

# THE INDIAN PENAL CODE 1860

*Act 45 of 1860*

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

## CHAPTER I INTRODUCTION

### SECTION 01: TITLE AND EXTENT OF OPERATION OF THE CODE

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

### SECTION 02: PUNISHMENT OF OFFENCES COMMITTED WITHIN INDIA

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

### SECTION 03: PUNISHMENT OF OFFENCES COMMITTED BEYOND BUT WHICH BY LAW MAY BE TRIED WITHIN INDIA

Any person liable, by any Indian law to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.

### SECTION 04: EXTENSION OF CODE TO EXTRA TERRITORIAL OFFENCES

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

- (1) any citizen of India in any place without and beyond India;
- (2) any person on any ship or aircraft registered in India wherever it may be.

*Explanation:* In this section the word "offence" includes every act committed outside India which, committed in India, would be punishable under this Code.

#### *Illustration*

A, who is a citizen of India, commits a murder in Uganda. He can be tried and convicted of murder in any place in India in which he may be found.

### SECTION 05: CERTAIN LAWS NOT TO BE AFFECTED BY THIS ACT

Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law

## CHAPTER II GENERAL EXPLANATIONS

### SECTION 06: DEFINITIONS IN THE CODE TO BE UNDERSTOOD SUBJECT TO EXCEPTIONS

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

#### *Illustrations*

(a) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) A, a police officer, without warrant apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

### **SECTION 07: SENSE OF EXPRESSION ONCE EXPLAINED**

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

### **SECTION 08: GENDER**

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

### **SECTION 09: NUMBER**

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

### **SECTION 10: "MAN", WOMAN"**

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

### **SECTION 11: "PERSON"**

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

#### *COMMENTS*

It may seem prima facie that a corporate body or a body unincorporated person is punishable as an ordinary individual.

According to s. 3(42) of the General Clauses Act, 1897, "person" shall include any company or association or body of individuals, whether incorporated or not;

A corporate body or a company shall not be indictable for offences which can be committed only by a human individual (e.g., rape, bigamy etc.) or for offences which must be punished by imprisonment (e.g. cheating).--State of Maharashtra v. Syndicate Bank AIR 1964 Bom 95:

In general, a corporation is in the same position in relation to criminal liability as a natural person and may be convicted of common law and statutory offences including those requiring mens rea. There are, however, crimes which a corporation is incapable of

committing or of which a corporation cannot be found guilty as principal; nor can a corporation be convicted of a crime for which death or imprisonment are the only punishments.

Criminal liability of a corporation arises where an offence is committed in the course of corporation's business by a person in control of its affairs to such a degree that it may fairly be said to think and act through him so that his actions and intent are the actions and intent of the corporation.

`Person' includes--

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses--  
Income-tax Act 1961, s. 2(31)

In Order 30, Rule 10, Code of Civil Procedure 1908, the word `person' does not include a company, because such a construction will be repugnant to the context--*Modi Vanaspati v. Khaitan Jute Mills* AIR 1969 Cal 496

A firm, an individual or a group of individuals may be a person under s. 2(9) of the Income-tax Act, 1922.--*Ipoh v. Commissioner of Income-tax* (1968)1 SCR 68: AIR 1968 SC 317

## SECTION 12: "PUBLIC"

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

### COMMENTS

It means members of the community, the aggregate of the citizen of a State, nation or municipality, inhabitants of a particular person. Public is a term of uncertain import, it must be limited in every case by the context in which it is used. It does not generally mean the inhabitants of the world or even the inhabitants of this country. In any specific context, it may mean for practical purposes only the inhabitants of a village or such members of the community or would be interested in any particular matter, professional, political, social, artistic or local.

## SECTION 13: DEFINITION OF "QUEEN"

Rep. by the AO 1950.

## SECTION 14: "SERVANT OF GOVERNMENT"

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

## SECTION 15: DEFINITION OF "BRITISH INDIA"

Rep. by the AO 1937.

## SECTION 16: DEFINITION OF "GOVERNMENT OF INDIA"

Rep. by the AO 1937.

## SECTION 17: GOVERNMENT

The word "Government" denotes the Central Government or the Government of a State

### COMMENTS

According to Halsbury's Law of England, from the legal point of view, 'government' may be described as the exercise of certain powers and the performance of certain duties by public authorities or officers, together with certain private persons or corporations exercising public functions. The structure of the machinery of the government, and the regulation of the powers and duties which belong to different parts of this structure, are defined by the law, which also prescribes, to some extent, the mode in which these powers are to be exercised or those duties are to be performed. Government generally connotes three estates, namely, the Legislature, the Executive and the Judiciary. In a narrow sense it connotes executive only.--State of UP v. Nemchandra Jain (1984)2 SCC 405

According to Code of Civil Procedure 1908, Order 27, Rule 8B, 'government' means--  
(a) in relation to any suit by or against the Central Government or against a public officer in the service of that Government, the Central Government, and  
(b) in relation to any suit by or against a State Government or against a public officer in the service of a State, the State Government.

Under s. 2(d) of the Dock Workers (Regulation of Employment) Act, 1948, 'government' means in relation to any major port, the Central Government and in relation to any other port, the State Government.

'Government' in relation to any Government security means the Central or State Government issuing the security.--Public Debt Act, 1944, s. 2(1-A)

'The government' or 'government' in relation to any loan or security means the Government raising the loan or issuing the security.--Indian Securities Act, 1920, s. 2(c)  
According to Official Trustees Act, 1913, s. 3(1) 'government' or 'the government' means in relation to any State, the State Government and in relation to any Union Territory, the Central Government.

According to s. 3(9) of Indian Ports Act, 1908, 'government' as respects major ports, for all purposes, and as respects other ports for the purposes of making rules under s. 6(1)(p) and of the appointment and control of port health officers under s. 17, means the Central Government, and save as aforesaid, means the State Government.

According to General Clauses Act, 1897, s. 3(23) 'government' or 'the government' shall include both the Central Government and any State Government.

## SECTION 18: INDIA

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

### COMMENTS

According to s. 2(7B) of Code of Civil Procedure 1908, 'India', means the territory of India excluding the State of Jammu and Kashmir.

Under s. 2(e) of the Monopolies and Restrictive Trade Practices Act, 1969, 'India' means for the purposes of this Act the territories to which this Act extends (i.e., whole of India except the State of Jammu and Kashmir).

According to s. 2(27) of Customs Act, 1962, 'India' includes the territorial waters of India.

## SECTION 19: "JUDGE"

The word "judge" denotes not only every person who is officially designated as a Judge, but also every person,

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgement or a judgement which, if not appealed against, would be definitive, or a judgement which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgement.

Illustrations

(a) A Collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(c) A member of a Panchayat which has power under Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.

(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

## COMMENTS

Judge means a Judge of a High Court and includes Chief Justice, an acting Chief Justice, and Additional Judge and an acting Judge of a High Court--High Court Judges (Conditions of Service) Act, 1954, s. 2(g)

Judge means a Judge of the Supreme Court and includes the Chief Justice and an acting Chief Justice--Supreme Court Judges (Conditions of Services) Act, 1958, s. 2(c)

## SECTION 20: "COURT OF JUSTICE"

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

Illustrations

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

## SECTION 21: "PUBLIC SERVANT"

The words "Public servant" denote a person falling under any of the descriptions hereinafter following, namely:--

[\* \* \*]

Second--Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third--Every Judge including any person empowered by law to discharge whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth--Every officer of a Court of Justice (including a liquidator, receiver or Commissioner) whose duty is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth--Every juryman, assessor, or member of a Panchayat assisting a Court of Justice or public servant;

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

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

Eighth--Every officer of the Government, whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth--Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law of the protection of the pecuniary interests of the Government,

Tenth--Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

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

Twelfth--Every person--

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)

Illustration

A Municipal Commissioner is a public servant.

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

Explanation 2 : Whatever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation, or public servant, whether legal defect there may be in his right to hold that situation.

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

[\* \* \*]

## STATE AMENDMENTS

### Rajasthan

In section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860), in its application to the State of Rajasthan, after clause twelfth, the following new clause shall be added, namely:--

"Thirteenth--Every person employed or engaged by any public body in the conduct and supervision of any examination recognised or approved under any law.

Explanation : The expression `Public Body' includes--

(a) a University, Board of Education or other body, either established by or under a Central or State Act or under the provisions of the Constitution of India or constituted by the Government; and

(b) a local authority."

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

## COMMENTS

Public servant includes any servant of any local authority and any person engaged in any employment or class of employment which the State Government may from time to time, declare to be employment or class of employment essential to the life of the community.

## SECTION 22: "MOVABLE PROPERTY"

The words "movable property" are 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.

## COMMENTS

Property of every description, except immovable property.--General Clauses Act, 1897, s. 3(36)

`Movable property' includes growing crops.--Code of Civil Procedure, 1908, s. 2(13)

According to s. 2(9) of the Registration Act, 1908, `movable property' includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property.

Corporeal property is property which may be perceived by senses.

## SECTION 23: "WRONGFUL GAIN"/"WRONGFUL LOSS"

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

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

Gaining wrongfully/losing wrongfully--A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

## COMMENTS

Wrongful gain includes wrongful retention and wrongful loss includes being kept out of the property as well as being wrongfully deprived of property--Krishan Kumar v. Union of India AIR 1959 SC 1390

Wrongful loss is the loss by unlawful means of property to which a person is entitled, while wrongful gain to a person means a gain to him by unlawful means of property to which the person gaining is not legally entitled--Tulsiram v. State of Uttar Pradesh AIR 1963 SC 666

It affects a party in some legal right.

#### SECTION 24: "DISHONESTLY"

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

#### COMMENTS

Disposition to lie, cheat, deceive, lack of honesty, betray or lack of integrity.

#### SECTION 25: "FRAUDULENTLY"

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

#### COMMENTS

Fraudulently means based on fraud. It is something done, made or effected with a purpose or design to carry out a fraud. To act with "intent to defraud" means to act willingly, and with the specific intent to deceive or cheat.

A conclusive test of the fraudulent character of a deception for criminal purposes is this: Did the author of the deceit derive any advantage from it, which could not have been had if the truth had been known. If so, it is hardly possible that the advantage should not have had an equivalent in loss or risk of loss to someone else, and if so, there is fraud.--Dr.

Vimla v. Delhi Administration AIR 1963 SC 1572

#### SECTION 26: "REASON TO BELIEVE"

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

#### COMMENTS

The belief must be in good faith, honest and have rational basis. It is not merely subjective satisfaction. It contemplates an objective determination based on intelligent care and determination involving judicial review.--Melina Fernandes v. Mohan Nair AIR 1966 Goa 23

Existence of the circumstances must be such as to justify the belief in the objective sense. Any reasonable person must be able to consider certain facts to be probable. Reason to believe must be an honest belief in the guilt of the accused based on reasonable grounds of the existence of several circumstances which if assumed to be true would reasonably lead an ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged is probably guilty of the crime imputed.--Hazari Lal v. State, 1984(7) DRJ 310:1984(2) Crimes 395

It cannot be arbitrary, capricious or whimsical.

## SECTION 27: "PROPERTY IN POSSESSION OF WIFE, CLERK OR SERVANT"

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

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

### COMMENTS

The possession must be conscious and intelligent possession and not merely the physical presence of the accused near the object. But a wife, clerk or a servant do not have any power to deal with things in their charge as owners.

## SECTION 28: "COUNTERFEIT"

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

Explanation 1 : It is not essential to counterfeiting that the imitation should be exact.

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

### COMMENTS

Counterfeiting generally implies exact imitation, with a view to deceive or defraud, by passing the copy or thing forged for that which is original or genuine. But for the purposes of this Code, there can be counterfeiting even though the imitation is not exact and there are differences in detail "between the original and the imitation so long as the resemblance is so close that deception may thereby be practised.--" State of U.P. v. AIR 1960 SC 669. Most commonly applied to the fraudulent and criminal imitation of money or securities. In this Code it occurs in offences relating to coin provided in Chapter XII and offences relating to property marks and currency notes in Chapter XVIII."

## SECTION 29: "DOCUMENT"

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

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

### Illustrations

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

A cheque upon a banker is a document.

A power of attorney is a document.

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

A writing containing directions or instructions is a document.

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

*Illustration*

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

## COMMENTS

According to s. 2(15) of the Companies Act 1956, 'Document' includes summons, notice, requisition, order, other legal process and registers, whether issued, sent or kept in pursuance of the Companies Act or any other Act or otherwise.

Any decipherable information which is set down in a lasting form would be a document, and if it is printed in India, it is hit by s. 3 of the Press and Registration of Books Act, 1867.--Public Prosecutor v. T. Amrath Rao AIR 1960 AP 176

Documents apply to writings; to words printed, lithographed, or photographed; to maps or plans; to seals, plates, or even stones on which inscriptions are cut or engraved. Within the meaning of the best evident rule, document is any physical embodiment of information or ideas of a letter, a contract, a receipt, a book of accounts, a blue print or an x-ray plate.

## SECTION 29A: [ELECTRONIC RECORD

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

Inserted by Information Technology Act 2000 w.e.f. 17-10-2000

## SECTION 30: "VALUABLE SECURITY"

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

*Illustration*

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

## SECTION 31: "A WILL"

The words "a will" denote any testamentary document.

## COMMENTS

Will: Wish; desire; pleasure; inclination; choice; the faculty of conscious, and especially of deliberate action--State v. Schwab 109 Ohio St.532, 143 NE 29, 31. When a person expresses his "will" that a particular disposition be made of his property, his words are words of command--Temple v. Russell 251 Mass. 231, 146 NE 679, 680, 49 ALR 1 and the word "Will" as so used is mandatory, comprehensive, and dispositive in nature--Mastellar v. Atkinson 94 Kan 279, 146 P 367, 368, Ann. Cas. 1917B, 502

In the law of Wills, Will is the legal expression or declaration of a person's mind or wishes as to the disposition of his property, to be performed or take effect after his death--Swinb. Wills, 2; Thomas v. House, 145 Va 742, 134, SE 673, 674; In re McCune's Estate, 265 Pa 523, 109A. 156, 157; Krause v. Krause 113 Neb 22, 201 NW 670, 673 A revocable instrument by which a person makes disposition of his property to take effect after his death--Howard's ex'r v. Dempster, 246 Ky 153, 54 SW 2d 660, 661. Any instrument whereby a person, makes a disposition of his property to take effect after his death.--Todd v. William's Dam'x Ky.778, 95 SW 2d 593, 596... A written instrument executed with the formalities of law, whereby a person makes a disposition of his property to take effect after his death--Tax Commission of Ohio v. Parker, 117 Ohio St. 215, 158 NE 89,90

To constitute "Will", intention must appear that writer by document itself intended to make disposition of property effective only after death--In re Button's Estate, 209 Cal. 325, 287 P.964, 967

A "Will" is not a sheet of paper, nor a number of sheets or pages, but consists of the words written thereon--In re Golden's Will 165 Misc. 205, 300 NYS 737, 738. And the form of an instrument is of little consequence in determining whether it is a Will, but if it is executed with formalities required by statute, and if it is to operate only after death of maker, it is a "Will"--In re Fowle's Estate, 292 Mich.500, 290 NW 883, 885

Under s. 3(64) of the General Clauses Act, Will shall include codicil and every writing making a voluntary posthumous disposition of property.

The essential characteristics of a Will is that it is a mere declaration of an intention so long as the testator is alive, a declaration that may be revoked or varied according to the variation in his intention; a disposition that requires the testator's death for its consummation and is but ambulatory without fixed effect until the happening of that event. A first on the other hand, is a transfer of property that is voluntary, gratuitous and absolute conferring immediate right.--Nodachy v. Ramalakshman 1955 Ker LT 891.

Where a document which is not altogether free from ambiguity, lays down rules for devolution of the testator's properties after his death with no present disposition in favour of anybody and carries with it the necessary implication; the element of revocability, it is a Will within the meaning of the section.--Promode Kumar v. Sephalika AIR 1957 Cal. 631

Under s. 2(h) of the Indian Succession Act, 1925, 'Will' means a legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect after his death.

## SECTION 32: WORDS REFERRING TO ACTS INCLUDE ILLEGAL OMISSIONS

In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

*COMMENTS*

`Act' means something voluntarily done by a person, which includes writing and speaking or any external manifestation. It includes intentional doing or intentional non-doing. It means something voluntarily done by a person. `Omission' means the neglect to perform what the law requires.

**SECTION 33: "ACT", "OMISSION"**

The word "act" denotes as well a series of act, as a single act, the word "omission" denotes as well as series of omission as a single omission.

**SECTION 34: ACTS DONE BY SEVERAL PERSONS IN FURTHERANCE OF COMMON INTENTION**

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

*COMMENTS*

`Act' does not create a substantive offence and applies even if no charge is framed under any section. It is only a rule of evidence. The person must not be physically present at the actual commission of the crime. Distance cannot exclude culpability of such co-accused.--R.S. Budhwar v. UOI 1995 (34) DRJ 426(DB) : 1995(58) DLT 339

Common intention means a pre-arranged plan in which several persons intend to do and do an act. All are guilty of the principal offence. There must be meeting of mind to commit an offence.--Paramjit Singh v. State 1983(23) DLT 338 : 1983(1) Crimes 1120

The section contemplates the doing of an act by several persons as principals and not as principal and agent.--Narain v. State 1982 DRJ 258 : 1982(21) DLT 256

It is necessary that intention of each one of them is known to the rest of them and shared by them.

**SECTION 35: WHEN SUCH AN ACT IS CRIMINAL BY REASON OF ITS BEING DONE WITH A CRIMINAL KNOWLEDGE OR INTENTION**

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

**SECTION 36: EFFECT CAUSED PARTLY BY ACT AND PARTLY BY OMISSION**

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

Illustration

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

### SECTION 37: CO-OPERATION BY DOING ONE OF SEVERAL ACTS CONSTITUTING AN OFFENCE

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

#### Illustrations

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(b) A and B are joint jailors, and as such have the charge of Z, a prisoner, alternatively for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each "during the time of his attendance, to furnish " with food supplied to them for that purpose. "dies of hunger. Both" and B are guilty of the murder of Z.

(c) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed for his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely to cause Z's death. Z, dies of hunger. B is guilty of murder, but, as A did not co-operate with B. A is guilty only of an attempt to commit murder.

### SECTION 38: PERSONS CONCERNED IN CRIMINAL ACT MAY BE GUILTY OF DIFFERENT OFFENCES

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

#### Illustration

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

### SECTION 39: "VOLUNTARILY"

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

#### Illustration

A sets fire, by night to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have

intended to cause death, and may even be sorry that death has been caused by his act; yet, if he knew that he has caused death, he has caused death, voluntarily.

#### *COMMENTS*

Done by design or intention, intentional and not accidental, without coercion, free choice, free will, without any compulsion.

#### **SECTION 40: "OFFENCE"**

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

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

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

#### *COMMENTS*

Offence means any act or omission made punishable by law for the time being in force. A felony or misdemeanor; a breach of the criminal laws; violation of law for which penalty is prescribed. The word "offence", while sometimes used in various senses, generally implies a felony or a misdemeanor infringing public as distinguished from mere private rights, and punishable under the criminal laws, though it may also include the violation of a criminal statute for which the remedy is merely a civil suit to recover the penalty.

Criminal offences may be classified into general categories as felonies and misdemeanors and as offenses against the person (e.g. murder, manslaughter), against habitation and occupancy (e.g. burglary, arson) against property (e.g. larceny), against morality and decency (e.g. adultery), against public peace, against government (e.g. treason).

