Subject :

Law of Crimes - I

Paper : 1.4

10 YEARS CELEBRATION

MIES R.M. Law College

Affiliated: **Vidyasagar University**

Approved by: **Bar Council of India**

SONARPUR

Near SBI
Kolkata-700 150
✆ 2428 3510

TABLE OF CONTENTS

NATURE AND DEFINITION OF CRIME

Nature and scope of crime

It is evident that the definition of a crime has varied significantly throughout history and among various legal systems. Legally speaking, crimes are typically described as actions or inactions that are prohibited by law and are subject to fines and/or imprisonment. This understanding of crime explains why there is such a wide range of criminal behavior and why people don't usually specialize in one kind of crime.

Blackstone defines crime : A crime is an infringement on someone's right that affects the entire community when taken as a whole.There are errors in the definition. It restricts the definition of crime to the exclusive breach of rights, whereas criminal law imposes criminal accountability even on individuals who fail to carry out their legal obligations.

Renowned criminologist Garafalo defined crime as unethical and antisocial behavior. According to him, crime is defined as an immoral and damaging conduct that is considered criminal by the public because it damages a community's moral sense, which is essential for an individual's ability to adapt to society.There is hardly any society which is free from any violation or crime. In the early civilization when people used to form groups and association then the need felt to regulate their behavior. Thus Salmond has defined, law as a rule of action regulating the conduct of individuals in the society. Therefore, to regulate the behavior of human being, law has prescribed certain standards of conduct to be followed by the people in the society. With the developments and the changing scenario of the society, a fresh approach to the concept of crime has taken place.

Definition of Crime :

It is very difficult to give a precise meaning of the term crime as crime is concerned with the social order and every society has its own norms, rules, customs to regulate people.

Blackstone defines crime A crime is an infringement on someone's right that affects the entire community when taken as a whole.There are errors in the definition. It restricts the definition of crime to the exclusive breach of rights, whereas criminal law imposes criminal accountability even on individuals who fail to carry out their legal obligations.

Italian criminologist Raffeale Garafalo preferred sociological definition of crime and stated that crime is an offence the basic sentiments of ‘Pity’ and ‘Probity’. Supporting his views Sutherland characterizes crime as a symptom of social disorganization.

According to Keeton, a crime is any undesirable act which the state find it most convenient to correct by the institution of proceeding for the infliction of a penalty, instead of leaving the remedy to the discretion of the injured party.

Halsbury defines crime as an unlawful act which is an offence against the public and the perpetrator of that act is liable to legal punishments. Halsbury’s definition is the most acceptable one than the other definitions of crime.

After analyzing the above definitions there are three important points can be identified the are —

1. Crime is an anti-social actwhich the state desires to punish.
2. For that anti-social act punishments are inflicted by the state.
3. In determining the guilt of the persons rules are framed by the society.

Mental Element in Crime:

An act done in certain frame of mind which the law forbids generally known as mental elements. Actus non facit reum nisi mens sit rea (act does not make a man guilty unless his inten- tion were so) i.e. unless found to be guilty according to direct and/or indirect evidences including circumstantial evidence.

The application of mens rea in criminal law is clarified by the doctrine of actus non facit reum nisi mens sat rea. It states that a behavior is only considered criminal if it is carried out with the intent to commit a crime. This adage is employed to determine if a particular behavior is unlawful or not. The consequences for crimes committed with a specific aim are higher than for unintentional or unplanned conduct. But no law breaking is allowed to go unpunished.

C.K. Jaffer Sharief v. State (CBI), 2012 The Supreme Court ruled that an individual's criminal culpability will be penalized if the law is broken. The Latin maxim "actus non facit reum nisi mens sit rea" limits the application of this rule, therefore it is not absolute. Put differently, the absence of criminal awareness precludes the commission of a crime. A person must demonstrate both that their activities led to unlawful acts or omissions and that such acts or omissions were accompanied by criminally responsible attitudes in order for their conduct to be found criminally accountable.

Thus, two components are present in every crime and are:
an element that is both mental and physical, known as mens reus and actus reus, respectively.

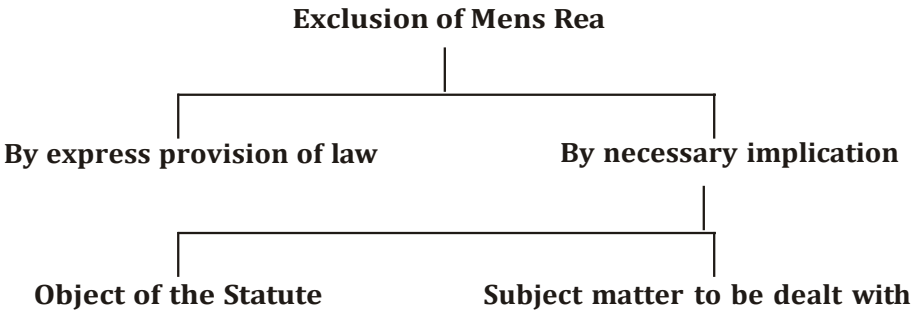
Criminal Jurisprudence on the liability of the accused may be applicable to this case. In this respect the Hon"ble Court relied on the observations of K. D. Gaur on "Criminal Law" can be read as follows: A person would be guilty of criminal law if: He commits an act that is prohibited by law; and He commits the act with a legally acceptable attitude of mind; and There are two elements of every crime: the physical element and the mental element. The Latin maxim "Actus Non Facit Reum, Nisi Mens Sit Rea" indicates that a crime cannot be a crime if there is no guilty mind. Thus for committing a crime it is necessary that they should have done with criminal intent which termed as mens rea. This concept is contained in the above Latin maim Actus non facitreum nisi mens sit rea. The principle of mens rea implies that unless it can be shown in a criminal act that the person had a guilty mind at the time of commission of the offence he could not be pun- ished. It must be noted here that mens rea or criminal intent implies that the act done voluntarily with the knowledge that the act may cause serious injury to the person against whom it is caused.

Actus Reus :

The concept actus reus refers to the physical element in crime. According to Russel actus reus is the "plysical result of human conduct". According to Kenny actus reus is such result of human conduct as the law seeks to prevent.

In the Indian Penal Code the doctrine of mens rea is used by using the terms intentionally, voluntarily, fraudulently, negligently etc.

Exceptions to the rule of mens rea :



There are certain offences which require strict adherence for the purpose of protecting so- cial and economic order. Thus the exclusion of mens rea for certain offences is justifiable. The offences which falls under the category of strict and absolute liability the doctrine does not apply. In regard with the Statutory offences of abduction, kidnapping, rape, public nuisance, public welfare offences etc., the doctrine of mens rea does not apply.

IgnorantiaFacit Doth Excusat :

Ignorance of fact excusable. As there is no necessary intention to commit an offence. Igno- rance of fact in Common Law is a defence. To get the benefit of this defence it has to be shown that the mistake must be reasonable. It was held that if a person is charged of committing bigamy believed that he is legally justified to marry it cannot be said that the crime was committed either intentionally or recklessly.

Ignorantia Juris Non Excusat :

Ignorance of law does not excusable. Mistake of law whether civil or criminal is not excus- able. It is presumed that everyone knows the law or at any rate ought to know under which he lives or to which he is subject for the time being.

R v. Prince (1875) L.R 2 C.C.R 154

Henry Prince was charged Under Section 55 of the Offence Against the Persons Act 1861. He was charged for having taken an unmarried girl being under the age of 16 years against the will of her father and mother. The father told that his daughter to be fourteen years old but she looked older than that and while at the time of taking her she told the defendant as she was 18 years and the defendant bonafide believed that statement. The Common Law doctrine of mens rea was not applied and held that the prisoner's belief that the girl was eighteen years is no defence. In this case a distinction was made between acts that were in themselves innocent but made punishable by statute and acts intrinsically wrong were immoral. The man who acted under the erroneous belief took the risk and should suffer the consequences.

The Queen v. Tolson (1889) 23 Q.B.D 168

In this case the accused after necessary inquiry made by her to search her husband who deserte her got married to another man and was charged for committing bigamy as thereafter her hus- band returned.

The Jury found that at the time of the second marriage she was in good faith and there was reasonable grounds to belief that her husband was dead. In this case the accused acted in good faith as she was found to be mistaken.

R. S. Joshi v. Ajit Mills Ltd. (1977) 4. S.C.C 94

The Supreme Court observed that a person may be liable for the penal consequences for the acts done by him whether he has done it with guilty mind or not, it is a matter of common knowledge that for proper enforcement of statutory provisions the rule of strict liability is created and the acts falling in the category are punished even in the absence of guilty mind.

JURISDICTION

Intra-Territorial Jurisdiction

Section 2 of the IPC provides that any person who commits or fails to commit an offence within the Indian territory is liable to be punished irrespective of his or her nationality, caste, or creed. This section applies to all offenders within the Indian territory. Foreign nationals cannot claim to be unaware of Indian law by committing an offence within the country. Section 2 of IPC applies to any person who commits, or fails to commit, an offence within the territory of India in violation of the provisions of the IPC. This includes both foreign nationals who enter the country and those who commit an offence outside the Indian territory but within the jurisdiction of the country. The court has ruled that physical presence does not have to be present in order to be held liable under the IPC.

