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LAW OF CRIMES (INDIAN PENAL CODE 1860)

By

Name of the Creator : Mr. Sourabh Batar

Designation : Assisstant Professor

Department : Law

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SUBJECT: LAW OF CRIMES (INDIAN PENAL CODE 1860)

UNIT-1

IPC and its applicability
Essential Elements & stages of crime
Punishment and kinds (Ss 1-75)
Common Intension & Common Object (Ss 34-38,141 & 149)
Attempt (511)

Stages of Crime-

In every crime, there are four stages. First is the intention to commit it; second is when the offender makes preparations to commit it; the third stage is when he attempts to commit it and if the third stage is successful then finally the actual commission of the offence. If the attempt fails, the crime is not complete but the law punishes the person attempting the act. An 'attempt' is made punishable, because every attempt, although fails must create alarm, which, of itself, is an injury and the moral guilt of the offender is the same as if he had succeeded.

Section 511of IPC read as, Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonments –

Whoever attempts to commit an offence punishable by this Code with 1[imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with 2[imprisonment of any des c r i p tion provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.

The preparation consists in devising or arranging the means or measures necessary for the commission of an offence. A mere preparation is not made punishable by the code except under following sections of the code viz.section 122 (preparation to wage war with the government of India, section 126 (preparation to commit depredation on territories of any power at peace with the government of India) and section 399(preparation to commit dacoity).

An attempt is a direct movement towards the commission after the preparations are made. An attempt is an intentional preparatory action which fails in an object because of circumstances independent of the person who seeks its accomplishment. When a man does an intentional act with a view to attaining a certain end and fails in his object through some circumstances independent of his own will, then that man has attempted to effect the object at which he aimed.

The test for determining whether the acts constitute attempt or preparation is whether the over acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless. But where the thing is done is such that if not prevented by any extraneous cause, would fructify into the commission of an

offence it would amount to an attempt to commit that offence. An accused committed an offence criminal lawyers in India to help to release them from the punishment.
The Supreme Court in *State of Maharashtra v.Mohd.Yakub, AIR 1980 SC*, held that the test applied in Malkiat Singh's case should be understood with reference to the facts of the case. In this case, customs officers received information that a truck and a jeep containing silver with the intention of smuggling it out of the country, we're heading towards the seashore. While the truck was being unloaded at the seashore, the customs officers arrested the accused. The court held that the accused had made all the preparations and it is only because of the intervention of custom officers that they could not succeed in their attempt. The accused were accordingly held guilty under section 511.

Essential elements of Crime-

Crime is an act or omission of an act which causes harm to the society as a whole and causes disturbance and panic in the society. Such an act is punishable by the criminal laws. Criminal law came exists due to the presence of crime in a country. It provides provisions and rules regarding the criminal activities that take place. Criminal law prescribes definitions of crimes and the punishments relating to it. Generally most legal systems impose criminal liability only when a person performs a prohibited act or incur a forbidden injury with a guilty state of mind. For an act to be declared as criminal there are certain steps that are examined whether they are present or not. The facts that must be ascertained in order to prove criminal Liability are called The Elements of Crime.

There are mainly four elements of crime namely: human being, Mens rea, Actus Reus and injury caused.

1. **Human being**: The first and foremost element of crime is that the injury must be caused by a human being. Only a human can be made legally bound to act in a judicially appropriate way as laws are only applicable to human. Under Sec. 11 of Indian Penal Code the word person include artificial or judicial person hence they are punishable as well. Animals used to be punished in ancient times now their owners are made liable.

2. **Mens Rea**: Mens Rea is the most important element to prove a crime has taken place. It means it was the intention of the wrongdoer to purposely/knowing/willing and with proper planning to cause harm to a person, animal or property.

3. **Actus reus**: It is the guilty Act that follows the guilty intention. An act will only be called a crime if both the elements are present. The guilty intention of person leads them to act in accordance to it and hence it turns into crime.

4. **Injury**: for a particular crime to take place it necessary for the injury to occur. After having guilty mind and doing the guilty act if the injury does not occur then that crime is not considered as committed.

Mens Rea

It is derived from the maxim "actus reus non facit reum nisi mens sit reas" which means "that an act is not guilty unless the mind is not guilty". The mens rea means some blame worthy mental condition, whether constituted by knowledge or intention or otherwise.[2] It is almost always necessary to prove Mens Rea. It is to be proven that the person accused really had the intention to cause such harm to the other person property and also knows about the consequences of his action. Exception to Mens rea is the "Strict Liability offences" in which punishments are provided even when the act is done without a guilt intention.

Motive is the reason for which the crime, but the law is more concerned with the intention of the accused. Mens Rea can be different in various crime for instance in murder the Mens Rea in the intention to incur a forbidden result that is to kill the other person whereas in assault cases it is to provide serious bodily harm. In civil law it is not always necessary to prove the mental element. It was held by the SC that Mens Rea is not an essential ingredient for contravention of the provision of a civil act. In few cases such as tort the punishment may increase the scope of liability. Unless a statute clearly or be necessary implication rules out mens rea as a constituent part of the crime, a person should not be found guilty against the criminal law unless he has got a guilty mind.

Actus reus

It is derived from the same maxim and it means the guilty action that follows the guilty mind. Actus Reus is related to the actual work and action that is required for the completion of the crime. Only thinking about killing someone is not murder until action is taken in order to kill the other person. The action alone also cannot be considered as crime. Both mens rea and actus reus works hand in hand. A crime can only take place where both these elements are simultaneously present. In order to find whether these elements are present or not the facts and circumstances of the case is also taken into consideration that what was the intention behind the actions of the accused.

What is intent?

It is the true reason behind a person's action. It refers to the facts on which a reasonable person acts in any given circumstances. In case of a criminal case, the intent to commit that crime means that the person knew what he was doing is wrong and still did it knowing that the consequences of his actions is futile. It is should not be confused with motive. Intent is the state of mind of the person while doing that crime whereas motive is the reason behind the act.

Exceptions

In Indian criminal Law, it is considered that certain section of people is not capable of having a guilty intention even if they have committed a prohibited act. And hence lack of guilty intention makes the action not a crime and can be excused. This category includes- person of unsound mind, minor and a person under whose while committing the action was under the influence of alcohol/drugs. These also come under the Chapter –IV 'General Exceptions' in IPC including section 76-106. In detail these defences can be classified as:-

1. Insanity: when a person is legally insane and they don't know what they are doing and have no idea of right or wrong.

2. **Involuntary intoxication**: Due to the involuntary intoxication when a person loses their ability to distinguish between right or wrong and has does not know what they are doing.

3. **Mistake of fact**: when a person accidently act assuming that, for a fact, what they are doing is right and does it in good faith. Unlike the mistake of fact the Ignorance of law is not excusable.

4. **Crime by a minor**: a child of age less than 7 years is completely excusable of any crime. A child who is less than 12 years of age and is not able to distinguish between right or wrong then he is also excused.

Illustrations

1. X, a police officer, while in processes of calming down a mob fires his gun by which a person Y is killed. Here the Actus Reus is present, that is the death of a person but there is no mens rea. The X shot Y without any guilty motive. This situation does not embody all four elements of crime and hence, can't be termed as a crime.

2. M planned to kill N. He bought a knife in order to do. He made an attempt but failed to actually kill N due to certain reasons. Here all the elements of crime excluding the element injury occurred. Still it cannot be considered as the crime of murder because of the absence of its one true element. It shall only be considered as an attempt.

Criminal Intention is the highest form of blameworthiness of mind or *mens rea*. Intention occupies a symbolic place in criminal law. As the highest form of the mental element, it applies to murder and the gravest form of crimes in the criminal justice system. The term 'intention' is not defined in Indian Penal Code but section 34 of IPC deals with common intention. The intention made among several people to do something wrong and act done in that manner in which it was formulated comes under the sanction of **Section 34 of IPC.**
Section 34 deals with a situation, where an offence requires a particular criminal intention or knowledge and is committed by several persons. Each of them who join the act with such knowledge or intention is liable in the same way as if it were done by him alone with that intention or knowledge. The liability of individuals under this circumstance is called Joint Liability. The principle of Joint Liability defined in section 34 is as follows:

Section 34. 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 it were done by him alone.
In this article the act is referred, which is defined under article 33 as:

Section 33. 'Act', 'Omission'. – the word 'act' denotes as well a series of acts as a single act: the word 'omission' denotes as well a series of omissions as a single omission.
It is clear from s.34 and s.33 that the term criminal act refers to more than a single act and would cover an entire series of acts.

Section 34 to section 38 in chapter II of IPC dealing with 'General Explanation' state the conditions in which a person may be held constructively liable for the acts committed by the other members of group.

The chapter VIII of Indian Penal Code refers to 'Offences against the Public Tranquillity' from section 141 to section 160. Offences against public tranquillity also known as 'Group Offences' and lead to disturbance of public peace. S.141 defines 'Unlawful Assembly' for which there should be five or more persons, and the object should be common to all. If five or more persons are doing wrong act with common objective then liability on each person will be same as it is done by him alone. This liability on each person is called 'Group Liability'. Section 149 of IPC imposes group liability on each and every members of assembly and defined as follows:

Section 149. Every member of unlawful assembly guilty of offence committed in prosecution of common object —If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.
To impose this section under group liability there should be an unlawful assembly, which is defined under s.141. And the offence should be committed in prosecution of common object.

COMMON INTENTION

Common intention implies a pre arranged plan and acting in concert pursuant to the plan. Common intention comes into being prior to the commission of the act, which need not be a long gap. To bring this section into effect a pre-concert is not necessarily be proved, but it may well develop on the spot as

between a number of persons and could be inferred from facts and circumstances of each case.

In Amrik Singh's Case it has been further held that though the common intention may develop in course of the fight but there must be clear and unimpeachable evidence to justify that inference. In the case Pandurang v. State of Hyderabad, Supreme court emphasized on this point that prior concert need not be something always very much prior to the incident, but could well be something that may develop on the spot, on the spur of the moment. In this case Ramchander Shelke (deceased) with his wife's sister went to the field. While Ramchander went to the river side the five persons including three appellant (Pandurang, Tukia, and Bhilia) attacked him.
According to eyewitnesses, Pandurang, Tukia, and Bhilia were holding axes and other two accused Tukaram and Nilia had stuck in their hands. The deceased died on the spot. In this case, different eyewitnesses told a different story. The trial court convicted each of accused of charge S.302 with S. 34 and sentenced to death. Appeal lied in High court and conviction of Pandurang, Tukia, Bhilia was maintained but other two accused person sentence was commuted to transportation for life. When the matter came up to the Supreme Court, the learned judge said that each is liable for their own act. The Apex Court set aside the death sentence of Pandurang and convicted him instead under S.326, and sentenced for 10 years rigorous imprisonment. The Supreme Court altered the sentence of Tukia and Bhilia to transportation for life. The Supreme Court elaborated in this case that:

"In a case like that, each would be individually liable for whatever injury he caused but none would be vicariously convicted for the acts of any of the others; if the prosecution cannot prove that his separate blow was a fatal one, he cannot be convicted of the murder, however clearly an intention to kill could be proved in this case…."
The essence of liability to be found in the existence of common intention is that the criminal act complained against was done by one of the accused persons in furtherance of common intention of all, if this is shown, then the liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone.
In the case of ***Mahboob Shah v. Emperor***, the appellant Mahboob Shah was of age 19 and was convicted by Session Judge of the charge s.302 with s.34 for the murder of Allah Dad. The Session court sentenced him for death. The High Court of Judicature also confirmed the death sentence. On appeal before Lordship, the conviction for murder and sentence of death was quashed. It was contended before appellant that – "when Allah Dad and Hamidullah

tried to run away, Wali Shah and Mahboob Shah Came in front of them… and fired shots" and so there was evidence of forming common intention at the spur of the moment. Their Lordship was not satisfied upon this view and humbly advised His Majesty that the appellant has succeeded in his appeal, his appeal should be allowed and his conviction for murder and the sentence of death set aside.

Common Intention and Similar Intention

Common intention does not mean similar intention of several persons. To constitute common intention it is necessary that the intention of each one of them be known to the rest of them and shared by them. This section 34 is only a rule of evidence and does not create a substantive offense. This section only applies with other penal sections which deal with the punishment of the offense.

