulated certain guiding principles in section 361, besides its essential ingredients, which are as follows:

1. In the case of minor girls this section is attracted irrespective of the question whether she is married or unmarried.
2. The consent of the minor is immaterial. **(State of Haryana vs Raja Ram, AIR 1973 SC 819)**
3. The motive or intention of the kidnapper is also immaterial. (State vs Sulekh Chand, AIR Punj. 83)
4. If the kidnapped girl turn turns out to be under 18 years of age, the kidnapper will be held liable, even though he had a bonafide belief and reasonable ground for believing that she was over eighteen years. **(Queen vs Prince, (1875) LR 2)**
5. The defence that the girl was easy virtue would not be sufficient to make accused not liable.

'Enticing' is inducing a minor to go of her own accord to the kidnapper. There is distinction between taking and enticing. The mental attitude of child is immaterial in the case of taking when the child is taken away. But the word 'entice' involves the idea of inducement or allurement. **[Biswanath Mallick vs State of Orissa, 1995 Cr.LJ 1416 (Ori)]**

Abduction

Abduction in common language means carrying away of a person by fraud or force. In United Kingdom, Kidnapping is used for both minors and adults, whereas in India kidnapping is used for minors and abduction for adults.

Section 362 in The Indian Penal Code – Abduction

Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

In view of the definition, the word 'force' connotes actual force and not merely show or threat of force. It would be an offence to carry a grown-up woman by force against her own will even with the object of restoring her to her husband. **[Allu vs Emperor, AIR 1925 Lah 512]** The expression deceitful as used here, is wide enough to include inducing a girl to leave her guardian's house on a pretext. It also implies the use of misrepresentation and fraud by act or conduct. **(R. vs Cort (2004) 4 All ER 137 (CA)]**

Section 363 in The Indian Penal Code – Punishment for kidnapping

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

Section 363-A in The Indian Penal Code – Kidnapping or maiming a minor for purposes of begging.

(1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging, shall be punished with imprisonment for life, and shall also be liable to fine.

(3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.

(4) In this section,—

(*a*) "begging" means—

(*i*) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;

(*ii*) entering on any private premises for the purpose of soliciting or receiving alms;

(*iii*) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(*iv*) using a minor as an exhibit for the purpose of soliciting or receiving alms;

(*b*) "minor" means—

(*i*) in the case of a male, a person under sixteen years of age; and

(*ii*) in the case of a female, a person under eighteen years of age.]

Section 364 in The Indian Penal Code – Kidnapping or abducting in order to murder.

Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(*a*) *A* kidnaps *Z* from India, intending or knowing it to be likely that *Z* may be sacrificed to an idol. *A* has committed the offence defined in this section.

(*b*) *A* forcibly carries or entices *B* away from his home in order that *B* may be murdered. *A* has committed the offence defined in this section.

Section 364-A in The Indian Penal Code – Kidnapping for ransom, etc.

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.]

Section 365 in The Indian Penal Code – Kidnapping or abducting with intent secretly and wrongfully to confine person.

Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 366 in The Indian Penal Code – Kidnapping, abducting or inducing woman to compel her marriage, etc.

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid].

Section 366-A in The Indian Penal Code – Procuration of minor girl.

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.]

Section 366-B in The Indian Penal Code – Importation of girl from foreign country.

Whoever imports into India from any country outside India or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.]

Sections 366 and **366 B** are intended to punish the export and import of girls for prostitution. Section 366 A deals with procuration of minor girls from one part of India to another part. Section 366B makes it an offence to import into India from any country outside India below the age of twenty one years for the purpose of prostitution.[2]

Section 367 in The Indian Penal Code – Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 368 in The Indian Penal Code – Wrongfully concealing or keeping in confinement, kidnapped or abducted person.

Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

S.no	KIDNAPPING	ABDUCTION
1	**It is committed only in respect Of minor under 16 years of age If a male and 18 years if a female or a person of unsound mind.**	**It is committed in respect of any age.**
2	**In kidnapping the consent of enticed is immaterial.**	**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. It is completed as soon as the Minor is removed from the Custody of his or her guardian.**	**It is a continuing offence. is being abducted both when he is first taken from one place to and also when he removed from one Place to other.**

14. What is hurt? Distinguish between Hurt and Grievous hurt

Answer:

No	Hurt	Grievous hurt
1.	**Definition:** Hurt defined under Section 319 of the Indian Penal Code- "Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt."	**Definition:** According to Section 320 of Indian Penal Code - The following kinds of hurt only are designated as "grievous" - First - Emasculation. Secondly - Permanent privation of the sight of either eye. Thirdly - Permanent privation of the hearing of either ear. Fourthly - Privation of any member or joint. Fifthly - Destruction or permanent impairing of the powers of any member or joint. Sixthly - Permanent disfiguration of the head or face. Seventhly - Fracture or dislocation of a bone or tooth. Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.
2	The nature of Hurt is simple	The nature of Grievous hurt is grievous.

3	It Covers bodily pains disease or infirmity to any person	According to Section 320 there are eight kinds of hurt which are said grievous in nature.
4	The offence is non-cognizable, bailable and triable by any Magistrate	The offence is cognizable, bailable, compoundable with the permission of the Court before which any prosecution of such offence is pending and triable by any Magistrate .
5	**Punishment :** Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. (Section 323 IPC)	**Punishment :** Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.(Section 325 IPC)

15. Explain the doctrine "Actus nonfacit reum nirimens sit rea" with elements of crime.

Answer:

Defination

Actus Non Facit Reum Nisi Mens Sit Rea is a Latin maxim which means that an act to be illegal, the person should do it with a guilty mind. Conviction of a crime requires proof of a criminal act and intent. A crime generally consists of two elements, a physical, wrongful deed (the "actus reus"), and a guilty mind that produces the act (the "mens rea"). A crime ordinarily is not committed if the mind of the person doing the act is innocent This Latin phrase is often given as a pinnacle of the common law criminal justice system and was valued by jurists. It was an essential component to all criminal cases. However, the maxim is subject to many criticisms.

Meaning

A crime is not considered to have been done unless the intention of the accused was to do so.

Easy way to remember

Actus = The act or action
Non facit = not doing / not done
reum = the accused / defendent
nisi = unless
mens = mental condition / of the mind / intention
sit = to be
rea = reum / the accused / defendent

Explanation

This maxim holds good for criminal law, where not only the act of the accused must be proved, but the intention of the accused to do that specific act must also be proven to show guilt and sentence him for that particular crime.

The act follows the intention.

By this principal, the accused must have the intention to perform a certain crime, which caused him to act in that way. The mental state must be such that the accused had the intention to commit that act and the knowledge of its outcome.

Only when the act committed and the state of mind of the accused is in concurrence, can he be sentenced for committing a crime.

Common Misconception

No where in this maxim is the word guilt mentioned or implied. Hence, this maxim does not talk about guilt, which needs to be proven later, it only talks about the mental state of the accused which maybe further extended to the intention, knowledge or foresight of the accused.

The interpretation that this maxim means "an act does not make a person guilty unless (their) mind is also guilty" is not completely correct.

Example

An accused who commits a motor vehicle accident which leads to death of the victim, may be charged for murder, if he had the intention of killing the accused i.e. his act and mind worked in unison to execute the crime. Else, it would be considered an accident or negligence attracting a lesser punishment.

This maxim is important for the determination of criminality of an act or omission. It means that act does not make a man guilty unless his intention is so. The maxim contains a good deal of **truth**, as there could be no crime without the presence of the guilty mind.

It has been observed that, "the maxim is bedrock of the English Common Law of crimes and it amounts to no more and no less than that all crime is characterized by and necessarily involves, some form of culpable intentionality".

r according to Stephen as observed in R. v. Sheppard, it means "no more than that the definition of all or nearly all crimes contains not only an outward and visible element, but a mental element varying according to the different crimes". It may be said that the two important elements of crime examined from the view point of the offender are—

(i) Conduct on his part or act or action which constitutes the physical act which is objective; and

(ii) A guilty state of mind or a mind which is blame-worthy, which is the subjective element usually inferred from either—

(a) The facts and circumstances of the case; or

(b) On the basis of the proposition that a man intends the natural consequences of his act.

16. What is wrongful restraint? Discuss with case law also compare it with wrongful confinement.

Answer:

1. INTRODUCTION

Section 339 to 348 of PPC provide for offences relating to wrongful restraint and wrongful confinement. Section 339 of the PPC defines wrongful restraint whereas section 340 defines the wrongful confinement. While section 341 and 342 of the PPC declared wrongful restraint and wrongful confinement as offence and also prescribe their punishment.

2. WRONGFUL RESTRAINT MEANING AND DEFINITION

The expression "wrongful restrairit" implies keeping a man out of a place where he wishes a right to be.

3. Scope and applicability of section 339

Section 339 relates to voluntary obstruction by a person and not to obstructions which are not voluntarily continued by persons accused of obstruction throughout the time it lasts. Before a person can be convicted of an offence of wrongful restraint, the prosecution must prove that the complainant had a right as distinguished from a license to proceed in a particular direction or that he had a right of way.

4. Illustration of wrongful restraint

The following illustrations elucidate the meaning of wrongful restraint.

(I) ILLUSTRATION-I
A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the pat. Z is thereby prevented from passing. A wrongfully restraints Z.

II. ILLUSTRATION
A threatens to set a savage dog at Z goes along a path along which Z has a right to go Z is thus prevented from going along that path. A wrongfully restraints Z.

From these illustrations it will appear that a person may obstruct another by causing it to appear to that other impossible, difficult or dangerous to proceed as well as by causing it actually to be impossible difficult or dangerous for that other to proceed.

erson from proceeding in any direction, and
(iii) That the person so proceeding has a right to proceed in the direction concerned.

6. PUNISHMENT FOR WRONGFUL RESTRAINT
Whoever wrongfully restraints any person shall be punished with:
(i) simple imprisonment for a term which may extend to one month; or
(ii) with fine which may extend to one thousand five hundred rupees: or
(iii) with both.

7. WRONGFUL CONFINEMENT MEANING AND DEFINITION
(I) MEANING
Wrongful confinement means to illegally limit or constraint a person into boundaries or walls (Marriarn Webster Dictionary).

(II) DEFINITION U/SEC. 340
Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

8. SCOPE OF SECTION 340
An essential ingredient of this offence is physical obstruction to the movement of a person. There must be a total restraint, not partial one. If one man merely obstructs the passage of: another in a particular direction, whether by threat of personal violence or otherwise, leaving him at liberty to stay where he is or to go in any other direction if he pleases, he cannot be said thereby to imprison him.

9. ILUSTRATIONS OF WRONGFUL CONFINEMENT

ILLUSTRATION-I
A causes Z to go within a walled space, and locks Z in, Z is thus prevented from proceeding in any direction beyond the circumscribing lines of wall. A wrongfully confines Z.

ILLUSTRATION-11
A places mien with fire-arms at the outlets of a building, and tells Z. that they will fire at Z. if Z attempts to leave the building. A wrongfully confines Z.

10. ESSENTIALS OF WRONGFUL CONFINEMENT
Following are the essentials of wrongful confinement.

(I) RESTRAINT
To constitute wrongful confinement, it is necessary that accused has wrongfully restrained a person.

(II) PREVENT THAT PERSON FROM PROCEEDING CERTAIN CIRCUMSCRIBING LIMITS

Such restraint must prevent that person from proceeding beyond certain circumscribing limits beyond which he has a right to proceed.

(III) TOTOAL RESTRAINT

To constitute wrongful confinement it is essential that There must be a total restraint, not a partial one. If one name merely obstructs the passage of another in a particular direction, whether by threat of a personal violence or otherwise leaving him at liberty to stay where he is or to go in any other direction if the pleases, he cannot be said thereby to confine him. Confinement is a total restraint on the liberty of the person, for however short a time and not a partial obstruction of his will whatever inconvenience it may bring on him.

11. PROOF OF WORNGFUL CONFINEMENT

Proof of actual obstruction is not essential to support a charge of wrongful confinement. It must in each case, he proved that there was at least such impression produced in the mind of the person detained as to lead to him reasonably to believe that he was not free from to departs and that he would be forthwith restrained if the attempted to do. Thus the belief that he could not depart without being seized immediately then it would be proper to hold that he was obstructed and confined.

12. DURATION OF WORNGFUL CONFINEMENT

The time during which a person is kept in wrongful confinement is immaterial except with reference to the extent of punishment. Detention through the exercise of moral force, without the use of physical force is sufficiently to constitute offence.

13. PUNISHMENT FOR WRONGFUL CONFINMENT U/SEC. 342

Whoever wrongfully confines any person shall be punished with;

i. Imprisonment of either description for a term which may extend to one year or,

ii. Fine which may extend to three thousand rupees

14. Difference between Wrongful Restraint and wrongful obstruction

a. Nature of obstruction

In wrongful restraint, the curtailment of restraint is partial while in wrongful confinement curtailment of liberty is total.

b. Area of obstruction

Wrongful restraint keeps a man out of place where he wishes to be. Wrongful confinement keeps the man struck within certain circumscribed limits.

c. Restriction on movement

In wrongful restraint, the person is restrained to proceed in a particular direction. In wrongful confinement he is restrained from proceeding in any direction.

d. Intensity of offence

Lastly, wrongful confinement is a more serious offence inasmuch as it prescribes punishment with imprisonment, simple or rigorous extending to one year, or fine up to Rs 1,000 or both while wrongful restraint is punishment with simple imprisonment up to one month or with fine up to Rs 500 or both.

15. Analysis

In last to conclude i can say that wrongful restraint means keeping a man out of a place where he wishes and a right to be and wrongful confinement means to illegally limit or constraint a person into boundaries and walls.

17. What is insanity within the meaning of section 84 of IPC? Explain the leading case law also compare between Medical Insanity and Legal Insanity.

Answer:

The law relating to insanity is laid down under Section 84, I.P.C., which runs as "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 his act, or that he is doing what is either wrong or contrary to law".

Basis:

Insanity means and includes both mental derangement and imbecility. Insanity is a defence to criminal responsibility. The basis therefore is that such a person is not of sound mind is non compos mentis. That is to say, he does not know the nature of the act he is doing or what is either wrong or contrary to law.

This section deals with a deficiency of will due to weak intellect, and lays down the legal taste of responsibility in cases of alleged unsoundness of mind. Insanity can be defence only when an accused is in such a State of mind arising from the disease as to be incapable of deciding between the right and wrong.

Test of Insanity in Law:

Unsoundness of mind non-compos mentis covers a wide range and is synonymous with insanity, lunacy, madness, mental derangement, mental disorder and mental aberration or alienation. The insane persons may be divided into four kinds: — (i) a lunatic; (ii) an idiot; (iii) one non compos mentis by sickness, or (iv) by drink.

A lunatic and an idiot, may be permanently so, or they may be subject to only temporary and occasional fits of malady. A person suffering from a total alienation of the mind is called 'insane' or 'mad', the term 'lunatic' being reserved for one whose disorder is intermittent with lucid intervals.

