

## INDIAN PENAL CODE FOR MADHYA PRADESH JUDICIAL SERVICES

### MODULE 1-2 : INTRODUCTION & GENERAL EXPLANATIONS

Preamble.—WHEREAS it is expedient to provide a general Penal Code for India, It is enacted as follows:—

*Section 1 : Title and extent of operation of the Code.*—This Act shall be called the Indian Penal Code, and shall extend to the whole of India except the State of Jammu and Kashmir.

IPC drafted by the first Indian Law Commission under Lord Macaulay. The provisions of the Code came into operation from 1 January 1862 and the Code applies to the whole of India including State of Jammu and Kashmir.

#### *Section 2. Punishment of offences committed within India*

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

#### **EVERY PERSON :**

- ✓ This section recognises the general principle of criminal jurisdiction over persons with reference to the locality of the offence committed by them being within India.
- ✓ It clarifies that “Every person” includes all persons without limitation and irrespective of nationality, allegiance, rank, status, caste, colour or creed. Therefore, a foreigner in India and committing an offence is punishable under the Code.
- ✓ The word “person” shall include the juristic persons as well, and barring a few offences, a company or a corporation can be held criminally liable for the acts of commissions and omissions constituting the offence.
- ✓ The Supreme Court of India in *Standard Chartered Bank v. Directorate of Enforcement*, held that as the company cannot be imprisoned, the court cannot impose that punishment but the punishment of “imprisonment and fine” can be enforced against a company by imposing fine for the offence committed by it.

#### **PERSONS WHO ARE EXEMPTED :**

- ✓ President and Governors — Under Article 361(2) of the Constitution
- ✓ Officers of the UNO and its institutions
- ✓ Foreign sovereigns
- ✓ Ambassadors
- ✓ Foreign army
- ✓ Alien enemies (for the acts of war)
- ✓ Warships

“WITHIN INDIA” : The criminal liability of a person for an offence arises on the basis of the laws applicable in the country where the offence is committed; it does not arise on the basis of the laws applicable in the country of the person committing the offence. (*Sirdar Gurdyal Singh v. Rajah of Faridkote*)

*Mobarak Ali case*<sup>1</sup> – A Pakistani citizen cheated Indian in Bombay through letters and phone call by getting 5 lakhs for the supply of rice, which did not supply. He was extradited and held liable for Section 420 IPC.

*Italian Marines case*<sup>2</sup> - The Supreme Court held that the Indian police and courts have jurisdiction as India is entitled both under its domestic law and public international law to exercise “rights of sovereignty” up to 24 nautical miles (contiguous zone) from the baseline on the basis of which the width of the territorial waters is measured. The incident of firing from the Italian vessel on the Indian fishing vessel having occurred within the contiguous zone (24 nautical miles), the Union of India is entitled to prosecute the two Italian marines under the criminal justice system prevalent in India.

Section 3. 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.

Sections 3 and 4 thus lay down an extra-territorial jurisdiction of the IPC.

An act constituting an offence in India shall also be an offence when committed beyond India.

As per section 3, if a person liable by Indian law commits an offence beyond India he will be dealt with for that offence in the same manner as if such an offence had been committed within India.

Section 4. Extension of Code to extra-territorial offences.—The provisions of this Code apply also to any offence committed by

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

<sup>1</sup> *Mobarak Ali Ahmed v. State of Bombay*, AIR 1957 SC 857

<sup>2</sup> *Republic of Italy v. Union of India*, (2013) 4 SCC 721

(3) any person in any place without and beyond India committing offence targeting a computer resource located in India

Explanation.—

In this section— (a) the word “offence” includes every act committed outside India which, if committed in India, would be punishable under this Code

(b) the expression “computer resource” shall have the meaning assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);]

Thus, the provisions of this Code will apply to all places in the world whenever an offence under this Code is committed by a citizen of India even outside the country.

Section 4 extends the jurisdiction of the Code to extra-territorial offences, that is, offences committed beyond the limits of India but the offender is found within its limits.