In the case of Dukhmochan Pandey v. State of Bihar, the complainant had sent about 20 labors to his field for transplanting paddy. On midday, the accused party came as a mob of about 200 people armed with various deadly weapons. They asked laborers to stop the work, and when the complainant objected to this, the two accused directed the mob to kill laborers. The mob started assaulted the laborers as a result of these two labors died. When the police party reached, the mob fled from the spot. The death was established to have caused by injuries inflicted by shock and hemorrhage caused by injuries inflicted with sharp pointed weapons.

The Supreme Court, in this case, held that*: "Common intention which developed at the spur of the moment is different from the similar intention actuated a number of person at the same time….the distinction between a common intention and similar intention may be fine, but is nonetheless a real one and if overlooked, may lead to miscarriage of justice…."*

The mere presence of accused together is not sufficient to hold that they shared the common intention to commit the offence in question. It is necessary that the intention of each one of 'several persons' be known to each other for constituting common intention.

Inferences

From the various interpretations of Apex Court and guideline given in different cases, some inferences could be drawn to impose Joint Liability under section 34. These are –

1. To establish common intention premeditation of minds is necessary. There should be prior meeting of minds which activated common intention and criminal act should have been done in furtherance of common intention.
2. There may be situation in which premeditation was not present, but intention developed at the spur of the time, but it should must been shared among one another.
3. To prove common intention is a very hard, because it is the mental thinking of the accused at that point of time. So it has to be culled out from the facts and circumstances of each case.
4. There is a difference between common intention and similar intention, and s.34 can be invoked only when the accused shares common intention and not one the similar intention.
5. Unless the common intention is proved, individual will be liable for his own act and not otherwise. They will be deal as under s.38 of IPC. And if there is any doubt, the benefit of doubt should be given to the accused.

Cases

One of the earliest cases came before the court under s.34 under the principle of Joint Liability was ***Barendra Kumar Ghosh v. King Emperor***. This case is also known as the 'Post Master Case'. In this case, the accused Barendra with other three persons went to Shankaritola post office at about 3.30 pm on the 3rd August 1923 armed with firearms. The accused stood outside the post office while the other three entered the post office through the backdoor of office. They asked post master Amrita Lal Roy to give the money which he was counting. When he refused, then others three opened fire from the pistol and fled from the place.

As a result of which he died almost immediately. Seeing others running the accused also ran away by air firing with his pistol. But he was chased and caught by the post office assistant. He was charged with others under s.302 (murder to post master) and s.394 (causing hurt in doing robbery) with S.34 in common intention of all. He contended that he was only standing guard outside the post office and he did not have the intention to kill the post master. Calcutta High Court confirmed his conviction of murder under S.302 with S.34. In the appeal before the Privy Council, Lord Sumner dismissed the appeal against the conviction and held that – *"criminal acts means that unity of criminal behaviour which results in something for which an individual would be responsible, if it were all done by himself alone, that is, in criminal offence."*

The other important case came before the Supreme Court was ***Rangaswami v. State of Tamil Nadu***. The occurrence took place at about 11.45 pm on 16.08.1973 in Big Bazar Street, in which one Jayaram was murdered. In this case, session court convicted A-1 under s. 302 and sentenced him to death. A-2 and A-3 were charged under S. 307 with S.34, and sentenced rigorous imprisonment of 8 years by session judge. While the High Court considering the fact altered the decision of session court and enhanced the sentence of A-2 and A-3 to imprisonment for life under s. 302 with s.34. And the death sentence of A-1 was modified for imprisonment for life.
Against this conviction, A-3 appealed in Supreme Court and contended that he was only in friendly relation with A-1 and A-2 but he did not share common intention with them. It was by mere chance that he appeared at the spot of occurrence and he did not participate in offense. In this case, there was a prior enmity between deceased and A-1 and A-2, because the deceased was accused of murdering the brother of A-1, and he was actually on the bail. Supreme Court held that even though the presence of A-3 was established but he did not share common intention and he was unfamiliar with the plan. Therefore he was acquitted all of the charges.

The other case before Supreme Court was ***Muthu Naicker and others v. State of Tamil Nadu***. The dispute arose among the village community of Karpakkam village when accused no. A-11 Kuppu Naicker who has a well in land bearing Survey No. 102, wanted to lay a pipe-line to take water to the field bearing No. 186/2 belonging to his wife, Dhanammal. There was another well sunk by the local Panchayat in Survey No. 170 for the use of the village community and when A-11 wanted to take water from his well in Survey No. 102, an apprehension was entertained by the residents of the village that there would not be enough water in the well in Survey No. 170 and there would be water shortage.

Gripped by this apprehension, a majority of the village community resisted the attempt of A-11 to take water by laying pipelines. Some villagers approached the collector on March 6, 1967, the collector suspended the permission granted to A-11 to lay the pipelines. A-11 and his companions ignored the order of collector and continued the digging of the channel. The matter arose on 27 November 1968 at around 2.30 pm when deceased Gajarajan brother of P.W. 31 was returning from Madras by bus, a crowd of 50-60 persons including A-1 to A-23 and A-28 attempted to waylay the deceased. Deceased tried to escape but was chased by them and encircled by the crowd near a well and was attacked. After completing the investigation police submitted challan against 28 accused for various offences.

The learned session judge giving the benefit of reasonable doubt rejected the prosecution case and acquitted all the accused. The state of Tamil Nadu preferred an appeal in High Court of Madras against A-1 to A-27. While the acquittal of A-28 was considered as final. The High Court convicted A-1 to A-7 and A-19 for charge under S.302 with S.34 and sentenced them for life imprisonment. They preferred a criminal appeal in the Supreme Court. The conviction of accused A-1, A-2, A-4, A-5 under S.302 with S.34 was confirmed and sentenced to life imprisonment.

While the conviction of A-3, A-6, A-7, A-19 under this charge of S.302 was set aside and were charged with others under Hurt and Grievous Hurt differently. Supreme Court held that in a local community when something unusual occurs, a good number of people appear on the scene not with a view to participating in occurrence but as curious spectators. In such event, mere presence in the unlawful assembly should not be treated that person concerned was a member of unlawful assembly.

COMMON OBJECT

The offence dealing with Group Liability or Vicarious Liability of members comes under Chapter VIII of the Indian Penal Code. This chapter deals with offences against Public Tranquillity from s.141 to s.160. The first section of this chapter s.141 defines Unlawful Assembly, for which there should be five or more persons and some common objects for which they have made that assembly. Section 141 is:

Section 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, 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.
From this section we can say that, to constitute an unlawful assembly the following ingredients is necessary –

1. There should be an assembly of five or more persons.
2. There must be a common object for them.
3. Common object must be one of the five ingredients, specified in the above section.

When the number of the persons reduces from five for trial for the reason that some were acquitted for the charges then the s. 141 will become inapplicable. But if there is clear indication that some other unidentified persons are involved in the crime then this section can be applied. In ***Ram Bilas Singh v. State of Bihar***, Supreme Court held that:
"it is competent to a court to come to the conclusion that there was an unlawful assembly of five or more persons, even if less than that number have been convicted by it if: (i) the charge states that apart from the persons named, several other unidentified persons were also members of the unlawful assembly whose common object was to commit an unlawful act .....(ii) or that the first information report and evidence shows such to be the case even though the charge does not state so. (iii) or that though the charge and prosecution witnesses named only the acquitted and the convicted accused persons there is other evidence which discloses the existence of named or other persons"
The other ingredient of this section is a common object. Object means the purpose, and it will be common when it is shared by the members of the unlawful assembly. A common object may be formed at any stage by all or a few members of the assembly. The explanation of this section shows it clearly. However common object is entertained in the human mind so there can be no evidence to prove directly about this.

It is a question of the fact and can be culled out on the basis of facts and circumstances of each case. It can be determined from the nature of the assembly, the kinds of arms and their uses by it, behavior and the language of the members of the assembly used before and after the incident. If only four out of the five assembled person have a common object and not fifth, then that assembly is not an unlawful assembly. Simple onlooker or family of the

parties cannot become a member of the unlawful assembly unless they actively participated or encouraged the violence.

In ***Moti Das v. Bihar***, the Supreme Court held that pre-concert is not necessary. An assembly may be lawful in beginning but may turn into unlawful later.
Being a member of Unlawful assembly is itself a crime and s.143 prescribes the punishment of six months, or fine, or both for being a member of that assembly.

The section which imposes the liability on each person of the offense committed by the members of the assembly is section 149 of IPC. Section 149 of IPC is:

Section 149. Every member of unlawful assembly guilty of offence committed in prosecution of common object — If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who,at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.
In ***Bhudeo Mandal v. State of Bihar***, the Apex Court held that before convicting any person with the aid of s.149, the evidence must clearly establish not only the common object, but also show that the common object was unlawful. In ***Ram Dhani v. State***, there was a dispute over land and the complainant party resorted to cutting crop grown by the accused party. The latter were more than five in number and assembled to prevent the cutting. The court held that – the persons acting in self-defence of the property cannot be members of an unlawful assembly. And so they could not be said to form an unlawful assembly.
The word ‘knew’ is used in the second part of the S. 149, which implies more than a possibility but less than might have known. An offence committed in prosecution of common object would generally be offence which the members of the assembly knew was likely to be committed. This phrase means that the offence committed was immediately connected with the common object of the unlawful assembly, of which the accused were members. The word ‘in prosecution of common object’ means that the offence committed was immediately connected with the common object of the assembly or in order to attain a common object.

Cases

In ***Rambilas Singh and others v. State of Bihar***, the case of the prosecution was that deceased Kumar Gopal Singh found A-2, A-16 and a female relation of them plucking Khesari crops from his field. And so he abused them and snatched away the plucked plants and their baskets. In retaliation for it the 16 accused persons had lay in wait for him on that night and attacked him at about 9.30 P.M. when he was returning home with his brother PW-22 and two other witnesses PWs 1 and 18 after attending a barat.
PW-22 stated that 16 persons surrounded Kumar Gopal Singh and then Dinesh Singh inflicted a stab injury on the neck of Kumar Gopal Singh as a result of which he died. The Session Judge acquitted all the persons A-1 to A-15 who were charged under s.302 with s.149, but convicted A-16 (Dinesh Singh) who was charged directly under s.302. In High Court, A-1 and A-9 were acquitted while A-2 and A-6 died during the pendency of the appeal. The High Court convicted the rest of the accused A-3, A-4, A-5, A-7, A-8, A-10 to A-15.

On appeal, further Supreme Court set aside the conviction of accused by High Court under s.302 with s.149 and held that in order to convict persons vicariously under Section 34 or Section 149 IPC, it is not necessary to prove that each and every one of them had indulged in overt acts. Even so, there must be material to show that the overt act or acts of one or more of the accused was or were done in furtherance of the common intention of all the accused or in the prosecution of the common object of the members of the unlawful assembly. In this case, such evidence is lacking and hence the appellants cannot be held liable for the individual act of Dinesh Singh.

In another case of Ram Bilas Singh v. State of Bihar, the court held that an accused person cannot be held liable vicariously for the act of an acquitted person.

DIFFERENCE BETWEEN COMMON INTENTION AND COMMON OBJECT

Both Section 34 and s.149 imposes vicarious liability on each person for acts not necessarily done by them. However, there is a difference in the scope and nature of operation of the two offences. The charge of s.149 is substituted by s.34 of IPC, especially when some accused are acquitted and number of the accused falls below five. In this case the court would have to carefully examine the evidence to see whether some element of common intention exists for which he can be made liable under s.34. The main differences between the two sections are as follows:

- Section 34 does not create any specific offence but only lays down the principle of joint criminal liability. Whereas s.149 creates specific offence and being a member of an unlawful assembly is itself a crime, which is punishable under s.143.
- ‘Common intention’ used in S.34 is not defined anywhere in IPC, while ‘common object’ in s.149 must be one of the five ingredients defined in S. 141 of IPC.
- Common intention requires a prior meeting of mind and unity of intention and overt act has been done in furtherance of the common intention of all. A common object may be formed without a prior meeting of mind when the common object of the members of the unlawful assembly is one but the intention of participants is different. It only requires that criminal act has been done in furtherance of the common object.
- For invoking S.34 it is sufficient that two or more persons were involved. However, there have to be a minimum of five persons to impose S.149.
- The crucial factor of S.34 is ‘participation’ while there is no need of active participation in S.149 of IPC.

