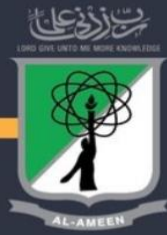




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Bba.IIb (M. S. Ramaiah College of Law)



AL-AMEEN COLLEGE OF LAW

(Affiliated To Karnataka State Law University &
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Model Answers 2021

Fourth Semester 5 Year B.A. LL. B.

CRIMINAL LAW – I : INDIAN PENAL CODE

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IV Semester 5 Yrs B.A. LL. B. Examination
CRIMINAL LAW – I : INDIAN PENAL CODE

Duration: 3 Hours

Max. Marks: 80

Instructions:

1. Answer any five questions from group (a) each question carries 10 marks.
2. Answer any five questions from group (b) each question carries 06 marks.
3. Answer should be written either in English or in Kannada completely.

Q. No. 1. a) Explain various types of punishments to which offenders are liable under Indian Penal Code.

Introduction

Under the law, punishment is provided to cease the wrongdoer from committing the crime again. Punishment is a consequence or result of a wrong committed by a person. Provisions for punishment are provided under Chapter III covering sections 53-75 of the Indian Penal Code. Section 53 defines various kinds of punishments to which the offenders are liable under the Indian Penal Code. The punishments given under section 53 apply only to offences given under this Code. Section 73 provides for another type of punishment, that is solitary confinement.

Theories of Punishment

In order to explain the purpose of punishment various experts have developed different theories of punishment such as:

1. Deterrent theory
2. Retributive theory
3. Preventive theory
4. Expiatory theory
5. Reformatory theory

Section 53 in the Indian Penal Code

S. 53. Punishments.—The punishments to which offenders are liable under the provisions of this Code are—

Firstly — Death;

Secondly — Imprisonment for life;

Thirdly – Repealed

Fourthly — Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly — Forfeiture of property;

Sixthly — Fine

1. Death Punishment

Punishment of death is also known as capital punishment. Under this punishment, a person is hanged till he dies. This punishment is sanctioned by the government and ordered by the court. It is provided only in the rarest of rare cases. This punishment is provided only for serious offences. A death sentence is the highest punishment awarded under IPC, and it has always been a controversial subject. Arguments are made both in favour and against the retention of the capital sentence as a form of punishment.

Death punishment or capital punishment can be provided for the offences under sections 121, 132, 194, 302, 303, 305, 307, 364A, 376E, 396 and so on of the Indian Penal Code. In these sections, it is not obligatory for the court to provide capital punishment.

Earlier for the offence provided under section 303, i.e., murder by life-convict, capital punishment was compulsory. In *Mithu vs State of Punjab*, the death penalty was held unconstitutional for being violative of Articles 14 and 21 of the Constitution.

The Supreme Court in *Bachan Singh vs the State of Punjab* upheld the validity of the death penalty, but the court restricted the provision of the death penalty in rarest of rare cases only. If the case falls under this theory, then capital punishment may be given.

The court did not elaborate as to what falls under the category. Still, the court has declared it from time to time that the cases like honour killings, assassination, genocide, brutal murder, etc. fall under the definition of ‘rarest of the rare case’.

As per section 54 of the Indian Penal Code, the appropriate government can commute the sentence of Death for any other punishment provided by this Code.

2. Imprisonment For Life

The words “imprisonment for life” was substituted for “transportation for life” by Act XXVI of 1955. In this type of punishment, an accused convicted of a crime have to remain in prison until he is alive or until pardoned or otherwise commuted to a fixed period.

In its natural meaning imprisonment for life means imprisonment for the whole of the remaining term of the convicted person’s natural life. As per section 57 of the Code, the period for life

imprisonment is 20 years only for calculating purposes. Imprisonment for life can never be simple imprisonment; it is always rigorous imprisonment.

As per section 433(b) of the Cr.P.C and section 55 of the IPC, the appropriate government has the power to reduce or suspend the sentence of imprisonment for life to imprisonment for a term of not more than 14 years. As the prisoner is under the supervision of the State Government, the State Government has trust in it and in such case, the State Government can appeal for the reduction of the punishment. But life imprisonment cannot be less than 14 years.

3. Imprisonment

Imprisonment means taking away a person's freedom and putting him in prison. According to section 53 of the IPC, there are two kinds of imprisonment:

1. **Simple Imprisonment:** It is the type of imprisonment where an accused convicted of a crime is kept in prison without any hard labour. They are required to do only light duties. The punishment of simple imprisonment is awarded only for lighter offences such as defamation.
2. **Rigorous Imprisonment:** It is the type of imprisonment under which a prisoner or an accused convicted for a crime is kept in prison, and they have to do hard labour such as agriculture, carpentry, drawing water, etc.

4. Forfeiture of Property

Forfeiture implies the loss of property of the accused. Under this punishment, the State seizes the property of a criminal. It is the result of the wrong or default caused by the person. The property forfeited may be movable or immovable.

Forfeiture of property as punishment is provided for the offences given under section 126 (committing depredation on territories of Power at peace with the Government of India) and section 127 (Receiving property taken by war or depredation mentioned in sections 125 and 126).

5. Fine

The court may impose the punishment of fine as sole imprisonment or as an alternative for imprisonment or in addition to the imprisonment. It depends upon the court to decide whether either imprisonment or fine or both are to be awarded in a particular case. According to section 64 of IPC, if a person fails to give fine, the court may order for the imprisonment.

6. Solitary Confinement

It is defined under section 73 of the IPC. Solitary Confinement means keeping the prisoner isolated and away from any kind of intercourse with the outside world. It is believed that a feeling

of loneliness may exert wholesome influence and reform the criminal. Solitary confinement shall in no case exceed three months in total. The scale, as given in section 73, is as follows:

1. If the term of imprisonment is less than or up to six months then the period of solitary confinement shall not exceed one month.
2. If the term of imprisonment is more than six months but less than one year then the period of solitary confinement shall not exceed two months.
3. If the term of imprisonment is of more than one year, then the period of solitary confinement may be up to three months but not beyond that.

It can be awarded only if the following two conditions exist:

1. A person must be convicted for an offence under this Code.
2. The offence must be the one for which the court has the power to sentence the accused to rigorous imprisonment.

According to section 74 of IPC, the punishment of solitary confinement cannot be awarded for the whole term of imprisonment, and it must be imposed at intervals. A sentence of solitary confinement for the whole term of imprisonment is illegal if awarded for more than 14 days at a time. When the imprisonment awarded is of more than three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded.

Conclusion

The court has the power to reduce the quantum of punishment after considering various aspects of the case and the mitigating circumstances if any. In India, the reformatory theory is followed to provide punishment. The punishment awarded should neither be so harsh nor so easy so that it fails to serve its purpose in generating impact on the offender and as an eye-opener for others. It is considered that punishment should be of such a nature that it brings reform in a person's personality and thinking.

Q. No. 1. b) Concept of Crime

An action committed or omitted, which constitutes an offence and is punishable by law is a crime. Crime is an unlawful act that is forbidden and punished by the State or the law. In other words, anything which is injurious to public welfare is a crime.

Generally speaking, crime is human conduct that the society generally disapproves. But in the modern sense, crime is any act that is prohibited by the penal law in force, and the result of this is punishment.

Blackstone has defined crime in his "Commentaries on The Laws of England". He defined it as "an act committed or omitted in violation of a public law either forbidding or commanding it."