#### **SECTION 41: "SPECIAL LAW"**

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

#### *COMMENTS*

A law is special when it is different from others of the same general kind or designed for a particular purpose or limited in range or confined to a prescribed field of action or operation. It relates to either particular person, place or thing which though not particularized, are separated by any method of selection from the whole class to which the law might be applied. A special law applies only to an individual or a member of individuals out of a single class similarly situated and affected, or to a special locality. Dowry Prohibition Act, Narcotic Drugs & Psychotropic Substances Act, 1985 are examples of special laws.

## SECTION 42: "LOCAL LAW"

A "Local law" is a law applicable only to a particular part of India.

### *COMMENTS*

A local law is one which relates or operates over a particular locality instead of over the whole territory of the State or the country.

## SECTION 43: "ILLEGAL"--"LEGALLY BOUND TO DO"

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

## SECTION 44: "INJURY"

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

## SECTION 45: LIFE

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

## SECTION 46: "DEATH"

The word "death" denotes the death of a human being unless the contrary appears from the context.

## SECTION 47: "ANIMAL"

The word "animal" denotes any living creature, other than a human being.

## SECTION 48: "VESSEL"

The word "vessel" denotes anything made for the conveyance by water of human being or of property.

## SECTION 49: "YEAR", "MONTH"

Wherever the word, "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

## SECTION 50: "SECTION"

The word "Section" denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

## SECTION 51: "OATH"

The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

## SECTION 52: "GOOD FAITH"

Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

#### *COMMENTS*

Honest intention free from taint of fraud or fraudulent resign is a constant element of the connotation of good faith--Brijendra Singh v. State of U.P AIR 1981 SC 636: (1981)1 SCC 597.

The definition of the term in General Clauses Act lays stress on the one aspect of honesty only irrespective of negligence, but in the Indian Penal Code stress is laid on two aspects, viz., honesty of intention along with due care and attention. Both the definitions retain the real essence of good faith, which is honesty. Good faith precludes pretence, deceit or lack of fairness and uprightness as also wanton or wilful negligence--Kailas Sizing Works v. Municipality of Bhivandi and Nizampur AIR 1969 Bom 127

Good faith imports the exercise of due care and attention. A person can be excused for having committed an error of judgement only if he exercised due care and attention, and his conduct makes it clear that there was no negligence according to reasonable standards--Kedarnath v. State AIR 1965 All 233.

#### **SECTION 52A: "HARBOUR"**

Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband or the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.

#### **CHAPTER III OF PUNISHMENTS**

#### **SECTION 53: PUNISHMENTS**

The punishment to which offenders are liable under the provisions of this Code are--

First--Death;

Secondly- Imprisonment for life;

Thirdly omitted

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

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly--Forfeiture of property;

Sixthly--Fine.

#### **SECTION 53A: CONSTRUCTION OF REFERENCE TO TRANSPORTATION**

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

(2) In every case in which a sentence of transportation for a term has been passed before the commencement of the Code of Criminal Procedure (Amendment) Act, 1955 (26 of

1955), the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.

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

(4) Any reference to "transportation" in any other law for the time being in force shall,  
(a) if the expression means transportation for life, be construed as a reference to imprisonment for life;  
(b) if the expression means transportation for any shorter term, be deemed to have been omitted.

#### **SECTION 54: COMMUTATION OF SENTENCE OF DEATH**

In every case in which sentence of death shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

#### **SECTION 55: COMMUTATION OF SENTENCE OF IMPRISONMENT FOR LIFE**

In every case in which sentence of imprisonment for life shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

#### **SECTION 55A: DEFINITION OF "APPROPRIATE GOVERNMENT"**

In sections 54 and 55 the expression "appropriate Government" means--

(a) in cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government; and

(b) in case where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the Government of the State within which the offender is sentenced.

#### **SECTION 56: SENTENCE OF EUROPEANS AND AMERICANS TO PENAL SERVITUDE, PROVISO AS TO SENTENCE FOR TERM EXCEEDING TEN YEARS BUT NOT FOR LIFE**

Rep.by the Criminal Law (Removal of Racial Discriminations) Act, 1949, w.e.f. 6-4-1949.

#### **SECTION 57: FRACTIONS OF TERMS OF PUNISHMENT**

In calculating fraction of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.

**SECTION 58:** [Offenders sentenced to transportation how dealt with until transported]  
Rep. by the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955) w.e.f. 1-1-1956.

**SECTION 59: [Transportation instead of imprisonment]**

Rep. by s. 117 and Sch. Rep. by the Code of Criminal Procedure (Amendment) Act, 1955 w.e.f. 1-1-1956.

**SECTION 60: SENTENCE MAY BE (IN CERTAIN CASES OF IMPRISONMENT) WHOLLY OR PARTLY RIGOROUS OR SIMPLE**

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

**SECTION 61: SENTENCE OF FORFEITURE OF PROPERTY**

Rep. by the Indian Penal Code (Amendment) Act , 1921, (16 of 1921).

**SECTION 62: FORFEITURE OF PROPERTY, IN RESPECT OF OFFENDERS PUNISHABLE WITH DEATH, TRANSPORTATION OR IMPRISONMENT**

Rep. by Indian Penal Code (Amendment) Act, 1921.

**SECTION 63: AMOUNT OF FINE**

Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

**SECTION 64: SENTENCE OF IMPRISONMENT FOR NON-PAYMENT OF FINE**

In every case, of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine.

It shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, in which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

**SECTION 65: LIMIT TO IMPRISONMENT FOR NON-PAYMENT OF FINE, WHEN IMPRISONMENT AND FINE AWARDBLE**

The term for which the court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

## **SECTION 66: DESCRIPTION OF IMPRISONMENT FOR NON-PAYMENT OF FINE.**

The imprisonment which is imposed in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

## **SECTION 67: IMPRISONMENT FOR NON-PAYMENT OF FINE, WHEN OFFENCE PUNISHABLE WITH FINE ONLY**

If the offence be punishable with fine only., the imprisonment which the Court imposes in default of payment of the fine shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceed two months, when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

## **SECTION 68: IMPRISONMENT TO TERMINATE ON PAYMENT OF FINE**

The imprisonment which is imposed in default of a payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

## **SECTION 69: TERMINATION OF IMPRISONMENT ON PAYMENT OF PROPORTIONAL PART OF FINE**

If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

### **Illustration**

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy five rupees of the fine be paid or levied before the expiration of one month of the imprisonment A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment. A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

## **SECTION 70: FINE LEVIABLE WITHIN SIX YEARS, OR DURING IMPRISONMENT-DEATH NOT TO DISCHARGE PROPERTY FROM LIABILITY**

The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the

expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

### **SECTION 71: LIMIT OF PUNISHMENT OF OFFENCE MADE UP OF SEVERAL OFFENCES**

Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Whereas anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

#### **Illustrations**

(a) A give Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But if, while A is beating Z, Y interferes and A intentionally strikes Y, here as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z and to another for the blow given to Y.

### **SECTION 72: PUNISHMENT OF PERSON GUILTY OF ONE OF SEVERAL OFFENCES, THE JUDGEMENT STATING THAT IT IS DOUBTFUL OF WHICH**

In all cases in which judgement is given that a person is guilty of one of several offences specified in the judgement, but that it is doubtful of which of these offences, he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

### **SECTION 73: SOLITARY CONFINEMENT**

Whenever any person is convicted of an offence for which under this Code the court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say--

A time not exceeding one month if the term of imprisonment shall not exceed six months.

A time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year;

A time not exceeding three months if the term of imprisonment shall exceed one year.

### **SECTION 74: LIMIT OF SOLITARY CONFINEMENT**

In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

#### **SECTION 75: ENHANCED PUNISHMENT FOR CERTAIN OFFENCES UNDER CHAPTER XII OR CHAPTER XVII AFTER PREVIOUS CONVICTION**

Whoever, having been convicted--

(a) by a court in India, of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description of a term of three years or upwards, shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to ten years.

#### **CHAPTER IV GENERAL EXCEPTIONS**

#### **SECTION 76: ACT DONE BY A PERSON BOUND, OR BY MISTAKE OF FACT BELIEVING HIMSELF BOUND, BY LAW**

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

Illustrations

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that court to arrest Y, and after due enquiry believing Z to be Y, arrest Z. A has committed no offence.

#### **SECTION 77: ACT OF JUDGE WHEN ACTING JUDICIALLY**

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

#### **SECTION 78: ACT DONE PURSUANT TO THE JUDGMENT OR ORDER OF COURT**

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

#### **SECTION 79: ACT DONE BY A PERSON JUSTIFIED, OR BY MISTAKE OF FACT BELIEVING HIMSELF JUSTIFIED BY LAW**

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

*Illustration*

A sees Z commit what appears to A to be a murder. A in the exercise, to the best of his judgement exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

### **SECTION 80: ACCIDENT IN DOING A LAWFUL ACT**

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

*Illustration*

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

### **SECTION 81: ACT LIKELY TO CAUSE HARM, BUT DONE WITHOUT CRIMINAL INTENT, AND TO PREVENT OTHER HARM**

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

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

*Illustrations*

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passenger in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(b) A, in a great fire, pulls down house in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

### **SECTION 82: ACT OF A CHILD UNDER SEVEN YEARS OF AGE**

Nothing is an offence which is done by a child under seven years of age

### **83: ACT OF A CHILD ABOVE SEVEN AND UNDER TWELVE OF IMMATURE UNDERSTANDING**

Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

### **SECTION 84: ACT OF A PERSON OF UNSOUND MIND**

Nothing is an offence which is done by a person who, at the time of doing it, 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.

### **SECTION 85: ACT OF A PERSON INCAPABLE OF JUDGEMENT BY REASON OF INTOXICATION CAUSED AGAINST HIS WILL**

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

### **SECTION 86: OFFENCE REQUIRING A PARTICULAR INTENT OR KNOWLEDGE COMMITTED BY ONE WHO IS INTOXICATED**

In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he could 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.

### **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 to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

#### **Illustration**

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm, which in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

### **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.

*Illustration*

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation of Z, with Z's consent. A has committed no offence.

#### **SECTION 89: ACT DONE IN GOOD FAITH FOR BENEFIT OF CHILD OR INSANE PERSON, BY OR BY CONSENT OF GUARDIAN**

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

*PROVIDED*

First--that this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly--that this exception shall not extend to the doing of any thing which the person doing it knows to be likely to cause death, for any purpose of other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly--that this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death of grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly--that this exception shall not extend to the abetment of any offence to the committing of which offence it would not extend.

*Illustration*

A, in good faith, of his child's benefit without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception inasmuch as his object was the cure of the child.

#### **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, 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

Consent of insane person : If the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child : Unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

## 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.

### Illustration

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

## 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 cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit:

### *PROVIDED*

First--That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly--That this exception shall no extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly--That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than preventing of death or hurt;

Fourthly--That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

### Illustrations

(a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball give Z a mortal wound. A has committed no offence;

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending of good faith, the child's benefit. A has committed no offence.

(d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

*Explanation:* Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

### 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.

*Illustration*

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

### 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 is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause apprehension that instant death to that person will otherwise be the consequence:

*PROVIDED* the person doing that act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

*Explanation 1 :* A person who, of his own accord, or by reason of threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

*Explanation 2 :* A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

### SECTION 95: ACT CAUSING SLIGHT HARM

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

OF THE RIGHT OF PRIVATE DEFENCE

### SECTION 96: THINGS DONE IN PRIVATE DEFENCE

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

#### *COMMENTS*

In India there is no rule which expects a man first to run away or at least try to do so before he can exercise his right of private defence. Rather he has every right to stand his own ground and defend himself if there is no time to have recourse to official help. Law does not expect a citizen to be a rank coward and leave his own house at the mercy of the burglar--Jaidev, 1963 (1) Cri.LJ 495 (SC).

There are a few limitations on the right of private defence of person or property--

- (i) that if there is sufficient time for recourse to public authorities, the right is not available;
- (ii) that more harm than that is necessary should not be caused;
- (iii) that there must be reasonable apprehension of death or grievous hurt or hurt to the person or damage to the property concerned--Puran Singh, 1975 Cri.LJ 1479 (SC).

## **SECTION 97: RIGHT OF PRIVATE DEFENCE OF THE BODY AND OF PROPERTY**

Every person has a right, subject to the restrictions contained in section 99, to defend First--His own body, and the body of any other person, against any offence affecting the human body;

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

### *COMMENTS*

This defence is available only to those who in the face of imminent peril act in good faith.

## **SECTION 98: RIGHT TO PRIVATE DEFENCE AGAINST THAT 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 to private defence against that act which he would have if the act were that offence.

### *Illustrations*

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

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

## **SECTION 99: ACT AGAINST WHICH THERE IS NO RIGHT TO PRIVATE DEFENCE**

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

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

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

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

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

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

### **COMMENTS**

Limitation within which the right of private defence be exercised is mentioned in s. 98. It applies when a public servant is acting in good faith under the shield of his office, though the particular act may not be justified by law. The public servant should not act outside the scope of his powers. He may act irregularly--(1958) 61 Bom LR 30. The right cannot be lawfully exercised when there is time to have recourse to the protection of public authorities. The third clause while exercising the right of private defence, one should not inflict, more harm than it is necessary to inflict for the purpose of defence. The amount of force used and injury inflicted actually depends on the circumstances of each case.

### **SECTION 100: WHEN THE RIGHT OF PRIVATE DEFENCE OF THE BODY EXTENDS TO CAUSING DEATH**

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

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

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

Thirdly--An assault with the intention of committing rape;

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

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

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

### **COMMENTS**

Apprehension must be reasonable and the violence inflicted must not be greater than is reasonably necessary for the purpose of self defence. If the accused has not taken the plea of private defence but necessary basis for the plea is laid down in cross-examination

of prosecution witness, the court can consider the plea--Jaspal Singh & Tirath Singh v. State 1986(10) DRJ 332: 1986(2) Crimes 338.

#### **SECTION 101: WHEN SUCH RIGHT EXTENDS TO CAUSING ANY HARM OTHER THAN DEATH**

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

#### **SECTION 102: COMMENCEMENT AND CONTINUANCE OF THE RIGHT OF PRIVATE DEFENCE OF THE BODY**

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

#### *COMMENTS*

So long as the danger to the body lasts, the right of private defence continues. Reasonable ground for apprehension is necessary.

#### **SECTION 103: WHEN THE RIGHT OF PRIVATE DEFENCE OF PROPERTY EXTENDS TO CAUSING DEATH**

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

First--Robbery;

Secondly--House-breaking by night;

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

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

#### **SECTION 104: WHEN SUCH RIGHT EXTENDS TO CAUSING ANY HARM OTHER THAN DEATH**

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

## SECTION 105: COMMENCEMENT AND CONTINUANCE OF THE RIGHT OF PRIVATE DEFENCE OF PROPERTY

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

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

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

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

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

## SECTION 106: RIGHT OF PRIVATE DEFENCE AGAINST A DEADLY ASSAULT WHEN THERE IS RISK OF HARM TO INNOCENT PERSON

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

Illustration

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

## CHAPTER V OF ABETMENT

### SECTION 107: ABETMENT OF A THING

A person abets the doing of a thing, who--

First--Instigates any person to do that thing; or

Secondly--Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly--Intentionally aids, by any act or illegal omission, the doing of the thing.

Explanation 1 : A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2 : Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

### *COMMENTS*

Abetment is an act of encouraging, inciting or aiding another. One can incite by any means of language, direct or indirect, whether it takes the form of express solicitation or insinuation.

To 'instigate' another person to commit a crime, to goad or urge forward or to provoke or encourage the doing of an act. What acts would amount to instigation or incitement will depend upon the particular facts of each case--State of Bihar v. Ranen Nath Roy

Chowdhary, AIR 1958 Pat. 259

Where a woman goaded her daughter-in-law to commit suicide by her cruel conduct, it was held that she was guilty of abetment of suicide by instigation within the meaning of s. 107 IPC.--Pratima Dutt, 1977 Cri LJ NOC 96 (Cal)

Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law.

The gist of the third paragraph of this section is the active complicity. Aiding and abetting almost inevitably involves a situation in which the secondary party and the main offender are together at some stage discussing the plans which they may be making in respect of the alleged offence, and are in contact so that each knows what is passing through the mind of the other.

### SECTION 108: ABETTOR

A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1 : The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2 : To constitute that offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

#### Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3 : It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

#### Illustrations

(a) A, with a guilty intention, abets a child or lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment does "the act in the absence of "A" and thereby causes 'Z's death. Here, though "B" was not capable by law of committing an offence, "A" is liable to be punished in the same manner as if "B" had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death."

(c) A instigates B to set fire to a dwelling house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling house, and is liable to the punishment, provided for that offence.

(d) A, intending to cause a theft to be committed instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belong to A. B takes the property of Z's possession in good faith, believing it to be A's property. B acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4 : The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

*Illustration*

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

*Explanation 5* : It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

*Illustration*

A concert with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the position, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

## SECTION 108A: ABETMENT IN INDIA OF OFFENCES OUTSIDE INDIA

A person abets an offence within the meaning of this Code who, in India, abets the commission of any act without and beyond India which would constitute an offence if committed in India.

*Illustration*

A, in India, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

### *COMMENTS*

Goa is now a part of the Indian Territory. The illustration therefore becomes obsolete.

### **SECTION 109: PUNISHMENT OF ABETMENT IF THE ACT ABETTED IS COMMITTED IN CONSEQUENCE AND WHERE NO EXPRESS PROVISION IS MADE FOR ITS PUNISHMENT**

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation: An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

#### Illustrations

(a) A offers a bribe to B, a public Servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

### **SECTION 110: PUNISHMENT OF ABETMENT IF PERSON ABETTED DOES ACT WITH A DIFFERENT INTENTION FROM THAT OF ABETTOR**

Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if that act had been done with the intention or knowledge of the abettor and with no other.

### **SECTION 111: LIABILITY OF ABETTOR WHEN ONE ACT ABETTED AND DIFFERENT ACT DONE**

When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

**PROVIDED** the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

#### Illustrations

(a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the

influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B. sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(c) A instigates B and C to break into an inhabited house at mid-night for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

#### *COMMENTS*

This section is based on a maxim--"every man is presumed to intend the natural consequences of his act". A and B instigated C to rob the deceased on his way back house. C killed the deceased. C was convicted of murder and A & B of offences under ss. 109 & 302. A probable consequence of an Act is one which is likely or which can reasonably be expected to follow from such Act.

#### **SECTION 112: ABETTOR WHEN LIABLE TO CUMULATIVE PUNISHMENT FOR ACT ABETTED AND FOR ACT DONE**

If the act for which he abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

##### *Illustration*

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

#### **SECTION 113: LIABILITY OF ABETTOR FOR AN EFFECT CAUSED BY THE ACT ABETTED DIFFERENT FROM THAT INTENDED BY THE ABETTOR**

When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

##### *Illustration*

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

## SECTION 114: ABETTOR PRESENT WHEN OFFENCE IS COMMITTED

Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he is would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

## SECTION 115: ABETMENT OF OFFENCE PUNISHABLE WITH DEATH OR IMPRISONMENT FOR LIFE IF OFFENCE NOT COMMITTED

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

If act causing harm be done in consequence

And if any act for which the abettor is liable in consequence of the abetment and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or imprisonment for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and, if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

## SECTION 116: ABETMENT OF OFFENCE PUNISHABLE WITH IMPRISONMENT

If offence be not committed

Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

If abettor or person abetted be a public servant whose duty it is to prevent offence

And if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence; or with such fine as is provided for the offence, or with both.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B abets the commission of a robbery by A, a police officer, whose duty it is to prevent that offence. Here though the robbery be not committed, B is liable to one half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

### **SECTION 117: ABETTING COMMISSION OF OFFENCE BY THE PUBLIC OR BY MORE THAN TEN PERSONS**

Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration

A affixes in a public place, a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

### **SECTION 118: CONCEALING DESIGN TO COMMIT OFFENCE PUNISHABLE WITH DEATH OR IMPRISONMENT FOR LIFE**

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

If offence be committed/If offence be not committed shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of their description, for a term which may extend to three years; and in either case shall also be liable to fine.

