LAW OF CRIMES (206)

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Unit - I Offences affecting the Human body

a. Culpable Homicide and Murder

Culpable Homicide

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

Culpable Homicide is defined in Section 299 of the IPC. If you study the definition you shall find that the definition stresses both on the physical and mental element, where an act is committed which is done with the intention of causing death, or with such knowledge that the act which he or she is going to undertake is going to kill someone, or causes such bodily or physical injury which will lead to a person's death. Also read the explanations to the Section which are actually clarifications to the Section.

Explanation One: Tells us that where knowingly a person accelerates someone's death in such as situation it is considered culpable homicide.

Example: Y is diagnosed with terminal illness and needs certain drugs to live from day to day. X confines him in a room and denies him his medication as a result of which Y dies. X is guilty of Culpable Homicide.

Explanation Two: Tells us that where a person inflicts such bodily injury on someone and the latter dies because of such injury, it will not be an excuse that if the person had received medical attention his life would have been saved.

Example: Ganda mows over a pedestrian deliberately. The pedestrian bleeds on the road and no one helps him and he dies as a result of Ganda's actions. Ganda cannot take the excuse that if the

pedestrian had taken medical treatment at the right time, the pedestrian would have lived and there would be no culpable homicide

Explanation Three: Tells us that abortion does not constitute culpable homicide. However if any part of the child is outside the womb, and the child is then killed, it constitutes culpable homicide. A word of caution, however, infanticide and abortion on the basis that the womb is bearing a female child is a criminal offence in India. Culpable Homicide can happen by commission or by omission, i.e. by an overt or conscious act or failure to act, by which a person is, deprived of his/her life. Now let us study the ingredients in detail.

- **Ingredients**

a) Acts

The Act should be of such a nature that it would put to peril someone's life or damage someone's life to such an extent that the person would die. In most cases the act would involve a high degree of violence against the person. Instances such stabbing a person in vital organs, shooting someone at point blank range, administering poison would include instances which would constitute culpable homicide.

However this is not always the rule and there are exceptions to this rule. Remember the section says "causes death by doing an act", so given the special circumstances certain acts which may not involve extreme degree of violence, but may be sufficient to cause someone's death. For example, starving someone may not require violence in the normal usage of the term, but may cause a person' s death. The Section also covers administration of bodily injury which is "likely" to cause death.

Causing death:

The very first test to decide whether a particular act or omission would be covered by the definition of culpable homicide is to verify whether the act done by an accused has ‘caused’ the death of another person. ‘Death’ means the death of a human being. But the word ‘death’ does not include the death of an unborn child. It is immaterial if the person whose death has been caused not the very person whom the accused intended to kill. The offence is complete as soon as any person is killed.

By doing an act:

Death may be caused in a number of ways; such as by poisoning, starving, striking, drowning or communicating some shocking news and by a hundred different ways. 'Act', here includes 'illegal omission' also.

The word 'illegal' is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action. Therefore, death caused by illegal omission will amount to culpable homicide.

b) Intention

Sometimes one is required to do certain dangerous acts, even in everyday life where there is a risk of death or causing hurt to such an extent that a person may die. Mundane things such as driving possess the potential of taking someone's life. The question however is was the act committed with the "intention of causing death". Thus where you push someone for a joke and the person falls on his head has a brain injury and dies, there was no "intention of causingdeath" but when you pushed the person deliberately with the idea that the person falls and dies, in that case the act is with the "intention of causing death"

To prove intention in acts where there is bodily injury is "likely to cause death", the act has to be can be of two types. Firstly where bodily injury itself is done in a fashion which cause death.For example bludgeoning someone on the head repeatedly with a blunt instrument.

Secondly in situations where there are injuries and there are intervening events between the injuries and the death provided the delay is not so blatant, one needs to prove that injuries were administered with the intention of causing death.

c) Knowledge

Knowledge is different from intention to the extent that where a person may not have the intention to commit an act which kills, he knows that the act which he commits will take someone's life or is likely to take someone's life will be considered having the "knowledge that he is likely by such act to cause death". For example, a doctor uses an infected syringe knowingly on a patient thereby infecting him with a terminal disease. The act by itself will not cause death, but the doctor has knowledge that his actions will lead to someone's death.

Culpable Homicide Amounting to Murder

Section 300 deals with Culpable Homicide amounting to murder. In other words the Section states that culpable homicide is murder in certain situations. This makes us come to two conclusions, namely:

For an act to be classified as murder it must first meet all the conditions of culpable homicide.

Secondly, all acts of murder are culpable homicide, but all acts of culpable homicides are not murder. Pictorially speaking:-

Now, let us study the situations in which culpable homicide does amount to murder. Section 300 states, that except for situations states (which do not concern us as of now) culpable homicide is murder in four situations:

i. When an act is done with the intention of causing death

The degree of intention required is very high for murder. There must be intention present and the intention must be to cause the death of the person, not only harm or grievous hurt without the intention to cause death.

Instances would include:

- Shooting someone at point blank range.
- Stabbing someone in the hurt
- Hanging someone by the neck till he dies
- Strapping a bomb on someone
- Administering poison to someone.

Remember the act must be accompanied with the intention to "cause death."

ii. Inflicting of bodily injury which the offender knows is likely to cause death

The second situation covers instances where the offender has special knowledge about the victim's condition and causes harm in such a manner which causes death of the person. Look at this part of Section 300 very carefully. It states that the offender "knows likely to be the cause of death"

Instances would include:

- Sundar is a hemophilic patient. Bandar knows this and cuts him in multiple places, which if carried out on an ordinary person would not have cost him his life.
- Lolo is suffering from jaundice. Bebo knows this and slips in alcohol in Lolo's medicine in order to rupture Lolo's liver so Lolo dies. Lolo dies as a result of consuming the adulterated medicine.

iii. Bodily injury which causes death in the ordinary course of nature

These situations cover such acts where there is bodily injury which in ordinary sequence of events leads to the death of the person. Read the part of the section carefully. The section actually has two conditions _ Firstly, the bodily injury inflicted is inflicted with the intention of causing death of the person on whom it is inflicted. _ Secondly, the bodily injury caused in the ordinary course of events leads to death of someone.

An instance of the same would be:

- Musharraf wants Sharif dead. In order to kill Musharraf picks up a hockey stick and repeatedly hits him on the head. Sharif dies as a result of the injury.

iv. Commission of an imminently dangerous act without any legitimate reason which would cause death or bodily injury which would cause death.

This head covers the commission of those acts which are so imminently dangerous which when committed would cause death or bodily injury which would result in death of a person and that such an act is done without any lawful excuse. Cases under this head have three requirements _ Commission of an inherently dangerous act _ the knowledge that the act in all probability will

cause death or bodily injury which will cause death and _ the act is done without any excuse (the excuse must be lawful or legitimate excuse)

Instances would include:

- Throwing a high intensity bomb in a crowded public place.
- Thrown loaded cast iron boxes from a multi storied building in a busy thoroughfare. Culpable Homicide Not Amounting to Murder

When not murder, culpable homicide is a crime by itself. As stated above a situation must first become culpable homicide before it becomes murder. Though dealt with in detail in the following section, the basic difference between culpable homicide and murder is the level of intention involved. Where there is a very high level of intention involved the act usually falls under murder. In addition to this general understanding (that acts when not murder are culpable homicide) the IPC itself lists certain cases when death is caused to be read as culpable homicide not amounting to murder covers five specific situations:

i. Acts under grave and sudden provocation

When a person loosesself control on account of certain situation and causes the death of some person. The provocation must be grave, it must be sudden, i.e. there must be no scope for pre meditation and thirdly, it must not be self invited so as to use it as an excuse to deprive a person of his/her life.

An example of this situation will be:

A has an affair with S. A's husband returns home to find A in a compromising position with S. Seeing his wife in such a position and without further thinking he reaches out for a knife and kills S. S will have committed culpable homicide not amounting to murder.

ii. When Private Defence is exceeded in good faith

In exercising private defence either with respect to property or person, if a person accidently exceeds his or her right in good faith or in wrong judgment and the act causes the death of a person, the act is culpable homicide and not murder

iii. Exceeding the Ambit of Discharging Public Duties

When an officer or public servant exceeds his or her mandate of duties or authority given to him or an officer or public servant assisting him exceeds the same, it is considered culpable homicide not amounting to murder.

Example:

Inspector Chulbul was given instructions to capture Gabbar but not shoot him. When the transport convoy broke down and Gabbar moved from his seat Chulbul thought he is going to escape and shot him. At best Chulbul would have committed culpable homicide not amounting to murder.

iv. When death is caused in sudden fight or heat of passion upon a sudden quarrel

Similar to the first situation, when at times fight gets out of hand and a person hits someone or injures a person in such a fashion that may cause death of a person.

v. When death is caused of a person above eighteen years of age who voluntarily took the risk of death

When death is caused in a situation where a person has by his own consent put himself to risk the same would be culpable homicide and not murder.

An example of this illustration would be:

Bhola instigates Bobby to commit suicide. Bobby after independently considering the suggestion and without any pressure from Bhola commits suicide. If Bhola was an adult , then Bhola would be guilty for assisting in culpable homicide.

b. Rash and Negligent Act

A rash or negligent act causing death or grievous hurt is a punishable offence under the Indian Penal Code (IPC). Section 304-A and Section 338 of the IPC deals with rash or negligent act leading to death or grievous hurt respectively. In order to convict a person under these provisions

it must be proved that the rash or negligent act was the direct or proximate cause of death or grievous hurt.

The expression rash or negligent has not been defined as such but has acquired a definite comprehendible meaning because of its frequent interpretations by the Courts of law.

S. 304A - "Whoever causes the death of any person by doing any rash or negligent act notamounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Section 304-A was added to the IPC by the Amendment Act, of 1870. This supplies an omission providing for the offence of manslaughter by negligence which was originally included in Draft Code, but omitted from the Code when it was finally enacted in 1860.

To impose criminal liability under Section 304-A, it is necessary that the death should have been the direct result of a rash and negligent act of the accused and that the act must be the proximate and efficient cause without the intervention of another's negligence.

It must be the *causacausans* (immediate or operating cause); it is not enough that it may have been the causa sine qua non (a necessary or inevitable cause). That is to say, there must be a direct nexus between the death of a person and rash or negligent act of the accused.

The provisions of Section 304-A apply to cases where there is no intention to cause death, and no knowledge that the act done in all probability would cause death. Section 304-A deals with homicide by negligence. It does not apply to a case in which there has been the voluntary commission of an offence against the person.

The doing of a rash or negligent act, which causes death, is the essence of Section 304-A. There is distinction between a rash act and a negligent act. 'Rashness' means an act done with the consciousness of a risk that evil consequences will follow. (It is an act done with the knowledge that evil consequence will follow but with the hope that it will not).

A rash act implies an act done by a person with recklessness or indifference as to its consequences. The term 'negligence' means 'breach of a legal duty to take care, which results in injury/damage undesired by the wrong doer. The term 'negligence' as used in Section 304-A does not mean mere carelessness.

A negligent act refers to an act done by a person without taking sufficient precaution or reasonable precautions to avoid its probable mischievous or illegal consequences. It implies an omission to do something, which a reasonable man, in the given circumstances, would not do. Rashness is a higher degree of negligence.

The rashness or negligence must be of such nature so as to be termed as a criminal act of negligence or rashness. Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused.

The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, t was the imperative duty of the accused person to have adopted.

Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happening.

The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that, if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumstances.

A rash act primarily is an overhasty act. Negligence is a breach of a duty caused by omission to do something which a reasonable man, guided by the those considerations which ordinarily regulate the conduct of human affairs would do.

The expression ‘not amounting to culpable homicide’ in Section 304-A indicates the offences outside the range of Sections 299 and 300, and obviously contemplates those cases into which neither intention nor knowledge enters. It indicates that intentionally on knowingly inflicted violence, directly and wilfully caused, is excluded from the implication of Section 304-A.

Section 304-A specifically deals with the rash or negligent acts which cause death but fall short of culpable homicide of either description. Where A takes up a gun not knowing it is loaded,

points in sport at B and pulls the trigger, B is shot dead. A would be liable for causing the death negligently under Section 304-A.

Contributory negligence is no defence to a criminal charge i.e., where the death of a person is caused partly by the negligence of the accused and partly by his own negligence. If the accused is charged with contributing to the death of the deceased by his negligence it matters not whether the deceased was deaf, or drunk, or negligent, or in part contributed to his owndeath. In order to impose criminal liability under Section 304-A, it is essential to establish that death is the direct result of the rash or negligent act of the accused.

Generally, Section 304-A is taken into consideration in the cases of road accidents, accidents in factories, etc. It is the duty of the driver to drive the vehicle in a cautious way. Where a driver drives the vehicle in an abnormal manner and cause the death of persons, he is liable under Section 304-A. Where a factory owner neglects the maintenance of the machine, and causes the death of a person, he shall be held liable under Section 304-A.

However, Section 80 of the IPC provides, "nothing is an offence which is done by accident or misfortune and without any criminal knowledge or intention in the doing of a lawful act in a lawful manner by a lawful means and with proper care and caution'. It is absence of such proper care and caution, which is required of a reasonable man in doing an act, which is made punishable under Section 304-A.

To render a person liable for neglect of duty it must be such a degree of culpability as to amount to gross negligence on his part. It is not every little slip or mistake that will make a man so liable. In Shivder Singh v. State [1]a passenger was standing on the foot-board of a bus to the knowledge of the driver and even so the driver negotiated a sharp turn without slowing down. The passenger fell off to his death. The driver was held to be guilty under Section 304-A.

In Akbar AH v. R [(1936) 12 Luck 336], the accused, a motor driver, ran over and killed a woman, but there was no rashness or negligence on the part of the driver so far as his use of the road or manner of driving was concerned, it was held that the accused could not be convicted under Section 304-A on the ground that the brakes of the lorry were not in perfect order and that the lorry carried no horn.

The 'rash or negligent act' referred to in Section 304-A means the act which is the immediate cause of death and not any act or omission which can at most be said to be a remote cause of death.

[1] [(1995) 2 Cr.LJ 2142 (Del.)],

In Tapti Prasad v. Emperor [2]the accused was the Assistant Station Master on duty. There was a collision of passenger train and goods train caused by the signalling of the accused. The collision claimed many lives and the accused were convicted under Section 304-A and Section 101 of Railway Act.

In Ramava v. R [3]the accused administered to her husband a deadly poison (arsenious oxide) believing it to be a love potion in order to stimulate his affection for her but the husband died. She was convicted under Section 304-A considering the act of the accused was rash and negligent.

In Batdevji v. State of Gujarat [4]the accused had run over the deceased while the deceased was trying to cross over the road. The accused did not attempt to save the deceased by swerving to the other side, when there was sufficient space. This was a result of his rash and negligent driving. His conviction under Section 304-A was upheld.

In medical field, a doctor is not criminally liable for a patient's death, unless his negligence or incompetence passes beyond a mere matter of competence and shows such a disregard for life and safety, as to amount to a crime against the State.

In Juggan Khan v. State of Madhya Pradesh X[5] the accused was a registered homeopath who had administered to a patient suffering from guinea worm, 24 drops of stramonium and a leaf of dathura without properly studying its effect. The patient died as a result of the medicine given by the accused. The accused was convicted under Section 304-A as he has given poisonous medicine without being aware of its effects by his rash and negligent act.

In Jacob Mathew v. State of Punjab[6]], the Supreme Court formulated the following guidelines, which should govern the prosecution of doctors for offences of criminal rashness or criminal negligence:

i) Negligence becomes actionable on accident of injury resulting from the act or omission amounting to negligence attributable to that person sued. The essential components of negligence are three; 'duty', 'breach' and 'resulting damage';

[2] [15 ALJ 590],
[3] [(1915) 17 Bom LR 217],
[4] [AIR 1979 SC 13 27],
[5] [AIR 1965 SC 831],
[6] [(2005) 6 SCC 1

ii) A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment is also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed;

iii) When the charge of negligence arises out of failure to use some particular equivalent, the charge would fail it the equipment were not generally available at the time (that is at the time of the incident) at which it is suggested it should have been used;

iv) A professional may be held liable for negligence on one of the two findings, viz., either he was not possessed of the requisite skill which he professes to have possessed, or he did not exercise, with reasonable competence in the given case, which he did possess;

v) The standard to be applied for judging, whether the person charged had been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices;

vi) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mensrea must be shown to exist. The degree of negligence must be much higher, i.e., gross on of a very high degree in criminal negligence. Negligence, which is neither, gross nor of a very high degree may provide a ground for action in civil law but cannot be the basis for prosecution;

vii) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury that resulted was most imminent;

viii) A private complaint may not be entertained against a doctor unless the complainant has produced prima facie evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor;

ix) A doctor accused of rashness or negligence may not be arrested in a routine manner (simply because a charge has been levelled against him), unless the arrest is necessary for furthering the investigation or for collecting evidence;

x) Simply because a patient has not favourably responded to a treatment given by a physician or a surgery has failed, the doctor cannot be held liable per se by applying the doctrine of res ipsa loquitur (i.e., the thing speaks for itself).

