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UNIT I. INTRODUCTION TO SUBSTANTIVE CRIMINAL LAW

Criminal law is a body of rules and statutes that defines conduct prohibited by the state because it threatens and harms public safety and welfare and that establishes punishment to be imposed for the commission of such acts. Criminal law differs from civil law, whose emphasis is more on dispute resolution than in punishment.
The term criminal law generally refers to substantive criminal laws. Substantive criminal laws define crimes and prescribe punishments. In contrast, Criminal Procedure describes the process through which the criminal laws are enforced. For example, the law prohibiting murder is a substantive criminal law. The manner in which state enforces this substantive law—through the gathering of evidence and prosecution—is generally considered a procedural matter.
The first civilizations generally did not distinguish between civil law and criminal law. The first written codes of law were designed by the Sumerians around 2100-2050 BC. Another important early code was the Code Hammurabi, which formed the core of Babylonian law. These early legal codes did not separate penal and civil laws. Of the early criminal laws of Ancient Greece only fragments survive, e.g. those of Solon and Draco.
After the revival of Roman law in the 12th century, sixth-century Roman classifications and jurisprudence provided the foundations of the distinction between criminal and civil law in European law from then until the present time. The first signs of the modern distinction between crimes and civil matters emerged during the Norman invasion of England. The special notion of criminal penalty, at least concerning Europe, arose in Spanish Late Scolasticism, when the theological notion of God's penalty (poena aeterna) that was inflicted solely for a guilty mind, became transfused into canon law first and, finally, to secular criminal law. The development of the state dispensing justice in a court clearly emerged in the eighteenth century when European countries began maintaining police services. From this point, criminal law had formalized the mechanisms for enforcement, which allowed for its development as a discernible entity.

A. Extent & operation of the IPC

Extent of operation of the Code:- This Act shall be called the Indian Penal Code, and shall extend to the whole of India except the State of Jammu and Kashmir.Punishment of offences committed beyond but which by law may be tried within India.- Any person liable by any Indian law to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India. Extension of Code to extra territorial offences.- The provisions if this Code apply also to any offence committed by-

(1) any citizen of India in any place without and beyond India;

(2) any person on any shop or aircraft registered in India wherever it may be.

Explanation.- In this Section the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code.

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

Certain laws not to be affected by this Act.- Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airman in the service of the Government of India or the provisions of any special or local law.

B. Definition Of Crime: Many jurists have defined crime in their own ways some of which are as under:

· **Blackstone** defined crime as an act committed or omitted in violation of a public law either forbidding or commanding it.

· **Stephen** observed a crime is a violation of a right considered in reference to the evil tendency of such violation as regards the community at large.

· **Oxford Dictionary** defines crime as an act punishable by law as forbidden by statute or injurious to the public welfare.

C . Fundamental Elements Of Crime:

There are four elements which go to constitute a crime, these are:-

· Human being

· Mens rea or guilty intention

· Actus reus or illegal act or omission

· Injury to another human being

Human Being- The first element requires that the wrongful act must be committed by a human being. In ancient times, when criminal law was largely dominated by the idea of retribution, punishments were inflicted on animals also for the injury caused by them, for example, a pig was burnt in Paris for having devoured a child, a horse was killed for having kicked a man. But now, if an animal causes an injury we hold not the animal liable but its owner liable for such injury.

So the first element of crime is a human being who- must be under the legal obligation to act in a particular manner and should be a fit subject for awarding appropriate punishment.

Section 11 of the Indian Penal Code provides that word 'person' includes a company or association or body of persons whether incorporated or not. The word 'person' includes artificial or juridical persons.

Mens Rea- The second important essential element of a crime is mens rea or evil intent or guilty mind. There can be no crime of any nature without mens rea or an evil mind. Every crime requires a mental element and that is considered as the fundamental principle of criminal liability. The basic requirement of the principle mens rea is that the accused must have been aware of those elements in his act which make the crime with which he is charged.

There is a well known maxim in this regard, i.e. "actus non facit reum nisi mens sit rea" which means that, the guilty intention and guilty act together constitute a crime. It comes from the maxim that no person can be punished in a proceeding of criminal nature unless it can be showed that he had a guilty mind.

Actus Reus [Guilty Act Or Omission] - The third essential element of a crime is actus reus. In other words, some overt act or illegal omission must take place in pursuance of the guilty intention. Actus reus is the manifestation of mens rea in the external world. Prof. Kenny was the first writer to use the term 'actus reus'. He has defined the term thus- "such result of human conduct as the law seeks to prevent".

Injury- The fourth requirement of a crime is injury to another person or to the society at large. The injury should be illegally caused to any person in body, mind, reputation or property as according to Section 44 of IPC, 1860 the injury denotes any harm whatever illegally caused to any person in body, mind, reputation or property.

D. Stages in commission of a Crime

If a person commits a crime voluntarily or after preparation the doing of it involves four different stages. In every crime, there is first intention to commit it, secondly, preparation to commit it, thirdly, attempt to commit it and fourthly the accomplishment. The stages can be explained as under-

1(e). **Intention-** Intention is the first stage in the commission of an offence and known as mental stage. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. But the law does not take notice of an intention, mere intention to commit an offence not followed by any act, cannot constitute an offence. The obvious reason for not prosecuting the accused at this stage is that it is very difficult for the prosecution to prove the guilty mind of a person.