An idiot is one who is of non-sane memory from his birth of perpetual infirmity, without lucid intervals. A person made non compos mentis by illness is excused in criminal cases for such acts as are committed while under the influence of his disorder.

'Unsoundness of mind' naturally impairs the cognitive faculties of the mind and exempts a person from criminal responsibility. 'Whether a person, who, under an insane delusion

as to the existing facts, commits an offence in consequence thereof is, therefore, to be excused, depends upon the nature of the delusion.

If he is labouring under a partial delusion, and it is not in other respects insane he must be considered in the same situation as to the responsibility as if the facts, with respect to which the delusion exists, were real.

If a person afflicted with insane delusion, in respect of one or more particular subjects or persons, commits a crime, knowing that he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed.

Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind, and it is by that test, as distinguished from medical test, that the criminality of an act is to be determined.

The mere fact that on former occasions he had been occasionally subject to insane delusions or had suffered from derangement of mind and subsequently he had behaved like a mentally deficient person is per se insignificant to bring his case within the exemption.

The antecedent and subsequent conduct of the man is relevant only to show what the state of his mind was at the time when the act was committed. In other words, so far as Section 84 is concerned, the Court is only concerned with the state of mind of the accused at the time of the act.

It is clear that it is only that unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground for exemption from criminal responsibility. The nature and the extent of the unsoundness of mind required must reach that stage as would make the offender incapable of knowing the nature of his act or that he is doing what is either wrong or contrary to law.

In Madhukar G. Nigade v. State of Maharashtra, the High Court of Bombay held that in order to get the benefit of Section 84 of the Indian Penal Code, it has to be brought on record that at the time when the said offence was committed, the accused was mentally not fit to understand the consequences of his action and was of unsound mind at that time.

Legal and Medical Insanity:

The difficulty in dealing with the subject of insanity has been felt by the jurists for want of medical knowledge and the controversy between the medical and the legal profession of the subject. Medical men say that the insane should be free from legal punishment as the nature of the disease is most obscure and the symptoms vary.

They thought of law as a rule of barbarism and crime as a disease. They also misunderstood of authority of the judge-made law on which the law relating to insanity is based. The legal insanity is different from the medical insanity.

In a case of legal insanity it is to be proved that the insanity is of a degree that, because of it, the man is incapable of knowing the nature of the act or what he is doing is either wrong or contrary to law. In other words, his cognitive faculties are such that he does not know what he has done or what will follow from his act.

Therefore, there can be no legal insanity unless the cognitive faculty of the mind is destroyed as result of unsoundness of mind to such an extent as to render the accused incapable of knowing the nature of the act that what he was doing was wrong or contrary to law.

The capacity to know a thing is quite different from what a person knows. The former is potentiality while the latter is a result of it. If a person possesses the former, he cannot be protected in law, whatever might be the result of his potentiality. In other words, what is protected is an inherent or organic incapacity, and not a wrong or erroneous belief which might be the result of a perverted potentiality.

A person might believe so many things. His beliefs can never protect him once it is found that he possessed the capacity to distinguish between right and wrong. If his potentialities lead him to a wrong conclusion, he takes the risk and the law will hold him responsible for the deed which emanated from him.

What the law protects is the case of a man in whom the guiding light that enables a man to distinguish between right and wrong and between legality and illegality is completely extinguished. Where such right is found to be still flickering, a man cannot be heard to plead that he should be protected because he was misled by his own misguided intention or by any fancied delusion which had been haunting him, and which he mistook to be a reality.

Our beliefs are primarily the offspring of the faculty of institution. On the other hand, the content of our knowledge and our realisation of its nature is born out of the faculties of cognition and reason.

The Courts are concerned with the legal and not with the medical view of the question. A man may be suffering from some form of insanity in the sense in which the term is used by the medical men, but may not be suffering from the unsoundness of mind as is described in Section 84.

If the facts of a particular case show that the accused knew that he had done something wrong it did not matter how though he might be insane from the medical point of view he could not be exonerated under Section 84.

Test:

There are various degrees of insanity known to medical men or psychiarists; but law does not recognise all kinds of insanity. Legal insanity as contemplated by Section 84 is that unsoundness of mind, in which a person completely loses his cognitive faculties and is incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law.

The facts were that after injuring a person with an axe, the accused wanted to assault another person who snatched away the axe from the accused. The accused then fled away. This conduct of the accused rules out that he did not know the nature of the act; on the contrary it is shown that he apprehended that those present would catch and punish him. In the circumstances, the plea of insanity fails.[1]

The test for exemption from conviction and punishment on the ground of insanity is the legal test laid down in this section and not the medical test of insanity. On an analysis of Section 84, one gets three classes of legal insanity: —

(1) A person is incapable of knowing the nature of the act, i.e., the physical acts he is doing.

(2) A person is incapable of knowing that he is doing wrong.

(3) A person is incapable of knowing that what he is doing is contrary to law.

The first one refers to the offender's consciousness of the bearing of his act on others, on those who are affected by it, the second and the third to his consciousness of its relation to himself.

The word "wrong", in the section means moral wrong, and no legal wrong, because if, the word "wrong" is interpreted as meaning "contrary to law", those words being already in this section, the word "wrong" becomes redundant.

The mere fact that the accused was feeling giddy at the time, or that he was not feeling well for the last one month or that he was running after village children or cattle does not

establish that he was non compos mentis or of unsound mind and required exemption from penal liability.

In Kamala Bhunia v. State of West Bengal, the Calcutta High Court has held that to extend benefit of Section 84 of the Indian Penal Code the Court must be satisfied that at the time of commission of the offence the accused was suffering from mental illness or was in such a state of insanity that the accused was not capable of understanding the consequence of wrongful act done by her/him.

The object of the legal test, as distinguished from the medical test is to determine the criminality of an act to ascertain how far a guilty intent of knowledge can be attributed to a person of unsound mind. Section 84, in substance, is the same as the McNaughtett Rules, which in spite of long passage of time are still regarded as the authoritative statement of the law as to criminal responsibility.

Although no hard and fast rule can be laid down and the conclusion would vary according to the facts and circumstances of each case, certain broad test based on objective standards are generally looked into by Courts. These are antecedent and subsequent conduct of the person accused of the offence.

Though such conducts is not per se enough, but is relevant only or show what the state of mind of the accused was at the time of the commission of the act. Some indication of the precise state of the offender's mind at the time of the commission of the act is often furnished by the words of the offender used while committing the act or immediately before or after the commission.

Speaking generally, the pattern of the crime, the circumstances under which it was committed, the manner and method of the execution, and the behaviour of the offender before or after the commission of the crime furnish some of the important clues to ascertain whether the accused had no cognitive faculty to know the nature of the act or that what he was doing was either wrong or contrary to law.

18. What do you know about killing of man? Whether all culpable Homicides are not murder? Discuss

Answer:

DEFINITION OF MURDER:

Before defining Murder we should know the definition of "**CULPABLE HOMICIDE**". The Legal meaning of Murder is Homicide. So according to this concept let's define what culpable homicide is:

SECTION 299: CULPABLE HOMICIDE:

Section 299 of **IPC** defines culpable homicide. It means 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 his act is likely to cause death, commits the offence of culpable homicide.

ILLUSTRATIONS:

- A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

- 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.

SECTION 300: MURDER: Culpable homicide leads to murder when:

1. If the act by which the death is caused is done with the intention of causing death, or

2. If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused.

3. If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.
4. If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

ILLUSTRATIONS:

- A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.
- A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

EXCEPTIONS WHEN CULPABLE HOMICIDE IS NOT MURDER:

1. CULPABLE HOMICIDE IS NOT MURDER:

Culpable homicide is not a murder when the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos–

First– That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing. Or doing harm to any person.

Secondly– That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly– That the provocation is not given by anything done in the lawful exercise of the right of private defense.

2. CULPABLE HOMICIDE IN EXERCISE OF GOOD FAITH:

Culpable homicide is not amounted to murder if it's done in exercise of good faith to protect the public or private property. If someone exceeds his power given by law and kills someone in order to save something or someone it cannot be amounted as Murder.

3. CULPABLE HOMICIDE IN CASE OF PUBLIC SERVANT:

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

SECTION 301: CULPABLE HOMICIDE BY CAUSING DEATH OF A PERSON OTHER THAN A PERSON WHOSE DEATH WAS INTENDED: Culpable Homicide amounts to murder if any other person who was not intended to die, dies due to the conditions and acts done by the perpetrator even if he has planned the murder for someone else.

SECTION 304 A: CAUSING DEATH BY NEGLIGENCE: Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to **two years**, or with fine, or with both.

SECTION 307: ATTEMPT TO MURDER: Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine, and if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life], or to such punishments decided by the court of law accordingly.

ILLUSTARTIONS:

- A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.

- A, with the intention of causing the death of a child of tender years, exposes it in a deserted place. A has committed the offence defined by this section, though the death of the child does not ensure.

SECTION 308: ATTEMPT TO COMMIT CULPABLE HOMICIDE: Whoever does any Act with such intention or knowledge and under such circumstances that, if he by that Act caused death, he would be guilty of culpable homicide not amount to murder and shall be punished with imprisonment of either description for a term which may extend to **three years**, or with fine, or with both, and if hurt is caused to any person by such Act, shall be punished with imprisonment of either description for a term which may extend to **seven years**, or with fine, or with both.

Culpable Homicide / Murder

Meaning:

- **the word Homicide derived from Latin words Homo and Cido**. Homo means human and Cido means killing by a human.
- **So Homicide means the killing of a human being by a human being.**
- Culpable means criminal manner or punishable by law.
- So in short Culpable homicide means death through human agency punishable by law. or
- So culpable homicide means killing a human being by a human being in a criminal manner

Thus, Culpable Homicide means killing of a human being by another human being in a blameworthy or criminal manner.

Chapter xvi sec-299 to 304 of IPC DEALS WITH CULPABLE HOMICIDE AND MURDER

Section 299 and Section 300 Indian Penal Code, 1860, deals with the definition of culpable homicide and murder respectively. Culpable homicide by causing death of person other than person whose death was intended is provided in sec-301 and 302 of the IPC provided punishment of murder, punishment of murder of a life convict is provides in sec-303 and sec-304 provides punishment of culpable homicide not amounting to murder.

EXPLANATORY NOTES ON SEC-299 AND 300 IPC

Homicide means some one is involved the death of other person.

- Homicide may be either lawful or unlawful.
- Lawful Homicide : In case of lawful homicide, law will set the culprit free. (sec-76-106)
  Unlawful Homicide: If death is caused with intention or knowledge to cause death, then homicide is classified as unlawful homicide. These cases are Culpable homicide Under Section 299 of the Indian Penal Code and Murder under Section 300 of I.P.C. (sec-302,304,305,306. Etc

Culpable homicide is the Genus, and murder is the Species

SEC -299 DEFIEN CULPABLE HOMICIDE IN SIMPLE WAY culpable homicide are two kinds

1. **Culpable Homicide Amounting to Murder: It is known as simple murder**
2. **Culpable homicide not amounting to Murder:**

- There is necessarily a criminal or knowledge in both. The difference does not lie in quality, it lies in the quantity or degree of criminality closed by the act
- Culpable homicide is the Genus, and murder is the Species. All murder are culpable homicide but not vice-versa, it has be held in **Nara Singh Challan v/s Sate of Orissa 1997C**.
- Sec-300 defines murder. Which means murder is the species of culpable homicide.
- it is to be noted that culpable homicide not amounting to murder is not defined separately in IPC it is defined as a part of murder in sec-300 IPC And also say circumstance when culpable homicide turn in to murder.
- The main distinction between 'Culpable Homicide' and 'Murder' is that the knowledge of offender as to degree of portability of death. Thus we often say, all murders are culpable homicides, but not vice-versa. .

Whenever the court has find out whether an offence is culpable homicide not amounting to murder or murder it should be followed in three steps -

1. First, a causal connection has to be established between the act of the accused and death caused

2. Once that is proved, the next step is finding out whether the act of the accused is culpable homicide as defined u/s 299 IPC.

3. If answer is affirmative then the court has to be find whether the case come within the ambit any of the four clauses of sec-300. If the answer is negative the offence is culpable homicide not amounting to murder. But if the answer is positive then it is murder And also if the answer is positive but fall within any of the exception u/s-300 then also it will culpable homicide not amounting to murder.

CULPABLE HOMICIDE ON THE BASIS OF DEFINATIONS

COMMON ELEMENT:- When an Act/omission (**Actus reous**) resulting the death of another human being it would be culpable homicide if any of the mensrea are their

Culpable Homicide (Sec-299)	When Culpable Homicide is murder (sec-300)	When culpable homicide is not murder (5-exception of sec-300)
Intention to cause death	• Provocation • Right of private defence • public servant exceeding his power • sudden fight • **with consent** Intention to cause death (no extra element necessary)	
Intention of such bodily injury as is likely to cause death.	+ (2) knowledge of the offender +(3)sufficient in ordinary course of nature	
With knowledge of possibility of death	+(4) surety of knowledge of death	

When culpable homicide is not murder

Exception 1.-Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or cause the death of any other person by mistake or accident.

—The above exception is subject to the following provisos:

Firstly.-That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.-That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.-That the provocation is not given by anything done in the lawful exercise of the right of private defence.

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

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

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

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself, A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose. Z, in exercise of the right of private defense, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defense.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a by stander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

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

Illustration

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

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

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

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

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

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

19. Explain the meaning ,nature and reasons for defense relating to the Right of private defense

Answer:

IPC Section 96 to 106 of the penal code states the law relating to the right of private defence of person and property.

The provisions contained in these sections give authority to a man to use necessary force against an assailant or wrong-doer for the purpose of protecting one's own body and property as also another's body and property when immediate aid from the state machinery is not readily available and in so doing he is not answerable in law for his deeds. Section 97 says that the right of private defence is of 2 types:

(i) Right of private defence of body,

(ii) Right of private defence of property.

Body may be one's own body or the body of another person and likewise property may be movable or immovable and may be of oneself or of any other person. Self-help is the first rule of criminal law. The right of private defence is absolutely necessary for the protection of one's life, liberty and property. It is a right inherent in a man. But the kind and amount of force is minutely regulated by law. The use of force to protect one's property and person is called the right of private defence

Nature of The Right

It is the first duty of man to help himself. The right of self-defence must be fostered in the Citizens of every free country. The right is recognised in every system of law and its extent varies in the inverse ratio to the capacity of the state to protect life and property of the subject(citizens). It is the primary duty of the state to protect the life and property of the individuals, but no state, no matter how large its resources, can afford to depute a policeman to dog the steps of every rouge in the country. Consequently this right has been given by the state to every citizen of the country to take law into his own hand for their safety. One thing should be clear that, there is no right of private defence when there is time to have recourse to the protection of police authorities. The right is not dependent on the actual criminality of the person resisted. It depends solely on the wrongful or apparently wrongful character of the act attempted, if the apprehension is real and

reasonable, it makes no difference that it is mistaken. An act done in exercise of this right is not an offence and does not, therefore, give rise to any right of private defence in return

IPC Section 96. Things done in private defence:

Nothing is an offence, which is done in the exercise of the right of private defence.