Section 4 applies IPC to

- ✓ an Indian citizen who commits an offence outside India and
- ✓ any non-Indian who commits an offence
  - on any ship or
  - aircraft registered in India or
  - for committing an offence targeting a computer resource located in India, irrespective of the nationality of the offender and place from where such offence is committed.

#### Section 5. Certain laws not to be affected by this Act

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

For punishing (i) mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India, or (ii) for offences under the provisions of any special or local law, IPC will apply.

#### Section 6 of Indian Penal Code : Definitions in the Code to be understood subject to exceptions

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

#### *Illustrations*

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

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

Section 6 clarifies that if an act comes under general exceptions it will not amount to an offence.

**Section 7 of Indian penal code : Sense of expression once explained :** Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

The maxim *expressio unius est exclusio alterius*, that is, the mention of one thing is the exclusion of another, is the basis of Section 7.

**Section 8:- Gender :** The pronoun “he” and its derivatives are used of any person, whether male or female.

**Section 9:- Number :** Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

**Section 10:- “Man” “Woman” :** The word “man” denotes a male human being of any age; the word “woman” denotes a female human being of any age.

**Section 11:- “Person” :** The word “person” includes any Company or Association or body of persons, whether incorporated or not.

The definition of the word “person” is not exhaustive. It must be taken to include artificial or juridical persons as well.

**Section 12:- “Public” :** The word “public” includes any class of the public or any community.

**Section 13. “Queen”.**—[Repealed by the Adaptation of Laws Order, 1950]

**Section 14:- “Servant of Government” :** The words “Servant of Government” denote any officer or servant continued, appointed or employed in India by or under the authority of Government.

**Section 15. “British India”.**—[Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937]

**Section 16. “Government of India”.**—[Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937]

**Section 17:- “Government” :** The word “Government” denotes the Central Government or the Government of a State.

**Section 18:- “India” :** “India” means the territory of India excluding the State of Jammu and Kashmir.

**Section 19:- “Judge” :** The word “Judge” denotes not only every person who is officially designated as a Judge, but also every person –

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

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#### Illustrations

1. A collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.
2. A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment with or without appeal, is a Judge.
3. A member of a panchayat which has power, under Regulation VII, 1816, of the Madras Code, to try and determine suit, is a Judge.
4. A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

#### ESSENTIAL ELEMENTS OF SECTION 19

The “judge” denotes:

- (a) every person *who is officially designated as a judge,*
- (b) (i) every person *who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or*
- (ii) a judgment which if not appealed against, would be definitive, or
- (iii) a judgment which, if confirmed by some other authority, would be definitive, or

(c) who is *one of a body of persons*, which body of persons is empowered by law to give such a judgment.

Consequently, the right to pronounce a definitive judgment is the sine qua non of a court.

HELD TO BE JUDGE : member of a village panchayat court, A police patrol, election officer etc..

**Section 20:- “Court of Justice”**: The words “Court of Justice” denote a Judge

- who is empowered by law to act judicially alone, or
- a body of Judges which is empowered by law to act judicially as a body,
- when such Judge or body of Judges is acting judicially.

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

**Section 21:- “Public servant”**

The words “public servant” denote a person falling under any of the descriptions hereinafter following, namely –

- Every Commissioned Officer in the Military, Naval or Air Forces of India;
- Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons. any adjudicatory functions;
- Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;
- Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;
- Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;
- Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

- Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
- Every officer whose duty it is as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;
- Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;
- Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- Every person:
  - ✓ in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;
  - ✓ in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

**Illustrations:** A Municipal Commissioner is a public servant.

**PUBLIC SERVANT:** Employee of LIC, suspended government service, professor in government college, employee in railways, Ministers, Chief minister, etc..

**NOT A PUBLIC SERVANT:**

- Where an appointment is without jurisdiction
- Person running coaching classes

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

**Explanation 2 :** Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

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

There are certain offences which can be committed only by public servants as could be seen from the provisions of Chapter IX – Of Offences by or Relating to Public Servants and also of Chapter XVI.