2(e). **Preparation-** Preparation is the second stage in the commission of a crime. It means to arrange the necessary measures for the commission of the intended criminal act. Intention alone or the intention followed by a preparation is not enough to constitute the crime. Preparation has not been made punishable because in most of the cases the prosecution has failed to prove that the preparations in the question were made for the commission of the particular crime.

If A purchases a pistol and keeps the same in his pocket duly loaded in order to kill his bitter enemy B, but does nothing more. A has not committed any offence as still he is at the stage of preparation and it will be impossible for the prosecution to prove that A was carrying the loaded pistol only for the purpose of killing B.

Preparation When Punishable- Generally, preparation to commit any offence is not punishable but in some exceptional cases preparation is punishable, following are some examples of such exceptional circumstances-

· Preparation to wage war against the Government - Section 122, IPC 1860;

· Preparation to commit depredation on territories of a power at peace with Government of India- Section 126, IPC 1860;

· Preparation to commit dacoity- Section 399, IPC 1860;

· Preparation for counterfeiting of coins or Government stamps- Sections 233-235, S. 255 and S. 257;

· Possessing counterfeit coins, false weight or measurement and forged documents. Mere possession of these is a crime and no possessor can plead that he is still at the stage of preparation- Sections 242, 243, 259, 266 and 474.

3(e). **Attempt-** Attempt is the direct movement towards the commission of a crime after the preparation is made. According to English law, a person may be guilty of an attempt to commit an offence if he does an act which is more than merely preparatory to the commission of the offence; and a person will be guilty of attempting to commit an offence even though the facts are such that the commission of the offence is impossible. There are three essentials of an attempt:-

. Guilty intention to commit an offence;

· Some act done towards the commission of the offence;

· The act must fall short of the completed offence.

Attempt Under The Indian Penal Code, 1860- The Indian Penal Code has dealt with attempt in the following four different ways-

· Completed offences and attempts have been dealt with in the same section and same punishment is prescribed for both. Such provisions are contained in Sections 121, 124, 124-A, 125, 130, 131, 152, 153-A, 161, 162, 163, 165, 196, 198, 200, 213, 240, 241, 251, 385, 387, 389, 391, 394, 395, 397, 459 and 460.

· Secondly, attempts to commit offences and commission of specific offences have been dealt with separately and separate punishments have been provided for attempt to commit such offences from those of the offences committed. Examples are- murder is punished under section 302 and attempt to murder to murder under section 307; culpable homicide is punished under section 304 and attempt to commit culpable homicide under section 308; Robbery is punished under section 392 and attempt to commit robbery under section 393.

· Thirdly, attempt to commit suicide is punished under section 309;

· Fourthly, all other cases [where no specific provisions regarding attempt are made] are covered under section 511 which provides that the accused shall be punished with one-half of the longest term of imprisonment provided for the offence or with prescribed fine or with both.

4. **Accomplishment Or Completion-** The last stage in the commission of an offence is its accomplishment or completion. If the accused succeeds in his attempt to commit the crime, he will be guilty of the complete offence and if his attempt is unsuccessful he will be guilty of

an attempt only. For example, A fires at B with the intention to kill him, if B dies, A will be guilty for committing the offence of murder and if B is only injured, it will be a case of attempt to murder .

UNIT . II .GENARAL EXPLANATIONS &EXCEPTION

A. Definitions in the code to be understood subject to exceptions.-

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

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

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

B. Constructive Joint Liability

The Indian Penal Code of 1860 deals with the concept of joint and group liability for criminal offences primarily in the following sections: S. 34, S. 35, S. 37, S.38, S. 149, S. 120-A, S. 121-A, S. 396 and S. 460.

S. 34. *Acts done by several persons in furtherance of common intention.* —When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. S. 34 can easily be understood by subdividing its essentials into three basic ingredients:

(1) A criminal act must be done by several persons.

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

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

S. 35: *When such an act is criminal by reason of its being done with a criminal knowledge or intention.* Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

S. 37: *Cooperation by doing one of several acts constituting an offence.* When an offence is committed by means of several acts, whoever intentionally cooperates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. This can be best explained by using the example of a conspiracy to commit a criminal act – here, the cumulative effect of the act, and not the share of each conspirator involved, determines the measure of criminal liability of each conspirator.

S. 38: *Persons concerned in a criminal act may be guilty of different offences.* Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

The principle hereby recognised and acknowledged by this Section is that if two or more persons intentionally do the same thing jointly, it is the same as if each of them had done it individually. The Doctrine of Joint Liability thus defined is said to have been evolved in the case of *Reg v. Cruise*, where, when a constable had gone to A's home to arrest A, three other persons B, C, and D upon seeing the constable emerged from the house and physically attacked him, thereby driving him away. The Court here held that each member of the group i.e. B, C, and D were equally liable and responsible for the blow, irrespective of whether only one of them had actually struck the blow.