Right of private defence cannot be said to be an offence in return. The right of self-defence under Section 96 is not absolute but is clearly qualified by Section 99 which says that the right in no case extends to the inflicting of more harm than it is necessary for the purpose of defence. It is well settled that in a free fight, no right of private defence is available to either party and each individual is responsible for his own acts. While it is true that law does not expect from the person, whose life is placed in danger, to weigh, with nice precision, the extent and the degrees of the force which he employs in his defence, it also does not countenance that the person claiming such a right should resort to force which is out of all proportion to the injuries received or threatened and far in excess of the requirement of the case. The onus of proving the right of private defence is upon the person who wants to plead it. But an accused may be acquitted on the plea of the right of private defence even though he has not specifically pleaded it.

Courts are empowered to exempt in such cases. It must be borne in mind that the burden of proving an exception is on the accused. It is not the law that failure to setup such a defence would foreclose this right to rely on the exception once and for all. It is axiomatic that burden on the accused to prove any fact can be discharged either through defence evidence or even through prosecution evidence by showing a preponderance of probability. It is true that no case of right of private defence of person has been pleaded by the accused not put forth in the cross-examination to the eye-witnesses but it is well settled that if there is a reasonable probability of the accused having acted in exercise of right of private defence, the benefit of such a plea can still be given to them.

The right of private defence, as the name suggests, is an act of defence and not of an offence. Consequently, it cannot be allowed to be used as a shield to justify an aggression. This requires a very careful weighing of the facts and circumstances of each case to decide as to whether the accused had in fact acted under this right. Assumptions without any reasonable basis on the part of the accused about the possibility of an attack do not entitle him to exercise this right. It was held in a case that the distance between the aggressor and the target may have a bearing on the question whether the gesture amounted to assault. No precise yardstick can be provided to fix such a distance, since it depends upon the situation, the weapon used, the background and the degree of the thirst to attack etc.

The right of private defence will completely absolve a persons from all guilt even when he causes the death of another person in the following situations, i.e

If the deceased was the actual assailant, and

If the offence committed by the deceased which occasioned the cause of the exercise of the right of private defence of body and property falls within anyone of the six or four categories enumerated in Sections 100 and 103 of the penal code

Thangavel case:

The general proverb or adage that "necessity knows no law" does not find a place in modern jurisprudence. The right of self-preservation is inherent in every person but to achieve that end nothing could be done which militates against the right of another person. In the other words, "society places a check on the struggle for existence where the motive of self-preservation would dictate a definite aggression on an innocent person".

Kamparsare vs Putappa:

Where a boy in a street was raising a cloud of dust and a passer-by therefore chased the boy and beat him, it was held that the passer-by committed no offence. His act was one in exercise of the right of private defence

Section 97.Right of private defence of the body and of Property:-

Every person has a right, subject to the restrictions contained in Section 99, to defend-
First-His own body, and the body of any other person, against any offence affecting the human body;
Secondly-The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief for criminal trespass.

This Section limits exercise of the right of private defence to the extent of absolute necessity. It must not be more than necessary for defending aggression. There must be reasonable apprehension of danger that comes from the aggressor in the form of aggression. This Section divides the right of private defence into two parts, i.e. the first part deals with the right of private defence of person, and the second part with the right of private defence of property. To invoke the plea of right of private defence there must be an offence committed or attempted to be committed against the person himself exercising such a right, or any other person. The question of the accrual of the right of the private defence, however, does not depend upon an injury being caused to the man in question. The right could be exercised if a reasonable apprehension of causing grievous injury can

be established. If the threat to person or property of the person is real and immediate, he is not required to weigh in a golden scale the kind of instrument and the force which he exerts on the spur of the moment. The right of private defence extends not only to the defence of one's own body and property, as under the English law, but also extends to defending the body and property of any other person.

Thus under section 97 even a stranger can defend the person or property of another person and vice versa, whereas under the English law there must be some kind of relationship existing such as father and son, husband and wife, etc., before this right may be successfully exercised. A true owner has every right to dispossess or throw out a trespasser, while the trespasser is in the act or process of trespassing but has not accomplished his mission; but this right is not available to the true owner if the trespasser has been successful in accomplishing possession and his success is known by the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies available under the law. The onus of establishing plea of right of private defence is on the accused though he is entitled to show that this right is established or can be sustained on the prosecution evidence itself. The right of private defence is purely preventive and not punitive or retributive. Once it is held that the party of the accused were the aggressors, then merely because a gun was used after some of the party persons had received several injuries at the hands of those who were protecting their paddy crop and resisting the aggression of the party of the accused, there can be no ground for taking the case out of Section 302, I.P.C., if otherwise the injuries caused bring the case within the definition of murder.

Chotelal vs State:

B was constructing a structure on a land subject to dispute between A and B. A was trying to demolish the same. B therefore assaulted A with a lathi. It was held that A was responsible for the crime of waste and B had therefore a right to defend his property

Parichhat vs State of M.P:

A lathi blow on his father's head, his son, the accused, gave a blow with a ballam on the chest of the deceased. The court decided that the accused has obviously exceeded his right of private defence.

IPC Section 98. Right of private defence against the act of a person of unsound mind, etc:

When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of

that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations:-

Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.
A enters by night a house which he is legally entitled to enter Z, in good faith, taking A for a house breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

This Section lay down that for the purpose of exercising the right of private defence, physical or mental capacity of the person against whom it is exercised is no bar. In other words, the right of private defence of body exists against all attackers, whether with or without mens rea. The above mentioned illustration are pointing a fact that even if an attacker is protected by some exception of law, that does not diminish the danger and risk created from his acts. That is why the right of private defence in such cases also can be exercised, or else it would have been futile and meaningless.

IPC Section 99. Act against which there is no right of private defence:

There is no right of private defence against an act which does not reasonable 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 reasonable 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 to 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 the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

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

Section 99 lays down that the conditions and limits within which the right of private defence can be exercised. The section gives a defensive right to a man and not an offensive right. That is to say, it does not arm a man with fire and ammunition, but encourage him to help himself and others, if there is a reasonable apprehension of danger to life and property. The first two clauses provide that the right of private defence cannot be invoked against a public servant or a person acting in good faith in the exercise of his legal duty provided that the act is not illegal. Similarly , clause three restricts the right of private defence, if there is time to seek help of public authorities. And the right must be exercised in proportion to harm to be inflicted. In other words , there is no right of private defence :

Against the acts of a public servant; and

Against the acts of those acting under their authority or direction;

Where there is sufficient time for recourse to public authorities; and

The quantam of harm that may be caused shall in no case be in excess of harm that may be necessary for the purpose of defence.

The protection to public servants is not absolute. It is subject to restrictions. The acts in either of these clauses must not be of serious consequences resulting in apprehension of causing death or of grievous hurt which would deprive one of his right of private defence.

To avail the benefit of those clauses (i) the act done or attempted to be done by a public servant must be done in good faith; (ii) the act must be done under the colour of his office; and (iii) there must be reasonable grounds for believing that the acts were done by a public servant as such or under his authority in the exercise of his legal duty and that the act is not illegal. Good faith plays a vital role under this section. Good faith does not require logical infallibility but due care and caution as defined under Section 52 of the code.

Emperor vs Mammun:

The accused, five in number, went out on a moonlit night armed with clubs, and assaulted a man who was cutting rice in their field. The man received six distinct fractures of the

skull-bones besides other wounds and died on the spot. The accused on being charged with murder pleaded right of private defence of their property. Held under Section 99 there is no right of private defence in cases where there is time to have recourse to the protection of the public authorities.

Public prosecute vs Suryanarayan:

On search by customs officers certain goods were found to have been smuggled from Yemen into Indian Territory. In course of search the smugglers attacked the officers and injured them. They argued that the officers had no power to search as there was no notification declaring Yemen a foreign territory under Section 5 of the Indian Tariff Act. It was held, that the officers had acted in good faith and that the accused had no right of private defence

IPC Section100. When the right of private defence of the body extends to causing death:

The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:--

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

Secondly-Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly-An assault with the intention of committing rape;

Fourthly-An assault with the intention of gratifying unnatural lust;

Fifthly-An assault with the intention of kidnapping or abducting;

Sixthly-An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

To invoke the provisions of sec 100, I.P.C., four conditions must exist:

That the person exercising the right of private defense must be free from fault in bringing about the encounter.

There must be present an impending peril to life or of great bodily harm
There must be no safe or reasonable mode of escape by retreat;
There must have been a necessity for taking the life.

Moreover before taking the life of a person four cardinal conditions must be present:
(a) the accused must be free from fault in bringing the encounter;

(b) presence of impending peril to life or of great bodily harm, either real or apparent as to create an honest belief of existing necessity;

(c) no safe or reasonable mode of escape by retreat; and

(d) a necessity for taking assailant's life

Yogendra Moraji vs. State:

The supreme court through Sarkaria, J. discussed in detail the extent and the limitations of the right of private defence of body. One of the aspects emphasized by the court was that 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. This aspect has create quite a confusion in the law as it indirectly suggests that once should first try to see the possibility of a retreat than to defend by using force which is contrary to the principle that the law does not encourage cowardice on the part of one who is attacked. This retreat theory in fact is an acceptance of the English common law principle of defence of body or property under which the common law courts always insisted to look first as to whether the accused could prevent the commission of crime against him by retreating.

Nand kishore lal case:

Accused who were Sikhs, abducted a Muslim married woman and converted her to Sikhism. Nearly a year after the abduction, the relatives of the woman's husband came and demanded her return from the accused. The latter refused to comply and the woman herself expressly stated her unwillingness to rejoin her Muslim husband. Thereupon the husband's relatives attempted to take her away by force. The accused resisted the attempt and in so doing one of them inflicted a blow on the head of the woman's assailants, which resulted in the latter's death. It was held that the right of the accused to defend the woman against her assailants extended under this section to the causing of death and they had, therefore, committed no offence.

IPC Section101. When such right extends to causing any harm other than death:
If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in Section 99, to the voluntary causing to the assailant of any harm other than death.

Mohinder Pal Jolly v. State of Punjab:-

Workers of a factory threw brickbats and the factory owner by a shot from his revolver caused the death of a worker, it was held that this section did not protect him as there was no apprehension of death or grievous hurt.

IPC Section102. Commencement and continuance of the right of private defence of the body:
The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues. The apprehension of danger must be reasonable, not fanciful. For example, one cannot shoot one's enemy from a long distance, even if he is armed with a dangerous weapon and means to kill. This is because he has not attacked you and therefore there is no reasonable apprehension of attack. In other words, there is no attack and hence no right of private defence arises. Moreover the danger must be present and imminent.

Kala Singh case:-

The deceased who was a strong man of dangerous character and who had killed one person previously picked up a quarrel with the accused, a weakling. He threw the accused on the ground, pressed his neck and bit him. The accused when he was free from the clutches of this brute took up a light hatchet and gave three blows of the same on the brute's head. The deceased died three days later. It was held that the conduct of the deceased was aggressive and the circumstances raised a strong apprehension in the mind of the accused that he would be killed otherwise. The apprehension, however, must be reasonable and the violence inflicted must be proportionate and commensurate with the quality and character of the act done. Idle threat and every apprehension of a rash and timid mind will not justify the exercise of the right of private defence.

IPC Section103. When the right of private defence of property extends to causing death:

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

namely;
First-Robbery;
Secondly-House-breaking by night;

Thirdly-Mischief by fire committed on any building, tent or vessel, which building, tent of vessel is used as a human dwelling, or as a place for the custody of property; Fourthly-Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

IPC Section 103 provides the right of private defence to the property whereas IPC Section 100 is meant for exercising the right of private defence to the body of a person. It justifies homicide in case of robbery, house breaking by night, arson and the theft, mischief or house trespass which cause apprehension or grievous harm. If a person does not have possession over the property, he cannot claim any right of private defence regarding such property. Right to dispossess or throw out a trespasser is not available to the true owner if the trespasser has been successful in accomplishing his possession to his knowledge. This right can be only exercised against certain criminal acts which are mentioned under this section

Mithu Pandey v. State:

Two persons armed with ‘tangi’ and ‘danta’ respectively were supervising collection of fruit by labourers from the trees which were in the possession of the accused persons who protested against the illegal act. In the altercation that followed one of the accused suffered multiple injuries because of the assault. The accused used force resulting in death. The Patna High Court held that the accused were entitled to the right of private defence even to the extent of causing death as the forth clause of this section was applicable.

Jassa Singh v. State of Haryana:

The Supreme court held that the right of private defence of property will not extend to the causing of the death of the person who committed such acts if the act of trespass is in respect of an open land. Only a house trespass committed under such circumstances as may reasonably caused death or grievous hurt is enumerated as one of the offences under Section 103.

Section104 IPC. When such right extends to causing any harm other than death:

If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong -doer of any harm other than death.

This Section cannot be said to be giving a concession to the accused to exceed their right of private defence in any way. If anyone exceeds the right of private defence and causes death of the trespasser, he would be guilty under Section 304, Part II. This Section is corollary to Section 103 as Section 101 is a corollary to Section 100.

V.C.Cheriyan v. State:

The three deceased person along with some other person had illegally laid a road through the private property of a Church. A criminal case was pending in court against them. The three accused persons belonging to the Church put up barricades across this road with a view to close it down. The three deceased who started removing these barricades were stabbed to death by the accused. The Kerela High Court agreed that the Church people had the right of private defence but not to the extent of causing death of unarmed deceased person whose conduct did not fall under Section 103 of the Code.

Section105. Commencement and continuance of the right of private defence of property:

The Right of private defence of property commences when a reasonable apprehension of danger to the property commences. The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint of as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.
The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

This right can be exercised if only there is no time to have recourse of public authorities. As soon as the trespass is accomplished successfully the true owner of the property loses right of private defence to protect property. No right of private defence to protect property is available to a trespasser when disputed land is not at all in possession of him

Section106. Right of private defence against deadly assault when there is risk of harm to innocent person:-

If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person his right or private defence extends to the running of that risk.

Illustration

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

This section removes an impediment in the right of private defence. The impediment is the doubt in the mind of the defender as to whether he is entitled to exercise his right even when there is a possibility of some innocent persons being harmed by his act. The Sections says that in the case of an assault reasonably causing an apprehension of death, if the defender is faced with such a situation where there exists risk of harm to an innocent person, there is no restriction on him to exercise his right of defence and he is entitled to run that risk.

Conclusion

To justify the exercise of this right the following are to be examined:-

The entire accident

Injuries received by the accused

Imminence of threat to his safety

Injuries caused by the accused

Circumstances whether the accused had time to recourse to public authorities.

