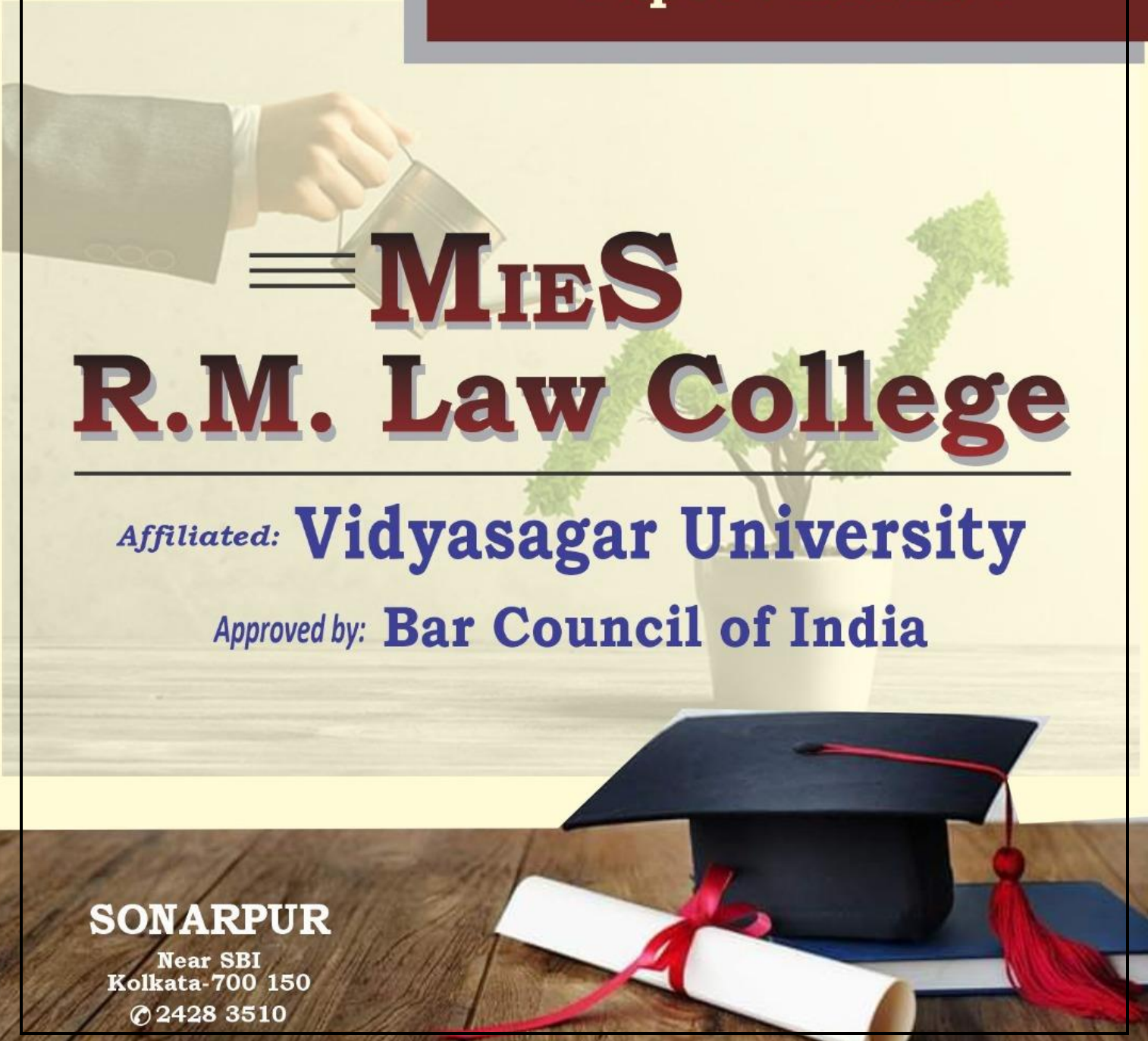


Subject :
Law of Crime- I
(BNS)

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NATURE AND DEFINITION OF CRIME

Nature and scope 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. 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 as 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.

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 act or omission which the state desires to punish.
2. For that act or omission punishments are inflicted by the state.
3. In determining the guilt of the persons rules are framed by the society.