UNIT-2

General Exceptions (Ss 76 to 95)
Right of Privet Defense (Ss 96 to 106)
Abetment, Criminal Conspiracy Giving and Fabrication of false Evidences (Ss191
to 195A, 197 & 201)

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

Object of Chapter IV

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

In short, the object of Chapter IV includes:

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

Burden of Proof

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

The fabric of Chapter IV

- Section 6 of IPC

"Throughout this code, every definition of offence, every penal provision and every illustration of every such definition or penal provision, shall be

understood subject to exceptions contained in the chapter titled General Exceptions".

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

- Excusable Acts
- Judicially Justifiable Acts

Excusable Acts	**Justifiable Act**
A mistake of Fact under section 76 and 79.	An act of Judge and Act performed in pursuance of an order under Section 77 and 78.
Accident under Section 80.	The necessity under 81.
Infancy – Section 82 and 83.	Consent under Section 87 – 89 and Section 90 and 92.
Insanity – Section 84.	Communication under Section 93.
Intoxication – Section 85 and 86.	Duress under Section 94.
	Trifles under Section 95.
	Private Defence under Section 96 – 106.

Excusable Acts

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

A mistake of Fact under Section 76 and 79

Under Section 76: Act done by a person bound or by mistake of fact believing, himself to be bound by law in included. Nothing is an offence

which is done by a person who is or by reason of a mistake of fact, not by mistake of law in good faith believes himself, to be, bound by law to do such act. It is derived from the legal maxim "*ignorantia facti doth excusat, ignorantia juris non excusat*".

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

Under Section 79: Act done by a person justified or by mistake of fact believing, himself justified, by law is included. Nothing is an offence which is done by any person who is justified by law, or who by reason of mistake of fact and not mistake of law in good faith, believes himself to be justified by law, in doing that particular act

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

Case law for Section 79

In *Kiran Bedi v. Committee of Inquiry*, petitioner refused to deposed to the

beginning of the inquiry as she believed that she could depose only at the end of

the inquiry

Accident under Section 80

Includes an Accident committed while doing a lawful act. Nothing is an offence which is done by accident or misfortune, without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

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

Case law for Section 80

In *King Emperor v. Timmappa*, a division bench held that shooting with an unlicensed gun does not debar an accused from claiming defence under Section 81 of IPC. The appeal of acquittal was dismissed and the order of trial

magistrate was upheld. The court was of the opinion that there is no reason why sentence awarded under Section 19(e) of the Indian Arms Act should be enhanced. The respondent was liable under the provision but no more. He just borrowed a gun for few minutes to kill as he thought a wild animal might attack him and his partners. The application was dismissed regarding enhancement of sentence.

Infancy – Section 82 and 83

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

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

Section 83: It includes an act of a child above seven and below twelve of immature understanding. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not yet attained sufficient maturity of understanding to judge the nature and repercussions of his conduct during that occasion.

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

Case law for Section 83

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

Insanity – Section 84

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

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

Case law for Section 84

In *Ashiruddin Ahmed vs. State*, the accused Ashiruddin was commanded by someone in paradise to sacrifice his own son, aged 4 years. Next morning he took his son to a Mosque and killed him and then went straight to us uncle, but finding a chowkidar, took the uncle nearby a tank and told him the story.

The Supreme Court opined that the accused can claim the defence as even though he knew the nature of the act, he did not know what was wrong.

Intoxication – Section 85 and 86

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

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

Section 86: Offence requiring a particular intent or knowledge committed by one who is intoxicated. This applies to cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in state of intoxication, shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

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

Case law for Section 86

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

Justifiable Acts

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

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

Section 77: Act of Judge when acting judicially. Nothing is an offence which is done by a judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

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

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

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

Necessity under 81

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

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

Case law for Section 81

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

Consent under Section 87 – 89 and Section 92

Section 87: Act not intended and not known to be likely to cause death or grievous hurt, done by consent. Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer which is likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or to be intended by the doer to cause, to any person, above 18 years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to that risk of harm.

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

Case law for Section 87

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

Section 88: Act not intended to cause death, done by consent in good faith for person's benefit. Nothing, which is not intended to cause death, is an offence

by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied to suffer that harm, or to take the risk of that harm.

Case law for Section 88

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

Section 89: Act done in good faith for the benefit of a child or insane person, by or by consent of the guardian. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person

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

Section 90: Consent known to be given under fear or misconception. A consent is not such a consent as is intended by any section of this Code,

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

Case law for Section 90

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

Section 91: Exclusion of acts which are offences independently of harm caused. The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Communication under Section 93

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

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

Duress under Section 94

Act to which a person is compelled by threats. Except murder, and offences against the state punishable with death, nothing is an offence which done by a person compelled to do it under threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence, provided the person doing the act did not of his own accord, or from reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

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

Trifles under Section 95

Act causing slight harm is included under this section. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Case law for Section 95

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

Private Defence under Section 96 – 106

Section 96: Things done in private defence.

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

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

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

1. Protecting his body or another person's body, against any offence in which there is a danger to life.
2. Protecting his or another person's movable or immovable property, against any offence like theft, robbery, mischief or criminal trespass or an attempt to commit theft, robbery, mischief or criminal trespass.

- Example: A father, in order to protect the life of daughter from the attack of a thief, shoots him in his leg. But the father will not be liable as he was protecting the life of his daughter.

Case law for Section 97

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

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

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

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

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

- There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or
- Attempted to be done, by a public servant acting in good faith under color of his office, though that act may not be strictly justifiable by law.
- There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or
- Attempted to be done, by the direction of a public servant acting in good faith under colour of his office though that direction may not be strictly Justifiable by law.
- There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.
- The harm caused should be proportional to that of imminent danger or attack.

Case law for Section 99

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

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

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

Case law for Section 100

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

Section 101: When such rights extend to causing any harm other than death.

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

Case law for Section 101

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

Section 102: Commencement and continuance the right of private defence of the body.

The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; it continues as long as such apprehension of danger to the body continues.1

- Example: A, B, and C were chasing D to kill him in order to take revenge, but suddenly they saw a policeman coming from another side. They got afraid and turned back to run. But D shoots B in his leg, even when there was no imminent danger of harm. D will be liable as there was no apprehension of death or risk of danger.

Section 103: When the right of private defence of property extends to causing death.

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

- Example: C Attempts to stab D maliciously while committing burglary in D's house. There is a reasonable apprehension in the mind of D that C will hurt him grievously, so in order to save himself and property, C throttled D with a knife in his chest, causing Death. C will not be liable.

Case law for Section 103

In *Mohinder Pal Jolly v. State*, the deceased worker and some of his colleagues were shouting slogans for demands outside the factory. Some brickbats were also thrown by them which damaged the property of the owner who fired two shots from outside his office room, one of which killed the deceased worker. The court held that it was a case of mischief and the accused will not get the defence of this section.

Section 104: When such right extends to causing harm other than death.

If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence, be theft, mischief, or

criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

- Example: If A has committed criminal trespass in order to annoy B or hurt him, then B will have the right to harm A in proportional manner, not causing death of the person.

Case law for Section 104

In *V.C Cheriyan v. State*, the three deceased along with other persons had illegally laid a road through private property of the church. A criminal case was pending against them. The three accused belonging to church put up barricades across this road. The deceased was stabbed by accused and Kerela HC held that private defence does not extend to causing the death of a person in this case.

Section 105: Commencement and continuance of the right of private defence of property.

The right of private defence of the property commences when:

- A reasonable apprehension of danger to the property commences. The right of private defence of property against theft continues until the offender has effected his retreat with the property
- Or, either the assistance of the public authorities is obtained,
- Or, the property has been recovered.
- The right of private defence of property against robbery continues as long as the,
- Offender causes or attempts to cause to any person death or hurt
- Or, wrongful restraint
- As long as the fear of instant death or
- Instant hurt or
- Instant personal restraint continues.
- The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

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

- Example: Suppose a thief into the house of an individual, and attempts to hurt him instantly with a knife, then that individual has the right to act in private defence and harm that thief to save life and property.

Case law for Section 105

In Nga Pu Ke v. Emp, paddy sheaves belonging to the accused were removed illegally by a person. Accused attacked the cartmen and that cartmen jumped off the carts and ran away leaving sheaves. The accused still chased him and attacked him leading to death. The court held him as guilty of offence.

Section 106: Right of private defence against deadly assault when there is a risk of harm to innocent person.

If in the exercise of private defence against an assault, a person causes apprehension of death, in which defender has no choice but harming an innocent person, his right will extend to that running of risk. 4

- Example: C is attacked by a mob who attempts to murder him. He cannot exercise his right to private defence without firing on the mob. In order to save himself, he is compelled to hurt innocent children while firing so C committed no offence as he exercised his right.

UNIT-3

Offences against State, Society & Reputation

The Indian Penal Code, 1860 deals with offences against the State under Chapter VI (Section 121 to Section 130). The purpose of these codes is to ensure the safety of the State as a whole. The existence of the State can be safeguarded by giving severe punishments in case of offences against the State such as life imprisonment or the death penalty. Offences against the State as well as the government to disturb the public tranquillity, public order and national integration.

Waging War

Waging war means an attempt to fulfil any purpose of public nature by the means of violence. Such a war occurs when several people rise and assemble against the State in order to attain any object of public nature by force and violence. In order to constitute an offence against the State, the purpose and intention are taken into consideration and not the murder or the force.

Difference between Waging war and Rioting

BASIS	**WAGING WAR**	**RIOTING**
MEANING	Where the rising is for general purpose, affecting the whole community and directly strikes at the government department then it is waging war against the state.	Where the rising is primarily to accomplish some private purpose, affecting only those who are engaged in it without questioning the government authority then it is a riot irrespective of how numerous or outrageous it is. [1]
PURPOSE	It is against the Government of India.	It is against the public tranquillity.
SERIOUS OFFENCE	It is a more serious offence as compared	It is a less serious offence as compared to

	to rioting.	waging war.
NUMBER OF PERSONS	The number of persons in waging war is not specific as it has not been mentioned anywhere.	The number of persons in rioting must be five or more.
MENTION IN THE CODE	It is mentioned and explained under Section 121 to 123 of the Indian Penal Code, 1860.	It is mentioned and explained under Section 146 to 148 of the Indian Penal Code, 1860.
PUNISHMENT	Serious punishment is given in such a case, that is, life imprisonment, or the death penalty, and fine.	Comparatively, less serious punishment is given, that is, imprisonment for two years, or fine, or both.

Waging War against the Government of India

Section 121 to Section 123 of the Code deals with waging war against the Government of India. Here, the phrase 'Government of India' is used in a much wider sense, that is, to imply the Indian State which derives the right and power of authority from the will and consent of its people. In other words, this expression signifies that although the State derives the power of authority from Public International Laws, however, such authority is vested by the people of the territory and is exercised by the representative government.

Under Section 121, the following are considered as essentials of the offences as they need to be proved in order to constitute an offence for waging war against the Government of India:

The accused must have:

- Waged war; or

- Attempted to wage war; or
- Abetted the waging of war.

Such a war must be against the State.

The punishment under this Section includes either life imprisonment or the death penalty. A fine can also be imposed in certain cases.

Whoever

The word ‘whoever’ is used in a broader sense and is not only limited to the people who owe loyalty to the established Government. Even the Supreme Court of India is unable to justify if the foreign nationals who enter into the territory of India for the purpose of disrupting the functioning of the Government and destabilising the society should be held guilty or not.

For instance, in the case of Mumbai Terror Attack, the first and the primary offence committed by the appellant and other conspirators was the offence of waging war against the Government of India. The attack was by foreign nationals and aimed at Indians and India. The purpose of this attack was to accelerate communal tensions, affect the financial situation of the country and most importantly to demand India to surrender Kashmir. Therefore, under Section 121, 121A and 122 of the Code, the appellant was rightly held guilty for waging war against the Government of India.