Right of private defence is a good weapon in the hand of every citizen to defend himself. This right is not of revenge but toward the threat and imminent danger of an attack. But people can also like misuse this right. Its very difficult for court to find out whether this right had been exercised in good faith or not.

17. Define the offence "Conspiracy" and discuss its nature and scope also. Compare it with common intention"
Answer:

120A. Definition of criminal conspiracy

When two or more persons agree to do, or cause to be done,-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

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

"The mind was apt to take pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole, and the more ingenious the mind of the individuals, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete" – A warning addressed by Baron Alderson to the jury in **Reg v. Hodge (1838) 2 Lew 227,** on danger that conjecture or suspicion may take the place of legal proof.

"The conspirators invariably deliberately, plan and act in secret over a period of time. It is not necessary that each one of them must have actively participated in the commission of the offence or was involved in it from start to finish. What is important is that they were involved in the conspiracy or in other words, there is a combination by agreement, which may be expression or implied or in part implied…" **Firozuddin Basheeruddin and others vs. State of Kerala, 2001 SCC (Crl) 1341.**

"The offence of conspiracy to commit a crime is different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients they are, therefore quite separate offences." [**Leo Roy Frey V. Suppdt. Distt. Jail (AIR 1958 SC 119)]**.

"Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy." **State v. Nalini**, (1999) 5 SCC 253

"The essential ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. – **Rajiv Kumar v. State of U.P., (2017) 8 SCC 791**

Common intention	**Difference between 'common intention' and 'common object'**	**Participation in the Criminal Act**.
(1) The burden lies on prosecution to prove that actual participation of more than one person for commission of criminal act was done in furtherence of common intention at a prior concert; State of Orissa v. Arjun Das, AIR 1999 SC 3229: 1999 (8) SCC 154: 1999 (6) JT 14: 1999 (4) Crimes 78 (SC). (2) When the accused rushed with sword drawn itself showed that he shared the common intention hence liable for conviction under section 300, read with section 34; (Abdulla Kunhi v. State of Kerala, AIR 1991 SC 452.) (3) The contention that the appellant was physically not in a position because of the sixty per cent. disability due to polio on his lower	A clear distinction is made out between common intention and common object is that common intention denotes action in concert and necessarily postulates the existence of a pre-arranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or pre-concert. Though there is a substantial difference between the two sections namely 34 and 149, they also to some extent overlap and it is a question to be determined on the facts of each case; Chittarmal v. State of Rajasthan, AIR 2003 SC 796. (1) Both sections 149 and 34 deal with a combination of persons who become liable to be punished as	(1) To apply section 34, apart from the fact that there should be two or more accused, two factors must be established: (i) common intention, and (ii) participation of accused in the commission of an offence. If common intention is proved but no overt act is attributed to the individual accused, section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent, section 34 cannot be invoked; Jai Bhagwan v. State of Haryana, AIR 1999 SC 1083. (2) It requires a pre-arranged plan and pre-supposes prior concert therefore there must be prior meeting of mind. It

limbs, to hold the hand of the deceased cannot be accepted. The fact that the accused held the hand of one of the deceased to facilitate assailants to assault deceased, is said to have shared common intention of committing murder of deceased; (Major Singh v. State of Punjab, AIR 2003 SC 342.) (4) Where the evidence did not establish that particular accused has dealt blow the liability would devolve on others also who were involved with common intention and as such conviction not sustainable; (State v. T.K. Sadashivaiah Din Kodimallappa, 1999 (1) CCR 152 (Kant).) (5) "Section 34 has been enacted on principle of joint liability in the doing of a criminal act, the section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several person arises under Section 34 if such criminal act is done in furtherance of a common intention of the person who join in	sharers in the commission of offences. The non-applicability of section is, therefore, no bar in convicting the accused under substantive section read with section 34 if the evidence discloses commission of an offence in furtherance of the common intention of them all; Nethala Pothuraju v. State of Andhra Pradesh, (1991) Cr LJ 3133 (SC). (2) In order to convict a person vicariously liable under section 34 or section 149 it is not necessary to prove that each and everyone of them had indulged in overts acts; Ram Blias Singh v. State of Bihar, (1989) Cr LJ 1782: AIR 1989 SC 1593.	can also be developed at the spur of moment but there must be pre-arrangement or premeditated concert: Ramashish Yadav v. State of Bihar, 1999 (8) SCC 555: 1999(6) JT 560: 1999 (2) JCC (SC) 471. (3) If some act is done by the accused person in furtherance of common intention of his co-accused, he is equally liable like his co-accused; State of Punjab v. Fauja Singh, (1997) 3 Crimes 170 (P&H). (4) In the instant case, there was a long standing enmity between two rival factions in a village, and proceedings under the Criminal Procedure Code were pending against members of both factions. On the day fixed for a hearing in the Magistrate's Court in a neighbouring town, members of both factions left their village armed with sticks and lathis. While one faction was waiting on the roadside for a bus, the other faction arrived and a fight ensued in which severe injuries were caused on both sides, as a result of which one man died. The members of the opposite faction were charged and convicted under sections 302/34 I.P.C. It was held that the mere presence of a

committing the crime. Direct proof of common intension is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. (Sachin Jana & Another vs State of West Bengal, 2008 (2) scale 2 SC)		person armed with a deadly weapon at the spot of a crime does not necessarily make him a participator in a joint crime in every case, because for the purpose of section 34 only such presence makes a man a participant in a joint crime as is established to be with the intention of lending weight to the commission of a joint crime; Jamun v. State of Punjab, AIR 1957 SC 469.

20. Describe the aims ,objectives and scope of prevention of corruption Act

Answer:

Genesis:-

The Prevention of Corruption Act, 1988 (henceforth referred to as PCA) came into force on 9th September, 1988. it incorporated the Prevention of Corruption Act, 1947, the Criminal Law Amendment Act, 1952, and sec. 161 to 165-A of the Indian Penal Code with modifications, enlarged the scope of the definition of the expression 'Public Servant' and amended the Criminal Law Amendment Ordinanc,k1944. The PCA, 1988l, thereby widened the coverage, strengthened the provisions and made them more effective.

The Prevention of Corruption Act, 1988:-

A] Definitions:

The most important definitions are that of :

- Public duty

- Public servant

1) Public Duty: It means a duty that is dine for the benefit of the State, the public or the community at a large. It this context, State would mean:

a) A corporation established by or under a Central, Provincial or State Act.

b) An authority or a body owned controlled or aided by the Government company as defined in Sec. 617 of the Companies Act,1956.

2) Public Servant: It is unique term in Anti-corruption law, being the deciding factor at the threshold, of one's liability, depending on his being public servant. The term 'Public Servant' was not defined under the PCA, 1947 and the Act adopted the definition of the term under sec. 21 of the Indian Penal Code. The PCA of 1988 provides a wider definition in the Act itself under clause (c) of sec.2

the following are the salient aspects of the new definition:

a) Under cl (c) of Sec.2 of the PC, the emphasis is on public duty and not on the Authority remunerating.

b) The definition is enlarged so as to include the office-bearers of the registered co-operative societies receiving any financial aid from the Government, or from a Government corporation or company, the employees of universities, public service commissions and banks etc.

incial or State Act, or an authority or body owned or controlled or aided by the Government company as defined in the Companies Act, 1956.

b) Any Judge or any person authorized by a court of justice to perform any duty, in connection with the administration of justice or any arbitrator to whom any cause or matter has been referred for decision or report by a court of justice or report by a court of justice or by a competent public authority.

c) Any person who holds an office result to which he is empowered to prepare, publish maintain or revise an electoral roll or to conduct an election or part of an election, or is authorized or required to perform any public duty.

d) Any person who is the president, secretary or other office bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central or State Government or any authority or body owned, controlled or aided by Government or Government company as defined in Sec. 617 of the Companies Act, 1956.

e) Any person who is a chairman, member or employee of any service commission or Board or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on their behalf

f) Any person who is the Vice-Chancellor or member of any governing body, professor, reader or lecturer of any University and any person whose services have been availed of by a University.

g) An office-bearer or an employee of an educational, scientific, social, cultural or other institution receiving or having received any financial assistance from the Central or State government or local or other public authority.

Explanation 1 states that it is immaterial whether the person falling within the periphery of the above clauses is appointed by Government or not.

Explanation 2 states that a person who is actually holding the position of the situation of public servant irrespective of the fact that he might not have th3e right to hold that situation shall be deemed to be 'public servant'.

B] Power To Appoint Special Judges:

The Central and the State Government is empowered to appoint Special Judges by placing a Notification in the Official Gazette, to try the following offences:
· Any offence punishable under this Act.

· Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified under the Act.

The qualification for the Special Judge is that he should be or should have been a Session Judge or an Additional Session Judge or Assistant Session Judge under the Code of Criminal Procedure, 1973

C] Case Trial By Special Judges:

Every offence mentioned in Section 3(1)shall be tried by the Special Judge for the area within which it was committed. When trying any case, a Special Judge may also try any offence other than what is specified in S. 3, which the accused may be, under Cr.P.C. be charged at the same trial. The Special Judge has to hold the trial of an offence on day-to-day basis. However, while complying with foretasted, it is to be seen that the Cr.P.C. is not bifurcated.

D] Power And Functions Of Special Judges:

The following are the powers of the Special Judge:

He may take cognizance of the offences without the accussed being commissioned to him for trial. In trying the accussed persons, shall follow the procedure prescribed by the Cr.P.C. for the trial of warrant cases by Magistrate. he may with a view to obtain the evidence of any person supposed to have been directly or indirectly concered in or privy

to an offence, tender pardon to such person provided that he would make full and true disclosure of the whole circumstances within his knowledge or in respect to any person related to the offence

Except as for S. 2(1), the provisions of Cr.P.C. shall apply to the proceedings before a Special Judge. Hence, the court of the Special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor.
The provisions of secs. 326 and 475of the Cr.P.C. shall apply to the proceedings before a Special Judge and for purpose of the said provisions, a Special Judge shall be deemed to be a magistrate."

A Special Judge may pass a sentence authorized by law for the punishment of the offence of which a person is convicted.

A Special Judge, while trying any offence punishable under the Act, shall exercise all powers and functions exercised by a District Judge under the Criminal Law Amendment Ordinance,1944.

Power to try summarily: Where a Special Judge tries any offence specified in Sec. 3(1), aleged to have been committed by a public servanet in relation to the contravention of any special order referred to in Sec.12-A(1) of the Essential Commodities Act, 1955 or all orders referred to in sub-section (2)(a) of that section then the special judge shall try the offence in a summarily way and the provisions of s. 262 to 265 (both inclusive) of the said code shall as far as may be apply to such trial. Provided that in the case of any conviction in a summary trial under this section this shall be lawful for the Special Judge to pass a sentence of imprisonment for a term not exceeding one year. However, when at the commencement of or in the course of a summary trial it appears to the Special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or it is undesirable to try the case summarily, the Special judge shall record all order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear and re-hear the case in accordance with the procedure prescribed by the said code for the trial of warrant cases by Magistrates. Moreover, there shall be no appeal by a convicted person in any case tried summarily under this section in which the Special Judge passes a sentence of imprisonment not exceeding one month and of fine not exceeding Rs. 2000

E] Offences And Penalties:

The following are the offences under the PCA along with their punishments:- Taking gratification other than legal remuneration in respect of an official act, and if the public servant is found guilty shall be punishable with imprisonment which shall be not

less than 6 months but which may extend to 5 years and shall also be liable to fine.

· Taking gratification in order to influence public servant, by corrupt or illegal means, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

· Taking gratification, for exercise of personal influence with public servant shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

· Abetment by public servant of offences defined in Section 8 or 9, shall be punishable with imprisonment for a term which shall be not les than six months but which may extend to five years and shall also be liable to fine.

· Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant, shall be punishable with imprisonment for a term which shall be not les than six months but which may extend to five years and shall also be liable to fine.

· Punishment for abetment of offences defined in Section 7 or 11 shall be punishable with imprisonment for a term which shall be not less that six months but which may extend to five years and shall also be liable to fine.

· Any public servant, who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to 7 years and shall also be liable to fine.

· Habitual committing of offence under Section 8, 9 and 12 shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to 7 years and shall also be liable to fine.

F] Matters To Be Taken Into Consideration For Fixing Fine:
Where a sentence of fine is imposed under sec. 13(2) and sec. 14, the court while fixing the amount for the same shall consider the amount or te value of the property which the accussed has obtained by committing the offence or where the conviction is for an offence referred to in sec. 13(1)(e), the pecuniary resource or property for which the accussed is unable to account satisfactorily.

Investigation:
Investigation shall be done by a police officer not below the rank of:
a] Incase of Delhi, of an Inspector of Police.

b] In metropolitan areas, of an Assistant Commissioner of Police.

c] Elsewhere, of a Deputy Superintendent of Police or an officer of equivalent rank shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a magistrate of first class, or make any arrest therefore without a warrant. If a police officer no below the rank of an Inspector of Police is authorized by the State Government in this behalf by general or special order, he may investigate such offence without the order of a Metropolitan Magistrate or Magistrate of First class or make arrest therefor without a warrant.

H] Previous Sanctions:
Previous sanction is required in following cases:

When an offence is punishable under secs. 7, 10, 11, 13 and 15 of the Act.

In case of a person who is employed in connection with the affiars of the Union or State and is not removable from his ofice save by or with the sanction of the Central or State Government as the case may be. In case of any other person, of authority competent to remove him from his office.

Previous sanction is required, if the court feels that a failure has occured in the administration of justice, to do the following:

reversal or alteration by the Court of Appeal of any findings, or any sentence or order passed by a Special Judge. stay the proceedings on the ground of error, omission or irregularity. revision of any interlocutory order passed in inquiry, trial, appeal or proceedings

I] Accused: A Competent Witness:

Any person charged with an offence punishable under this Act, shall be a competent witness for the defense and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial: Provided that-

(a) He shall not be called as a witness except at his own request;

(b) His failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;

(c) He shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless-

(i) The proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or
(ii) He has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defense is such as to involve amputations on the character of the prosecutor or of any witness for the prosecution, or
(iii) He has given evidence against any other person charged with the same offence.

J] Appeal And Revision:

The High Court has given all power of appeal and revision that are provided to it through Cr.P.C. as if the Court of Special Judge were a Court of Session trying cases within the local limits of the High Court

Conclusion:-

Corruption is a termite that is eating up the pith of our society it not only hampers the individual's growth but also the collective growth of our Country. Hence, it stands highly imperative to control and then stop this growing menace and in this case the Prevention of Corruption Act,1988 comes to our aid. In fact, the Act has been beautifully drafted, however, a huge power has been vested in the hands of the Central and State Government in form of appointment of Special Judges, providing sanctions etc. Hence the Act would become oblivious if the matter in question is related to Central or State Governments. The PCA despite of this lacunae is a very powerful Act which needs proper implementation in order to curb corruption from grass root-level

21. Explain the principle of joint liability under the Indian criminal law

Answer:

The concept of joint liability comes under Section 34 of IPC which states that "when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone." The section can be explained as when two or more persons commit any criminal act and with the intention of committing that criminal act, then each of them will be liable for that act as if the act is done by them individually.