- In **Mobarik Ali v. The State of Bombay**, a Pakistani national was held liable for an offence in Bombay despite not being physically present at the time of commission.

- **State of Maharashtra v. Mayer Hans George,** a foreigner was held liable for an offence under the Foreign Exchange Regulation Act, 1973 upon landing in India.

- **State of Maharashtra v. Syndicate Transport Company**, a company was held liable for the criminal act of its director, authorized agent or servants, while

- **Superintendent and Remembrancer of Legal Affairs, West Bengal v. Corporation of Calcutta**, the state was held responsible for the wrongful acts or omissions of its agent.

Extra- Territorial Jurisdiction

Sections 3 and 4 of the Indian penal code give extra-territorial jurisdiction to the code. Thus a person may be held liable under the penal code for committing offences beyond the territory of India. Section 3 gives criminal jurisdiction to the courts to try an offence committed by a person beyond the territory of India provided such person is subject to the Indian law. The accused will be liable for the offence in the same manner and to the same extent as if it were committed within India. The scope of section 3 is wide enough in as much as it not only makes Indian citizens liable for offences committed abroad, but also those who are covered by any special law bringing them under Indian jurisdiction.

Section 4 puts that the Indian penal code will apply to any offence committed by :—

i) Any citizen of India in any place without and beyond India

ii) Any person on any ship or aircraft registered in India wher-ever it may be

iii) Any person in any place without and beyond India committing offence targeting a com- puter resource located in India.

The word “offence” includes every act committed outside India which, if committed in India, would be punishable under this Code. The expression “computer resource” shall have the mean- ing assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000.

GENERAL EXPLANATIONS

SOME OF THE IMPORTANT EXPLANATIONS:

Section 21. ''Public servant''. The words public servant denote a person falling under any of the descriptions hereinafter following, namely:

Second. Every Commissioned Officer in the Military, [Naval or Air] Forces of India]; [*Third*. Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]

Fourth. Every officer of a Court of Justice [6][(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 authorised by a Court of Justice to perform any of such duties;

Fifth. Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

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

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

Eighth. Every officer of [7] [the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth. Every officer whose duty it is as such officer, to take, receive, keep or expend any property on behalf of [7][the Government], or to make any survey, assessment or contract on behalf of [7][the Government], or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of [7]the Government, or to make, authenticate or keep any document relating to the pecuniary interests of [7][the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of [7][the Government] ;

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

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

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

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

Illustration

A Municipal Commissioner is a public servant.

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

Explanation 2. 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.

Sec 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.

Sec 23. "Wrongful gain".—"Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

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

Sec 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".

Sec 25. "Fraudulently".—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

Sec 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.

[1][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.

Sec 29. "Document".—The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

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

Illustrations

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

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

A writing containing directions or instructions is a document.

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

Illustration

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

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

Illustration

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

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

Illustration

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

Sec 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.

COMMON INTENTION AND COMMON OBJECTIVE:

Section 34 lays down only a rule of evidence and does not engender a substantive offence. This section is intended to meet cases in which it may be arduous to distinguish between the acts of the individual members of a party or to prove precisely what component was taken by each of them in furtherance of the prevalent intention of all. This section authentically denotes that if two or more persons intentionally do a thing jointly, it is just equipollent to if each of them has done it individually. The objective of offence under Section 149 is assembly of several (five or more) persons having one or more of the mundane objects mentioned in Section 141 and it could be accumulated from the nature of the assembly, arms utilized by them and the comportment of the assembly at or afore scene of occurrence. Section 149 engenders joint liability of all members of an unlawful assembly for malefactor act done by any member in prosecution of the mundane object of the verbalized assembly.

PUNISHMENT

Criminal law is concerned with those fundamental social values expressing the way people interact with each other in the society. Criminal law attempts to protect the people and the very structure and fabric of society from undesirable, notorious and unwelcomed behaviour of such individuals and organisations who try to disrupt and disturb public peace, tranquillity and har- mony in the society. Punishment is the sanction imposed on an accused for the infringement of the established rules and norms of the society.

The objective of inflicting punishment is to protect society from mischievous elements by deter- ring offenders, by preventing the actual offenders from committing further offences and by reform- ing and turning them into law-abiding citizens. The very objective of inflicting punishment has been aptly described by the great Hindu philosopher Manu in the following words…"Punishment governs all mankind; punishment alone preserves them and punishment wakes while their guards are asleep; the wise considers the punishment (danda) as the perfection of justice."

Kinds of Punishment under the penal code

The Indian penal code in sections 53 to 75 has provided for a graded system of punishment to suit the different categories of offences for which the offenders are accountable under it. The criminal law generally abide in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. Section 53 of the penal code pre- scribes for five types of punishment to be meted out to a person convicted of a crime under the code, depending upon the nature and gravity of the offence, and they are namely:-

i) Death Sentence or Capital Punishment

ii) Imprisonment for Life

iii) Imprisonment which may be either rigorous with hard labour or simple imprisonment.

iv) Forfeiture of Property.

v) Fine.

The corporal punishment of whipping added to the penal code by the Whipping Act of 1864 as punishment for certain crimes, was abolished in 1955 in view of the inhuman and cruel nature of the sentence. Such a punishment was considered unsuitable for a civilised society. It was sug- gested to add five new categories of punishment to the existing ones in section 53 with a view to deter particular types of criminals. The Indian penal code (Amendment) Bill, 1978 proposed to add community service (section 74A), Compensation to victims of Crime (Section 74B), public censure (Section 74C) and disqualification from holding office (Section 74D) in addition to the existing five categories of punishments.

Theories of punishment

The various theories of punishment are as follows :—

Deterrent theory :— Deterrence is virtually regarded as the main function of punish- ment. According to this theory, the object of punishment is not only to prevent the wrong- doer from doing a wrong a second time, but also to make him an example to others who have criminal tendencies. Salmond considers deterrent aspects of criminal justice to be the most important for control of crime. The deterrent theory was the basis of punishment in England in the Medieval Period. Severe and inhuman punishment was the order of the day. This theory has been criticised a lot on the grounds that it has proved ineffective in checking crimes and also that inflicting excessive punishment tends to defeat its own pur- pose by arousing sympathy towards the criminal by the public.

Preventive theory:— Another object of punishment is prevention or disablement. Of- fenders are prevented from repeating the crime by warding punishments such as, death, exile or forfeiture of an office. By putting the criminal in jail, he is thereby prevented from committing another crime. The criticism of this theory is that it has an undesirable effect of hardening first offenders or juvenile offenders, when imprisonment is the punishment by putting them in the mix of hardened criminals.

Retributive theory:— In earlier times and in primitive society punishment was mainly retributive. The person wronged was allowed to have revenge against the wrong-doer. The principle is of "an eye for an eye", "a tooth for a tooth" was the basis of criminal administration. The person who favours this theory says that the criminal deserves to be punished and the point put forward by them is that unless the criminal receives the punishment he deserves then either the victim will seek individual revenge or the victim will refuse to make a complaint or offer testimony and the state will therefore be handicapped in dealing with criminals. In modern times the idea of private revenge has been forsaken and the state has come forward to effect revenge in place of the private individual.

Reformative theory :— According to this theory the object of punishment is the reformation of criminals. The notion is that even if an offender commits a crime under certain circumstances, he does not cease to be a human being. The object of the punishment should be to reform the offender. The criminal must be educated, and taught some art or craft during his time in imprisonment so that he may be able to lead a good life and become a responsible citizen after release from jail. Critics of this theory state that if criminals are sent to prison to be transformed into good citizens then the deterrent motive would be defeated altogether in favour of reformative theory. Criminals will no longer have the fear of punishment in their mind if the jail transforms into a dwelling house in place of prison.

Expiatory theory :— This theory is also known as the theory of penance. According to this theory, punishment is necessary for the purification of the offender. It is a kind of penance for the misdeeds of a person. Men undergo punishment so that the wrong done by them may be expiated. In view of Hindu jurists expiation washes away the sin. In modern times expiation theory is accepted in a modified form and is considered by some to be part of the retributive theory.

Death Penalty under the Penal Code:

Death Penalty or Capital Punishment is the most extreme punishment being sanctioned under the Indian penal code. In the time of code of criminal procedure, 1898 death sentence was the rule and life imprisonment an exception in capital offences and whenever the court preferred to award a sentence lesser than death in such circumstances it was required to record your reasons in writing for such decisions. Now the Code of criminal procedure, 1973 states that imprisonment for murder is the rule and death sentence is an exception. Death penalty under the Indian penal code is being inflicted for the following offences which are as follows:-

1. Waging War or attempting to wage war or abetting waging war against the Government of India. (Section 121)
2. Abetting mutiny actually committed. (Section 132).
3. Giving or fabricating false evidence upon which an innocent person suffers Death. (Sec- tion 194)
4. Murder which may be punished with Death or life imprisonment (section 302).
5. Abetment of suicide of a minor, or insane, or intoxicated person (Section 305).
6. Attempt to murder by a person under sentence of imprisonment for life, if hurt is caused (Section 307).
7. Kidnapping for ransom, etc. (Section 364A).
8. Dacoity accompanied with Murder (section 369).