The punishment for causing death by negligence under Section 304-A is imprisonment of either description for a term, which may extend to two years, or with fine, or with both. Sentence depends on the degree of carelessness seen in the conduct of the accused.

This offence is cognizable and warrant should ordinarily issue in the first instance. It is bailable, but not compoundable, and is triable by a Magistrate of the First Class.

c. Dowry Death

The problem of Dowry has always been persistent in India and is also rising at a rapid rate and so are the offences related to dowry demand. Dowry demands can go on for years together. The birth of children and a number of customary and religious ceremonies often tend to become the occasions for dowry demands. The inability of the bride's family to comply with these demands often leads to the daughter-in-law being treated as a pariah and subject to abuse. In the worst cases, wives are simply killed to make way for a new financial transaction—that is, another marriage. The Section 304-B, IPC has been inserted by the Dowry Prohibition Amendment Act, 1986 with a view of combating increased menace of dowry deaths.

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.

To invoke **Section 304B** of the Indian Penal Code the following ingredients are essential:

- The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.
- Such a death should have occurred within seven years of her marriage.
- She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- Such cruelty or harassment should be for or in connection with the demand of dowry.
- Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

One of the important ingredients to attract the provision of dowry death is that the death of the bride must relate to the cruelty or harassment on account of demand for dowry. It is true that Section 304-B does not define cruelty. However, under explanation of Section 113-B of the Evidence Act, by which presumption of dowry can be drawn, it has been provided that 'cruelty' shall have the same meaning as in section 498-A of the Indian Penal Code. As per requirement of clause (b) appended to section 498-A I.P.C. there should be a nexus between harassment and any unlawful demand for dowry.

If these conditions are fulfilled then a presumption acts under the Indian Evidence Act and the burden of proof shifts on the accused to prove that he is innocent. The section states:

In dowry death cases direct evidence may not be available. Such cases may be proved by circumstantial evidence. Section 304-B IPC read with 113-B of the Evidence Act indicates the rule of presumption of dowry death. If an unnatural death of a married woman occurs within 7 years of marriage in suspicious circumstances, like due to burns or any other bodily injury and there is cruelty or harassment by her husband or relatives for or in connection with any demand for dowry soon before her death then it shall be dowry death.

113B. Presumption as to Dowry Death

When the question is whether a person has committed the dowry death of a women and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry; the court shall presume that such person had caused the dowry death.

In the case of State of Punjab v. Iqbal Singh, AIR 1991 SC 1532. [7]the Supreme Court clarified the position as to why the necessity to introduce Section 113-B in the Indian Evidence Act was felt –

The legislative intent is clear to curb the menace of dowry deaths, etc. with a firm hand. It must be remembered that since crimes are generally committed in privacy of residential houses and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing Section 113-B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundation facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry. Section 113-B, Evidence Act provides that the court shall presume that such person had caused the dowry death.

A conjoint reading of Section 113-B of the Act and 304-B I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. 'Soon before' is a relative term and it would depend upon circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period soon before the occurrence. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death.

d. Attempt to murder

Section 307 - "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.

[7]AIR 1991 SC 1532.

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:

i. 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.
ii. A, with 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.
iii. 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.
iv. 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 servants to place it on Z's table. A has committed the offence defined in this section."

Attempt is an intentional preparatory action which fails in its object- which so fails through circumstances independent of the person who seeks its accomplishment. There is a thin line of demarcation between the preparation for, and an attempt to, commit an offence.

Undoubtedly, a culprit first intends to commit the offence, then makes necessary preparations for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence.

Attempt to commit an offence, therefore, can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence, and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence.

The essentials for criminal attempt are:

i. An existence of an intention on the part of the accused to commit a particular offence;
ii. Some steps taken towards it after completion of preparation;
iii. The step must be apparently though not necessarily adapted to the purpose designed;
iv. It must come dangerously near to success;
v. It must fall short of completion of the ultimate design.

An attempt in order to be criminal need not be the penultimate act. It is sufficient in law if there is present an intent coupled with some overt act in execution thereof. For purposes of criminal liability, it is sufficient if the attempt had gone so far that the crime would have been completed but for extraneous intervention which frustrated its consummation.

Section 307 deals with the offence of attempt to commit murder. In order to constitute an offence under Section 307, two elements are essential. First the intention of knowledge to commit murder. Secondly, the actual act of trying to commit the murder. It must have both the necessary mensrea and actusreus.

For offence under this section, all the elements of murder as envisaged by Section 300 must exist, except for the fact that death has not occurred. An attempt, in order to be criminal, need not be the penultimate act foreboding death. It is sufficient if there is present an intention to commit homicide coupled with some overt act in execution thereof.

The words 'such intention' found in Section 307 refer to the intention found in Section 300. The IPC uses the word 'intention' in the sense that something is intentionally done if it is done deliberately or purposely or in other words, is a willed though not necessarily a desired result or a result which is the purpose of the deed. In IPC, 'intention' is used in relation to the consequences of an act, the effect caused thereby, not in relation to the act itself – the voluntariness required to constitute an act is implied by that very word.

In Section 307, the word 'intention means: (i) intention to cause death; (ii) intention to cause such bodily injury, which the offender knows is likely to cause death; (iii) intention to cause such bodily injury, which injury is sufficient in the ordinary course of nature to cause death.

Thus, the intention to cause death is the essence of the offence of attempt to murder. Intention is a man's state of mind; direct evidence therefore except through his own confession cannot be had; and apart from confession they can be proved only by circumstantial evidence.

Therefore, intention is something which can be gathered from circumstances like the nature of the weapon used, the words used by the accused at the time of the act, the motive of the accused, the parts of the body where the injuries are caused, the nature of injuries and the severity and persistence of the blows given etc.

The term 'knowledge' refers to the knowledge of the offender that the act done by him is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death. Even if the accused did not have a deliberate intention, if he must have had the knowledge that his act was likely to cause death, Section 307 applies.

The words 'and under such circumstances' point to the act having reached that stage of development at which there was nothing more left in the act or to complete it. It means that the circumstances present at the time of the act were such that the act would have caused death, but it did not; and if it had caused death, the offence would have been murder.

Under Section 307, the offence is complete although the harmful consequence of death does not ensue, indeed even if no harm ensues. But the words "if he by that act caused death"

necessarily imply that the act must be capable of causing death. The act, namely, the bare physical act, must be an act capable of causing death, at any rate, not one intrinsically incapable of causing death.

The word 'act' would include an illegal omission. In order to bring the case under Section 307, the act must be capable of causing death in the natural and ordinary course of things, or in other words, that death might be caused if the act took effect.

An accused charged under Section 307 cannot be acquitted merely because the injury inflicted on the victim was in the nature of simple hurt. Nevertheless, the nature of injury actually caused render considerable assistance to the Court in finding the intention of the accused. However, it can ascertain intention from other circumstances, even without reference to actual wounds.

In State of Maharashtra v. BalramBama Pate [8]it was observed that to justify a conviction under Section 307, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds.

[8][AIR 1983 SC 305],

Section 307 makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result as far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under Section 307.

It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in Section 307.

An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

In Antony v. State of Kerala [9]the accused, aimed a blow with a dagger at the victim's head who raised his hand to ward it off and got his hand severed from the wrist. The severity of the blow itself spells out his murderous intent. His conviction under Section 307 was held to be proper.

In Sarju Prasad v. State of Bihar [10]it was observed that the mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not itself sufficient to take the act out of the purview of Section 307 IPC.

The second part of Section 307, prescribes death sentence to a life convict for attempt to bodily injury capable of causing death and in that process causing hurt to such person,

Section 307 which specifically uses the word 'may' and not 'shall' and provides that whenany person offending Section 307 is under sentence of imprisonment for life, he may, if hurtis caused, be punished with death may also receive judicial consideration if it's also deservesto be struck down as unconstitutional. Court has powers to reduce quantum of sentence if certain conditions are met and Court is satisfied that by reducing the sentence, the ends of justice would not be disturbed.

Offence under Section 307 is cognizable and warrant should ordinarily issue in first instance. It is non-bailable as well as non- compoundable and is exclusively triable by the Court of Session.

e. Attempt and abetment to suicide

[9][AIR 1994 SC 2450],
[10][AIR 1965 SC 843],

Attempt to suicide

Suicide has not been defined anywhere in the IPC. However briefly defined, 'suicide' is the human act of self-inflicted, self-intentioned cessation. It has been defined by various sociologists and psychologists in different ways. Some of the definitions are 'suicide is the initiation of an act leading to one's own death'. "It is synonymous with destruction of the self by the self or the intentional destruction of one's self." Thus, suicide is killing oneself intentionally so as to extinguish one's life and to leave this world. The Oxford Companion to Law, explains it as 'self killing or taking one's own life'.

Suicide as such is no crime under the code. It is only attempt to commit suicide that is punishable under this section, i.e., code is attracted only when a person is unsuccessful in committing the suicide. If the person succeeds, there is no offender who could be brought within the purview of law. The section is based on the principle that the lives of men are not only valuable to them but also to the state which protects them

Attempt to suicide is an offence punishable under section 309 of the Indian Penal Code.

Section 309 reads thus:

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."

Article 21 of the Constitution of India enjoins that no person shall be deprived of his life or personal liberty except according to procedure established by law.

A Division Bench of the Supreme Court in P. Rathinam v. Union of India [11]held that the right to live of which Article 21 speaks of can be said to bring in its trail the right not to live a forced life, and therefore, section 309 violates Article 21.

This decision was, however, subsequently overruled in GianKaur v. State of Punjab [12]by a Constitution Bench of the Supreme Court, holding that Article 21 cannot be construed to include within it the 'right to die' as a part of the fundamental right guaranteed therein, and therefore, it cannot be said that section 309 is violative of Article 21.

- **Right to live**: Ambit and scope – It is settled law that life does not mean 'animal existence'. Before more than 100 years, it was recognized by the U.S. Supreme Court in

[11](AIR 1994 SC 1844)
[12](AIR 1996 SC 946)

the leading case of Munn v. Illinois. This principle is recognized by our Supreme Court in Kharak Singh, Sunil Batra v. Delhi Administration and in various other cases. After Maneka Gandhi v. Union of India, various rights have been held to be covered by Article 21; such as right to go abroad, right to privacy, right against solitary confinement, right to speedy trial, right to shelter, right to breathe in unpolluted environment, right to medical aid, right to education, etc. Thus, life does not mean mere living, but a glowing vitality – the feeling of wholeness with a capacity for continuous intellectual and spiritual growth.

- **Right to die**- As a normal rule, every human being has to live and continue to enjoy the fruits of life till nature intervenes to end it.

- **Death is certain**. It is a fact of life. Suicide is not a feature of normal life. It is an abnormal situation. But if a person has right to enjoy his life, he cannot also be forced to live that life to his detriment, disadvantage or disliking. If a person is living a miserable life or is seriously sick or having incurable disease, it is improper as well as immoral to ask him to live a painful life and to suffer agony. It is an insult to humanity. Right to live means right to live peacefully as ordinary human being. One can appreciate the theory that an individual may not be permitted to die with a view to avoiding his social obligations. He should perform all duties towards fellow citizens. At the same time, however, if he is unable to take normal care of his body or has lost all the senses and if his real desire is to quit the world, he cannot be compelled to continue with torture and painful life. In such cases, it will indeed be cruel not to permit him to die. …

- **Reduction of suffering** - Right to live would, however, mean right to live with human dignity up to the end of natural life. Thus, right to live would include right to die with dignity at the end of life and it should not be equated with right to die an unnatural death curtailing natural span of life.

Hence, a dying man who is terminally ill or in a persistent vegetative state can be permitted to terminate it by premature extinction of his life. In fact, these are not cases of extinguishinglife but only of accelerating process of natural death which has already commenced. In such cases, causing of death would result in end of his suffering.

But even such change, though desirable, is considered to be the function of the legislature which may enact a suitable law providing adequate safeguards to prevent any possibleabuse."

Abetment to suicide

Abetment of suicide is an offence under section 306 & 107 of the Indian penal code, 1860. A woman may be driven to commit suicide due to excessive demands for dowry. However, it may be difficult to prove that the death was a dowry death. In such cases, these provisions can be used to punish the offender.

A person is guilty of abetment when a. He instigates someone to commit suicide (or) b. He is part of a conspiracy to make a person commit suicide.(or) c. He intentionally helps the victim to commit suicide by doing an act or by not doing something that he was bound to do. The charge of abetment of suicide is usually accompanied by a charge under section 498A, IPC if the woman was treated cruelly by her husband or his relatives. Where a woman has committed suicide within 7 years of her marriage because of violence by her husband or relatives and the prosecution proves the above, the court presumes that the husband or his relatives abetted the suicide. Where the woman committed suicide after 7 years of her marriage, no presumption will be made. The prosecution has to prove beyond reasonable doubt that the cruelty was of such a nature that it drove the woman to commit suicide.

Unit-II: Against Human Body II

a. Hurt and Grievous Hurt

In normal sense, hurt means to cause bodily injury and/or pain to another person. IPC defines Hurt as follows -

Section 319 - Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt.

Based on this, the essential ingredients of Hurt are -

i. Bodily pain, disease or infirmity must be caused - Bodily pain, except such slight harm for which nobody would complain, is hurt. For example, pricking a person with pointed object like a needle or punching somebody in the face, or pulling a woman's hair. The duration of the pain is immaterial. Infirmity means when any body organ is not able to function normally. It can be temporary or permanent. It also includes state of mind such as hysteria or terror.
ii. It should be caused due to a voluntary act of the accused.

The expression 'bodily pain' means that the pain must be physical as opposed to any mental pain. So mentally or emotionally hurting somebody will not be 'hurt' within the meaning of Section 319. However, in order to come within this section, it is not necessary that any visible injury should be caused on the victim.

All that the section contemplates is the causing of bodily pain. The degree or severity of the pain is not a material factor to decide whether Section 319 will apply or not. The duration of pain is immaterial. Pulling a woman by the hair would amount to hurt.

'Causing disease' means communicating a disease to another person. However, the communication of the disease must be done by contact.

Causing of nervous shock or mental derangement by some voluntary act of the offender is covered by Section 319. The duration of the state of mental infirmity is immaterial.

'Infirmity' means inability of an organ to perform its normal function which may either be temporary or permanent. It denotes an unsound or unhealthy state of the body or mind, such as a state of temporary impairment or hysteria or terror. 'Infirmity' denotes an unsound or unhealthy state of the body. This infirmity may be a result of a disease or as a result of consumption of some poisonous, deleterious drug or alcohol.

As per Section 319, the hurt must be caused to 'any person'. This means 'any person' other than the person causing the hurt.

The causing of bodily pain must be caused by direct application of force to the body is clearly erroneous as there is nothing in Section 319 to suggest that the hurt should be caused by direct physical contact between the accused and his victim. Where the direct result of an act is the causing of bodily pain, it is hurt whatever be the means employed to cause it.

Where there is no intention to cause death or bodily injury as is likely to cause death or there is no knowledge that death is likely to be caused from the harm inflicted, and death is caused, the accused would be guilty of hurt only if the injury caused was not serious.

In Marana Goundan v. R [13]the accused demanded money from the deceased which the latter owed him. The deceased promised to pay later. Thereafter the accused kicked him on the abdomen and the deceased collapsed and died. The accused was held guilty of causing hurt as it could not be said that he intended or knew that kicking on the abdomen was likely to endanger life.

In Naga Shevepo v. R [(1883) SJLB 179] the accused struck a man one blow on the head with a bamboo yoke and the injured man died afterwards in a hospital. He was guilty of an offence of causing hurt under Section 319 because there was no intention to cause death and the blow in itself was not of such a nature as was likely to cause death.itself was not of such a nature as was

In ArjunaSahu v. State [31 Cut. L.T. 831] it was observed that a push on the neck is likely to cause some bodily pain within the meaning of Section 319 though in some cases it may be so slight.

Self-inflicted hurt does not come within the purview of Section 319. Section 321 elaborates on what amounts to voluntarily causing hurt

When there is no intention of causing death or bodily injury as is likely to cause death, and there is no knowledge that inflicting such injury would cause death, the accused would be guilty of hurt if the injury is not serious. In NgaShwe Po's case 1883, the accused struck a man one blow on the head with a bamboo yoke and the injured man died, primarily due to excessive opium administered by his friends to alleviate pain. He was held guilty under this section.

A physical contact is not necessary. Thus, a when an accused gave food mixed with dhatura and caused poisoning, he was held guilty of Hurt.

The term ‘Simple hurt’ is used nowhere in the IPC. However, to differentiate ordinary hurt covered by Sections 319, 321 & 323, from that of grievous hurt, the expression ‘simple hurt’ has come into popular use.