Illustration

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this Section.

### **SECTION 119: PUBLIC SERVANT CONCEALING DESIGN TO COMMIT OFFENCE WHICH IT IS HIS DUTY TO PREVENT**

Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design;

If offence be committed

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

If offence be punishable with death etc.

or, if the offence be punishable with death or imprisonment for life, with imprisonment of either description for a term which may extend to ten years;

If offence be not committed

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

*Illustration*

A, an officer of police, being legally bound to give information of all designs or commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of the offence. Here A has by an illegal omission concealed the existence of B's design and is liable to punishment according to the provisions of this section.

## SECTION 120: CONCEALING DESIGN TO COMMIT OFFENCE PUNISHABLE WITH IMPRISONMENT

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

If offence be committed/If offence be not committed

shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine, as is provided for the offence, or with both

## CHAPTER VA CRIMINAL CONSPIRACY

### SECTION 120A: DEFINITION OF CRIMINAL CONSPIRACY

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

(1) an illegal act, or

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

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

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

## *COMMENTS*

Conspiracy consists of an agreement, or a combination or confederation between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or a criminal act or to do a lawful act by unlawful means.

According to Halsbury's Laws of England, 4th Ed. it is an indictable offence at common law. The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied.

Conspiracy is both a crime and a tort. The agreement of two or more persons to do any unlawful act or to do a lawful act by unlawful means is a crime. The unlawful act which the conspirators agree to do may be either crime or civil wrong. The gist of the offence is the fact of such agreement or combination; it is not necessary that some overt act should have been done in furtherance of the agreement. The tort of conspiracy, on the other hand, is constituted only if the agreed combination is carried into effect and damage to the plaintiff is caused--Crofter v. Vetich 1942 AC 435

A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he: (a) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (b) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

A conspiracy may be a continuing one; actors may drop out, and others drop in; the details of operation may change from time to time; the members need not know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose--Craig v. U.S., C.C.A.Cal., 81 F 2d 816,822

For an offence to fall under this section, bare engagement and association to break the law is the requirement. The methods employed should be illegal. All parties should agree to do a single illegal act.

The onus is on the prosecution to prove the charge of conspiracy by cogent evidence, direct or circumstantial.--State v. V.C Shukla, 1980 CrLJ 965 (SC)

Conspiracy consists simply in the agreement or confederacy to commit an offence. It is not an ingredient of the offence under s. 120B that all the parties should agree to do a single act. It may comprise the commission of a number of acts. It is also not necessary that each member of the conspiracy must know all the details of conspiracy--P.V. Narasimha Rao v. CBI, 1997(43) DRJ 108: 1997 (68) DLT 553

## **SECTION 120B: PUNISHMENT OF CRIMINAL CONSPIRACY**

- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
- (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

## CHAPTER VI OF OFFENCES AGAINST THE STATE

### SECTION 121: WAGING, OR ATTEMPTING TO WAGE WAR, OR ABETTING WAGING OF WAR AGAINST THE GOVERNMENT OF INDIA

Whoever, wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or Imprisonment for life and shall also be liable to fine.

#### Illustration

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

### SECTION 121A: CONSPIRACY TO COMMIT OFFENCES PUNISHABLE BY SECTION 121

Whoever within or without India conspires to commit any of the offences punishable by section 121, or conspires to overawe, by means of criminal force or the show of criminal force the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

*Explanation:* To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

### SECTION 122: COLLECTING ARMS, ETC., WITH INTENTION OF WAGING WAR AGAINST GOVERNMENT OF INDIA

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

### SECTION 123: CONCEALING WITH INTENT TO FACILITATE DESIGN TO WAGE WAR

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

### SECTION 124: ASSAULTING PRESIDENT, GOVERNOR, ETC., WITH INTENT TO COMPEL OR RESTRAIN THE EXERCISE OF ANY LAWFUL POWER

Whoever, with the intention of inducing or compelling the President of India, or the Governor of any State, to exercise or refrain from exercising in any manner any of the lawful powers of such President or Governor, assaults or wrongfully restrains, or attempts

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

#### **SECTION 124A: SEDITION**

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

Explanation 1: The expression "disaffection" includes disloyalty and all feelings of enmity.

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

Explanation 3: Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

#### **COMMENTS**

'Sedition' means bringing or attempting to bring into hatred or contempt or exciting or attempting to excite disaffection towards Government by words, either spoken or written, or by signs, or by visible representation or otherwise.

Communication or agreement which has as its objective the stirring up of treason or certain lesser commotions, or the defamation of the government. Sedition is advocating, or with knowledge of its contents knowingly publishing, selling or distributing any document which advocates, or, with knowledge of its purpose, knowingly becoming a member of any organization which advocates the overthrow or reformation of the existing form of government of this state by violence or unlawful means. An insurrectionary movement tending towards treason, but wanting an overt act; attempts made by meetings or speeches, or by publications, to disturb the tranquillity of the state. The intention with which the language is used is the essence of the crime of sedition. It is only when the words have pernicious tendency or intention of creating public disorder or disturbance of law and order that the law comes into the picture--Kedar Nath, AIR 1962 SC 955

This section is not unconstitutional and it is not violative of the fundamental right of freedom of speech and expression under Art. 19(1)(a) of the Constitution.

#### **SECTION 125: WAGING WAR AGAINST ANY ASIATIC POWER IN ALLIANCE WITH THE GOVERNMENT OF INDIA**

Whoever wages war against the Government of any Asiatic power in alliance or at peace with the Government of India or attempts to wage such war, or abets the waging of such war, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

## **SECTION 126: COMMITTING DEPREDATION ON TERRITORIES OF POWER AT PEACE WITH THE GOVERNMENT OF INDIA**

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

## **SECTION 127: RECEIVING PROPERTY TAKEN BY WAR OR DEPREDATION MENTIONED IN SECS. 125 AND 126**

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

## **SECTION 128: PUBLIC SERVANT VOLUNTARILY ALLOWING PRISONER OF STATE OR WAR TO ESCAPE**

Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

## **SECTION 129: PUBLIC SERVANT NEGLIGENTLY SUFFERING SUCH PRISONER TO ESCAPE**

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

## **SECTION 130: AIDING ESCAPE OF, RESCUING OR HARBOURING SUCH PRISONER**

Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation :* A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

## **CHAPTER VII OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE**

### **SECTION 131: ABETTING MUTINY, ATTEMPTING TO SEDUCE A SOLDIER, SAILOR OR AIRMAN FROM HIS DUTY**

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

Explanation : In this section, the words "officer", "soldier" "sailor" and "airman" include any person subject to the Army Act, the Army Act, 1950 (46 of 1950), the Naval Discipline Act, Indian Navy (Discipline) Act, 1934 (34 of 1934), the Air Force Act or the Air Force Act, 1950, as the case may be.

### **SECTION 132: ABETMENT OF MUTINY, IF MUTINY IS COMMITTED IN CONSEQUENCE THEREOF**

Whoever abets the committing of mutiny by an officer, soldier, sailor or airman in the Army, Navy or Air Force of the Government of India, shall, if mutiny be committed in consequence of that abetment, be punished with death or with imprisonment for life, or imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

### **SECTION 133: ABETMENT OF ASSAULT BY SOLDIER, SAILOR OR AIRMAN ON HIS SUPERIOR OFFICER, WHEN IN EXECUTION OF HIS OFFICE**

Whoever abets an assault by an officer, soldier, sailor or airman in the Army, Navy or Air Force of the Government of India, or any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

### **SECTION 134: ABETMENT OF SUCH ASSAULT, IF THE ASSAULT IS COMMITTED**

Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall, if such assault be committed in consequence of that abetment be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **SECTION 135: ABETMENT OF DESERTION OF SOLDIER, SAILOR OR AIRMAN**

Whoever abets the desertion of any officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### **SECTION 136: HARBOURING DESERTER**

Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of

India has deserted, harbours such officer, soldier, sailor or airman, shall be punished with imprisonment of either description of a term which may extend to two years, or with fine, or with both.

**Exception:** This provision does not extend to the case in which the harbour is given by a wife to her husband.

#### **SECTION 137: DESERTER CONCEALED ON BOARD MERCHANT VESSEL THROUGH NEGLIGENCE OF MASTER**

The master or person in charge of a merchant vessel, on board of which any deserter from the Army, Navy or Air Force of the Government of India is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

#### **SECTION 138: ABETMENT OF ACT OF INSUBORDINATION BY SOLDIER, SAILOR OR AIRMAN**

Whoever abets what he knows to be an act of insubordination by an officer, soldier, sailor or airman in the Army, Navy or Air Force of the Government of India, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**SECTION 138A:** [Application of foregoing sections to the Indian Marine Service]  
Rep. by the Amending Act, 1934 (35 of 1934)

#### **SECTION 139: PERSON SUBJECT TO CERTAIN ACTS**

No person subject to the Army Act, the Army Act, 1950 (46 of 1950), the Naval Discipline Act, the Indian Navy (Discipline) Act, 1934 (34 of 1934), the Air Force Act, the Air Force Act, 1950 (45 of 1950), is subject to punishment under this Code for any of the offences defined in this Chapter.

#### **SECTION 140: WEARING GARB OR CARRYING TOKEN USED BY SOLDIER, SAILOR OR AIRMAN**

Whoever, not being a soldier, sailor or airman in Military, Naval or Air service of the Government of India, wears any garb or carries any token resembling any garb or token used by such a soldier, sailor or airman with the intention that it may be believed that he is such a soldier, sailor or airman shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both

### **CHAPTER VIII OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY**

#### **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.

### *COMMENTS*

The meeting together of five or more persons, to the disturbance of the public peace and with the intention of cooperating in the forcible and violent execution of some unlawful enterprise. Five or more persons come together with a common plan in mind which, if carried out, will result in a riot. The intention is to commit a crime by force or to execute a common design lawful & unlawful, in an unauthorized manner likely to cause courageous persons to apprehend a breach of the peace. If they take steps towards the performance of their purpose, it becomes a rout; and if they put their design into actual execution, it is a riot. Common object is the essence of the offence under this section. They should all be aware of it and concur in it.

### **SECTION 142: BEING MEMBER OF UNLAWFUL ASSEMBLY**

Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

### **SECTION 143: PUNISHMENT**

Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

### **SECTION 144: JOINING UNLAWFUL ASSEMBLY ARMED WITH DEADLY WEAPON**

Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### **SECTION 145: JOINING OR CONTINUING IN UNLAWFUL ASSEMBLY, KNOWING IT HAS BEEN COMMANDED TO DISPERSE**

Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be

punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **SECTION 146: RIOTING**

Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

#### *COMMENTS*

Unlawful assembly which has developed to stage of violence. The term "riot" means a public disturbance involving (1) an act or acts of violence by one or more persons part of an assemblage of three or more persons, which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of, any other person or to the person of any other individual or (2) a threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of immediate execution of such threat or threats, where the performance of the threatened act or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual.

A person is guilty of riot if he participates with five or more others in a course of disorderly conduct: (a) with purpose to commit or facilitate the commission of a felony or misdemeanor; (b) with purpose to prevent or coerce official action; or (c) when the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon.

A riot is an unlawful assembly. It is only the use of force that distinguishes rioting from an unlawful assembly.

#### **SECTION 147: PUNISHMENT FOR RIOTING**

Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **SECTION 148: RIOTING, ARMED WITH DEADLY WEAPON**

Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### **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.

### *COMMENTS*

It is a specific and distinct offence. The accused cannot take the defence that he did not commit the offence with his own hands--Shailesh Kumar 1968 Cri. LJ 110

Mere presence of the appellants in the mob at the time the mob came, would not lead to any inference that the appellants had become members of the said mob sharing the unlawful objects of the said mob--Tribhuvan Nath v. State, 1995(32) DRJ 189 (DB): 1995 JCC 167

Rioting, looting, murder and large scale barbaric killings of the Sikhs during the 1984 riots was considered the rarest of rare cases. The trial court convicted and awarded death sentence to the accused. The accused appealed. The court held that mere absence of mention of the name of the accused in the FIR or that of even victims, on the facts and circumstances of the case is not fatal. The accused cannot be permitted to take advantage of tardy investigation and inaction of the police. Crime here falls in the category of rarest of rare cases and the sentence has to be deterrent so as to send a message for future.

Lawlessness must be sternly dealt with--Duli Chand v. State, 1997 (43) DRJ 699: 1998(1) Crimes 38: 1998 Cri, LJ 988.

There must be a necessity of an overt act i.e., an open act which must be proved--Abdul Hameed v. State of U.P., 1991(2) DRJ 72 (SC)

### **SECTION 150: HIRING, OR CONNIVING AT HIRING, OF PERSONS TO JOIN UNLAWFUL ASSEMBLY**

Whoever hires or engages, or employs or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

### **SECTION 151: KNOWINGLY JOINING OR CONTINUING IN ASSEMBLY OF FIVE OR MORE PERSONS AFTER IT HAS BEEN COMMANDED TO DISPERSE**

Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both.

*Explanation:* If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

### **SECTION 152: ASSAULTING OR OBSTRUCTING PUBLIC SERVANT WHEN SUPPRESSING RIOT ETC.**

Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or the suppress a riot or affray, or uses, or threatens or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**SECTION 153: WANT ONLY GIVING PROVOCATION WITH INTENT TO CAUSE RIOT--IF RIOTING BE COMMITTED-- IF NOT COMMITTED**

Whoever, malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**SECTION 153A: PROMOTING ENMITY BETWEEN DIFFERENT GROUPS ON GROUNDS OF RELIGION, RACE, PLACE OF BIRTH, RESIDENCE, LANGUAGE, ETC., AND DOING ACTS PREJUDICIAL TO MAINTENANCE OF HARMONY**

(1) Whoever

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

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Offence committed in place of worship, etc.

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

*COMMENTS*

There has to be mens rea on the part of the accused to commit the offence of promoting disharmony amongst different religions. This mens rea or malicious intention can be proved either by evidence or, at times, by writing, itself. The writing can be of such a nature that it may become apparent to the court that any reasonable man or an overage man in the street is likely to get a feeling of enmity or hatred. If such an article is printed and published, then it can be presumed that malicious intent was there thereby inviting the provisions of s. 153A, Indian Penal Code.

### **SECTION 153AA: PUNISHMENT FOR KNOWINGLY CARRYING ARMS IN ANY PROCESSION OR ORGANISING OR HOLDING OR TAKING PART IN ANY MASS DRILL OR MASS TRAINING WITH ARMS**

Whoever knowingly carries arms in any procession or organizes or holds or takes part in any mass drill or mass training with arms in any public place in contravention of any public notice or order issued or made under section 144-A of the Code of Criminal Procedure, 1973 (2 of 1974) shall be punished with imprisonment for a term which may extend to six months and with fine which may extend to two thousand rupees.

*Explanation.*—"Arms" means articles of any description designed or adapted as weapons for offence or defence and includes fire arms, sharp edged weapons, *lathis, dandas* and sticks.]

*Amendment Act, 2005.*—Clause 19 is intended to enable the District Magistrate to prohibit mass drill (or training) with arms in public places. A new section 153-AA is, therefore, being added to the Indian Penal Code to prescribe punishment with imprisonment upto six months and fine upto two thousand rupees for the contravention of the prohibitory order. (*Notes on Clauses*).

\* **Inserted by the code of Criminal Procedure (Amendment) Act, 2005, S.44(a)**

### **SECTION 153B: IMPUTATIONS, ASSERTION PREJUDICIAL TO NATIONAL INTEGRATION**

(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise--

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

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

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

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious

ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

#### **SECTION 154: OWNER OR OCCUPIER OF LAND ON WHICH AN UNLAWFUL ASSEMBLY IS HELD**

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

#### **SECTION 155: LIABILITY OF PERSON FOR WHOSE BENEFIT RIOT IS COMMITTED**

Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

#### **SECTION 156: LIABILITY OF AGENT OF OWNER OR OCCUPIER FOR WHOSE BENEFIT RIOT IS COMMITTED**

Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

#### **SECTION 157: HARBOURING PERSONS HIRED FOR AN UNLAWFUL ASSEMBLY**

Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons knowing that such persons have been hired, engaged or employed or are about to be hired, engaged or employed, to join or become

members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

#### SECTION 158: BEING HIRED TO TAKE PART IN AN UNLAWFUL ASSEMBLY OR RIOT

Whoever is engaged, or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. or to go armed--and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which is used as weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### SECTION 159: AFFRAY

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

#### SECTION 160: PUNISHMENT FOR COMMITTING AFFRAY

Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to one hundred rupees, or with both

#### CHAPTER IX OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

[161 to 165A--Rep. by the Prevention of Corruption Act, 1988 (49 of 1988)]

#### SECTION 166: PUBLIC SERVANT DISOBEYING LAW, WITH INTENT TO CAUSE INJURY TO ANY PERSON

Whoever, being a public servant knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

##### Illustration

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

#### SECTION 167: PUBLIC SERVANT FRAMING AN INCORRECT DOCUMENT WITH INTENT TO CAUSE INJURY

Whoever, being a public servant, and being, as 1[such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect intending thereby to cause or knowing it to be likely that he may thereby

cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Substituted by Information technology act 2000 w.e.f. 17-10-2000

#### **SECTION 168: PUBLIC SERVANT UNLAWFULLY ENGAGING IN TRADE**

Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to three years, or with fine, or with both.

#### **SECTION 169: PUBLIC SERVANT UNLAWFULLY BUYING OR BIDDING FOR PROPERTY**

Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

#### **SECTION 170: PERSONATING A PUBLIC SERVANT**

Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **SECTION 171: WEARING GARB OR CARRYING TOKEN USED BY PUBLIC SERVANT WITH FRAUDULENT INTENT**

Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both

#### **CHAPTER IX-A OF OFFENCES RELATING TO ELECTIONS**

#### **SECTION 171A: "CANDIDATE", "ELECTORAL RIGHT" DEFINED**

For the purposes of this Chapter--

- (a) "candidate" means a person who has been nominated as a candidate at any election;
- (b) "electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

#### **SECTION 171B: BRIBERY**

(1) Whoever--

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery:

**PROVIDED** that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) a person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification;

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

### SECTION 171C: UNDER INFLUENCE AT ELECTIONS

(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever--

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

### SECTION 171D: PERSONATION AT ELECTIONS

Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election:

**1[PROVIDED that nothing in this section shall apply to a person who has been authorised to vote as proxy for an elector under any law for the time being in force insofar as he votes as a proxy for such elector.]**

Inserted vide Election Laws(Amendment Act 2003) Dt:24-3-2003 w.e.f. 22-9-2003 vide SO 1088(e) dt 22-9-2003

### SECTION 171E: PUNISHMENT OF BRIBERY

Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

*PROVIDED that* bribery by treating shall be punished with fine only.