In addition to the abovestated cases Indian penal Code also prescribes for death Penalty in the following three conditions which are as follows:-

1. Criminal conspiracy to commit any offence punishable with death, if committed in consequence thereof for which no punishment is prescribed. (Section 120B).
2. Joint liability extending the principle of constructive liability on all the persons who conjointly commit an offence punishable with death, if committed in furtherance of common intention or common object of all (Section 34 and 149).
3. Abetment of offences punishable with death. (Section 109).

The supreme courts first version in awarding the death penalty is to study whether the offence amounts to the rarest of rare cases. The penalty is awarded by the court by interpreting the cir- cumstances of individual case. The advocates of the "eye for an eye" theory demand death pen- alty for serious and heinous crimes and the humanists on the other hand press for the other extreme i.e. "death in no-case". A synthesis has emerged by the apex court in ***Bachan Singh v. State of Punjab*** case of the year 1980 wherein the "rarest of rare cases" formula for imposing death penalty in a murder case has been evolved. The question as to what are the rarest of the rare cases justifying death penalty lies in the discretion of the judges and so far no uniformity has been followed by the Supreme Court while executing this principle in awarding death sentence.

Apart from the Indian Penal Code the capital punishment is also given under the following statutes listed below :—

1. The Indian Air Force Act, 1950.
2. The Army Act, 1950.
3. The Navy Act, 1950.
4. The National Security Guards Act, 1956 and the indo-Tibetan Border Police Act, 1992 prescribe the Death sentence as an alternative punishment for defined offences committed by members of the Armed forces.
5. The Commission of Sati (Prevention) Act, 1987.
6. The Narcotics Drugs and Psychotropic Act, 1985.
7. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

GENERAL **EXCEPTIONS**

As a general rule man is presumed to know the nature and consequences of his act and is, therefore held responsible for it. However there are certain exceptions to this general rule wherein a person may be excused of crime. The scope of the general Exceptions provided in this Chapter is very wide. It is not only limited to the offences under the penal code but it extends even for offences under local and special laws as well as specified under section 40 of this code. Chapter IV consists of 31 sections which can be broadly classified into eight groups which are as follows:-

a. Mistake of fact and mistake of law. (Section 76, 79).

b. Privileged Judicial Acts (Sections 77, 78).

c. Accidental Acts (Section 80).

d. Necessity (Section 81).

e. Incapability to commit a crime (Sections 82 to 86).

f. Acts done with Consent (Sections 87-90) or without consent (Section 92).

g. Triviality (Section 95).

h. Private Defence (Sections 96-106).

Broadly speaking the exceptions provided in the code may be grouped into two categories namely :

1. Excusable Exceptions.
2. Justifiable Exceptions.

In the case of excusable exceptions the necessary mens rea for the offence would be lacking either by reason of a bona fide mistake as to the existence of a fact (sections 76 and 79) or by reason of the act being done accidently (section 80), or by reason of the infancy (sections 82 , 83) or insanity (section 84) or intoxication (sections 85-86) and so the actor is not responsible for what he has done. On the other hand in the latter category of cases the circumstances under which the offence was committed furnish legal justification for its commission either by reason of the act being done by a judge under the direction of law (section 77) or in pursuance of the orders of a court (section 78), or to prevent a greater harm to a person or property in case of necessity (section 81), or an act done with the consent of the person harmed (sections 87-89, 92), or in the exercise of the right of private defence (section 96-106) or of the act being trivial in nature (section 95) and hence the law would not take note of it.

Generally the burden of proof of everything essential to the establishment of the charge against the accused lies on the prosecution who substantially asserts the affirmative and not upon the person who denies it except in offences relating to dowry death, abetment of suicide of newly married woman etc. the rule of burden of proof has its origin in the Roman maxim "ei qui affirmat non qui negat incumbit probation" which means he who seeks the aid of a court should be the first to prove that he has a case, and that in the nature of things it is more difficult to prove a negative than an affirmative.

Section 80 gives statutory recognition to the common law doctrine of mens rea, that there can be no crime without a criminal intention. To avail the benefit of exemption from criminal liability under this section it must be proved that the act was done by :—

a) Accident or misfortune

b) Without any criminal intent or knowledge

c) In a lawful manner

d) By lawful means

e) With proper care and caution.

Section 81 of the code grants immunity to a man from criminal charge with respect to acts committed under the compelling circumstances forced by necessity. The proverb which grants the immunity under this section is "Quod necessitas non habet leegam" which means that necessity knows no law. The defence of necessity in order to be available the following conditions must be satisfied :—

i) The act was done in order to avoid consequences which could not otherwise be avoided, and which if they had followed would have caused irreparable damage.

ii) No more harm was done than was necessary for that purpose.

iii) That the evil inflicted was not disproportionate to the evil avoided.

iv) The act must be done without any criminal intention to cause harm

v) The act must be done in good faith for the purpose of preventing or avoiding other harm to a person or property.

vi) The harm must have been done in order to avert a greater harm.

The explanation of this section makes it very clear that is it is a question of fact to be decided in accordance with each case as to whether the harm to be prevented or avoided was of such a nature as to justify or excuse taking the risk of the act.

Doli Incapax:

After the notion was accepted that moral delinquency was a prerequisite of criminal guilt, it was felt that liability could not be imputed to very young children. But there was uncertainty regarding the age as to when this liability of the criminal offence will start. Initially the age of twelve was set as the age for criminal responsibility. Later the law become more severe and the age for the termination of immunity was fixed at seven years. Blackstone has aptly explained the reason for exempting infants from criminal liability in the following words:

"Infancy is a defect of the understanding, and infants under the age of discretion ought not to be punished by any criminal prosecution whatsoever". However this age of immunity from crimi- nal liability differs from country to country. In England, Malaysia and Singapore the age of com- plete immunity is ten years. In Germany and Austria the age is 14 years and in France the age of complete immunity is 13 years. In Pakistan, Bangladesh, Sri Lanka the minimum age of liability is seven years.

In the Indian penal code sections 82 and 83 deals with immunity of the child from criminal liability. Section 82 grants absolute immunity on a child under seven years of age and section 83 grants qualified immunity to a child above the age of seven years to under the age of twelve years from criminal liability. Under the code a child below the age of seven years is immune from criminal liability since a child below this age is considered doli incapax in law. That means that a child under that age cannot form the necessary intention to constitute a crime since he possesses no adequate discretion or understanding at this age for his deeds. Thus if a child below the age of seven years is charged for committing crime, the fact that he was at that time below the age of seven years is ipso facto an answer to the prosecution. The scope of the immunity granted under this section is wide enough as it extends even for offences under local and special laws as well as specified under section 40 of this code.

Section 83 talks about qualified immunity to a child above the age of seven years to under the age of twelve years from criminal liability. It means that if it shows that child within the age group of seven-twelve years has not attained the required degree of understanding and maturity to judge the nature and consequences of his conduct, he is exempted from criminal responsibility. The presumption of innocence of the child is based on the principle that 'the younger the child in age, the lesser the probability of being corrupt'. Under the English law the age of qualified immunity is from 10 to 14 years.

The leading case of the qualified immunity is that of ***Hiralal Mallick v. State of Bihar*** where the appellant aged 12 years along with his elder brothers participated in a concerted action and used sharp weapon, a sword on the neck of the deceased to avenge and ran like others. No evidence was led about the youth's feeble understanding of his action and hence the defence was not allowed and accused was held liable for the offence. The Supreme Court held a child between the age of 7 to 12 years is qualified to avail the defence of doli incapax if it is proved that he has not attained sufficient maturity of understanding to judge the nature and consequences of his act.

Insanity

Section 84 states that unsoundness of mind is a defence act of a person to a criminal charge on the theory that 'one who is insane has no mind and hence cannot have the necessary mens rea to commit a crime'. As a matter of fact a child is even in a better position compared to a mad man as the child can at least regulate his conduct while the latter can't. In fact a mad man is punished by his own madness and it is explained by the maxim "Furiousus furore sui punier". Unsoundness of mind is commonly termed as insanity and insanity in medical terms differs from insanity in law. Insanity in law means a disorder of the mind which impairs the cognitive faculty, i.e., the reason- ing capacity of a man, to such an extent as to render him incapable of understanding the nature and consequences of his actions.

The important question that pops out from the discussion about the defence of insanity is that "how it to be detected and what should be the demarcating line between 'sanity' and 'insanity' in order to extend to a man the protection of law from criminal prosecution?" A number of tests have been given from time to time as an answer to the question but the most notable is the 'right and wrong test' formulated in M' Naghten's case. In this case the law relating to sanity is to be found in the form of replies given by the 15 judges of the House of Lords to the five questions put to them. The answers to second and third question finds special importance as they find place in the Penal Code of almost all countries in the world influenced by Common Law. The House of Lords held that "to establish insanity as a defence, it must be clearly proved that at the time of committing the act the accused was labouring under such a defect of reason due to disease of the mind as not to know the nature and the quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong".