The ingredients of section 34 of IPC are-

1) A criminal act is done by several persons;

2) The criminal act must be to further the common intention of all;

3) There must be participation of all the persons in furthering the common intention.

Let us take a hypothetical situation- There are two persons A and B. Both of them decided to rob a bank to earn some quick money. Both of them decided in advance that they will not hurt anybody and they will only take the money. After reaching the bank A tells B to guard the gate of the bank while he takes the money. When A was taking the money, security guard came running towards A. A out of fear, stabbed the security guard with a knife due to which he died. After that A ran with B along with the knife. In this case, even though B had no intention of killing the security guard but he will also be liable for the murder of security guard and robbery along with A.

Whether we can study section 120 A of IPC for understanding the concept of Joint Liability?

According to section 120A of IPC- "When two or more persons agree to do, or cause to be done,- (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy : Provided that no agreement except an agreement to commit and 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. The section can be explained as two or more than two persons perform an illegal act and deciding of that act in advance is criminal conspiracy.

Laws Relating to Joint Liability

The concept of Joint Liability is embodied under Section 34 of Indian Penal Code –

"Acts done by several persons in furtherance of common intention- 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 done by him alone." When IPC was enacted in 1860, section 34 at that time didn't included words 'in furtherance of common intention', then an amendment was made in year 1870 to amend Indian Penal Code and then these words were included in the section 34. The amended section 34 of IPC simply says that all those persons who have committed a crime with a common intention and they have acted while keeping in mind the common intention, then everyone should be liable for the acts of another done in common intention as if the act is done by the person alone. It happens that different persons perform different acts in the commission of the act or non commission of the act, even though when section 34 applies, all the persons in group are jointly liable for the acts of another.

The concept of Joint Liability was evolved in the case of Reg v. Cruise, in this case police had gone to arrest A at his home. B, C and D were also present at that time. When all the three persons saw police coming, they came out of the house and gave a blow on the police and they drove them away. The court held that all the three are liable for the blow even if the blow was given by only one person.

Case Laws Analysis

In the case of **Rangaswamy v. State of Tamil Nadu**, accused no. 3 was convicted by the trial court for committing offences contrary to section 302 r/w section 34; section 307 r/w section 34 and section 506 of IPC. He came to the Supreme Court with the pleading that he was only with friendly terms with accused no. 1 and accused no. 2 and he did not shared common intention with them to kill the deceased or to attack deceased companion. He said that it was by chance that he was present at the site of offence and he had not participated in the commission of the offence. The accused no. 1 had a prior enmity with the deceased as he was accused of murdering brother of accused no. 1 and then he was released on bail. The occurrence of crime took place in bazaar. The court held that presence of accused no. 3 was established at the site of offence but there is no evidence to show that he shared a common intention with the other two accused. The Supreme Court acquitted accused no. 3 of all the charges.

In the case of **William Stanley v. State of Madhya Pradesh**, the accused in this case was a 22 year old man who was in love with the sister of the deceased. The deceased didn't like his intimacy. On the day of occurrence, there was a quarrel between the deceased and the accused and the accused was asked to go away from the house. Later, the accused returned with his younger brother and called the sister of deceased to come out. Instead of the sister, the deceased brother came out. There was a heated exchange of words. The accused slapped the deceased on the cheek. Then accused snatched hockey

stick from his younger brother and gave one blow on the head of deceased due to which his skull was fractured. The deceased died in hospital 10 days later. According to doctor, the injury was such as likely to cause death. Both accused and his co- accused brother were charged for murder under section 302 read with section 34 of IPC. The co-accused brother was acquitted of all the charges but appellant was held guilty under section 302 of IPC. On the facts of the case, the conviction was altered into culpable homicide not amounting to murder under section 304 of IPC.

In the case of **Chhotu v. State of maharashtra**, the complainant party was attacked by the accused as a result of which one person died. The witness produced stated that three persons were assaulting the deceased and the fourth one was simply standing holding a knife in his hand. It was held that only three accused were liable under section 302/34 of IPC and fourth one didn't share the common intention

22. Explain the concept of crime .How is a crime different from the tort?

Answer:

A tort and a crime are technical terms used in the legal world. The word crime is more commonly understood as crimes are newsworthy events and reach headlines. They affect the society we live in.

A tort differs from a crime because although it is a wrong doing it is classified as a civil offense. A tort interferes with another person or their property.A crime on the other hand, is a wrong doing that affects civilized society and falls under the laws of the state or federal government.

Torts and crimes are tried in different courts and although both accused parties are known as defendants the charges of a tort are laid by a plaintiff while crimes are brought to court by the federal government.A tort may well be part of a crime as some personal injury may occur to innocent parties during the crime. Crimes are tried in a criminal court while torts are brought to justice through a civil court.

Crimes are identified by the legal system as acts that go against society. Torts are based on injury to individuals due to negligence or personal damage.Understanding the basic principles of each action helps to understand the differences between them. Torts appear to be smaller events compared with the larger scale of organized crime.

What is a Tort?

A tort is best defined as a private infringement on someone's civil rights. In legal terms a tort occurs when negligence directly causes damage to a person or their property.

There are different types of tort, but they all result in injury to a private person or property. Negligence is the most common cause of a tort.

When a person acts without care and unintentionally injures someone the injured party may sue and accuse the defendant of a tort. Strict liability torts become an issue if a private party is injured through the attack of an animal or faulty product. These unintentional acts cause damage to a person's health or their property. Intentional torts occur when an individual intentionally causes harm to another person. These injuries could be the result of battery or defamation of character. The injured party may sue for loss of income as a result of the tort or for damages to property due to negligent behavior.

Intentional torts can be confused with crime because they often happen during criminal activity. If the injured party decides to sue for compensation, then the criminal case becomes a tort. The perfect examples of a tort can be seen in motor vehicle accidents, cases of slipping and falling, medical malpractice, assault, product liability and workplace accidents. A tort that is part of a criminal activity is evident when someone driving under the influence of alcohol or drugs causes bodily harm to another individual involved in the accident. The crime is described as the way the guilty party drove, and the tort is the injury sustained by a private individual. Therefore, it is clear to see the role of a tort in a situation violating the safety and health of an individual during the course of what is classified as a crime.

A tort is unlawful because –

- A tort causes bodily harm or psychological injuryto an individual and impairs a person's lifestyle.
- A tort goes against the civil rights of an individual in society.
- Torts are covered by law and the offence can be prosecuted, but the outcome will differ based on the legal guidelines serving the law and civil rights.

What is a crime?

A crime is a wrong doing that affects society. It has been identified by the state legal system and is prosecuted according to the laws of the state and the procedure followed in a criminal court of law.

The injured party is classified as the society and the laws broken have been set up by the state or federal government to protect the members of society.

The proceedings that are used to bring about justice take place in a criminal court of law. The punishment will fit the crime under criminal law and the defendant will serve the sentence given to him through the criminal court of law.Crimes go against laws that are already set for the protection of society and to keep peace ensuring everyone can have the right to live in a crime free society, in an ideal world!

Sometimes the punishment involves community service as a means to put right the wrong committed at the time and help reform individuals.

Crimes are illegal acts for the following reasons.

- Crimes go against existing laws laid down in society.
- Crimes affect the standard of living for law-abiding citizens who wish to live peacefully in their social environment.
- A crime is a deliberate act going against the law and contravening human rights.

Difference between Tort Vs. Crime

1. **Method**

A tort is a wrong doing that goes against an individual, while a crime affects the social order of the community we live in.

2. **Intent**

The intent of a tort can be unintentional, it is accidental and caused by negligence. It is still damaging to the individual. A crime is an intentional wrong doing that affects society. Individuals may be caught up in the crime and suffer during the criminal activity, but generally the crime and criminals break the law and intend to gain from the wrong doing.

3. **Effect on society**

Torts and crimes affect society in different ways, but the impact is negative. A tort upsets the well being of an individual and they may seek legal action and compensation. A crime affects society and the criminal law will ensure the perpetrators are punished for their crimes. Sometimes, torts and crimes can be inter-twined in the same criminal activity. An individual, on the scene of the crime, could be injured because of the criminal activity.

Summary of Tort versus Crime

- A tort affects an individual and causes damage to individuals leading to loss of income or damage to property. Crimes are planned actions that deliberately go against the laws of society and can be executed by individuals or groups of criminals.
- Crimes and torts influence the well being of the people who suffer at the hands of the perpetrators. It may be accidental in the case of a tort, but in the end, the result is still negligent and harmful to individuals or to society.
- A tort and a crime are acts against humanity one defined by the effect on an individual and the other defined by the effect to society.
- Torts generally appear to be less damaging and often accidental or just negligent and not deliberate. Occasionally torts are planned actions that are harmful, but because they are felt more often by an individual, and may even be accidental, they are not as hazardous to society and can be dealt with differently. Sometimes torts can be resolved between the individual parties involved in the wrong doing and this saves legal proceedings

Tort vs Crime

Tort	Crime
An infringement of civil rights committed against an individual. A tort is a violation of the rights of a persona.	A crime is an infringement against an individual and against society. It violates rights in rem. A Latin term meaning' against or about something' a property issue not usually people.
A tort is often accidental and not intended to injure but as a result of negligent behavior an injury occurs.	Crimes are planned wrong doings that affect society. They are deliberate and planned acts of wrong doing.
Torts are tried in a civil court.	Crimes are tried in a criminal court.
Compensation for a tort is metered out for the individual based on the measure of wrongs and loss due to damages of the individual.	Crimes are punished by society according to laid down laws. The criminal is judged to receive a punishment for his crime or wrong doing that is deemed fair in the court according to the rules of society for the protection of society from criminal activity.
A suit is brought about by the individual whose legal right has been violated or property damaged.	In the interest of society, the criminal is prosecuted by the state and the state is party to the criminal proceeding.
The object of the law of torts is to compensate the individual, whose legal right has been infringed by the wrong doer	The object of the law of crimes is to punish the criminal in the interest of society.
The remedy for a tort infringement is to punish the individual according to the findings of a civil court.	When an individual is punished for a crime it can be a tort within the criminal case for an infringement against society.

DB Difference Between.net

WRITE SHOT NOTE

1. Criminal force with intent to outrage the modesty of women
Answer:

S.354 Assualt or criminal force to woman with intent to outrage her modesty

Description

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty[1], shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

[1] Criminal Law (Amendment) Act, 2013

Classification u/schedule 1 CrPC

Offence	Punishment
Assault or use of criminal force to woman with intent to outrage her modesty	1 to 5 years + Fine

Cognizance	Bail	Triable By
Cognizable	Non-bailable	Any Magistrate

Composition u/s 320 CrPC

Offence is NOT listed under Compoundable Offences

S.354 A Sexual Harassment and punishment of sexual harassment

Description

1. A man committing any of the following acts—
    1. physical contact and advances involving unwelcome and explicit sexual overtures; or
    2. a demand or request for sexual favours; or
    3. showing pornography against the will of a woman; or

4. making sexually coloured remarks, shall be guilty of the offence of sexual harassment[1].

2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
3. Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

S. 354 B Assualt or use olf criminal force to woman with intent to disrobe

Description

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing[1] or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

S.354 C Voyeurism

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image[1] shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanations

1. For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.
2. Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

S.354 D Stalking

Description

(1) Any man who—

1. follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
2. monitors the use by a woman of the internet, email or any other form of electronic communication,
commits the offence of stalking[1];

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

1. it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
2. it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
3. in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

2. Unlawful Assembly

Answer:

Section 141 in The Indian Penal Code

141. Unlawful 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 of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

(Fifth) — By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do. Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

3. Adulteration
Answer:

Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Classification u/schedule 1 CrPC

Offence	Punishment
Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious	6 Months or Fine or Both

Cognizance	Bail	Triable By
Non-Cognizable	Non-Bailable	Any Magistrate

Section 272 in The Indian Penal Code

272. Adulteration of food or drink intended for sale.—Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 272 of Indian Penal Code. "Adulteration of food or drink intended for sale"

Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. STATE AMENDMENTS State of Uttar Pradesh: In sections 272, 273, 274, 275 and 276 for the words "shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both" the following shall be substituted, namely:- "shall be punished with imprisonment for life and shall also be liable to fine: Provided

that the court may, for adequate reason to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment tot- life." [Vide U.P. Act No. 47 of 1975.

State of West Bengal: In its application to the State of West Bengal in sections 272, 273, 274, 275 and 276 for the words "of either description tot, a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both" the following shall be substituted, namely:- "for life with or without fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment. impose a sentence of imprisonment which is less than imprisonment for life." [Vide: W.B. Act No. 42 of 1973, w.e.f. 29th. April, 1973].

4. Cruelty

Answer:

Meaning of Cruelty:

It was held in 'Kaliyaperumal vs. State of Tamil Nadu1[5]', that cruelty is a common essential in offences under both the sections 304B and 498A of IPC. The two sections are not mutually inclusive but both are distinct offences and persons acquitted under section 304B for the offence of dowry death can be convicted for an offence under sec.498A of IPC. The meaning of cruelty is given in explanation to section 498A. Section 304B does not contain its meaning but the meaning of cruelty or harassment as given in section 498-A applies in section 304-B as well. Under section 498-A of IPC cruelty by itself amounts to an offence whereas under section 304-B the offence is of dowry death and the death must have occurred during the course of seven years of marriage. But no such period is mentioned in section 498-A.

In the case of 'Inder Raj Malik vs. Sunita Malik1[6]' , it was held that the word 'cruelty' is defined in the explanation which inter alia says that harassment of a woman with a view to coerce her or any related persons to meet any unlawful demand for any property or any valuable security is cruelty.

Kinds of cruelty covered under this section includes following:

(a) Cruelty by vexatious litigation

(b) Cruelty by deprivation and wasteful habits

(c) Cruelty by persistent demand

(d) Cruelty by extra-marital relations

(e) Harassment for non-dowry demand

(f) Cruelty by non-acceptance of baby girl

(g) Cruelty by false attacks on chastity

(h) Taking away children

The presumption of cruelty within the meaning of section 113-A, Evidence Act,1872 also arose making the husband guilty of abetment of suicide within the meaning of section 306 where the husband had illicit relationship with another woman and used to beat his wife making it a persistent cruelty within the meaning of Explanation (a) of section 498-A.

5. Wrongful restrain

Answer:

Section 339 in The Indian Penal Code
339. Wrongful restraint.—Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

(Exception) —The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section. Illustration A obstructs a path along which Z has a right to pass. A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

339. Wrongful restraint.

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

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

Illustration-
A obstructs a path along which Z has a right to pass. A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

6. Defamation

Answer:

What is defamation?