Grievous Hurt

Section 320 lays down the following kinds of hurt only which are designated as "grievous":

(1) Emasculation i.e., depriving a person of masculine vigour;

[13][AIR 1941 Mad. 560]

(2) Permanent privation of the sight of either eye;

(3) Permanent privation of hearing of either ear;

(4) Privation of any member of joint

(5) Destruction or permanent impairing of the powers of any member or joint:

(6) Permanent disfiguration of the head or face

(7) Fracture or dislocation of bone or tooth; and

(8) Any hurt which endangers life or which causes the sufferer to be during the space of 20 days in severe bodily pain, or unable to follow his ordinary pursuits—(seven years, and fine).

It could not be said that the accused intended or knew that the kicking on the abdomen was likely to endanger life and consequently the accused was guilty of causing hurt only.

It was held in similar circumstances in ShaheRai (3 Cal. 623) that the accused had committed hurt on the infant under the circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt.

The offence committed is neither of grievous hurt, not of culpable homicide, but of simple hurt. (1917 Bom. 259).

Hurt (Section – 319 of IPC)	**Grievous hurt (Section – 320 of IPC)**
Whoever causes i) bodily pain , ii) disease or iii)infirmity to any person is said to cause hurt .	The following eight kinds of hurt are designated as grievous ------ 1) Emasculation . 2) Permanent privation of the sight of either eye . 3) Permanent privation of the hearing of either ear. 4) Privation of any member or joint . 5) Destruction or permanent impairing of the powers of any member or joint .

	6) Permanent disfiguration of the head or face . 7) fracture or dislocation of a bone or tooth. 8) Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain , or unable to follow his ordinary pursuits .

c. Criminal force and assault

Criminal force

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

Illustrations

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and hedoes this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has there-fore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or in-tending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here Z has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z.

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

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact withZ, or Z's clothes. A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing, A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into con-tact with Z, or with other water so situated that such contact must affect Z's sense of feeling; A has therefore intentionally used force to Z; and if he has done this withoutZ's consent intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

According to Section 350 of the Code, force becomes criminal (i) when it is used without consent and in order to the committing of an offence; or (ii) when it is intentionally used to cause injury, fear or annoyance to another to whom the force is used.

The ingredients of Section 350 of the Code are:

i) The intentional use of the force to any person;

ii) Such force must have been used without the person's consent;

iii) The force must have been used:

a) In order to the committing of an offence; or

b) With the intention to cause, or knowing it to be likely that it will cause, injury, fear or annoyance to the person to whom it is used.

The term 'battery' of English law is included in 'Criminal force'. 'Battery' is the actual and intentional application of any physical force of an adverse nature to the person of another without his consent, or even with his consent, if it is obtained by fraud, or the consent is unlawful, as in the case of a prize-fighting.

The criminal force may be very slight as not amounting to an offence as per Section 95 of the Code. Its definition is very wide so as to include force of almost every description of which a person may become an ultimate object. Criminal force is the exercise of one's energy upon another human being and it may be exercised directly or indirectly.

So if A raises his stick at B and the latter moves away, A uses force within the meaning of Section 350. Similarly, if a person shouts, cries and calls a dog or any other animal and it moves in consequence, it would amount to the use of force. In the use of criminal force no bodily injury or hurt need be caused.

Where A spits over B, A would be liable for using criminal force against B because spitting must have caused annoyance to B. Similarly if A removes the veil of a lady he would be guilty under Section 350 of the Code.

The word 'intentional' excludes all involuntary, accidental or even negligent acts. An attendant at a bath, who from pure carelessness turns on the wrong tap and causes boiling water to fall on another, could not be convicted for the use of criminal force.

The word 'consent' should be taken as defined in Section 90, IPC. There is some difference between doing an act 'without one's consent' and 'against his will'. The latter involves active mental opposition to the act.

According to Mayne, "where it is an element of an offence that the act should have been done without the consent of the person affected by it, some evidence must be offered that the act was done to him against his will or without his consent".

The various illustrations under Section 350 exemplify the different ingredients of the definition of force given in Section 349. Of these illustrations, illustration (a) exemplifies motion in Section 349; illustration (b) 'change of motion'; illustration (c) 'cessation of motion; illustrations (d), (e),

(f), (g) and (h) 'cause to any substance any such motion'. Clause (1)of Section 349 is illustrated by illustrations (c), (d), (e), (f) and (g); clause (2) of Section 349 is illustrated by illustration (a); and clause (3) of Section 349 is illustrated by illustrations(b) and (h).

Assault

351. Assault.—Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations

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

(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

As per Tomlins Law Dictionary, assault is "An attempt with force and violence, to do corporal hurt to another as by striking at him with or without a weapon. But no words whatsoever, be they ever so provoking can amount to an assault, notwithstanding the many ancient opinions to the contrary".

An assault is (a) an attempt unlawfully to apply any of the least actual force to the person of another directly or indirectly; (b) the act of using a gesture towards another, giving him reasonable grounds to believe that the person using that gesture meant to apply such actual force to his person as aforesaid; (c) the act of depriving another of his liberty, in either case, without the consent of the person assaulted, or with such consent if it is obtained by fraud.

The essential ingredients of an assault are:

1) That the accused should make a gesture or preparation to use criminal force;

2) Such gesture or preparation should be made in the presence of the person in respect of whom it is made;

3) There should be intention or knowledge on the part of the accused that such gesture or preparation would cause apprehension in the mind of the victim that criminal force would be used against him;

4) Such gesture or preparation has actually caused apprehension in the mind of the victim, of use of criminal force against him.

Assault is generally understood to mean the use of criminal force against a person, causing some bodily injury or pain. But, legally, 'assault' denotes the preparatory acts which cause apprehension of use of criminal force against the person. Assault falls short of actual use of criminal force. An assault is then nothing more than a threat of violence exhibiting an intention to use criminal force accompanied with present ability to effect the purpose.

According to Section 351 of the Code, the mere gesture or preparation with the intention of knowledge that it is likely to cause apprehension in the mind of the victim, amounts to an offence of assault. The explanation to Section 351 provides that mere words do not amount to assault, unless the words are used in aid of the gesture or preparation which amounts to assault.

The apprehension of the use of criminal force must be from the person making the gesture or preparation, but if it arises from some other person it would not be assault on the part of that person, but from somebody else, it does not amount to assault on the part of that person. The following have been held to be instances of assault:

i) Lifting one's lota or lathi

ii) Throwing brick into another's house

iii) Fetching a sword and advancing with it towards the victim

iv) Pointing of a gun, whether loaded or unloaded, at a person at a short distance

v) Advancing with a threatening attitude to strike blows.

Though mere preparation to commit a crime is not punishable, yet preparation with the intention specified in this section amounts to an assault.

Another essential requirement of assault is that the person threatened should be present and near enough to apprehend danger. At the same time there must have been present ability in the assailant to give effect to his words or gestures.

If a person standing in the compartment of a running train, makes threatening gesture at a person standing on the station platform, the gesture will not amount to assault, for the person has no present ability to effectuate his purpose.

The question whether a particular act amounts to an assault or not depends on whether the act has caused reasonable apprehension in the mind of the person that criminal force was imminent. The words or the action should not be threat of assault at some future point in time. The apprehension of use of criminal force against the person should be in the present and immediate.

The gist of the offence of assault is the intention or knowledge that the gesture or preparations made by the accused would caused such effect upon the mind of another that he would apprehend that criminal force was about to be used against him. Illustration (b) to Section 351 exemplifies that although mere preparation to commit a crime is not punishable yet preparation with intention specified in Section 351 amounts to assault.

The offence under Section 351 is non-cognizable, bailable, compoundable, and triable by any Magistrate.

c. Wrongful Restraint and Wrongful confinement

Wrongful Restraint

Section 339. Wrongful restraint

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

Wrongful restraint means preventing a person from going to a place where he has a right to go. In wrongful confinement, a person is kept within certain limits out of which he wishes to go and has a right to go. In wrongful restraint, a person is prevented from proceeding in some particular direction though free to go elsewhere. In wrongful confinement, there is restraint from

proceeding in all directions beyond a certain area. One may even be wrongfully confined in one's own country where by a threat issued to a person prevents him from leaving the shores of his land.

Object - The object of this section is to protect the freedom of a person to utilize his right to pass in his. The slightest unlawful obstruction is deemed as wrongful restraint. Physical obstruction is not necessary always. Even by mere words constitute offence under this section. The main ingredient of this section is that when a person obstructs another by causing it to appear to that other that it is impossible difficult or dangerous to proceeds as well as by causing it actually to be impossible, difficult or dangerous for that to proceeds.

Ingredients:

1. An obstruction.
2. Obstruction prevented complainant from proceeding in any direction. Obstruction:-

Obstruction mans physical obstruction, though it may cause by physical force or by the use of menaces or threats. When such obstruction is wrongful it becomes the wrongful restraint. For a wrongful restraint it is necessary that one person must obstruct another voluntarily.

In simple word it means keeping a person out of the place where his wishes to, and has a right to be.

This offence is completed if one's freedom of movement is suspended by an act of another done voluntarily.

Restraint necessarily implies abridgment of the liberty of a person against his will.

What is required under this section is obstruction to free movement of a person, the method used for such obstruction is immaterial. Use of physical force for causing such obstruction is not necessary. Normally a verbal prohibition or remonstrance does not amount to obstruction, but in certain circumstances it may be caused by threat or by mere words. Effect of such word upon the mind of the person obstructed is more important than the method.

Obstruction of personal liberty:

Personal liberty of a person must be obstructed. A person means a human being, here the question arises whether a child of a tender age who cannot walk of his own legs could also be the subject of restraint was raised in MahendraNathChakarvarty v. Emperor. It was held that the section is not confined to only such person who can walk on his own legs or can move by physical means within his own power. It was further said that if only those who can move by physical means within their own power are to be treated as person who wishes to proceed then the position would become absurd in case of paralytic or sick who on account of his sickness cannot move.

Another points that needs our attention here is whether obstruction to vehicle seated with passengers would amount to wrongful restraint or not.

An interesting judgment of our Bombay High Court in Emperor v. Ramlala : "Where, therefore a driver of a bus makes his bus stand across a road in such a manner, as to prevent another bus coming from behind to proceed further, he is guilty of an offence under Sec. 341 of the Penal Code of wrongfully restraining the driver and passengers of another bus".

"It is absurd to say that because the driver and the passengers of the other bus could have got down from that bus and walked away in different directions, or even gone in that bus to different destinations, in reverse directions, there was therefore no wrongful restraint" is the judgment of our High Court which is applicable to our busmen who suddenly park the buses across the roads showing their protest on some issues.

Illustrations-

I. A was on the roof of a house. B removes the ladder and thereby detains A on the roof.

II. A and B were co-ower of a well. A prevented B from taking out water from the well .

Wrongful confinement

Section 340. Wrongful confinement.

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Object - The object of this section is to protect the freedom of a person where his personal liberty has totally suspended or abolish, by voluntarily act done by another.

Wrongful confinement is aggravated form of wrongful restraint. In wrongful restraint, the person restrained is obstructed to proceed in a direction in which he has right to proceed. However alternative ways are always opened in wrongful restraint. But in wrongful confinement, the person restrained is confined in some circumscribed limits. In wrongful confinement, restrained person is not allowed to move anywhere. He has no alternative to move in any other way.

Ingredients:

A. The person must be wrongfully restrained.

B. The restrained person must be such as to prevent the person to proceed beyond some circumscribing limits.

1) The person must be wrongfully restrained: Before satisfying other conditions it is necessary that the conditions for a wrongful restrained must be satisfied. (All the ingredients of wrongful restrain can also be mentioned here).

2) The restrained person must be such as to prevent the person to proceed beyond some circumscribing limits: It is necessary that the person confined must not have any option to proceed in any direction. Circumscribing limits means some type of boundary or some type of ambit in which a person has been locked with a view to obstruct him to proceed in any way.

Restraint may be physical or otherwise: It is not necessary that the physical restraint must be there or any force is not necessary to use to obstruct the person. A person can also be restraint or confined by use of moral force as well as direction.

For e.g. when any person is directed to stand at a particular place and warned not to move anywhere, then this may be said to be confinement.

Wrongful confinement is a kind of wrongful restraint, in which a person kept within the limits out which he wishes to go, and has right to go.

There must be total restraint of a personal liberty, and not merely a partial restraint to constitute confinement. For wrongful confinement proof of actual physical obstruction is not essential. Circumscribing Limits

Wrongful confinement means the notion of restraint within some limits defined by a will or power exterior to our own.

Degree of Offense

Wrongful restraint is not a serious offence, and the degree of this offense is comparatively lees then confinement.

Wrongful confinement is a serious offence, and the degree of this offense is comparatively intensive then restraint.

Principle element

Vluntarily wrongful obstruction of a person personal liberty, where he wishes to, and he have a right to.

Voluntarily wrongfully restraint a person where he wishes to, and he has a right to, within a circumscribing limits.

Personal liberty

It is a partial restraint of the personal liberty of a person. A person is restraint is free to move anywhere other than to proceed in a partial direction.

it is a absolute or total restraint or obstruction of a personal liberty.

Nature

Confinement implies wrongful restraint. Wrongful confinement not implies vice-versa.

Necessity

No limits or boundaries are required

Certain circumscribing limits or boundaries requires.

Conclusion — persuasion is not obstruction, physical presence, for obstruction is not necessary, reasonable apprehension of force is sufficient, restraint implies will and desire are some of the salient features of such decisions.

d. kidnapping and Abduction

Kidnapping

Definition of Kidnapping

The offence of kidnapping , according to the section 359 of the Indian Penal Code , is of two kinds --- 1) kidnapping from India , and 2) kidnapping from lawful guardianship .

1) Kidnapping from India is defined by section 360 of the Indian Penal Code

According to this section , whoever , conveys any person beyond the limits of India , without the consent of that person or of some person legally authorized to consent on behalf of that person , is said to commit the offence of kidnapping from India .

The essentials of this section are, therefore, the conveying of any person beyond the limits of India and such conveying must be without the consent of that person. It is apparent from the above that the offence with regard to kidnapping from India may be committed on a grown up person or a minor by conveying him or her beyond the limits of India.

2) Kidnapping from lawful guardianship is defined by section 361 of the Indian Penal Code .

According to this section, whoever takes or entices a minor male under 16 years of age if a male , or under 18 years of age if a female , or any person of unsound mind , out of the keeping of the lawful guardianship of such minor or person of unsound mind , without the consent of such guardian , is said to commit the offence of kidnapping from lawful guardianship .

The words lawful guardianship in this section includes any person lawfully entrusted with the care or custody of such minor or other person.

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

The essential elements of the offence of kidnapping from lawful guardianship are as follows

a) The offender took or enticed away a minor or a person of unsound mind;

b) Such minor, if male, must be under 16 years of age, and if female must be less than 18 years of age;

c) The act must be one of taking or enticing out of the keeping of the lawful guardianship of such minor or person of unsound mind;

d) The act of taking or enticing out must be done without the consent of the lawful guardian.

The object of Section 361 is at least as much to protect children of tender age from being abducted or seduced for improper purposes as for the protection of the rights of parents and guardians.

The offence of kidnapping from lawful guardianship arises when a minor, under 16 in the case of a male or under 18 in the case of a female is taken or enticed from the keeping of the lawful guardian.

Section 361 has no application to children without any guardian, legal, lawful or de facto such as a street (i.e., a poor) Arab, who may permit himself to be taken away by any one who may choose to do so.

The person taking away such a child may himself become the 'lawful guardian' of the child, and any other person taking or enticing the child out of his keeping may be guilty of kidnapping. The same rule applies to a lunatic without a lawful curator.

Meaning of 'takes or entices'

The word 'take' means to cause to, to go to, escort, or to get in the possession. The word 'take' implies want of wish and absence of desire of the person taken. Taking implies neither force nor misrepresentation.

'Enticing' is an act of the accused by which the person kidnapped is induced of his own accord to go to the kidnapper. The word 'entice' involves an idea of inducement or allurement by exciting hope or desire in the other.

There is an essential distinction between the two terms 'take' and 'entice'. The mental attitude of the minor is not of relevance in the case of taking. The word 'take' means to cause to go, to escort or to get into possession.

The word 'entice' involves an idea of inducement by exciting hope or desire in the other. One does not entice another unless the latter attempted to do a thing which she or he would not otherwise do.

The juxta position of these two words makes it clear that the act of taking is complete when the accused takes her with him or accompanies her in the ordinary sense of the term, irrespective of her mental attitude.

When the accused took the minor with him, whether she was willing or not, the act of taking was complete and it amounted to 'taking' her out of the father's custody within the meaning of Section 361.

The expression 'enticing' involves that, while the person kidnapped might have left the keeping of the lawful guardian willingly, still the state of mind that brought about that willingness must have been induced or brought about in some way by the accused.

Meaning of 'Lawful guardian'

The word 'lawful' is different from the term 'legal'. A guardian may be lawful without being a legal guardian. A legal guardian is the guardian appointed by law, or whose appointment is in consonance with the general law of the land and the person whose guardian he is. A lawful guardian is a guardian whose custody is merely sanctioned by law.