According to Kenny, “crimes are wrongs whose sanction is punitive and is in no way remissible by any private person; but is remissible by crown alone, if remissible at law.”

The main elements that make up a crime are:

1. A human being
2. Evil intent or guilty mind from the part of a human being. (Mens rea)
3. Any act committed or omitted in accordance with the evil intent and is forbidden by law. (Actus reus)
4. Injury

1. Human Being

The first element of a crime is a human being. Any wrongful act to be called crime must be done by a human being. There must be a human being under a legal obligation to act in a particular way, and it must also be capable of being punished.

2. Mens Rea

The second essential element of a crime is mens rea or guilty mind or evil intent. Mens rea refers to the mental element that is necessary for a particular crime. Any wrongful act committed by a human being cannot be called a crime if committed without evil intent. There must be an evil intent while doing an act.

There is a well-known maxim– ‘Actus non facit reum nisi mens sit rea’. It means ‘the act itself does not make a man guilty unless his intentions were so.’

3. Actus Reus

The third element of the crime is actus reus. The criminal intent to be punishable must be obvious in some voluntary act or omission. As per Kenny, ‘actus reus’ is such a result of human conduct as the law seeks to prevent. The act committed must be the one that is forbidden or is punished by the law.

An act includes omissions also. A man is also held liable if some duty is imposed upon him by law, and he omits to discharge that duty. An omission must be a breach of a legal duty.

4. Injury

Injury is the last important, or we can say the essential element of a crime. It must be caused illegally to another human being or a body of individuals or society at large. ‘Injury’ has been defined in section 44 of the Indian Penal Code as ‘any harm whatever illegally caused to any person in body, mind, reputation or property.’

However, there can be some crimes that may not cause any injury to anybody. For example, if you drive a vehicle without a driving license, it is a crime, even if it does not cause any injury to someone.

Stages of Crime:

- 1) The intention is the first stage of a crime.
- 2) Preparation is the second stage of crime.
- 3) The third stage is an attempt. It is direct movement of an Act towards execution of an Act after preparation of the plan.
- 4) The fourth stage is the accomplishment

Q. No. 2. a) What is Mens rea? State its significance in statutory offences.

Introduction

The term *mens rea* connotes criminal intent. The literal translation from Latin is "guilty mind." The plural of *mens rea* is *mentes reae*. A *mens rea* refers to the state of mind statutorily required in order to convict a particular defendant of a particular crime. Establishing the *mens rea* of an offender is usually necessary to prove guilt in a criminal trial. The prosecution typically must prove beyond reasonable doubt that the defendant committed the offense with a culpable state of mind.

Actus non facit reum, nisi mens sit rea

The concept of Mens Rea was first introduced in the 17th century along with the Latin maxim '*actus non facit reum, nisi mens sit rea*' which means 'the act and the intent must both concur to constitute a crime'. This maxim clarifies that a crime can only be said to be constituted where the action was done in accordance of a guilty intention.

Mens rea or the mental element of crime is a very important part of criminal law in India as well as other countries. Most laws in India contain the element of guilty mind so as to make an act by a person criminally liable for punishment. Mens rea is the whole essence of crime. Without having an intention to act in a manner that it causes harm to person or property then in front of law it is not a crime. The presence of Mens rea implies that the wrongdoer had the ability to choose between what is good and what is not.

Levels of Mens rea

- **Intention:** It is the state of mind of the person doing the crime. It can be proved when the defendant can foresee virtually that the consequences of the action of the person is going to kill, cause grievous injury or any other prohibited harm to them.
- **Motive:** A motive in criminal law is the cause that moves people to induce into a certain action. Motive is not a basic element of crime but it is mostly looked into while investigation of a criminal case. Motive is the reason of any act, hence, even if motive was good but the act was wrong then criminal liability may arise.
- **Knowledge:** It can be seen from two sides, firstly a person had knowledge and act in a wrongful manner and secondly they had knowledge about the bad consequences and chose

not to act hence resulting in a wrongful act. Both can be understood as a part of Mens rea and are punishable.

- **Negligence:** Negligence is the lack of attention or due care that a reasonable or prudent person may have while performing any task. For a negligent act to turn into criminal negligence its degree shall be high enough to cause criminal liability.
- **Recklessness:** It is the state of mind where a person deliberately and unjustifiably pursues a course of action while consciously disregarding any risks flowing from such action. Recklessness is less culpable than malice, but is more blameworthy than carelessness.

These all refer to different types of mental aptitude which constitutes mens rea.

Mens rea in Statutory Offences

Offence can be defined as the violation of law. The word offence is generally interpreted as a criminal wrong. There are certain offences that are not created by criminal laws but by different statutes like taxation, national security etc. are Statutory Offences. The acts those are inherently wrong such as murder, rape or grievously hurting someone etc. are offences but acts like driving on the wrong side of the road which is not inherently wrong but is also an offence, such offences are known as statutory offences. Some examples of these offences are:

- Adulteration of food items and drugs.
- Tax evasion or avoidance
- Black Marketing, false advertising, hoarding, profiteering etc.
- Misappropriation or theft of public funds or property.
- Misuse of position by public servants in any field of work.

While statutory interpretations are done there are certain aspects that are presumed. Here the presumption is that all criminal actions contain the element of Mens rea. It has also held that- “ it is of the utmost importance that the protection of the liberty of the subject that a court should always bear in mind that, unless a statute, rules out Mens Rea as a constituent part of crime the court should not find a man guilty of an offence against criminal law, unless he has guilty mind’.

Though a statutory crime does not contain the explicit but a statute require specific intention, knowledge malice etc. to act in such manner. In some case the statute may be silent on the requirement of Mens Rea in such a situation the objects and terms of the statutes are looked into. The court some court has also stated that even when there is no clear mention of state of mind in the language of the statute it is implied that Mens Rea is an important ingredient in the constitution of any offence.

In other instances the court has created a strict liability on statutory offences irrespective of the presence of mens rea. Strict liability arises on matters concerning food, drugs, taxes etc.

Mens rea when Not Essential: Strict Liability

Although mens rea is a sacrosanct principle of criminal law, it can be waived in certain circumstances. The following are the exceptional cases in which mens rea is not required in criminal law:

Mens rea is not essential in respect of five offences in I.P.C., namely:

Sec. 121 (waging war),

Sec. 124 A (sedition),

Secs. 359 and 363 (kidnapping and abduction), and

Sec. 232 (counterfeiting coins).

Thus, where the accused is charged with kidnapping a minor girl, his plea that he honestly believed that the girl was not minor was not accepted by the court. Similarly, a person who attempts to pass a counterfeit currency note or in whose possession such notes were found, should not be permitted to raise plea that he was not aware of notes being counterfeit, unless the person is an ignorant and illiterate villager.

Where a statute imposes strict liability, the presence or absence of a guilty mind is irrelevant. Several modern statutes passed in the interests of public safety and social welfare impose such strict liability, e.g. The Motor Vehicles Act; The Arms Act; Narcotic Drugs and Psychotropic Substances Act, 1985; The Public Liability Insurance Act, 1991; etc. Similarly, in other statutory offences like bribing, smuggling, Forex violations, sale of adulterated articles, etc., the guilty mind is not taken into account by the courts.

Important Cases

Following are the important cases as the relevancy of mens rea in statutory offences.