- According to **section 499 of IPC**, whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to **defame that person**.
- Section 499 also cites exceptions. These include "imputation of truth" which is required for the "public good" and thus has to be published, on the public conduct of government officials, the conduct of any person touching any public question and merits of the public performance.
- **Section 500**, which is on punishment for defamation, reads: "Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."
- **In India, defamation is both civil and criminal offence**. The remedy for civil defamation is covered under the Law of Torts. In a civil defamation case, a person who is defamed can move either High Court or subordinate courts and seek damages in the form of monetary compensation from the accused. Also, under sections 499 and 500 of the IPC, a person guilty of criminal defamation can be sent to jail for two years.

Defamation

"Balance between one person's right to freedom of speech and another's right to protect their good name."

Any intentional false communication, either written or spoken , that harms a person's reputation; decreases the respect, regard or confidence in which a person is held; or induces disparaging, hostile or disagreeable opinions or feelings against a person is known as defamation.

Defamation is the act of making untrue statements about another which damages his/her reputation.
It is a statement that injures someone's reputation. Defamation is the act of saying false things in order to make people have a bad opinion of someone. Defamation may be defined as a communication to some person, other than the person defamed, of the matter which tends to lower the plaintiff in the estimation of right thinking persons or to deter them from associating or dealing with him. Defamation is a wrong done by a person to another's reputation by words, written or spoken, sign or other visible representation.

In the words of Dr. Winfield "Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of the society, generally or, which tends to make them shun or avoid that person."

Defamation is of two kinds Libel and Slander. If the statement is made in writing and published in some permanent and visible form, then the defamation is called libel. Whereas, if the statement is made by some spoken words then the defamation is called slander.

Defamation may be a civil charge or a criminal charge under Section 499 and 500 of IPC. Section 499 Of IPC:- Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person is said to defame that person.

Section 500 of IPC:- Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years or with fine or both

What the victim must prove to establish that defamation occurred

If the victim has to win a lawsuit relating to defamation, then the victim has to prove the following essentials:

1) Statement- There must be a statement which can be spoken, written, pictured or even gestured.
2) Publication- For a statement to be published, a third party must have seen, heard or read the defamatory statement. If there is no publication there is no injury of reputation and no action will arise.
3) Injury- The above statement must have caused an injury to the subject of the statement. It means that the statement must tend to injure the reputation of a person to whom it refers.
4) Falsity- The defamatory statement must be false. If the statement is not false then the statement will not be considered as defamatory statement.
5) Unprivileged- In order for a statement to be defamatory, it must be unprivileged. There are certain circumstances, under which a person cannot sue someone for defamation

Defences available under defamation

The following are the defences taken in an action for defamation:-

1) Justification of truth-

If the defendant proves that the defamatory statement is true, no action will lie for it, even if the statement is published maliciously. It is not necessary to prove that the statement is literally true, it is sufficient if it is true in substance.

2) Fair and bonafide comment-

A fair and bonafide comment on a matter of public interest is a defence in an action for defamation. The essentials of a fair comment are:
(i) That it is comment or criticism and not a statement of fact,
(ii) That the comment is on a matter of public interest,
(iii) That the comment is fair and honest.

3) Privileged statement-

Law makers have decided that one cannot sue for defamation in certain instances when a statement is considered privileged. Whether a statement is privileged or unprivileged is policy decision that rests on the shoulders of the lawmakers.

Conclusion:

Defamation is tort resulting from an injury to ones reputation. It is the act of harming the reputation of another by making a false statement to third person. Defamation is an invasion of the interest in reputation. The law of defamation is supposed to protect people's reputation from unfair attack. In practice its main effect is to hinder free speech and protect powerful people from scrutiny. Defamation law allows people to sue those who say or publish false and malicious comments

7. Dowry Death

Answer:

Section 304B in The Indian Penal Code

1[304B. Dowry death.—
(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

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

In 1986, a new offence known as "Dowry Death" was inserted in the Indian Penal Code as section 304-B by the Dowry Prohibition (Amendment) Act, 1986 (43 of 1986) with effect from November 19, 1986. The provisions of section 304-B, IPC are more stringent than that provided under section 498-A of the Penal Code. The offence is cognizable, non-bailable and triable by a Court of Session.

Section 304-B in The Indian Penal Code – Dowry death.

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

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

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

The essential components of Section 304-B are:

1. Death of a woman occurring otherwise than under normal circumstances.
2. Death should have occurred within 7 years of marriage.

3. Soon before her death, she should have been subject to cruelty and harassment in connection with any demand for dowry.

Interpretation

Soon before her death — The expression indicates that there must be a perceptible nexus between the infliction of dowry-related harassment and cruelty on the woman and death, **Satvir Singh v. State of Punjab, (2001) 8 SCC 633.**

Dowry death — The expression "otherwise than under normal circumstances" would mean death not in the usual course but apparently under suspicious circumstances, if not caused by burns or bodily injury. **Kans Raj v. State of Punjab, (2000) 5 SCC 207**

Words "shown" and "deemed" — "Shown" should be read as "proved" and "deemed" should be read as "presumed". The initial burden is on the prosecution to prove by a preponderance of probabilities the ingredients of S. 304-B. Requiring prosecution to prove these ingredients beyond a reasonable doubt would defeat the purpose of S. 304-B. Once such initial burden is discharged by the prosecution, initial presumption of innocence of accused would get replaced by the deemed presumption of guilt of accused. The burden would then be shifted on accused to rebut that deemed presumption of guilt by proving beyond the reasonable doubt his innocence. Right to life and liberty of accused cannot be jeopardised without providing accused opportunity to prove his innocence, **Sher Singh v. State of Haryana, (2015) 3 SCC 724**

8. Affray

Answer:

Section 159 in The Indian Penal Code

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

According to Section 159 of the Indian Penal Code, **Affray** is defined as "When two or more persons by fighting in a public place, disturb the public peace, they are said to commit an **affray**." The punishment for committing **affray** is imprisonment for up to one month or fine up to one hundred rupees or both (Section 160)

The word "affray" means a skirmish or fighting between two or more, and there must be a stroke given or offered, or a weapon drawn. An affray is committed is a public offence to the terror of the people. According to Section 159 of the Indian Penal Code, Affray is defined as "*When two or more persons by fighting in a public place, disturb the public peace, they are said to commit an affray."*

The punishment for committing affray is imprisonment for up to one month or fine up to one hundred rupees or both (Section 160). This offence necessarily postulates the commission of a definite assault or a breach of the peace. Mere quarrelling or abusing in a place not resulting in the exchange of blows is not enough to draw the attention of Section 160 IPC. A fight is a necessary element to constitute affray. This means both the parties have to be aggressive and participate in the struggle.

MEANING OF AFFRAY

According to *Blackstone, "The offence is the fighting of two or more persons in public place to the terror of His Majesty's subjects for, if the fighting be in private, it is no affray but an assault."* The gist of the offence consists in the terror it causes to the public. The word 'affray' is derived from the French word *'affraier'* which means 'to terrify' and so, in a legal sense it is taken for a public offence causing terror to the people. For the conviction to arise under this offence, it is sufficient that an alarm would have been caused to the public or members of the public. It is not necessary that any particular member of the public must give evidence to the effect that he was alarmed. The presence of public at the time of disturbance would be sufficient to show that the members of the public must have been alarmed by reason of the disturbance and there was sufficient breaking of the peace.

INGREDIENTS OF AFFRAY

An affray consists of the following:

- fighting by two or more persons
- the fighting must take place in a public place
- such fighting must also result in disturbance of the public peace

Fighting by two or more persons

The offence of Affray is nevertheless a fight, i.e., a bilateral act, in which two parties participate and it will not amount to an affray when the party who is assaulted submits to the assault without resistance. Fighting necessarily implies a competition of struggle for mastery between two or more persons against one another. When members of one party beat the members of other party and the latter does not retaliate or make an attempt to retaliate but remain passive it can't be said that there was fighting between the members of one party and the members of the other and the offence of affray can't be said to have been established*[Jodhey v. State (AIR 1952 All. 788 at p. 794)]*.

"Fight" contemplated under Section 160 IPC, is certainly different from a mere quarrel. The Law Lexicon by *P. Ramanatha Aiyar* defines "fight" as follows:

"*To strike or contend for victory, in the battle or in single combat to attempt to defeat, subdue, or destroy an enemy, either by blows or weapons."*

"Quarrel" means an exchange of angry utterances between two or more persons and not the mere use in an ordinary tone. Though it may need two for a fight or quarrel, the difference between them is obviously apparent.

Fighting in a public place

A place where public go, no matter whether they have a right to go or not, is a public place.

There is a difference between an act done in public and an act done in a public place. In England, some statutes make acts penal which are done in public, others make acts penal which are done in public place, so that in the criminal statute law in England the distinction is, it will be observed, between doing an act in public and doing an act in a public place. The same demarcation is depicted in the Acts of Indian Legislature. The offence here contemplated must be committed in a public place and in the presence of public without whom there can be no breach of the public peace.

Disturbance of the public peace

In order to constitute an affray, there must be not only fighting, but it may cause disturbance of public peace.

CHARACTERISTICS OF AN AFFRAY

- A charge of affray brings in both the sides as accused persons since both the fighting groups have committed the offence.
- It is a bailable offence.
- It is non-compoundable offence.
- The Criminal Procedure Code, 1973 has now made it a cognisable offence.
- It may be tried by any magistrate and is triable summarily.

SOME IMPORTANT CASES

Jagannath Sah [(1937) O.W.N. 37.]

Two brothers were quarrelling and abusing one another on a public road in a town. A huge number of people gathered around them. Even the traffic was jammed but no actual fight broke out between them. It was held that no affray was committed.

Babu Ram and Anr. vs. Emperor [(1930) I.L.R. 53. All.229.]

A person was attacked and overpowered by two other persons in a public place. He could merely defend himself. It was held that they were guilty of the offence because there was fighting in public place which disturbed the public peace.

DISTINCTION BETWEEN AFFRAY AND RIOT

The offence differs from a riot in the following ways:-

- An affray cannot be committed in a private place whereas a riot can be committed in a private place.
- To constitute an affray there must be a presence of two or more persons while for a riot it has to be five or more.

DISTINCTION BETWEEN AFFRAY AND ASSAULT

An affray is distinguishable from assault as:-

- An affray has to be committed in a public place while an assault may take place anywhere.

- The offence is considered to be an offence against public peace whereas assault, against the person or an individual.

CONCLUSION

The offence of affray is thus a bilateral act in which two or more parties participate to fight against one another which is committed at a public place and this results in the disturbance of public peace. It involves an actual fight between the parties to establish this offence and mere quarrelling would not result in an affray. Section 159 of the IPC defines it and Section 160 IPC imposes punishment for the offence. It has also been distinguished from riot and assault due to its distinction of place where the act was committed, the number of parties and whether the public was affected or not.

9. Indecent Representation of Women

Answer:

The Indecent Representation of Women (Prohibition) Act, 1986 is an Act of the Parliament of India which was enacted to prohibit indecent representation of women through advertisement or in publications, writings, paintings, figures or in any other manner

1. Published in the Gazette of India , Extraordinary. Pt. II, Sec. 1 No. 74. dated 23rd December, 1986 .

An Act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Thirty-seven Year of the Republic of India as follows:

STATEMENT OF OBJECTS AND REASONS OF THE ACT

The law relating to obscenity in this country is codified in Secs. 292, 293 and 294 of the Indian Penal Code. In spite of these provisions, there is growing body of indecent representation of women or references to women in publications, particularly advertisements, etc. which have the effect of denigrating women and are derogatory to women. Though there may be no specific intention, these advertisements, publications, etc. have an effect of depraving or corrupting persons. It is, therefore, felt necessary to have a separate legislation to effectively prohibit the indecent representation of women through advertisements, books, pamphlets, etc.

The salient features of the Bill are;

(a) Indecent representation of women has been defined to mean the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent or derogatory to or denigrating, women or is likely to deprave, corrupt or injure the public morality or morals.

(b) It is proposed to prohibit all advertisements, publications, etc. which contain indecent representation of women in any form.

(c) It has also been proposed to prohibit selling, distribution, circulation of any books, pamphlets, etc. containing indecent representation of women.

(d) Offences under the Act are made punishable with imprisonment of wither description for a term extending to two years and fine extending to two thousand rupees on first conviction. Second and subsequent convictions will attract a higher punishment

10. Criminal Breach of Trust

Answer:

Section 405. Criminal breach of trust

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

The aim of this paper is to explore how the supreme courts & the high courts ,in their various rulings have incorporated this concept of Live divided my project broadly under 4 categories:

1. What Is Criminal Breach Of Trust.

2. Entrustment

3. Property

4. Criminal Misappropriation

What Is Criminal Breach of Trust

The offence of criminal breach of trust, as defined under this section, is similar to the offence of embezzlement under the English law. A reading of the section suggests that the gist of the offence of criminal breach of trust is 'dishonest misappropriation' or 'conversion to own use' another's property, which is nothing but the offence of criminal misappropriation defined u/s 403. The only difference between the two is that in respect of criminal breach of trust, the accused is entrusted with property or with dominion or control over the property. Entrustment.

As the title to the offence itself suggests, entrustment or property is an essential requirement before any offence under this section takes place. The language of the section is very wide. The words used are 'in any manner entrusted with property'. So, it extends to entrustments of all kinds-whether to clerks, servants, business partners or other persons, provided they are holding a position of trust. "The term "entrusted" found in a 405, IPC governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property"

In **State of Gujarat vs Jaswantlal Nathalal,**

The government sold cement to the accused only on the condition that it will be used for construction work. However, a portion of the cement purchased was diverted to a godown. The accused was sought to be prosecuted for criminal breach of trust. The Supreme Court held that the expression 'entrustment' carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further, the person handing over the property must have confidence in the person taking the property. so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an entrustment. If the accused had violated the conditions of purchase, the only remedy is to prosecute him under law relating to cement control. But no offence of criminal breach of trust was made out.

In Jaswant Rai Manilal Akhaney vs State of Bombay,

It was held that when securities are pledged with a bank for specific purpose on specified conditions, it would amount to entrustment. Similarly, properties entrusted to directors of a company would amount to entrustment, because directors are to some extent in a position of trustee. However, when money was paid as illegal gratification, there was no question of entrustment.