This definition is not exhaustive.

In *G.A. Monterio v. State of Ajmer*, the Supreme Court laid down the test to determine whether a person is a public servant or not. The test is:

- (a) whether he is in the service or pay of the Government, and
- (b) whether he is entrusted with the performance of any public duty.

in *P.V. Narasimha Rao v. State*, that the Members of Parliament (MP) or members of the legislative assemblies of the States (MLA) are public servants because they hold an office and that they are required and authorised thereby to carry out a public duty.

A public servant under suspension is also part of this definition.

**Section 22:- “Movable property”:** The words “movable property” are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

**What is ‘Wrongful gain’ and ‘Wrongful loss’. MPJS 1996.**

**Section 23 :**

- **Wrongful Gain** – is gain by unlawful means of property to which the person gaining is not legally entitled.
- **Wrongful loss** – is the loss by unlawful means of property to which the person losing it is legally entitled.
- **Gaining wrongfully.** A person is said to **gain wrongfully** when such person retains wrongfully, as well as when such person acquires wrongfully.



- **Losing wrongfully.** A person is said to **lose wrongfully** when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

The word “wrongful” means an act which is not legal, not right, is unjustified and unfit.

**Define ‘Dishonestly’. MPJS 1996.**

**Section 24:- “Dishonestly”:** Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

Whoever does anything with *the intention of causing*

1. *wrongful gain* to one person, or
2. *wrongful loss* to another is said to do that thing dishonestly.

The word *dishonestly* occurs in:

1. counterfeiting coins [Ss. 246 and 247],
2. theft [S. 378],
3. extortion [S. 383],
4. robbery [S. 390 but only by implication],
5. criminal misappropriation [Ss. 403, 404],
6. criminal breach of trust [S. 405],
7. receiving stolen property [S. 411, 412], and
8. cheating and allied offences [Ss. 415, 420–424]
9. making a false document and allied offences [Ss. 464, 471, 474, 477], and
10. fraudulent marriage [S. 496] where it occurs with the word fraudulently.

For something to be taken dishonestly, it must be taken knowing or having reason to believe that the owner has not authorised its taking.

**Section 25:- “Fraudulently”:** A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

To defraud means to commit fraud. It involves two elements : deceits + injury to the person deceived.

The word “fraudulently” occurs alone in the

- definitions of offences against public justice [Ss. 206–208 and 210],

- counterfeit coins and stamps [Ss. 239, 240, 242, 243, 246, 252, 253 and 261–263],
- weights and measures [Ss. 264–266],
- offences against property [Ss. 415, 421–424],
- offences relating to documents and to property marks [Ss. 463, 464, 471, 474, 477], and
- offences relating to marriage [S. 496].

### Define 'Reason to believe'. MPJS 1996.

**Section 26:- “Reason to believe”** : A person is said to have “reason to believe” a thing, if he has sufficient cause to believe that thing but not otherwise.

When a person acts, he must have certain reasons to do so and those reasons or causes must be sufficient to initiate an action. A person can be supposed to “know” where there is a direct appeal to his senses but a person has “reason to believe” if he has sufficient cause to believe the thing and not otherwise.

**Section 27. “Property in possession of wife, clerk or servant”**.—When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

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

The section explains that when property is in possession of a person's wife, clerk or servant; on account of that person, it is in that person's possession within the meaning of this Code. It can be temporary employment also.

**Section 28. “Counterfeit”**.—A person is said to “counterfeit” who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

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

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

A person is said to “counterfeit”:

(a) who causes one thing to resemble another thing,

(b) intending by means of that resemblance to practice deception, or

(c) knowing it to be likely that deception will thereby be practised.  
(Exp.1) the resemblance or the imitation need not be exact; and  
(Exp.2) the resemblance capable of deception raises a presumption that the person so doing wanted to practise deception or knew very well the likelihood of deception.

The value of the thing counterfeited is immaterial.