R v Prince (1875) LR 2 CCR 154

Henry Prince (H) was convicted by the trial court under section 55 of the Offences Against the Person Act 1861 of taking an unmarried girl under the age of 16 out of the possession of her father without the father's consent. The girl, Annie Phillips (A), was in fact 14 years old, however A had told H that she was 18, and H reasonably believed that was her age. The appellant H, appealed against his conviction.

Section 55 of the Offences Against the Person Act 1861 is silent as to the *mens rea* required for the offence. The issue in question was whether the court is required to read a *mens rea* requirement into a statute which is silent as to the *mens rea* for an offence, and therefore if H's reasonable belief was a defence to the offence under Section 55.

It was held that where a statute is silent as to the *mens rea* for an offence, the court is not bound to read a *mens rea* requirement into the statute. The offence was one of strict liability as to age, therefore a *mens rea* of knowledge of the girl's actual age was not required to establish the offence. H's reasonable belief was therefore no defence, and the conviction was upheld.

R. vs. Tolson (1889 23 QBD 168)

The accused was tried under Section 57 of the Offences against the Persons Act, 1861 (similar provision in India is Section 494 of the Indian Penal Code, 1860) for having committed the offence of bigamy.

Under that Section, it was an offence for a married person to contract a second marriage during the life time of the husband or wife, as the case may be. In this case, Mrs. Tolson married in 1880.

In 1881, Mr. Tolson deserted her and went away. She made all possible enquiries about him and ultimately came to know that her husband Mr. Tolson died in a ship accident in America.

Therefore, supposing herself to be a widow, she married another man in 1887. The whole story was known to the second husband and the marriage was not secrecy.

In the meantime, Mr. Tolson suddenly re-appeared and prosecuted Mrs. Tolson for bigamy. In the trial Court, she was convicted for imprisonment on the ground that a belief in good faith and on reasonable facts about the death of husband was no defence to the charge of bigamy. She appealed to the Court of Appeal.

The question before the Court of Appeal was whether Mrs. Tolson had guilty intention (*mens rea*) in committing the offence of bigamy.

Judgment: The Court of Appeal by majority set aside the conviction on the ground that a bona fide belief about the death of the first husband at the time of second marriage was a good defence in the offence of bigamy.

It also opined that the statutory limitation for the second marriage of seven years was completed at the time of her second marriage and she informed the real facts to the second husband. Hence it acquitted the accused.

R. vs. Wheat and Stock (1921) 2 KB 119)

In this case, the accused an uneducated man handed over his case to his solicitor for obtaining divorce from his first wife. He believed that as soon as he handed over his case to his solicitor, he obtained divorce from his first wife.

Believing it in good faith, he married another lady. The first wife prosecuted him. He pleaded that he did not know the procedure of law and he believed that he obtained the divorce and with bona fide intention he married another lady.

The Court did not accept his version, and convicted him for the offence for bigamy on the ground that reasonable belief about the dissolution of marriage would be no defence to the charge of bigamy, unless the divorce would be obtained from a Court of law.

Conclusion

The fundamental principle of penal liability is *actus non facit reum, nisi mens sit rea*, i.e., the act itself is not criminal unless accompanied by a guilty mind. *Mens rea* is an essential ingredient of a criminal offence unless the statute expressly or by necessary implication excludes it.

Q. No. 2. b) 'D' gave a poisoned apple to his wife intending do kill her and wife ignorant of the matter gave it to their child who ate it and died however, wife did not die. Decide.

The doctrine of Transferred Malice

If a person committing culpable homicide had an intention to kill a person but killed another person. It may also be the case where he did not even have an intention to kill or where he did not have the knowledge that his act would cause death. In these cases he will be ruled as guilty and such vague excuses as the absence of intention will not be entertained in any court.

Section 301 IPC

As per section 301 IPC The person committing culpable homicide had a piece of knowledge or intention to cause the death of someone and in result kills someone else who he never intended to cause death or even knew that an act will cause his death will be liable for committing culpable homicide.

In simpler terms, a person under Section 301 cannot be set free on the grounds of not having any intention. Instead, the 'Doctrine of Transferred Malice' will apply and he will be held guilty.

R v. Saunders (1573) 2 Plowd 473

In this case, the defendant persuaded his wife to eat a poisoned apple laced with arsenic (a chemical). It was with an intention to kill her so that he can be free and marry another woman after her death. However, his wife gave the poisoned apple to their daughter. The daughter ate the apple and as a result, she died. After applying the 'Doctrine of Transferred Malice', the defendant was charged with murder. The intention to kill his wife got transferred to his daughter and due to that, she died.

Conclusion

In the given case 'D' is guilty of committing murder.

Q. No. 3. a) What is Criminal Conspiracy ? How does it differ from abetment ?

Introduction

The original Indian Penal Code did not have an offence by the name criminal conspiracy. However, the need to have this offence was felt later on and Chapter V-A relating to criminal conspiracy with only two sections in it, section 120-A which provides definition of criminal conspiracy and section 120-B providing its punishment, was added in the Indian Penal Code by the Criminal Law

(Amendment) Act, 1913, with a view to making conspiracy a substantive offense. Mere conspiracy to commit an offense has now been made punishable under Section 120 B.

Definition of Criminal Conspiracy

S. 120A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,—

- (1) an illegal act, or
 - (2) an act which is not illegal by illegal means,
- such an agreement is designated a criminal conspiracy:

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

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

Essential Ingredients

Etymologically the word conspiracy means breathing together; it is not possible to breathe together unless the heads are put together, hence conspiracy is an act for which at least two persons are essential. In other words when two or more persons agree to commit a crime, they are said to have conspired. It is immaterial whether the crime is committed or not, the persons are called conspirators. Conspiracy under the Section 120 A, has the following essentials:

1. An agreement between two or more persons
2. To do or cause to do an illegal act or
3. To do an act which is not illegal but by illegal means
4. An overt act done in pursuance of the conspiracy in case of number three.

Thus Section 120 A provides for two kinds of conspiracies:

- (1) Agreement to do or cause to be done an illegal act: In this case mere agreement is punishable.
- (2) Agreement to do or cause to be done an act which is not illegal, but by illegal means: In this case some overt act besides the agreement should be done by one or more parties to such agreement in pursuance there off.

Now let us go through each of the two kinds in detail:

1. An agreement to do an illegal act

Agreement is the gist of the offense, there must be an agreement that need not to be proof of direct meeting or combination of the parties being brought into each other's presents. The agreement may

be infringed from circumstances raising a presumption of a common plan to carry out a lawful design.

An agreement implies meeting of the two minds with reference to a particular matter and so long as matters are discussed and views are interchanged but the plan of the action has not been settled by the concurrence of any two or more of the conspirators, the stage of criminal conspiracy would not be considered to have been reached.

The only relevant fact is that all means adopted and illegal act done must be and purported it to be in furtherance of the object of conspiracy, even though there may be sometimes misfire or overshooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy.

In *Topan Das Vs. State of Bombay* (AIR 1956 SC 33), the Supreme Court held that there must be two or more persons and one person alone can never be held guilty of criminal conspiracy, and this view was approved by the Supreme Court in *Haradhan Chakraborty Vs. Union of India* (1990 2 SCC 1210). In *State of Tamil Nadu Vs. Nalini* (1999 Cri.LJ 2516 SC), commonly known as Rajiv Gandhi assassination case, it was held that the association of the accused with the main accused or even his knowledge about the conspiracy would not make the accused a conspirator, because agreement is the sine qua non of the offence of conspiracy.