Explanation : "Treating" means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

#### SECTION 171F: PUNISHMENT FOR UNDUE INFLUENCE OR PERSONATION AT AN ELECTION

Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

#### SECTION 171G: FALSE STATEMENT IN CONNECTION WITH AN ELECTION

Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

#### SECTION 171H: ILLEGAL PAYMENTS IN CONNECTION WITH AN ELECTION

Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

*PROVIDED* that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

#### SECTION 171I: FAILURE TO KEEP ELECTION ACCOUNTS

Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees

#### CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

#### SECTION 172: ABSCONDING TO AVOID SERVICE OF SUMMONS OR OTHER PROCEEDINGS

Whoever absconds in order to avoid being served with a summons, notice or order, proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons or notice or order is to attend in person or by agent, or to 1[produce a document or an electronic record in a Court of Justice], with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Substituted by Information Technology Act 2000, w.e.f 17-10-2000

### SECTION 173: PREVENTING SERVICE OF SUMMONS OR OTHER PROCEEDING, OR PREVENTING PUBLICATION THEREOF

Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order, proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order.

or intentionally prevents the lawful affixing to any place of any such summons, notice or order, or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or 1[to produce a document or electronic record in a Court of Justice], with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Substituted by Information Technology Act 2000, w.e.f 17-10-2000

### SECTION 174: NON-ATTENDANCE IN OBEDIENCE TO AN ORDER FROM PUBLIC SERVANT

Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at the place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

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

#### Illustration

(a) A, being legally bound to appear before the High Court at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A, being legally bound to appear before, a District Judge as a witness, in obedience to a summons issued by that District judge intentionally omits to appear. A has committed the offence defined in this section.

## **SECTION 174A: NON-APPEARANCE IN RESPONSE TO A PROCLAMATION UNDER SECTION 82 OF ACT 2 OF 1974**

Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 (2 of 1974) shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.]

*\* Inserted by the code of criminal Procedure (Amendment) Act, 2005, S.44 (b)*

## **SECTION 175: OMISSION TO PRODUCE DOCUMENT OR ELECTRONIC RECORD TO PUBLIC SERVANT BY PERSON, LEGALLY BOUND TO PRODUCE IT**

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

or, if the 1[document or electronic record] is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Illustration

A, being legally bound to produce a document or electronic record before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Substituted for Document by Information technology Act 2000 w.e.f 17-10-2000

## **SECTION 176: OMISSION TO GIVE NOTICE OR INFORMATION TO PUBLIC SERVANT BY PERSON LEGALLY BOUND TO GIVE IT**

Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898 (5 of 1898) with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

## **SECTION 177: FURNISHING FALSE INFORMATION**

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

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

### **Illustrations**

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, willfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause 5, section VII, Regulation III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police station, wilfully mis-informs the police officer that a body of suspicious character passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the later part of this section.

Explanation : In section 176 and in this section the word "offence " includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.

## **SECTION 178: REFUSING OATH OR AFFIRMATION WHEN DULY REQUIRED BY PUBLIC SERVANT TO MAKE IT**

Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

## **SECTION 179: REFUSING TO ANSWER PUBLIC SERVANT AUTHORISED TO QUESTION**

Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

## SECTION 180: REFUSING TO SIGN STATEMENT

Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

## SECTION 181: FALSE STATEMENT ON OATH OR AFFIRMATION TO PUBLIC SERVANT OR PERSON AUTHORISED TO ADMINISTER AN OATH OR AFFIRMATION

Whoever, being legally bound by an oath or affirmation to state the truth on any subject to any public servant or other person authorized by law to administer such oath or affirmation, makes, to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

## SECTION 182: FALSE INFORMATION, WITH INTENT TO CAUSE PUBLIC SERVANT TO USE HIS LAWFUL POWER TO THE INJURY OF ANOTHER PERSON

Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant--

- (a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or
- (b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### *Illustrations*

(a) A informs a Magistrate that Z, a police officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband shall in a secret place knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(d) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

183. Resistance to the taking of property by the lawful authority of a public servant  
Whoever, offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#### **SECTION 184: OBSTRUCTING SALE OF PROPERTY OFFERED FOR SALE BY AUTHORITY OF PUBLIC SERVANT**

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

#### **SECTION 185: ILLEGAL PURCHASE OR BID FOR PROPERTY OFFERED FOR SALE BY AUTHORITY OF PUBLIC SERVANT**

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

#### **SECTION 186: OBSTRUCTING PUBLIC SERVANT IN DISCHARGE OF PUBLIC FUNCTIONS**

Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

#### **SECTION 187: OMISSION TO ASSIST PUBLIC SERVANT WHEN BOUND BY LAW TO GIVE ASSISTANCE**

Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;  
and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to five hundred rupees, or with both.

#### **SECTION 188: DISOBEDIENCE TO ORDER DULY PROMULGATED BY PUBLIC SERVANT**

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to

take certain order with certain property in his possession or under his management, disobeys such direction; shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tend to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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

*Illustration*

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

### **SECTION 189: THREAT OF INJURY TO PUBLIC SERVANT**

Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public function of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### **SECTION 190: THREAT OF INJURY TO INDUCE PERSON TO REFRAIN FROM APPLYING FOR PROTECTION TO PUBLIC SERVANT**

Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

## **CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE**

### **SECTION 191: GIVING FALSE EVIDENCE**

Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

*Explanation 1:* A statement is within the meaning of this section, whether it is made verbally or otherwise.

*Explanation 2* : A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

#### Illustrations

- (a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.
- (b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.
- (c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.
- (d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.
- (e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

## SECTION 192: FABRICATING FALSE EVIDENCE

Whoever causes any circumstance to exist or 1[makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement], intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is said "to fabricate false evidence".

#### Illustrations

- (a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that his circumstance may cause Z to be convicted of theft. A has fabricated false evidence.
- (b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.
- (c) A, with the intention of causing Z to be convicted to a criminal conspiracy, writes a letter in imitation of Z's handwriting purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

Substituted by Information Technology Act 2000 w.e.f 17-10-2000

## SECTION 193: PUNISHMENT FOR FALSE EVIDENCE

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1 : A trial before a Court martial is a judicial proceeding.

Explanation 2 : An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustrations

(i) A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. An this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3 : An investigation, directed by a Court of Justice according to law and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

(ii) A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

## **SECTION 194: GIVING OR FABRICATING FALSE EVIDENCE WITH INTENT TO PROCURE CONVICTION OF CAPITAL OFFENCE**

Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the laws for the time being in force in India shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; if innocent person be thereby convicted and executed and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

## **SECTION 195: GIVING OR FABRICATING FALSE EVIDENCE WITH INTENT TO PROCURE CONVICTION OF OFFENCE PUNISHABLE WITH IMPRISONMENT FOR LIFE OR IMPRISONMENT**

Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by the law for the time being in force in India is not capital, but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

*Illustration*

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is imprisonment for life, or rigorous

imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to imprisonment for life or imprisonment, with or without fine.

#### **SECTION 196: USING EVIDENCE KNOWN TO BE FALSE**

Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

#### **SECTION 197: ISSUING OR SIGNING FALSE CERTIFICATE**

Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

#### **SECTION 198: USING AS TRUE A CERTIFICATE KNOWN TO BE FALSE**

Whoever, corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

#### **SECTION 199: FALSE STATEMENT MADE IN DECLARATION WHICH IS BY LAW RECEIVABLE AS EVIDENCE**

Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

#### **SECTION 200: USING AS TRUE SUCH DECLARATION KNOWING IT TO BE FALSE**

Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

*Explanation:* A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

#### **SECTION 201: CAUSING DISAPPEARANCE OF EVIDENCE OF OFFENCE, OR GIVING FALSE INFORMATION TO SCREEN OFFENDER**

Whoever, knowing or having reason to believe that an offence has been committed, cause any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

If a capital offence

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

If punishable with imprisonment for life

and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If punishable with less than ten years' imprisonment

and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description proved for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

## **SECTION 202: INTENTIONAL OMISSION TO GIVE INFORMATION OF OFFENCE BY PERSON BOUND TO INFORM**

Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

## **SECTION 203: GIVING FALSE INFORMATION RESPECTING AN OFFENCE COMMITTED**

Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation : In sections 201 and 202 and in this section the word "offence" includes any act committed at any place out of India, which if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

## **SECTION 204: DESTRUCTION OF DOCUMENT TO PREVENT ITS PRODUCTION AS EVIDENCE**

Whoever secretes or destroys any 1[document or electronic record] which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such or obliterates or renders illegible the whole or any part of such 1[document or electronic record] with the intention of preventing the same from being produced or used as evidence before such Court or public servant as

aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Substituted for "document" by Information Technology Act 2000 w.e.f 17-10-2000

#### **SECTION 205: FALSE PERSONATION FOR PURPOSE OF ACT OR PROCEEDING IN SUIT OR PROSECUTION**

Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgement, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### **SECTION 206: FRAUDULENT REMOVAL OR CONCEALMENT OF PROPERTY TO PREVENT ITS SEIZURE AS FORFEITED OR IN EXECUTION**

Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **SECTION 207: FRAUDULENT CLAIM TO PROPERTY TO PREVENT ITS SEIZURE AS FORFEITED OR IN EXECUTION**

Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **SECTION 208: FRAUDULENTLY SUFFERING DECREE FOR SUM NOT DUE**

Whoever, fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum that is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied,

or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### Illustration

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers judgement to pass against him for a larger amount at the suit of B, who has no just claim against him, in order, that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

### **SECTION 209: DISHONESTLY MAKING FALSE CLAIM IN COURT**

Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

### **SECTION 210: FRAUDULENTLY OBTAINING DECREE FOR SUM NOT DUE**

Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### **SECTION 211: FALSE CHARGE OF OFFENCE MADE WITH INTENT TO INJURE**

Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **SECTION 212: HARBOURING OFFENDER**

Whenever an offence has been committed, whoever, harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment;

If a capital offence

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

If punishable with imprisonment for life, or with imprisonment and if the offence is punishable with imprisonment for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

"Offence" in this section includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 451, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception : This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to imprisonment for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

### **SECTION 213: TAKING GIFT, ETC., TO SCREEN AN OFFENDER FROM PUNISHMENT**

Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of this not proceeding against any person for the purpose of bringing him to legal punishment,

If a capital offence

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with imprisonment for life, or with imprisonment and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

### **SECTION 214: OFFERING GIFT OR RESTORATION OF PROPERTY IN CONSIDERATION OF SCREENING OFFENDER**

Whoever gives or causes, or offer or agrees to give or cause, any gratification of any person, or restores or causes the restoration of any property to any person, in

consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

If a capital offence

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with imprisonment for life or with imprisonment

and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception : The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

#### **SECTION 215: TAKING GIFT TO HELP TO RECOVER STOLEN PROPERTY, ETC.**

Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any moveable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **SECTION 216: HARBOURING OFFENDER WHO HAS ESCAPED FROM CUSTODY OR WHOSE APPREHENSION HAS BEEN ORDERED**

Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody:

or whenever a public servant in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say--

If a capital offence

if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with imprisonment for life, or with imprisonment

if the offence is punishable with imprisonment for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

"Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of India, which, if he had been guilty of it in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception : The provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

#### **SECTION 216A: PENALTY FOR HARBOURING ROBBERS OR DACOITS**

Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

*Explanation* : For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without India.

Exception: This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

#### **SECTION 216B: [Definition of "harbour" in section 212, 216 and 216A]**

Rep. by the Indian Penal Code (Amendment) Act, 1942 (8 of 1942)

#### **SECTION 217: PUBLIC SERVANT DISOBEYING DIRECTION OF LAW WITH INTENT TO SAVE PERSON FROM PUNISHMENT OR PROPERTY FROM FORFEITURE**

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **SECTION 218: PUBLIC SERVANT FRAMING INCORRECT RECORD OR WRITING WITH INTENT TO SAVE PERSON FROM PUNISHMENT OR PROPERTY FROM FORFEITURE**

Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### **SECTION 219: PUBLIC SERVANT IN JUDICIAL PROCEEDING CORRUPTLY MAKING REPORT, ETC., CONTRARY TO LAW**

Whoever, being a public servant corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years or with fine, or with both.

#### **SECTION 220: COMMITMENT FOR TRIAL OR CONFINEMENT BY A PERSON HAVING AUTHORITY WHO KNOWS THAT HE IS ACTING CONTRARY TO LAW**

Whoever, being in any office which gives him legal authority or commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

#### **SECTION 221: INTENTIONAL OMISSION TO APPREHEND ON THE PART OF PUBLIC SERVANT BOUND TO APPREHEND**

Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say;

with imprisonment of either description for a term which may extend to seven years with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended was charged with, or liable to be apprehended for, an offence punishable with imprisonment for life or imprisonment for a term which may extend to ten years; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

**SECTION 222: INTENTIONAL OMISSION TO APPREHEND ON THAT PART OF PUBLIC SERVANT BOUND TO APPREHEND PERSON UNDER SENTENCE OR LAWFULLY COMMITTED**

Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence or lawfully committed to custody, intentionally omits to apprehend such person, or intentionally suffers such person to escape or intentionally aids which person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say--

with imprisonment for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or  
with imprisonment of either description for a term which may extend to seven years with or without fine, if the person in confinement or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to imprisonment for life or imprisonment for a term of ten years or upwards; or  
with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not exceeding to ten years or if the person was lawfully committed to custody.

**SECTION 223: ESCAPE FROM CONFINEMENT OR CUSTODY NEGLIGENTLY SUFFERED BY PUBLIC SERVANT**

Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently suffers such person to escape form confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

**SECTION 224: RESISTANCE OR OBSTRUCTION BY A PERSON TO HIS LAWFUL APPREHENSION**

Whoever, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment for either description for a term which may extend to two years, or with fine, or with both.

*Explanation:* The punishment in this section is in addition to the punishment for which the person to be apprehended in custody was liable for the offence with which he was charged, or of which he was convicted.

**SECTION 225: RESISTANCE OR OBSTRUCTION TO LAWFUL APPREHENSION OF ANOTHER PERSON**

Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any

other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with imprisonment for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended or rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to imprisonment for life or imprisonment, for a term of ten years or upwards shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

#### **SECTION 225A: OMISSION TO APPREHEND, OR SUFFERANCE OF ESCAPE, ON PART OF PUBLIC SERVANT, IN CASES NOT OTHERWISE, PROVIDED FOR**

Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished--

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

#### **SECTION 225B: RESISTANCE OR OBSTRUCTION TO LAWFUL APPREHENSION, OR ESCAPE OR RESCUE IN CASES NOT OTHERWISE PROVIDED FOR**

Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment for either description for a term which may extend to six months, or with fine, or with both.

#### **SECTION 226: [Unlawful return from transportation]**

Rep. by the Code of Criminal Procedure (Amendment) Act 1955 (26 of 1955) w.e.f. 1-1-1956.

### SECTION 227: VIOLATION OF CONDITION OF REMISSION OF PUNISHMENT

Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

### SECTION 228: INTENTIONAL INSULT OR INTERRUPTION TO PUBLIC SERVANT SITTING IN JUDICIAL PROCEEDING

Whoever, intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### SECTION 228A: DISCLOSURE OF IDENTITY OF THE VICTIM OF CERTAIN OFFENCES, ETC

(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C, or section 376D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is--

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:

**PROVIDED** that no such authorization shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, or any recognised welfare institution or organisation.

Explanation : For the purposes of this sub-section, "recognised welfare institution or organisation" means as social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation : The printing or publication of the judgement or any High Court or the Supreme Court does not amount to an offence within the meaning of this section.

## SECTION 229: PERSONATION OF A JUROR OR ASSESSOR

Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a juror or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

## SECTION 229A: FAILURE BY PERSON RELEASED ON BAIL OR BOND TO APPEAR IN COURT

Whoever, having been charged with an offence and released on bail or on bond without sureties, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in Court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Explanation.*—The punishment under this section is—

(a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and

(b) without prejudice to the power of the Court to order forfeiture of the bond.]

*Amendment Act, 2005.*—Under clause 37 an obligation is cast on the person released on bail or on bond to appear and surrender to custody. In order to enforce this obligation, a new section 229-A is being inserted in the Indian Penal Code to prescribe punishment for those who fail to do so. (*Notes on Clauses*).

*Classification of Offence.*—The offence under this section is cognizable, non-bailable, non-compoundable and triable by any Magistrate.

### 1. Inserted by the Code of Criminal Procedure (Amendment) Act, 2005, S.44(c)

## CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

### SECTION 230: "COIN" DEFINED

Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign power in order to be so used.

Indian Coin: Indian coin is metal stamped and issued by the authority of the Government of India in order to be used as money; and metal which has been so stamped and issued shall continue to be Indian coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.

Illustrations

(a) Cowries are not coin.

(b) Lumps of unstamped copper, though used as money, are not coin.

(c) Medals are not coin, in as much as they are not intended to be used as money.

(d) The coin denominated as the Company's rupees is Indian coin.

(e) the "Farukhabad rupee" which was formerly used as money under the authority of the Government of India is Indian coin although it is no longer so used.

### **SECTION 231: COUNTERFEITING COIN**

Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation : A person commits this offence who intending to practise description, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

### **SECTION 232: COUNTERFEITING INDIAN COIN**

Whoever counterfeits, or knowingly performs any part of the process of counterfeiting Indian coin, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **SECTION 233: MAKING OR SELLING INSTRUMENT FOR COUNTERFEITING COIN**

Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

### **SECTION 234: MAKING OR SELLING INSTRUMENT FOR COUNTERFEITING INDIAN COIN**

Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting Indian coin shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **SECTION 235: POSSESSION OF INSTRUMENT, OR MATERIAL FOR THE PURPOSE OF USING THE SAME FOR COUNTERFEITING COIN**

Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

If Indian coin : and if the coin to be counterfeited, is Indian coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **SECTION 236: ABETTING IN INDIA THE COUNTERFEITING OUT OF INDIA OF COIN**

Whoever, being within India, abets the counterfeiting of coin out of India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within India.

### **SECTION 237: IMPORT OR EXPORT OF COUNTERFEIT COIN**

Whoever imports into India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

### **SECTION 238: IMPORT OR EXPORT OF COUNTERFEITS OF THE INDIAN COIN**

Whoever imports into India, or exports therefrom, any counterfeit coin, which he knows or has reason to believe to be a counterfeit of Indian coin, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **SECTION 239: DELIVERY OF COIN, POSSESSED WITH KNOWLEDGE THAT IT IS COUNTERFEIT**

Whoever, having any counterfeit coin, which at the time when he became possessed of it, he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

### **SECTION 240: DELIVERY OF INDIAN COIN, POSSESSED WITH KNOWLEDGE THAT IT IS COUNTERFEIT**

Whoever, having any counterfeit coin which is a counterfeit of Indian coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of Indian coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **SECTION 241: DELIVERY OF COIN AS GENUINE, WHICH, WHEN FIRST POSSESSED, THE DELIVERER DID NOT KNOW TO BE COUNTERFEIT**

Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

#### **Illustration**

A, a coiner, delivers counterfeit company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit, C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this Section. But B and C are punishable under section 239 or 240, as the case may be.

**SECTION 242: POSSESSION OF COUNTERFEIT COIN BY PERSON WHO KNEW IT TO BE COUNTERFEIT WHEN HE BECAME POSSESSED THEREOF**

Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term may extend to three years, and shall also be liable to fine.

**SECTION 243: POSSESSION OF INDIAN COIN BY PERSON WHO KNEW IT TO BE COUNTERFEIT WHEN HE BECAME POSSESSED THEREOF**

Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of Indian coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**SECTION 244: PERSON EMPLOYED IN MINT CAUSING COIN TO BE OF DIFFERENT WEIGHT OR COMPOSITION FROM THAT FIXED BY LAW**

Whoever, being employed in any mint lawfully established in India, does any act, or omits what he is legally bound to do with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**SECTION 245: UNLAWFULLY TAKING COINING INSTRUMENT FROM MINT**

Whoever, without lawful authority, takes out of any mint, lawfully established in India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**SECTION 246: FRAUDULENTLY OR DISHONESTLY DIMINISHING WEIGHT OR ALTERING COMPOSITION OF COIN**

Whoever, fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

*Explanation:* A person who scoops out part of the coin and puts anything else into the cavity alters the composition of that coin.