Hence in order to avail the benefit of insanity as a ground of defence the following points must be proved :—

i) The accused was insane (non compos mentis) i.e. not of sound mind.

ii) The accused was incapable of knowing the nature of the act.

iii) That the accused was precluded by reason of unsoundness of mind from understanding that what he was doing was either wrong or contrary to law.

The leading case of insanity as a defence is of ***Dayabhai Chhaganbhai Thakkar v. State of Gujarat*** wherein the accused was convicted under section 302 of I. P. C. for murder of his wife. One night the two of them was sleeping and the neighbours were awakened on hearing her cries that she

was killed. They found the door of the room bolted from inside and called upon the accused to open it. When he opened the door they found his wife dead with as many as 44 knife injuries on her body. The defence of insanity was rejected by both the trial court and subsequently on appeal by the high court in view of the fact that in the statements made to the police immedi- ately after the incident, there was no indication whatsoever that they had found his conduct on emerging from the room to be that of a person who had lost his sanity. The Supreme Court also dismissed the appeal and stated that it is only that circumstances of mind which impairs the (cognitive reasoning) faculty of mind which can constitute a ground for exemption from criminal liability and the evidence on record in this case does not firmly establish this point.

Private defence

Sections 96 to 106 of the Indian penal code deals with the defence of private defence. The provisions mentioned in these sections gives 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. Self-help is the first rule of criminal law. No doubt it is the duty of the state to provide security to the society but in practical sense this is not possible. There may be situations when help from state authorities cannot be obtained in order to repel an unlawful aggression either because there is no time to ask for such help or for any other reason. To meet such exigencies the law has given the right of private defence of body and property to every individual.

The law of private defence is based on three cardinal principles and they are :—

- Everyone has the right to defend his own body and property as also another's body and property.
- The right cannot be applied as a pretence for justifying aggression for causing harm to others nor for causing more harm than necessary to inflict for the purpose of defence.
- The right is essentially of defence and not of retribution.

The right of private defence will completely absolve a person from all guilt even when he causes the death of another person in the following situations :—

- If the deceased was the actual assailant.
- If the offence committed by the deceased which occasioned the cause of the exercise of the right of private defence of body or property falls within anyone of the seven or four categories enumerated in section 100 and 103 or was an assault reasonably causing the apprehension of his death, as explained in section 106.

Section 97 provides that subject to the restrictions imposed under section 99, every man has a right to defend his own body and the body of any other person as well as his property and the property of any other person against offence affecting the human body and against theft, robbery, mischief or criminal trespass or an attempt to commit any one of these offences.

Section 98 also provides the right of private defence against an act of the person of unsound mind or against the person who is unable to understand the consequences of his act because of infancy or against the person who is having misconception or against a person who is excused from criminal liability because of intoxication.

Section 99 lays down the limitations within which the right of private defence can be exercised. According to this section there is no right of private defence in the following situations which are as follows :—

i) Against the acts which does not reasonably cause the apprehension of death or grievous hurt if done by a public servant acting in good faith under the colour of his office.

ii) Against the acts which does not reasonably cause the apprehension of death or grievous hurt if done by those acting under the authority or direction of a public servant acting in good faith under the colour of his office.

iii) Where there is sufficient time for recourse to public authorities.

iv) The quantum of harm that may be caused shall in no case be in excess of harm that may be necessary for the purposes of defence.

It is important to know that the explanation of this section states that :—

i) A person retains his right of private defence even against an act done by a public servant unless he knows or reasons to believe that the person doing the act is such public servant.

ii) A person retains his right of private defence even against an act done by those acting under the authority or direction of a public servant unless he knows or reason to believe that the person doing the act is doing it by such direction or unless such person states the authority under which he acts or if he has authority in writing, unless he produces such authority if demanded.

Section 100 of the Indian penal code states the circumstances under which even death can be caused in the name of private defence concerned with private defence of one's own body and the body of another person. They are namely an assault :—

i) Causing the apprehension of death.

ii) Causing the apprehension of grievous hurt.

iii) With the intention of committing rape.

iv) With the intention of gratifying unnatural lust.

v) With the intention of kidnapping or abduction.

vi) With the intention of wrongfully confining a person under circumstances which may give apprehension that he will be unable to have recourse to the public authorities for his redress.

vii) An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.

Section 103 provides the circumstances whereby the right of private defence of property can be extended even to the causing of death and they are:-

I. Robbery.

II. House-breaking by night.

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

IV. Thief, 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.

OFFENCES AGAINSTTHE STATE

Sec 121. Waging, or attempting to wage war, or abetting waging of war, against the Government of India.—Whoever wages war against the [Government of India], or attempts to wage such war, or abets the waging of such war, shall be punished with death, or [imprisonment for life] [and shall also be liable to fine].

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

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

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

Sec 124A. Sedition.—Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in [India], shall be punished with imprisonment for life , to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

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

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

OFFENCES AGAINST PUBLIC TRANQUILITY

This kind of offences is contained in Part VIII of the Indian penal code and this chapter consists of 22 sections from sections 141 to 160 including section 153A and 153B. It falls between offences against state in one side and offences against the person and property on other side. They are generally group offences and are generally executed by large number of people. The group disturb the public peace by committing the offences falling within this particular category of offences. Previously large size of assembly of men was discouraged since prevention of offences involving multiple offenders becomes very difficult. However with the advent of civilisation and democracy the right to assemble became a basic right and in our constitution also article 19(1) (b) supports it. Out of the offences falling under this category unlawful Assembly, Rioting and Affray are the most.

Unlawful Assembly:

Unlawful assembly is defined in section 141 of Indian penal code. Essentials for the offence of unlawful assembly are as follows :—

i) There must be an assembly of five or more people.

ii) The assembly must have a common object.

iii) The common object must be to commit one of the five illegal objects specified in the section. Regarding

the first requirement of five or more than five persons the Indian law has deviated from the English law whereby 3 or more persons are enough to form unlawful assembly. This principle is well established in the case of ***R. v. Huntwhereby*** the requirement of three or more persons as a requirement for constituting unlawful assembly under English law was stated. The second point of difference between the English law and Indian law in this issue is that under English law no common purpose of the assembly is necessary unless a statute provides for such common purpose. Here it is to be noted that if the unlawful assembly is of five persons and if anyone of those 5 persons is acquitted, then the rest cannot be convicted for being a member of that unlawful assembly, unless there is evidence which shows that there were more unidentified members of the unlawful assembly. In the case of ***Mohan Singh v. State of Punjab***, five persons were charged under sec 302 plus sec 149 for committing murder as members of unlawful assembly.2 of them got acquitted and other 3 got convicted by the high court under sections 302 & 149.On appeal the Supreme Court held that the remaining 3 could not be convicted as mem- bers in the absence of any evidence which proves that there is evidence which shows that there were more unidentified members of the unlawful assembly.

Another important element for Unlawful Assembly is Common object and it is very clear that if there is absence of common object then there is no Unlawful Assembly. It must be proved that the members had common object and they were actuated by the common object. The word object here denotes the purpose or design to do a thing aimed at and that for it to become common it must be shared and known to each and every member of the assembly. That means that in an unlawful assembly of 5 persons each and every member of the assembly must have the knowledge that the rest of the 4 also know what that particular member knew of the common object. The common object must be concurred and consented by each and every member of unlawful assem- bly. Same object does not mean the same as common object unless it is shared and known and concurred by all members of unlawful assembly.

Regarding the third requirement five illegal objects are being specified in section 141. Regard- ing the first illegal object the section specifies the category against whom if by overawe or show of criminal force the unlawful assembly is forwarding the common object they will be convicted and they are :—

- The central or state government.
- The parliament or any state legislature.
- Any public servant in the exercise of the lawful power of such public servant.

Regarding the second illegal object specified in section 141 it is stated that if the common object of the assembly of five or more people is to resist the execution of any law or any process then it will be held as unlawful assembly. The meaning of this clause is that when the assembly of five or more person tries to resist the execution or implementation of any act or legislation or any provision thereof of any legislationthen it will be unlawful assembly.

Third illegal object is to commit any mischief or criminal trespass or other offence.The term other offence here means :—

- All offences against body or property.
- Thing punishable under a special law or local law with imprisonment of six months or upwards with or without fine

Regarding the fourth illegal object it is stated that use or show of criminal force by an assembly of five or more persons would be illegal if the purpose is to:-

- To take or obtain possession of any property— the word possession is the most important here as the clause gives more weightage to possession as compared to mere right to propertyas possession is considered pivotal in order to preserve peace and orderin the community as against mere legal right to property.
- To deprive any person of its enjoyment of a right of way, or of use of water other incorpo- real right of which he is in possession or enjoyment— in case of such incorporeal right or right of way or right of use of water, a person is said to be in possession or enjoyment of such right only when he is in peacefully exercising it.
- To enforce any right or supposed right— this clause makes it an offence if the assembly uses or shows criminal force to implement any right or supposed right. Here the distinction between any right and supposed right is that supposed right is no right at all. It does not exist and is a mere pretention to a right which is not there is reality and therefore no one has the right to vindicate his supposed right.