A legal guardian is necessarily a lawful guardian but not necessarily vice versa e.g., a school master or an employer is a lawful guardian, a parent of the minor is a legal guardian. The expression 'lawful guardian' would include a natural guardian, a testamentary guardian, appointed by court and a person lawfully entrusted with the care and custody of a minor.

The guardian is described in this section as a 'lawful guardian' and not as a legal guardian', and the significance of the adjective 'lawful' is emphasised by the explanation which showsthat it includes any person who is lawfully entrusted with the care or custody of the ward concerned.

The expression 'lawful guardian' in Section 361 would include a person who voluntarily undertakes the care and custody of the minor in a lawful manner. If an orphan is left without the protection of the legal guardian and a philanthropic person out of humanitarian or charitable motives, takes up the care and custody of such an orphan and treats him as his child, the person so taking the custody and care of the orphan comes within the meaning of Section 361.

If the guardian though not a de jure guardian, was still a guardian de facto if his custody was not illegal and he had accepted the child. The explanation to Section 361 says that the words 'lawful guardian' would include any person lawfully entrusted the care or custody of such minor.

'Legal guardian' would be parents or guardians appointed by courts. 'Lawful guardian' would include within its meaning not only legal guardians, but also such persons like a teacher, relative etc. who are lawfully entrusted with the care and custody of minor.

Out of the keeping of the lawful guardian:

The word 'keeping' implies neither apprehension nor detention but rather maintenance, protection and control, manifested not by continued action but as available on necessity arising. It is not necessary that the minor should be in the physical possession of the guardian. It is enough if the minor is under a continuous control which is for the first time terminated by the act complained of.

Section 361 makes the taking or enticing of any minor person or person of unsound mind 'out of the keeping of the lawful guardian', an offence. The meaning of the words 'keeping of the lawful guardian' came up for consideration before the Supreme Court in State of Haryana v. Raja Ram [AIR 1973 SC 819].

The court observed that the word 'keeping', in the context connotes the idea of charge, protection, maintenance and control. The court compared it with the language used in English statutes, where the expression used was 'take out of the possession' and not 'out of the keeping'.

The difference in the language between the English statutes and this section only goes to show that Section 361 was designed to protect the sacred right of the guardian with respect to their minor wards.

Without the consent of such guardian:

The taking or enticing of the minor out of the keeping of the lawful guardian must be without his consent. The consent of the minor is immaterial. If men by false and fraudulent representations induce the parents of a girl to allow him to take her away, such taking willamount to kidnapping. Consent given by the guardian after the commission of the offence would not cure it.

In GooroodossRajbunsee v. R [(1865) 4 WR (Cr) 7], where a person carried off, without the consent of her father, a girl to whom he was betrothed by her father, because the father suddenly changed his mind and broke off the engagement, it was held that he was guilty of kidnapping.

Entrustment:

'Entrustment' means the giving, handing over or confiding of something by one person to another. It involves the idea of active power and motive by the person reposing the confidence towards the person in whom the confidence is reposed.

The 'entrustment' may be by a legal guardian; it may be written or oral, express or implied. Entrustment which this section requires may be inferred from a well- defined and consistent course of conduct governing the relations of the minor and the person alleged to be the lawful guardian.

In Abdul v. Emperor [AIR 1928 Mad. 525] the accused wrote several letters to the minor girl alluring her to come away from her father's house. The Court held that the accused was guilty of the offence of kidnapping from lawful guardian.

In BhagavanPaanigrahi v. State [1989 Cr.LJ 103], the minor girl aged sixteen years, came from a village for education. Her father used to visit her monthly once or twice and was looking after her necessities. She stayed in a rented room. She came into contact with the accused.

Both of them went away from that town to another place with an intention to get married. The consent of the minor girl was not considered and the court convicted the accused under Section 361 as there was no guardian's consent.

In Ram Das v. State of MP [AIR 1970 SC 864], the girl compelled the accused to marry and got the marriage registered. When she informed the same, her father locked her in a room. She broke open the room and went to stay with the accused. The court acquitted the accused since there was no enticing or taking to constitute the offence.

In Varadarajan v. State of Madras [AIR 1965 SC 942], a 16 year old girl voluntarily fell in love with the accused and got the marriage agreement registered. The Supreme Court held that, though she was a minor girl, the offence would not amount to kidnapping since there was no taking or enticing.

The Supreme Court further observed: 'There is a distinction between 'taking' and 'allowing' a minor to accompany a person. Two expressions are not synonymous though cannot be laid down that in no conceivable circumstances can the two be regarded as the same meaning for the purposes of Section 361.

Where the minor leaves her father's house knowing and having capacity to know the circumstances of what she is doing voluntarily, it means the accused person cannot be deemed to have taken away from the lawful guardianship. Something more has to be shown in a case of this kind and some kind of inducement held out by the accused person or an active participation by him in the information of the intention of the girl to leave the house of the guardian"

Abduction

Definition of Abduction:-

The offence of abduction is defined by section 362 of the Indian Penal Code. According to this section, whoever, by force compels, or by any deceitful means induces , any person to go from any place , is said to commit the offence of abduction.

According to Blackstone, "Abduction in general signifies the act of illegally taking or leading away, carrying off by force a child, wards, voter or wife. This may be by fraud, persuasion, or open violence".

To constitute the offence of abduction the following ingredients must remain present

i) The offender enticed a person by deceitful means or by forcible compulsion to go away from any place;

ii) The offence of abduction was committed for any of the purposes enumerated in section 366 of the IPC.

The term 'force' as embodied in S. 362, IPC, means the use of actual force and not merely show of force or threat of force. Where an accused threatened the prosecutrix with a pistol to make her go with him, it would amount to abduction under this section.

Deceitful means: 'Deceitful' means misleading a person by making false representation and thereby persuading the person to leave any place. The expression 'deceitful means' includes a misleading statement. Deceitful means is used as an alternative to 'use of force'. It is, really speaking, a matter of intention. The intention of the accused is the basis and gravamen of the charge.

Inducement:

In inducement there is some active suggestion on the part of the abductor which is the case of the person abducted to move to some place where he would not have gone but for this suggestion. The change of mind of the victim must have been caused by an external pressure of some kind.

To go from any place:

An essential element of abduction is compelling or inducing a person to go from any place. It need not be only from the custody of lawful guardian as in the case of kidnapping. For unlike kidnapping, abduction is a continuing offence. The offence of kidnapping is complete, the moment a person is removed from India or from the keeping of lawful custody of guardian.

But, in the case of abduction, a person is being abducted not only when he is first taken away from any place, but also when he is subsequently removed from one place to another place. The words 'from any place' indicate the meaning that abduction is a continuing offence.

Continuous offence:

Abduction is a continuing offence and a person is liable not only when a person is first moved from one place to another but all those who are involved in subsequently moving that person to other places are also liable

- ❖ <u>Difference between Kidnapping from lawful guardianship and Abduction The differences between the offences of Kidnapping and abduction are as follows</u>

1) The offence of abduction can be committed with respect to a person of any age. Likewise, the offence of kidnapping from India can also be committed with respect to a person of any age.

On the other hand kidnapping from lawful guardianship can only be committed with respect to a minor under 16 years of age , if male , and under 18 years of age , if a female . But the offence of kidnapping from lawful guardianship can be committed with respect to a person of unsound mind of any age.

2) In case of abduction, the offender must use compulsion, force, or deceitful means. But in kidnapping, the minor is simply taken away or enticed away.

3) In case of abduction or kidnapping from India, if the victim is capable by law of giving consent, the offence is not committed. But in case of kidnapping from lawful guardianship giving consent by the victim is immaterial or inoperative.

4) In case of kidnapping from lawful guardianship, the person kidnapped must be removed out of the custody of a lawful guardian. A person without a guardian cannot be kidnapped. But abduction has reference exclusively to the person abducted.

5) Abduction is an auxiliary act, not punishable by itself, but made criminal only when it is committed with one or other intents mentioned in section 364 onwards of IPC. But kidnapping is a substantive offence, either from India or from lawful guardianship.

6) Kidnapping from lawful guardianship cannot be abetted, but if there is a conspiracy, conviction for abetment can be sustained. But abduction or kidnapping from India can be abetted.

7) In case of kidnapping, intention of the offender is wholly irrelevant. But in case of abduction intention of the offender is an important factor.

UNIT-III: OFFENCES AGAINST WOMEN:

A. Outraging the modesty of women, Voyeurism, Stalking, Acid attack:

Outraging modesty of women: Section 354 and 509, IPC-

Section 354 of the Indian Penal Code, 1860 provides "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 shall not be

less than one year but which may extend to five years, and shall also be liable to fine". As per Section 10 of the I. P. C. "The word 'woman' denotes a female human being of any age".

Whereas "modesty" is not defined in the Indian Penal Code, however it means "womanly propriety of behavior, scrupulous chastity of thought, speech and conduct (in men or women) reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions"(Oxford English Dictionary,1933 Edn.)

Test of modesty:

"The essence of a woman's modesty is her sex". The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses modesty, capable of being outraged. A female of tender age stands on a somewhat different footing. Her body is immature, and her sexual powers are dormant. Even if the victim is a baby, has not yet developed a sense of shame and has no awareness of sex. Nevertheless, from her very birth she possesses the modesty which is the attribute of her sexCourt's View:

In State of Punjab vs. Major Singh, AIR 1967 SC 63, the question before Supreme Court was whether the respondent (Major Singh) who Caused injury to the private parts of a female child of seven and half months is guilty under s. 354 of the Penal Code of the offence of outraging the modesty of a woman.

Justice Mudholkar unhesitatingly declared that under s. 354 IPC while the individual reaction of the victim to the act of the accused would be irrelevant, when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind, that act must fall within the mischief of the section and would, constitute an offence under the section. Since the action of the accused (respondent) in interfering with and thereby causing injury to the vagina of the child, who was seven and half months old, was deliberate, he must be deemed to have intended to outrage her modesty.

Justice Bachawat with a serious concern and conviction added that the essence of a woman's modesty is her sex. Even a female of tender age from her very birth possesses the modesty, which is the attribute of her sex. Under the section the culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. The respondent is punishable for the offence under the section because, by his act he outraged and intended to outrage whatever modesty the little victim was possessed of.

'Criminal force must have been used'

In Ramkripal S/o ShyamlalCharmakar v State of Madhya Pradesh (Crl. appeal 370 of 2007) Hon'ble Justice Dr. ArijitPasayat& S.H. Kapadia of Supreme Court clarified the essential ingredients of offence under Section 354 IPC as follows:-

(a) That the assault must be on a woman.

(b) That the accused must have used criminal force on her.

(c) That the criminal force must have been used on the woman intending thereby to outrage her modesty.

Hon'ble Justice V. V. Kamat of Bombay High Court rightly pointed out in the State of Maharastra v Manohar @ ManyaKanhaiyaBairagi (1994 Cri.L.J. 2536) that in fact the principles laid down by the Supreme Court are to the effect that the body of a female of a tender age may be immature at a given point of time, but development of a sense of shame, an awareness of her sexual characteristics, although get postponed to a particular age, the court has to regard that from her very birth, she possesses the modesty, which is the attribute of her sex.

In RupanDeol Bajaj V. Kanwar Pal Singh Gill (1995 SCC (Cri) 1059), Hon'ble Justice Dr. A.S. Anand and M.K. Mukherjee of Supreme Court observed that the allegation contained in the FIR constitute offences under section 354 and 509 IPC. The word `modesty' has not been defined in the Indian Penal Code. From the dictionary meaning of `modesty' and the interpretation given to that word by the Supreme Court in Major Singh case it appears that the ultimate test for ascertaining whether modesty has been outraged is the action of the offender such as could be perceived as one, which is capable of shocking the sense of decency of a woman. When the above test is applied in the present case, keeping in view the total fact situation, it must be held that the alleged act of the respondent in slapping the appellant on her posterior amounted to "outraging of her modesty" for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady- "Sexual overtones" or not, notwithstanding".

Hon'ble Judges observed "since the word `modesty' has not been defined in the Indian Penal Code we may profitably look into its dictionary meaning. According to Shorter Oxford English

Dictionary (3rd Edn.) modesty is the quality of being modest and in relation to woman means "womanly propriety of behavior; scrupulous chastity of thought, speech and conduct". The word `modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct: not forward or lewd; shame fast". Webster's Third New International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Edn.) the meaning of the word modesty is given as "womanly propriety of behavior; scrupulous chastity of thought, speech and conduct (in man or woman): reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

In the case of KeshavBaliramNaik v. State of Maharashtra, 1996 Cr LJ 1111 (Bom.), a woman came out early in the morning to get water from the village well. The accused caught her hand and forcefully pulled her to him to be taken to a nearby place. She resisted and raised shouts. Her bangles were broken and she was injured. The accused was found guilty of the offence under s. 354 and was convicted accordingly setting aside his acquittal.

The Amendment Act of 2013 has enhanced the term of imprisonment prescribed for the offence which falls under the category of assault or criminal force to woman with intent to outrage her modesty (section 354). While earlier the accused was liable to imprisonment of a term which could extend to two years or fine or both, now, the same offence is punishable with a term of one year which may extend up to five years and shall also be liable to fine.

This reflects substantial change in the outlook towards the crime and a stronger determination to deter criminals.

SECTION 509 OF THE INDIAN PENAL CODE

"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 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 three years, and also with fine."

Before 2013 Amendment, this offence was punishable with simple imprisonment for a term which may extend to one year, or with fine, or with both.

An insult to the modesty of the woman is an essential ingredient of this offence. If a man exposes his person in an indecent way or used obscene words which intend that he should be heard or his

obscene drawings should be seen, he is held to be an offender under s.509 of IPC. The intention to insult the modesty of woman must be coupled with the fact that the insult is caused. It means that the other party understands that he is insulted. If a person intrudes upon the privacy of a woman, then also he is considered to be liable under this section.

The question of what constitutes an insult to female modesty requires no description. It is common knowledge that any word, spoken or written, any song, picture, or figure exhibited which suggests lewd thoughts is immoral and insulting to female modesty, unless the woman is a consenting party to it.

Where an accused enters into a woman's apartment and tries to catch hold of her and persuades her for sexual connection by removing garments, an offence under this section is registered. [Bankey, AIR 1961 All 131]. Likewise, when an accused sent a letter containing indecent overtures, lewd and filthy suggestions to an unmarried nurse, it was held that an offence was made out. [Tarak Das Gupta, AIR 1926 Bom 159]

Section 509 basically deals with eve teasing and it serves as a deterrent in curbing the mounting indecency with which lewd and obscene remarks are passed onto the women in public places. A law to curb such an act was urgently required as it leads to lowering of self esteem of a person. However the repercussions are far reaching and at many a places its repetition has resulted in suicide and fatal attempts on one's life.

- **Voyeurism: (Section 354C)**

Section 354C of IPC provides- "Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation I- For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2- Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section."

This provision deals with the specific act of either watching or capturing the images of a woman engaging in a private act where she expects privacy and observation by the perpetrator or any other person at the behest of the perpetrator is not likely. Such watching or capturing images of a woman is criminalized and attracts an imprisonment term which shall not be less than one year but may extend to three years and fine. Also on a subsequent conviction the minimum imprisonment term shall be that of three years extendable to seven years and also fine.

For the purpose of this section the offence is widely defined and includes a situation where the victim may have consented to the capturing of images or any act but not agreed to the dissemination of the same to any third person.

The provision seeks to protect victims of voyeurism, who have been watched, or recorded, without their consent and under circumstances where the victim could reasonably expect privacy, and where the victim's genitals, buttocks or breasts have been exposed. A reasonable expectation of privacy means that in the circumstances, whether in a public or a private place, the victim has a reasonable expectation that she is not being observed engaging in private acts such as disrobing or sexual acts. The test of reasonable expectation of privacy can be derived from similar provisions in voyeurism laws across the world, and also section 66E of the Information Technology Act, 2000. It is particularly important because voyeurism does not necessarily take place in private places like the victims home, but also in public spaces where there is generally an expectation that exposed parts of one's body are not viewed by anyone.

A 'voyeur' is generally defined as "a person who derives sexual gratification from the covert observation of others as they undress or engage in sexual activities." Voyeurism is the act of a person who, usually for sexual gratification, observes, captures or distributes the images of another person without their consent or knowledge. With the development in video and image capturing technologies, observation of individuals engaged in private acts in both public and private places, through surreptitious means, has become both easier and more common. Cameras or viewing holes may be placed in changing rooms or public toilets, which are public spaces where individuals generally expect a reasonable degree of privacy, and where their body may be exposed. Voyeurism is an act which blatantly defies reasonable expectations of privacy that individuals have about their bodies, such as controlling its exposure to others. Voyeurism is an offence to both the privacy as well as the dignity of aperson, by infringing upon the right of

individuals to control the exposure of their bodies without their consent or knowledge, either through unwarranted observation of the individual, or through distribution of images or videos against the wishes or without the knowledge of the victim.

- **Stalking:**

Section 354D of IPC provides:

(1) Any man who—

i. follows a woman and contacts, or attempts. to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

ii. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

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

i. it was pursued for the purpose of preventing or detecting crime and the man accused of stalking bad been entrusted with the responsibility of prevention and detection of crime by the State; or

ii. it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

iii. in the particular circumstances such conduct was reasonable and justified.