ESSENTIAL ELEMENTS OF 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 intention 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 sit 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.

TWO ELEMENTS IN CRIME:

- *mens rea and*
- *actus reus*

Thus, two components are present in every crime and are an element that is both mental and physical, known, 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 maxim Actus non facit reum 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 punished. 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. The concept actus reus refers to the physical element in crime. According to Russel actus reus is the “physical result of human conduct”. According to Kenny actus reus is such result of human conduct as the law seeks to prevent. rea is used by using the terms intentionally, voluntarily, fraudulently, negligently etc.

Exclusion of mens rea:

There are certain offences which require strict adherence for the purpose of protecting social 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.

Ignorantia Facit Doth Excusat :

Ignorance of fact excusable. As there is no necessary intention to commit an offence. Ignorance 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 excusable. 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 husband 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

Sections 1(3) to 1(5) of the Bhartiya Nyaya Sanhita 2023 talk about the territorial extent of the Sanhita. It gives a general idea about the territorial extent of jurisdiction where the Bhartiya Nyaya Sanhita can be applied and which type of persons can be held liable under this Sanhita.

Territorial jurisdiction of BNS is that it extends to the whole of India and beyond.

Intra-Territorial Jurisdiction :Section 1(3) of the Sanhita sheds light upon the intra-territorial jurisdiction of BNS. It declares that for every offence committed within the territory of India, the offender shall be liable under this Sanhita.

- Section 1(4) and 1(5) of the Bhartiya Nyaya Sanhita 2023 gives extra-territorial operation to the Sanhita. Section 1(4) says that if a person liable by any law for the time being in force in India commits an offence beyond India, he will be held liable and tried in the same manner as if he had committed the crime within India. Sec 1(5) The provisions of this Sanhita shall also apply to any offence committed by--
 - (a) any citizen of India in any place without and beyond India;
 - (b) any person on any ship or aircraft registered in India wherever it may be;
 - (c) any person in any place without and beyond India committing offence targeting a computer resource located in India.

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

- Illustration.

A, who is a citizen of India, commits a murder in any place without and beyond India. He can be tried and convicted of murder in any place in India in which he may be found.

- 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.

GENERAL EXPLANATIONS

SOME OF THE IMPORTANT EXPLANATIONS:

Sec 2(4) "counterfeit".---A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

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

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

Sec 2(28) "public servant" means a person falling under any of the descriptions,
namely:—

(a) every commissioned officer in the Army, Navy or Air Force;

(b) 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;

(c) every officer of a Court 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 to perform any of such duties;

(d) every assessor or member of a panchayat assisting a Court or public servant;

(e) every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court, or by any other competent public authority;

(f) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(g) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

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

(i) 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;

(j) every person who holds any office by 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;

(k) every person—

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

(ii) in the service or pay of a local authority as defined in clause (31) of section 3 of the General Clauses Act, 1897, a corporation established by or under a Central or State Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013.

Explanation.—

(a) persons falling under any of the descriptions made in this clause are public servants, whether appointed by the Government or not;

(b) 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 is a public servant;

(c) “election” means 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 for the time being in force.

Illustration.

A Municipal Commissioner is a public servant;

2(31) "valuable security" means 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 lawful holder of it, the endorsement is a "valuable security";

2(33) "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 2(36) "wrongful gain" means gain by unlawful means of property to which the person gaining is not legally entitled;

Sec 2(37) "wrongful loss" means the loss by unlawful means of property to which the person losing it is legally entitled;

Sec 2(38) "gaining wrongfully" and "losing wrongfully".---A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property;

COMMON INTENTION AND COMMON OBJECTIVE:

Under the Bharatiya Nyaya Sanhita (BNS), **Common Intention** (Section 3(5)) and **Common Object** (Section 190) are legal doctrines of joint and constructive criminal liability. 'Common intention' should not be confused with 'similar intention'; it means 'intention common to all. To come within the mischief of this section the following ingredients must be present:

- (a) there must be a common intention to commit a crime;
- (b) such act must be committed in furtherance of the common intention; (c) such act must result in the commission of a crime;
- (d) such common intention must be common to two or more persons;
- (e) such persons (more than two or more) must have done the act or must have participated in the commission of that act.