  Regarding the fifth illegal object it will be an unlawful assembly if their common object is to force or compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do by means of use or show of criminal force. The criminal intent is necessary here.

Section 142 specifies the way you can become the member of an unlawful assembly. Accord- ing to this section to hold a person responsible as a member of an unlawful assembly the following two conditions are essential which are as follows :—

1. The person joining the assembly must be aware of the facts which render the assembly unlawful as specified in section 141, I.P.C.
2. The person must either intentionally join that assembly or if he joined the assembly before being so aware, he must continue in it after becoming so aware.
3. The mere presence of a person in an assembly does not make him a member of an unlaw- ful assembly, unless it is proved that he did something or omitted to do something which would make him a member of an unlawful assembly or unless the case falls under section 142 of I.P.C. Section 143 of I.P.C. specifies punishment for unlawful assembly and it states the punishment for being a member of unlawful assembly is imprisonment for term which may extend to six months or with fine or both. Section 144 provides that where a member of an unlawful assembly is armed with a deadly weapon or any weapon which when used may be fatal to the victim, joins an unlawful assembly, he would be liable to an enhanced punishment which may extend to two years of imprisonment or with fine or with both. Section 145 makes continuance or joining in an unlawful assembly after being commanded to disperse punishable with upto two years of impris- onment or with fine or with both.

Rioting

Rioting is actually the aggravated form of unlawful assembly. Hence the essential requirements for the offence of rioting as given in section 146 of I.P.C. are as follows :—

1. There must be an unlawful assembly.
2. The common object of that unlawful assembly has to be to commit any of the five offences specified in section 141 of I.P.C. by the use of force or violence.
3. Force or violence must be used by the said unlawful assembly or any member thereof. Hence mere intention to use that force is not enough.
4. The accused must be a member of such an unlawful assembly.

The basic difference between unlawful assembly and rioting is the use of force or violence. Hence if the common object of the assembly is not illegal as per mentioned in section 141 of I.P.C. then it will not be either unlawful assembly or rioting even if in the latter case the force or violence is used. Mere use of force by persons assembled does not form rioting as it requires the use of force to achieve a common design. Hence degree of previous concert and deliberation has to be there. Therefore a sudden quarrel will not form rioting. Hence in a group violence may be used by the whole assembly or by any member thereof and even then each and every member is guilty of rioting. There is no right of private defence when a riot is premeditated on both sides. When both the parties are armed and prepared to fight it is immaterial who the first to attack is, unless it is shown that the party was acting within the legal limits of the right of private defence. Section 147 mentions the quantum of punishment for rioting and as per the section the punishment for com- mitting rioting is two years or with fine or with both. Section 148 of I.P.C is an aggravated form of rioting. Under this section when a person, being armed with a deadly weapon or a weapon which is likely to cause death, commits rioting, he is subjected to enhanced punishment which may extent to three years of imprisonment or fine or both.

Common Object

Section 149 does not create a new offence as in sections 34 and 120B. It incorporates the principle of vicarious liability and holds a person liable for an offence, which he might not have actually committed, by reason of his being a member of an unlawful assembly. The section pro- vides that every member of an unlawful assembly having a common object is responsible for acts committed by any other member of that assembly and is guilty of the substantive offence and hence punishable for that offence. Hence the essential ingredients to hold a member of an unlaw- ful assembly liable under this section the following two conditions must be fulfilled :—

I. 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.

II. 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.

Affray:

The term affray is derived from the French word “affraier” which means to terrify. Affray is similar both in English law and Indian law. The essential ingredients of affray are as follows :—

1. There must be fight between two or more persons.
2. The fight must take place in a public place.
3. The fighting must disturb the public peace.

Regarding the first requirement of affray the fight is necessary and it means that a contest or struggle in which two or more persons participates. It also means the actual exchange of blows between 2 or more than 2 persons, each of whom is trying to obtain mastery over the other. Hence threatening language will not in any case amount to affray. Courts have interpreted the “fight” in very unanimous manner. In the case of Jagannath Sah v. Emperor, the court held that in absence of actual exchange of blows or “marpit” there cannot be an offence of affray. In the case of ***M.Korga Shetty v. State of Mysore***, court found that actual exchange of blows is necessary for a fight but still considered it sufficient that blows were aimed regardless of whether proved that successful contact was made.

Regarding public place required to form the offence of affray the following may be considered for that purpose :—

I. Where the public go irrespective of whether they have a right to go or not.
II. Where the public is allowed access irrespective of any legal right thereto.
III. Where the public are actually in the habit of going, irrespective of any legal right thereto.
IV. Where the public undoubtedly are or may be.

Hence presence of public at a particular time at a particular place is the determining factor. Regarding the requirement of "public peace" the term is not defined either in the section or any- where in IPC. One of the views regarding public peace is that the gist of offence of affray consists in the terror it causes to the public. Another view holds it is enough that the disturbance was proved to be such as might very well intimidate reasonable person. The section 160 of the Indian penal code defines the punishment for affray. According to that section the punishment for affray is imprisonment for one month or fine of rs 100 or may be both.

The basic differences between Rioting and Affray are as follows :—

1. Rioting is the use of force or violence by an unlawful assembly or by any member thereof in prosecution of common object, which consists a minimum of five and maximum of more than five members. Whereas an Affray is committed by a minimum of two and maximum of more than two persons.
2. Rioting is done with a Common object in a public place or may be a private place. Affray is committed in a public place only as it cannot be done in a private place.
3. Every Member in case of Rioting (which is an aggravated form of Unlawful Assembly) is punishable, although some of them may not have personally used force or violence. In case of Affray the persons who actually are engaged in Affray are liable for Punishment.
4. Section 146 of the Indian Penal Code defines Rioting. Affray is defined in Section 159 of the Indian Penal Code.
5. The quantum of punishment in case of Rioting is imprisonment of two years or fine or both. In case of Affray the quantum of punishment is imprisonment of one month or with fine of Rs 100/- or with both.

OFF ENCES AFF ECT ING T HE HUMAN BODY

Culpable Homicide & Murder

The penal code has first defined culpable homicide under section 299 of the Indian penal code which is the genus and has then defined murder under section 300 of the Indian penal code. The residuary of culpable homicide after the special characteristics of murder has been removed from it is culpable homicide not amounting to murder (section 300, Exceptions 1 to 5). Culpable homicide can be broadly classified into two heads namely :—

- ❖ Culpable homicide amounting to murder (section 300)
- ❖ Culpable homicide not amounting to murder (section 300, Exceptions 1 to 5).

The important elements of the offence of culpable homicide are as follows :—

a) Causing of death

b) By doing an act

c) The act of causing death must be done :—

i) With the intention of causing death.

ii) With the intention of causing such bodily injury as is likely to cause death.

iii) With the knowledge that such act is likely to cause death.

Hence though an act may cause death, it will not amount to culpable homicide unless the above conditions are satisfied. Except in the cases of culpable homicide not being murder (the exceptions mentioned in section 300 from 1 to 6), culpable homicide is murder in the following circumstances:-

i) If the act by which the death is caused is done with the intention of causing death, or

ii) If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

iii) If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be in-flicted is sufficient in the ordinary course of nature to cause death, or

iv) If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Section 300 also lays certain exceptions under which culpable homicide is not murder and it is punished under section 304 of the Indian penal code and not under section 302 of I.P.C. The exceptions are :—

1. Grave and sudden provocation.
2. Private defence.
3. Exercise of legal power.
4. Without premeditation in a sudden fight.
5. Consent.

However if the culpable homicide not amounting to murder is committed on provocation ad- duced by the deceased then the following conditions must be satisfied which are :—

i) The deceased must have given provocation to the accused.

ii) The provocation must be grave.

iii) The provocation must be sudden.

iv) The offender, by reason of the said provocation, should have been deprived of his power of self-control.

v) The accused killed the deceased during the continuation of the deprivation of the power of self-control.

vi) The offender must have caused death of the person who gave the provocation or that of any other person by mistake or accident.

It may be stated that the defence of provocation is further limited by the following three provi- sos. That is to say the Exception is not available :—

i) If the accused courts (gives) provocation or uses it as an excuse for assaulting another, or

ii) If the act is legally done by a public servant in the exercise of his legal right as a public servant.

iii) If the act is done in the exercise of the right of private defence. Of all the exceptions mentioned in section 300 whereby culpable homicide is not murder the most important which has puzzled the courts from time to time, is what amounts to grave and sudden provocation, in consequence of which the accused is deprived of his power of self- control which will entitle him to the benefit of the exception. The answer to this question depends on a number of factors and is mainly a question of fact to be decided according to the facts and circumstances of each case. The scope of the doctrine has been well stated, by Simon, L.C., in the case of ***Mancini v. Director of Public Prosecutions*** as it is not all provocation that will reduce the crime of murder to manslaughter (culpable homicide) Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self-control, as the result of which he commits the unlawful act which causes death.