**Section 29:- “Document”** : The word “document” denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

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

#### *Illustrations*

1. A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.
2. A cheque upon a banker is a document.
3. A power-of-attorney is a document.
4. A map or plan which is intended to be used or which may be used as evidence, is a document.
5. A writing containing directions or instructions is a document.

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

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

This section defines the term 'document'. It has also been defined in the Indian Evidence Act 1872, s 3 and the General Clauses Act 1897, s 3(18).

The word "document" denotes:

- (i) any matter expressed or described upon any substance,
- (ii) by means of letters, figures or marks, or by more than one of those means,
- (iii) intended to be used or which may be used as evidence of that matter.

**Section 29A. "Electronic record".**—The words "electronic record" shall have the meaning assigned to them in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000)

**Section 30:- "Valuable security":** The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or who hereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

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

This section defines 'valuable security', as a document creating or extinguishing a legal right, or acknowledging a liability. It is the original document which creates or purports to create or extinguish legal rights, that is a valuable security. A cancelled instrument cannot be a valuable security.

**Section 31. "A will".**—The words "a will" denote any testamentary document.

**Section 32. Words referring to acts include illegal omissions.**—In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions

**Section 33:- "Act". "Omission"**

- ✓ The word "act" denotes as well as series of acts as a single act:
- ✓ the word "omission" denotes as well a series of omissions as a single omission.

**Section 34:- Acts done by several persons in furtherance of common intention –**

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

**Section 36:- Effect caused partly by act and partly by omission :** Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

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

**Section 37:- Co-operation by doing one of several acts constituting an offence :** When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

**Illustrations**

1. A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects the several doses of poison so administered to him. Here A and
2. B intentionally co operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.
3. A and B are joint jailors, and as such have the charge of Z, a prisoner, alternatively for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.
4. A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B. A is guilty only of an attempt to commit murder.

**Section 38:- Persons concerned in criminal Act may be guilty of different offences**

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

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

**Section 39:- "Voluntarily"** : A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

**Illustrations:** A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

This section is based on the well known rule of law that a man is presumed to intend the probable consequences of his act and, therefore, in performing the act he voluntarily causes the consequences. The word 'voluntarily' is to be understood in relation to the causation of effects and not to the doing of acts from which those effects result.

It must be presumed that when a man voluntarily does an act, knowing at the time, that in the natural course of events, a certain result will follow, he intends bringing about that result. Knowledge may also be express or implied.

**Section 40:- "Offence"** : Except in the Chapters and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

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

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

'Offence' means 'an act or instance of offending'; 'commit an illegal act' and illegal means, contrary to or forbidden by law'.

There are three essential attributes of criminal offence: (i) the crime is an act of commission or omission on the part of human being, which is considered harmful by the State; (ii) the transgression of such harmful act is prevented by the threat or sanction of punishment administered by the State; and (iii) the guilt of the accused is determined after the accusation against him has been investigated in legal proceeding of a special kind in accordance with established procedure contained in the relevant provisions of law.

The definition of 'offence' in *Section 2(n) Crpc* is only applicable for the purpose of the CrPC and is not applicable to the IPC

**Section 41:- "Special law"** : A "special law" is a law applicable to a particular subject.

**Section 42:- "Local law"** : A "local law" is a law applicable only to a particular part of India.

**Section 43:- "Illegal", "Legally bound to do"** :

The word "illegal" is applicable to

- ✓ everything which is an offence or which is prohibited by law, or
- ✓ which furnishes ground for a civil action;

and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

**This section covers a breach of contract, and not merely a tort.**

**Section 44:- "Injury"** : The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

- ✓ This definition is very wide
- ✓ Includes every tortious act
- ✓ 'property' means something tangible and capable of being destroyed or damaged in value or utility
- ✓ Unlawful detention of cart after the toll has been paid is said to cause "injury" [Re B Appalaswami(1892) 1 Weir 441]

**Section 45:- “Life”** : The word “life” denotes the life of a human being, unless the contrary appears from the context.

**Section 46:- “Death”** : The word “death” denotes the death of a human being unless the contrary appears from the context.