Waging War

The phrase ‘waging war’ must be understood in the general sense and can only mean waging war in the manner usual in war. It doesn’t include overt acts like collection of men, arms and ammunition. Also, in the international sense, the inter-country war involving military operations between two or more countries is not included under this type of war.

Under, Section 121 it has been made clear that ‘war’ is not conventional warfare between countries, however, joining or organising an insurrection against the Government of India is a form of war. Waging war is a way to accomplish any purpose of public nature by violence.

Intention

In the case of waging war intention and purpose are considered to be the most important factors to be examined behind such aggression against the Government. In such a war, murder and force are irrelevant.

Sedition and Abetting War

Both the offences are cognizable, non-compoundable and non-bailable. Theses offences can be tried in a Court of Session.

Section 124A of IPC deals with sedition. This offence means that the intention is to bring hatred or contempt or excite disaffection (including disloyalty and a feeling of enmity) against the Government of India.

Abetting the war is a special type of offence. The main purpose of such instigation should be necessarily waging of war.

For instance, in Najot Sandhu's case, the appellant was a part of the criminal conspiracy and was deemed to have abetted the offence. He took an active part in a series of steps taken for the purpose of the conspiracy. Therefore, the judgement given by the High Court was upheld and the appellant was convicted under Section 121 of IPC.

In a case under Section 121 of IPC if the charge doesn't set out the speeches to be seditious, then this doesn't spoil or affect the proceedings. Thus, it can be concluded that there is a difference between sedition and abetting war.

Conspiracy to Wage War

Section 121A was added to IPC in 1870. It states that it is not necessary for any act or illegal omission to take place explicitly in order to constitute a conspiracy.

This section deals with two types of conspiracies:

1. Conspiring to commit an offence punishable under Section 121 of the Code, within or without India.
2. Conspiring to overawe, that is, intimidated by means of criminal force or a mere show of criminal force against the Government.

The punishment under this Section includes imprisonment for ten years or life imprisonment along with a fine. Such punishment can be given by the Central Government as well as the State Government.

Preparation to Wage War

Section 122 of the IPC deals with the preparation of war. There is a difference between an attempt and preparation for committing the offence. The essentials of this Section are:

- Collection of men, arms and ammunition.
- There must be an intention to wage war or make preparations to wage war for such collection.
- The accused must participate in such collection.
- The war must be waged against the Government of India.

The punishment under this Section is either life imprisonment or imprisonment for ten years along with a fine.

For instance, if print material along with other things are found in the room of the accused, then they are neither considered objectionable nor infuriating. Thus the accused cannot be convicted under this Section.

Concealment of Design to Wage War

Section 123 of the IPC deals with the concealment of design to wage war. The essentials of this Section are:

- There must be an existence of a design which is prepared to wage war against the Government of India.
- The concealment should be done with the intention of facilitating the war against the Government of India.
- The person should be knowing about the concealment of the design.

The punishment under this Section is imprisonment of up to ten years along with a fine.

For instance, in the Parliament attack case, the accused had information of conspiracy along with a plan of terrorists. Thus his illegal omission made him liable under Section 123 of the IPC.

Waging War against Power

War Against Asiatic Power

Section 125 deals with 'Waging war against any Asiatic Power in alliance with the Government of India. This Section contempts the waging of war against any Asiatic power. Here, the accused should have waged war against the State or attempted to wage war, or abetted the waging of war. The essentials of this Section are:

- There must be an Asiatic State along with an international influence.
- Such a State should be other than India.
- Such a State should be in alliance with or at pace with the Government of India.

The punishment under this Section is life imprisonment or imprisonment for seven years along with a fine in some cases; or fine.

Depredation in Friendly Countries

Section 126 deals with 'Depredation on territories of Power at peace with the Government of India'. Depredation refers to an act of attacking. The essentials of this Section are:

- The accused should have committed or prepared to commit depredation.
- The act must be done on the territories of any power which is in alliance with or at peace with the Government of India.

Punishment under this Section is imprisonment for a term of seven years along with a fine. Any property used for the purpose of committing such offence or acquired as a result of this offence can also be forfeited.

NOTE: Section 126 is wider than Section 125, as the latter deals with the waging of war against Asiatic Power in alliance with the Government of India whereas the former Section applies to a Power which may or may not be Asiatic.

Receiving Property Taken by War or Depredation

Section 127 deals with the 'Receiving property taken by war or depredation as mentioned in Section 125 and 126'. The essentials of this Section are:

- The accused must have received any property.
- The accused must have been received the property by waging war with a Power at peace with the Government of India or by committing depredation on its territories.

Punishment under this Section is imprisonment for a term of seven years along with a fine. Also, the property must be forfeited.

Assault on High Officials

Section 124 of the IPC deals with the assault on high officials, that is, the President, Governor, etc. Such assault should be done with the intention of inducing or compelling the high officials to exercise or refrain from exercising their lawful powers. The ingredients of this Section are:

- The accused should have assaulted the President or the Governor of any State; or
- The accused should have wrongfully restrained the President or the Governor; or
- The accused attempted to assault or wrongfully restrain the President or the Governor; or
- The accused attempts to instigate or influence the President or the Governor with force or show of force with an intention to compel them from exercising or refraining from exercising their powers.

Escape of a State Prisoner

Section 128, 129 and 130 deals with the various aspects of the escape of a state prisoner.

The expression 'State prisoner' refers to a person whose imprisonment is necessary to preserve the security of India from internal disturbances as well as foreign hostility.

Section 128 of the IPC deals with 'public servants voluntarily allowing prisoners of State or war to escape'. The ingredients of this Section are:

- The accused should be a public servant; or
- The confined person should be a prisoner of State or war; or
- Such prisoner should be in the custody of the accused person; or
- The accused servant should have allowed such a prisoner to escape voluntarily.

NOTE: This Section doesn't apply in the case of the prisoner escapes during the transit.

The offence under this Section is an aggravated form of an offence under Section 225-A. In both cases, the public servant is punished if he voluntarily allows the prisoner to escape, however, under Section 225-A a prisoner may be an ordinary criminal.

Punishment under this Section is either life imprisonment or punishment for a term of ten years along with a fine.

Section 129 of the IPC deals with 'public servant negligently causing the prisoner of State or war to escape'. The ingredients of this Section are:

- The accused should be a public servant, necessarily at the time of committing the offence.
- Such a prisoner should be in the custody of the accused person.
- Such a prisoner should be rescued or escaped.
- Such an escape or rescue should be due to the negligence of the accused.

The offence under this Section is an aggravated form of an offence under Section 223. In both cases, the public servant is punished if he negligently causes the prisoner to escape, however, under Section 223 prisoner may be an ordinary criminal.

Punishment under this Section is simple imprisonment of up to three years along with a fine.

Section 130 of the IPC deals with the 'any person who aids or assists the escape of, rescuing, or harbouring of a prisoner of State or the war to escape'. This Section is more extensive as compared to Section 128 and 129. The ingredients of this Section are:

- The accused knowingly aids or attempts to aid, rescue, harbour or conceal such prisoner.
- Such a prisoner should be in lawful custody.
- The act or omission should be done intentionally or knowingly.

Punishment under this Section is life imprisonment or imprisonment up to ten years, and a fine.

Sedition

Section 124A deals with sedition. Under this Section, any person who by:

- Words, written or spoken; or
- Signs; or
- Visible representations; or
- Otherwise;

Brings or even attempts to bring hatred or excites disaffection (including the feeling of enmity and disloyalty) towards the Government of India, is punishable with:

- Life imprisonment along with a fine in certain cases; or
- Imprisonment for up to three years along with a fine in certain cases; or
- Fine.

Essential Ingredients of Section 124A

Words, Sign, Visible Representation or Otherwise

Sedition can be made in various ways- by words, written or spoken, by signs, or by visible representation. Seditious deeds include music, publications, performances (films and puppets), sculptures, photographs, cartoons, paintings and any other method.

Under sedition, it is immaterial whether the seditious articles are being used by the actual authors or not. The editor, publisher or printer is equally liable as the author in such a case. Thus, whoever wrote or used it for the purpose of exciting disaffection is guilty of sedition. In case, the accused pleads that he did not authorise the article, then the burden of proof lies with the accused. Moreover, if the accused is unaware of the contents of the published article or paper then he is not guilty under this Section as the intention is absent.

Sedition doesn't necessarily consist of written or spoken words but can also be of other kinds such as signs and by visual representation. For instance, it can be evidenced by a woodcut or engraving of any kind.

Brings or Attempts to Bring into Hatred or Contempt

The expression 'brings or attempts to bring into hatred or contempt' attempts to not interfere or interfere less with the freedom of speech.

For instance, the writers in the public press are not allowed to write or get indulged in improper or dishonest motives. A writer when publishes an article with a calm, unsentimental and dispassionate view, and discusses his little feelings that may or may not cause a man to think, are not considered to be seditious. However, if the article goes beyond and contains improper, corrupt and dishonest motive, then such an article is considered to be seditious.

Excite Disaffection

The term 'disaffection' includes disloyalty and all other feelings of enmity. In order to amount to sedition, an act of disaffection must be excited among the people. In other words, the feeling of disaffection must be stirred among the people of the State.

As per this Section, the disaffection can be excited in several ways, such as:

- Poem,
- Allegory,
- Historical or philosophical discussion,
- Drama, etc.

In order to amount to sedition, the publication is necessary. The publication can be of any kind and manner, including posts.

Government Established by Law

This expression refers to the existing political system which includes the ruling authority and its representatives. In other words, it refers to the people who are authorised by law to administer the Executive Government in any part of India. It includes the State Government as well as the Central Government.

An offence to come under this section must be directed toward the Government of India.

The following situations do not fall under the umbrella of sedition:

- Speech urging strike against businessmen or mill owners and not Government.
- Discouraging recruiting.

- Pursuing people to not pay land revenue.

Thus, sedition means attacks on the established Government or the Sovereign. An attack on the justice administration does not fall under the ambit of Section 124A.

Expressing Disapprobation – Explanations 2 and 3

The phrase 'expressing disapprobation' simply refers to expressing disapproval. A man can be liked by someone, however, such liking doesn't necessarily amount to approval of that man's sentiments or actions. Explanation 2 and 3 give a plethora of options for people to make comments expressing disapprobation of the measures of the Government. It is done in order to obtain their alteration by lawful means or other Government actions. All this can be done without exciting hatred or exciting disapprobation of the Government.

Explanation 2 and 3 have a limited scope and are strictly defined. Thus, the objective of these explanations is to protect bonafide criticism of public measures as well as their institutions, in order to improve. It is the right of the free press in a free country to accelerate changes in policy by criticising such measures. Nowadays, the freedom given to media is much more when compared to earlier years or pre-independence.

For instance, an article in the newspaper is not seditious when it attacks a proposed bill or the policy of the ministry, however, an attack on the ministry would amount to sedition.

Constitutional Validity of Section 124A

The provisions of this Section are not considered to be unconstitutional as being violative of the fundamental right of freedom of speech and expression under Article 19(1)(a) of the Indian Constitution.

Ram Nandan v. State of U.P. was the first case in which the constitutional validity of sedition was questioned. The Allahabad High Court held that the Section imposed a restriction on freedom of speech and was not considered to be in the interest of the general public. Therefore, this Section was considered as *ultra vires* to the constitution. However, it was overruled in the case of *Kedar Nath Das v. State of Bihar*. In this case, it was held that this Section would only limit the acts involving an intention to create a disturbance of law

and order or enticement of violence. Thus, the Supreme Court held this Section *intra vires*.

Proposals for Reform

India is the largest democracy in the world and the right to freedom of speech and expression is an essential element of a democracy. A mere expression or thought about the government policy doesn't amount to sedition. Therefore, many proposals for reform have been made throughout the years.

Many proposals were made by the Law Commission in this regard:

- In 1968, that is, in 39th Law Commission Report, the idea of repealing this Section was rejected.
- In 1971, that is, in 42nd Law Commission Report, the scope of the Section was suggested to be expanded and include the Constitution, the legislature, the judiciary and the Government established by law.
- In August 2018, the Law Commission of India published a consultation paper suggesting to repeal Section 124A of the Indian Penal Code that deals with sedition.
- Recently the Law Commission of India has suggested in a consultation paper to invoke Section 124A to criminalise only those acts which are committed with the intention to disrupt public order or to overthrow the Government with violence and other illegal means.