It was further made clear that it is not necessary for a conspirator to be present at the scene of the crime. One person alone cannot conspire, if in the case two persons have been charged for the offense of conspiracy and if one is acquitted the other cannot be convicted, even if he confesses his guilt. He cannot be held for offense of conspiracy.

2. Agreement to do an act not illegal but by illegal means

In this case conspiracy consists in agreeing to do or cause to be done an act which is not illegal but by illegal means. The term illegal has been defined in Section 43 IPC, thus an agreement to do or cause to be done something which in itself may be indifferent or even lawful by unlawful means amounts to conspiracy in this case.

For example A and B agree to murder C, A goes to purchase a revolver in false name, both are guilty because A's illegal act, though not the murder of C in which B had conspired is yet incidental to that object.

Differences between Section 34 and Section 120 A

Section 34 applies when a criminal act is done in furtherance of the common intention of all the offenders, whereas Section 120 A deals with an association to break law even though the illegal act does not follow.

Section 34 lays down a principle to determine the criminal liability of persons more than one in the commission of a crime, whereas Section 120 A defines a substantive offense that is; the offense of conspiracy.

Punishment for criminal conspiracy – Section 120 B

Whoever is a party to a criminal conspiracy to commit an offense punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall wear no express provision is made in this code for the punishment of such a conspiracy is punished in the same manner as if he had abetted such offence.

Whoever is a party to a criminal conspiracy other than a criminal conspiracy, to commit an offense punishable as further said shall be punished with imprisonment of either description for a term not exceeding six months or with fine or with both.

Differences between Criminal Conspiracy and Abetment

Chapter V of the Indian Penal Code from section 107-120 deals with offences relating to abetment. Abetment basically means the action of instigating, encouraging or promoting a person into committing an offence. It can also mean aiding the offender while he is committing a crime.

When more than one person contributes to committing an offence, each person's involvement may vary. This variation may be either in the manner or in the degree to which the involvement occurs.

For example, one person may procure a gun and hand it over to another who may shoot somebody with it. The former person is guilty of abetment, while the latter commits murder.

Definition of Abetment

The definition of abetment under Section 107, IPC requires a person to abet the commission of an offence. This abetment may occur in any of the three methods that the provision prescribes.

The Section says that abetment basically takes place when a person abets the doing of a thing by:

- (1) instigating a person to do that thing; or
- (2) engaging with another person (or persons) in a conspiracy to do that thing; or
- (3) intentionally aiding a person to do that thing.

When any of these requirements exists, the offence of abetment is complete. Sometimes a person may commit more than one of these three circumstances in a single offence.

As regards the difference between criminal conspiracy and abetment, abetment is wider of the two; abetment is a genus of which conspiracy is a species. Abetment may be committed in various ways while conspiracy is one of them. Abetment is not a substantive offence, while criminal conspiracy is a substantive offence by itself.

These are the main points of distinction between the two:

1. Conspiracy is a process by which an agreement is entered into between two or more persons for Commission of an illegal act or doing a legal act by illegal means. The parties to the agreement are called conspirators. Abetment is a process by which one or more engage others for commission of an offence. The former who abets is called abettor, while the latter who commits the offence is called the principal offender.
2. Conspiracy can be committed by two or more. Abetment can be committed by one or more number.
3. Conspiracy is one of the methods of abetment. Abetment can be committed in various methods namely instigation, conspiracy, intentional aid etc.
4. Conspiracy is a substantive offence, whereas abetment is not a substantive offence.

Conclusion

Under the Indian Penal Code, a person becomes liable as an abettor if he instigates another to commit a crime, or engages in a criminal conspiracy with another to commit a crime and some act is done in furtherance of such conspiracy or if he intentionally aids another in order to facilitate the commission of a crime.

Q. No. 3.b) 'A' is at work with a hatchet, the head flies off and kills a man who is standing by. Decide the liability of 'A'.

The given case falls under the general defence of 'accident' as provided under section 80 of IPC. With this defence a person can escape criminal liability where such act of person occurs as a result of accident. Such act must be devoid of intention. Law does not intend to punish a man of the things over which he could possibly have no control.

Section 80

S. 80 – Accident in doing a lawful act. – Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration

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

An accident must be unintentional and unexpected. It implies to happening which cannot be predicted by prudent man. To succeed under this section the following essential elements of the defence must be proved :

1. Something is done by accident or misfortune.
2. There is absence of criminal intention or knowledge.
3. The act done must be a lawful act.

4. It must be done in a lawful manner.
5. It must be done by lawful means.
6. It must be done with proper care and caution.

Q. No. 4. a) Describe the liability of persons for the acts done in furtherance of common intention of all the persons.

Introduction

Section 34 of the Indian Penal Code deals with Common Intention. As per this provision, when a number of persons engaged in a criminal act with a common intention, each person is made liable as if he alone did the act.

Criminal Intention

Criminal Intention is the highest form of blameworthiness of mind or mens rea. Intention occupies a symbolic place in criminal law. As the highest form of the mental element, it applies to murder and the gravest form of crimes in the criminal justice system. The term 'intention' is not defined in Indian Penal Code but section 34 of IPC deals with common intention. The intention made among several people to do something wrong and act done in that manner in which it was formulated comes under the sanction of Section 34 of IPC.

Section 34 deals with a situation, where an offence requires a particular criminal intention or knowledge and is committed by several persons. Each of them who join the act with such knowledge or intention is liable in the same way as if it were done by him alone with that intention or knowledge. The liability of individuals under this circumstance is called Joint Liability. The principle of Joint Liability defined in section 34 is as follows:

Section 34 IPC

S. 34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Object of Section 34

Section 34 lays down only a rule of evidence and does not create a substantive offence. This section is intended to meet cases in which it may be difficult to distinguish between the acts of the individual members of a party or to prove exactly what part was taken by each of them in furtherance of the common intention of all. This section really means that if two or more persons intentionally do a thing jointly, it is just the same as if each of them has done it individually. The reason why all are deemed guilty in such cases is that the presence of accomplices gives encouragement, support and protection to the person actually committing an act.

Elements Of Section 34

To attract the application of Section 34, the following conditions must be satisfied:-

1. Some Criminal Act

‘Criminal act’ used in section 34 does not refer to individual acts where a crime is committed by a group of persons. Where a crime is committed by several persons in furtherance of common intention of all of them, each of them doing some act, similar or diverse, big or small shall be liable for that act. ‘That act’ refers to the ‘criminal act’ used in section 34 which means the unity of criminal behaviour which results in something for which an individual would be punishable if it were all done by himself alone in an offence.

2. Criminal Act Done By Several Persons

The criminal act in question must have been done by several persons i.e. by more than one person. The number of wrong doers should be at least two. Most importantly, if the criminal act was fresh and independent act springing wholly from the mind of the doer, the others are not liable merely because when it was done they were intending to be partakers with the doer in a different criminal act.