S. 120-A. *Criminal Conspiracy.* When two or more persons agree to do, or cause to be done,
1) an illegal act, or

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

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

The House of Lords stated: "… So long as [the unlawful] design rests in intention only it is not indictable. When two agree to carry it into effect, the very plot is an act in itself and the act of each of the parties promise against promise *actus contra actum* capable of being enforced if lawful, punishable if for a criminal object or for the use of criminal means." Under the IPC as well, no consummation as such of the crime needs to be achieved or attempted. The agreement to commit the act is offence enough. The rationale behind the law of conspiracy as an inchoate crime is this, that the act of agreeing with another person to commit a crime is a sufficiently compulsive act along the road of criminality to make a person subject to discipline by the law.

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

S. 121 deals with waging, or attempting to wage war, or abetting waging of war against the Government of India. Clearly, S. 121-A deals with conspiracies which have the political object of overthrowing the reigning government. The word 'overawe' clearly imports more than the creation of apprehension of alarm or fear. It connotes the creation, of a situation, in which the government is compelled to choose between yielding to force or exposing the government or the members of the public to a very serious danger.

S. 149. *Every member of unlawful assembly guilty of offence committed in prosecution of common object*: If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly

knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Thus, the essentials of this provision are:

1. There must be an unlawful assembly.

2. The offence must have been committed by one or the other member of the assembly in prosecution of the common object of the unlawful assembly; and

3. The offence must be such as the members of the unlawful assembly knew it to be likely to be committed in prosecution of the common object.

In addition, S. 396 (Dacoity with Murder) and S. 460 (lurking house-trespass and housebreaking by night when resulting in death or grievous hurt) are also provisions which attract the doctrine of joint liability under the Indian Penal Code, 1860.

C. Mistake

Section 76. Act done by a person bound, or by mistake of fact believing himself bound, by law.—

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

Illustrations

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

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

D. Judicial Acts

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

Sec78. Act done pursuant to the judgment or order of Court Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice; if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Sec79. Act done by a person justified, or by mistake of fact believing himself justified, by law Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

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

A judicial act is an act done by a member of the judicial department of government in construing the law or applying it to a particular state of facts presented for the determination of the rights of the parties there under; an act done in furtherance of justice, or a judicial proceedings by a person having the right to exercise judicial authority.

A judicial act must be an act performed by a Court, touching the rights of parties, or property, brought before it by voluntary appearance, or by the prior action of ministerial officers. An adjudication of the rights of the parties who in general appear or are brought before the tribunal by notice or process and on whose claims some decision is rendered.

According to American Encyclopaedia a judicial act is the power to decide the rights of person or property in specific cases.

A judicial act is an act involving the exercise of judicial power. The distinction between a judicial and a legislative act is well defined. The one determines what the law is, and what the rights of parties are, with reference to transactions already had; the other prescribes what the law shall be in future cases arising under it.

The term judicial does not necessarily means acts of a judge or legal tribunal sitting for the determination of matters of law, but a judicial act may be an act done by competent authority upon a consideration of facts and circumstances and imposing liability or affecting the rights of others. The authority must exercise some right or duty to decide before its act can be called judicial. The act of the presiding member of a municipal council in declaring the result of a poll is a purely ministerial or administrative act and not judicial.

A judicial act seems to be an act done by a competent authority upon a consideration of facts and circumstances and imposing liability or affecting the rights of other. Thus it must be that of a person or persons who have legal authority to determine questions affecting the rights of parties and in a judicial manner.

The duties of the Election Officer certainly fit it with the definition of judicial acts. He has legal authority to decide on the objection raised by the candidate. The question decided by him effects the rights of the parties and in deciding the objection raised he hears the parties and may also make an enquiry and therefore has a duty to act judicially.

A judicial action is usually held to be adjudication upon the rights of parties who, in general, appear or are brought before Tribunal by notice or process, and upon whose claims some decision or judgment is rendered. Action of a court upon a cause, by hearing it, and determining what shall be adjudged or decreed between the parties, and with which is the right of the case.

E. Accident

Section 80. Accident in doing a lawful act.—

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

Illustration

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

F. Necessity

This article is about the definition of necessity according to domestic law. For the concept of necessity in international law, see Military necessity. For logical meanings, see Necessary (disambiguation) and Modal logic.

In U.S. criminal law, **necessity** may be either a possible justification or exculpation for breaking the law. Defendants seeking to rely on this defense argue that they should not be held liable for their actions as a crime because their conduct was *necessary* to prevent some greater harm and when that conduct is not excused under some other more specific provision of law such as self defense. Except for a few statutory exemptions and in some medical cases there is no corresponding defense in English law