3(5) 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.

The word everyday object defined under Section 189 of the BNS 2023, an assembly (meeting) of five or more individuals becomes illegal when they gather with a common aim to commit any of the following:

- (a) Employ criminal force (or threaten to do so) with intent to intimidate the Central or State Government, Parliament, State Legislature, or a public servant acting in discharge of his duty.
- (b) Obstruct the application of the law or any legal order (such as a warrant or court order).
- (c) Commit any offence, mischief, or criminal trespass.
- (d) Threaten or apply criminal force to, steal someone's property. Prevent someone from exercising their lawful rights (such as a right of way, water, or other non-tangible rights). Enforce a claim or right (even falsely thought).
- (e) Make someone do what they're not legally obliged to do, or prevent them from doing what they're legally authorised to do with criminal force or its threat.

DIFFERENCE BETWEEN COMMON INTENTION AND COMMON OBJECT

- Common Intention implies a meeting of mind of the persons charged of the crime, requiring a preliminary unity. Whereas Common Object refers to a purpose which is shared by all the members of an unlawful assembly.
- Number of persons required for common intention the word used as several person whereas in case of common object 5 person is required.
- In common intention everyone is held liable as if they committed the act themselves. In common objective members are liable for any offence committed in the group's pursuit of the common object, provided they knew it was likely to be committed.
- Common intention requires active participation or overt acts by the accused to further the intention. In case of common object mere membership in the unlawful assembly is enough, even if the person does not actively participate in the violence.

Objective of 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 harmony 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 deterring offenders, by preventing the actual offenders from committing further offences and by reforming 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 Section 4 of the Bharatiya Nyaya Sanhita (BNS), 2023

4. The punishments to which offenders are liable under the provisions of this Sanhita are—

- (a) Death;
- (b) Imprisonment for life;
- (c) Imprisonment, which is of two descriptions, namely:—
 - (1) Rigorous, that is, with hard labour;
 - (2) Simple;
- (d) Forfeiture of property;
- (e) Fine;
- (f) Community Service.

Theories of punishment

The various theories of punishment are as follows :—

Deterrent theory :— Deterrence is virtually regarded as the main function of punishment. 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 purpose by arousing sympathy towards the criminal by the public.

Preventive theory:— Another object of punishment is prevention or disablement. Offenders 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.

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. **Sections 14 to 44 deals with** general exceptions under the Bharatiya Nyaya Sanhita (BNS)

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

- ❑ **Mistake of Fact (Sec. 14-15):** Acts done by a person who is bound by law or—due to a good-faith mistake of fact—believes themselves justified by law to do it. (Mistake of law is not an exception).
- ❑ **Judicial Acts (Sec. 15-16):** Acts performed by a judge acting judicially, or actions taken in pursuance of a court order.
- ❑ **Accident (Sec. 18):** Unintended harm caused while performing a lawful act with proper care and caution.
- ❑ **Child Immunity (Sec. 20-21):** Absolute immunity for children under 7 years old. 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 criminal liability differs from country to country. In England, Malaysia and Singapore the age of complete 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.

Children between 7 and 12 are also protected if they lacked the sufficient maturity to understand the nature and consequences of their act.

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.

□ Unsoundness of Mind (Sec. 22): Acts committed by a person who, due to mental illness, is incapable of knowing the nature of the act or that it is wrong/contrary to law. Insanity

Section 22 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 “Furiosus 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 reasoning 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 immediately 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 those 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.

- ❑ **Intoxication (Sec. 23-24):** Excusable only if the intoxication was involuntary and rendered the person incapable of understanding their actions or intent.
- ❑ **Consent (Sec. 25-33):** Harm (short of death or grievous hurt) caused to an adult of sound mind with their valid, free, and informed consent. It also covers medical procedures and acts done in good faith for the benefit of minors or persons with mental illness by their guardians.
- ❑ **Trifling Acts (Sec. 33):** Minor harms that would not cause a person of ordinary sense and temper to complain.
- ❑ **Communication in Good Faith (Sec. 31):** Unintended harm resulting from a communication made in good faith for the benefit of the individual.

Right of Private Defense (Sec. 34-44): Every person has the right to use proportional, reasonable force to defend their own body, the body of others, and their property or the property of others against unlawful aggression. Under specific circumstances, this extends to causing death.