3. Common Intention

The expression ‘common intention’ means unity of purpose or a pre-arranged plan; it has been given various meanings which are as follows-

- Common intention implies a pre-arranged plan, prior meeting of minds, prior consultation in between all the persons constituting the group [Ref. Mahboob Shah v. Emperor, AIR 1945 PC 118].
- Common intention means the mens rea necessary to constitute the offence that has been committed [Ref. As per DAS, J., in Ibra Akanda v. Emperor, AIR 1944 Cal. 339].
- It also means evil intent to commit some criminal act, but not necessarily the same offence which is committed [Ref. As per WANCHOO, J., in Saidu Khan v. The State, AIR 1951 All 21 (F.B.)].
- Common intention implies a pre-arranged plan. Pre-arranged plan means prior concert or prior meeting of minds. Criminal act must be done in concert pursuant to the pre-arranged plan. Common intention comes into being prior to the commission of the act in point of time.
- Where there is no indication of premeditation or of a pre-arranged plan, the mere fact that the two accused were seen at the spot or that the two accused fired as a result of which one person died and two others received simple injuries could not be held sufficient to infer common intention [Ref. Ramachander v. State of Rajasthan, 1970 Cr.L.J. 653].
- However, common intention may develop on the spot as between a number of persons and this has to be inferred from the act and conduct of the accused, and facts and circumstances of the case [Ref. Kripal Singh v. State of U.P., AIR 1954 SC 706].

4. Participation in the Criminal Act

The participation in a criminal act of a group is a condition precedent in order to fix joint liability and there must be some overt act indicative of a common intention to commit an offence. The law requires that the accused must be present on the spot during the occurrence of the crime and take part in its commission; it is enough if he is present somewhere nearby.

The Supreme Court has held that it is the essence of the section that the person must be physically present at the actual commission of the crime. He need not be present in the actual room; he can for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape, but he must be physically present at the scene of the occurrence and must actually participate in the commission of the offence some way or other at the time crime is actually being committed.

The first leading case on the point is *Barendra Kumar Ghosh v. King Emperor*, AIR 1925 PC 1 (also known as *Shankari Tola Post Office Murder Case*). In this case several persons appeared before the sub-post master who was counting the money on the table and demanded the money. In the mean time they opened fire killed the sub-post master and ran away without taking any money. *Barendra Kumar* was, however, caught with a pistol in his hand and was handed over to the police.

The accused was tried under sections 302/34 as according to the prosecution he was one of the three men who fired at the sub-post master. The accused denied his charge on the ground that he was simply standing outside and had not fired at the deceased. The trial court, on being satisfied that the sub-post master was killed in furtherance of the common intention of all, convicted the accused even if he had not fired the fatal shot.

The High Court of Calcutta and the Privy Council both agreed with the findings of the trial court and held the accused guilty of murder. Giving his judgment LORD SUMNER quoting a line from Milton's famous poem, "ON HIS BLINDNESS" said. "even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things they also serve who only stand and wait.... Section 34 deals with doing of separate act, similar or diverse by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all as if he had done them himself".

Conclusion

Section 34 lays down a very important principle of joint liability under criminal law. It says that when several persons do a criminal act in furtherance of the common intention of all of them, each one of them shall be liable for that act in the same manner as if he had done it alone. In cases where more than one person participate in the commission of a crime, it becomes very difficult to prove the guilt of each of the participants. The matter gets all the more complicated when all the accused persons are armed with similar weapons because then even though the medical report will be able to point out as to the number of injuries inflicted and their nature and parts of the body on which these are inflicted, the extent of participation of each of the participants may not be known. The

criminal Code of the country must have some principles to be applied to such cases. With this view in mind principles of joint criminal liability are enacted under section 34 IPC.

Q. No. 4. b) Write a note on mistake of fact and mistake of law.

Certain persons are immune from the operation of the criminal law. Chapter IV of the IPC, entitled 'General Exceptions,' which includes sections 76 to 106, exempts certain individuals from criminal liability on certain grounds. 'Mistake' is one of such grounds.

There are two types of mistake which a normal person can do according to tort:

1. Mistake of Law
2. Mistake of Facts

In general, the mistake of law is no defence to the violation of the law. It is presumed that all people know and understand the law of the land, except minors, lunatics or insane. There are few other rare exceptions to this rule. A mistake of fact can be an exception in reducing or eliminating the liability of the person.

Mistake of Fact:

Mistake of fact arises when accused misunderstood some fact that negates an element of crime. This legal weapon can be used, where accused succeeds to prove that he/she was mistaken to the existence of some facts or ignorant of the existence of such facts. It is a condition that such mistake must pertain to fact not law. **Section 76 and 79 of IPC** contains the provision of mistake of fact. Such mistake must be reasonable and must be of fact and not of law. The legal maxim, "*ignorantia facti excusati ignorantia juris non excusat*" which means ignorance of fact is an excuse, but ignorance of law is no excuse. So it is a basic requirement to be get protected under the sphere of this defence that mistake must be of fact.

Section 76: Act done by a person bound, or by mistake of fact believing himself bound, by law. – Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations

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

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

Section 79: Act done by a person justified, or by mistake of fact believing himself justified, by law. – Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration

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

Thus it is cleared that an act will not be an offence, if it is committed in a bonafide manner by a person who by mistake of fact believes himself to be bound by law or who bound by law. Such belief must be a mistake of fact not law and that should be exercised in good faith.

In *Chirangi v. State* (1952) Cri LJ 1212, the accused in a moment of delusion believed his son to be an animal, he assailed him with an axe. It was held that he was justified as he mistook a human being to be a dangerous animal and was not held liable for his mistake.

Mistake of fact will not be a valid defence if the act is committed is illegal itself.

In *R v. Prince* (1875) LR 2 CCR 154, in this case, the accused was charged of unlawfully taking an unmarried girl of 16 years against the will of her father, it was found that the accused had bona fide and reasonable belief that the girl was older than 16 years. It was held that the defence was not valid on the ground that act of abduction is a wrongful and immoral act.

A person's act which constitutes an offence comes under the ambit of this defence only when he acts in good faith and with good intention and believes that his act is justified by law.

Q. No. 5. a) Define murder. Explain when culpable homicide does not amount to murder ?

Introduction

Homicide is a term which originates from the Latin term 'Homo' means human and 'caedere' means killing. Homicide is one of the most grievous act a person can commit as it is the highest order of bodily injury inflicted on a human being hence that's why regulations regarding Homicide are really grave, for instance, culprits are usually sentenced to life imprisonment or the death penalty as these are the most extreme punishments given by the judiciary.

In India homicide is divided into two forms- Culpable Homicide (Section 299 of the Indian Penal Code) and Culpable Homicide amounting to murder (Section 300 of the Indian Penal Code). Both of these have a very minimal difference but these differences prove to be very crucial for the legal system as the delivery of a fair judgment is dependent on these differences.

The term "Murder" traces its origin from the Germanic word "morth" which means secret killing. Murder means when one person is killed by another person or a group of persons who have a pre-determined intention to end life of the former. An offence will not amount to 'Murder' unless it

includes an offence which falls under the definition of culpable homicide as per the definition of 'Murder' under IPC. All murders are culpable homicide but all homicides are not murders.

Lawful and Unlawful Homicide

A culprit in a case of Homicide cannot always be culpable. This derives the notion of lawful homicide where the accused had a valid reason to commit the crime. In these cases, the person will not tend to be tried by the law and can also be exempted from the charges.