**SECTION 247: FRAUDULENTLY OR DISHONESTLY DIMINISHING WEIGHT OR ALTERING COMPOSITION OF INDIAN COIN**

Whoever, fraudulently or dishonestly performs on any Indian coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**SECTION 248: ALTERING APPEARANCE OF COIN WITH INTENT THAT IT SHALL PASS AS COIN DIFFERENT DESCRIPTION**

Whoever, performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**SECTION 249: ALTERING APPEARANCE OF INDIAN COIN WITH INTENT THAT IT SHALL PASS AS COIN OF DIFFERENT DESCRIPTION**

Whoever performs on any Indian coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**SECTION 250: DELIVERY OF COIN, POSSESSED WITH KNOWLEDGE THAT IT IS ALTERED**

Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

**SECTION 251: DELIVERY OF INDIAN COIN, POSSESSED WITH KNOWLEDGE THAT IT IS ALTERED**

Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**SECTION 252: POSSESSION OF COIN BY PERSON WHO KNEW IT TO BE ALTERED WHEN HE BECAME POSSESSED THEREOF**

Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 246 or 248 has been committed, having known at the time of becoming possessed thereof that such

offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a time which may extend to three years, and shall also be liable to fine.

### **SECTION 253: POSSESSION OF INDIAN COIN BY A PERSON WHO KNEW IT TO BE ALTERED WHEN HE BECAME POSSESSED THEREOF**

Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either or the section 247 or 249 has been committed having known at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

### **SECTION 254: DELIVERY OF COIN AS GENUINE WHICH, WHEN FIRST POSSESSED, THE DELIVERER DID NOT KNOW TO BE ALTERED**

Whoever delivers to any other person as genuine or as a coin of different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

### **SECTION 255: COUNTERFEITING GOVERNMENT STAMP**

Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

*Explanation* : A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a difference denomination.

### **SECTION 256: HAVING POSSESSION OF INSTRUMENT OR MATERIAL FOR COUNTERFEITING GOVERNMENT STAMP**

Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **SECTION 257: MAKING OR SELLING INSTRUMENT FOR COUNTERFEITING GOVERNMENT STAMP**

Whoever makes or performs any part of the process of making or buys, or sells or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### **SECTION 258: SALE OF COUNTERFEIT GOVERNMENT STAMP**

Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### **SECTION 259: HAVING POSSESSION OF COUNTERFEIT GOVERNMENT STAMP**

Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### **SECTION 260: USING AS GENUINE A GOVERNMENT STAMP KNOWN TO BE COUNTERFEIT**

Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

#### **SECTION 261: EFFACING WRITING FROM SUBSTANCE BEARING GOVERNMENT STAMP OR REMOVING FROM DOCUMENT A STAMP USED FOR IT, WITH INTENT TO CAUSE LOSS TO GOVERNMENT**

Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### **SECTION 262: USING GOVERNMENT STAMP KNOWN TO HAVE BEEN BEFORE USED**

Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

## **SECTION 263: ERASURE OF MARK DENOTING THAT STAMP HAS BEEN USED**

Whoever, fraudulently or with intent to cause loss to Government, erases, or removes from a stamp issued by Government for the purpose of revenue, any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

## **SECTION 263A: PROHIBITION OF FICTITIOUS STAMPS**

(1) Whoever

(a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(b) has in his possession, without lawful excuse, any fictitious stamp, or

(c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp, shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamps, die, plate, instrument or materials in the possession of any person for making any fictitious stamps may be seized and, if seized shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word "Government", when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country.

## **CHAPTER XIII OF OFFENCES RELATING TO WEIGHTS AND MEASURES**

### **SECTION 264: FRAUDULENT USE OF FALSE INSTRUMENT FOR WEIGHING**

Whoever, fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

### **SECTION 265: FRAUDULENT USE OF FALSE WEIGHT OR MEASURE**

Whoever, fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

## **SECTION 266: BEING IN POSSESSION OF FALSE WEIGHT OR MEASURE**

Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

## **SECTION 267: MAKING OR SELLING FALSE WEIGHT OR MEASURE**

Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length of capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both

## **CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS**

### **SECTION 268: PUBLIC NUISANCE**

A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

### **SECTION 269: NEGLIGENT ACT LIKELY TO SPREAD INFECTION OF DISEASE DANGEROUS TO LIFE**

Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

### **SECTION 270: MALIGNANT ACT LIKELY TO SPREAD INFECTION OF DISEASE DANGEROUS TO LIFE**

Whoever malignantly does any act which is, and which he knows or has reason to believe to be , likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or, with both.

### **SECTION 271: DISOBEDIENCE TO QUARANTINE RULE**

Whoever knowingly disobeys any rule made and promulgated by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse

between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

#### **SECTION 272: ADULTERATION OF FOOD OR DRINK INTENDED FOR SALE**

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

#### **SECTION 273: SALE OF NOXIOUS FOOD OR DRINK**

Whoever sells, or offers or exposes for sale, as food or drink any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#### **SECTION 274: ADULTERATION OF DRUGS**

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

#### **SECTION 275: SALE OF ADULTERATED DRUGS**

Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#### **SECTION 276: SALE OF DRUG AS A DIFFERENT DRUG OR PREPARATION**

Whoever knowingly sells or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### **SECTION 277: FOULING WATER OF PUBLIC SPRING OR RESERVOIR**

Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

### **SECTION 278: MAKING ATMOSPHERE NOXIOUS TO HEALTH**

Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

### **SECTION 279: RASH DRIVING OR RIDING ON A PUBLIC WAY**

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### **SECTION 280: RASH NAVIGATION OF VESSEL**

Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### **SECTION 281: EXHIBITION OF FALSE LIGHT, MARK OR BUOY**

Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

### **SECTION 282: CONVEYING PERSON BY WATER FOR HIRE IN UNSAFE OR OVERLOADED VESSEL**

Whoever, knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### **SECTION 283: DANGER OR OBSTRUCTION IN PUBLIC WAY OR LINE OF NAVIGATION**

Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

## **SECTION 284: NEGLIGENCE CONDUCT WITH RESPECT TO POISONOUS SUBSTANCE**

Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

## **SECTION 285: NEGLIGENCE CONDUCT WITH RESPECT TO FIRE OR COMBUSTIBLE MATTER**

Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

## **SECTION 286: NEGLIGENCE CONDUCT WITH RESPECT TO EXPLOSIVE SUBSTANCE**

Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

## **SECTION 287: NEGLIGENCE CONDUCT WITH RESPECT TO MACHINERY**

Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

## **SECTION 288: NEGLIGENCE CONDUCT WITH RESPECT TO PULLING DOWN OR REPAIRING BUILDINGS**

Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with

imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#### **SECTION 289: NEGLIGENT CONDUCT WITH RESPECT TO ANIMAL**

Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#### **SECTION 290: PUNISHMENT FOR PUBLIC NUISANCE IN CASES NOT OTHERWISE PROVIDED FOR**

Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

#### **SECTION 291: CONTINUANCE OF NUISANCE AFTER INJUNCTION TO DISCONTINUE**

Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

#### **SECTION 292: SALE, ETC, OF OBSCENE BOOKS, ETC**

(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or where it comprises two or more distinct items) the effect of any one of its items, is , if taken as a whole, such as to tend to deprave and corrupt person who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) Whoever--

(a) sells, lets to hire distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section, shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years and also with fine which may extend to five thousand rupees.

Exception : This section does not extend to--

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure--

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation, or figure is in the interest of science, literature, art or learning or other objects of general concern, or

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in--

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, (24 of 1958), or

(ii) any temple, or any car used for the conveyance of idols, or kept or used for any religious purpose.

#### *COMMENTS*

The test of determination of obscenity is as follows--

The work as a whole must have the tendency to deprave and corrupt the persons who are likely to read it. The published material has to be judged in mind the present day literary trends and also the popular permissiveness--Neelam Mahajan v. Commissioner of Police, 1996(37) DRJ 154: 1996(61) DLT 871

#### **SECTION 293: SALE, ETC., OF OBSCENE OBJECTS TO YOUNG PERSON**

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts to do so, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.

#### **SECTION 294: OBSCENE ACTS AND SONGS**

Whoever, to the annoyance of others--

(a) does any obscene act in any public place, or

(b) sings, recites, or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

#### **SECTION 294A: KEEPING LOTTERY OFFICE**

Whoever keeps any office or place for the purpose of drawing any lottery not being a State lottery or a lottery authorised by the State Government, shall be punished with

imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever punishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, or any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery shall be punished with fine which may extend to one thousand rupees

## **CHAPTER XV OF OFFENCES RELATING TO RELIGION**

### **SECTION 295: INJURING OR DEFILING PLACE OF WORSHIP WITH INTENT TO INSULT THE RELIGION OF ANY CLASS**

Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement, as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### **SECTION 295A: DELIBERATE AND MALICIOUS ACTS INTENDED TO OUTRAGE RELIGIOUS FEELINGS OF ANY CLASS BY INSULTING ITS RELIGION OR RELIGIOUS BELIEFS**

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult in the religion or religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

### **SECTION 296: DISTURBING RELIGIOUS ASSEMBLY**

Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

### **SECTION 297: TRESPASSING ON BURIAL PLACES, ETC**

Whoever, with the intention of wounding the feelings of any person or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sculpture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons, assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

## SECTION 298: UTTERING WORDS, ETC., WITH DELIBERATE INTENT TO WOUND THE RELIGIOUS FEELINGS

Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places, any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

## CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

### SECTION 299: CULPABLE HOMICIDE

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

Illustrations

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

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

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

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

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

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

### COMMENTS

Homicide means the killing of a human being by a human being. Homicide may be

- (i) culpable i.e. criminal;
- (ii) justifiable;
- (iii) excusable.

Homicide is not necessarily a crime. It is a necessary ingredient of the crimes of murder and manslaughter, but there are other cases in which homicide may be committed without criminal intent and without criminal consequences, as, where it is done in the lawful execution of a judicial sentence, in self-defence, or as the only possible means of

arresting an escaping felon. The term "homicide" is neutral; while it describes the act, it pronounces no judgement on its moral or legal quality.

A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being. Criminal homicide is murder, manslaughter or negligent homicide.

#### Justifiable Homicide

Such as is committed intentionally, but without any evil design, and under such circumstances of necessity or duty as render the act proper, and relieve the party from any shadow of blame; as where a sheriff lawfully executes a sentence of death upon a malefactor, or where the killing takes place in the endeavor to prevent the commission of felony which should not be otherwise avoided, or as a matter of right, such as self-defence or other causes provided for by statute.

#### Excusable homicide

The killing of a human being, either by misadventure or in self-defence. Such homicide consists of a perpetrator's acting in a manner which the law does not prohibit, such as self-defence or accidental homicide. The name itself imports some fault, error, or omission, so trivial, however, that the law excuses it from guilt of felony, though in strictness it judges it deserving of some little degree of punishment. It is of two sorts,-- either per infortunium, by misadventure, or se defendendo, upon a sudden affray.

Homicide per infortunium is where a man, doing a lawful act, without any intention of hurt, unfortunately kills another; but, if death ensue from any unlawful act, the offence is manslaughter, and not misadventure. Homicide se defendendo is where a man kills another upon a sudden affray, merely in his own defence, or in defence of his wife, child, parent, or servant, and not from any vindictive feeling.

There must be a direct and distinct, not immediate and not to remote a connection between the `act' and death caused.

### SECTION 300: MURDER

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or Secondly--if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or Thirdly--if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

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

#### Illustrations

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

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

A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

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

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

Exception 1 : When culpable homicide is not murder

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

The above exception is subject to the following provisos:--

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

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

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

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

Illustrations

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

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

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

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

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

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

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

Illustration

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

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

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

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

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

Illustration

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

### *COMMENTS*

All the four clauses require that the act which causes death should be done intentionally or with the knowledge or means of knowing that death is a natural consequence of the act.

The Penal Code recognizes three degrees of culpable homicide. The first is the culpable homicide of the first degree which is its gravest form is defined as murder in s. 300. The second is the culpable homicide of the second degree punishable under the 1st part of s. 304. The third is the culpable homicide of the third degree and is punishable under the second part of s. 304. It is the lowest type of culpable homicide.

There is a very thin line of distinction between s. 299 and s. 300 IPC. 'Culpable homicide' is genus and 'murder' is its specie. All 'murder' is 'culpable homicide' but not vice versa. The distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. This distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between cl.(b) of s. 299 and cl. (3) of s. 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or lowest degree.

It is culpable homicide where death must have been known to be a probable result. It is murder where it must have been known to be the most probable result. All acts of killings done with the intention to kill, or to inflict bodily injury sufficient to cause death, or with the knowledge that death must be the most probable result are prima facie murder; while these committed with the knowledge that death will be a likely result are culpable homicide not amounting to murder. An offence cannot amount to murder unless it falls within the definition of culpable homicide.

The two offences involve the killing of a person. They are the offences of culpable homicide and the more heinous offence of murder. What distinguishes these two offences is the presence of special mens rea which consists of four mental attitudes in the presence of any of them the learner becomes greater. These four mental attitudes are stated in s. 300 IPC as distinguishing murder from culpable homicide--Rajwant Singh v. State of Kerala AIR 1966 SC 1874; Sampuran v. State of Haryana 1980 Cri.LJ 951; Monica Mandal v. State of West Bengal (1985) 1 Crimes 429 (Cal)

Conviction of the accused on extra judicial confession was proper and no corroboration was necessary--State of U.P. v. M.K. Anthony AIR 1985 SC 48 .yAlso see Vinayak Shivajirao Pal v. State of Maharashtra 1998(1) Crimes 131(SC)

Provocation need not necessarily be confined to a physical or verbal attack but there could be that small class of exceptional situation when the situational provocation gives rise to commission of an offence and even though concept is comparatively lesser known in criminal jurisprudence, it is not foreign to it--Sulaiman K v. State of Karnataka 1998(1) Crimes 414.

### **SECTION 301: CULPABLE HOMICIDE BY CAUSING DEATH OF PERSON OTHER THAN PERSON WHOSE DEATH WAS INTENDED**

If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

### **SECTION 302: PUNISHMENT FOR MURDER**

Whoever commits murder shall be punished with death, or imprisonment for life and shall also be liable to fine.

### **SECTION 303: PUNISHMENT FOR MURDER BY LIFE CONVICT**

Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death.

### **SECTION 304: PUNISHMENT FOR CULPABLE HOMICIDE NOT AMOUNTING TO MURDER**

Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause

death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

### SECTION 304A: CAUSING DEATH BY NEGLIGENCE

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

#### *COMMENTS*

The omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do.

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstance. Conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm; it is a departure from the conduct expectable of a reasonably prudent person under like circumstances.

The term refers only to that legal delinquency which results whenever a man fails to exhibit the care which he ought to exhibit, whether it be slight, ordinary, or great. It is characterized chiefly by inadvertence, thoughtlessness, inattention, and the like, while "wantonness" or "recklessness" is characterized by wilfulness. The law of negligence is founded on reasonable conduct or reasonable care under all circumstances of particular case. Doctrine of negligence rests on duty of every person to exercise due care in his conduct toward others from which injury may result.

Negligent homicide is the criminal offence committed by one whose negligence is the direct and proximate cause of another's death. Criminal homicide constitutes negligent homicide when it is committed negligently. It 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. Criminal rashness in 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. A rash act is primarily an overhasty act is opposed to a deliberate act.

This section deals with homicide by negligence. The provisions apply to cases where there is no intention to cause death and no knowledge that the act done in all probability would cause death. This section does not apply to cases where there has been the voluntary commission of an offence against the person. A person is liable for neglect of duty only if there is such a degree of culpability so as to amount to gross negligence on his part.

Injury caused on account of the construction material from the adjacent building which resulted in the death of the deceased. While demolishing the scaffoldings it was the duty

of the petitioner to take all reasonable and proper precautions so as to guard against any injury either to the public in general or to any individual in particular. Held that death caused by negligence and therefore falls under s. 304A IPC. Even though there is no criminality in the act itself it flows out of the fact that it is capable of causing injury to another person. The expression 'negligent act' has a wider connotation inasmuch as every one to whom negligence can be attributed will be necessary for such Act.--Tarseen Chand v. State 1985(8) DRJ 216 : 1985 (1) Crimes 948

Where accident was caused by the convict by rash and negligent driving on the wayside of the road, benefit of probation was denied to the convict as it would amount to granting a licence to kill which will make road a roulette with death--Raj Pal v. State 1992(22) DRJ 166: 1991(3) Crimes 550: 1992 Cri.LJ 1470

### SECTION 304B: DOWRY DEATH

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

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

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

#### *COMMENTS*

Under s. 2 of the Dowry Prohibition Act, 1961 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly--

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Bail denied to the accused as death caused by burn injuries within 14 months of marriage. The case falls within this section.--Seema Puri v. State 1990 (19) DRJ 347: 1990 (41) DLT 660

To frame the charges for an offence falling under s. 304B, the court has only to form a prima facie view on the basis of evidence available and for framing the prima facie view the court has not to scrutinize the evidence so deeply as is required at the time of final decision.--Kishore Kumar v. State 1992(23) DRJ 482: 1993 Cri LJ 253

### SECTION 305: ABETMENT OF SUICIDE OF CHILD OR INSANE PERSON

If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the

commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall be also be liable to fine.

### SECTION 306: ABETMENT OF SUICIDE

If any person commits suicide, whoever, abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### *COMMENTS*

The act or an instance of taking one's life voluntarily and intentionally; self-killing. Every act of self-destruction is suicide, provided it be intentional act of a party knowing the probable consequences of what he is doing. Abetment of suicide is confined to the case of persons who aid and abet the commission of suicide by the hand of the person himself who commits suicide. Where in her dying declaration the deceased categorically stated that the accused mother-in-law motheated and taunted her for bringing less dowry and this led her to take the extreme step taken by her, it was held that the mother-in-law was guilty of abetment of suicide under this section.--Nirmala Devi 1983 Cri LJ NOC 230 (P&H)

### SECTION 307: ATTEMPT TO MURDER

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned. Attempts by life convicts : When any person offending under this section is under sentence of imprisonment for life, he may, if hurt, is caused, be punished with death.

#### Illustrations

- (a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.
- (b) A, within the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.
- (c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence, A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.
- (d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section.

#### *COMMENTS*

Attempt means an endeavour to commit a crime or unlawful act. In every crime there are three stages--intention, preparation, attempt.

In the third stage, that is, if attempt is successful, the crime is complete. In case the attempt fails, the crime is not complete but the law punishes the person attempting the criminal act. Intention is the direction of conduct towards the object chosen; but the law does not take notice of an intention without an act. Preparation consists in devising or arranging the means or measures necessary for the commission of the crime. And attempt is the direct movement towards the commission after the preparations are made. The test for determining if the acts constitute attempt or preparation is whether the overt acts already done by the offender are completely harmless or would fructify into commission of an offence. In re, Tustipada Mandal AIR (1960) Cut 75. Attempt to commit offences is punishable under s. 511 of the Indian Penal Code. And an attempt to commit suicide is punishable under s. 309 of the Code, though the actual commission cannot be punished.