Private defence

Sections 34 to 44 of the BNS deals with 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 37 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 38 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 41 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.

ABETMENT, CRIMINAL CONSPIRACY

Abetment of a thing: According to sec **Section 45 BNS**

A person abets the doing of a thing, who:

1. instigates any person to do that thing; or
2. engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
3. intentionally aids, by any act or illegal omission, the doing of that thing.

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

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

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

Sec 46 provides for abettor: A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

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

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

Illustrations:

1. A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.
2. A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

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

Illustrations:

1. A, with a guilty intention, abets a child or a person with mental illness to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.
2. A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.
3. A instigates B to set fire to a dwelling-house. B, in consequence of his mental illness, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.
4. A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

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

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

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

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

Sec 61 provides for criminal conspiracy:

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

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

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

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

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

Offences Against Woman And Children

The Bhartiya Nyaya Sanhita recognises these offences against women and children in Chapter V (Sections 63 – 99). One of the most gruesome ways violence can be inflicted on women is through sexual offences. Sexual Offences are of a dynamic range which has been discussed under the BNS from Sections 63 – 73 in Chapter V of the statute. These offences not only cause bodily injury to the women, but also cause long-term psychological effects on the women's minds and snatch away their modesty.

The Bhartiya Nyaya Sanhita defines the crime of rape in India under section 63 of the statute. A man is said to commit “rape” if he:

1. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
2. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
3. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
4. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:
 1. against her will.
 2. without her consent.
 3. with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
 4. with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
 5. with her consent when, at the time of giving such consent, by reason of mental illness or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
 6. with or without her consent, when she is under eighteen years of age.
 7. when she is unable to communicate consent.

Sec 64 provides for whoever, commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

Whoever,

1. being a police officer, commits rape,
 1. within the limits of the police station to which such police officer is appointed; or
 2. in the premises of any station house; or
 3. on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or
2. being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
3. being a member of the armed forces deployed in an area by the Central Government or a State Government commits rape in such area; or
4. being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
5. being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
6. being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
7. commits rape during communal or sectarian violence; or
8. commits rape on a woman knowing her to be pregnant; or
9. commits rape, on a woman incapable of giving consent; or
10. being in a position of control or dominance over a woman, commits rape on such woman; or
11. commits rape on a woman suffering from mental illness or physical disability; or
12. while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
13. commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Tuka Ram and Anr. vs State of Maharashtra

Mathura custodial rape case, the rape laws experienced some major changes. Custodial rape, which relates to rapes committed by law enforcement, was included to the definition of rape. Consequently, the Indian Evidence Act of 1872 was amended to include 114 A. This new section, which related to custodial rapes, assumed a lack of consent in certain circumstances if the victim stated so. The IPC was also amended to include Section 228A, which forbade victim character assassination and made it illegal to reveal the name of victims of specific crimes, including rape.

Thus, under Section 64 of the Bhartiya Nyaya Sanhita 2023, if a person commits the act of rape, generally he will be subjected to rigorous imprisonment for minimum of 10 years, which may also extend to a life imprisonment sentence, and shall also be liable to fine.

Sec 70 provides for Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine;

Sec 75 provides for a man committing any of the following act:

1. physical contact and advances involving unwelcome and explicit sexual overtures; or
2. a demand or request for sexual favours; or
3. showing pornography against the will of a woman; or
4. making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

Under Section 67 of BNS 2023, If a man has sexual intercourse with his wife, who is living separately for the time being, under a decree of separation or otherwise, he shall be subjected to rigorous imprisonment for a minimum of 2 years, which may extend to 7 years, and shall also be liable to a fine. The status of Marital Rape is, unfortunately still legal except in exceptional cases like the scenario this section portrays.

Voyeurism

Under Section 76 of the Sanhita, whoever watches, or clicks pictures or videos of a woman engaged in a private act in a situation where she usually would not expect being observed by anyone, or distributes such image shall be punished –

- on first conviction with imprisonment of either description for a minimum of 1 year, which may extend to 3 years, and shall also be liable to fine,
- on a second or subsequent conviction with imprisonment of either description for a minimum of 3 years, which may extend to 7 years, and shall also be liable to fine.