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

Stalking is generally characterized by unwanted and obsessive harassment or persecution of one person by another. Stalking can be a physical act such as constantly following a person, or can be done through electronic means — usually the internet (known as cyber stalking). Stalking may or may not be an act which physically threatens the security of an individual; however, it can cause

mental trauma and fear to the person being stalked. Stalking is a blatant intrusion into an individual's privacy, where the stalker attempts to establish relationships with their victim which the victim does not consent to and is not comfortable with. The stalker also intrudes into the victim's private life by collecting or attempting to collect personal information the victim may not want to disclose, such as phone numbers or addresses, and misusing it. If the stalker is left undeterred to continue such actions, it can even lead to a threat to the safety of the victim. Cyber-stalking is a phenomenon which can prove to be even more invasive and detrimental to privacy, as most cyber-stalkers attempt to gain access to private information of the victims so that they can misuse it. Stalking, in any form, degrades the privacy of the victim by taking away their choice to use their personal

information in ways they deem fit. Recognizing stalking as an offence would not only protect the physical privacy rights of the victims, but also nip potentially violent crimes in the bud.

Many nations including Australia, the United States of America and Japan have penal provisions which criminalise stalking. Prior to 2013 Amendment, there was no appropriate response to stalking as an offence in India — either in its physical or electronic forms. The Information Technology Act, purported to deal with instances of cyber-crimes, overlooks instances of breach of online privacy and stalking which does not lead to publication of obscene images or other obvious manifestations of physical or mental threat. The general provision under which victims of stalking can file complaints was Section 509 of the Indian Penal Code (IPC), which states that — '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. There were several problems with using this section as a response to stalking. Without a particular definition of what comes under the scope of 'intrusion of privacy' under this section, there is reluctance both for the victim to approach the police and for the police to file the complaint. Usually the offence is coupled with some other form of harassment or violence, and the breach of privacy and trauma is not considered as a separate offence. For example, if a person is continuously following or trying to contact you without your consent or approval, but does not physically threaten or insult you, there is no protection in law against such a person. Hence, as pointed out, there is a need to recognize the breach of privacy as a separate ground of offence, notwithstanding other physical or mental grounds. Secondly, the provisions of this section require the criminal to have the 'intent of insulting the modesty of a woman'. Aside from

the difficulties in adjudging the 'modesty' of a woman, the provision limits the scope of harassment to only that which intends to insult the modesty of a woman and excludes any other intention as criminal behaviour. The present law amends these problems by disregarding the reason or intent for the behaviour, and by clearly defining the elements of the offence and making stalking as a stand-alone, punishable offence.

Acid Attack:

Section 326A provides- Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Explanation 1.- For the purposes of this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.- For the purposes of this section, permanent or partial damage or deformity shall not be required to be irreversible.

Section 326B provides- Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent of partial damage or deformity of burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years, but which may extent to seven years and also be liable to fine.

Explanation 1.- For the purposes of section 326 A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.- For the purposes of section 326 A and this section, permanent or partial damage or deformity shall not be required to be irreversible.

Acid attacks are becoming a growing phenomenon in India. Though acid attack is a crime which can be committed against any man or woman, it has a specific gender dimension in India. Most of the reported acid attacks have been committed on women, particularly young women for spurning suitors, for rejecting proposals of marriage, for denying dowry etc. The attacker cannot bear the fact that he has been rejected and seeks to destroy the body of the woman who has dared to stand up to him. Thus, acid throwing is an extremely violent crime by which the perpetrator of the crime seeks to inflict severe physical and mental suffering on his victim. As stated above this kind of violence is often motivated by deep-seated jealousy or feelings of revenge against a woman. For instance, in Bangladesh 78 percent of the reported acid violence is inflicted on women with the most common reasons for attack being the refusal of marriage, the denial of sex, and the rejection of romance. The acid is usually thrown at the victim's face. The perpetrator wants to disfigure the victims and turn them into a monster. Aside from the reasons stated above the other reasons for acid attacks include robbery, land disputes etc. Perpetrators of the crime act cruelly and deliberately. Acid violence is a premeditated act of violence as the perpetrator of the crime carries out the attack by first obtaining the acid, carrying it on him and then stalking the victim before executing the act.

Furthermore, an acid attack has long-lasting consequences on the life of the victim who faces perpetual torture, permanent damage and other problems for the rest of her life. Victims normally feel worthless, afraid and modified and become social outcasts because of their appearance. They may become too traumatized and embarrassed to walk out of their house and carry out simple tasks let alone get married, have children, get a job, go to school, etc. Even if they are willing to pursue a normal life, there is no guarantee that society itself will treat them as normal human beings given their appearance and disabilities after an attack. They may not be able to work, or be able to find a job, and thus perpetually struggle to survive.

Acid attack is one of the most heinous crimes against women and the law is striving to deal with it stringently by virtue of said provision.

B. Rape and unnatural offences:

Rape:

According to Section 375- A man is said to commit "rape" if he-—

a. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

b. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

c. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any ~ of body of such woman or makes her to do so with him or any other person; or

d. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven 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 eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation I.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception I.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

:**Section 376 provides for Punishment for rape**

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

2. Whoever,—

a. being a police officer, commits rape—

i. within the limits of the police station to which such police officer is appointed; or

ii. in the premises of any station house; or

iii. on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

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

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

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

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

f. being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

g. commits rape during communal or sectarian violence; or

h. commits rape on a woman knowing her to be pregnant; or

i. commits rape on a woman when she is under sixteen years of age; or

j. commits rape, on a woman incapable of giving consent; or

k. being in a position of control or dominance over a woman, commits rape on such woman; or

l. commits rape on a woman suffering from mental or physical disability; or

m. while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

n. commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.—For the purposes of this sub-section,—

a. "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any Jaw for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government!, or the State Government;

b. "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

c. "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861;

d. "women'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 an institution called by any other name, which is established and maintained for the reception and care of women or children.

Section 376A provides for Punishment for causing death or resulting in persistent vegetative state of victim: Whoever, commits an offence punishable under sub-section (l) or sub¬section

(2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

Section 376B provides- Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375

Section 376C provides- Whoever, being—

a. in a position of authority or in a 6duciary relationship; or

b. a public servant; or

c. 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 a women's or children's institution; or

d. on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than 6ve years, but which may extend to ten years, and shall also be liable to fine.

Explanation l.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

Explanation 2. —For the purposes of this section, Explanation I to section 375 shall also be applicable.

Explanation 3.—"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 such person can exercise any authority or control over its inmates.

Explanation 4.—The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in Explanation to sub-section (2) of section 376.

Section 376D provides for offence of gang rape- Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Section 376E provides- Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 3760 and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

Law prior to 2013 Amendment Act:

KiranBedi., Joint Commissioner, Special Branch observed: "The law of rape is not just a few sentences. It is a whole book, which has clearly demarcated chapters and cannot be read selectively. We cannot read the preamble and suddenly reach the last chapter and claim to have understood and applied it."

In the Mathura rape case , wherein Mathura- a sixteen-year-old tribal girl was raped by two policemen in the compound of Desai Ganj Police station in Chandrapur district of Maharashtra.Her relatives, who had come to register a complaint, were patiently waiting outside even as the heinous act was being committed in the police station. When her relatives and the assembled crowd threatened to burn down the police chowky, the two guilty policemen, Ganpat and Tukaram, reluctantly agreed to file a panchnama.The case came for hearing on 1st June, 1974 in the sessions court. The judgment however turned out to be in favour of the accused. Mathura was accused of being a liar. It was stated that since she was her consent was voluntary; under the circumstances only sexual intercourse could be proved and not rape.On appeal the Nagpur bench of the Bombay High Court set aside the judgment of the Sessions Court, and sentenced the accused namely Tukaram and Ganpat to one and five years of rigorous

imprisonment respectively. The Court held that passive submission due to fear induced by serious threats could not be construed as consent or willing sexual intercourse.However, the Supreme Court again acquitted the accused policemen. The Supreme Court held that Mathura had raised no alarm; and also that there were no visible marks of injury on her person thereby negating the struggle by her.The Court in this case failed to comprehend that a helpless resignation in the face of inevitable compulsion or the passive giving in is no consent. However, the Criminal Law Amendment Act, 1983 has made a statutory provision in the face of Section.114 (A) of the Evidence Act, which states that if the victim girl says that she did no consent to the sexual intercourse, the Court shall presume that she did not consent.

In Mohd.Habib v. State, the Delhi High Court allowed a rapist to go scot-free merely because there were no marks of injury on his penis, which the High Court presumed was a indication of no resistance. The most important facts such as the age of the victim (being seven years) and that she had suffered a ruptured hymen and the bite marks on her body were not considered by the High Court. Even the eye- witnesses, who witnessed this ghastly act, could not sway the High Court's judgment. Another classic example of the judicial pronouncements in rape cases is the case of Bhanwari Devi, wherein a judge remarked that the victim could not have been raped since she was a dalit while the accused hailed from an upper caste- who would not stoop to sexual relations with a dalit.

In another instance of conscience stirring cases, Sakina- a poor sixteen year old girl from Kerala, who was lured to Ernakulam with the promise of finding her a good job, where she was sold and forced into prostitution. There for eighteen long months she was held captive and raped by clients. Finally she was rescued by the police- acting on a complaint filed by her neighbour. With the help of her parents and an Advocate, Sakina filed a suit in the High Court- giving the names of the upper echelons of the bureaucracy and society of Kerala. The suit was squashed by the High Court, while observing that 'it is improbable to believe that a man who desired sex on payment would go to a reluctant woman; and that the version of the victim was not so sacrosanct as to be taken for granted.

Whereas, in State of Punjab v. Gurmit Singh, the Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character.

The Supreme Court has in the case of State of Maharashtra v. Madhukar N. Mardikar, held that "the unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate her person against her wish. She is equally entitled to the protection of law. Therefore merely because she is of easy virtue, her evidence cannot be thrown overboard."

Also the Bandit Queen case, which depicts the tragic story of a village girl.Phoolan Devi, who was exposed from an early age to the lust and brutality of some men. She was married to a man old enough to be her father. She was beaten and raped by him. She was later thrown out of the village- accused of luring boys of the upper caste. She was arrested by the police and subjected to indignation and humiliation. Was also kidnapped and raped by the leader of dacoits and later by the leader of a gang of Thakurs, who striped her naked and paraded her in front of the entire village. This is truly one story that shows the apathy of the existing society. In Chairman, Railway Board v. ChandrimaDas , a practicing Advocate of the Calcutta High Court filed a petition under Article.226 of the Constitution of India against the various railway authorities of the eastern railway claiming compensation for the victim (Smt. HanufaKhatoon)- a Bangladesh national- who was raped at the Howrah Station, by the railway security men. The High Court awarded Rs.10 lacs as compensation.

An appeal was preferred and it was contended by the state that:

a) The railway was not liable to pay the compensation to the victim for she was a foreigner.

b) That the remedy for compensation lies in the domain of private law and not public law. i.e. that the victim should have approached the Civil Court for seeking damages; and should have not come to the High Court under Article.226.

Considering the above said contentions, the Supreme Court observed:

"Where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would be avoidable under public law. It was more so, when it was not a mere violation of any ordinary right, but the violation of fundamental rights was involved- as the petitioner was a victim of rape, which a violation of fundamental right of every person guaranteed under Article.21 of the Constitution."

The Supreme Court also held that the relief can be granted to the victim for two reasons-firstly, on the ground of domestic jurisprudence based on the Constitutional provisions; and secondly, on the ground of Human Rights Jurisprudence based on the Universal Declaration of Human Rights, 1948 which has international recognition as the 'Moral Code of Conduct' adopted by the General Assembly of the United Nation.

Position after 2013 Amendment Act:

The Criminal Law (Amendment) Act, 2013 came into force on 3rd February, 2013 following the outrage of the entire nation behind the homicidal gang rape that took place in New Delhi on the night of 16th December 2012. The protest in the Delhi after the barbarous Rape Incident indicated the whole of India, the enormity as well as the seriousness for an immediate reform in Rape Laws. The Act recognizes the broad range of sexual crimes to which women may fall victim, and a number of ways in which gender based discrimination manifests itself. It also acknowledges that lesser crimes of bodily integrity often escalate tograver ones. It seeks to treat cases as "rarest of the rare" for which courts can award capital punishment if they decide so. The Act clarifies and extends the offense of sexual assaults or rape as a result of abuse of position of trust. As per the Act, the police will also be penalized for failing to register FIRs – this will make it easier for rape victims to report their cases.

The 2013 Act expands the definition of rape to include oral sex as well as the insertion of an object or any other body part into a woman's vagina, urethra or anus.

The punishment for rape is seven years at the least, and may extend up to life imprisonment. Any man who is a police officer, medical officer, army personnel, jail officer, public officer or public servant commits rape may be imprisoned for at least ten years. A punishment of life imprisonment, extending to death has been prescribed for situations where the rape concludes with the death of the victim, or the victim entering into a vegetative state. Gang rape has been prescribed a punishment of at least 20 years under the newly amended sections.

The new amendment defines 'consent', to mean an unequivocal agreement to engage in a particular sexual act; clarifying further, that the absence of resistance will not imply consent. Non-consent is a key ingredient for commission of the offence of rape. The definition of consent therefore is key to the outcome of a rape trial, and has been interpreted systemically to degrade and discredit victims of rape.

Exceptions to the Section

Marital rape, a contentious issue among feminist groups in India, is an exception to section 375, provided that the wife is not under 15 years of age.

An exception also has been provided for the purpose of medical examination. In April, 2013, the Supreme Court criticised present medical tests for rape survivals, and has castigated the standard

two-finger test in the case of Lillu @ Rajesh v. State of Haryana AIR 2013 SC 1784. Justices BS Chauhan and Kalifulla have directed the centre to provide better medical tests that do not violate the dignity of rape-survivors, thus preventing a "second rape".

Unnatural Offences:

Section 377 provides- Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[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.

Lacking precise definition, Section 377 became subject to varied judicial interpretation over the years. Initially covering only anal sex, it later included oral sex and still later, read to cover penile penetration of other artificial orifices like between the thighs or folded palms. The law made consent and age of the person irrelevant by imposing a blanket prohibition on all penile-non-vaginal sexual acts under the vague rubric of 'unnatural offences'

Though ostensibly applicable to heterosexuals and homosexuals, Section 377 acted as a complete prohibition on the penetrative sexual acts engaged in by homosexual men, therebycriminalising their sexual expression and identity. Besides, the society too identified the proscribed acts with the homosexual men, and the criminalisation had a severe impact on their dignity and self-worth. Section 377 was used as a tool by the police to harass, extort and blackmail homosexual men and prevented them from seeking legal protection from violence; for fear that they would themselves be penalized for sodomy. The stigma and prejudice created and perpetuated a culture of silence around homosexuality and resulted in denial and rejection at home along with discrimination in workplaces and public spaces.

The Naz Foundation (India) Trust, a Delhi-based non-governmental organization and working in the field of HIV prevention amongst homosexuals and other men having sex with men (MSM), realised that Section 377, IPC constituted one of the biggest impediments in access to health services for MSM. MSM remained a hidden population due to fear of prosecution under the law. Through its interactions with clients, Naz Foundation became acutely aware of the disproportionate and invidious impact of Section 377 on homosexuals.

Naz Foundation (India) Trust v. Government of NCT of Delhi and Ors. [Writ Petition (Civil) No. 4755 of 2001]

In 2001, Lawyers Collective, on behalf of Naz Foundation (India) Trust, filed a writ petition in Delhi High Court challenging the constitutionality of Section 377 on grounds of violation of right to privacy, dignity and health under Article 21, equal protection of law and non-discrimination under Articles 14 and 15 and freedom of expression under Article 19 of the Constitution. Notice was issued to Union of India in 2002 and the Attorney General was asked to appear. The Ministry of Home Affairs filed an affidavit opposing the petition in September, 2003. The petition was dismissed by the High Court on 02.09.2004 for lack of cause of action as no prosecution was pending against the petitioner.

The Petitioner filed a review petition (RP 384/2004) in the High Court against the order of dismissal but that too was dismissed on 03.11.2004. Aggrieved by the same, the Petitioner filed a Special Leave to Appeal (C.N. 7217-18/2005) in the Supreme Court of India in 2005. On 03.02.2006, the Supreme Court passed an order holding that "the matter does require consideration and is not of a nature which could have been dismissed on the ground afore-stated". Remitting the matter back to the High Court of Delhi to be decided on merits, the Supreme Court set aside the said order of the High Court. Subsequently, the Ministry of Health and Family Welfare through National AIDS Control Organisation (NACO) submitted an affidavit in support of the petition in the High Court contending that Section 377 acted as an impediment to HIV prevention efforts in July, 2006.

Thereafter, the final arguments in the matter ensued in November, 2008 before the division bench of Chief Justice of Delhi High Court A.P. Shah and Justice S. Muralidhar.