The test to be applied is that of the effect of the provocation on a reasonable man, as was laid down by the Court of Criminal Appeal in ***Rex v. Lesbini***, so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did.

The basic differences between Culpable Homicide and Murder is made in the following table

CULPABLE HOMICIDE	**MURDER**
1) Section 299 defines culpable homicide.	**1)** Section 300 defines murder
2) It is the genus. It means that all culpable homicides are necessarily not murder.	**2)** It is the species of the genus. It means that all murders are culpable homicide.
3) Section 304 lays down the punishment for the offence of culpable homicide not amounting to murder.	**3)** Section 302 mentions the punishment for the offence of murder.
4) The quantum of punishment in the case of culpable homicide is imprisonment for life, or imprisonment of either description for a term which may extend to ten years and shall also be liable for fine.	**4)** The quantum of punishment in case of the offence of murder is capital punishment or imprisonment for life and shall also be liable for fine.
5) A person commits culpable homicide, if the act be which the death is caused if done – **a.** With the intention of causing death. **b.** With the intention of causing such bodily injury as is likely to cause death **c.**With the knowledge that such act is likely to cause death.	**5)** Subject to certain exceptions culpable homicide is murder, if the act by which the death is caused is done – **a.** With the intention of causing death. **b.** With the intention of causing such bodily injury as the offender knows to be likely to cause thedeath ofthe person to whomtheharm is caused. **c.** With the intention of causing bodily injury to any person and the bodily injury intended to be in-flicted is sufficient in the ordinary course of nature to cause death. **d.** knowledge that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and even then commits such act without any excuse for incurring the risk of causing death or such injury.

This category of offences deals with the crimes connected and committed against the body of an individual and it starts from section 299 explaining culpable homicide and it extends till section 377 which deals with unnatural offences. This category of offences is contained in Chapter XVI of the Indian penal code.

Kidnapping & abduction

Kidnapping is of two kinds and they are :—

- Kidnapping from India (section 359).
- Kidnapping from lawful guardianship (section 361).

The essential ingredients for the offence of kidnapping from India are as follows :—

i) Conveying of any person beyond the limits of India.

ii) Without the consent of that person, or of someone legally authorised to consent on behalf of that person.

The essential requirements for the offence of Kidnapping from lawful guardianship are as follows :—

I. There must be taking away or enticing of a minor or a person of unsound mind.

II. Such minor must be under the age of 16 years if male and 18 years if female.

III. Taking away or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind and

IV. Taking or enticing must be without the consent of such guardian.

The gravity of the offence of kidnapping lies in the 'taking' or 'enticing away' of a minor under the specified age out of the keeping of the lawful guardian, without the consent of such guardian. It is very much understood that in this section the consent of the minor who is taken, or enticed away is immaterial and nor it is necessary that the taking or enticing away has to be accompanied with force or fraud as persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of his/her lawful guardian is enough to attract this section.

The basic difference between the offence of kidnapping from lawful guardianship and abduction are as follows :—

i) Kidnapping from lawful guardianship is committed with people of the age of 16 years if male and 18 years if female. But abduction may take place against a person of any age.

ii) Kidnapping is the removal of the person from lawful guardianship. Abduction has reference only to the person abducted.

iii) Kidnaping is simply taking away of a person from lawful guardianship. Abduction means force or compulsion or deceitful means is used.

iv) Consent in kidnapping is immaterial. Consent in case of abduction if free and voluntary condones abduction.

v) Intention of the kidnapper is immaterial. Intention of the abductor is an important factor in determining the guilt of the accused.

vi) Kidnapping is the substantive offence. Abduction is not a substantive offence and is punishable only when it is done with some intent as given in sections 363A, 364, 364A etc.

vii) Kidnapping is not a continuing offence. Abduction is a continuing offence.

viii) The punishment and definition is given in sections 359 to 361 and in section 363. Abduction is only mentioned in section 362.

Criminal force and assault:-

Section 350 of the Indian penal code defines the offence of criminal force. To designate a force as "criminal" it must be used :—

i) Intentionally against any person.

ii) Without the consent of the person.

iii) To commit an offence.

iv) With the intention to cause or knowing it to be likely to cause injury, fear or annoyance to the person to whom it is caused.

Section 351 defines the offence of assault and the gist of the offence lies in the effect which the threat creates in the mind of the victim. The following two conditions are essential in order to establish assault :—

- ❖ Making of any gesture or preparation by a person in the presence of another.
- ❖ Intention or knowledge of likelihood that such gesture or preparation will cause the person to apprehend that the person making it is about to use criminal force to him.

In case of assault it should be kept in mind that uttering of only words do not amount to assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

The basic point of difference between the criminal force and assault are as follows :—

i) Assault is defined in section 351 of the Indian penal code. But on the other hand criminal force is defined under section 350 of the Indian penal code.

ii) In case of Assault there is no physical contact. In case of criminal force there is physical contact or fear in the mind of the aggrieved person in the application of criminal force.

iii) In assault there is only an attempt to commit criminal force. But in case of criminal force the action of the wrong-doer is completed.

iv) Every assault may not include criminal force. On the other hand every criminal force must always include assault.

v) In order to constitute assault it is also necessary that the person so assaulted must on reasonable grounds, believe that the person assaulting has the ability to apply the criminal force so attempted by him. On contrary in case of criminal force no such belief is needed. The application of even the slightest amount of force is actionable. Even a slight touch to person or causing fear is sufficient.

vi) Assault is a lesser form of offence comparing with criminal force. Whereas criminal force is a higher form of offence comparing with assault.

Wrongful Restraint & wrongful confinement:

The constitution of India confers the right to freedom of movement to every person freely through- out the territory of India and guarantees personal liberty under articles 21 and 19 of the constitu- tion but this right is not absolute as reasonable and valid restrictions can be imposed upon them. These constitutional guarantees are available the state's action and inaction and not against individual action. The remedy against individual action of abridgement of another's right to move- ment lies under the criminal law in the form of wrongful restraint and wrongful confinement.

Wrongful restraint means obstructing a man from moving from one place to another where he has a right to be and wants to go. Hence to hold a person liable for this offence the obstruction must be :—

i) Voluntary obstruction of a person.

ii) The obstruction must be such as to prevent that person from proceeding in any direction in which he has a right to proceed.

However if the obstruction is made in good faith and the accused believes himself to have a lawful right to obstruct, no offence is committed in such a case.

Wrongful confinement as defined in section 340 is a form of wrongful restraint under which a person is wrongfully prevented from proceeding beyond certain circumscribed limits.

The basic difference between Wrongful restraint and Wrongful confinement are :—

ii) Wrongful restraint is defined in section 339 of the penal code. Wrongful confinement is defined in section 340 of the penal code.

iii) Wrongful restraint is genus. Whereas wrongful confinement is a species of wrongful restraint.

iv) Wrongful restraint is an offence which prevents a person from moving from one place to another where he has a right to be and wants to go. On the other hand wrongful confinement is an offence which keeps a person within certain circumscribing limits. The person wrongfully confined cannot go out of circumscribing limits, even if he wishes to.

v) In wrongful restraint there is only a partial suspension of one's liberty or locomotion and the person restrained is free to move in any direction other than the one blocked. Bu tin case of wrongful confinement there is total suspension of liberty beyond certain circumscribing limits.

vi) The punishment for the offence of wrongful restraint is mentioned in section 341 and it is one month or with fine of rs 500/- or both. Whereas the punishment for wrongful confinement is rs 1000 fine or one year or both.

OFFENCES AGAINST PROPERTY

This category of offences deals with the crimes connected and committed against the property of an individual be it movable property and sometimes connected with immovable property also. It starts from section 378 explaining theft and it extends till section 462. This category of offences is contained in Chapter XVII of the Indian penal code.

Theft

Section 378 defines the offence of theft and the following section 379 prescribes the punish- ment for the offence of theft. Theft is the dishonest removal of movable property out of the posses- sion of any person without his consent. It is thus an offence against possession and not against ownership of property. Hence according to the section to constitute the offence of theft the follow- ing conditions are very much necessary which are as follows :—

1. The accused must have a dishonest intention to take the property.
2. The property must be movable.
3. The property must be taken out of the possession of another person, resulting in wrongful gain by one person and wrongful loss to another.
4. The property must be moved in order to such taking, i.e., obtaining property by deception.
5. Taking must be without the person's consent either express or implied.

The punishment for the offence of theft is three years maximum imprisonment or with fine or both.

Extortion

Section 383 defines extortion and section 384 provides punishment for the offence of extor- tion. The essential conditions for the offence of extortion are as follows :—

i) Intentionally putting a person in fear of injury to himself or another.

ii) Dishonestly induces the person so put in fear to deliver to any person property or valuable security or anything sealed or signed which may be converted in to valuable security.

iii) There must be fear and delivery of property as delivery of property by the person put in fear is the essence of the offence.