Sec 77 deals with Whoever watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

OFFENCES RELATING TO MARRIAGE

This chapter falls from section 80 to 87 of BNS :

Sec 80 provides for dowry death where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Section 82 of BNS provides bigamy and also provides the punishment for the offence.

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).

Sec 85 provides for whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. or the purposes of section 85 cruelty” means:

1. any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
2. harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Offences Against Child

Sec 93. Exposure and abandonment of child under twelve years of age, by parent or person having care of it.—Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

Sec 94. Concealment of birth by secret disposal of dead body.—Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth,

intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Sec 95. Hiring, employing or engaging a child to commit an offence.—Whoever hires, employs or engages any child to commit an offence shall be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself.

Explanation.

—Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section.

Sec 96. Procurement of child.—Whoever, by any means whatsoever, induces any child to go from any place or to do any act with intent that such child may be, or knowing that it is likely that such child will

sec 97. Kidnapping or abducting child under ten years of age with intent to steal from its person.—

Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sec 98. Selling child for purposes of prostitution, etc.—Whoever sells, lets to hire, or otherwise disposes of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation 1.—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation 2.—For the purposes of this section “illicit intercourse” means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a *quasi*-marital relation.

Sec 99. Buying child for purposes of prostitution, etc.—Whoever buys, hires or otherwise obtains possession of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which shall not be less than seven years but which

may extend to fourteen years, and shall also be liable to fine.

OFFENCES AGAINST PUBLIC TRANQUILITY

Under the Bharatiya Nyaya Sanhita (BNS), 2023, offences against public tranquility are grouped under Chapter XI (Sections 189 to 197). These laws penalize group actions that disrupt social peace, threaten national integration, or promote enmity.

Unlawful Assembly:

Unlawful assembly is defined in section 189 of BNS. 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. Hunt* whereby 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 members 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 assembly. 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. Regarding 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 legislation then 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 property as possession is considered pivotal in order to preserve peace and order in 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.

Rioting

Rioting is actually the aggravated form of unlawful assembly. Hence the essential requirements for the offence of rioting as given in section 191 of BNS 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 191 BNS 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 181 of BNS 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 committing 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 extend 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 provides 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 unlawful 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.

OFFENCES AFFECTING THE HUMAN BODY

Culpable Homicide & Murder

BNS has defined culpable homicide under section 100 & murder under section 101. Culpable homicide can be broadly classified into two heads namely :—

- ❖ Culpable homicide amounting to murder (section 101)
- ❖ Culpable homicide not amounting to murder (section 101 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.

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 inflicted 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 101 also lays certain exceptions under which culpable homicide is not murder 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.

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

CULPABLE HOMICIDE

1) Section 299 defines culpable homicide.

2) It is the genus. It means that all culpable homicides are necessarily not murder.

3) Section 304 lays down the punishment for the offence of culpable homicide not amounting to murder.

4) The quantum of punishment in the case of culpable homicide is imprisonment for life, or imprisonment of either description for for a term which may extend to ten years and shall also be liable for fine.

5) A person commits culpable homicide, if the act be which the death is caused if done – is

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.

MURDER

1) Section 300 defines murder

2) It is the species of the genus. It means that all murders are culpable homicide.

3) Section 302 mentions the punishment for the offence of murder.

4) The quantum of punishment in case of the offence of murder is capital punishment or imprisonment for life and shall also be liable fine.

5) Subject to certain exceptions culpable homicide is murder, if the act by which the death

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 the death of the person to whom the harm is caused.

c. With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

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.

Sec 111 111. Organised crime.—(1) Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute organised crime.

Whoever commits organised crime shall,—

48(a) if such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine which shall not be less than ten lakh rupees;

(b) in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

(3) Whoever abets, attempts, conspires or knowingly facilitates the commission of an organised crime, or otherwise engages in any act preparatory to an organised crime, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

(4) Any person who is a member of an organised crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

(5) Whoever, intentionally, harbours or conceals any person who has committed the offence of an organised crime shall be punished with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees:

Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

(6) Whoever possesses any property derived or obtained from the commission of an organised crime or proceeds of any organised crime or which has been acquired through the organised crime, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than two lakh rupees.