These can include death caused in self-defence or by mistake of fact or there was a bonafide execution of the law etc. Hence Homicide can be lawful as well as unlawful. Lawful Homicide may include justifiable and excusable homicide. Unlawful Homicide may include death by rash and negligent act (Sec 304-A), suicide (Sec 309) or culpable homicide.

Culpable Homicide

As mentioned before culpable homicide is a type of unlawful homicide. There are two types of culpable homicides-

1. Culpable homicide not amounting to murder – Section 299
2. Culpable homicide amounting to murder – Section 300

Culpable Homicide not amounting to Murder – Section 299

It can be simply referred to as culpable homicide, this comes under the purview of Section 299 of The Indian Penal Code which states that:

S. 299. Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of

culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Conditions

After bifurcating the definition, we get 3 conditions which have to be fulfilled to attract Section 299 of the Indian Penal Code these are-

1. The intention of causing death.
2. The intention of causing such bodily injury as is **likely** to cause death.
3. With the knowledge that he is **likely** by such an act to cause death.

Culpable Homicide amounting to Murder – Section 300

It can be simply referred to as Murder, this comes under the purview of Section 300 of the Indian Penal Code which states that:

S. 300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) —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—

(Thirdly) —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—

(Fourthly) —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.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Conditions

After bifurcating the definition, we get 4 conditions which have to be fulfilled to attract Section 300 of the Indian Penal Code these are-

1. The intention of causing death.
2. 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.
3. 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.
4. 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.

Exceptions to Section 300 – Circumstances where culpable homicide does not amount to murder

Culpable homicide amounts to murder when the act is done with the intention of causing death but in the cases mentioned below this principle doesn't apply. The following acts can amount to culpable homicide not amounting to murder. Exceptions 1-5 in the section 300 of the IPC define conditions when culpable homicide is not amounting to murder, these are as follows-

The exceptions are:

1. Grave and sudden provocation
2. Private defence
3. Exercise of legal power
4. Without premeditation in sudden fight and
5. Death of an adult caused with consent

1. SUDDEN AND GRAVE PROVOCATION

If the offender is deprived of the power of self-control due to sudden and grave provocation, and his act causes the death of the person who provoked or death of any other person by accident or mistake.

This exception is subject to a certain proviso:

- That the provocation is not sought or is voluntarily provoked by the offender to be used as an excuse for killing or causing any harm to the person.
- That the provocation is not given by anything that is done in obedience to the law, or by a public servant while exercising the powers lawfully of a public servant.
- That the provocation is not done while doing any lawful exercise of the right of private defence.

ILLUSTRATION

A is given grave and sudden provocation by C. A fires at C as a result of this provocation. A didn't intend or have knowledge that his act is likely to kill C, who was out of A's sight. A kills C. A is not liable to murder but is liable to culpable homicide.

CASES

K.M. Nanavati v. State of Maharashtra, 1961 (AIR 1962 SC 605):

In this case, the Supreme Court had extensively explained the law relating to provocation in India. It was observed by the court:

- The test of "sudden and grave provocation" is whether a reasonable man, who belongs to the same society as the accused, is placed in the situation in which the accused was placed would have been so provoked as to lose his self-control.
- Under certain circumstances, words and gestures may also lead to sudden and grave provocation to an accused, so as to bring his act under an exception.
- The mental background of the victim can be taken into consideration, taking account of his previous act to ascertain whether the subsequent act leads to sudden and grave provocation for committing the offence.
- The fatal blow clearly should trace the influence of passion that arises from the sudden and grave provocation. It should not be after the provocation has cooled down due to lapse of time, otherwise, it will give room and scope to the accused for altering the evidence.

2. WHEN THE PERSON EXCEEDS HIS RIGHT TO PRIVATE DEFENSE

Act of private defence can said to have been exercised, when the act is committed in order to defend oneself from further harm. If the accused intentionally exceeds his right to private defense, then he is liable to murder. If it is unintentional, then the accused will be liable to culpable homicide not amounting to murder.

ILLUSTRATION

X attempts to flog Y, not in a manner to cause grievous hurt to Y. A pistol is drawn out by Y, X persists the assault. Y believes that he had no way to prevent himself from being flogged by X, Y fires at X. X is liable to culpable homicide not amounting to murder.

NATHAN V. STATE OF MADRAS, AIR 1973 SC 665

In this case the landlord was trying forcefully to evict the accused. The accused killed the landlord while exercising his right to private defense. There was no fear of death to the accused as the deceased was not holding any deadly weapon that could have caused grievous hurt or death of the accused. The deceased had no intention to kill the accused, thus, the accused exceeded his right of private defence. The accused was liable to culpable homicide not amounting to murder.

3. CULPABLE HOMICIDE IN CASE OF PUBLIC SERVANT

The act is done by a public servant who is acting to promote public justice. If the public servant commits an act which is necessary to discharge his duty as is done in good faith and he believes it to be lawful.

ILLUSTRATION

If the police officer goes to arrest a person, the person tries to run away and during that incident, if the police officer shoots the person, the police officer will not be guilty of murder.

DAKHI SINGH V. STATE, 1955

In this case the appellant was the constable of Railway Protection Force, while he was on duty, he killed a fireman unintentionally, while he was firing bullet shots to catch the thief. The constable was entitled to benefit under this section.

4. SUDDEN FIGHT/RAGE

The sudden fight is when the fight is unexpected or premeditated. Both the parties don't have any intention to kill or cause the death of another. The fact that which party had assaulted or offered a provocation first is not important.

RADHEY SHYAM AND ANR. V. STATE OF UTTAR PRADESH, 2018

In this case the appellant was extremely angry when he got to know that his calf had come to the deceased place. The appellant started abusing the deceased, when the latter tried to stop him, the appellant fired at the deceased. The deceased was unarmed at that time, thus, the appellant had an intention to kill the deceased, hence, he was held liable to murder.

5. CONSENT OF ADULT

Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

Essential Ingredients

Culpable Homicide not amounting to Murder

According to the definition provided under Section 299 of the Indian Penal Code, there are majorly 3 essential ingredients to prove that the person is liable for culpable homicide not amounting to murder. These are-

1. The intention of causing death.
2. The intention of causing such bodily injury as is **likely** to cause death.
3. With the knowledge that he is **likely** by such an act to cause death.

Culpable Homicide amounting to Murder

According to the definition provided under Section 300 of the Indian Penal Code, there are majorly 4 essential ingredients to prove that the person is liable for culpable homicide amounting to murder. These are-

1. The intention of causing death.
2. 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.
3. 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.
4. 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.

Punishment

Punishment for culpable homicide amounting to murder (Sec 300) is given under Section 302 which is either death penalty or life imprisonment as well as fine. Punishment for culpable homicide not amounting to murder (Sec 299) is given under Section 304 which is either

imprisonment for 10 years or fine or both. It can extend to life imprisonment if there was intention present.

Major differences between culpable homicide and murder

“All murders are culpable homicide but not all culpable homicides are murders” this is a very common phrase used to establish a difference between culpable homicide and murder. It talks about the point which I’ve already proved before that culpable homicide is the **genus** and murder is the **species**. The major difference between them is that murder is a more aggravated form of culpable homicide. In murder there is no presence of ambiguity that the act may or may not kill as it is present in culpable homicide, looking at Section 299 of the Indian Penal Code where there is clearly mentioned that:

“Act done with the intention of causing death or causing such bodily injury which is **LIKELY** to cause death or having the knowledge that he can **LIKELY** by his act can cause death, he’ll be committing the offense of culpable homicide”.