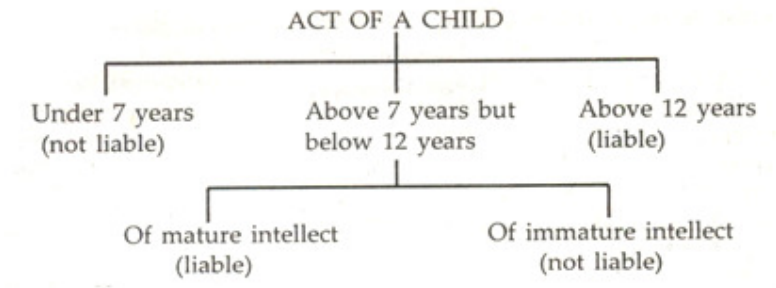
For example, a drunk driver might contend that he drove his car to get away from a kidnap (cf. *North by Northwest*). Most common law and civil law jurisdictions recognize this defense, but only under limited circumstances. Generally, the defendant must affirmatively show (i.e., introduce some evidence) that (a) the harm he sought to avoid outweighs the danger of the prohibited conduct he is charged with; (b) he had no reasonable alternative; (c) he ceased to engage in the prohibited conduct as soon as the danger passed; and (d) he did not himself create the danger he sought to avoid. Thus, with the "drunk driver" example cited above, the necessity defence will not be recognized if the defendant drove further than was reasonably necessary to get away from the kidnapper, or if some other reasonable alternative was available to him. However case law suggests necessity is narrowed to medical cases.

The political necessity defence saw its demise in the case of *United States v. School*. In that case, thirty people, including appellants, gained admittance to the IRS office in Tucson, where they chanted "keep America's tax dollars out of El Salvador," splashed simulated blood

on the counters, walls, and carpeting, and generally obstructed the office's operation. The court ruled that the elements of necessity did not exist in this case.

G.Infancy

A child can commit no wrong (i) if he is below 7 years of age as he is at such age presumed to be not endowed with a sufficient maturity of understanding to be able to distinguish right from wrong, or (ii) if he is above 7 and below 12 but too weak in intellect to judge what is right or wrong. The principle of the law may be expressed in tabular form as follows:



Section 82 says nothing is an offence which is done by a child under seven years of age and **Section 83** says nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Law of exemption from criminal liability in the case of minors

These two sections lay down a rule which owing to its origin in the civil law, had long since become established in the criminal systems of all civilized countries. In English Common Law, a child below seven years of age cannot be guilty of any criminal offence whatever may be evidence as to its possessing a guilty state of mind in the ordinary course of nature.

A person of such age is absolutely incapable of distinguishing between right and wrong. He is absolutely doli incapax. Indian law on this point is the same. If a child is accused of an offence under the Code, proof of the fact that he was at the time below 7 years of age is ipso facto an answer to the prosecution.

The circumstances of a case may disclose such a degree of malice as to justify the maxim miltia supplet actatem (Malice supplied defect of years).

The privilege of a child aged between 10 to 14, is absolute under English law, while it is qualified in India. According to the English law an infant between the age of ten and fourteen years is presumed to be doli incapax.

But under this Code, if the accused is above seven years of age and under twelve, the incapacity to commit an offence only arises when the child has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct and such non-

attainment would have apparently, to be specially pleaded and pursued, like the incapacity of a person who at the time of doing an act charged as an offence, was alleged to have been of unsound mind whether really the child in question possesses sufficient maturity of understanding is a matter to be inferred by the Court from the facts and circumstances of the case.

In England it is a presumption of law regarding the sexual offences that a boy below fourteen years cannot be guilty of rape. In India, however, the presumption of English law has no application and therefore boy of twelve years may be convicted of attempt to commit rape.

A minor girl aged more than 12 years can be guilty of an offence so long as her case is not covered by Sections 82 and 83 of the Code. Any offence punishable under the Code including an offence punishable under Section 408 can be committed by a person more than 12 years of age. Criminal liability is quite distinct from civil liability. A person may be criminally liable even though he may not be civilly liable.

e.g.:

(i) A child of 9 years of age took a necklace valued at Rs. 2/8/- from another boy and immediately sold it to another for five annas, the child was discharged under this section, but the accused was convicted of receiving stolen property for the court considered convict displaying sufficient intelligence to hold him guilty.

(ii) The accused, a girl of 10 years of age, a servant of the complainant, picked up his button worth eight annas and gave it to her mother. She was convicted and sentenced to a month's imprisonment. But the High Court quashed the conviction holding that there was no finding by the Magistrate that the accused had attained maturity of understanding sufficient to judge the nature of her act.

In Marsh v. Loader the defendant caught a child while stealing a piece of wood from his premises and gave into custody. Since the child was under the age of 7 years, he was discharged.

In case of Krishna Bhagwan v. State of Bihar, Patna High Court upheld that if a child who is accused of an offence during the trial, has attained the age of 7 years or at the time of decision the child has attained the age of 7 years can be convicted if he is able to understand the nature of the offence.

Burden of Proof:

The non-attainment of sufficient maturity of understanding would have to be specially pleaded and proved. The onus is on the person who claims and the benefit of the general exception to prove the circumstances which entitle him to exception.