Thus, it is unlikely that the Section would be scrapped sooner or later. However, the Section should not be misused.

Conclusion

Offences against the State play a crucial role in regulating and maintaining public order. The people of the State have a right to criticise the policies of the Government, however, they should not misuse their liberty to cause harm to the people around them or the Government. Waging war against India and against power is a punishable offence. The law also protects the high officials, such as the President, the Governor of every State etc. in case of assault against them. Most importantly, sedition is considered to be one of the most dangerous cognizable offences against the State. Thus, it can be concluded that the State needs to restrict the freedom of the people of the country for the betterment of the State.

UNIT-4

Culpable Homicide
Murder (Ss 299-309)
Hurt & Grievous hurt (Ss 319-338)
Criminal Force & Assault & Outraging the modesty of a woman (Ss 349-358)
Kidnapping & Abduction (Ss 359-374)
Sexual Offences (Ss 375-377)
Crime against Marriage (Ss 493-498A)

Culpable Homicide and Murder

Culpable Homicide -The word homicide is derived from two Latin words - homo and cido. Homo means human and cido means killing by a human. Homicide means killing of a human being by another human being. A homicide can be lawful or unlawful. Lawful homicide includes situations where a person who has caused the death of another cannot be blamed for his death. For example, in exercising the right of private defence or in other situations explained in Chapter IV of Indian Penal Code covering General Exceptions.

Unlawful homicide means where the killing of another human is not approved or justified by law. Culpable Homicide is in this category. Culpable means blame worthy. Thus, Culpable Homicide means killing of a human being by another human being in a blameworthy or criminal manner. Culpable Homicide is defined in Section 299 of the IPC. If you study the definition you shall find that the definition stresses both on the physical and mental element, where an act is committed which is done with the intention of causing death, or with such knowledge that the act which he or she is going to undertake is going to kill someone, or causes such bodily or physical injury which will lead to a person's death. Also read the explanations to the Section which are actually clarifications to the Section.

Explanation One: Tells us that where knowingly a person accelerates someone's death in such as situation it is considered culpable homicide. Example: Y is diagnosed with terminal illness and needs certain drugs to live from day to day. X confines him in a room and denies him his medication as a result of which Y dies. X is guilty of Culpable Homicide. Explanation Two: Tells us that where a person inflicts such bodily injury on someone and the latter dies because of such injury, it will not be an excuse that if the person

had received medical attention his life would have been saved. Example: Ganda mows over a pedestrian deliberately. The pedestrian bleeds on the road and no one helps him and he dies as a result of Ganda's actions. Ganda cannot take the excuse that if the pedestrian had taken medical treatment at the right time, the pedestrian would have lived and there would be no culpable homicide Explanation Three: Tells us that abortion does not constitute culpable homicide. However if any part of the child is outside the womb, and the child is then killed, it constitutes culpable homicide. A word of caution, however, infanticide and abortion on the basis that the womb is bearing a female child is a criminal offence in India. Culpable Homicide can happen by commission or by omission, i.e. by an overt or conscious act or failure to act, by which a person is, deprived of his/her life. Now let us study the ingredients in detail. Ingredients a) Acts The Act should be of such a nature that it would put to peril someone's life or damage someone's life to such an extent that the person would die. In most cases the act would involve a high degree of violence against the person. Instances such stabbing a person in vital organs, shooting someone at point blank range, administering poison would include instances which would constitute culpable homicide. However this is not always the rule and there are exceptions to this rule. Remember the section says "causes death by doing an act", so given the special circumstances certain acts which may not involve extreme degree of violence, but may be sufficient to cause someone's death. For example, starving someone may not require violence in the normal usage of the term, but may cause a person' s death. The Section also covers administration of bodily injury which is "likely" to cause death. Causing death: The very first test to decide whether a particular act or omission would be covered by the definition of culpable homicide is to verify whether the act done by an accused has ‘caused’ the

death of another person.

‘Death’ means the death of a human being. But the word ‘death’ does not include the death of an unborn child. It is immaterial if the person whose death has been caused not the very person whom the accused intended to kill. The offence is complete as soon as any person is killed. By doing an act: Death may be caused in a number of ways; such as by poisoning, starving, striking, drowning or communicating some shocking news and by a hundred different ways. ‘Act’, here includes ‘illegal omission’ also. The word ‘illegal’ is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action. Therefore, death caused by illegal omission will amount to culpable homicide. b) Intention Sometimes one is required to do certain dangerous acts, even in everyday life where there is a risk of death or causing hurt to such an extent that a person may die. Mundane things such as driving possess the potential of taking someone's life. The question however is was the act committed with the "intention of causing death". Thus where you push someone for a joke and the person falls on his head has a brain injury and dies, there was no "intention of causingdeath" but when you pushed the person deliberately with the idea that the person falls and dies, in that case the act is with the "intention of causing death" To prove intention in acts where there is bodily injury is "likely to cause death", the act has to be can be of two types. Firstly where bodily injury itself is done in a fashion which cause death.For example bludgeoning someone on the head repeatedly with a blunt instrument. Secondly in situations where there are injuries and there are intervening events between the injuries and the death provided the delay is not so blatant, one needs to prove that injuries were administered with the intention of causing death. c) Knowledge Knowledge is different from intention to the extent that where a person may not have the

intention to commit an act which kills, he knows that the act which he commits will take someone's life or is likely to take someone's life will be considered having the "knowledge that he is likely by such act to cause death". For example, a doctor uses an infected syringe knowingly on a patient thereby infecting him with a terminal disease. The act by itself will not cause death, but the doctor has knowledge that his actions will lead to someone's death. Culpable Homicide Amounting to Murder Section 300 deals with Culpable Homicide amounting to murder. In other words the Section states that culpable homicide is murder in certain situations. This makes us come to two conclusions, namely: For an act to be classified as murder it must first meet all the conditions of culpable homicide. Secondly, all acts of murder are culpable homicide, but all acts of culpable homicides are not murder. Pictorially speaking:- Now, let us study the situations in which culpable homicide does amount to murder.

Section 300 states, that except for situations states (which do not concern us as of now) culpable homicide is murder in four situations: i. When an act is done with the intention of causing death The degree of intention required is very high for murder. There must be intention present and the intention must be to cause the death of the person, not only harm or grievous hurt without the intention to cause death. Instances would include: • Shooting someone at point blank range. • Stabbing someone in the hurt • Hanging someone by the neck till he dies • Strapping a bomb on someone • Administering poison to someone. Remember the act must be accompanied with the intention to "cause death." ii. Inflicting of bodily injury which the offender knows is likely to cause death The second situation covers instances where the offender has special knowledge about the victim's condition and causes harm in such a manner which causes death of the person. Look at this part of Section 300

very carefully. It states that the offender "knows likely to be the cause of death" Instances would include: • Sundar is a hemophilic patient. Bandar knows this and cuts him in multiple places, which if carried out on an ordinary person would not have cost him his life. • Lolo is suffering from jaundice. Bebo knows this and slips in alcohol in Lolo's medicine in order to rupture Lolo's liver so Lolo dies. Lolo dies as a result of consuming the adulterated medicine. iii. Bodily injury which causes death in the ordinary course of nature These situations cover such acts where there is bodily injury which in ordinary sequence of events leads to the death of the person. Read the part of the section carefully. The section actually has two conditions _ Firstly, the bodily injury inflicted is inflicted with the intention of causing death of the person on whom it is inflicted. _ Secondly, the bodily injury caused in the ordinary course of events leads to death of someone. An instance of the same would be: • Musharraf wants Sharif dead. In order to kill Musharraf picks up a hockey stick and repeatedly hits him on the head. Sharif dies as a result of the injury. iv. Commission of an imminently dangerous act without any legitimate reason which would cause death or bodily injury which would cause death. This head covers the commission of those acts which are so imminently dangerous which when committed would cause death or bodily injury which would result in death of a person and that such an act is done without any lawful excuse. Cases under this head have three requirements _ Commission of an inherently dangerous act _ the knowledge that the act in all probability will cause death or bodily injury which will cause death and _ the act is done without any excuse (the excuse must be lawful or legitimate excuse) Instances would include: • Throwing a high intensity bomb in a crowded public place. • Thrown loaded cast iron boxes from a multi storied building in a busy thoroughfare. Culpable Homicide Not

Amounting to Murder When not murder, culpable homicide is a crime by itself. As stated above a situation must first become culpable homicide before it becomes murder. Though dealt with in detail in the following section, the basic difference between culpable homicide and murder is the level of intention involved. Where there is a very high level of intention involved the act usually falls under murder. In addition to this general understanding (that acts when not murder are culpable homicide) the IPC itself lists certain cases when death is caused to be read as culpable homicide not amounting to murder covers five specific situations: i. Acts under grave and sudden provocation When a person loosesself control on account of certain situation and causes the death of some person. The provocation must be grave, it must be sudden, i.e. there must be no scope for pre meditation and thirdly, it must not be self invited so as to use it as an excuse to deprive a person of his/her life. An example of this situation will be: A has an affair with S. A's husband returns home to find A in a compromising position with S. Seeing his wife in such a position and without further thinking he reaches out for a knife and kills S. S will have committed culpable homicide not amounting to murder. ii. When Private Defence is exceeded in good faith In exercising private defence either with respect to property or person, if a person accidently exceeds his or her right in good faith or in wrong judgment and the act causes the death of a person, the act is culpable homicide and not murder iii. Exceeding the Ambit of Discharging Public Duties When an officer or public servant exceeds his or her mandate of duties or authority given to him or an officer or public servant assisting him exceeds the same, it is considered culpable homicide not amounting to murder. Example: Inspector Chulbul was given instructions to capture Gabbar but not shoot him. When the transport convoy broke down and Gabbar moved from his seat Chulbul thought he is going to escape and

shot him. At best Chulbul would have committed culpable homicide not amounting to murder. iv. When death is caused in sudden fight or heat of passion upon a sudden quarrel Similar to the first situation, when at times fight gets out of hand and a person hits someone or injures a person in such a fashion that may cause death of a person. v. When death is caused of a person above eighteen years of age who voluntarily took the risk of death When death is caused in a situation where a person has by his own consent put himself to risk the same would be culpable homicide and not murder. An example of this illustration would be: Bhola instigates Bobby to commit suicide. Bobby after independently considering the suggestion and without any pressure from Bhola commits suicide. If Bhola was an adult , then Bhola would be guilty for assisting in culpable homicide.