If you notice the multiple occurrences of the term “**LIKELY**” showcases that there is an element of ambiguity that the act of the accused may or may not kill the person, is present. Whereas, in the case of murder which is defined under Section 300 of the Indian Penal Code there is no such mention of words as “likely” which shows that there is no chance of ambiguity left on behalf of the accused, the accused is for sure that his act will defiantly cause death.

As mentioned by Sir James Stephen, it is extremely difficult to distinguish between Culpable Homicide and Murder as the end result of both is death. But there is a presence of difference though little it all boils up to a very subtle distinction of intention and knowledge involved in both the crimes. The actual difference lies in the degree of the act there is a very wide difference of degree of intention and knowledge among both the crimes.

Case Law

Through the case of Reg. v. Govinda, a clear distinction was drawn between culpable homicide and murder. According to the facts of the case, there was a quarrel between a husband and a wife in a fit of anger the husband knocked the wife. The wife became unconscious and the husband in order to wake the wife punched her with closed palms but unfortunately, the wife died because of internal bleeding in her brain. Herein, **Melvil, J**, held that the man was liable under Section 299 of IPC because clearly there was no intention to cause death and the act was not grave enough to cause death on the spot.

Conclusion

Culpable homicide means causing the death of someone by an act so fatal which can likely cause death. According to the Indian Penal Code, there are two types of culpable homicide. Culpable

homicide not amounting to murder. (Sec 299 IPC), Culpable homicide amounting to murder. (Sec 300 IPC). There is one interesting section as well in the act which talks about a person killing another person by mistake while he was trying to kill another person, it is Section 301 of IPC.

Q. No. 5. b) Wrongful restraint and wrongful confinement.

Sections 339 to 348 of the IPC deal with the offences of wrongful restraint and wrongful confinement. Both these offences have been defined and punishments prescribed for the commission of them. Punishments for committing wrongful confinements under certain special situations have also been prescribed in this part.

➤ **Wrongful restraint**

S. 339. Wrongful restraint.-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 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 right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

Ingredients

To establish the offence of wrongful restraint the complainant must prove all the following essential:

1. That there was an obstruction;
2. That the obstruction prevented the complainant from proceeding in any direction;
3. That the person/complainant so proceeding must have a right to proceed in the direction concerned.

Punishment

Section 341 of the Indian Penal Code imposes punishment against the wrongdoer under Section 339 with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees, or with both.

➤ **Wrongful confinement**

S. 340. Wrongful confinement.—Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustrations

(a) A causes Z to go within a walled space, and locks Z in. A is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with fire-arms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

Ingredients

The essential ingredients of the offence of wrongful confinement are:

1. The accused should have wrongfully restrained the complainant (i.e. all ingredients of wrongful restraint must be present)
2. Such wrongful restraint was to prevent the complainant from proceeding beyond certain circumscribing limits beyond which he or she has the right to proceed.

Punishment

Section 342 of the Indian Penal Code states that whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Q. No. 6. a) “Assault is only an attempt or apprehending of using Criminal force”. Discuss.

Introduction

Assault is an integral part of any criminal activity. Assault is the basis for an act to be considered as criminal. Many times it happens that assault is misinterpreted or misunderstood leading to confusion. Thereafter it becomes difficult to comprehend exactly what act committed was. So, It's important to clearly know its meaning to avoid confusion. The act of assault clearly tells us the legality of the act and also the mind-set of the person who is harming and having wrong intentions. Assault is only an attempt or apprehending of using criminal force. Thus it is necessary to understand what is criminal force in order to know the nature of assault. Section 349, 350 and 351 defines force, criminal force and assault respectively.

Force – Section 349

S. 349. 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 three ways hereinafter described.

(First) — By his own bodily power.

(Secondly) —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.

(Thirdly) — By inducing any animal to move, to change its motion, or to cease to move.

Essential Ingredients of Force

The section merely says what is a force but did not consider it as an offence. Hence, it is better understood with the later section, which says what is a criminal force which is again useful for understanding what is assault. The section explains force with respect not only to a person but substance, things that the other person is in contact with. Here, two things are essential i.e., first, there must be motion caused or change in motion or cessation of motion externally and second, the above must be caused to another person either directly or through things or substances he/she is in contact with.

If the motion is caused or change in motion is caused, or cessation of motion is caused to the external object or substance or thing which the other person possesses or wears or carries or is in contact, does not affect that person, then it is not force. It will not be considered as use of force.

Criminal Force – Section 350

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

Illustrations

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and 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.

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

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

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

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

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling; A has therefore intentionally used force to Z; and if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

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

Essential Ingredients of Criminal Force

The above section gives us what is criminal force and the illustrations to explain the offence better. These illustrations are a combination of scenarios where there is motion caused or change in motion or in few cessations of motion caused. Further, these illustrations better explain the clauses as provided in section 349, which gives us manners in which force can be used.

The essentials of force are combined with that of the criminal force and show us what exact need to be satisfied to constitute criminal force.

1. There must be a use of force.
2. Force should be used intentionally
3. Force used should be without consent
4. The force used should satisfy either of it –
 - a. the use of force must be “in pursuance to the commission of an offence” or;
 - b. the use of force must be “intending to cause or knowing that it is likely to cause injury, fear or annoyance to the person to whom the force is used”.

Assault – Section 351

S. 351. Assault.—Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

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

Illustrations

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

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

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

Essential Ingredients of Assault

The following are the essential elements to prove an assault has been committed-

1. There must be “a gesture or preparation made to use criminal force”.
2. That “gesture or preparation must be made in the presence of person”, against whom it is being made.
3. There must be “an intention or knowledge that such gesture or preparation would cause apprehension in the mind of the victim that criminal force would be used against him.
4. Finally, the actual cause of apprehension of use of criminal force against him, in the mind of the victim.

What is Gesture or Preparation?

The section makes it clear that mere words are not enough to constitute an assault; there must be some gesture or preparation for the use of criminal force, then only it will amount to an assault.

Some illustrations in the section itself help us to understand what a gesture or preparation can be. Like shaking fist, which shows the preparation to strike someone.^[11] And lifting a stick with a warning sign shows that the accused is ready to hit the victim with that stick.^[12] Unloosening a ferocious dog, to cause that dog to attack someone becomes a gesture to use criminal force against the victim.

The apprehension of use of Criminal Force => Assault

The apprehension of criminal force is itself an essential of assault but is also associated with two main requirements to complete the assault. Firstly, the “gesture or preparation” made against the victim must be done “in the victim’s presence” which is close enough to create an apprehension in the mind of the victim.

For example, if an accused pointed out a gun, against the victim who knows that he is far beyond the reach of the gunshot, is not an assault. As the person’s presence is too remote to cause an apprehension of the use of criminal force.

Secondly, as said earlier, the “apprehension of use of criminal force must be actually caused”. Thus, the gesture or preparation must be such which would have an effect of such apprehension, and it must occur in the “present and immediate state”, not at some later point. And further, if there are mere threats, then that would not be causing an apprehension. Those threats would not constitute an assault. For example, a neighbour threatening to beat the people, for throwing balls at their courtyard while playing, will not amount to an assault.