In other words under Section 83 maturity of understanding is to be presumed in case of such children, unless the negative be proved by the defence; while under English law in the case of

a child between ten to fourteen years, incapacity to commit the crime is to be presumed unless the contrary be proved by prosecution**.**

H.Insanity

There is a difference between the medical definitions of insanity. According to medical science, insanity is a disorder of the mind that impairs the mental facilities of a man8. Insanity is another name for mental abnormalities due to various factors and exists in various degrees. Insanity is popularly denoted by idiocy, madness, lunacy, to describe mental derangement, mental disorder and all other forms of mental abnormalities known to medical science. Insanity in medical terms encompasses much broader concept than insanity in medical terms. Therefore, the scope of the meaning of insanity in medical terms is much wider when compared to its legal meaning. Insanity or unsoundness of mind is not defined in the act. It means a disorder of the mind, which impairs the cognitive faculty; that is, the reasoning capacity of man to such an extent as to render him incapable of understanding consequences of his actions. It means that the person is incapable of knowing the nature of the act or of realising that the act is wrong or contrary to law. A person, although of unsound mind, who knows that he is committing an unlawful act, may not get the
benefit of IPC, s. 84. The nature and extent of the unsoundness must be so high so as to impair his reasoning capacity and that he may not understand the nature of the act or that it is contrary to law .It excludes from its preview insanity, which might be caused by engendered by emotional or volitional factors.
Sec84. Act of a person of-unsound mind **:** nothing is an offence which is done by a person who, at the time of doing it, by reason of, unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

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

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

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

(3) a lunatic or a madman – lunatics are those who become insane and whose incapacity might be or was temporary or intermittent. A lunatic is afflicted by mental disorder .

I.Intoxication

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

the influence of drugs or alcohol. Such intoxication should be caused by fraud or coercion and such intoxication should limit his ability to decide what is right and what is wrong.

Section 86 deals with intoxication which is self- induced. Such intoxication which results in an offence follows the principle that one who sins when drunk be punished when he is sober. For example, if a person who has consumed too much liquor, takes a knife from his house and goes with the intention to kill a person but instead kills a person who tried to pacify him, his act would amount to murder once he is sober. However, in Delirium tremens, a form of insanity arising out of habitual drinking which makes a person reach a degree of madness whereby he is incapable of distinguishing between right an wrong, the disease is perceived as insanity protanto and the person's case is given the same treatment as that of a case of involuntary drunkenness.

J.Consent

Sec 87. Act not intended and not known to be likely to cause death or grievous hurt, done by consent

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

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

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Sec 88. Act not intended to cause death, done by consent in good faith for person's benefit

Nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

e.g. A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death and intending in good faith,

Z's benefit performs that operation on Z, with Z's consent. A has committed no offence.

Sec 89. Act done in good faith for benefit of child or insane person, by or by consent of guardian

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

Provisos-Provided-

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

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

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

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

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

Sec90. Consent known to be given under fear or misconception

A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person-

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

Consent of child-

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

K.Good Faith

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

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

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

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

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

Examples:

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

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

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child' s guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child' s benefit. A has committed no offence.

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

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

Sec93. Communication made in good faith

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

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

L .Private Defence:

Section 96 to 106 of the penal code states the law relating to the right of private defence of person and property. The provisions contained in these sections give authority to a man to use necessary force against an assailant or wrong-doer for the purpose of protecting one's own body and property as also another's body and property when immediate aid from the state machinery is not readily available and in so doing he is not answerable in law for his deeds.

Section 97 says that the right of private defence is of 2 types:-

(i) Right of private defence of body,
(ii) Right of private defence of property.

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

Nature Of The Right

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

Section 96. *Things done in private defence:-*

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

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

case. The onus of proving the right of private defence is upon the person who wants to plead it. But an accused may be acquitted on the plea of the right of private defence even though he has not specifically pleaded it. Courts are empowered to exempt in such cases. It must be borne in mind that the burden of proving an exception is on the accused. It is not the law that failure to setup such a defence would foreclose this right to rely on the exception once and for all. It is axiomatic that burden on the accused to prove any fact can be discharged either through defence evidence or even through prosecution evidence by showing a preponderance of probability. It is true that no case of right of private defence of person has been pleaded by the accused not put forth in the cross-examination to the eye-witnesses but it is well settled that if there is a reasonable probability of the accused having acted in exercise of right of private defence, the benefit of such a plea can still be given to them. The right of private defence, as the name suggests, is an act of defence and not of an offence. Consequently, it cannot be allowed to be used as a shield to justify an aggression. This requires a very careful weighing of the facts and circumstances of each case to decide as to whether the accused had in fact acted under this right. Assumptions without any reasonable basis on the part of the accused about the possibility of an attack do not entitle him to exercise this right. It was held in a case that the distance between the aggressor and the target may have a bearing on the question whether the gesture amounted to assault. No precise yardstick can be provided to fix such a distance, since it depends upon the situation, the weapon used, the background and the degree of the thirst to attack etc.