Though it is not possible to give a precise or exhaustive definition of attempt, it may be broadly stated that an intentional act which a person does towards the commission of an offence but which fails in its object through circumstances independent of the volition of that person is attempt.--State of U.P. v. Ram Chandra AIR 1962 All 359 : 1962 All LJ 13. Depending largely on circumstances it is a mixed question of law and fact and it defies precise and exact definition. A person attempts to commit a particular offence when (i) he intends to commit that particular offence; (ii) he having made preparations and with the intention to commit the offence does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence.--State of Maharashtra v. Md. Yakub AIR 1980 SC 1111: 1980 CrLJ 793: 1980 SCC (Cr) 513:(1980)3 SCC 57: (1980) 2 SCJ 163: 1980 Cr LR (SC) 251

The requisite elements of an `attempt' to commit a crime are--(i) an intent to commit it; (ii) an overt act towards its commission; (iii) failure of consummation; (iv) the apparent possibility of commission.

An attempt is an intentional preparatory action which fails in its object--which so fails through circumstances independent of the person who seeks its accomplishment.

To convict the accused under this section it is not necessary to show that bodily injury capable of causing death was inflicted. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. Attempt need not be penultimate act. It is sufficient if there is intent coupled with some overt act in execution thereof--State of Maharashtra v. B B Patil 1983 CrLJ 331(SC)

Where two accused armed with firearms fired four shots at their victim at night causing injuries on his person, it was held that attack at night is not ordinarily done unless it is pre-planned and, therefore, it can be reasonably inferred that they attacked the victim with malice aforethought and accordingly their case fell under s. 307 IPC--Sadha Singh, 1985 Cri.LJ 1361 (SC).

When the fight between two parties is accidental owing to a sudden quarrel, the case does not fall under s. 307. The court held that since there was no intention or motive to commit murder and the fight was a sudden flare up, it does not attract the provisions of s. 307--Hari Kishan v. Sukhbir Singh AIR 1988 SC 2127.

The injuries on the victim were found to be simple in nature. The accused had no intention of causing death of any person nor any injuries found were sufficient in the

ordinary course of nature to cause death, the court held that the accused persons were guilty not under s. 307 IPC r/w s. 34 but guilty under s. 326 r/w s. 34 only.--Pashora Singh v. State of Punjab AIR 1993 SC 1256

### **SECTION 308: ATTEMPT TO COMMIT CULPABLE HOMICIDE**

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

#### **Illustration**

A, on grave and sudden provocation, fires pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

### **SECTION 309: ATTEMPT TO COMMIT SUICIDE**

Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

### **SECTION 310: THUG**

Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

### **SECTION 311: PUNISHMENT**

Whoever is a thug, shall be punished with imprisonment for life, and shall also be liable to fine.

### **OF THE CAUSING OF MISCARRIAGE, OF INJURIES TO UNBORN CHILDREN, OF THE EXPOSURE OF INFANTS, AND OF THE CONCEALMENT OF BIRTHS**

### **SECTION 312: CAUSING MISCARRIAGE**

Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child may, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Explanation* : A woman who causes herself to miscarry, is within the meaning of this section.

### **SECTION 313: CAUSING MISCARRIAGE WITHOUT WOMAN'S CONSENT**

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **SECTION 314: DEATH CAUSED BY ACT DONE WITH INTENT TO CAUSE MISCARRIAGE**

Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; If act done without woman's consent: and if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment above mentioned.

*Explanation* : It is not essential to this offence that the offender should know that the act is likely to cause death.

### **SECTION 315: ACT DONE WITH INTENT TO PREVENT CHILD BEING BORN ALIVE OR TO CAUSE IT TO DIE AFTER BIRTH**

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

### **SECTION 316: CAUSING DEATH OF QUICK UNBORN CHILD BY ACT AMOUNTING TO CULPABLE HOMICIDE**

Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Illustration*

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

### **SECTION 317: EXPOSURE AND ABANDONMENT OF CHILD UNDER TWELVE YEARS, BY PARENT OR PERSON HAVING CARE OF IT**

Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine or with both.

*Explanation* : This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child dies in consequence of the exposure.

### SECTION 318: CONCEALMENT OF BIRTH BY SECRET DISPOSAL OF DEAD BODY

Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child dies before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

OF HURT

### SECTION 319: HURT

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

#### *COMMENTS*

Where in course of a sudden quarrel the accused hit his friend on his head with a stick weighing only 210 grams which unfortunately proved fatal, it was held that no knowledge of death could be ascribed to him. This conviction was accordingly changed under s. 323 IPC, i.e punishment for voluntarily causing hurt. Duyaneshwar, 1982 Cri.L.J. 1870 (Bom).

Non-recovery of the weapon is immaterial in a case where injuries are proved by medical evidence. The motive of causing injury also stood proved convicted under s. 323 IPC.-- Ram Narain v. State 1984 (6) DRJ 347: 1984(1) Crimes 758

### SECTION 320: GRIEVOUS HURT

The following kinds of hurt only are designated as "grievous"--

First--Emasculation

Secondly--Permanent privation of the sight of either eye.

Thirdly--Permanent privation of the hearing of either ear.

Fourthly--Privation of any member or joint.

Fifthly--Destruction or permanent impairing of the powers of any member or joint.

Sixthly--Permanent disfiguration of the head or face

Seventhly--Fracture or dislocation of a bone or tooth

Eighthly--Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

#### *COMMENTS*

Grievous hurt is hurt of a more serious kind. The authors of the Code observe: "we have found it very difficult to draw a line between those bodily hurt which are serious and those which are slight. To draw such a line with perfect accuracy is, indeed, absolutely impossible; but it is far better that such a line should be drawn, though rudely than that offences some of which approach in enormity to murder, while others are little more than pettier which a good-natured man would hardly resent, would be classed together".

There must be some specific hurt, voluntarily inflicted, and coming within any of the eight kinds enumerated in this section in order to make out an offence under s. 320.

Emasculation means depriving a male of masculine vigour.

Disfiguration means doing a man some external injury which detracts from his personal appearance but does not weaken him, as the cutting of a man's nose or ears. Where the accused went with a razor to the house of a dancing girl and cut the bridge of her nose with it, which according to doctor permanently disfigured her face, the case clearly fell within clause sixthly of s. 320 IPC-- Gangaram, 1984 Cri.LJ 180 (Raj).

For the application of clause seventhly, it is not necessary that the bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. Any break or splintering of the bone, rupture or fissure in it would amount to fracture within the meaning of this clause. Harilal, AIR 1970 SC 1969.

Victim assaulted by a gandas at the time when he was wearing and putting on a turban. Due to this, he was saved but it did leave a head injury behind. Medical evidence showed that there was a deep cut involving the whole of outer table and reaching up to the inner table. The fracture was within the meaning of seventhly clause under s. 320 IPC. The High Court altered the conviction of the accused from that under s. 324 IPC to owe under s. 326.--Naib Singh v. State of Punjab AIR 1986 SC 2192

Where the medical evidence showed that the injury on the forehead which caused death was by a lathi and not by an iron rod as deposed to by witnesses and the internal injury could not be correlated to the external injury caused by the accused, it was held to be a fit case where the accused should be convicted only under s. 325 IPC--Mohinder Singh, 1985 Cri.LJ 1903 (SC).

Injury caused to the abdomen is grievous in nature, since it is the vital part of human body--Vasu Dev v. State 1982 DRJ 1501

## SECTION 321: VOLUNTARILY CAUSING HURT

Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

## SECTION 322: VOLUNTARILY CAUSING GRIEVOUS HURT

Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".

*Explanation:* A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

## SECTION 323: PUNISHMENT FOR VOLUNTARILY CAUSING HURT

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

#### **SECTION 324: VOLUNTARILY CAUSING HURT BY DANGEROUS WEAPONS OR MEANS**

Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### **SECTION 325: PUNISHMENT FOR VOLUNTARILY CAUSING GRIEVOUS HURT**

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### **SECTION 326: VOLUNTARILY CAUSING GRIEVOUS HURT BY DANGEROUS WEAPONS OR MEANS**

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 327: VOLUNTARILY CAUSING HURT TO EXTORT PROPERTY, OR TO CONSTRAIN TO AN ILLEGAL ACT**

Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 328: CAUSING HURT BY MEANS OF POISON, ETC., WITH INTENT TO COMMIT AN OFFENCE**

Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to

such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **SECTION 329: VOLUNTARILY CAUSING GRIEVOUS HURT TO EXTORT PROPERTY, OR TO CONSTRAIN TO AN ILLEGAL ACT**

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **SECTION 330: VOLUNTARILY CAUSING HURT TO EXTORT CONFESSION, OR TO COMPEL RESTORATION OF PROPERTY**

Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### **Illustrations**

- (a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.
- (b) A, a police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.
- (c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.
- (d) A, a Zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

### **SECTION 331: VOLUNTARILY CAUSING GRIEVOUS HURT TO EXTORT CONFESSION, OR TO COMPEL RESTORATION OF PROPERTY**

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **SECTION 332: VOLUNTARILY CAUSING HURT TO DETER PUBLIC SERVANT FROM HIS DUTY**

Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

### **SECTION 333: VOLUNTARILY CAUSING GRIEVOUS HURT TO DETER PUBLIC SERVANT FROM HIS DUTY**

Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **SECTION 334: VOLUNTARILY CAUSING HURT ON PROVOCATION**

Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

### **SECTION 335: VOLUNTARILY CAUSING GRIEVOUS HURT ON PROVOCATION**

Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

*Explanation:* The last two sections are subject to the same provisos as Explanation 1, section 300.

### **SECTION 336: ACT ENDANGERING LIFE OR PERSONAL SAFETY OF OTHERS**

Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

## SECTION 337: CAUSING HURT BY ACT ENDANGERING LIFE OR PERSONAL SAFETY OF OTHERS

Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

## SECTION 338: CAUSING GRIEVOUS HURT BY ACT ENDANGERING LIFE OR PERSONAL SAFETY OF OTHERS

Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

## OF WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT

### 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 a right to proceed, is said wrongfully to restrain that person.

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

Illustration

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

### SECTION 340: WRONGFUL CONFINEMENT

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustrations

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

(b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

### SECTION 341: PUNISHMENT FOR WRONGFUL RESTRAINT

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

### SECTION 342: PUNISHMENT FOR WRONGFUL CONFINEMENT

Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

#### **SECTION 343: WRONGFUL CONFINEMENT FOR THREE OR MORE DAYS**

Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **SECTION 344: WRONGFUL CONFINEMENT FOR TEN OR MORE DAYS**

Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

#### **SECTION 345: WRONGFUL CONFINEMENT OF PERSON FOR WHOSE LIBERATION WRIT HAS BEEN ISSUED**

Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.

#### **SECTION 346: WRONGFUL CONFINEMENT IN SECRET**

Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

#### **SECTION 347: WRONGFUL CONFINEMENT TO EXTORT PROPERTY, OR CONSTRAIN TO ILLEGAL ACT**

Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall be also be liable to fine.

#### **SECTION 348: WRONGFUL CONFINEMENT TO EXTORT CONFESSION, OR COMPEL RESTORATION OF PROPERTY**

Whoever wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined any confession or any

information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

## OF CRIMINAL FORCE AND ASSAULT

### SECTION 349: FORCE

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

PROVIDED that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways herein after described:--

First--By his own bodily power.

Secondly--By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly--By inducing any animal to move, to change its motion, or to cease to move.

### SECTION 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 of that other.

Illustrations

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z, and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot, A lashes Z's horses, and thereby causes them to quicken their place. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z, and as A has acted thus intentionally

without Z's consent in order to the commission of an offence, A has used criminal force to Z.

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

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z.

Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z; and if he did so without Z's

consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with that water so situated that such contact must affect Z's sense of feeling; A has therefore intentionally used force to Z; and if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z. A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

## SECTION 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 beatings". 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.

## SECTION 352: PUNISHMENT FOR ASSAULT OR CRIMINAL FORCE OTHERWISE THAN ON GRAVE PROVOCATION

Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

*Explanation* : Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

### **SECTION 353: ASSAULT OR CRIMINAL FORCE TO DETER PUBLIC SERVANT FROM DISCHARGE OF HIS DUTY**

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### **SECTION 354: ASSAULT OR CRIMINAL FORCE TO WOMAN WITH INTENT TO OUTRAGE HER MODESTY**

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### **SECTION 355: ASSAULT OR CRIMINAL FORCE WITH INTENT TO DISHONOUR PERSON, OTHERWISE THAN ON GRAVE PROVOCATION**

Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### **SECTION 356: ASSAULT OR CRIMINAL FORCE IN ATTEMPT TO COMMIT THEFT OF PROPERTY CARRIED BY A PERSON**

Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

## SECTION 357: ASSAULT OR CRIMINAL FORCE IN ATTEMPT WRONGFULLY TO CONFINE A PERSON

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

## SECTION 358: ASSAULT OR CRIMINAL FORCE ON GRAVE PROVOCATION

Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

*Explanation:* The last section is subject to the same explanation as section 352.

## OF KIDNAPPING, ABDUCTION, SLAVERY AND FORCED LABOUR

### SECTION 359: KIDNAPPING

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

#### *COMMENTS*

Kidnapping means stealing or carrying away of a person from one place to another or from one's own country to another against his will. A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes--(a) to hold for ransom or reward, or as a shield or hostage; or (b) to facilitate commission of any felony or flight thereafter; or (c) to inflict bodily injury on or to terrorize the victim or another; or (d) to interfere with the performance of any governmental or political function.

Before a person is said to have kidnapped a minor, there must be some proof of his having done something which led to removal of the minor from the keeping of his/her guardian. The consent of the minor is immaterial and "taking" would be complete if a minor is taken out of the permission of the father without his consent.--Madan Lal v. Jaswant Singh 1994(28) DRJ 335

### SECTION 360: KIDNAPPING FROM INDIA

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

### SECTION 361: KIDNAPPING FROM LAWFUL GUARDIANSHIP

Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of

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

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

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

## SECTION 362: ABDUCTION

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

### COMMENTS

This section merely defines the word 'abduction' and there is no such offence as abduction under the Code. But abduction with certain intent is an offence where force or fraud is essential. Abduction is a continuous offence, that is, a girl is being abducted not only when she is first taken from any public place but also when she is removed from one place to another. Mere finding that the accused abducted the woman is not enough, it must be shown that the accused abducted her for any of the purposes mentioned in s. 366 IPC. Else the accused is to be acquitted.--Chhotelal v. State of Haryana AIR 1979 SC 1994

It is essential to know the difference between kidnapping and abduction. It is as follows:-

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- (i) Kidnapping is committed only in respect of a minor under sixteen years of age if a male and under eighteen years if a female or a person of unsound mind; while abduction is in respect of a person of any age.
- (ii) The person kidnapped is removed out of lawful guardianship. A child without a guardian cannot be kidnapped. Abduction has reference exclusively to the person abducted.
- (iii) In kidnapping the minor is simply taken away. The means used may be innocent. In abduction, force, compulsion, or deceitful means are used.
- (iv) Consent of the person taken or enticed is immaterial in kidnapping; while in abduction, the consent of the person moved, if freely and voluntarily given, condones abduction.
- (v) The intention of the offender, in kidnapping, is a wholly irrelevant consideration while in abduction it is the most important factor.
- (vi) Kidnapping from guardianship is a substantive offence under the Code, but abduction is an auxiliary act, not punishable by itself, but made criminal only when it is done with one or other of the intents specified in s. 364 of this Code.

Where the deceased was persuaded by the accused to go with them in their jeep with a view to settling a dispute which the deceased had with another person and the deceased thereupon left with them after getting properly dressed, it was held that it could not be abduction as there was neither force nor deceit which compelled the deceased to go with the accused persons--Vinod Chaturvedi, 1984 Cri.LJ 814 (SC).

Enticing away by natural guardian or father, it does not constitute abduction.--Sudesh Thakur v. KCJ 1996 (38) DRJ 22: 1996 JCC 541

### SECTION 363: PUNISHMENT FOR KIDNAPPING

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

### SECTION 363A: KIDNAPPING OR MAIMING A MINOR FOR PURPOSES OF BEGGING

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

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

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

(4) In this section--

(a) "begging" means--

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

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

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

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

(b) "minor" means--

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

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

### SECTION 364: KIDNAPPING OR ABDUCTING IN ORDER TO MURDER

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

Illustrations

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

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

### **1[SECTION 364A: KIDNAPPING FOR RANSOM, ETC**

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes death or hurt to such person in order to compel the government or 2[any foreign State or international inter-governmental organisation or any other person to do so or abstain from doing any act or to pay ransom, shall be punishable with death, or imprisonment of life, and shall also be liable to fine.]

1Inserted by Act No.42 of 1993 wef 22-5-1993

2Substituted by Act 24 of 1995 w.e.f 26-5-1995

### **SECTION 365: KIDNAPPING OR ABDUCTING WITH INTENT SECRETLY AND WRONGFULLY TO CONFINE PERSON**

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

### **SECTION 366: KIDNAPPING ABDUCTING OR INDUCING WOMAN TO COMPEL HER MARRIAGE, ETC**

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

### **SECTION 366A: PROCURATION OF MINOR GIRL**

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

### **SECTION 366B: IMPORTATION OF GIRL FROM FOREIGN COUNTRY**

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

### **SECTION 367: KIDNAPPING OR ABDUCTING IN ORDER TO SUBJECT PERSON TO GRIEVOUS HURT, SLAVERY ETC.**

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

### **SECTION 368: WRONGFULLY CONCEALING OR KEEPING IN CONFINEMENT, KIDNAPPED OR ABDUCTED PERSON**

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

### **SECTION 369: KIDNAPPING OR ABDUCTING CHILD UNDER TEN YEARS WITH INTENT TO STEAL FROM ITS PERSON**

Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **SECTION 370: BUYING OR DISPOSING OF ANY PERSON AS A SLAVE**

Whoever, imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **SECTION 371: HABITUAL DEALING IN SLAVES**

Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves shall be punished with Imprisonment for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

### **SECTION 372: SELLING MINOR FOR PURPOSES OF PROSTITUTION, ETC**

Whoever sells, lets to hire or otherwise dispose of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation 1* : When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel,

the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that he shall be used for the purpose of prostitution.

*Explanation 2* : For the purposes of this section "Illicit intercourse" means sexual intercourse between persons not united by marriage or by any union or tie which though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong, or where they belong to two different communities, of both such communities, as constituting between them a quasi-marital relation.

### **SECTION 373: BUYING MINOR FOR PURPOSES OF PROSTITUTION, ETC.**

Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation I* : Any prostitute or any person keeping or managing a brothel, who buys, hires, or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

*Explanation II* : "Illicit intercourse" has the same meaning as in section 372.

### **SECTION 374: UNLAWFUL COMPULSORY LABOUR**

Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

## **SEXUAL OFFENCES**

### **SECTION 375: RAPE**

A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:--

First--Against her will.

Secondly--Without her consent.

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

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

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

Sixthly--With or without her consent, when she is under sixteen years of age.

Explanation : Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

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

#### COMMENTS

In case of a girl below the age of consent, her consent will not matter so far as the offence of rape is concerned, but if she consented her evidence will be suspected as that of an accomplice. The Supreme Court has held that a woman who has been raped is not an accomplice. If she was ravished she is the victim of an outrage and if she consented there is no rape; 1952 (SCR) 377. There is no need for corroboration by independent testimony connecting the accused with the crime. It depends on peculiar facts and circumstances of each case. The Supreme Court observed--"when no woman of honour will accuse another of rape since she sacrifices thereby what is dearest to her ..... when a woman is ravished what is inflicted is not merely physical injury but the deep sense of some deathless shame..... Judicial response to human rights cannot be blunted by legal bigotry--Rafique, 1980 Cri.LJ 1344 (SC)."In the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule in adding insult to injury..... There is built in assurance that the charge is genuine rather than fabricated..... The victim of sex offence is entitled to great weight absence of corroboration notwithstanding--Bharwada Bhajanbhai Hirjibhai, 1983 Cri.LJ 1096 (SC). In custodial rape it is utmost difficult to get any other independent evidence to corroborate the testimony of the prosecutrix. When a person in custody commits of such a serious crime of rape on a young girl, there is no room for sympathy or pity. The punishment must in such cases be exemplary. Sentence of 5 years rigorous imprisonment and fine of Rs. 1000 was held to be proper--State of Maharashtra v. C.K.Jain AIR 1990 SC 658.