On 02.07.2009, the Delhi High Court passed a landmark judgment holding Section 377 to be violative of Articles 21, 14 and 15 of the Constitution, insofar as it criminalised consensual sexual acts of adults in private.

Suresh Kumar Koushal&Ors. v. Naz Foundation (India) Trust &Ors.[Special Leave Petition (Civil) No. 15436 of 2009]Following the High Court decision, 15 Special Leave Petitions (SLPs) were filed in the Supreme Court appealing against the said decision on behalf of mostly faith-based andreligious groups from all parts of India. Importantly, the Union of India did not appeal against the judgment and the Supreme Court too did not grant a stay on the operation of the same. In February, 2012, final arguments began in this matter before the division bench of Justice G.S. Singhvi and Justice S.J. Mukhopadhyay and continued till the end of March,

2012.The panel of two Supreme Court judges deciding the case allowed the appeal and overturned the High Court's previous decision, finding its declaration to be "legally unsustainable". The Supreme Court ultimately found that Section 377 IPC does not violate the Constitution and dismissed the writ petition filed by the Respondent.

C. Cruelty and offences relating to marriage:

Cruelty by Husband or Relatives of Husband:

Section 498A:

Matrimonial Cruelty in India is a cognizable, non bailable and non-compoundable offence. It is defined in Chapter XXA of I.P.C. under Section 498A as 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 her to cruelty shall be punished with imprisonment for a term, which may extend to three years and shall also be liable to a fine.

Explanation – for the purpose of this section, "cruelty" means:

(a) anywilful 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 demands for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

For safeguarding the interest of a woman against the cruelty they face behind the four walls of their matrimonial home, the Indian Penal Code,1860 was amended in 1983 and S.498A was inserted which deals with 'Matrimonial Cruelty' to a woman. The section was enacted to combat the menace of dowry deaths. It was introduced in the code by the Criminal Law Amendment Act, 1983 (Act 46 of 1983). By the same Act section 113-A was been added to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman. The main objective of section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband.

Section 113-A of Indian Evidence Act, reads as follows:

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to crueltyor harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation- For the purpose of this section 'dowry death' shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).

The object with which section 498A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting Criminal Law (Second Amendment) Act No. 46 of 1983. As clearly stated therein, the increase in number of dowry deaths was a matter of serious concern. The extent of the evil was commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some of cases, cruelty of the husband and the relatives of the husband culminated in suicide by or murder of the helpless woman concerned. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure,1973 (in short 'the Cr.P.C') and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in- law's and relatives. The avowed object was to combat the menace of dowry death and cruelty. [Sushil Kumar Sharma vs. Union of India; JT 2005(6) SC266]

Meaning of Cruelty:

Cruelty includes both physical and mental torture. Wilful conduct in Explanation (a) to section 498A, I.P.C. can be inferred from direct and indirect evidence. The word cruelty in the Explanation clause attached to the section has been given a wider meaning.

It was held in Kaliyaperumal vs. State of Tamil Nadu [2004 (9) SCC 157], that cruelty is a common essential in offences under both the sections 304B and 498A of IPC. The two sections are not mutually inclusive but both are distinct offences and persons acquitted under section 304B for the offence of dowry death can be convicted for an offence under sec.498A of IPC. The meaning of cruelty is given in explanation to section 498A. Section 304B does not contain its meaning but the meaning of cruelty or harassment as given in section 498-A applies in section 304-B as well.

In the case of Inder Raj Malik vs. Sunita Malik [1986 (2) Crimes 435] it was held that the word 'cruelty' is defined in the explanation which inter alia says that harassment of a woman with a view to coerce her or any related persons to meet any unlawful demand for any property or any valuable security is cruelty.

The Supreme Court, in Mohd.Hoshan vs. State of A.P. [2002 Cr.L.J 4124] observed: "Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusation or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of the sensitivity, degree of courage and endurance to withstand such cruelty. Each case has to be decided on its own facts whether mental cruelty is made out"

Constitutional Validity of Section 498A:

In Inder Raj Malik and others vs. SunitaMalik[1986 (2) Crimes 435], it was contended that this section is ultra vires Article 14 and Article 20 (2) of the Constitution. There is the Dowry Prohibition Act, 1961 which also deals with similar types of cases; therefore, both statutestogether create a situation commonly known as double jeopardy. But Delhi High Court negatived this contention and held that this section does not create situation for double jeopardy. Section 498-A is distinguishable from Section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry is punishable and existence of the element of cruelty is not necessary, whereas section 498-A deals with an aggravated form of the offence. It punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her. Hence a person can be prosecuted in respect of both the offences punishable under section 4 of the Dowry Prohibition Act and this section. It was thus held that though, this section gives wide discretion to the courts in the matters of interpretation of the words occurring in the laws and also in matters of awarding punishment.

Similarly, its constitutionality was challenged in the case of PolavarpuSatyanarayana v. Soundaravalli [1988 Cr.L.J 1538 (AP)] where it was again held that 498A is not ultra vires of constitution.

In the case of SurajmalBanthia&Anr.v. State of West Bengal[II (2003) DMC 546 (DB)], the deceased was ill-treated and tortured for several days and not given food several times. The court acknowledging that this is the treatment that several young brides face when they move out of their parents' home and into the house of her in-laws, held the husband and his father liable under 498A.

In VijaiRatna Sharma v. State of Uttar Pradesh[1988 Cr.L.J 1581]the Allahabad High Court took a pragmatic view in a criminal proceeding initiated by a dowry victim, by doing away with jurisdictional technicalities in the matter. The court brushed aside the argument of lack of jurisdiction on technical grounds and held that since from the very beginning, the dowry demand had been present and subsequent behaviour was an ensuing consequence, all the offences can be tried together.

In Bhagwant Singh v. Commissioner of Police [AIR 1983 SC 826], Supreme Court held that the greed for dowry and the dowry system as an institution calls for the severest condemnation by all sections.

Section 498A and the Allegation of Misuse:

In the last 20 years of criminal law reform a common argument made against laws relating to violence against women in India has been that women misuse these laws. The police, civil society, politicians and even judges of the High Courts and Supreme Court have offered these arguments of the misuse of laws vehemently. The allegation of misuse is made particularly against Sec 498A and against the offence of dowry death in Sec 304B. One such view was expressed by former Justice K T Thomas in his article titled 'Women and the Law', which appeared in The Hindu. The 2003 Malimath Committee report on reforms in the criminal justice system also noted, significantly, that there is a "general complaint" that Sec 498A of the IPC is subject to gross misuse; it used this as justification to suggest an amendment to the provision, but provided no data to indicate how frequently the section is being misused.

Again Supreme Court, in a relatively recent case, Sushil Kumar Sharma vs. Union of India and others [JT 2005(6) 266], observed: "The object of the provision is prevention of the dowry menace. But as has been rightly contented by the petitioner that many instances have come to light where the complaints are not bonafide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy sufferedduring and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary

for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with.

The Supreme Court in its recent judgment in Arnesh Kumar v. State of Bihar and Anr. [SLP (Cri) No. 9127 of 2013] said that no arrest should be made immediately in the offences which are allegedly committed by the accused and the offence is cognizable and non-bailable, with particular reference to S. 498A. It laid down certain guidelines for the police officers to follow relating to the arrests made under the section, due to increase in number of false complaints.

Offences relating to marriage:

Chapter XX (section 493- 498), IPC, deals with offences relating to marriage. All these offences deal with infidelity within the institution of marriage in one way or another. Chapter XX-A, containing only one section (s 498A) dealing with cruelty to a woman by her husband or his relatives to coerce her and her parents to meet the material greed of dowry, was added to the IPC by the Criminal Law (Second Amendment) Act 1983.

The following are the main offences under this chapter:

- Mock or invalid marriages (ss 493 and 496);
- Bigamy (ss 494 and 495);
- Adultery (s 497);
- Criminal elopement (s 498);
- Cruelty by husband or relatives of husband (s 498A)

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 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 thereby 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.

The essential elements of both the sections i.e. 493 and 496, is that the accused should have practiced deception on the woman, as a consequence of which she is led to believe that she is lawfully married to him, though in reality she is not. In s 493, the word used is 'deceit' and in s 496, the words 'dishonestly' and 'fraudulent intention' have been used. Basically both the sections denote the fact that the woman is cheated by the man into believing that she is legally wedded to him, whereas the man is fully aware that the same is not true. The deceitand fraudulent intention should exist at the time of the marriage. [KAN Subrahmanyam v. J Ramalakshmi (1971) Mad LJ(Cr) 604] Thus mensrea is an essential element of an offence under this section.

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.

The important ingredients are:

- deceit or fraudulent intention

- causing of false belief
- cohabit or have sexual intercourse

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.

The essential ingredients are:

- existence of a previous marriage
- second marriage to be valid
- second marriage to be void by reason of first husband or wife living

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.

Before the IPC was enacted, adultery was not an offence in India either for men or women. It was also not included in the first draft of the penal code. However, the second Law Commission it. The Law Commissioner noted that the then prevalent social infrastructure and the secondary and economically dependent position of women were not conducive to punish adulterous men. Further, they noted, that a wife was socially conditioned to accept her husband's adulterous relationship as polygamy was an everyday affair. Thus they incorporated adultery as an offence punishing only adulterous men.

In Kashuri v. Ramaswamy, (1979) CrLJ 741 (Mad) it was held that the proof of sexual intercourse has to be inferred from the facts and circumstance of a case as direct evidence can rarely be proved.

The essential ingredients are:

- sexual intercourse
- woman must be married
- knowledge
- consent or connivance of husband
- should not constitute rape

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.

The essential ingredients are:

- takes or entices away
- woman to be a married woman
- knowledge
- taken from control of husband or person having care of her on behalf of her husband
- intention to have illicit intercourse
- conceals or detains such women

In Alamgir v. State of Bihar, AIR 1969 SC 436 it was observed that if a man knowingly goes away with the wife of another in such a way to deprive the husband of his control over her, with the intent to have illicit intercourse, then it would constitute an offence within the meaning of the section.

Unit-IV: Offences against Property:

A. Theft, Extortion, Robbery and Dacoity:

Theft:

INGREDIENTS OF THE OFFENCE

1. An intention to take some moveable property,
2. the taking intended must be dishonest,
3. it must be from the possession of another,
4. without his consent, and
5. in pursuance of the said intention the property must be moved.

Mensrea – Dishonest Intention

Actus Reus - Moving

Sec. 24 defines the term 'dishonestly'. Sec. 23 defines the terms "wrongful gain" and "wrongful loss". Taking these two definitions together, a person can be said to have dishonest intention if in taking the property it is his intention to cause gain by unlawful means, of the property to which the person so gaining is not legally entitled or to cause loss, by wrongful means, of property to which the person so losing is legally entitled. It is further clear from the definition that the gain or loss contemplated need not be a total acquisition or a total deprivation but it is enough if it is a temporary retention of property by the person wrongfully gaining or a temporary "keeping out" of property from the person legally entitled. This is clearly brought out in Illustration (1) to Sec.

378, Penal Code, and is uniformly recognized by various decisions High Courts which point out that in this respect "theft" under the IPC (hereinafter called “IPC”) differs from "larceny" in English law which stipulated permanent gain or loss.

MOVEABLE PROPERTY

The term "moveable property" is defined in sec. 22 as including ‘corporeal property of every description, except land and things attached to the earth, or permanently fastened to anything which is attached to the earth.’

It is expressly stated by explanations 1 & 2 of Sec. 378 that things attached to the land may become movable property by severance from the earth and that the act of severance itself will be theft. Standing crop so long as it is attached to the earth is not a moveable property as defined in the Code, but the moment it is severed from the earth its character is changed it can become the subject of theft. In fact the very act of severance may constitute the offence of Theft.

NO PROPERTY

HUMAN BODY - But, though the word "moveable property" is large, it is not large enough to include such a thing as the body of a human being, dead or alive. Indeed, seeing that the property here spoken of must be in the possession of another person, a human being is necessarily excluded, as he cannot be in the possession of another person. Similarly, human corpses cannot be the subject of commerce, except when they are preserved as mummies or the like in museums or in scientific institutions.

TEMPORARY DEPRIVATION

The above point has been very well illucidated upon in the 3 judge bench judgment delivered by jagannadhadas, b. J. in K.N.Mehra v. State of Rajasthan, the taking out of the an aircraft by the appellant for the unauthorized flight gives the appellant, the temporary use of the aircraft, for his own purpose and temporarily deprives the owner of the aircraft, viz. the Government, of its legitimate use for its purposes, i.e., the use of this Harvard aircraft for the Indian Air Force Squadron that day. Such use being unauthorized and against all the regulations of aircraft-flying, is clearly a gain or loss by unlawful means. The true position, however, in a case of this kind is that, all the circumstances of the unauthorized flight justify the conclusion both as to the absence of consent and as to the unlawfulness of the means by which there has been a temporary gain or loss by the use of the aircraft.

The three judge bench of the hon'ble apex court in PyarelalBhargava v. State of Rajasthan categorically held that, "Wrongful loss is loss by unlawful means of property to which the person losing it is legally entitled. It cannot be disputed that the appellant unauthorized took the file from the office and handed it over to Ram Kumar Ram. He had, therefore, unlawfully taken the file from the department, and for a short time he deprived the Engineering Department of the possession of the said file. The loss need not be caused by a permanent deprivation of property but may be caused even by temporary dispossession, though the per-son taking it intended to restore it sooner or later. A temporary period of deprivation or dispossession of the property of another causes loss to the other. That a person- will act dishonestly if he temporarily dispossesses another of his property is made clear by illustrations (b) and (1) of s.378 of the Indian penal code. They are: (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.

(1). 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.

It will be seen from the said illustrations that a temporary removal of a dog which might ultimately be returned to the owner or the temporary taking of an article with a view to return it after receiving some reward constitutes theft, indicating thereby that temporary deprivation of another person of his property causes wrongful loss to him."

DISHONESTLY

It follows that there can be no theft where there is no dishonesty. Since the definition of theft requires that the moving of the property is to be in order to such taking "such" meaning "intending to take dishonestly", the very moving out must be with the dishonest intention. It will be noticed that the section does not speak of "fraudulently," for the two terms are quite distinct. Dishonestly, as here used, of course, bears the meaning ascribed to it in Sec. 24. As distinct from

fraudulently, the term bears a meaning at variance with its popular significance. But upon its exact application depends the one element of criminality which suffixes to

convert an innocent act into a crime This term requires that the act should be done with the intention of causing wrongful gain to one person or wrongful loss to another person, and nothing is wrongful which is not done by unlawful means, so that "dishonestly" implies:

(a) the adoption of the unlawful means,

(b) to cause gain or loss to which a person is not legally entitled, and

(c) the intention of adopting those means and of causing such gain or loss.

PROPERTY MUST BE IN POSSESSION

The word ‘possession’ is not defined in the IPC, though its nature in one aspect is indicated in sec. 27 which provides for constructive possession of property.

But the fact that the property was moveable and of some value is only one element in the crime of theft. Its taking is not necessarily a theft unless it was taken "out of the possession of any person," which means another person. This is an element of the crime in which this section presents a noticeable distinction with English law. For, while under that system the taking must be from owner, or the owner's possession, the offence here is complete if it is taken out of the possession of any person. The word "person" here includes not only a natural person, that is a human being but also an artificial person, such as a corporation. Such person must be in possession of the property at the time it is taken from him. Now, what constitutes "possession" has been advisedly left undefined. But at the same time it is evident that the Legislature intended it to be used in its ordinary normal sense as denoting such lawful custody or control over a thing as entitles the person to exercise some rights over it to the exclusion of others.

Section 378 to 382 provides for offence of theft.

Section 378- 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 movable 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 affects the severance may be a theft.

Explanation 3 — A person is said to cause a thing to move by removing an obstacle which prevented it 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 maybe given either by the person in possession, or by any person having for the purpose authorityeither 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 the 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 highroad, 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, in as much 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, in as much 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 in as much 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 her 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 no 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 B'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.

THEFT BY OWNER OF HIS OWN PROPERTY

Again, ironic though it may appear, there is nothing in law against the owner being held guilty of theft in respect of his own goods. This will be apparent if regard is had to the fact that, as theft is an offence against possession, ownership of the property is no defence to it. And so even in England, where regard is had only to ownership, possession is defended on the ground of "special property" believed to be in the possessor, against which the owner cannot assert the right of dispossession. This will be evident from the wording of the section which punishes one who dishonestly removes goods out of the possession of another so that a person in possession may justly charge the owner with theft of property, if it was removed by him dishonestly and without his consent. So where the owner has delivered his goods to a carrier, the carrier, and not the owner has possession. The owner would, therefore, be guilty of theft, if removes the goods from his possession with dishonest intention.