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

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

Thangavel case:-

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

Kamparsare vs Putappa:-

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

Section 97*.Right of private defence of the body and of Prop*erty:-

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

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

This Section limits exercise of the right of private defence to the extent of absolute necessity. It must not be more than necessary for defending aggression. There must be reasonable apprehension of danger that comes from the aggressor in the form of aggression. This Section divides the right of private defence into two parts, i.e. the first part deals with the right of private defence of person, and the second part with the right of private defence of property. To invoke the plea of right of private defence there must be an offence committed or attempted to be committed against the person himself exercising such a right, or any other person. The question of the accrual of the right of the private defence, however, does not depend upon an injury being caused to the man in question. The right could be exercised if a reasonable apprehension of causing grievous injury can be established. If the threat to person or property of the person is real and immediate, he is not required to weigh in a golden scale the kind of instrument and the force which he exerts on the spur of the moment. The right of private defence extends not only to the defence of one's own body and property, as under the English law, but also extends to defending the body and property of any other person. Thus under section 97 even a stranger can defend the person or property of another person and vice versa, whereas under the English law there must be some kind of relationship existing such as father and son, husband and wife, etc., before this right may be successfully exercised. A true owner has every right to dispossess or throw out a trespasser, while the trespasser is in the act or process of trespassing but has not accomplished his mission; but this right is not available to the true owner if the trespasser has been successful in accomplishing possession and his success is known by the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies available under the law. The onus of establishing plea of right of private defence is on the accused though he is entitled to show that this right is established or can be sustained on the prosecution evidence itself. The right of private defence is purely preventive and not punitive or retributive. Once it is held that the party of the accused were the aggressors, then merely because a gun was used after some of the party persons had received several injuries at the hands of those who were protecting their paddy crop and resisting the aggression of the party of the accused, there can be no ground for taking the case out of Section 302, I.P.C., if otherwise the injuries caused bring the case within the definition of murder.

Chotelal vs State:-

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

Parichhat vs State of M.P:-

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

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

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

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

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

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

There is no right of private defence against an act which does not reasonable cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law. There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.
Extent to which the right may be exercised:--The right to Private defence in no case extends to the inflicting of more harm that it is necessary to inflict for the purpose of defence.

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

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

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

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

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

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

Emperor vs Mammun:-

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

Public prosecute vs Suryanarayan:-

On search by customs officers certain goods were found to have been smuggled from Yemen into Indian Territory. In course of search the smugglers attacked the officers and injured them. They argued that the officers had no power to search as there was no notification

declaring Yemen a foreign territory under Section 5 of the Indian Tariff Act. It was held, that the officers had acted in good faith and that the accused had no right of private defence.

Section100. *When the right of private defence of the body extends to causing death:-* The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :--

First-Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;
Secondly-Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;
Thirdly-An assault with the intention of committing rape;
Fourthly-An assault with the intention of gratifying unnatural lust;
Fifthly-An assault with the intention of kidnapping or abducting;
Sixthly-An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

To invoke the provisions of sec 100, I.P.C., four conditions must exist:-
• That the person exercising the right of private defense must be free from fault in bringing about the encounter.

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

Moreover before taking the life of a person four cardinal conditions must be present:
(a) the accused must be free from fault in bringing the encounter;
(b) presence of impending peril to life or of great bodily harm, either real or apparent as to create an honest belief of existing necessity;
(c) no safe or reasonable mode of escape by retreat; and
(d) a necessity for taking assailant's life.

Yogendra Moraji vs. State :-

The supreme court through Sarkaria, J. discussed in detail the extent and the limitations of the right of private defence of body. One of the aspects emphasized by the court was that there must be no safe or reasonable mode of escape by retreat for the person confronted with an impending peril to life or of grave bodily harm except by inflicting death on the assailant. This aspect has create quite a confusion in the law as it indirectly suggests that once should first try to see the possibility of a retreat than to defend by using force which is contrary to the principle that the law does not encourage cowardice on the part of one who is attacked. This retreat theory in fact is an acceptance of the English common law principle of defence of body or property under which the common law courts always insisted to look first as to whether the accused could prevent the commission of crime against him by retreating.

Nand kishore lal case :-

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

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

Mohinder Pal Jolly v. State of Punjab :-

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

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

Kala Singh case :-

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

Section103. *When the right of private defence of property extends to causing death:-* The right of private defence of property extends, under the restrictions mentioned in Section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely; -
First-Robbery;
Secondly-House-breaking by night;

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

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

Mithu Pandey v. State :-

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

Jassa Singh v. State of Haryana :-

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

Section104. *When such right extends to causing any harm other than death:-* If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong -doer of any harm other than death.

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

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

Section105. *Commencement and continuance of the right of private defence of property:-* The Right of private defence of property commences when a reasonable apprehension of danger to the property commences. The right of private defence of property against theft continues till the offender has effected his \

retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint of as long as the fear of instant death or of instant hurt or of instant personal restraint continues
• The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.
• The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

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

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

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

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

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

• The entire accident

• Injuries received by the accused

• Imminence of threat to his safety

• Injuries caused by the accused

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

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

UNIT III . ABETMENT & CRIMINAL CONSPIRACY

An agreement between two or more persons to engage jointly in an unlawful or criminal act, or an act that is innocent in itself but becomes unlawful when done by the combination of actors.

Conspiracy is governed by statute in federal courts and most state courts. Before its Codification in state and federal statutes, the crime of conspiracy was simply an agreement to engage in an unlawful act with the intent to carry out the act. Federal statutes, and many state statutes, now require not only agreement and intent but also the commission of an Overt Act in furtherance of the agreement.

Conspiracy is a crime separate from the criminal act for which it is developed. For example, one who conspires with another to commit Burglary and in fact commits the burglary can be charged with both conspiracy to commit burglary and burglary.

Conspiracy is an inchoate, or preparatory, crime. It is similar to solicitation in that both crimes are committed by manifesting an intent to engage in a criminal act. It differs from solicitation in that conspiracy requires an agreement between two or more persons, whereas solicitation can be committed by one person alone.