The fear or injury must be of a real nature so as to unsettle the mind of the man upon whom it is exercised in such a way that the act does not remain voluntary. The injury that a person may be put in fear need not necessarily be a physical injury and injury to the character may also be an injury. Section 384 punishes the offence of extortion and according to this section the punishment for the offence of extortion is three years maximum imprisonment or with fine or both.

Difference between Theft and Extortionare as follows :—

i) In theft property is taken away without the consent of the owner. Whereas in extortion the consent of the owner is obtained but wrongfully.

ii) Theft is defined in Section 378 of the Indian penal code. Whereas extortion is mentioned in Section 383 of the Indian penal code.

iii) Theft may be only in respect of movable property. In case of extortion the property may be either movable or immovable.

iv) In case of theft there is no element of force. In case of extortion property is obtained by putting a person in fear of injury and thereby inducing him to part with his property.

v) There is no delivery of property by the owner in case of theft. In case of extortion there is delivery of property by the owner.

vi) In theft only dishonest intention is seen in the act of the accused. But in the case of extortion besides dishonest intention, the accused puts the owner in fear of injury and even to cause death.

Robbery

Section 390 defines Robbery and in common language robbery means to deprive a person of his or her property. In all cases of robbery there is either theft or extortion. Theft gets transformed into robbery in the following conditions which are as follows :—

i) If in order to the committing of the theft, the offender for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

ii) If in committing the theft, the offender for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

iii) If in carrying away or attempting to carry away property obtained by the theft, the offender for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

Extortion gets converted into robbery in the following conditions which are as follows :—

i) If the offender at the time of committing the extortion, is in the presence of the person put in fear and commits extortion by putting that person in fear of instant death, or of instant hurt or of instant wrongful restraint to that person and by so putting in fear, induces the person so put in fear then and there to deliver the thing delivered.

ii) If the offender at the time of committing the extortion, is in the presence of the person put in fear and commits extortion by putting that person in fear of instant death, or of instant hurt or of instant wrongful restraint to some other person and by so putting in fear, induces the person so put in fear then and there to deliver the thing delivered.

Dacoity

Section 391 defines Dacoity. Robbery is dacoity if the number of persons committing the of- fence is five or more in number. The offence of dacoity consists in the cooperation of five or more persons to commit or attempt to commit robbery. It is very essential that all the persons should share the common intention of committing robbery. The essential ingredients for the offence of dacoity are as follows :—

a. The accused commit or attempt to commit robbery

b. Persons committing or attempting to commit robbery and persons present or aiding must not be less than five.

c. All such persons should act conjointly.

The word conjointly here refers to united or concerted action of five or more persons partici- pating in the act of committing the offence.

The basic differences between robbery and dacoity are as follows :—

i) Section 391 defines dacoity and section 390 defines robbery.

ii) Dacoity is an aggravated form of robbery. Whereas robbery includes either theft or extortion.

iii) The main difference between the two is the number of participants. In case of dacoity the number of participants must be five or more persons. In case of robbery no minimum number of participants is prescribed. Robbery may be committed by one person to four persons.

iv) Dacoity is a more serious and heinous offence than robbery. Robbery on the other hand is lesser an offence than dacoity.

v) In dacoity all persons participating should act conjointly. There is no such requirement in case of robbery.

vi) In dacoity every member of the gang is punished whether he takes active part or not as the punishment is same for all the members of the offence. But in case of robbery the real wrong-doer is only punished.

vii) The punishment for dacoity is imprisonment for life or rigorous imprisonment which may extend to ten years and also fine. In the case of robbery the punishment is rigorous imprisonment which may extend to ten years and also fine and if the offence is committed on the highways between sunset and sunrise, the imprisonment may be extended to fourteen years.

Section 396 punishes dacoity with murder and the essential requirements for this section are :—

- ⌘ Dacoity was committed.
- ⌘ Five or more persons conjointly committed dacoity.
- ⌘ One or more of them committed murder.
- ⌘ The murder was committed during the commission of the offence.

The punishment mentioned for this section is death sentence or imprisonment for life or rigor- ous imprisonment which may extend to ten years and also fine.

Section 397 provides punishment for robbery or dacoity with the attempt to cause death or grievous hurt. The essential requirements of the section are :—

i) Robbery or dacoity was committed

ii) The accused used deadly weapons or caused grievous hurt or attempted to cause death.

iii) During the commission of robbery or dacoity, such weapons were used.

The punishment for the offence prescribed states that the minimum imprisonment shall be of seven years.

Criminal Br each of Trust

This offence is an aggravated form of criminal misappropriation and is meant to afford protec- tion to the property of a deceased which under the circumstances needs special protection. The section is intended to punish strangers and servants who can have possibly no right or interest in the effects of a dead man. Hence to attract this section the following ingredients must exist:-

i) The property must be a movable property.

ii) Such property was in possession of the deceased at the time of his death.

iii) The accused misappropriated it or converted it to his own cause.

iv) The accused did so dishonestly.

The punishment for the offence is three years in normal circumstances and seven years if the person accused is clerk of the deceased person.

OFFENCES RELATING TO MARRIAGE

This chapter consists of six sections and deals with offences related to marriage. It falls from section 493 to 498 and forms Part XX of the Indian penal code. The offences under this chapter can be broadly discussed under the following four heads which are as follows:—

1. Mock marriage (Section 493 and 496).
2. Bigamy (Section 494 and 495)
3. Adultery (Section 497)
4. Criminal elopement (Section 498)

Section 493 punishes the offence committed when a man either married or unmarried, in- duces a women to become as he thinks his wife, but in reality is his concubine. The form of marriage ceremony depends on the race or religion to which the person entering into marriage belongs. The section penalise only the man and it does not penalise mere cohabitation or sexual intercourse with a women who is not lawfully married to him but foresees the case

a. Firstly, when a man deceitfully induces a women to have sexual intercourse with him.
b. Secondly causing her to believe that she is lawfully married to him.

In other words section 493 only punishes a man for obtaining the body of a woman deceitful assurance that he is her husband. The essence of the offence is therefore the deception caused by a man on a woman in consequence of which she is led to believe that she is lawfully married to him, while in fact they are not lawfully married. In order to establish deception there must be allegation that the accused falsely induced her to believe that she was legally married to him. The punishment for this offence is that imprisonment for a term which may be extended for ten years may be given and fine shall also be applicable.

Bigamy

Section 494 defines bigamy and also provides the punishment for the offence. The offence of bigamy is similar to bigamy contained in section 57 of the English law termed the Person Act, 1861. The scope of this section is very wide and it covers both the husband and wife. Under this section bigamy is an offence in case of all persons living in India irrespective of religion of either sex, namely Hindus, Christians, Parsis except Muslims males. However in case of a Muslim fe- male there is a distinction between them and the Muslim males (who can up to four wives at a particular time) as for the females the rule is of monogamy. Thus a Muslim male marrying a fifth wife during the continuance of earlier four marriages and a Muslim women marrying during the continuance of an earlier marriage are punishable under section 494, I.P.C.

The essential ingredients of the offence of bigamy are as follows :—

i) That the accused spouse had already been married.
ii) That while the first marriage was subsisting, the spouse contracted a second marriage.
iii) That both the marriages have been valid in the sense that the essential ceremonies, such as Dutta Homa and Saptapadi required by the personal laws governing the parties had been duly performed (in the case of Hindus).

The section 494 also expressly exempts a person for bigamy in the following situations which are as follows :—

a) When the first marriage has been declared void and annulled by a court of competent jurisdiction.

b) When the husband or wife has been continually absent for a period of seven years or more.

c) The absent spouse must not have been heard of by the other party as being alive within that period.

d) The party marrying must inform of the fact of absence to the person whom he or she marries.

e) When a valid divorce has taken place according to the law of the spouse.

The famous English case of Bigamy is the case of Tolson v. Tolson, wherein Mrs Tolson was married to Tolson on December 11, 1880. Tolson deserted her on December 13, 1881. She and herfathermade enquires about him and learnt from his elder brother and from general report that he had been lost in a vessel bound for America, which went down with all hands on board. On January 10, 1887 after a gap of 6 years the prisoner supposing herself to be a widow, went through the ceremony of marriage with another man. In December, 1887 Tolson returned from America after six years and accused Mrs Tolson of the offence of bigamy. The House of Lords by a majority of nine to five quashed the conviction and held that a reasonable belief in good faith in the death of the first spouse negatives mens rea and is a good defence to a charge of bigamy, although he or she has not been continuously absent from the defendant for seven years.