The fact that a person may be guilty of the theft of his own property is recognised in Illus. (t) and (k) of this section. They are, however, only two out of the many cases by which the same rule may be illustrated. But they all depend upon the principle that, though the goods belong to the accused, they were at the time of taking in the lawful possession of another. Such possession may arise, either under contract, express or implied, or the obligation of law, or partly under one and partly under the other. If, for instance, the owner pawns his goods to another, he undertakes that the pawnee shall have possession of them until they are redeemed. His dishonest removal of them from his possession would then be theft, and it is no defense that the goods, still with the pledgee, were sufficient to cover his loan. So if a person's property be attached and taken possession of by the bailiff, his removal of it from his possession or from that another to whom it

has been entrusted for safe custody, would be theft or robbery if the necessary violence is used. It can never be lawful for a person, even if he is the owner of the moveable property to take it away, after attachment, from the person to whom it is entrusted without recourse to the Court under whose order the attachment has been made. If he takes away attached property from the possession of D, without recourse to law, he is guilty of the offence under Sec. 379, IPC.

There can be no theft if the possession of the person from whom the owner took the property, though initially legal, ceased to be such. The taking of possession by the owner would be then in the exercise of the right of recapture. Such was the case of the accused who forcibly seized his kettle which he had given to the complainant for repairs who failed to repair it within the stipulated time and declined to deliver it to the accused (i.e. the owner) till his quantummeruit charges were paid. It was held that since the complainant had no lien over the kettle under Sec. 170 of the Contract Act, the accused was right in seizing his property wrongly detained by the complainant, So where the accused's cattle were illegally distrained, he could not be convicted of theft for retaking them. Again, even if the seizure of the accused's property be lawful, it does not necessarily follow that the accused's act in retaking it is necessarily unlawful. It all depends upon circumstances. The crops of the accused were attached for arrears of revenue; when they became ripe the accused reaped them and stacked them on a threshing floor forming part of the same land. He was prosecuted for theft, but in view of the fact that the crops had been stacked on the holding, the Court accepted the statement of the accused that they had been cut to prevent damage and he was consequently acquitted. In this case it was taken for granted that the attachment necessarily vested possession in the attaching officer.

In another case the Court even expressly so held. Both these were cases of attachment by distraint made by the Revenue Courts, and it may be that the law of distress has the effect of divesting the owner of legal possession in his property with the attachment. But this is certainly not the effect of an attachment by a civil court. Which merely prohibits a transfer by the judgment-debtor, and the transferee from taking any benefit from such transfer or charge. Under the old Code such transfer was void as against the claim of the decree-holder arising under the attachment. The effect of the attachment now is to pass no interest whatever to the transferee, instead of the qualified interest which passed under the old Code, but nevertheless.it does not divest the owner of his property or possession, and so long as there is merely attachment, he commits no theft by the doing of acts incidental to ownership save only those covered by the stop order. And even if he transfers his property in spite of the order, it may be that he conveys no title to the transferee, but he does not then commit theft, though, in that case, he may possibly be guilty of an offence under Sec. 424 of the Code. But for this it must be shown that the person transferring is the person against whom the attachment was made. For an attachment, or indeed any order or decree of the Court, cannot affect persons not parties nor privies to it, and they

could not, therefore, be proceeded against for acts done in defiance of the Court's precept. So if the Court passed a possessory decree against A delivered symbolical possession to the decree-holder, and A's brother B who was in actual possession, cut the crops which he had raised on the field, he not be convicted of theft for disturbing the decree-holder whose symbolical possession could bind only the party to the suit.

POSSESSION OF ANOTHER NECESSARY

This emphasizes the necessity establishing possession. Now, the term "possession" does not necessarily mean actual physical custody or control; since a person is as much in possession of goods which he has under his lock and key as those which are within his right and hearing. And, as has been elsewhere explained, property is in the possession of a person's wife, clerk or servant, casual or permanent, on account of that person, it is in that person's possession within the meaning of the Code. So where the owner turns out his animals to graze in the open, they do not cease to be his property and the removal of them is consequently theft and not criminal misappropriation. But if in such a case, some of the animals go astray and are lost, then the finder misappropriating them would be guilty of criminal misappropriation and not theft. But the mere fact that the cattle are left loose with a view to going to drink water in a river, or for browsing, and no one is in charge, does not make them any the less in his possession, because they happen to be out of his immediate control. The complainant washeda carpet at the village tank and hung it up there to dry, whereupon the accused too it away dishonestly. His offence was held to be theft and not criminal appropriation.

Possession may, then, be actual or constructive, and so may be the taking, for instance, suppose a person personating a railway passenger orders the porter to bring to him certain property from, a carriage which he does, the taking of it by the porter would be taking by him, for which he alone would be supposing that the porter was innocent: Qui facit per aliumfacit per se.

But it cannot be generally predicated of all taking that he who orders another to take is invariably guilty of taking, for it depends upon the degree of his complicity in the crime. A person may employ another to do an obviously illegal act, as to forcibly seize property of a person, in which case both would be liable, but whether they are both liable as principals, or whether one is liable as a principal and the other as an abettor, depends upon the degree of their respective contribution to the cime. So where it was found that theft was actually committed by certain members of an unlawful assembly, but it was not found that the accused himself committed it by removing any property, or that he had made any preparation for committing it, or aiding any one in the commission of it, it was held that he could not be convicted of theft under Sec. 379 read with Sec. 114. Where a buffalo of the accused was wrongly attached in execution of a decree against another and was being taken away by a bailiff when the accused and her companions

turned up and took back the buffalo, it was held that no theft was committed as the accused and her companions had no intention of causing wrongful gain or wrongful loss, but merely of recovering the property of the accused which was being wrongly taken away under colour of Government office. Where certain persons were appointed custodian of certain plots attached in a proceeding and one party to the proceeding cut away the crop in spite of the knowledge of the promulgation of the order of attachment, it was held that the responsibility of the custodian was not confined to the mere watching of the crop. The custodian has the authority to reap the crop when it is ready and therefore the crop was in possession of the custodian on behalf of the Court. Since possession passed from accused to the custodians, the cutting of the crop by accused was dishonest.

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 orderto the retaining of property taken by such theft, shall be punished with rigorous imprisonment for 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.

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 anyproperty or valuable security, or anything signed or sealed which may be converted into avaluable security, commits "extortion".

Illustrations

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

(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 to —

Whoever commits extortion by putting any person in fear of death or of grievous hurt o 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.

Robbery:

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 carving 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, induces 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, shows 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.

In order that theft may constitute robbery, prosecution has to establish—

(a) if in order to the committing of theft; or

(b) in committing the theft; or

(c) in carrying away or attempting to carry away property obtained by theft;

(d) the offender for that end i.e. any of the ends contemplated by (a) to (c).

(e) 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 instant wrongful restraint

In other words, theft would only be robbery if for any of the ends mentioned in (a) to (c) the offender 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 instant wrongful restraint. If the ends does not fall within (a) to (c) but, the offender still causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or instant wrongful restraint, the offence would not be robbery. That (a) or (b) or (c) have to be read conjunctively with (d) and (e). It is only when (a) or (b) or (c) co-exist with (d) and (e) or there is a nexus between any of them and (d), (e) would amount to robbery; State of Maharashtra v. Joseph MingelKoli, (1997) 2 Crimes 228 (Bom).

Robbery means a felonious taking from the person of another or in his presence or against his will, by violence or putting him in fear. Robbery is an aggravated form of theft or extortion. If there is no theft or no extortion, there is no robbery.

In all robbery there is either theft or extortion:

The framers of the Indian Penal Code observed: "There can be no case of robbery which does not fall within the definition either of theft or extortion; but in a practice it will perpetually be a matter of doubt whether a particular act of robbery was a theft or extortion.

A large proportion of robberies will be half theft, half extortion. A seizes Z, threatens to murder him, unless he delivers all his property, and begins to pull of Z ornaments. Z in terror begs A will take all he has, and spare his life, assists in taking of his ornaments, and delivers them to A. Here, such ornaments as A took without Z's consent is taken by theft.

Those which Z delivered from fear of death or acquired by extortion. It is by no means improbable that Z's right arm bracelet may have been obtained by theft and left arm bracelet by extortion; that the rupees in Z's girdle may have been obtained by theft and those in his turban by extortion.

Probable in nine-tenths of the robberies which are committed something like this actually takes place, and it is probable a few minutes later neither the robber nor the person robbed would be able to recollect in what proportions theft and extortion were mixed in the crime; nor is it at all necessary for the ends of justice that this should be ascertained.

For though, in general, the consent of a suffer is a circumstance which vary materially modifies the character of an offence, and which ought, therefore, to be made known to the

Courts, yet the consent which a person gives to the taking of this property by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial."

C. When theft is robbery: Before theft can amount to robbery,—

Firstly:

The offender must have voluntarily caused or attempted 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,

Secondly:

This must be in order to the committing of theft, or in committing of theft, or in carrying away or attempting to carry away property obtained by the theft,

Thirdly:

The offender must voluntarily cause or attempt to cause to any person hurt, etc., for that end, that is in order to committing theft or for carrying away or attempting to carry away property obtained by the theft,

Fourthly:

The offender must voluntarily attempt one or any of the above acts.

D. When extortion is robbery:

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

E. Punishment:

Sec. 392 imposes punishment for robbery. It lies down that 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 high-way between the sun-set and the sun-rise, the imprisonment may be extended to fourteen years.

Inquiry:

The nature of offence under this Section is cognizable, non-bailable, non-compoundable, and triable by Magistrate of the first class.F. Sikander Kumar v. State [1998 (3) Crimes 69 Delhi HC]The prosecution was that the two appellants pointed a knife at the complainant and took Rs. 50/- and drove away the auto of the complainant. Next day the accused were arrested in Nakabandi in presence of complainant. One independent witness turned hostile.The trial Court imposed punishment against Sikander Kumar and other accused. On appeal, the Delhi High Court set aside the conviction, opining that entire prosecution story was inherently improbable

and unbelievable. It would be unsafe to place total reliance on testimony of complainant to base conviction as one independent witness turned hostile. G. Attempt to commit robbery:

Sec. 393 says that 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. Theoffence under this Section is cognizable, non-bailable, non-compoundable, and triable by Magistrate of the first class.

H. Voluntarily causing hurt in committing robbery:

According to Sec. 394, if the offender while committing robbery voluntarily causes hurt to the complainant, such offender shall be punished with imprisonment with life or with rigorous imprisonment for a term which may extend to ten years and also fine. The offence under this Section is cognizable, non-bailable, non-compoundable, and triable by Magistrate of the first class.

I. Omprakash v. State (1978 CrLJ 797 All.)

In this case, the accused committed a high-way robbery. They looted the passengers of the bus. The trial Court imposed punishment for life. On appeal High Court upheld it.

J. Narayan Prasad v. State of M.P. (AIR 2006 SC 204)

Brief Facts: The accused did robbery and also killed the wife of the complainant. The complainant identified the accused in the Identification Parade. The accused showed the stolen property.Recovery effected at the instance of accused not claimed by them, except one N who claimed that those were purchased by him under receipt. One of the PWs hostiled. The accused were convicted by the trial Court and it was confirmed by the High Court. Judgment:The Supreme Court confirmed the trial Court judgment.

Dacoity:

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".

When robbery is either committed or an attempt to commit it is made by five or more persons then all such persons, who are present or aiding in its commission or in an attempt to commit it, would commit the offence of dacoity; State of Maharashtra v. Joseph MingelKoli, (1997) 2 Crimes 228 (Bom).

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.

A. Ingredients of Sec. 391:

1. Where robbery is committed by five or more persons, the offence is dacoity.

2. Even if their attempt is failed, it is also considered as dacoity.

3. “Five or more persons”: It is the most essential ingredient of offence of dacoity. Minimum number of accused five persons is necessary to constitute this offence.

4. “Conjointly commit or attempt to commit”: Another essential element of dacoity is that the accused (five or more) must conjointly commit or attempt to commit robbery.

A. State of H.P. v. Jagar Singh (1989 CrLJ 12 H.P.)

Nine accused attacked the complainant at a place and threatened to hand over them all he had. They had beaten him. The complainant gave his money, wrist-watch, cycle, etc. All the accused were punished under Sec. 395 dacoity.

B. InSaktu v. State of U.P. (AIR 1973 SC 760) case, the Supreme Court held that when it is established that more than five persons committed the dacoity the fact that conviction of all of them is not possible for want of evidence, the remaining accused can be convicted even if the number of them is less than five.

C. Punishment for dacoity: Sec. 395 imposes punishment imprisonment for life or with rigorous imprisonment for a term which may extend to ten years and also fine. The offence under this Section is cognizable, non-bailable, non-compoundable, and triable by the Court of Session.

D. Burden of proof:

As a matter of fact, it is very difficult to identify the accused in the offence of dacoity. The prosecution must establish (i) that five or more persons jointly committed the offence; or (ii) that one or more of the attempted or committed to commit robbery; and (iii) that others were present and aiding such commission or attempt. If the dacoity is committed by unknown persons, wearing veils in the dark nights it is highly difficult to establish their identity. Without identity of the accused, the Courts could not impose punishment. However there are three kinds of evidence generally available in robbery or dacoity.

First occasion, when the offenders are caught red-handed on the spot by the villagers. It is somewhat difficult in majority dacoities. The reason is that the villagers or residents do not wear the weapons. The accused wear deadly weapons and attack the complainants with courage and preplan.

Second occasion, when the wrong-doers are arrested in some other cases and they disclose their previous offences during the interrogation and investigation by the police in other cases. Third occasion arises when the offender or offenders sell the stolen property after dacoity in another place. Such property and those accused are red-handedly caught.

F. Barendra Kumar Ghosh v. King Emperor (AIR 1925 PC 1)

G. KalikaTiwari v. State of Bihar (1997 SC 445 SCC)

The accused formed a group and did dacoity. One of them murdered the inmate. The trial Court punished all the members of the dacoity. The High Court imposed punishment only on the member who murdered and acquitted the remaining members.The Supreme Court held that the High Court erred in acquitting the remaining members. It held that under Section 396 read with Sees. 302, 32 and 149, when a member of an unlawful assembly murders, all the members of that unlawful assembly shall be imposed with the same punishment. [This Case-Law may also be referred to in Topics "Common Intention Common Object" & "Culpable Homicide and Murder".]

H. Dacoity with murder:

According to Section 396, 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. Nature of offence: Cognizable, non-bailable, non-compoundable, and triable by Court of Session.

I. Robbery or dacoity, with attempt to cause death or grievous hurt:

According to Section 397, 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. Nature of offence: Cognizable, non-bailable, non-compoundable, and triable by Court of Session.

J. Attempt to commit robbery or dacoity when armed with deadly weapon:

According to Section 398, 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. Nature of offence: Cognizable, non-bailable, non-compoundable, and triable by Court of Session.

K. Making preparation to commit dacoity:

According to Section 399, 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. Nature of offence: Cognizable, non- bailable, non-compoundable, and triable by Court of Session.

L. Punishment for belonging to gang of dacoits:

According to Section 400, 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 Nature of offence: Cognizable, non-bailable, non-compoundable, and triable by Court of Session.

M. Punishment for belonging to gang of thieves:

According to Section 401, 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. Nature of offence: Cognizable, non-bailable, non-compoundable, and triable by Magistrate of the first class.

N. Assembling for purpose of committing dacoity:

According to Section 402, 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. Nature of offence: Cognizable, non-bailable, non- compoundable, and triable by Court of Session.

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.

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 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 thieves —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.

B. Criminal Misappropriation and Criminal Breach of Trust:

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 any 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 I —A dishonest misappropriation for a time only is a misappropriation with 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 if 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 or 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 the 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 of 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.

A person commits criminal breach of trust if he (1) being in any manner entrusted with property or with any dominion over property, (2) dishonestly misappropriates or converts to his own use that property, or (3) dishonesty uses or disposes of that property in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged or (ii) of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do. (S. 405) Punishment three years, fine or both.

In order to constitute legal entrustment within the meaning of S. 405, IP.C. the following ingredients are necessary, viz., the complainant must be the owner of the property alleged to have been entrusted; (2) there must be a transfer of possession; (3) such transfer must be made by somebody who has no right, excepting that of a custodian; and (4) such entrustment must be made to a person, not to a company or a firm. (SreenarayanShroff v. Shambhu Prasad, 79 C.W.N. 538).

To constitute the offence of criminal breach of trust there has to be the entrustment and also dishonest misappropriation or conversion to his own use or dishonest use or disposal of the property by the accused in violation of any direction of law or of any legal contract express or implied.

Where under a contract the accused was required by the complainant to print and hand over certain number of books without entrustment of manuscript, papers or any other material with the accused and the accused in breach of the contract did not make available certain number of books, there was no criminal breach of trust. At the best there was a breach of contract which is a dispute civil in nature. (K.L. Sachdeva, New Delhi v. Rakesh Kumar Jain, Varanasi, 1983 All. L.J. 1087).

The prosecution in cases of criminal breach of trust has to prove three things:

(i) That the accused was a public servant;

(ii) That he in such capacity was entrusted with the property in question or dominion over it

and

(iii) That he committed the criminal breach of trust. In the case of criminal breach of trust, once it is shown that money was entrusted to the accused or was received by him for a particular

purpose was not used for that purpose, and the same was not returned by him in accordance with his duty or if he failed to account for it, he will be presumed to have misappropriated the same.