Conspiracy also resembles attempt. However, attempt, like solicitation, can be committed by a single person. On another level, conspiracy requires less than attempt. A conspiracy may exist before a crime is actually attempted, whereas no attempt charge will succeed unless the requisite attempt is made.

The law seeks to punish conspiracy as a substantive crime separate from the intended crime because when two or more persons agree to commit a crime, the potential for criminal activity increases, and as a result, the danger to the public increases. Therefore, the very act of an agreement with criminal intent (along with an overt act, where required) is considered sufficiently dangerous to warrant charging conspiracy as an offense separate from the intended crime.

According to some criminal-law experts, the concept of conspiracy is too elastic, and the allegation of conspiracy is used by prosecutors as a superfluous criminal charge. Many criminal defense lawyers maintain that conspiracy is often expanded beyond reasonable interpretations. In any case, prosecutors and criminal defense attorneys alike agree that conspiracy cases are usually amorphous and complex.

Section 120-A of the I.P.C. defines 'conspiracy' to mean that when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated as "criminal conspiracy.

No agreement except an agreement to commit an offence shall amount to a criminal conspiracy, unless some act besides the agreement is done by one or more parties to such agreement in furtherance thereof.

Section 120-B of the I.P.C. prescribes punishment for criminal conspiracy. It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements:

(1) agreement

(2) between two or more persons by whom the agreement is effected; and

(3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished.

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

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

Sec120B. Punishment of criminal conspiracy.--
(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both

ABETMENT

Section 107. Abetment of a thing.-- A person abets the doing of a thing, who- First.- Instigates any person to do that thing; or Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.
Explanation 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.
Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby

Section108. Abettor.-- A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor. Explanation 1.- The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.
Explanation 2.- To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Examples :
(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.
(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder. Explanation 3.- It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.
(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.
(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z' s death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z' s death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.
(c) A instigates B to set fire to a dwelling- house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A' s instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling- house, and is liable to the punishment provided for that offence.
(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z' s possession. A induces B to believe that the property belongs to A. B takes the property out of Z' s possession, in good faith, believing it to be A' s property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft. Explanation 4.- The abetment of an offence being an offence, the abetment of such an abetment is also an offence. Illustration A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B' s instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Difference between Abetment by Conspiracy (Sec. 107) and Criminal Conspiracy (120-A)

Abetment by Conspiracy:

1. Under Sec. 107 (2) combination of two or more persons is not enough, but some act or illegal omission must take place in doing of the thing conspired for.

2. Sanction of competent authorities is not necessary to proceed against the Abettors, who merely abetted to commit a crime.

3. The punishment is imposed depending on variable circumstances explained in Sees. 106 to 117.

Criminal Conspiracy:

1. Mere agreement between two or more persons to commit a crime is the gist of the offence of conspiracy.

2. Sanction of competent authorities is necessary to proceed against the conspirators who merely agreed to commit a crime.

3. The punishment is prescribed under Sec. 120- B

UNIT IV. PUNISHMENT

a. Theories: Deterrent, Retributive, Preventive, Expiatory and Reformative Theory

b. Punishment under the IPC: Fine, Imprisonment, Capital Punishment

A. Theories of Punishments

There are Five theories of punishments.

1. Deterrent Theory
2. Retributive Theory
3. Preventive Theory
4. Reformative Theory
5. Expiatory Theory

1. Deterrent Theory

'Deter' means to abstain from doing at act. The main objective of this theory is to deter (prevent) crimes. It serves a warning to the offender not to repeat the crime in the future and also to other evil-minded persons in the society. This theory is a workable one even though it has a few defects.

2. Retributive Theory

Retribute means to give in return. The objective of the theory is to make the offender realise the suffering or the pain. In the Mohammedan Criminal Law, this type of punishment is called 'QISAS' or 'KISA'. Majority or Jur or Jurists, Criminologists, Penologists and Sociologists do not support this theory as they feel it is brutal and barbaric.

3. Preventive Theory

The idea behind this theory is to keep the offender away from the society. The offenders are punished with death, imprisonment of life, transportation of life etc. Some Jurists criticize this theory as it may be done by reforming the behavior of criminals.

4. Reformative Theory

The objective is to reform the behavior of the criminals. The idea behind this theory is that no one is born as a Criminal. The criminal is a product of the social, economic and environmental conditions. It is believed that if the criminals are educated and trained, they can be made competant to behave well in the society. The Reformative theory is proved to be successful in cases of young offenders.

5.Expiatory Theory

Jurists who support this theory believes that if the offender expiates or repents, he must be forgiven.