**Section 47. “Animal”**.—The word “animal” denotes any living creature, other than a human being.

**Section 48. “Vessel”**.—The word “vessel” denotes anything made for the conveyance by water of human beings or of property.

**Section 49. “Year”. “Month”**.—Wherever the word “year” or the word “month” is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

**Section 50. “Section”**.—The word “section” denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

**Section 51. “Oath”**.—The word “oath” includes

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

Every witness is competent to testify unless the court considers that he is prevented from understanding the questions put to him, or from giving rational answers to those questions by reason of tender years, extreme old age, disease etc. (Section 118 IEA)

Competency of a witness is the rule and incompetency is an exception.

The net effect of s Section 4 and 7 of the *Oaths Act 1969* is that oath or affirmation must be administered to every witness unless the court is of the opinion in case of a child 12 years of age, that he does not understand the nature of the oath

### MPJS 1996. What is ‘good faith’?

**Section 52:- “Good faith”** : Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.



- This is a negative definition of Good faith.
- It requires not logical infallibility but due care and attention.
- It is a question of fact.
- Section 3(22) of the *General Clauses Act 1897*, 'A thing shall be deemed to be done in 'good faith' where it is done in fact honestly whether it is done negligently or not'.
  - ✓ The definition in the *General Clauses Act* lays stress on one aspect only, while the one in this section emphasizes two aspects; the honesty of intention as well as due care and attention. Thus, this section excludes the element of negligence from the purview of 'good faith'.
  - ✓ Absence of good faith under IPC means simply *carelessness or negligence whereas* Absence of good faith, under the *General Clauses Act*, means 'want of honesty'
- *Due care* denotes the degree of reasonableness in the care sought to be 'such a degree of care, precaution or diligence as may fairly and of the subject-matter and the circumstances surrounding the transaction.
- The question of good faith must be considered with reference to the position of the accused and the circumstances under which he act.
- 'What is *due care and attention* depends on the position in which a man finds himself and varies in different cases'
- *Due care and attention* implies a genuine effort to reach the truth and not the ready acceptance on ill-natured belief. Simple belief or actual belief by itself is not enough. ( *Harbhajan Singh v State of Punjab* )

**Section 52A:- "Harbour"** : Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the *supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.*

**This section is intended for IPC Section 130, 136 and 157 and 212, 216 and 216-A.**

## DEFINITION OF CRIME

1. **CRIMINAL SCIENCE** = study of criminal law, criminology & penology.

2. **WHAT IS A CRIME?** Crime is an - Act or omission - defined by law - punishable in nature.

**As per Indian Penal code.** The word "offence" denotes a thing made punishable by this Code *S.40 OF IPC*.

### COMPREHENSIVE ANALYSIS OF THE DEFINITION OF CRIME : 6 APPROACHES

**THERE IS DIFFERENT APPROACHES WHICH CONSIDER - WHAT IS A CRIME IN A SOCIETY:**

<b>CRIME IS A PUBLIC WRONG</b>	Blackstone = act/ omission in violation of public rights & duties = in the community. Kenny critics - not all injurious acts are crime.
<b>CRIME AS A MORAL WRONG</b>	crime constitutes = immoral and anti-social acts. GARAFALO.
<b>CRIME AS A CONVENTIONAL WRONG</b>	EDWIN SUTHERLAND: Criminal behaviour is a behaviour in violation of the criminal law. <b>Criticism:</b> Crime can also be anything which is not violating criminal law.
<b>CRIME AS A SOCIAL WRONG</b>	<ul style="list-style-type: none"> <li>• Crime is an act – Harmful to society. JOHN GILLIN.</li> <li>• <b>CRITICISM:</b> Dowry is a crime ; there is hardly any change in people attitude.</li> </ul>
<b>CRIME AS A PROCEDURAL WRONG:</b>	<ul style="list-style-type: none"> <li>• <b>Defined in the terms of nature of the proceedings:</b> <ul style="list-style-type: none"> <li>✓ a wrong which is pursued by the sovereign or his subordinates is a crime. PUBLIC WRONG. AUSTIN.</li> <li>✓ crimes are wrongs whose sanction is punitive, and is in no way remissible by any private person, but is remissible by the crown alone, if remissible at all. KENNY.</li> </ul> </li> </ul>

**CRIME AS LEGAL WRONG:**

legal wrong = when a penal statute prescribes punishment for an act or illegal omission it becomes a crime. SEC.32 IPC.