In State of UP vs Babu Ram,

The accused, a sub-inspector (SI) of police, had gone to investigate a theft case in a village. In the evening, he saw one person named Tika Ram coming from the side of the cannal and hurriedly going towards a field. He appeared to be carrying something in his dhoti folds. The accused searched him and found a bundle containing currency notes. The accused took the bundle and later returned it. The amount returned was short by Rs. 250. The Supreme Court held that the currency notes were handed over to the SI for a particular purpose and Tika Ram had trusted the accused to return the money once the accused satisfied himself about it. If the accused had taken the currency notes, it would amount to criminal breach of trus

In **Rashmi Kumar vs Mahesh Kumar Bhada** the Supreme Court held that when the wife entrusts her stridhana property with the dominion over that property to her husband or any other member of the family and the husband or such other member of the family dishonestly misappropriates or converts to his own use that property, or willfully suffers and other person to do so, he commits criminal breach of trust

Property

The definition in a 405 does not restrict the property to movables or immoveable alone. In R K Dalmia vs Delhi Administration, the Supreme Court held that the word 'property'

is used in the Code in a much wider sense than the expression 'moveable property'. There is no good reason to restrict the meaning of the word 'property' to moveable property only, when it is used without any qualification in s 405. Whether the offence defined in a particular section of IPC can be committed in respect of any particular kind of property, will depend not on the interpretation of the word 'property' but on the fact whether that particular kind of property can be subject to the acts covered by that section. Dominion Over Property

The word 'dominion' connotes control over the property. In **Shivnatrayan vs State of Maharashtra**, it was held that a director of a company was in the position of a trustee and being a trustee of the assets, which has come into his hand, he had dominion and control over the same.

However, in respect of partnership firms, it has been held29 that though every partner has dominion over property by virtue of being a partner, it is not a dominion which satisfies the requirement of s 405, as there is no 'entrustment of dominion, unless there is a special agreement between partners making such entrustment.

Explanations (1) and (2) to the section provide that an employer of an establishment who deducts employee's contribution from the wages payable to the employee to the credit of a provident fund or family pension fund or employees state insurance fund, shall be deemed to be entrusted with the amount of the contribution deducted and default in payment will amount of the contribution deducted and default in payment will amount to dishonest use of the amount and hence, will constitute an offence of criminal breach of trust. In Employees State Insurance Corporation vs S K Aggarwal, the Supreme Court held that the definition of principal employer under the Employees State Insurance Act means the owner or occupier. Under the circumstances, in respect of a company, it is the company itself which owns the factory and the directors of the company will not come under the definition of 'employer.' Consequently, the order of the High Court quashing the criminal proceedings initiated u/ss 405 and 406, IPC was upheld by the Supreme Court

Misappropriation

Dishonest misappropriations the essence of this section. Dishonesty is as defined in sec.24, IPC, causing wrongful gain or wrongful loss to a person. The meaning of wrongful gain and wrongful loss is defined in sec 23, IPC. In order to constitute an offence, it is not enough to establish that the money has not been accounted for or mismanaged. It has to be established that the accused has dishonestly put the property to his own use or to some unauthorized use. Dishonest intention to misappropriate is a crucial fact to be proved to bring home the charge of criminal breach of trust.

Proof of intention, which is always a question of the guilty mind or mens rea of the person, is difficult ot establish by way of direct evidence. In Krishan Kumar V UOI, the accurse was employed as an assistant storekeeper in the Central Tractor Organisation (CTO) at Delhi. Amongst other duties, his duty was the taking of delivery of consignment of goods received by rail for CTO. The accused had taken delivery of a particular wagonload of iron and steel from Tata Iron and Steel Co, Tatanagar, and the goods were removed from the railway depot but did not reach the CTO. When questioned, the accused gave a false explanation that the goods had been cleared, but later stated that he had removed the goods to another railway siding, but the goods were not there.

The defence version of the accused was rejected as false. However, the prosecution was unable to establish how exactly the goods were misappropriated and what was the exact use they were put to. In this context, the Supreme Court held that it was not necessary in every case to prove in what precise manner the accused person had dealt with or appropriated the goods of his master. The question is one of intention and not direct proof of misappropriation. The offence will be proved if the prosecution establishes that the servant received the goods and that he was under a duty to account to his master and had not done so. In this case, it was held that the prosecution has established that the accused received the goods and removed it from the railway depot. That was sufficient to sustain a conviction under this section. Similarly, in **Jaikrishnadas Manohardas Desai vs State of Bombay**, it was held that dishonest misappropriation or conversion may not ordinarily be a matter of direct proof, but when it is established that property, is entrusted to a person or he had dominion over it and he has rendered a false explanation for his failure to account for it, then an inference of misappropriation with dishonest intent may readily be made. In Surendra Prasad Verma vs State of Bihar, the accused was in possession of the keys to a safe. It was held that the accused was liable because he alone had the keys and nobody could have access to the safe, unless he could establish that he parted with the keys to the safe. As seen in the case of criminal misappropriation, even a temporary misappropriation could be sufficient to warrant conviction under this section

Conclusion:

Hence its clear that for an offence to fall under this section all the four requirements are essential to be fulfilled. The person handing over the property must have confidence in the person taking the property. so as to create a fiduciary relationship between them or to put him in position of trustee. The accused must be in such a position where he could exercise his control over the property i.e; dominion over the property. The term property includes both movable as well as immoveable property within its ambit. It has to be established that the accused has dishonestly put the property to his own use or to some unauthorized use. Dishonest intention to misappropriate is a crucial fact to be proved to bring home the charge of criminal breach of trust

11. Terrorism

Answer:

What is terrorism?

Terrorism is the most henious activites in the world.. The term "Terrorism" comes from the French word Terrorisme, which is based on the Latin verb “terrere” (to cause to tremble). The Jacobins cited this precedent when imposing a Reign of Terror during the French Revolution. After the Jacobins lost power, the word "terrorist" became a term of abuse.In modern times "Terrorism" usually refers to the killing of innocent people by a private group in such a way as to create a media spectacle. In November 2004, a United Nations Security Council report described terrorism as any act "Intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act". In many countries, acts of terrorism are legally distinguished from criminal acts done for other purposes, and "terrorism" is defined by statute.

History of terrorism in India

Terrorism in India is started before india got independence on 1947 but that times terrorist activites aim create a fear among the British Ruler and not killed the general People. So we not called these freedom fighters as a terrorist but after 1947 the terrorism actitivites to kill the innocent people. In early times the Kashmir, Punjab and North East Frontier part was affected of terrorism. But in current cinario the terrorism scope has been increase. The regions with long term terrorist activities today are Jammu and Kashmir, Mumbai, Central India (Naxalism) and Seven Sister States (independence and autonomy movements). In the past, the Punjab insurgency led to militant activities in the Indian state of Punjab as well as the national capital Delhi.

In Indian concern for the terrorism, it is the main attribute of the terrorist activities in form of religious terrorism. Religious terrorism is terrorism performed by groups or individuals, the motivation of which is typically rooted in the based tenets. Terrorist acts throughout the centuries have been performed on religious grounds with the hope to either spread or enforce a system of belief, viewpoint or opinion. The terrorist activities in India primarily attributable to Islamic, Hindu, Sikh, Christian and Naxalite radical movements. In current scinario the domestic and extermal terrorist activities is increasing in India

Recent incident of terrorist attack in India

Since 1947 India got indpendence till that time ,at least 232 of the country's 608 districts were afflicted, at differing intensities, by various insurgent and terrorist movements. In current situation there are as many as 800 terrorist organizations operating in the country.

The major incident of terrorist attack on India is

12 March 1993 - Series of 13 bombs go off killing 257

14 March 2003 - Bomb goes off in a train in Mulund killing 10

29 October 2005 Delhi bombings

2005 Ram Janmabhoomi attack in Ayodhya

2006 Varanasi bombings

11 July 2006 - Series of seven bombs go off in trains killing

26 November 2008 to 29 November 2008 - Coordinated series of attacks killing at least 170

This data shows that after 1980, the terrorist activities are increased in India. India has fourgh a war against the terrorism and in these wars we have lost more then 6000 people. We have already lost more then 70000 civilians. In addition, we have lost more then 9000 security personnel. Almost six lakh people in this country have become homeless as a result of terrorism.

Laws related to terrorism in India

Terrorism has immensely affected India. The reasons for terrorism in India may vary vastly from religious cause and other things like poverty, unemployment and not developed etc.

The Indian Supreme Court took a note of it in Kartar Singh v. State of Punjab [1994] 3 SCC 569, where it observed that the country has been in the firm grip of spiraling terrorist violence and is caught between deadly pangs of disruptive activities..

Anti-terrorism laws in India have always been a subject of much controversy. One of the arguments is that these laws stand in the way of fundamental rights of citizens guaranteed by Part III of the Constitution. The anti-terrorist laws have been enacted before by the legislature and upheld by the judiciary though not without reluctance. The intention was

to enact these statutes and bring them in force till the situation improves. The intention was not to make these drastic measures a permanent feature of law of the land. But because of continuing terrorist activities, the statutes have been reintroduced with requisite modifications.

(Prevention) Act, 1967. There have been other anti-terrorism laws in force in this country a different points in time. The measure laws are that

Unlawful Activities (Prevention) Act, 1967

The UAPA was designed to deal with associations and activities that questioned the territorial integrity of India. The ambit of the Act were strictly limited to meeting the challenge to the territorial integrity of India. The Act was a self-contained code of provisions for declaring secessionist associations as unlawful, adjudication by a tribunal, control of funds and places of work of unlawful associations, penalties for their members etc. The Act has all along been worked holistically as such and is completely within the purview of the central list in the 7th Schedule of the Constitution.

Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA)

The second major act came into force on 3 September 1987 was The Terrorist & Disruptive Activities (Prevention) Act 1987 this act had much more stringent provisions then the UAPA and it was specifically designed to deal with terrorist activities in India. When TADA was enacted it came to be challenged before the Apex Court of the country as being unconstitutional. The Supreme Court of India upheld its constitutional validity on the assumption that those entrusted with such draconic statutory powers would act in good faith and for the public good in the case of Kartar Singh vs State of Punjab (1994) 3 SCC 569. However, there were many instances of misuse of power for collateral purposes. The rigorous provisions contained in the statute came to be abused in the hands of law enforcement officials. TADA lapsed in 1995.

The Maharashtra Control of Organised Crime Act, 1999 (MCOCA)

Other major Anti-terrorist law in India is The Maharashtra Control of Organised Crime Act, 1999 which was enforced on 24th April 1999. This law was specifically made to deal with rising organized crime in Maharashtra and especially in Mumbai due to the underworld. For instance, the definition of a terrorist act is far more stretchable in MCOCA than under POTA. MCOCA mention organized crime and what is more, includes `promotion of insurgency' as a terrorist act. Under the Maharashtra law a person is presumed guilty unless he is able to prove his innocence. MCOCA does not stipulate prosecution of police officers found guilty of its misuse.

Prevention of Terrorism Act, 2002

With the intensification of cross-border terrorism and the continued offensive agenda of Pak ISI targeted at destabilizing India and the post 11th September developments, it became necessary to put in place a special law to deal with terrorist acts. Accordingly, the Prevention of Terrorism Act, 2002 (POTA, 2002) was enacted and notified on 28.03.2002.

The POTA, 2002 clearly defines the terrorist act and the terrorist in Section 3 and grants special powers to the investigating authorities under the Act. In the case of **People's Union for Civil Liberties Vs. Union of India (UOI)** (2004) 9 SCC 580 the constitutional validity of the Prevention of Terrorism Act, 2002 was discussed. The court said that the Parliament possesses power under Article 248 and entry 97 of list I of the Seventh Schedule of the Constitution of India to legislate the Act. Need for the Act is a matter of policy and the court cannot go into the same.

However, in order to ensure that these powers are not misused and the violation of human rights does not take place, specific safeguards have been built into the Act. Some of these are:

· No court can take cognizance of any offence under the Act without the previous sanction of the Central Government or, as the case may be, of the State Government.

· No officer lower in rank than the Deputy Superintendent of Police can investigate offences under the Act.

· Confession made by a person before a police officer not below the rank of Superintendent of Police is admissible as evidence under the Act provided such person is produced with 48 hours before a magistrate along with his confessional statement.

The Act provides for punishment for any officer who exercises powers maliciously or with malafide intentions. It also provides for award of compensation to a person who has been corruptly or maliciously proceeded against under the Act.

The POTA, 2002 is a special law for the prevention of and for dealing with terrorist activities and clearly defines the terrorist act and the terrorist in Section 3, Sub-Section (1) of the Act. The Act provides the legal framework to strengthen the hands of the administration in our fight against the menace of terrorism and can and should be applied against such persons and acts as are covered by the provisions of this law and it is not meant as a substitute for action under ordinary criminal laws

Unlawful Activities (Prevention) Amendment Act, 2004

It would however be simplistic to suggest, as some critics did, that the new law has retained all the operational teeth of Pota or it has made only cosmetic changes. The difference between Pota and UAPA is substantial even as a lot of provisions are in common.

Myths and Realities regarding on Anti-terrorism laws

There is several Myths and there realities regarding to anti terrorism laws are The **First myth** is that general public considers freedom fighter and terrorist are same. There is no such definition for terrorism or terrorist activity. The adage now discarded by serious analysts, is still paraded in forums i.e. "One man's terrorist is another man's freedom fighter". Many terrorist fight for the certain aim and similar in view of the Freedom Fighter. The equipment which was used by the freedom fighter and terrorism. They both work for certain aim and the ways for destabilizing the administrator system are same.

The Reality is that the freedom fighter and terrorist are two different things. Terrorist means that" a radical who employs terror as a political weapon; usually organizes with other terrorists in small cells; often uses religion as a cover for terrorist activities" while the freedom fighter means to that a person who fought for his country freedom. The freedom fighter aim to free the country from foreigner while terrorist aim to be the destabilized the government and country break in many parts. So there is such difference between the freedom fighter and terrorist.

The **second myth** is that the objective of the anti terrorism laws to secure the people of India from the terrorist activities and end up the terrorist activates. Also gave punishment to terrorist

In section 3 of Terrorist and Disruptive Activates Act, 1987 define terrorist act and set up punishment for this. Section 3 states that Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or lethal weapons or poisons or noxious gases or other chemicals or by any other substances of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss . The punishment for these activites is life imprisonment or death sentence and fine etc. Section 3 of Prevention of Terrorism Activites,2002 states that with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive

substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life.

The **Reality** is that aim of the anti terrorism laws is secure the people from the terrorist activites and gave punishment to terrorist. But many times when laws made the terrorist activites increased in India. like after making of Terrorist and Disruptive Activites ,1987 and Prevention from Terrroism Activites,2002 , the terrorist activites was increased i.e. measure terrorist attack 1993 Mumbai Bomb blast, , 2001 Indian parliament attack, 2001 kashmir legislation attack, 2003 mumbai serial blast, 2005 delhi bomb blast and 2611 mumbai attack

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It is normally said that terrorism is a low intensity war. But the loss, which our country has suffered in the last two decades due to the rise of terrorist activities, has been on a very large scale we have lost more then 6000 people by the terrorist activites . We have already lost more then 70000 civilians. Outside the expenditure on our armed forces, merely for maintaining the entire set up to fight insurgency, to fight cross-border terrorism, the economic cost itself has been Rs 45000 crore. The budgetary increase itself in the last 15 years, because of terrorism or anti-insurgency activities, has been 26 times.