Corroboration of the testimony of victim is not a pre-condition. Refusal to act on the testimony of the victim in the absence of corroboration is adding insult to injury.--Jai Chand v. State 1996 (36) DRJ 424: 1996(3) Crimes 160.

The prosecution is required to establish two things to bring the guilt home--firstly, that rape had been committed on prosecutrix and secondly, it was the accused who committed rape on her.--Jagdish Maur v. State 1986 (10) DRJ 44

For the purpose of determining the age of the prosecutrix when there is doubtful oral evidence and suspicious evidence in the shape of a school leaving certificate the court should give all importance to the opinion of the radiologist regarding the age of the prosecutrix i.e. on the basis of ossification test.--Kanchan Dass v. State 1990(18) DRJ 99: 1991 Cri. LJ 2036; Man Singh v. State 1992(23) DRJ 80: 1992(48) DLT 13

#### SECTION 376: PUNISHMENT FOR RAPE

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

PROVIDED that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,

(a) being a police officer commits rape--

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

*PROVIDED* that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1 : Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2 : "Woman's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3 : "Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

## **SECTION 376A: INTERCOURSE BY A MAN WITH HIS WIFE DURING SEPARATION**

Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

## **SECTION 376B: INTERCOURSE BY PUBLIC SERVANT WITH WOMAN IN HIS CUSTODY**

Whoever, being a public servant, takes advantage of his official position and induces or seduces any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

#### **SECTION 376C: INTERCOURSE BY SUPERINTENDENT OF JAIL, REMAND HOME, ETC**

Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

*Explanation 1* : "Superintendent" in relation to a jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates.

*Explanation 2* : The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.

#### **SECTION 376D: INTERCOURSE BY ANY MEMBER OF THE MANAGEMENT OR STAFF OF A HOSPITAL WITH ANY WOMAN IN THAT HOSPITAL**

Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position on and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

*Explanation*: The expression "hospital " shall have the same meaning as in Explanation 3 to sub-section (2) of section 376.

#### **OF UNNATURAL OFFENCES**

#### **SECTION 377: UNNATURAL OFFENCES**

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation* : Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

#### **CHAPTER XVII OF OFFENCES AGAINST PROPERTY OF THEFT**

## SECTION 378: THEFT

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

Explanation 1 : A thing so long as it is attached to the earth, not being moveable property is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2 : A moving effected by the same act which effects the severance may be a theft.

Explanation 3 : A person is said to cause a thing to move by removing an obstacle which prevented from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4 : A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5 : The consent mentioned in the definition may be express or implied and may be given either by the person in possession or by any person having for that purpose authority either express or implied.

### Illustrations

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent. A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the high road, not in the possession of any person. A by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a

security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z here husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of Z's possession. Here, as A does not take dishonestly, he does not commit theft.

### **SECTION 379: PUNISHMENT FOR THEFT**

Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

### **SECTION 380: THEFT IN DWELLING HOUSE, ETC.**

Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **SECTION 381: THEFT BY CLERK OR SERVANT OF PROPERTY IN POSSESSION OF MASTER**

Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

## SECTION 382: THEFT AFTER PREPARATION MADE FOR CAUSING DEATH, HURT OR RESTRAINT IN ORDER TO THE COMMITTING OF THE THEFT

Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment of a term which may extend to ten years, and shall also be liable to fine.

### Illustrations

(a) A commits theft on property in Z's possession, and while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

## OF EXTORTION

## SECTION 383: EXTORTION

Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

### Illustrations

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

## SECTION 384: PUNISHMENT FOR EXTORTION

Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

## SECTION 385: PUTTING PERSON IN FEAR OF INJURY IN ORDER TO COMMIT EXTORTION

Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

## **SECTION 386: EXTORTION BY PUTTING A PERSON IN FEAR OF DEATH OR GRIEVOUS HURT**

Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

## **SECTION 387: PUTTING PERSON IN FEAR OF DEATH OR OF GRIEVOUS HURT, IN ORDER TO COMMIT EXTORTION**

Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

## **SECTION 388: EXTORTION BY THREAT OF ACCUSATION OF AN OFFENCE PUNISHABLE WITH DEATH OR IMPRISONMENT FOR LIFE, ETC.**

Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with imprisonment for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and , if the offence be one punishable under section 377 of this Code, may be punished with imprisonment for life.

## **SECTION 389: PUTTING PERSON IN FEAR OF ACCUSATION OF OFFENCE, IN ORDER TO COMMIT EXTORTION**

Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with imprisonment for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life.

## **OF ROBBERY AND DACOITY**

### **SECTION 390: ROBBERY**

In all robbery there is either theft or extortion

When theft is robbery : Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery : Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the

extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, includes the person so put in fear then and there to deliver up the thing extorted.

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

Illustrations

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

(b) A meets Z on the high roads, show a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z, by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

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

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

## COMMENTS

Felonious taking of money, personal property, or any other article of value, in the possession of another, from his person or immediate presence and against his will, accomplished by means of fear or fear.

A person is guilty of robbery, if, in the course of committing a theft, he--(a) inflicts serious bodily injury upon another; (b) threatens another with or purposely puts him in fear of immediate serious bodily injury; (c) commits or threatens immediately to commit any felony of the first or second degree.

Robbery is a special and aggravated form of either theft or extortion. The chief distinguishing element in robbery is the presence of imminent fear of violence.

In order to make an offence of theft a robbery--there must be either theft and injury or threat of injury while committing theft--P.Mahapatra, 1983 Cri.LJ NOC 238.

## SECTION 391: DACOITY

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "Dacoity".

## COMMENTS

The gravity of the offence consists in the terror it causes by the presence of a number of offenders.

The legislatures have made dacoity punishable at four stages. First stage, when five or more persons assemble for the purpose of committing a dacoity, each of them is punishable under s. 402 IPC on the ground of joining the assembly. Second stage, when one makes preparation to commit a dacoity, he is punishable under s.399 IPC. Third and the fourth stages can be taken from the definition of the dacoity itself. The stage of attempting to commit and the stage of actual commission of robbery. Attempt to commit dacoity is also dacoity and punishable under s. 395 IPC.

Out of the five named accused who committed the dacoity, two were acquitted holding that only three took part in the offence. It was held that the remaining three could not be convicted as the offence of dacoity is committed by not less than five persons.--Debi (1952)2 Raj 177 Ram Lakhan v. State of UP 1983 Cri. LJ 691 (SC)

Benefit of doubt was given, where there was no corroborative evidence showing involvement of accused persons.--Surya Moorthy v. Govindaswamy AIR 1989 SC 1410

### **SECTION 392: PUNISHMENT FOR ROBBERY**

Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

### **SECTION 393: ATTEMPT TO COMMIT ROBBERY**

Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

### **SECTION 394: VOLUNTARILY CAUSING HURT IN COMMITTING ROBBERY**

If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

### **SECTION 395: PUNISHMENT FOR DACOITY**

Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

### **SECTION 396: DACOITY WITH MURDER**

If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

### **COMMENTS**

When dacoity takes place with murder, all of his companions participating in the commission of the same dacoity are committed under this section. The prosecution need

not establish either any common intention in s. 34 or common object in s. 149.--Kalika Tiwari v. State of Bihar AIR 1997 SC 2186

#### **SECTION 397: ROBBERY, OR DACOITY, WITH ATTEMPT TO CAUSE DEATH OR GRIEVOUS HURT**

If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

#### **SECTION 398: ATTEMPT TO COMMIT ROBBERY OR DACOITY WHEN ARMED WITH DEADLY WEAPON**

If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

#### **SECTION 399: MAKING PREPARATION TO COMMIT DACOITY**

Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 400: PUNISHMENT FOR BELONGING TO GANG OF DACOITS**

Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 401: PUNISHMENT FOR BELONGING TO GANG OF THEIVES**

Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

#### **SECTION 402: ASSEMBLING FOR PURPOSE OF COMMITTING DACOITY**

Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

#### **OF CRIMINAL MISAPPROPRIATION OF PROPERTY**

#### **SECTION 403: DISHONEST MISAPPROPRIATION OF PROPERTY**

Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### Illustrations

(a) A takes property belonging to Z out of Z's possession in good faith believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

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

(c) A and B, being joint owners of a horse. A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1 : A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

#### Illustration

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2 : A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means what is a reasonable time in such a case, is a question of fact. It is not necessary that the finder should know who is the owner of the property, or that any particular person is that owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

#### Illustrations

(a) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was

drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention to restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use, A is guilty of an offence under this section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

#### **SECTION 404: DISHONEST MISAPPROPRIATION OF PROPERTY POSSESSED BY DECEASED PERSON AT THE TIME OF HIS DEATH**

Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

##### **Illustration**

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

#### **OF CRIMINAL BREACH OF TRUST**

#### **SECTION 405: CRIMINAL BREACH OF TRUST**

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharge, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commit "criminal breach of trust".

Explanation 1 : A person, being an employer, of an establishment whether exempted under section 17 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952) or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2 : A person, being an employer, who deducts the employee's contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established

under the Employees' State Insurance Act, 1948, (34 of 1948) shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution of the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of direction of law as aforesaid.

#### Illustrations

(a) A, being executor to will of a deceased person, dishonestly disobeys the law which directs him to divide the effect according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z going on a journey entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with direction to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue officer, is entrusted with public money and is either directed by law or bound by a contract, express or implied, with the Government to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

### **SECTION 406: PUNISHMENT FOR CRIMINAL BREACH OF TRUST**

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

### **SECTION 407: CRIMINAL BREACH OF TRUST BY CARRIER, ETC.**

Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **SECTION 408: CRIMINAL BREACH OF TRUST BY CLERK OR SERVANT**

Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with

imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### **SECTION 409: CRIMINAL BREACH OF TRUST BY PUBLIC SERVANT, OR BY BANKER, MERCHANT OR AGENT**

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **OF THE RECEIVING OF STOLEN PROPERTY**

#### **SECTION 410: STOLEN PROPERTY**

Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property", whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession thereof, it then ceases to be stolen property.

#### **SECTION 411: DISHONESTLY RECEIVING STOLEN PROPERTY**

Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### **SECTION 412: DISHONESTLY RECEIVING PROPERTY STOLEN IN THE COMMISSION OF A DACOITY**

Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment of life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 413: HABITUALLY DEALING IN STOLEN PROPERTY**

Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 414: ASSISTING IN CONCEALMENT OF STOLEN PROPERTY**

Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with

imprisonment of either description for a term which may extend to three years or with both.

## OF CHEATING

### SECTION 415: CHEATING

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind reputation or property, is said to "cheat".

Explanation : A dishonest concealment of fact is a deception with the meaning of this section.

#### Illustrations

- (a) A, by falsely pretending to be in Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- (b) A, by putting a counterfeit mark on an article intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.
- (d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
- (e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money A cheats.
- (f) A intentionally deceives Z in the belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.
- (g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards break his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.
- (h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.
- (i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

## COMMENTS

Deceiving in this section means a false and fraudulent representation as to a matter of fact made in order to induce a person to act thereupon. To induce a person to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. The deceiver's object is fraudulent. He intends in all cases to acquire or retain wrongful possession of that to which some other has better claim and which that other person is entitled to recover by law. The object must be wrongful gain attended with wrongful loss. Deceiving is done intentionally.

There are two parts or two separate clauses of acts which the person deceived may be induced to do. In the first part he may be induced fraudulently or dishonestly to deliver any property to any person or to consent that any person shall retain any property. The second part is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. Inducing must be intentional but not fraudulent or dishonest in the second part. Each part is independent of each other. Both parts have a common feature and it is that there must be deceit practised by the accused upon the victim. Generally speaking, 'deceiving' is to lead into error by causing a person to believe what is false or to disbelieve what is true and such deception may be by words or by conduct. A fraudulent representation can be made directly or indirectly.--Swami Dhirendra Brahmachari v. Shailender Bhushan 1994(28) DRJ 362: 1994 JCC 699

## SECTION 416: CHEATING BY PERSONATION

A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation : The offence is committed whether the individual personated is real or imaginary person.

Illustrations

- (a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.
- (b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

## SECTION 417: PUNISHMENT FOR CHEATING

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

## SECTION 418: CHEATING WITH KNOWLEDGE THAT WRONGFUL LOSS MAY ENSUE TO PERSON WHOSE INTEREST OFFENDER IS BOUND TO PROTECT

Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

## SECTION 419: PUNISHMENT FOR CHEATING BY PERSONATION

Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### **SECTION 420: CHEATING AND DISHONESTLY INDUCING DELIVERY OF PROPERTY**

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### **COMMENTS**

Simple cheating is punishable under s. 417. But where there is delivery or destruction of any property or alteration or destruction of any valuable security resulting from the act of the person deceiving this section comes into play. For an offence under this section it must be proved that the complainant parted with his property acting on a representation which was false to the knowledge of the accused and that the accused had a dishonest intention from the outset.

#### **OF FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY**

#### **SECTION 421: DISHONEST OR FRAUDULENT REMOVAL OR CONCEALMENT OF PROPERTY TO PREVENT DISTRIBUTION AMONG CREDITORS**

Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **SECTION 422: DISHONESTLY OR FRAUDULENTLY PREVENTING DEBT BEING AVAILABLE FOR CREDITORS**

Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

#### **SECTION 423: DISHONEST TO FRAUDULENT EXECUTION OF DEED OF TRANSFER CONTAINING FALSE STATEMENT OF CONSIDERATION**

Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or a persons for whose use or benefit it is

really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

## SECTION 424: DISHONEST OR FRAUDULENT REMOVAL OR CONCEALMENT OF PROPERTY

Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly release any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

## OF MISCHIEF

### SECTION 425: MISCHIEF

Whoever with intent to cause, knowing that he is likely to cause wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1 : It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.  
Explanation 2 : Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

#### Illustrations

- (a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.
- (b) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z A has committed mischief.
- (c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.
- (d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.
- (e) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the under writers. A has committed mischief.
- (f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money or bottomry on the ship. A has committed mischief.
- (g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.
- (h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

### SECTION 426: PUNISHMENT FOR MISCHIEF

Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

#### **SECTION 427: MISCHIEF CAUSING DAMAGE TO THE AMOUNT OF FIFTY RUPEES**

Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **SECTION 428: MISCHIEF BY KILLING OR MAIMING ANIMAL OF THE VALUE OF TEN RUPEES**

Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **SECTION 429: MISCHIEF BY KILLING OR MAIMING CATTLE, ETC., OF ANY VALUE OR ANY ANIMAL OF THE VALUE OF FIFTY RUPEES**

Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years or with fine, or with both.

#### **SECTION 430: MISCHIEF BY INJURY TO WORKS OF IRRIGATION OR BY WRONGFULLY DIVERTING WATER**

Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

#### **SECTION 431: MISCHIEF BY INJURY TO PUBLIC ROAD, BRIDGE, RIVER OR CHANNEL**

Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or, navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

#### **SECTION 432: MISCHIEF BY CAUSING INUNDATION OR OBSTRUCTION TO PUBLIC DRAINAGE ATTENDED WITH DAMAGE**

Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

**SECTION 433: MISCHIEF BY DESTROYING, MOVING OR RENDERING LESS USEFUL A LIGHT-HOUSE OR SEA MARK**

Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

**SECTION 434: MISCHIEF BY DESTROYING OR MOVING, ETC., A LAND-MARK FIXED BY PUBLIC AUTHORITY**

Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**SECTION 435: MISCHIEF BY FIRE OR EXPLOSIVE SUBSTANCE WITH INTENT TO CAUSE DAMAGE TO AMOUNT OF ONE HUNDRED OR (IN CASE OF AGRICULTURAL PRODUCE) TEN RUPEES**

Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**SECTION 436: MISCHIEF BY FIRE OR EXPLOSIVE SUBSTANCE WITH INTENT TO DESTROY HOUSE, ETC.**

Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**SECTION 437: MISCHIEF WITH INTENT TO DESTROY OR MAKE UNSAFE A DECKED VESSEL OR ONE OF TWENTY TONS BURDEN**

Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of

either description for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 438: PUNISHMENT FOR THE MISCHIEF DESCRIBED IN SECTION 437 COMMITTED BY FIRE OR EXPLOSIVE SUBSTANCE**

Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with imprisonment of life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 439: PUNISHMENT FOR INTENTIONALLY RUNNING VESSEL AGROUND OR ASHORE WITH INTENT TO COMMIT THEFT, ETC.**

Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 440: MISCHIEF COMMITTED AFTER PREPARATION MADE FOR CAUSING DEATH OR HURT**

Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

### **OF CRIMINAL TRESPASS**

#### **SECTION 441: CRIMINAL TRESPASS**

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains therewith intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

#### **SECTION 442: HOUSE-TRESPASS**

Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building, used as a place for worship, or as a place for the custody of property, is said to commit "house trespass".

*Explanation* : The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

#### **SECTION 443: LURKING HOUSE TRESPASS**

Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the

building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

#### SECTION 444: LURKING HOUSE-TRESPASS BY NIGHT

Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night".

#### SECTION 445: HOUSE-BREAKING

A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:--

Firstly--If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly--If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly--If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly--If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly--If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly--If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation : Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations

- (a) A commits house-trespass by making hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.
- (b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.
- (c) A commits house-trespass by entering Z's house through a window. This is house-breaking.
- (d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.
- (e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.
- (f) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having open the door with that key. This is house-breaking.
- (g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h) Z, the door-keeper of Y, is standing in Y's door way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

#### **SECTION 446: HOUSE-BREAKING BY NIGHT**

Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night".

#### **SECTION 447: PUNISHMENT FOR CRIMINAL TRESPASS**

Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

#### **SECTION 448: PUNISHMENT FOR HOUSE-TRESPASS**

Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

#### **SECTION 449: HOUSE-TRESPASS IN ORDER TO COMMIT OFFENCE PUNISHABLE WITH DEATH**

Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with imprisonment for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

#### **SECTION 450: HOUSE-TRESPASS IN ORDER TO COMMIT OFFENCE PUNISHABLE WITH IMPRISONMENT FOR LIFE**

Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

#### **SECTION 451: HOUSE-TRESPASS IN ORDER TO COMMIT OFFENCE PUNISHABLE WITH IMPRISONMENT**

Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

#### **SECTION 452: HOSE-TRESPASS AFTER PREPARATION FOR HURT, ASSAULT OR WRONGFUL RESTRAINT**

Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **SECTION 453: PUNISHMENT FOR LURKING HOUSE-TRESPASS OR HOUSE-BREAKING**

Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

### **SECTION 454: LURKING HOUSE-TRESPASS OR HOUSE-BREAKING IN ORDER TO COMMIT OFFENCE PUNISHABLE WITH IMPRISONMENT**

Whoever commits lurking house-trespass, or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

### **SECTION 455: LURKING HOUSE-TRESPASS OR HOUSE-BREAKING AFTER PREPARATION FOR HURT, ASSAULT OR WRONGFUL RESTRAINT**

Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **SECTION 456: PUNISHMENT FOR LURKING HOUSE-TRESPASS OR HOUSE-BREAKING BY NIGHT**

Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

### **SECTION 457: LURKING HOUSE-TRESPASS OR HOUSE-BREAKING BY NIGHT IN ORDER TO COMMIT OFFENCE PUNISHABLE WITH IMPRISONMENT**

Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

### **SECTION 458: LURKING HOUSE-TRESPASS OR HOUSE-BREAKING BY NIGHT AFTER PREPARATION FOR HURT, ASSAULT, OR WRONGFUL RESTRAINT**

Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

#### **SECTION 459: GRIEVOUS HURT CAUSED WHILST COMMITTING LURKING HOUSE-TRESPASS OR HOUSE-BREAKING**

Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 460: ALL PERSONS JOINTLY CONCERNED IN LURKING HOUSE-TRESPASS OR HOUSE-BREAKING BY NIGHT PUNISHABLE WHERE DEATH OR GRIEVOUS HURT CAUSED BY ONE OF THEM**

If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 461: DISHONESTLY BREAKING OPEN RECEPTACLE CONTAINING PROPERTY**

Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **SECTION 462: PUNISHMENT FOR SAME OFFENCE WHEN COMMITTED BY PERSON ENTRUSTED WITH CUSTODY**

Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

### **CHAPTER XVIII**

#### **OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS**

#### **SECTION 463: FORGERY**

Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into

any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

#### COMMENTS

The false making or material altering of a document or electronic record with the intent to defraud. A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor: (a) alters any writing of another without his authority; or (b) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or (c) utters any writing which he knows to be forged in a manner specified in paragraph (a) or (b).