The famous Indian case regarding the offence of bigamy is Sarla Mudgal v. Union of India wherein the husband of the petitioner changed his religion from Hinduism to Islam so that he can get the license of marrying again without falling under the offence of Bigamy. In this case the Supreme Court held that change of religion does not permit a person to defeat the provisions of law and give licence to commit bigamy. The court held that when one or the other spouse, i.e., husband or wife renounces his or her religion and embraces other religion (e.g. Islam which permits polygamy for men) in order to marry again during the life time of the former spouse then in that case section 494 of the penal code is attracted. Bigamy is an offence in Singapore irrespec- tive of the religion for both male and female. Malaysia also prohibits bigamy but for the Muslim males. The punishment for bigamy has been fixed as term of imprisonment which may extend to seven years and fine. The offence is non-cognizable, bailable, and compoundable also.

Under section 495 of the penal code an aggravated form of the offence of bigamy is mentioned. Here in this section the accused had already been married to some person and his/her first mar- riage is valid legally and the other spouse is alive and inspite of that he/she contracted a second marriage and most importantly when marrying the second time the accused concealed from the person whom the accused married the second time, the fact of the first marriage. The punishment for this offence is imprisonment for a term which may extend to ten years and fine. The offence is non-cognizable, bailable, non-compoundable and triable by a magistrate of first class.

Section 496 seeks to punish fraudulent or mock marriages. It applies to those situations where a fake ceremony is gone through pretending it to be a validmarriage. The essential ingredients to this offence are as follows:-

i) The accused must have gone through the ceremony of being married.

ii) The performance of such ceremony should not constitute a lawful marriage.

iii) The accused must have known that his going through such ceremony did not amount to his lawful marriage.

iv) The accused must have acted dishonestly or with some intent to defraud.

But if the accused intends to perform a valid marriage and honestly goes through the necessary ceremonies during the lifetime of the other spouse it will be an act of bigamy punishable under section 494. This section and section both deals with mock or fraudulent marriages but there is some basic difference between the two sections which are:-

a) Section 493 makes cohabitation or sexual intercourse by deceitfully making the women believe that the accused was lawfully married to her, and makes her live with him as wife and husband. Whereas in section 496 deals with cases wherein ceremony is fraudulently performed with no intent of lawful marriage.

b) Section 493 only affects the man while section 496 effects a person of both sex i.e. both a man and woman.

c) Section 496 does not require deception, cohabitation or sexual intercourse as an essential requirement for the offence but a dishonest or fraudulent abuse of the marriage ceremony is sufficient. On the contrary in section 493 deception is necessary followed by cohabitation or sexual intercourse to hold a person liable.

Adultery

Adultery is an invasion on the right of the husband over his wife. It is an offence against the sanctity of the matrimonial home and an act which is committed by a man. Adultery is an offence committed by a man against a husband in respect of his wife. To constitute an offence of adultery the following conditions are essential:—

i) Sexual intercourse must be committed with the wife of another man.

ii) The person must have knowledge or has reason to believe that the woman is the wife of another man.

iii) Such sexual intercourse must be without the consent or connivance of the husband.

iv) Such sexual intercourse must not amount to the offence of rape.

Hence adultery is not committed in the following cases :—

i) When there is sexual intercourse by the man with an unmarried woman.

ii) When there is sexual intercourse by the man with a prostitute.

iii) When there is sexual intercourse by the man with a widow.

iv) When there is sexual intercourse even with a married woman provided the husband of such woman consents to it or gives his accord to it.

Hence it is very clear that here only the man is held guilty of the offence of adultery and the women is not convicted or punished under this section. Here the wife is not punishable as an adultress, or even as an abettor of the offence, despite being a consenting party to the crime. This point is highly criticised and critics think that is high time that women be brought under the purview of the section. The existing law glorifies gender bias and this is something that women find distasteful. The law was written nearly 150 years ago and now the situation of women in the society has changed considerably compared to the situation i50 years ago. Hence there is need to change the existing law regarding adultery. The Indian penal code (Amendment) Bill, 1972 sug- gested that women be brought under the purview of section 497 but sadly the amendment could not be carried away and the law remains such.

The famous Indian cases regarding the offence of adultery is ***Yusuf Abdul Aziz v. State of Bombay*** and ***Sowmithri Vishnu v. Union of India*** and another, wherein it was contended that section 497 is violative of articles 14 and 15 of the constitution and also violative of article 21 of the Indian constitution on the following grounds :—

1. It confers upon the husband the right to prosecute the adulterer but it does not confer any right upon the wife to prosecute the woman with whom her husband has committed adultery.
2. It does not confer any right on the wife to prosecute the husband who has committed adultery with another woman.
3. It does not take in cases wherein the husband had sexual intercourse with unmarried woman or widow with the result that the husband has, as it were, a free license under the law to have extra marital relationship with unmarried or widow woman.
4. It was also contended that the section does not contain provision for hearing wife, therefore it is violative of Art 21 of the Indian constitution.

The Supreme Court rejected these arguments and held that it cannot be said that in defining the offence of adultery so as to restrict the class of offender to men, any constitutional provision is infringed. It held that sex is a reasonable and sound classification accepted by the constitution, which provides that state can make special provisions for women and children vide article 15 clause 3 of the constitution. In connection with the violation of article 21 is concerned the court held that there is no violation of article 21 as though this section does not contain provision for hearing wife but if she makes an application in the trial court that she should be given opportunity of being heard, then she would be given that opportunity.

The comparative analysis of the offence of adultery and its subsequent punishment is essential in order to understand its standing in the universal arena. The state of Jammu and Kashmir which operates the Ranbir Penal Code punishes the married woman as an abettor for the offence of Adultery. In France a wife guilty of adultery is punished for a period ranging from three months to two years of imprisonment. But the husband may put an end to her sentence by agreeing to take her back. The adulterer is punishable similarly. In Pakistan adultery is viewed as a serious offence and both the man and women are subjected to punishment which may extend to the death sen- tence. In Malaysia, Singapore and Hong Kong adultery is not an offence under the penal code.

The major differences between Adultery and Rape are as follows: —

1. Adultery is an offence defined in section 497 under Chapter XX of the Indian penal code dealing with the Offences relating to Marriage. Whereas Rape is an offence defined under sections 375 and 376 of the code. It is defined in Chapter XVI of the code relating to offences affecting the Human Body.
2. Adultery is an Offence against the Husband. Whereas Rape is an offence against the women herself irrespective of married or unmarried.
3. In case of adultery the consent of the women is immaterial. In fact a woman is always a willing and consenting party to sexual intercourse. But in case of rape consent is a defence. The offence of Rape is committed against the will and consent of the woman and the exception is in case of a girl under sixteen years of age wherein even a consent given by her would be not a defence to the offence of rape.
4. Adultery can be committed only against married woman. But Rape can be committed against anybody be it married or unmarried.
5. Adultery is less serious offence and punishment may extend up to five years imprisonment or fine or both. Whereas Rape is more serious and punishment is more severe in case of Rape which can be extended even to imprisonment for life.

The major differences betweenAdultery and Bigamy are as follows :—

1. Adultery is an offence defined in section 497 of the Indian Penal Code. Whereas Bigamy is an offence defined in section 494 of the Indian Penal Code.
2. In adultery there is sexual intercourse with the wife of another person without his consent or connivance of such person. But offence of Bigamy consists in marrying second spouse in the life time of the wife or husband and when the first marriage is legally continuing.
3. In adultery if sexual intercourse is done with the wife with the consent of the husband, it is not an offence. In case of Rape consent of the husband or wife will not exempt the offender from conviction. Even if the guilty spouse married second time with the consent of the other party of the first marriage still he/she would be punished under Bigamy.
4. In Adultery wife is not punished even though she is a willing and consenting party to sexual intercourse. Whereas in Bigamy either sex may be guilty.
5. Section 494 of the Indian Penal Code applies to both sexes of all religions alike. But Bigamy is not committed by Muslim Male till they do not marry the 5th time while the first four marriages are legally operative.

Section 498 of the penal code deals with offence of criminal elopement. This section like the section 497 is intended to protect the rights of the husband and not that of the wife. The essential conditions for the application of this section are as follows :—

a) Taking or enticing away or concealing the wife of another man from (i) the husband or (ii) from any person having care of her on behalf of the husband.

b) Knowledge or reason to believe that she is the wife of another man.

c) Such taking, concealing or detaining must be with the intent that she may have illicit intercourse with any person.

For the purposes of this section enticement means some kind of persuasion or allurement. It is important to take note of the point that no court can take cognizance of an offence under this section except upon a compliant made by the husband of the woman, or in his absence made with permission of the court by some person who had care of such woman on the husband's behalf at the time when such offence was committed. In this section like adultery the consent of the woman is no consent and is no ground for defence for the convicted man.

CRIMINAL INTIMIDATION

According to sec 503. Criminal intimidation means, whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation - A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

ESSENTIALS: In order to complete an offence under Section 503, the following ingredients must exist:

1. Threatening a person with an injury to his person, reputation or property (or to that of any other person he has interest in); and

2. The threat must be with the intention to:

(a) cause alarm to that person; or

(b) cause that person to do something he is not legally bound to do for avoiding the harm that may arise if he does not do it; or

(c) cause that person to do omit something he is legally bound to do for avoiding the harm that may arise if he did it.

****