So that after making anti terrorism legislation there is no stopping of terrorist attack.

The anti terrorism legislation also failed to gave punishment to terrorist. In many times the anti terrorism laws not gave punishment due to some problem. In case of Afzal Guru, an accused in assaulted in attack on Indian parliament and gave death sentence by the supreme court but the punishment not given due to excuse application is pending before the president. This things shows loopholes of Indian system so liberal before those criminal who attack the Temple of democracy in India. Similar in case of Ajmal Kasab , one of the terrorist who attack the mumbai on 2611 and killed the hundreds person. There is one year happened to this event but till not given punishment by anti terrorism legislation. The terroist who killed many person during attack and accused by our brave soldiger but our anti terrorism legislation unable to give punishment due to loophole in our system.

In case of **Sanjay Dutt Vs. State through C.B.I** 1994 SCC 410, sanjay dutt arrested u/s 5 of TADA. But he is not punished while according to section 5 of TADA and section 4 of Pota clearly show that possession of certain unauthorized arms is punishable under TADA and Pota. But sanjay dutt is not punished. That give example in loophole in laws.

The **Third myth** is that the provisions of anti terrorism legislation violated the fundamental right given by the constitution. It violated the basic human right of human being. The person who is arreseted under .In POTA and TADA, the custody of police 60 and 30 days and accused have no right to bail. So this provision clearly shows violationof accused right to life and liberty and speech and expression and also violation of human right.

A study of TADA and POTA would disclose that the legislature had the sole object of suppressing the voices of dissent or to deal with the political opponents so that they do not become people's movements. These legislation's have been from time to time framed and mis-used in the beginning in one state or the other , but when the majority of the Indian citizens chose to not to raise their voice against such repressive laws, these laws were mis-used in the whole of the country. For example, TADA when it was originally introduced and passed in the Parliament, the excuse was to contain the elements who demanded a separate home land for the Sikhs and were considered by the interested parties to be a threat to national security. In the garb to contain the movement, the Act which was introduced mainly for Punjab was by and large mis-used in all the states till it was finally allowed to lapse and die its own death in April, 1995, but before its death, it ruined lives of thousands of innocent citizens, not only in Punjab, but also in various parts of the Indian State. In Punjab, more than fifteen thousand people were booked under TADA. Though the Act is no more in force after April, 1995, but even today in the State of Punjab there are around fifty cases of TADA being tried in the various courts. So, the mis-use of TADA continues unabated, even after the death of the Act.

Also the misuse the power by police officer. In case of Kartar Singh v. State of Punjab {1994} 3 SCC 569 the constitution validity of Terrorist and Disruptive Activities,1987 was upheld. In this case the accused arrested by the misuse of power by the police officer.

In many cases, TADA and POTA used by the administrator and politician to arrested of his opponent politician. To cite an instance, while TADA was enacted to protect the security and integrity of the country by fighting with militants in Punjab, it was applied to even Uttar Pradesh and Gujarat where there was no threat to national security nor there were similar armed groups fighting for their right to self determination, as was the situation in Punjab

The **Reality** is that this is true that the misused of TADA and POTA in very widely. But there is need of anti terrorism legislation in India. The usual arguments that are trotted out against an anti-terrorism law are that the law is misused, that acts of terrorism could not be prevented even when we had such a law, and that the existing laws are adequate to deal with terror. All these are specious. If a law is misused, the answer lies in punishing those who abuse its provisions and not dismantling the law itself. The Arms Act, the Narcotics Act and a host of other laws are also misused. Shall we, then, repeal all these

and let the criminals have a field day? Besides, counter-terrorism involves a comprehensive package; law is only one of its components. Those arguing that the existing laws are adequate are either deluding themselves or saying so for extraneous reasons. In the wake of 9/11, the US enacted the PATRIOT Act, which gave sweeping powers to the domestic law enforcement and the intelligence agencies. It modified the procedures that protected the confidentiality of private communications, reinforced the curbs on money laundering, prevented alien terrorists from entering the US and enhanced the penalties for acts of terrorism. The UK passed an Anti-Terrorism Crime and Security Act, 2001, which gave additional powers to the police and reinforced the security of airports and laboratories. It even allowed the internment of foreign nationals suspected of involvement in terrorist activities.

These examples show that even violation of human right and misuse but fighting from terrorism there is need anti terrorism legislation.

onclusion

After reading the whole view, Various suspicion and voices have been raised by people NGO's under the pretext of constitution, constitutional provisions, and equality before law and civil rights. All these organizations must keep in mind that provisions are there in the constitution where reasonable restrictions can be enforced even upon the liberty of people and there is need to stringent law to tackle the terrorism. We also need to bear in mind that much as terrorist keep apace with emerging technology- the current phenomena being termed as fourth generation warfare and certainly India also need to fine tune and adopt their anti terror legislation to fought to the changing time. The mandate is particularly relevant in India on one hand it states identified as an emerging economic growth which is harassing it resource to take it appointed place in the heierachy of nation at the other hand its dramatic prograss it this direction is sought to be stymied by the enemies by carrying out repeated terror attacks right across the country. Even as proactive executive means of copying with terror(intelligence, organizational, technical and human capital related) fall into place, we need not just law that tackle to terrorism but more important what new generation of people who must be educated an what it means to fight terror in a democratric set up. In the view of the misuse of power, we can make develop a system to stop it misuse.

Lord Denning said: "***The freedom of individual must take second place to the security of the state***". Recently, no less a person than the Chief Justice of India said that the international community could not fault India if it chose to enact tough measures to deal with the menace of terror.

So there is needed to make stringent law to tackle terrorism

12. Unlawful assembly

Answer:

Article 19 (1) (b) of the Constitution confers the fundamental right to assemble peacefully and without arms. However, section 141 of the IPC aims to criminalize unlawful assembly.

An unlawful assembly as per section 141 of Indian Penal Code, 1860 (IPC) means an assembly of 5 or more persons if the common object of the assembly is-

1. To overawe by using criminal force or show criminal force, to Central or any State Government or Parliament or any State Legislature or any public servant; or
2. To oppose the performance of any law or legal process; or
3. To carry out any mischief or criminal trespass or any other offence; or
4. By use of criminal force takes possession of any property or deprives any person of the right to the way or the use of water or any incorporeal right; or
5. With the use or show of criminal force compels any person to do any illegal act.

As section 141 there has to be at least 5 members and should have any one or more than one common object as mentioned above, to constitute an unlawful assembly. The essence of section 141 requires 5 persons and their common object. Being simply present with other members without any common object does not amount to an unlawful assembly. The mere presence of any person in an assembly without any common object does not make him the member of the unlawful assembly. In *Bhanwar Singh v. the State of M.P.,**[1]* the court held that the common object of an unlawful assembly depends firstly on whether such object can be classified as one of those described under section 141; secondly, such common object need not be the product of prior concert but may form on spur of the moment, finally, nature of such common object is a question of fact to be determined by considering the nature of arms, nature of assembly, behaviour of members etc. The common object essentially to be examined keeping in view the acts of the members and the surrounding circumstances of a particular case. Further, there is always a possibility that an assembly may be turned to an unlawful one.

Member of an Unlawful Assembly

Section 142 of IPC reads – "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."[2] The essential ingredient of section 142 is that as soon as the person is aware of the fact that the assembly is unlawful, it is to be proved that he remained as the part of such assembly despite to knowing the fact that it is unlawful. The word 'continues' under section 142 signifies physical presence as a member of an unlawful assembly, that is, to be physically present in the crowd.[3] This

section cannot be attributed to a person who knows that the assembly is unlawful and is present as a just bystander. In the case of Apren Joseph, it was held that the test is whether the person knows the common object of the assembly and continues to keep its company due to his own free will.

Section 143 of the IPC embodies the punishment for being a member of an unlawful assembly. A person who is a part of an unlawful assembly shall be punishable with an imprisonment which may extend to 6 months, or with fine, or with both.

Section 144 of IPC can be said to be an extended version section 143. Section 144 aims to punish the persons armed with a weapon of offence in an unlawful assembly. It prescribes the punishment with imprisonment for a term which may extend to 2 years, or with fine, or with both. The intention of this section is to reduce the risk of hampering the public tranquillity.

Section 145 of IPC prescribes punishment for knowingly joining an unlawful assembly which has been commanded to disperse. This section is in par with section 151 and 148 of IPC. Section 151 talks about the cases of special nature where disobedience will lead to a breach of public peace, further, section 188 deals with cases where there is a violation of any legal order commanded by any public servant. Section 129 of Code of Criminal Procedure provides for special powers to a police officer to command dispersal of an unlawful assembly.

Section 150 makes liable to persons who were hired for joining the unlawful assembly. It provides that if a person is hired for being a member of an unlawful assembly he shall be liable in the same manner as if he was the member of such assembly and he himself had committed the offence. Section 157 of the IPC is a wider section which provides punishment for harbouring the hired persons. All such person who harbours knowingly that the persons are hired to be the part of an unlawful assembly shall be liable with imprisonment which may extend to 6 months, or with fine, or with both.

Dispersal of Unlawful Assembly by use of Civil Force:

The fundamental right under article 19(1)(b) of the Constitution is subject to reasonable restriction as imposed under article 19(3). Section 129 of Cr.P.C. aims to protect public peace. Section 129(1) confers power to Executive Magistrate or any police officer not below the rank of sub-inspector to command for the dispersal of any unlawful committee or any assembly of 5 or more persons which is likely to cause a disturbance of the public peace. It shall be the duty of the members of the assembly to disperse accordingly, as soon as it is commanded to disperse. The subsection (1) only provides power to command not the power to use force.

Further, under section 129(2) power has been conferred on Executive Magistrate or any police officer not below the rank of sub-inspector to disperse, the assembly commanded to disperse, by force if such assembly does not disperse after being so commanded, or if the assembly by its conduct shows determination not to disperse if not being so commanded. The subsection provides power to use force and may also take the assistance of male persons to disperse the assembly. However, for the purpose of dispersal, no member or officer of armed forces shall be allowed to assist under this section. The power to use force also includes the power to arrest and confine a person, if necessary, for the dispersal of the assembly.

The power given under this section is subject to following conditions:

1. The assembly must be of 5 or more persons
2. such assembly is likely to cause a breach of public peace
3. such assembly need to be dispersed
4. not to use force until and unless assembly does not disperse, despite being ordered to disperse

Dispersal of Unlawful Assembly by Armed Forces

Section 129 of Cr.P.C. grants no power to armed forces to disperse the unlawful assembly. This power has been given by section 130. Under section 130(1) the Executive Magistrate of the highest rank may command to disperse the assembly by armed forces. This power by the Magistrate can be exercised only if:

1. the assembly cannot be dispersed otherwise, and
2. if it is utmost necessary in the public security that such assembly is required to disperse.

Section 130(2) provides that the Magistrate may require any officer of the armed forces to disperse the assembly with the help of armed forces. All such officers are also conferred with power to arrest and confine the members of the assembly in order to disperse it or punish them according to law. Section 130(3) puts check on the power of officers of armed forces. Every officer is required to use little force and do as little harm to the person and property which is necessary for dispersal of assembly. In the case of *State of Karnataka v. B. Padmanabha Beliya,**[4]* when the district armed reserve police fired without lawful orders from the authorities on the members of an unlawful assembly and caused the death of one of the person, it was held that the State Government is vicariously liable and had to pay compensation to the dependants of the deceased.

Section 131 hand over special powers to commissioned or gazetted officer of the armed forces to disperse the assembly. All such officers are authorized to command the dispersal of an assembly only when the public security is considerably endangered by

such assembly and no communication with the Executive magistrate is practicable. According to section 132(3) 'armed forces' means the military, naval and air forces and also includes any other armed forces of Union.

The section also states the situation where while executing his power it becomes practicable for the officer to communicate with the Magistrate, then, he shall be bound to communicate and shall act as per the instructions of the Magistrate to continue or discontinue the action.

Protection against Prosecution

Section 132 provides protection to persons to who had done any act in the persuasion of their power under section 129, 130 and 131.As per section 132(1), no prosecution shall lie against any person,for any act done pertaining to section 129, 130 and 131, in any Criminal Court except:

a. with the prior permission of the Central Government where the person is an officer or member of the armed forces;
b. with the prior permission of the State Government in any other case.

According to section 132(2) following persons shall be deemed have committed no offence:

a. an Executive Magistrate or a police officer acting in good faith under any of the said section;
b. a person acting in good faith in compliance with a requisition under section 129 or 130;
c. the officer of the armed forces acting in good faith under section 131;
d. the member of the armed forces doing any act in conformity with the order he is bound to obey.

This section specifically provides protection against prosecution to persons who had acted in a bona fide manner. An act done with the absence of good faith will attract liability.

Illustrations

a. where 10 or more people are gathered in order to protest the implementation of a law and throwing stones in the persuasion of such protest, is an unlawful assembly.
b. Where 6 friends in a park are chatting peacefully, does not constitute an unlawful assembly within the section 141 of IPC

13. Cruelty by husband or relative of husband

Answer:

Cruelty by Husband or Relatives of Husband

In 1983 to check cruelty to women by husbands and parents-in-law, rampant in an unprecedented scale in the country a new Chapter, XX-A entitled. Cruelty or harassment differs from the case of case. It relates to a mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones.

It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. **Surinder Singh vs State of Haryana [Criminal Appeal No. 1791 of 2008]**

Section 498-A in The Indian Penal Code – Husband or relative of husband of a woman subjecting her to cruelty

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

Explanation —For the purposes of this section, "cruelty" means—

1. any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
2. harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Essential ingredients

To bring home the charge under Section 498-A, held, cruelty is the necessary ingredient which is needed to be proved, **State of Maharashtra v. Ashok Narayan Dandalwar, (2000) 9 SCC 257**

Section 498-A, IPC and section 4 of Dowry Prohibition Act do not attract double jeopardy

Section 498-A, IPC provision is distinguishable from section 4 of the Dowry Prohibition Act, because in the latter mere demand of dowry is punishable and the existence of an element of cruelty is not necessary, whereas section 498-A, IPC punishes an act of cruelty caused to a newly married woman. **(Inder Raj Malik vs Sunita Malik (1986) Cr LJ 1510)**

Section 498-A, IPC is not ultra vires to the Constitution

The Andhra Pradesh High Court in **Vungarala Yedukodalu vs State of Andhra Pradesh, [1988 Cr LJ 1538 (AP)]** while admitting that the expression 'cruelty' was not capable of precise definition, held that there was no vagueness in its meaning and as such it is not ultra vires of the Constitution. Each case has to be adjudged in the light of the facts of that particular case in the historical circumstances which necessitated the amendment.

14. Cheating and Mischief

Answer:

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 introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.
- A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.
- A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.
- A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the under-writers. A has committed mischief.
- A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.
- A, having joint property with Z in a horse, shoots the horse, intending thereby 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.