**DEFINITION GIVEN BY EMINENT AUTHORS/BOOKS**

**HALSBURY 4<sup>TH</sup> - 'PRINCIPLES OF CRIMINAL LIABILITY' - "...Ordinarily a crime is a wrong which affects the security or well-being of the public generally so that the public has an interest in its suppression. A crime is frequently a moral wrong in that it amounts to conduct which is inimical to the general moral sense of the community...."**

**KENNY - OUTLINES OF CRIMINAL LAW - 19<sup>TH</sup> EDITION - No inherent difference bt a crime and a tort. Any conduct which harms an individual to some extent harms society, since society is made up of individuals; and therefore although it is true to say of crime that is an offence against society, this does not distinguish crime from tort. The difference is one of degree only ....."**

**EMINENT AUTHOR - STEPHEN : "A crime is an unlawful act or default which is an offence against the public, rendering the person guilty of such act or default liable to legal punishment..."**

**CRIME : AS DEFINED BY SUPREME COURT OF INDIA:**

**DIFFERENT DEFINITIONS GIVEN BY SUPREME COURT OF INDIA :** Definition of what is a crime will keep on changing based on the political, economic and social set-up of the country. Generally, Crime involves a serious invasion of rights and liberties of some other person or persons. Crime is an attack on the civilisation of the day as it affects 'law & order' & disturb 'public order'. Although individual is ultimate sufferer, every crime is considered as an *offence against the society as a whole* and not only against an individual.

**OVERVIEW :** From what has already been stated, it will appear that crime is

- a) either an act or an omission

- b) the act should be something forbidden by law.
- c) the omission must relate to something not performed, although law commanded its performance;

**“omission” must be an illegal omission, that is, there must be a legal duty to do but it is not done.**

- d) The act alone is not sufficient. **The mind must be at fault.** In other words, *Mens Rea* must be there.
- e) The sanction prescribed for commission of crime is ‘**punishment**’.

**Elements of Crime: Guilty Act and Guilty Mind : ACTUS REA + MENS REA :**

**To be classified as a crime, the act of doing something bad (actus reus) must be usually accompanied by the intention to do something bad (mens rea).**

The principle of actus reus and mens rea are embedded in a Latin maxim, which is: **“actus non facit reum nisi mens sit rea”**. This latin maxim means that an act does not make one guilty unless the mind is also legally blameworthy. There can be no crime without an evil mind.

### **Elements of Crimes**

- **PHYSICAL ELEMENT** - The physical elements are collectively called as Actus reus.
- **MENTALELEMENT** - the accompanied mental state is called the Mens rea

**TWIN REQUIREMENT** - In order to commit a crime an actor must possess both *Mens rea* and *Actus reus*. The crime is the combination of both, and is a single unity.

To put it in simple language, **a completed offence** requires both physical overt act as also a guilty state of mind. In crimes, requiring mens rea as well as actus rea, the physical act must be contemporaneous with the guilty mind, it is not enough that a mentally innocent act is subsequently followed by mens rea.

### **DEFINITIONS**

**In the words of K.D.Gaur - “ ...To make a person criminally accountable it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind...”**

**To put it in the classic words of Lord Kenyon C.J. in Fowler v. Padget [1798] 101 ER 1103 at 1106. "The intent and the act must both concur to constitute the crime."**

## **ACTUS REUS :**

**DEFINITION :** *Actus reus* is commonly defined as a criminal act that was the result of voluntary bodily movement. This describes a physical activity that harms another person or damages property. Anything from a physical assault or murder to the destruction of public property would qualify as an Actus reus.