Rash and Negligent Act A rash or negligent act causing death or grievous hurt is a punishable offence under the Indian Penal Code (IPC). Section 304-A and Section 338 of the IPC deals with rash or negligent act leading to death or grievous hurt respectively. In order to convict a person under these provisions it must be proved that the rash or negligent act was the direct or proximate cause of death or grievous hurt. The expression rash or negligent has not been defined as such but has acquired a definite comprehendible meaning because of its frequent interpretations by the Courts of law. S. 304A - “Whoever causes the death of any person by doing any rash or negligent act notamounting 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 304-A was added to the IPC by the Amendment Act, of 1870. This supplies an omission providing for the offence of manslaughter by negligence which was originally included in Draft Code, but omitted from the Code when it was finally enacted in 1860. To impose criminal liability under

Section 304-A, it is necessary that the death should have been the direct result of a rash and negligent act of the accused and that the act must be the proximate and efficient cause without the intervention of another's negligence. It must be the causacausans (immediate or operating cause); it is not enough that it may have been the causa sine qua non (a necessary or inevitable cause). That is to say, there must be a direct nexus between the death of a person and rash or negligent act of the accused. The provisions of Section 304-A apply to cases where there is no intention to cause death, and no knowledge that the act done in all probability would cause death. Section 304-A deals with homicide by negligence. It does not apply to a case in which there has been the voluntary commission of an offence against the person. The doing of a rash or negligent act, which causes death, is the essence of Section 304-A. There is distinction between a rash act and a negligent act. 'Rashness' means an act done with the consciousness of a risk that evil consequences will follow. (It is an act done with the knowledge that evil consequence will follow but with the hope that it will not). A rash act implies an act done by a person with recklessness or indifference as to its consequences. The term 'negligence' means 'breach of a legal duty to take care, which results in injury/damage undesired by the wrong doer. The term 'negligence' as used in Section 304-A does not mean mere carelessness. A negligent act refers to an act done by a person without taking sufficient precaution or reasonable precautions to avoid its probable mischievous or illegal consequences. It implies an omission to do something, which a reasonable man, in the given circumstances, would not do. Rashness is a higher degree of negligence. The rashness or negligence must be of such nature so as to be termed as a criminal act of negligence or rashness. Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is

so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, t was the imperative duty of the accused person to have adopted. Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happening. The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that, if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumstances. A rash act primarily is an overhasty act. Negligence is a breach of a duty caused by omission to do something which a reasonable man, guided by the those considerations which ordinarily regulate the conduct of human affairs would do. The expression ‘not amounting to culpable homicide’ in Section 304-A indicates the offences outside the range of Sections 299 and 300, and obviously contemplates those cases into which neither intention nor knowledge enters. It indicates that intentionally on knowingly inflicted violence, directly and wilfully caused, is excluded from the implication of Section 304-A. Section 304-A specifically deals with the rash or negligent acts which cause death but fall short of culpable homicide of either description. Where A takes up a gun not knowing

it is loaded, points in sport at B and pulls the trigger, B is shot dead. A would be liable for causing the death negligently under Section 304-A. Contributory negligence is no defence to a criminal charge i.e., where the death of a person is caused partly by the negligence of the accused and partly by his own negligence. If the accused is charged with contributing to the death of the deceased by his negligence it matters not whether the deceased was deaf, or drunk, or negligent, or in part contributed to his owndeath. In order to impose criminal liability under Section 304-A, it is essential to establish that death is the direct result of the rash or negligent act of the accused. Generally, Section 304-A is taken into consideration in the cases of road accidents, accidents in factories, etc. It is the duty of the driver to drive the vehicle in a cautious way. Where a driver drives the vehicle in an abnormal manner and cause the death of persons, he is liable under Section 304-A. Where a factory owner neglects the maintenance of the machine, and causes the death of a person, he shall be held liable under Section 304-A. However, Section 80 of the IPC provides, "nothing is an offence which is done by accident or misfortune and without any criminal knowledge or intention in the doing of a lawful act in a lawful manner by a lawful means and with proper care and caution'. It is absence of such proper care and caution, which is required of a reasonable man in doing an act, which is made punishable under Section 304-A. To render a person liable for neglect of duty it must be such a degree of culpability as to amount to gross negligence on his part. It is not every little slip or mistake that will make a man so liable. In Shivder Singh v. State 1 a passenger was standing on the foot-board of a bus to the knowledge of the driver and even so the driver negotiated a sharp turn without slowing down. The passenger fell off to his death. The driver was held to be guilty under Section 304-A. In Akbar AH v. R [(1936) 12 Luck 336], the accused, a motor driver, ran over and killed a

woman, but there was no rashness or negligence on the part of the driver so far as his use of the road or manner of driving was concerned, it was held that the accused could not be convicted under Section 304-A on the ground that the brakes of the lorry were not in perfect order and that the lorry carried no horn. The ‘rash or negligent act’ referred to in Section 304-A means the act which is the immediate cause of death and not any act or omission which can at most be said to be a remote cause of death. 1 [(1995) 2 Cr.LJ 2142 (Del.)], In Tapti Prasad v. Emperor 2 the accused was the Assistant Station Master on duty. There was a collision of passenger train and goods train caused by the signalling of the accused. The collision claimed many lives and the accused were convicted under Section 304-A and Section 101 of Railway Act. In Ramava v. R 3 the accused administered to her husband a deadly poison (arsenious oxide) believing it to be a love potion in order to stimulate his affection for her but the husband died. She was convicted under Section 304-A considering the act of the accused was rash and negligent. In Batdevji v. State of Gujarat 4 the accused had run over the deceased while the deceased was trying to cross over the road. The accused did not attempt to save the deceased by swerving to the other side, when there was sufficient space. This was a result of his rash and negligent driving. His conviction under Section 304-A was upheld. In medical field, a doctor is not criminally liable for a patient’s death, unless his negligence or incompetence passes beyond a mere matter of competence and shows such a disregard for life and safety, as to amount to a crime against the State. In Juggan Khan v. State of Madhya Pradesh X5 the accused was a registered homeopath who had administered to a patient suffering from guinea worm, 24 drops of stramonium and a leaf of dathura without properly studying its effect. The patient died as a result of the medicine given by the accused. The accused was convicted under Section

304-A as he has given poisonous medicine without being aware of its effects by his rash and negligent act. In Jacob Mathew v. State of Punjab6], the Supreme Court formulated the following guidelines, which should govern the prosecution of doctors for offences of criminal rashness or criminal negligence: i) Negligence becomes actionable on accident of injury resulting from the act or omission amounting to negligence attributable to that person sued. The essential components of negligence are three; 'duty', 'breach' and 'resulting damage'; 2 [15 ALJ 590], 3 [(1915) 17 Bom LR 217], 4 [AIR 1979 SC 13 27], 5 [AIR 1965 SC 831], 6 [(2005) 6 SCC 1 ii) A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment is also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed; iii) When the charge of negligence arises out of failure to use some particular equivalent, the charge would fail it the equipment were not generally available at the time (that is at the time of the incident) at which it is suggested it should have been used; iv) A professional may be held liable for negligence on one of the two findings, viz., either he was not possessed of the requisite skill which he professes to have possessed, or he did not exercise, with reasonable competence in the given case, which he did possess; Hurt and Grievous Hurt In normal sense, hurt means to cause bodily injury and/or pain to another person. IPC defines Hurt as follows - Section 319 - Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt. Based on this, the essential ingredients of Hurt are - i. Bodily pain,

disease or infirmity must be caused - Bodily pain, except such slight harm for which nobody would complain, is hurt. For example, pricking a person with pointed object like a needle or punching somebody in the face, or pulling a woman's hair. The duration of the pain is immaterial. Infirmity means when any body organ is not able to function normally. It can be temporary or permanent. It also includes state of mind such as hysteria or terror. ii. It should be caused due to a voluntary act of the accused. The expression 'bodily pain' means that the pain must be physical as opposed to any mental pain. So mentally or emotionally hurting somebody will not be 'hurt' within the meaning of Section 319. However, in order to come within this section, it is not necessary that any visible injury should be caused on the victim. All that the section contemplates is the causing of bodily pain. The degree or severity of the pain is not a material factor to decide whether Section 319 will apply or not. The duration of pain is immaterial. Pulling a woman by the hair would amount to hurt. 'Causing disease' means communicating a disease to another person. However, the communication of the disease must be done by contact. Causing of nervous shock or mental derangement by some voluntary act of the offender is covered by Section 319. The duration of the state of mental infirmity is immaterial. 'Infirmity' means inability of an organ to perform its normal function which may either be temporary or permanent. It denotes an unsound or unhealthy state of the body or mind, such as a state of temporary impairment or hysteria or terror. 'Infirmity' denotes an unsound or unhealthy state of the body. This infirmity may be a result of a disease or as a result of consumption of some poisonous, deleterious drug or alcohol. As per Section 319, the hurt must be caused to 'any person'. This means 'any person' other than the person causing the hurt. The causing of bodily pain must be caused by direct application of force to the body is clearly erroneous

as there is nothing in Section 319 to suggest that the hurt should be caused by direct physical contact between the accused and his victim. Where the direct result of an act is the causing of bodily pain, it is hurt whatever be the means employed to cause it. Where there is no intention to cause death or bodily injury as is likely to cause death or there is no knowledge that death is likely to be caused from the harm inflicted, and death is caused, the accused would be guilty of hurt only if the injury caused was not serious. In Marana Goundan v. R 13the accused demanded money from the deceased which the latter owed him. The deceased promised to pay later. Thereafter the accused kicked him on the abdomen and the deceased collapsed and died. The accused was held guilty of causing hurt as it could not be said that he intended or knew that kicking on the abdomen was likely to endanger life. In Naga Shevepo v. R [(1883) SJLB 179] the accused struck a man one blow on the head with a bamboo yoke and the injured man died afterwards in a hospital. He was guilty of an offence of causing hurt under Section 319 because there was no intention to cause death and the blow in itself was not of such a nature as was likely to cause death.itself was not of such a nature as was In ArjunaSahu v. State [31 Cut. L.T. 831] it was observed that a push on the neck is likely to cause some bodily pain within the meaning of Section 319 though in some cases it may be so slight. Self-inflicted hurt does not come within the purview of Section 319. Section 321 elaborates on what amounts to voluntarily causing hurt When there is no intention of causing death or bodily injury as is likely to cause death, and there is no knowledge that inflicting such injury would cause death, the accused would be guilty of hurt if the injury is not serious. In NgaShwe Po's case 1883, the accused struck a man one blow on the head with a bamboo yoke and the injured man died, primarily due to excessive opium administered by his friends to alleviate

pain. He was held guilty under this section. A physical contact is not necessary. Thus, a when an accused gave food mixed with dhatura and caused poisoning, he was held guilty of Hurt. The term ‘Simple hurt’ is used nowhere in the IPC. However, to differentiate ordinary hurt covered by Sections 319, 321 & 323, from that of grievous hurt, the expression ‘simple hurt’ has come into popular use. Grievous Hurt Section 320 lays down the following kinds of hurt only which are designated as "grievous": (1) Emasculation i.e., depriving a person of masculine vigour; 13[AIR 1941 Mad. 560] (2) Permanent privation of the sight of either eye; (3) Permanent privation of hearing of either ear; (4) Privation of any member of joint (5) Destruction or permanent impairing of the powers of any member or joint: (6) Permanent disfiguration of the head or face (7) Fracture or dislocation of bone or tooth; and (8) Any hurt which endangers life or which causes the sufferer to be during the space of 20 days in severe bodily pain, or unable to follow his ordinary pursuits—(seven years, and fine). It could not be said that the accused intended or knew that the kicking on the abdomen was likely to endanger life and consequently the accused was guilty of causing hurt only. It was held in similar circumstances in ShaheRai (3 Cal. 623) that the accused had committed hurt on the infant under the circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt. The offence committed is neither of grievous hurt, not of culpable homicide, but of simple hurt. (1917 Bom. 259). Hurt (Section – 319 of IPC) Grievous hurt (Section – 320 of IPC) Whoever causes The following eight kinds of hurt are i) bodily pain , designated as grievous ------ ii) disease or 1) Emasculation . iii)infirmity 2) Permanent privation of the sight of either eye . to any person is said to cause hurt . 3) Permanent privation of the hearing of either ear. 4) Privation of any member or joint . 5) Destruction or permanent impairing of

the powers of any member or joint . c. Criminal force and assault Criminal force 350. Criminal force.—Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other. Illustrations (a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and hedoes this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has there-fore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z. (b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here Z has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z. (c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z. 6) Permanent disfiguration of the head or face . 7) fracture or dislocation of a bone or tooth. 8) Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain , or unable to follow his ordinary pursuits . (d) A

intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z. (e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact withZ, or Z's clothes. A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z. (f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her. (g) Z is bathing, A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into con-tact with Z, or with other water so situated that such contact must affect Z's sense of feeling; A has therefore intentionally used force to Z; and if he has done this withoutZ's consent intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force. (h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z. According to Section 350 of the Code, force becomes criminal (i) when it is used without consent and in order to the committing of an offence; or (ii) when it is intentionally used to cause injury, fear or annoyance to another to whom the force is used. The ingredients of

Section 350 of the Code are: i) The intentional use of the force to any person; ii) Such force must have been used without the person's consent; iii) The force must have been used: a) In order to the committing of an offence; or b) With the intention to cause, or knowing it to be likely that it will cause, injury, fear or annoyance to the person to whom it is used. The term 'battery' of English law is included in 'Criminal force'. 'Battery' is the actual and intentional application of any physical force of an adverse nature to the person of another without his consent, or even with his consent, if it is obtained by fraud, or the consent is unlawful, as in the case of a prize-fighting. The criminal force may be very slight as not amounting to an offence as per Section 95 of the Code. Its definition is very wide so as to include force of almost every description of which a person may become an ultimate object. Criminal force is the exercise of one's energy upon another human being and it may be exercised directly or indirectly. So if A raises his stick at B and the latter moves away, A uses force within the meaning of Section 350. Similarly, if a person shouts, cries and calls a dog or any other animal and it moves in consequence, it would amount to the use of force. In the use of criminal force no bodily injury or hurt need be caused. Where A spits over B, A would be liable for using criminal force against B because spitting must have caused annoyance to B. Similarly if A removes the veil of a lady he would be guilty under Section 350 of the Code. The word 'intentional' excludes all involuntary, accidental or even negligent acts. An attendant at a bath, who from pure carelessness turns on the wrong tap and causes boiling water to fall on another, could not be convicted for the use of criminal force. The word 'consent' should be taken as defined in Section 90, IPC. There is some difference between doing an act 'without one's consent' and 'against his will'. The latter involves active mental opposition to the act.