(7) If any person on behalf of a member of an organised crime syndicate is, or at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten years and shall also be liable to fine which shall not be less than one lakh rupees.

Sec 112. Petty organised crime.— Whoever, being a member of a group or gang, either singly or jointly, commits any act of theft, snatching, cheating, unauthorised selling of tickets, unauthorised betting

or gambling, selling of public examination question papers or any other similar criminal act, is said to commit petty organised crime.

Explanation.

—For the purposes of this sub-section “theft” includes trick theft, theft from vehicle, dwelling house or business premises, cargo theft, pick pocketing, theft through card skimming, shoplifting and theft of Automated Teller Machine.

(2) Whoever commits any petty organised crime shall be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine.

Sec 113. Terrorist act.—Whoever does any act with the intent to threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India or with the intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substance or inflammable substance or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substance (whether biological, radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause,—

(i) death of, or injury to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iv) damage to, the monetary stability of India by way of production or smuggling or circulation of counterfeit Indian paper currency, coin or of any other material; or

(v) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatening to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act,
commit a terrorist act.

Sec 114. Hurt.—Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Sec 115. Voluntarily causing hurt.—(1) Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”

(2) Whoever, except in the case provided for by sub-section (1) of section 122 voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

Sec 116. Grievous hurt.—The following kinds of hurt only are designated as “grievous”, namely:—

- (a) Emasculation;
- (b) Permanent privation of the sight of either eye;
- (c) Permanent privation of the hearing of either ear;
- (d) Privation of any member or joint;
- (e) Destruction or permanent impairing of the powers of any member or joint;
- (f) Permanent disfiguration of the head or face;
- (g) Fracture or dislocation of a bone or tooth;
- (h) Any hurt which endangers life or which causes the sufferer to be during the space of fifteen days in severe bodily pain, or unable to follow his ordinary pursuits.

117. Voluntarily causing grievous hurt.—(1) Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said “voluntarily to cause grievous hurt”

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Explanation.

—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Sec 126. Wrongful restraint.—(1) Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.

—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

(2) Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both.

Sec 127. Wrongful confinement.—(1) Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said “wrongfully to confine” that person.

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 re- strain.
- 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 confine- ment 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 circum- scribing 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 confine- ment is rs 1000 fine or one year or both.

Sec 128. Force.—A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling:

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the following three ways, namely:—

- (a) by his own bodily power;
- (b) by disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person;
- (c) by inducing any animal to move, to change its motion, or to cease to move.

Sec 129. Criminal force.—Whoever intentionally uses force to any person, without that person's

consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.;

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

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

Sec 130. Assault.—Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.

—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

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

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

Kidnapping & abduction

Sec 137 provides for Kidnapping.—(1) Kidnapping is of two kinds: kidnapping from India, and kidnapping from

lawful guardianship—

(a) whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India;

(b) whoever takes or entices any child or any person of unsound mind, out of the keeping of the lawful guardian of such child or person of unsound mind, without the consent of such guardian, is

said to kidnap such child or person from lawful guardianship.

Explanation.

—The words “lawful guardian” in this clause include any person lawfully entrusted with the care or custody of such child or other person.