**EXCEPTION:** The exception to Actus reus is **when the criminal actions are involuntary.**

### **DOES AN ACT IN ACTUS REUS INCLUDE OMISSIONS?**

**An omission is nothing but inaction or not doing something. Section 32 of the Indian Penal Code (IPC) clarifies that acts which may be considered as Crime include "illegal omissions". But mere moral omissions of not doing something would not complete the requirement of actus reus.**

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### **OMISSIONS/DUTY TO ACT :**

**When failure to act may result in criminal prosecution? When you have a ...**

- 1. Special Relationship to the victim. Such as parent/child relationships, husband/wife relationships and employer/employee relationships.**
- 2. Duty to act under statutory law.**
- 3. Duty to protect/care under a private contract.**
- 4. Defendant voluntarily aid the victim in a bad situation, but leaves the situation making worse than before.**
- 5. Defendant puts the victim in way of harm. Here failure to help the victim can result in criminal liability**

## **MENS REA**

**MEANING :** Mens rea generally means 'ill intention'. Mens rea is a legal phrase used to

describe the *mental state of a person*, he must have been in the situation - while committing a crime for it to be intentional. It can be *general intent* to break the law or a *specific intent* viz., premeditated plan to commit a particular offense. The act becomes criminal when the actor does it with a guilty mind..

#### **ESTABLISHING MENS REA :**

**As intention is an abstract idea, it is difficult to establish it and the help is taken of surrounding facts or factors -**

**(i) Previous relation between the accused and the victim, any object of hostility between them.**

**(ii) Existence of instigation, i.e. Whether accused was hired and what prompted him to commit crime; and**

**(iii) Whether the accused had something to gain out of the whole affair.**

**Thus, guilty intention is always preceded by a motive or real causal factors.**

#### **VERY IMPORTANT : COINCIDENCE OF ACTUS REUS AND MENS REA: CONTEMPORANEITY RULE**

**The intent and act must both concur to constitute the crime' -Fowler v. Padget (1798).**

- **Where an offence requires Mens rea the prosecution must prove that the accused had Mens rea at the time he did the act which caused the actus reus.**
- **It is a general principle in criminal law that for a person's liability to be established it must be shown that the defendant possessed the necessary Mens rea at the time the Actus reus was committed in other words the two must coincide. This is also known as the *contemporaneity rule*.**
- **In some cases a literal interpretation of this rule would manifestly lead to injustice, and the courts have developed ways of finding coincidence of Mens rea and Actus reus (a) when the events take place over a period of time, and (b) where they constitute a course of events.**

#### **TRACING THE ORIGIN OF CONCEPT OF MENS-REA:**

**CASE 1: REGINA V. PRINCE. KEY TAKEAWAY :** Majority held that immoral = crime. However dissenting opinion of Lord Brett was that to be a crime, an act should be **criminal, not just immoral**

**CASE 2: REGINA V. FAULKNER.**

**HELD:** Lords Fitzgerald and Palles conclude that the Mens rea requirement means that Faulkner (*Accused*) must have at least intended to do something criminal that might reasonably have been expected to have led to the actual harm for which he is charged.

**MENS REA IN THE INDIAN PENAL CODE**

**APPLICABILITY:** In India, doctrine of *mens rea* is not strictly applicable. And, there is no mention 'mens rea' in entire of IPC. However, we can say that essence of *mens rea* is reflected in almost all the provisions of the Code. HOW DO YOU SAY THAT ?

*REASON ONE :* All offences in IPC are carefully defined so as to include the precise evil intent which is the essence of a particular offence. Offences are defined with requisite state of mind of the accused like "intentionally", "dishonestly", "voluntarily", "fraudulently", "malignantly", "maliciously" and likewise.

*REASON TWO:* Even where certain acts/ omissions may constitute as offence/crime – can be cease to be offence/crime. This is done under IPC (Chapter IV of IPC – General exceptions) by expressing the absence of *mens rea* to acquit the criminal. This chapter controls all offences in IPC by dealing with the general conditions which negative *mens rea* and thus exclude criminal responsibility.