Mere making of a false document or false electronic record would not constitute defrauding unless injury or intent to cause injury to the person deceived is also proved--  
Sadanand, 1997 CrLJ NOC 103 : Tul Mohan Ram, 1981 Cri.LJ NOC 223 (Delhi).

#### SECTION 464: MAKING A FALSE DOCUMENT

2[A person is said to make a false document or false electronic record--

First--Who dishonestly or fraudulently--

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or transmits any electronic record or part of any electronic record;
- (c) affixes any digital signature on any electronic record;
- (d)makes any mark denoting the execution of a document or the authenticity of the digital signature,

with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

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

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

<sup>1</sup>Substituted by Information Technology Act 2000, w.e.f 17-10-2000

#### Illustrations

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

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f) Z's will contains these words "I direct that all my remaining property be equally divided between A, B and C" A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "pay to Z or his order", and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here as A made a false document in order to induce Z to part with property. A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1 : A man's signature of his own name may amount to forgery.

Illustrations

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterward write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery, and if B,

knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable; here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects, with B for A's benefit, and with intent to defraud his creditors, and in order to give colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2 : The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Explanation 3 : For the purposes of this section, the expression "affixing digital signature" shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000.

Illustration

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

## **SECTION 465: PUNISHMENT FOR FORGERY**

Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

## **SECTION 466: FORGERY OF RECORD OF COURT OR OF PUBLIC REGISTER, ETC,**

1[Whoever forges a document or an electronic record, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgement, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

2[Explanation : For the purpose of this section, "register" includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000.

## **SECTION 467: FORGERY OF VALUABLE SECURITY, WILL ETC.**

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or

transfer any valuable security, or to receive the principal, interest or dividends thereon, or to received or deliver any money, moveable property, or valuable security or any document purporting to be an acceptance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security shall be punished with 3[imprisonment for life] or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 468: FORGERY FOR PURPOSE OF CHEATING**

Whoever commits forgery, intending that the 4[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### **SECTION 469: FORGERY FOR PURPOSE OF HARMING REPUTATION**

Whoever commits forgery 5[intending that the document or electronic record forged] shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment for either description for a term which may extend to three years, and shall also be liable to fine.

#### **SECTION 470: FORGED DOCUMENT**

A false 6[document or electronic record] made wholly or in part by forgery is designated a forged 6[document or electronic record].

1Substituted by Information Technology Act 2000, w.e.f 17-10-2000

2Inserted by Information Technology Act 2000, w.e.f 17-10-2000

3Substituted by Act 26 of 1855 for transportation for life” w.e.f 1-1-1956

4 Substituted by Information Technology Act 2000, w.e.f 17-10-2000

5Substituted by Information Technology Act 2000, w.e.f 17-10-2000

6 Substituted by Information Technology Act 2000, w.e.f 17-10-2000

#### **SECTION 471: USING AS GENUINE A FORGED DOCUMENT**

Whoever fraudulently or dishonestly uses as genuine any 1[document or electronic record] which he knows or has reason to believe to be a forged 1[document or electronic record,] shall be punished in the same manner as if he had forged such document or electronic record.

#### **SECTION 472: MAKING OR POSSESSING COUNTERFEIT SEAL, ETC., WITH INTENT TO COMMIT FORGERY PUNISHABLE UNDER SECTION 467**

Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that, the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate or other instrument knowing the same to be counterfeit, shall be punished with 2[imprisonment for life], or with imprisonment of

either description for a term which may extend to seven years, and shall also be liable to fine.

**SECTION 473: MAKING OR POSSESSING COUNTERFEIT SEAL, ETC., WITH INTENT TO COMMIT FORGERY PUBLISHABLE OTHERWISE**

Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this Chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**SECTION 474: HAVING POSSESSION OF DOCUMENT DESCRIBED IN SECTION 466 OR 467, KNOWING IT TO BE FORGED AND INTENDING TO USE IT AS GENUINE**

3[Whoever has in his possession any document or electronic record, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as a genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code], be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**SECTION 475: COUNTERFEITING DEVICE OR MARK USED FOR AUTHENTICATING DOCUMENTS DESCRIBED IN SECTION 467, OR POSSESSING COUNTERFEIT MARKED MATERIAL**

Whoever, counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with 2[imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

1.Substituted for document by Information Technology Act 2000 wef 17-10-2000

2.Substituted by Act 26 of 1955 for “transportation for life w.e.f 1-1-1956

3.Substituted by Information Technology act 2000 w.e.f. 17-10-2000

**SECTION 476: COUNTERFEITING DEVICE OR MARK USED FOR AUTHENTICATING DOCUMENTS OTHER THAN THOSE**

## DESCRIBED IN SECTION 467, OR POSSESSING COUNTERFEIT MARKED MATERIAL

Whoever counterfeits upon, or in the substance of any material, any device or mark used for the purpose of authenticating a<sup>1</sup>[any document or electronic record] other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity or any document then forged or thereafter to be forged on such material, or who with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

## SECTION 477: FRAUDULENT CANCELLATION, DESTRUCTION, ETC. OF WILL, TO ADOPT, OR VALUABLE SECURITY

Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with <sup>2</sup>[imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

## SECTION 477A: FALSIFICATION OF ACCOUNTS

Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any <sup>3</sup>[book, electronic record, paper, writing], valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such <sup>2</sup>[book, electronic record paper, writing], valuable security or account, shall be punished with imprisonment of either description of a term which may extend to seven years, or with fine, or with both.

Explanation : It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

## OF<sup>4</sup>[\*\*\*] PROPERTY AND OTHER MARKS

## SECTION 478: [TRADE MARKS]

Rep. by the Trade and Merchandise Marks Act, 1958 (43 of 1958) w.e.f. 25-11-1959.

<sup>1</sup>Substituted for “any document” by Information Technology Act, 2000 w.e.f 17-10-2000

<sup>2</sup>Substituted for “transportation for life” by Act 26 of 1955, w.e.f 1-1-1956

<sup>3</sup>Substituted for “book paper, writing” by information Technology Act 2000, wef 17-10-2000

<sup>4</sup>The word trade omitted by Act 43 of 1958 w.e.f. 25-11-1959

## SECTION 479: PROPERTY MARK

A mark used for denoting that moveable property belongs to a particular person is called a property mark.

#### **SECTION 480: [USING A FALSE TRADE MARK.]**

Rep. by the Trade and Merchandise Marks Act, 1958 (43 of 1958) w.e.f. 25-11-1959.

#### **SECTION 481: USING A FALSE PROPERTY MARK**

Whoever marks any movable property or goods or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods, contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

#### **SECTION 482: PUNISHMENT FOR USING A FALSE PROPERTY MARK**

Whoever uses any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

#### **SECTION 483: COUNTERFEITING A PROPERTY MARK USED BY ANOTHER**

Whoever counterfeits any property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **SECTION 484: COUNTERFEITING A MARK USED BY A PUBLIC SERVANT**

Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

#### **SECTION 485: MAKING OR POSSESSION OR ANY INSTRUMENT FOR COUNTERFEITING A PROPERTY MARK**

Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a property mark, or has in his possession a property mark for the purpose of denoting that any goods belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

## **SECTION 486: SELLING GOODS MARKED WITH A COUNTERFEIT PROPERTY MARK**

Whoever sells, or exposes, or has in possession for sale, any goods or things with a counterfeit property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves--

- (a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect of genuineness of the mark, and
- (b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or
- (c) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

## **SECTION 487: MAKING A FALSE MARK UPON ANY RECEPTACLE CONTAINING GOODS**

Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

## **SECTION 488: PUNISHMENT OF MAKING USE OF ANY SUCH FALSE MARK**

Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

## **SECTION 489: TAMPERING WITH PROPERTY MARK WITH INTENT TO CAUSE INJURY**

Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

## **OF CURRENCY-NOTES AND BANK-NOTES**

### **SECTION 489A: COUNTERFEITING CURRENCY NOTES OR BANK NOTES**

Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency note or bank note shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation* : For the purpose of this section and of sections 489B, 489C, 489D and 489E, the expressions "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money.

#### **SECTION 489B: USING AS GENUINE, FORGED OR COUNTERFEIT CURRENCY-NOTES OR BANK-NOTES**

Whoever sells to, to or buys or receives from any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 489C: POSSESSION OF FORGED OR COUNTERFEIT CURRENCY-NOTES OR BANK-NOTES**

Whoever has in his possession any forged or counterfeit currency-note, or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

#### **SECTION 489D: MAKING OR POSSESSING INSTRUMENTS OR MATERIALS FOR FORGING OR COUNTERFEITING CURRENCY-NOTES OR BANK-NOTES**

Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 489E: MAKING OR USING DOCUMENTS RESEMBLING CURRENCY-NOTES OR BANK-NOTES**

- (1) Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note shall be punished with fine which may extend to one hundred rupees.
- (2) If any person, whose name appears, on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.
- (3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or any other document used or

distributed in connection with that document it may , until the contrary is proved, be presumed that the person caused the document to be made.

## CHAPTER XIX OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

**SECTION 490:** [Breach of contract of service during voyage of journey.]  
Rep. by the Workmen's Breach of Contract (Repealing) Act, 1925 (3 of 1925)

### **SECTION 491: BREACH OF CONTRACT TO ATTEND ON AND SUPPLY WANTS OF HELPLESS PERSON**

Whoever, being bound by a lawful contract to attend on or to supply the wants of any person, who by reason of youth, or of unsoundness of mind or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

### **SECTION 492: BREACH OF CONTRACT TO SERVE AT DISTANT PLACE TO WHICH SERVANT IS CONVEYED AT MASTER'S EXPENSE**

[Rep. by the Workmen's Breach Contract (Repealing) Act, 1925]

## CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

### **SECTION 493: COHABITATION CAUSED BY A MAN DECEITFULLY INDUCING A BELIEF OF LAWFUL MARRIAGE**

Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **SECTION 494: MARRYING AGAIN DURING LIFETIME OF HUSBAND OR WIFE**

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception : This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with

whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

#### **SECTION 495: SAME OFFENCE WITH CONCEALMENT OF FORMER MARRIAGE FROM PERSON WITH WHOM SUBSEQUENT MARRIAGE IS CONTRACTED**

Whoever, commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **SECTION 496: MARRIAGE CEREMONY FRAUDULENTLY GONE THROUGH WITHOUT LAWFUL MARRIAGE**

Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not hereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### **SECTION 497: ADULTERY**

Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

#### **SECTION 498: ENTICING OR TAKING AWAY OR DETAINING WITH CRIMINAL INTENT A MARRIED WOMAN**

Whoever, takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

#### **CHAPTER XXA OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND**

#### **SECTION 498A: HUSBAND OR RELATIVE OF HUSBAND OF A WOMAN SUBJECTING HER TO CRUELTY**

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Explanation : For the purposes of this section , "cruelty" means

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

## COMMENTS

Cruelty means intentional and malicious infliction of physical or mental suffering upon living creatures, particularly human beings.

As far as Matrimonial Jurisprudence of India is concerned, the Supreme Court expressly departing from the English rules on the point states that harm of injury to health, reputation, working career or the like would be an important consideration in determining whether the conduct of the respondent amounts to cruelty. It is not necessary, as under the English law, that the cruelty must be of such a character as to cause 'danger' to life, limb or health as to give rise to a reasonable apprehension of such a danger. Therefore, what the courts must determine is not whether the petitioner has proved the charge of cruelty having regard to the principles of English Law, but whether the petitioner proves that the respondent has treated him with such cruelty as to cause a reasonable apprehension in his mind that it will be harmful or injurious for him to live with the respondent.--N.G. Dastane v. S.G. Dastane AIR 1975 SC 1534: (1975)2 SCC 326  
Cruelty is not confined to physical cruelty. It includes as well mental cruelty.--Kalpana Srivastava v. Surendra AIR 1985 All 253

Cruelty is one of the grounds for judicial separation and divorce under the Hindu Marriage Act, 1955. It is also a ground for divorce under the Divorce Act, 1869, and the Special Marriage Act, 1954.

Wilful conduct means conduct wilfully done may be inferred by direct or indirect evidence which should be construed to be such.--Pawan Kumar & Ors. v. State of Haryana 1998(1) Crimes 164 (SC)

The offences committed under s. 498A are antisocial and if a soft view is not taken in respect of such offences it would provide impetus to people to commit such offences--B.A. Waghmare v. State of Maharashtra 1998 (1) Crimes 138 (Bom)

The decree of divorce was passed on 25-1-1991 and cognizance of the case under s. 498A was taken on 12-9-1991. Held that on the date of filing of the complaint, no legal and valid marriage subsisted between the parties and it has ceased to exist. The Magistrate cannot take cognizance of the offence under s. 498A IPC on the date when mutual consent divorce decree was in force. It is bad in law.--Durga Prasad Kar and others v. Ranjitarani Satpathy 1998(1) Crimes 391 (Orissa)

## CHAPTER XXI OF DEFAMATION

### SECTION 499: DEFAMATION

Whoever, by words either spoken or intended to be read, or by signs or by visible representation, makes or publishes any imputation concerning any person intending to

harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1 : It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2 : It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3 : An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4 : No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says "Z is an honest man; he never stole B's watch"; intending to cause it to be believed the Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it falls with one of the exceptions.

(c) A draws a picture of Z running away with B's watch intending it to be believed that Z stole B's watch. This is defamation, unless it falls, within one of the exceptions.

First Exception : Imputation of truth which public good requires to be made or published  
It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception : Public conduct of public servants

It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception : Conduct of any person touching any public question

It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception Publication of reports of proceedings of courts

It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation : A Justice of the peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is A court within the meaning of the above section

Fifth Exception--Merits of case decided in Court or conduct of witnesses and others concerned

It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct and no further.

Illustrations

(a) A says "I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respect Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says- "I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception- Merits of public performance

It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation : A performance may be submitted to the judgement of the public expressly or by acts on the part of the author which imply such submission to the judgement of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgement of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z- "Z's book is foolish; Z must be a weak man, Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says - "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine,". A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception- Censure passed in good faith by person having lawful authority over another.

It is not defamation in a person having over another any authority, either conferred by law or arising out of lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children; a School-master, whose authority is derived from a parent, censuring in a good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier--are within this exception.

**Eighth Exception-** Accusation preferred in good faith to authorised person.

It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect of the subject-matter of accusation.

**Illustration**

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father-A is within this exception.

**Ninth Exception-**Imputation made in good faith by person for protection of his or other's interest

It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or any other person, or for the public good.

**Illustrations**

(a) A, a shopkeeper, says to B, who manages his business-"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a magistrate, in making a report of his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

**Tenth Exception-** Caution intended for good of person to whom conveyed or for public good.

It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

## **SECTION 500: PUNISHMENT FOR DEFAMATION**

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

## **SECTION 501: PRINTING OR ENGRAVING MATTER KNOWN TO BE DEFAMATORY**

Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

## **SECTION 502: SALE OF PRINTED OR ENGRAVED SUBSTANCE CONTAINING DEFAMATORY MATTER**

Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

## CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

### SECTION 503: CRIMINAL INTIMIDATION

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation : A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

### SECTION 504: INTENTIONAL INSULT WITH INTENT TO PROVOKE BREACH OF THE PEACE

Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### SECTION 505: STATEMENTS CONDUCTING TO PUBLIC MISCHIEF

(1) Whoever makes, publishes or circulates any statement, rumour or report--

(a) with intent to cause, or which is likely to cause, any officer soldier, sailor or airman in the Army, Navy or Air force of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community;

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

(2) Statements creating or promoting enmity, hatred or ill-will between classes--

Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create, or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste, or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(3) Offence under sub-section (2) committed in place of worship, etc.

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

Exception : It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid.

#### **SECTION 506: PUNISHMENT FOR CRIMINAL INTIMIDATION**

Whoever, commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

If threat be to cause death or grievous hurt, etc. : And if the threat be to causes death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

#### **SECTION 507: CRIMINAL INTIMIDATION BY AN ANONYMOUS COMMUNICATION**

Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

#### **SECTION 508: ACT CAUSED BY INDUCING PERSON TO BELIEVE THAT HE WILL BE RENDERED AN OBJECT OF THE DIVINE DISPLEASURE**

Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations

(a) A sits dharna at Z's door with the intention of causing it to be believed that by so sitting he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

#### **SECTION 509: WORD, GESTURE OR ACT INTENDED TO INSULT THE MODESTY OF A WOMAN**

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

#### **SECTION 510: MISCONDUCT IN PUBLIC BY A DRUNKEN PERSON**

Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

#### **CHAPTER XXIII OF ATTEMPTS TO COMMIT OFFENCES**

#### **SECTION 511: PUNISHMENT FOR ATTEMPTING TO COMMIT OFFENCES PUNISHABLE WITH IMPRISONMENT FOR LIFE OR OTHER IMPRISONMENT**

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

##### **Illustrations**

(a) A makes an attempt to steal some jewels by breaking open a box and finds, after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

##### **COMMENTS**

An "attempt" ordinarily means an intent combined with an act falling short of the thing intended. It may be described as an endeavour to do an act, carried beyond mere preparation, but short of execution.

In criminal law, an intent to commit a crime coupled with an act taken toward committing the offence. An effort or endeavour to accomplish a crime, amounting to more than mere

preparation or planning for it, which, if not prevented, would have resulted in the full consummation of the act attempted, but which, in fact, does not bring to pass the party's ultimate design. The requisite elements of an "attempt" to commit a crime are: (1) an intent to commit it, (2) an overt act toward its commission, (3) failure of consummation, and (4) the apparent possibility of commission.

There are three stages in every crime--intention, preparation and attempt. Intention is the direction of conduct towards the object. Preparation consists in devising or arranging the means or measures necessary for the commission of an offence. Attempt is the direct movement towards the commission after the preparations are made. If attempt is successful, crime is complete. If it fails, crime is not complete but still law punishes the person attempting the act. Every attempt creates an alarm which itself is an injury, so attempt is made punishable. Attempt is an intentional preparatory action. To determine whether the act determines attempt or not is whether intention followed by preparation is followed by any "act done towards the commission of the offence". "Act done towards the commission of the offence" are vital words.