According to Mayne, “where it is an element of an offence that the act should have been done without the consent of the person affected by it, some evidence must be offered that the act was done to him against his will or without his consent”. The various illustrations under Section 350 exemplify the different ingredients of the definition of force given in Section 349. Of these illustrations, illustration (a) exemplifies motion in Section 349; illustration (b) ‘change of motion’; illustration (c) ‘cessation of motion; illustrations (d), (e), (f), (g) and (h) ‘cause to any substance any such motion’. Clause (1)of Section 349 is illustrated by illustrations (c), (d), (e), (f) and (g); clause (2) of Section 349 is illustrated by illustration (a); and clause (3) of Section 349 is illustrated by illustrations(b) and (h). Assault 351. Assault.—Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault. Illustrations (a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z, A has committed an assault. (b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z. (c) A takes up a stick, saying to Z, “I will give you a beating”. Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault. As per Tomlins Law

Dictionary, assault is “An attempt with force and violence, to do corporal hurt to another as by striking at him with or without a weapon. But no words whatsoever, be they ever so provoking can amount to an assault, notwithstanding the many ancient opinions to the contrary”. An assault is (a) an attempt unlawfully to apply any of the least actual force to the person of another directly or indirectly; (b) the act of using a gesture towards another, giving him reasonable grounds to believe that the person using that gesture meant to apply such actual force to his person as aforesaid; (c) the act of depriving another of his liberty, in either case, without the consent of the person assaulted, or with such consent if it is obtained by fraud. The essential ingredients of an assault are: 1) That the accused should make a gesture or preparation to use criminal force; 2) Such gesture or preparation should be made in the presence of the person in respect of whom it is made; 3) There should be intention or knowledge on the part of the accused that such gesture or preparation would cause apprehension in the mind of the victim that criminal force would be used against him; 4) Such gesture or preparation has actually caused apprehension in the mind of the victim, of use of criminal force against him. Assault is generally understood to mean the use of criminal force against a person, causing some bodily injury or pain. But, legally, ‘assault’ denotes the preparatory acts which cause apprehension of use of criminal force against the person. Assault falls short of actual use of criminal force. An assault is then nothing more than a threat of violence exhibiting an intention to use criminal force accompanied with present ability to effect the purpose. According to Section 351 of the Code, the mere gesture or preparation with the intention of knowledge that it is likely to cause apprehension in the mind of the victim, amounts to an offence of assault. The explanation to Section 351 provides that mere words do not amount to

assault, unless the words are used in aid of the gesture or preparation which amounts to assault. The apprehension of the use of criminal force must be from the person making the gesture or preparation, but if it arises from some other person it would not be assault on the part of that person, but from somebody else, it does not amount to assault on the part of that person. The following have been held to be instances of assault: i) Lifting one's lota or lathi ii) Throwing brick into another's house iii) Fetching a sword and advancing with it towards the victim iv) Pointing of a gun, whether loaded or unloaded, at a person at a short distance v) Advancing with a threatening attitude to strike blows. Though mere preparation to commit a crime is not punishable, yet preparation with the intention specified in this section amounts to an assault. Another essential requirement of assault is that the person threatened should be present and near enough to apprehend danger. At the same time there must have been present ability in the assailant to give effect to his words or gestures. If a person standing in the compartment of a running train, makes threatening gesture at a person standing on the station platform, the gesture will not amount to assault, for the person has no present ability to effectuate his purpose. The question whether a particular act amounts to an assault or not depends on whether the act has caused reasonable apprehension in the mind of the person that criminal force was imminent. The words or the action should not be threat of assault at some future point in time. The apprehension of use of criminal force against the person should be in the present and immediate. The gist of the offence of assault is the intention or knowledge that the gesture or preparations made by the accused would caused such effect upon the mind of another that he would apprehend that criminal force was about to be used against him. Illustration (b) to Section 351 exemplifies that although mere preparation to commit a

crime is not punishable yet preparation with intention specified in Section 351 amounts to assault. The offence under Section 351 is non-cognizable, bailable, compoundable, and triable by any Magistrate. c. Wrongful Restraint and Wrongful confinement Wrongful Restraint Section 339. Wrongful restraint Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has right to proceed, is said wrongfully to restrain that person. Wrongful restraint means preventing a person from going to a place where he has a right to go. In wrongful confinement, a person is kept within certain limits out of which he wishes to go and has a right to go. In wrongful restraint, a person is prevented from proceeding in some particular direction though free to go elsewhere. In wrongful confinement, there is restraint from proceeding in all directions beyond a certain area. One may even be wrongfully confined in one's own country where by a threat issued to a person prevents him from leaving the shores of his land. Object - The object of this section is to protect the freedom of a person to utilize his right to pass in his. The slightest unlawful obstruction is deemed as wrongful restraint. Physical obstruction is not necessary always. Even by mere words constitute offence under this section. The main ingredient of this section is that when a person obstructs another by causing it to appear to that other that it is impossible difficult or dangerous to proceeds as well as by causing it actually to be impossible, difficult or dangerous for that to proceeds. Ingredients: 1. An obstruction. 2. Obstruction prevented complainant from proceeding in any direction. Obstruction:- Obstruction mans physical obstruction, though it may cause by physical force or by the use of menaces or threats. When such obstruction is wrongful it becomes the wrongful restraint. For a wrongful restraint it is necessary that one person must obstruct another voluntarily. In simple word it means

keeping a person out of the place where his wishes to, and has a right to be. This offence is completed if one's freedom of movement is suspended by an act of another done voluntarily. Restraint necessarily implies abridgment of the liberty of a person against his will. What is required under this section is obstruction to free movement of a person, the method used for such obstruction is immaterial. Use of physical force for causing such obstruction is not necessary. Normally a verbal prohibition or remonstrance does not amount to obstruction, but in certain circumstances it may be caused by threat or by mere words. Effect of such word upon the mind of the person obstructed is more important than the method. Obstruction of personal liberty: Personal liberty of a person must be obstructed. A person means a human being, here the question arises whether a child of a tender age who cannot walk of his own legs could also be the subject of restraint was raised in MahendraNathChakarvarty v. Emperor. It was held that the section is not confined to only such person who can walk on his own legs or can move by physical means within his own power. It was further said that if only those who can move by physical means within their own power are to be treated as person who wishes to proceed then the position would become absurd in case of paralytic or sick who on account of his sickness cannot move. Another points that needs our attention here is whether obstruction to vehicle seated with passengers would amount to wrongful restraint or not. An interesting judgment of our Bombay High Court in Emperor v. Ramlala : "Where, therefore a driver of a bus makes his bus stand across a road in such a manner, as to prevent another bus coming from behind to proceed further, he is guilty of an offence under Sec. 341 of the Penal Code of wrongfully restraining the driver and passengers of another bus". "It is absurd to say that because the driver and the passengers of the other bus could have got down

from that bus and walked away in different directions, or even gone in that bus to different destinations, in reverse directions, there was therefore no wrongful restraint" is the judgment of our High Court which is applicable to our busmen who suddenly park the buses across the roads showing their protest on some issues. IllustrationsI. A was on the roof of a house. B removes the ladder and thereby detains A on the roof. II. A and B were co-ower of a well. A prevented B from taking out water from the well . Wrongful confinement Section 340.Wrongful confinement. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person. Object - The object of this section is to protect the freedom of a person where his personal liberty has totally suspended or abolish, by voluntarily act done by another. Wrongful confinement is aggravated form of wrongful restraint. In wrongful restraint, the person restrained is obstructed to proceed in a direction in which he has right to proceed. However alternative ways are always opened in wrongful restraint. But in wrongful confinement, the person restrained is confined in some circumscribed limits. In wrongful confinement, restrained person is not allowed to move anywhere. He has no alternative to move in any other way. Ingredients: A. The person must be wrongfully restrained. B. The restrained person must be such as to prevent the person to proceed beyond some circumscribing limits. 1) The person must be wrongfully restrained: Before satisfying other conditions it is necessary that the conditions for a wrongful restrained must be satisfied. (All the ingredients of wrongful restrain can also be mentioned here). 2) The restrained person must be such as to prevent the person to proceed beyond some circumscribing limits: It is necessary that the person confined must not have any option to proceed in any direction.

Circumscribing limits means some type of boundary or some type of ambit in which a person has been locked with a view to obstruct him to proceed in any way. Restraint may be physical or otherwise: It is not necessary that the physical restraint must be there or any force is not necessary to use to obstruct the person. A person can also be restraint or confined by use of moral force as well as direction. For e.g. when any person is directed to stand at a particular place and warned not to move anywhere, then this may be said to be confinement. Wrongful confinement is a kind of wrongful restraint, in which a person kept within the limits out which he wishes to go, and has right to go.

UNIT-5

Theft & Extortion
Robbery & Dacoity
Forgery
Criminal Misappropriation and
Breach of trust
Cheating & Mischief
Forgery & Criminal Trespass (Ss 378-492)

Theft - Section 378 Indian Penal Code (Hereinafter referred as IPC) Statutory Definition- Whoever, intending to take dishonestly any movable property out of the possession of any person without that persons consent, moves that property in order to such taking is said to commit theft. - This section defines the offense of theft. - It is clear from the definition that to constitute the offence of theft, the following elements must be satisfied- (1) The intention of the offender must be to take the property dishonestly. (2) The property must be movable. (3) The property must be in the possession of some person. (4) The property must be taken without the consent of its possessor. (5) The property must be moved in order to such taking. 2 - Apart from theseThere are five explanations attached to this section to clarify the specific words used in section. - The first of which states that what is movable property for the purpose of this section. It states that anything attached to the earth is not movable property and is therefore, not the subject of theft; But as soon as it is severed from the earth, it becomes capable of being the subject of theft. - The second explanation says that a moving effected by the same act which effects the severance may be theft. - The third explanation clarifies that a person is said to cause a thing to move who either actually moves it, or who moves it by removing an obstacle which prevented it from moving, or who moves it by separating it from any other thing. - The fourth explanation states that a person who causes an animal to move by any means is said to move that animal and to move everything which, in consequence of the motion so caused, is moved by that animal. - The fifth explanation clarifies that the consent may be express or implied. The possessor of the property may himself give it; or any other person who has express or implied authority for that purposes, may also give it. - Besides these explanations, 16 illustrations are also attached for conceptual clarity about the offence of theft. Element wise Analysis - (1) Intending to take dishonestly/ the intention of the offender must be to take the property dishonestly – The dishonest intention is the determining 3 element of the offence of theft. The intention on the part of the offender must be to take the property dishonestly. - The expression "dishonestly" has been defined under section 24 of the Indian Penal Code. - According to section 24, whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'. - Wrongful gain and wrongful loss have been defined under section 23 of the Code, which states that - - 'wrongful gain' is gain by unlawful means of property to which the person gaining is not legally entitled, whereas; - 'wrongful loss' is the loss by unlawful means of property to which the person losing it, is legally entitled. - The same section further clarifies that a person is said to gain wrongfully when such person retains wrongfully, as well as