**DEGREE OF MENS REA :** The degree of *mensrea* plays a significant role in determining the culpability of any offence and has a direct relation to it.

- The highest degree of *mens rea* is '**intention**'. Any crime committed with the intention of committing such a crime, attracts the highest penalty prescribed for that offence.
- Any act done with the '**knowledge**' of the forbidden consequences but without malafide intent attracts a slightly lesser punishment.
- The other degrees of *mens rea* are '**negligence**' which denotes a want of due care and caution and '**rashness**', which implies a mental indifference to some obvious risk.

The punishment for acts done rashly or negligently is less than acts done intentionally or knowingly.

## INTENTION

To intend is to have in mind a fixed purpose to reach a desired objective; it is used to denote the state of mind of a man who not only *foresees* but also *desires* the possible consequences of his conduct. Mere intention to commit an offence not followed by any act, cannot constitute an offence.

### TRANSFERRED INTENTION:

**Transferred intent/malice is a legal doctrine refers to a situation where the intention to harm one individual inadvertently causes a second person to be hurt instead, the perpetrator is still held responsible**

## INTENTION AND MOTIVE

### MOTIVE IS SOMETHING WHICH PROMPTS A MAN TO FORM AN INTENTION.

- **MOTIVE- It incites or stimulates action.**
- **INTENTION – It is determination to act in a particular manner**

**ANALYSIS :** A crime is generally not committed for the sake of crime itself. There is always an ulterior objective. In the context of a crime, if you ask why it was committed the answer is what may be called as “Motive”.<sup>3</sup> It should be agreed that intention is different from motive. Motive is what prompts a person to form an intention.

**ROLE OF MOTIVE IN COMMISSION OF CRIME:** *Motive is not an essential element of an offence but motive helps the court to know the intention of a person.*

**EVIDENTIARY VALUE:** Motive will be taken into account in **determining the nature and quantum of punishment.**

## KNOWLEDGE

Knowledge is the mental cognition of a thing or state of affair. To know a thing means to have a mental cognition of it.

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<sup>3</sup> Nankaunoo v. State of U.P



**Section 26 of the Indian Penal Code states that “a person is said to have reason to believe a thing if he has sufficient cause to believe that thing, but not otherwise.”**

INTENTION V. KNOWLEDGE : A man may be aware of the consequence of an act, though he may not intent to bring them about.

KNOWLEDGE	INTENTION
It is awareness on the part of the person concerned of the consequence of his act of omission or commission, indicating his state of mind.	It is a desire to achieve a certain purpose.
Knowledge is bare awareness.	Intention is to know certain consequences should ensue.
As compared to ‘knowledge’, ‘intention’ requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end.” The demarcating line between knowledge and intention is no doubt thin, but it is not difficult to perceive that they connote different things.	

## RECKLESSNESS

The term recklessness means a *form of indifference* to the realised possible risk and consequences of one’s action. Here the man may foresee his possible/probable consequences; yet not desire it, but it the end that undesired consequence is the result. This state of mind is known as ‘recklessness’. It is an attitude of mental indifference to obvious risk. It also involves the wrongful assumption of a risk.

## NEGLIGENCE

CIVIL NEGLIGENCE V. CRIMINAL NEGLIGENCE:

(Civil) Negligence is an omission to do something which

- ✓ a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or
- ✓ doing something which a prudent and reasonable man would not do.

**CRIMINAL NEGLIGENCE:** Criminal negligence is the gross and culpable neglect or ***failure to exercise reasonable care and proper precaution*** imperative to be adopted by a person to avoid causing of injury to the public or a person or an individual. Criminal negligence is culpable carelessness.

**TEST OF NEGLIGENCE:** In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the *rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent.*<sup>4</sup>

**RASHNESS V. NEGLIGENCE:** Negligence is the genus, of which rashness is the species.

Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law.

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<sup>4</sup> Syad Akbar v. State of Karnataka (1980) 1 SCC 30.