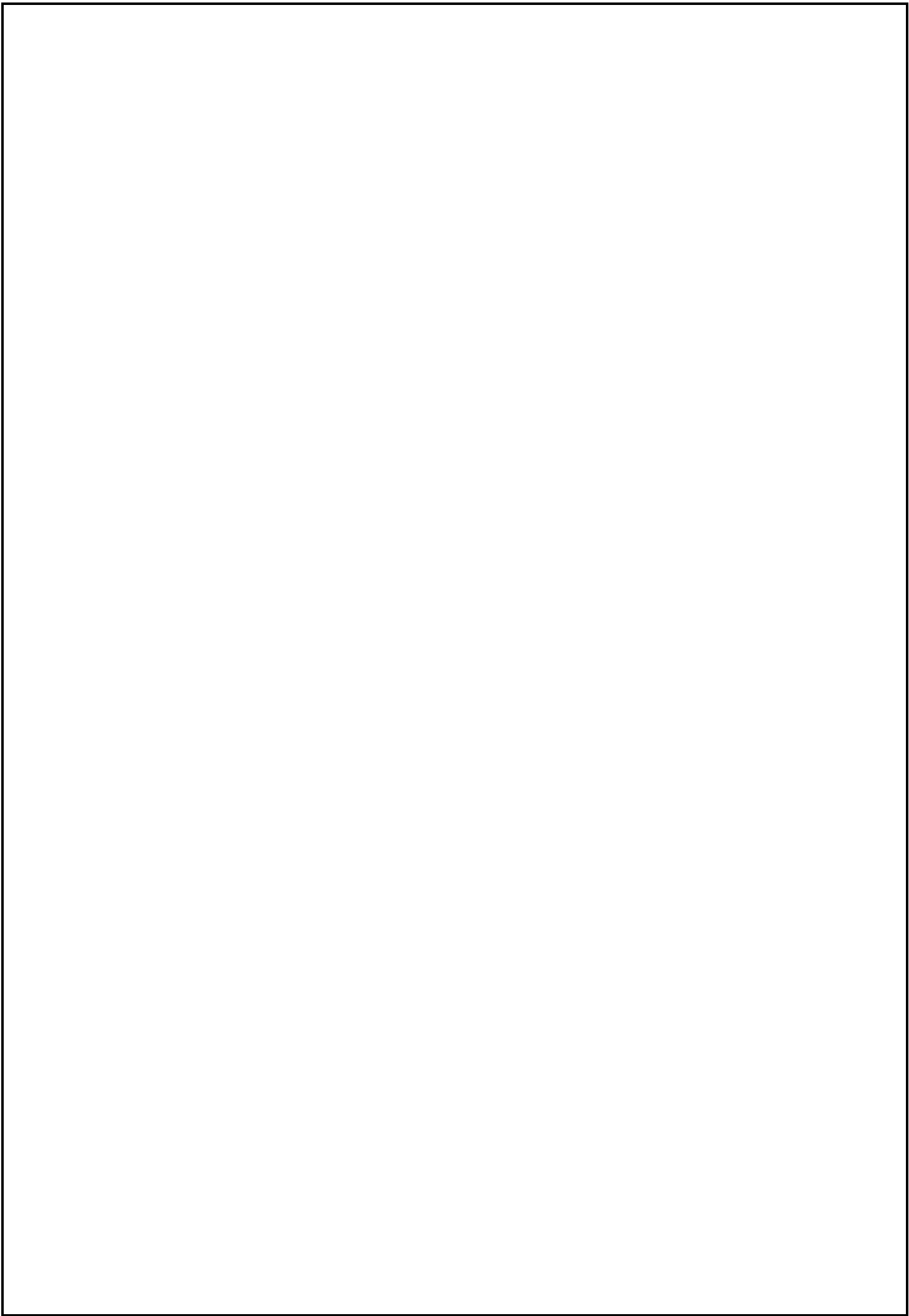
Exception.

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

(2) Whoever kidnaps any person from India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sec 138 provides for Abduction.—Whoever by force compels, or by any deceitful means induces, any person to go

from any place, is said to abduct that person.



OFFENCES AGAINST PROPERTY

Theft

Section 303 defines the offence of theft. Theft is the dishonest removal of movable property out of the possession 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 following 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.

Sec 304 deals with **304. Snatching.**—(1) Theft is snatching if, in order to commit theft, the offender suddenly or quickly

or forcibly seizes or secures or grabs or takes away from any person or from his possession any movable property.

(2) Whoever commits snatching, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Extortion

Section 308 defines extortion and section 384 provides punishment for the offence of extortion.

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 Extortion are 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 309 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 310 defines Dacoity. Robbery is dacoity if the number of persons committing the offence 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 participating 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.

Sec 314 deals with dishonest misappropriation of property.—Whoever dishonestly misappropriates or converts

to his own use any movable property, shall be punished with imprisonment of either description for a term which shall not be less than six months but which may extend to two years and with fine.

Illustrations.

(a) A takes property belonging to Z out of Z's possession, in good faith believing at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B, being, joint owners of a horse. A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

CRIMINAL INTIMIDATION

Criminal intimidation in India is defined under **Section 351** of the **Bharatiya Nyaya Sanhita (BNS)** 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. 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.**