such person acquires wrongfully. - A person is said to lose wrongfully when such person is wrongfully kept out of property, as well as when such person is wrongfully deprived of property. - As a crux, it is not necessary for the offence of theft that wrongful gain or wrongful loss must result in each and every case. - Either of one is sufficient to constitute the offence, because; - The ultimate intention must be to cause wrongful gain or wrongful loss. - For example - if 'A' takes the property of 'B' wrongfully- - he causes wrongful loss to 'B', and if - - he keeps that property with himself, - he causes wrongful gain to himself also, if- 4 - he gives that property unlawfully to 'C', - he causes wrongful gain to 'C', if- - he destroys that property, - he causes wrongful loss to 'B' but - no wrongful gain to anyone. - Therefore, what is material for the offence of theft is that there must be intention to cause wrongful gain or wrongful loss; and - not actual wrongful gain or wrongful loss. Some remarkable aspects of intending to take dishonestly - i. Time- The intention to take the property dishonestly must exist at the time of moving the property. It can be justified/supported from illustration (h). - Such an intention exists when the taker of the property intends to cause wrongful gain to one person or wrongful loss to another person. ii. Personal Benefits- It would be not defence to plead that the accused did not intend to procure personal benefits. For example -Where the accused took complaints three cows against her will and distributed them among her creditors, he was guilty of theft. - Likewise, the accused a Hindu, who arrived at the scene later on, carried away the calf without the consent of its Mohammedan owner with a view to save it from any chance of its sacrifice. It was held that the accused was guilty of theft as the removal of the calf by him was dishonest. iii. Taking need not be permanent -Taking of property need not be permanent or with an intention to appropriate the thing taken. (Illustration-(l) of the section 378) - Theft may be committed without an intention to deprive the owner of his/her property permanently. 5 For example - Where 'A' snatched away some books from ‘B’ and told him that they would be returned, when he will come to his house. 'A' would be guilty of theft. iv. Taking in assertion of a bona fide dispute- Removal of a property under a bona fide claim of right cannot amount to theft because dishonest intention would be absent even is the claim is unfounded. For example- Where a bona fide dispute existed between two parties over possession of a piece of land and one of them forcibly harvested the crop, it could not amount to theft if the party harvesting genuinely, even though mistakenly, believed that they had a right to the crop. - But, this defence will not be available in cases of mere colourable pretence to obtain or keep possession of property. v. Stealing one's own property - A person can be held guilty of theft of his own property. - Illustrations (j) & (k) in section 378 show that an

offender can commit theft of his own property also. These illustrations however show that the property was in the possession of another person. - These illustrations clarify that a person can be convicted of stealing his own property, if he takes it dishonestly from another. For example - Where a person removes his cattle after attachment from the person to whom they have been entrusted without recourse to the court under whose order the attachment has been made, he will be guilty of theft. - Presence or absence of dishonest intention has been prominently shown in illustrations (i), (j), (k), (l), (n), (o) and (p) in section 378. vi. Mistake- Where a person takes another's property believing under a mistake of fact and in ignorance that he has a right to take it, he is not guilty of theft 6 because there is no dishonest intention even thought he may cause wrongful loss. For example - 'A' in good faith believing the property of 'B' to be his own property takes that property out of 'B's' possession. 'A' will not be liable for theft because he does not take dishonestly. - Likewise, where the accused went into a Police Station to register a complaint and finding the constable on duty asleep, he picked up a handcuff from there and took up with him. He could not be convicted of theft because he did not intend to cause wrongful loss to the police department nor wrongful gain to anyone. - Where a respectable man pinched away another person's cycle, because his own was missing at the time and brought it back. In the absence of dishonest intention he could not convicted of theft. - Similar law would apply where someone takes the cycle of another without even informing him with a view to report to the Police Station about a crime having been committed or with a view to follow a criminal who had just then committed a crime and had run away. There would not be any liability in such cases because there is not dishonest intention on his part. vii. Theft by husband and wife - As far as Hindu Law in concerned, husband and wife do not constitute one single entity for the purpose of criminal law. - Therefore, a wife may be guilty of theft, if the moves/gives any property to other person belonging to her husband with dishonest intention without husband's consent. - Similarly, if a husband dishonestly takes his wife's separate property like her 'Stridhana' without her consent, he commits theft. - Also, a Mohammedan wife may be guilty of stealing her husband's property and the husband may also similarly be held guilty. 7 See also the leading English case of R. v. Hands, (1887) 16 Cox 188. (2) Any Movable Property - The next element of the offence of theft is concerned with the nature of the property. The subject of theft must be a movable property as per the definition under section 378 because the theft of immovable property is not possible. - The expression 'movable property' has the same meaning as given by section 22 of the Code. - This definition is inclusive which says that this expression is intended to include corporeal

property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth. - The first explanation shows that once an immovable property is converted into a movable property, it becomes a subject of theft; - whereas, second explanation makes it clear that severance from the earth may make any property attached to land movable and that the act of severance may of itself be theft. - Illustration (a) under section 378 clarifies that conversion from immovable to movable and moving of the property both can be done by a single act only. - But, whether a movable property is subject of theft or not must be judged in the light of section 95 of IPC according to which nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm. - Value of property - It is not necessary that the thing stolen must have some appreciable value. Kinds of movable properties which can be subject of theft- 8 (A) Crops - Where a disputed land is in possession of the complainant and he grows crops on it, the other party to the dispute has no right is harvest it, and if the does harvest it, he may be guilty of theft. - In such cases, the first thing which a court generally does is, to find out who grew the crop. But that is not decisive. - The title of the land and the evidence of past possession also deserve to be looked into along with other allied maters. (B) Water - Water is movable property as per the definition of movable property in section 22. - Therefore, theft of water is punishable where water is reduced into possession of someone. - But, sea and river being not in the possession of anyone, taking such water would not amount to theft. (C) Electricity - Electricity running in electric wire is not movable property and therefore dishonest abstraction of electricity does not amount to an offence vide section 22 of the Code. - But, theft of electricity has been made an offence under Electricity Act which also says that the same will be deemed to be an offence under the IPC and thus punishable under section 379 of the Code (Avtar Singh v. State) (D) Gas - Cooking gas has been held to be movable property by English Courts and as such theft of gas has been punished as larceny. For Example - Where the accused, in order to avoid paying for the total gas consumed by him, introduced another pipe at the entry point of the gas which allowed the gas to move without going into the meter. It is theft/larceny. (R. v. White). 9 (E) Human Bodies - Human bodies whether living or dead, is not a movable property within the meaning of section 22 of the Code. So, stealing of a dead body thus does not make the accused guilty of theft. - But, where a human body has been preserved as a mummy, or where any part of it has been preserved with some purposes, like for research, teaching etc., or where a human body or skeleton is being used

as an article, stealing the same would amount to theft. (F) Animals - Animals have been divided into two categories - animals mansuetae naturae or tame, pet or domesticated animals; and - animals ferae naturae or ferocious, wild, dangerous or non-domesticated animals. - The tame animals have been held to be movable property. - Thus, theft of dog, cow, goat, bullock, cat etc., is possible and punishable. - Fish, in their free state are regarded as ferae naturae. - But, a fish in fishery under the possession of a person who has exclusive right to catch it from there, taken dishonestly would amount to theft. (3) Out of the possession of any person – The next requirement of the offence of the theft is that the property must be in the possession of any person (other than the accused). - Whether, he is the owner of it or is in possession of it in some other manner - Even though, the expression 'possession' has not been defined in the Indian Penal Code; - But, section 27 of the Code says that when property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code; and 10 - The explanation attached to section 27 clarifies that a person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk, is a clerk or servant within the meaning of this section. - The requirements of possession has been highlighted by illustrations (d), (e), (f) and (g) in section 378. - Illustration (g) demonstrates that where property dishonestly taken belonged in nobody's possession or where it is lost property without any apparent possessor, is not the offence of theft but criminal misappropriation. - A movable property is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons and when the circumstance are such that he may be presumed to intend to do so in case of need. - It would be sufficient if the property is taken against his wishes from the custody of a person who has an apparent title. - Mere physical control of the prosecutor over the thing taken is quite sufficient. - Even owner of the property may be guilty of committing theft of his own property. (Illustrations (j) and (k)). For Example- The removal of crops standing on land attached and taken possession of by the court under section 145 of the Criminal Procedure Code amounts to theft. See the case of H. J. Ransom v. Triloki Nath also. (4) Without that person's consent - In order to constitute theft the property must have been taken without the consent of the possessor. - Explanation 5 and illustrations (m) & (n) explain that the consent may be express or implied and can be given either by the person in possession or any authorized person on his behalf. 11 - Section 90 of the Code defines consent and states that consent given under fear of injury or under misconception of fact is not a valid consent; and - if a person taking the consent knows or has reason to

believe that the consent was given under such circumstances. - It also states that consent under unsoundness of mind or under intoxication is also not valid if the gives of the consent does not understand because of such state of mind, the nature and consequences of that to which he gives his consent. - It also states that unless the contrary appears from the context, consent of a person under twelve years of age is not valid. For example - Where the wood was removed from a forest without payment of fees, even though with the consent of the Forest Inspector could amount to theft because Inspector was a Government Servant and possession of the wood by him was possession of Government itself and as such his consent was unauthorized and fraudulent. - Likewise, 'A' sought 'B's' aid in committing theft of 'B's' master's property. 'B' told everything to his master and then assisted in the theft to procure 'A's' punishment. - It was held that 'A' would be liable for abetment of theft only and not for theft because in theft the property must be taken without the consent of the possessor whereas in this case 'B's' master knew about 'A's' plan so that he and 'B' together could catch 'A' committing theft. (T. N. Choudhury v. Emp., (1878) 4 Cal. 366. - However, under English law in similar circumstances, 'A' would be guilty of larceny because consent is a two-way affair, the giver of the consent 12 knowing as to what he is consenting and the taker of the consent knowing what for is he seeking consent. - But in the present case wile 'B's' master knew about 'A's' plan, 'A' did not know as to what 'B's' master's mind and therefore, this was not a valid consent, and thus the property was taken without the possessor's consent. (R. v. Bannen, (1844) 1 C & K 295). - In a similar case, 'A' suggested 'B' a servant of 'C' a plan for the commission of robbery at the 'C's' shop. B the servant pretending to agree to his suggestion gave the keys of the shop to 'A' who got duplicate keys made on a day arranged with 'B' the accused 'A' unlocked the shop with that key and entered the shop. - 'A' was arrested. 'B' the servant had already informed C, the prosecutrix beforehand about 'A's' plan to enter the shop on the appointed day. - The accused was held guilty of having broken and entered the shop with intent to steal therein. His conviction was justified in spite of the fact that C knew that the accused (appellant) had been supplied with means of breaking the lock and entering the room by her own servant. (Chandler, (1913) 1K.B.125). (5) Moves that property in order to such taking - The offences of theft gets completed only when the movable property which is the subject of theft is dishonestly moved in order to such taking. - Moving of the property is a must, and the moving must be in order to such taking and not for anything else. - The least removal of the thing taken from the place where it was before amounts to taking though it may not be carried off. 13 - It is not necessary that the property should be removed out of its owner's reach or carried away from

the place in which it was found. - Explanations 3 & 4 show how moving could be effected in certain cases; and illustrations (b) & (c) elucidate the meaning of explanation 4. - Illustrations (a), (b), (c) and (h) in this section illustrate the aspects of moving of the property. For example - Where a guest took bed-sheets from the room with an intention to steal them and carried them to the hall but was apprehended before he could get out of the house, he was held guilty of theft. - Likewise, where the accused, an employee in the Post Office, while assisting in sorting letters took out two letters with the intention of handing them over to the delivery peon and sharing with him certain money payable upon them. He was held guilty of theft and also of attempted criminal misappropriation of property (Venkatasami v. Emp., (1890)14 Mad. 229). - Similarly, the accused cut the string which fastened a neck ornament to the complainant's neck and forced the ends of the ornament slightly apart in order to remove the same from her neck with the result that in ensuing struggle between the accused and the complainant, the ornament fell from her neck and was found on the bed later on. The accused was held guilty of theft as there has been in eyes of law sufficient moving of the ornament to constitute theft. (Bisakhi’s case). - Likewise, pulling wool from the bodies of live sheep and lamb amounts to theft under this section. (R. v. Martin,(1777)1Leach 171). - Ultimately, the unique feature of the offence of theft that it cannot be justified in any necessity. It is governed by the maxim "Necessitas inducit privilegium quo ad jura privata" which means that no amount of necessity can justify an act of theft.