In every case, the prosecution is not under obligation to prove the manner of misappro-priation or conversion to his own use by the accused, the property entrusted to him. When theaccused does not discharge the trust, in consequence of which he comes to have dominion over the property, then the misappropriation can legitimately be inferred against him. (State of Punjab v. Rattan Chand, 1984 Cri. L.J., NOC. 153, Punj.&Hry.)

The word "entrustment" connotes that the person holds the property in a fiduciary capacity. There can be no breach of trust when there has been no entrustment or dominion of the property on trust.

There must be dishonest misappropriation or .conversion to his own use of dishonest using or disposing of that property. If it is done in good faith there is no criminal breach of trust before criminal breach of trust by a partner is established it must be shown that the person charged has been entrusted with property or with dominion over the property.

In other words the offence of criminal breach of trust under S. 406 of the Penal Code is not in respect of property belonging to the partnership but is an offence committed by the person in respect of property which has been specially entrusted to such a person and which he holds in a fiduciary capacity. [Debabrata Gupta v. S.K. Ghosh, (1971)1 S.C.I. 134].

Illustrations:

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects 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 an agent for Z, residing at Delhi. There is an express or implied contract betweenA and Z that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lack of rupees to A, with directions 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 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, 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 breach of trust.

(a) Theft and Criminal Breach of Trust:

In the former there is a wrongful taking of a movable property out of the possession of the owner, i.e., by stealth without the owner's knowledge, but in the latter the property is given on trust or received on one's behalf and instead of discharging the trust, it is dishonestly misappropriated or used or disposed of in violation of the law. The owner here parts with something in good faith but the person who takes it keeps the thing for himself.

In theft there is no prior lawful possession; the offences is completed as soon as the property is dishonestly taken away, but in criminal breach of trust the offender prior to the offence ishimself in possession of the property and the offence is completed when he dishonestly converted the same to his own use.

Then in theft the property involved is a movable property, but in criminal breach of trust it may be any property. Criminal breach of trust is ordinarily punished with the same severity as theft, but where there is a greater degree of trust as in the case of a carrier, or a clerk or a servant entrusted with his master's property or in the case of a public servant or banker, heavier punishment is provided under Sections 407, 408 and 409, 1.P.C.

(b) Criminal misappropriation and Criminal Breach of Trust:

1. In criminal misappropriation the property comes into the possession of the offender by some casualty or otherwise, and he afterwards misappropriates it. In the case of criminal breach of trust the offender is lawfully entrusted with the property and he dishonestly misappropriates

the same, or willfully suffers any other person to do so, instead of discharging the trust attached to it. (Ratan Lai).

2. In criminal misappropriation there is no contractual relationship, but there is such a relationship in criminal breach of trust.

3. In criminal misappropriation there is the conversion of property coming into possession of the offender anyhow, but in criminal breach of trust there is the conversion of property held in fiduciary Offences against Property character.

4. A breach of trust includes criminal misappropriation, but the converse is not always true.

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.

Section 405. Criminal breach of trust —

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Explanation 1 —A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds 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 employees' contributionfrom the wages payable to the employee for credit to the Employees' State Insurance Fundheld and administered by the Employees' State Insurance Corporation established under theEmployees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrustedwith the amount of the contribution so deducted by him and if he makes default in thepayment of such contribution to the said Fund in violation of the said Act, shall be deemed tohave dishonestly used the amount of the said contribution in violation of a direction of law asaforesaid.

Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriate 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 directions to A to invest the same in Company's paper. A dishonestly disobeys the direction 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 warehousekeeper, 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.

C. Cheating and Forgery:

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 facts is a deception within the meaning of thissection.

Illustrations

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

(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 on money, and by which A expects that the bill will be dishonored, 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 article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may led 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 breaks 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 theprevious sale and conveyance to B, and receives the purchase or mortgage money for Z. A cheats.

Legal provisions regarding Meaning of Cheating under section 415 of Indian Penal Code, 1860.

The essential ingredients of the offence of cheating are:

1) The accused must deceive the complainant fraudulently or dishonestly or intentionally.

2) The complainant must have been induced, to:

a) Deliver any property or allow any person to retain any property; or

b) Do or omit to do anything which he ought not have done, if he was not so deceived.

3) The act or omission likely to cause any harm to the complainant in body, mind, reputation or property.

Explanation to Section 415 says that a dishonest concealment of facts is a deception within the meaning of Section 415.

According to Justice RaghubirDayal, Cheating can be committed in either of the two ways described in Section 415, IPC namely:

i) A person deceived may be fraudulently or dishonestly induced to deliver any property or to consent to the retention of any property by any person.

ii) The person deceived may also be intentionally induced to do or to omit to do anything which he would not have done if not deceived, and which act of his caused or was likely to cause damage or harm in body, mind, reputation or property.

Thus, Section 415 has two parts; in the first part, inducement must be dishonest or fraudulent, and in the second part, inducement should be intentional. 'Deception' is common element in both the parts. It is, however, not necessary that deception should be expressed in words but it may be by conduct or implied in the nature of transaction itself.

Deception:

One of the initial ingredients which have to be proved to establish the offence of cheating is deception, which must precede and thereby induce the other person to either (a) deliver or retain property; or (b) To commit the act or omission defined to in the second part of Section

415. 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 word or by conduct.

A fraudulent representation can be made directly or indirectly. A willful misrepresentation of a definite fact with intent to defraud constitutes an offence of cheating. It is not sufficient to prove that a false representation had been made but it must be proved that the representation was false to the knowledge of the accused and was made to deceive the complainant.

Where a person knows that statements made by another are false, but still acts upon them with a view to entrap that person, the accused will be guilty of attempt to commit this offence.

By virtue of explanation to Section 415, a dishonest concealment of facts is tantamount to deception. Not all concealment of material facts but dishonest concealment of facts amountsto deception. It does not necessarily deal with illegal concealment of facts but with dishonesty even in the absence of legal obligation or duty to speak.

Where there is willful representation with intent to defraud, it has been considered to amount to cheating. To establish offence, what is important is to see whether the misrepresentation was false to the knowledge of the accused at the time when it was made.

To constitute the offence of cheating it is not necessary that the act which the person deceived is induced to do should actually cause harm to him. It is enough that the act which the person deceived has been induced to person deceived is likely to cause damage or harm to him.

Inducement:

The second essential ingredient to the offence of cheating is the element of 'inducement' leading to either delivery of property or doing of an act or omission. Section 415 clearly shows that mere deceit is not sufficient to prove the offence. Likewise, committing something fraudulently or dishonestly is also not sufficient.

The effect of the fraudulent or dishonest act must be such that it induces the person deceived to deliver property or do something (in the form of an act or omission). Thus, in either of the two situations covered by Section 415, the element of inducement leads either to delivery of property or doing of an act or omission to do anything.

As per the Supreme Court (AIR 1999 SC 1216), the crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was the commission of an offence or not.

It is necessary to consider that for the offence of cheating to be made out; the inducement by the accused to the complainant must have been made in the initial or early part of the transaction itself. Here too, what is important is to prove that at or about the time that the person induced was made to part with money, the respondents (i.e., alleged accused persons) ought to have known that their representation was false and that the representation was made with the intention of deceiving the other person. If this is not shown, then the dispute is only civil in nature.

The second crucial aspect is that the complainant has to show that at the time the alleged false representation was made or the inducement offered by the accused, the accused had no intention of honouring the same.

Otherwise, the entire transaction would only be civil in nature. However, if the accused had no intention whatsoever to pay, but merely said that he would do so in order to induce the complainant to part with the goods, then a case of cheating could be established.

A person can be said to have done a thing dishonestly when he does so with the intention of causing wrongful gain to one person or wrongful loss to another person.

Wrongful gain occurs when a person who is not entitled to property acquired it through unlawful means conversely, wrongful loss is loss of property sustained by a person through unlawful means. There is no requirement in law to establish both wrongful gain and wrongful loss. It is sufficient to establish the existence of any one of them.

False pretence need not be in express words for constituting offence of cheating. It can be inferred from all the circumstances, including the conduct of the accused.

Mensrea is one of the essential ingredients of the offence of cheating under Sections 415 and 425, IPC and where mensrea is not established no offence of cheating can be made out.

The use of the term 'cause' in Section 415 postulates a direct and proximate connection between the act or omission and the harm and damage to the victim. It excludes damage occurring as a mere fortuitous sequence, unconnected with the act induced by deceit.

The definition of cheating includes all damages resulting or likely to result as a direct natural or probable consequence of the induced act. The loss or damage to the victim arising from the act of cheating must be proximate and not vague or remote. It must be a natural consequence of the act or omission in question and not a contingent one.

To establish cheating, it is necessary that it has to be proved that the accused induced someone fraudulently or dishonestly so as to deliver any property. Property may be movable or immovable.

The property need not necessarily belong to the person deceived. A passport, an admission card to an examination, title deeds, salary of a person, health certificate, etc., are deemed as property for the purpose of Section 415 and Section 420.

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 a real orimaginary person.

Illustration

(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.

Forgery

Forgery means fraudulent making or alteration of any record, deed, writing, instrument, register, stamp, etc., to the prejudice of another man's right. It is a false making of any written instrument for the purpose of fraud or deceit; including every alteration of or addition to a true instrument.

Section 463. Forgery —

Whoever makes any false documents or part of a document 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.

Forgery is the false making or materially altering with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy, or the foundation of a legal liability. According to Section 463 of the Indian Penal Code, "Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with

property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

The elements of forgery under Section 463 are:

1. The document or electronic record or the part of it must be false in fact;

2. It must have been made dishonestly or fraudulently within the meaning of the words used in Section 464, IPC; and

3. The making of false document or electronic record should be with intent to:

a) Cause danger or injury to: (i) the public, or (ii) to any person; or

b) Support any claim or title; or

c) Cause any person to part with property; or

d) Enter into any express or implied contract; or

e) Commit fraud or that fraud may be committed.

The term 'fraud' in Section 463 implies an infringement of someone's legal right though not necessarily connected with deprivation of property. Intent to defraud implies (a) an intention to deceive and (b) such deception involving the causing of legal injury. Unless there is an element of fraud, the making of a false document would not amount to a forgery.

It should be noted that intention to cause injury is not an essential ingredient of the offence of forgery. As per Section 463, intention to cause damage or injury to the public or person is only one of the five situations. The other situations being: (i) to support any claim or title (ii) cause any person to part with property; (iii) enter into any implied or express contract; or (iv)with intent to commit fraud. The first component, namely, intention to cause damage is intent complete in itself.

The definition in Section 463 is itself subject to the definition in Section 464, in which the two essential elements are that the act should be done 'dishonestly and fraudulently'. In other words,

whichever of the intents as provided in Section 463 are applicable, the act itself must be done dishonestly and fraudulently to sustain the allegation of forgery.

Section 464. Making a false document —

A person is said to make a false document—

First — Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly— Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed 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 adocument, knowing that such person by reason of unsoundness of mind or intoxicationcannot, or that by reason of deception practised upon him, he does not know the contents ofthe document or the nature of the alteration.

Illustrations

(a) A has a letter of credit upon B for rupees 10,000 written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000 intending that it may be 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 to 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 payment. 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 the 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 in as much 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 afterwards 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 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 of 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 wa 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 a 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.

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.—Whoever forges a document, 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 judgment, 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.

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 receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, 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 468. Forgery for purpose of cheating —Whoever commits forgery, intending that the document 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, intending that the document 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 of either description for a term which may extend to three years, and shall also be liable to fine.

Section 470. Forged document —A false document made wholly or in part by forgery is designated "a forged document".

Section 471. Using as genuine a forged document —Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

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 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 punishable 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 wouldbe 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 —Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document 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.

D. Mischief:

Section 425. Mischief

Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly. Illustrations

(a) 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 on 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.

Chapter XVII of the Indian Penal Code explains about the offences against property, of them Sees. 425 to 440 explain about Mischief.

Important Points:

A. Ingredients:

1. Mensrea is one of the essential ingredients of mischief. The accused shall have intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person.

2. He caused destruction or damage or changed the shape of the property.

3. Due to his acts, the value of the property is decreased

4. By doing the wrongful acts of mischief, the accused need not personally benefitted.

B. InGopiNaik v. Somnath (1977 CrLJ 1665 Goa) case, the accused had cut the water pipe connection of the complainant. The Court held that the accused was guilty of the offence of Mischief, as he had diminished the value of the property, i.e., water supply.

C.InArjuna v. State (AIR 1969 Ori 200) case, the accused damaged the standing crops grown by the complainant on the land belonging to the Government. The Court held that the accused was guilty under Sec. 425.

D. InSippatfar Singh v. Kishore (AIR 1957 All 405) case, the accused had cut the sugar cane from the field of the complainant, and taken away it. The Court held that the accused was not the guilty of mischief, but he was guilty of theft, because no damage was caused to remaining field of the sugar cane, and the accused moved certain quantity of sugar cane from the field with a dishonest intention to misappropriate it.

E. InShriram v. Thakurdas (1978 CrLJ 715 Bom.) case, the accused was an officer of Municipal Corporation. He gave notices to the complainant/house owner for the unauthorised construction.

After giving notices, the accused demolished the unauthorized construction. The complainant contended that it would attract the offence of "Mischief". The Bombay High Court held that it was not an offence, as the accused demolished the unauthorized construction as per law.

F. Default of Payments:

For the default of payment or any illegal acts, disconnection of water supply, sewerage supply, electricity supply, telephone connection, etc., by the concerned departments do not come under the purview of "Mischief", as such acts are legally done.

G. Punishment for mischief:

Section 426 prescribes punishment for mischief. It says that whoever commits mischief shall punish with imprisonment of either description for a term which may extend to three months, or with fine, or with both. Nature of offence: The offence under this Section is non-cognizable, bailable, compoundable, and triable by any Magistrate.

H. Mischief causing damage to the amount of fifty rupees:

Section 427 says that 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. Nature of offence: The offence under this Section is non-cognizable, bailable, compoundable, and triable by any Magistrate.

I. Mischief by killing or maiming animal of the value of ten rupees:

Section 428 says that 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. Nature of offence: The offence under this Section is cognizable, bailable, compoundable with permission of the Court before which any prosecution of such offence is pending, and triable by any Magistrate.

J. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees:

Section 429 says that 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. Nature of offence: The offence under this Section is cognizable, bailable, compoundable with permission of the Court before which any prosecution of such offence is pending, and triable by any Magistrate.

K. Mischief by injury to works of irrigation or by wrongfully diverting water:

Section 430 says that 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. Nature of offence: The offence

under this Section is cognizable, bailable, compoundable with permission of the Court before which any prosecution of such offence is pending, and triable by any Magistrate.

L. Mischief by injury to public road, bridge, river or channel:

Sec. 431 says that 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 or a term which may extend to five years, or with fine, or with both. Nature of offence: The offence under this Section is cognizable, bailable, non-compoundable, and triable by Magistrate of the first class.

M. Mischief by causing inundation or obstruction to public drainage attended with damage: Sec. 432 says that 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. Nature of offence: The offence under this Section is cognizable, bailable, non-compoundable, and triable by Magistrate of the first class.

N. Mischief by destroying, moving or rendering less useful a light-house or sea-mark:

Sec. 433 says that 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 or 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. Nature of offence: The offence under this Section is cognizable, bailable, non-compoundable, and triable by Magistrate of the first class.

O. Mischief by destroying or moving etc., a land-mark fixed by public authority:

Sec. 434 says that 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. Nature of offence: The offence under this Section is non-cognizable, bailable, non-compoundable, and triable by any Magistrate.

P. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees:

Sec. 435 says that 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. Nature of offence: The offence under this Section is cognizable, bailable, compoundable, and triable by Magistrate of the first class.

Q. Mischief by fire or explosive substance with intent to destroy house, etc.:

Sec. 436 says that 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. Nature of offence: The offence under this Section is cognizable, NON-bailable, non-compoundable, and triable by Court of Session.

R. Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden:

Sec. 437 says that 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. Nature of offence: The offence under this Section is cognizable, non-bailable, non-compoundable, and triable by Court of Session.

S. Punishment for the mischief described in Sec. 437 committed by fire or explosive substance:

Sec. 438 says that 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 for life, or with imprisonment of either description for a term which mayextend to ten years, and shall also be liable to fine. Nature of offence: The offence under this Section is cognizable, non-bailable, non- compoundable, and triable by Court of Session.

T. Punishment for intentionally running vessel aground or shore with intent to commit theft, etc.:Sec. 439 says that 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. Nature of offence: The offence under this Section is cognizable, non-bailable, non- compoundable, and triable by Court of Session,

U. Mischief committed after preparation made for causing death or hurt:

Sec. 440 says that 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. Nature of offence: The offence under this Section is cognizable, bailable, non-compoundable, and triable by Magistrate of the first class

Section 427. Mischief causing damage to the amount of fifty rupees —

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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 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 439. Punishment for intentionally running vessel agground 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.

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