B . Punishment under the IPC

a. Fine

A fine is money paid usually to superior authority, usually governmental authority, as a punishment for a crime or other offence. The amount of a fine can be determined case by case, but it is often announced in advance

Sec63. Amount of fine Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Sec 64. Sentence of imprisonment for non-payment of fine 47[In every case, of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable 34[with imprisonment or fine, or] with fine only, in which the offender is sentenced to a fine,] it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence

Sec 65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Sec66. Description of imprisonment for non-payment of fine The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Sec67. Imprisonment for non-payment of fine, when offence punishable with fine only If the offence be punishable with fine only, 33[the imprisonment which the Court imposes in default of payment of the fine shall be simple, and] the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed tile following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

Sec68. Imprisonment to terminate on payment of fine The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

Sec69. Termination of imprisonment on payment of proportional part of fine If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the

expiration of one month of the imprisonment. A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment. A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

Sec 70. Fine leviable within six years or during imprisonment-Death not to discharge property from liability The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

b. Capital Punishment

Capital punishment or the death penalty is a legal process whereby a person is put to death by the state as a punishment for a crime. The judicial decree that someone be punished in this manner is a death sentence, while the actual process of killing the person is an execution. Crimes that can result in a death penalty are known as *capital crimes* or *capital offences*. The term *capital* originates from the Latin *capitalis*, literally "regarding the head" (referring to execution by beheading

Capital punishment has, in the past, been practised by most societies currently 58 nations actively practise it, and 97 countries have abolished it (the remainder have not used it for 10 years or allow it only in exceptional circumstances such as wartime) It is a matter of active controversy in various countries and states, and positions can vary within a single political ideology or cultural region. In the European Union member states, Article 2 of the Charter of Fundamental Rights of the European Union prohibits the use of capital punishment

Currently, Amnesty International considers most countries abolitionist. The United Nations General Assembly has adopted, in 2007, 2008 and 2010, non-binding resolutions calling for a global moratorium on executions, with a view to eventual abolition. Although many nations have abolished capital punishment, over 60% of the world's population live in countries where executions take place, such as the People's Republic of China, India, the United States of America and Indonesia, the four most-populous countries in the world, which continue to apply the death penalty (although in India, Indonesia and in many US states it is rarely employed). Each of these four nations voted against the General Assembly resolutions.

c.Imprisionment

Imprisonment is a legal term. It refers to the restraint of a person's liberty. Detention (some sort of imprisionment) is the process when a state, government or citizen lawfully holds a person by removing their freedom of liberty at that time. This can be due to (pending)

criminal charges being raised against the individual as part of a prosecution or to protect a person or property. Being detained does not always result in being taken to a particular area (generally called a detention centre), either for interrogation, or as punishment for a crime.

The term can also be used in reference to the holding of property, for the same reasons. The process of detainment may or may not have been preceded or followed with an arrest. The prisoners in Guantánamo Bay are for example referred to as "detainees".

Detainee is a term used by certain governments and their military to refer to individuals held in custody, such as those it does not classify and treat as either prisoners of war or suspects in criminal cases. It is used to refer to "any person captured or otherwise detained by an armed force. More generally, it is someone held in custody.

Article 9 of the Universal Declaration of Human Rights states that, "No one shall be subjected to arbitrary arrest, detention or exile." In wars between nations, detainees are referenced in the Fourth Geneva Convention

Some fines are small, such as loitering which can run about $25–$100. In some areas of the United States (for example California, New York, Texas, and Washington D.C.), there are petty crimes, such as criminal mischief (shouting in public places, projecting an object at a police car) that run between $2500–$5000.

Life imprisonment (also known as a life sentence, lifelong incarceration or life incarceration) is any sentence of imprisonment for a serious crime under which the convicted person is to remain in jail for the rest of his or her life or until paroled. Examples of crimes for which a person could receive this sentence include murder, severe child abuse, rape, high treason, drug dealing or human trafficking, or aggravated cases of burglary or robbery resulting in death or grievous bodily harm.

This sentence does not exist in all countries. Portugal was the first country in the world to abolish life imprisonment by the prison reforms of Sampaio e Melo in 1884. However, where life imprisonment is a possible sentence, there may also be formal mechanisms to request parole after a certain period of imprisonment. This means that a convict could be entitled to spend the rest of the sentence (that is, until he or she dies) outside prison. Early release is usually *conditional* depending on past and future conduct, possibly with certain restrictions or obligations. In contrast, when a fixed term of imprisonment has ended, the convict is *free*.

The length of time and the modalities surrounding parole vary greatly for each jurisdiction. In some places, convicts are entitled to apply for parole relatively early, in others, only after several decades. However, the time until being entitled to apply for parole does not necessarily tell anything about the actual date of parole being granted. Article 110 of the Rome Statute of the International Criminal Court stipulates that for the gravest forms of crimes (e.g., war crimes, crimes against humanity and genocide), a prisoner ought to serve two thirds of a fixed sentence, or 25 years in the case of a life sentence. The highest determined prison sentence that can be imposed in the ICC, aside from life imprisonment, is 30 years (article 77 1) a)). After this period, the court will review the sentence to determine whether or not it should be reduced.

Unlike other areas of criminal law, sentences handed to minors do not differ from those given to legal adults. A few countries worldwide allow for minors to be given lifetime sentences that have no provision for eventual release. Countries that allow life imprisonment without the possibility of parole for juveniles include Antigua and Barbuda, Argentina, Australia, Belize, Brunei, Cuba, Dominica, Saint Vincent and the Grenadines, the Solomon Islands, Sri Lanka, and the United States. Of these, only the United States currently has minors serving such sentences. As of 2009, Human Rights Watch had calculated that there were 2,589 youth offenders serving life without parole in the United States.

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