Punishment for Assault – Section 352

S. 352. Punishment for assault or criminal force otherwise than on grave provocation.—Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Conclusion

Assault is basically the apprehension that the other person is going to get hurt. It is done to another person with the use of criminal force with the ill will to harm the other person. Any person who assaults any other person by using criminal force, he may be punished or fined, or both, according to the Indian Penal Code.

Q. No. 6. b) Distinguish hurt from grievous hurt.

Under the IPC, the offences of hurt and grievous hurt can be found in the ‘offences affecting the human body’ chapter.

Hurt – Section 319

S. 319. Hurt.—Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

S. 321. Voluntarily causing hurt.—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”.

323. Punishment for voluntarily causing hurt.—Whoever, except in the case provided for by section 334, 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 one thousand rupees, or with both.

Grievous Hurt – Section 320

S. 320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

S. 322. Voluntarily causing grievous hurt.—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”.

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.

Illustration

A, intending of knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

S. 325. Punishment for voluntarily causing grievous hurt.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Difference between Hurt and Grievous Hurt

The concept of hurt is different from grievous hurt in the following ways:

1. The injuries caused in grievous hurt are specific in nature like emasculation, loss of sight, loss of limb, fracture, disfiguration etc. whereas the injuries caused in section 319 i.e. hurt are just covered by bodily pain, disease and infirmity.
2. The risk of life is much more grave in the case of grievous hurt than in the case of hurt.
3. Hurt is not punishable in itself. For hurt to be punishable, it must be accompanied by other offences. But grievous hurt is punishable in itself.

Q. No. 7. a) Explain Cheating. When does it become cheating by personation ?

Introduction

Cheating is considered as a criminal offence under the Indian Penal Code. It is done in order to gain profit or an advantage from another person by using some deceitful means. The person who deceives another knows for the fact that it would place the other person in an unfair situation. Cheating as an offence is defined under section 415 and when does it become Cheating by personation is given under section 416 IPC.

Cheating – Section 415

S. 415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

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

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamond articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A Intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

Essential Ingredients of Cheating

To invoke Section 415 of the Indian Penal Code following ingredients are to be satisfied.

- i) A person deceives any person.
- ii) He fraudulently or dishonestly induces the person so deceived –
 - a) to deliver any property to any person; or
 - b) to Consent that any person shall retain any property; or
- iii) He intentionally induces the person so deceived to do or omit anything which he would not do or omit if not deceived and which act or omission etc. causes or is likely cause to damage or harm to that person.

Detail Analysis of the Section

A. Deception:

One of the initial ingredients which have to be proved to establish the offence of cheating is deception. Generally speaking, deceiving is lead into error by causing a person to believe what is false or to disbelieve what is true and such deception may be by words or conduct.

In *Swami Dhirendra Brahmachari vs. Shaikndra Bushan (1995) Cr. LJ 1810 (Delhi)*, the court held that when the accused made false assertions that his ashram is recognized by government of India, thereby, inducing students for admission, the court held him guilty of cheating.

B. Inducement:

The second essential ingredient to the offence of cheating is the element of “inducement” The emphases, on the effect of the fraudulent or dishonest act must be such that it induces the person deceived to deliver or do something in the form of act or omission.

In *Swami BS SVYV Maharaj vs. State of Andhra Pradesh AIR 1999 SC 2332*, the court held that when the appellant accused made representation that he had divine healing powers through his touches, thereby, making the complainant believe that he could cure his little girl of his congenital dumbness through his divine powers, inducing later to shell out money to accused is fraudulent and amounted to inducement. Therefore, is held liable under this section.

C. Dishonest Intention:

Dishonest Intention should be present at the time of making the promise. It is necessary to consider that for the offence of cheating to be made out, the inducement by the accused to the complainants must have been made in the initial or early part of the transaction itself. If this is not shown, then the dispute is civil in nature.

In *Hari Prasad Chamaria vs. Bhisun Kumar Surekha AIR 1974 SC 301*, the Supreme Court held that the fact that subsequent to the transaction, the respondents did not honour their promises would only create a civil liability, and, a criminal liability cannot be fastened on the accused.

D. Damage

To body, Mind, reputation or property caused or a damage likely to be caused:

The use of the term “cause” in section 415 postulates a direct and proximate connection between the act or omission and harm and the damage to the victim. It must be natural consequence of the act or omission in question and not a contingent one. The definition includes all damages resulting or likely to result as a direct natural or probable consequence of the induced act.

Cheating by Personation – Section 416

S. 416. Cheating by personation.—A person is said to “cheat by personation” if he cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Essential Ingredients of Cheating by Personation

The offence of cheating by false representation is an aggravated form of cheating. False personation consists of personating another, or by knowingly substituting another person and pretending to be that another person.

To invoke Section 416 of the Indian Penal Code following ingredients must be satisfied:

- i) A person cheats,
- ii) He does so –
 - a) by pretending to be some other person; or
 - b) By knowing, by substituting one another person for another, or
 - c) By representing that he or any other person is a person other than he or such other person really is.

The offence of cheating by personation is an aggravated form of cheating. To personate means to pretend to be a particular person. As soon as a man by word, act, or sign hold himself forth as a person entitled to vote with the object of passing himself off as that person, and exercising the right which that person has, he has personated him.

In *Baboo Khan Vs. State of Uttar Pradesh AIR 1961 ALL 639*, the accused who pretended to be a certain well-known eye specialist and induced the complainant to allow him to perform an operation on the eye of his 12 year old son, was found guilty under this section.

Punishment for Cheating and its aggravated forms

S. 417. Punishment for cheating.—Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

S. 418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.—Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he

was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

S. 419. Punishment for cheating by personation.—Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

S. 420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Conclusion

Deceitful practices in defrauding or endeavouring to defraud another of own right by means of some artful device contrary to the plain rule of common honesty is called cheating. Under cheating by personation, a person commits cheating when he pretends to be another person, real or imaginary. The offence is committed provided some gain has accrued or some loss is incurred by either party.

Q. No. 7. b) ‘C’ a carrier is entrusted by ‘D’ with a television to be carried by road. ‘C’ dishonestly misappropriates the television. What offence that ‘C’ has committed ?

‘C’ has committed offence under section 407 IPC which is an aggravated form of Criminal Breach of Trust as defined under section 403 IPC.

407. Criminal breach of trust by carrier, etc.—Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by a carrier, wharfinger and warehouse-keeper is treated to be much more serious and, therefore, more severe punishment for the same has been prescribed by this section. A carrier is a person who undertakes to transport the goods of another person from one place to another for hire. In the given case ‘C’ is a carrier and by doing such wrongful act committed an offence punishable under section 407 IPC.

Q. No. 8. a) “In all robbery there is either theft or extortion”. Explain.

Introduction

The offences of theft, robbery and extortion come under Chapter XVII of the Indian Penal Code under offences Against Property. The terms robbery, theft, and even extortion seem very similar and even used interchangeably at times in everyday usage. However, in the legal sense and within

the ambit on the Indian Penal Code, 1860 these terms are distinct and have been very clearly defined as distinct crimes. The demarcation between these is given under section 390 of the Penal Code.

Definition of Robbery

According to Section 390 of the Indian Penal Code, "*in all robbery there is either theft or extortion.*"

S. 390. Robbery.—In all robbery there is either theft or extortion.

When theft is robbery.—Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in 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.

When extortion is robbery.—Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted. Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations

(a) A holds Z down and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high roads, shows a pistol, and demands Z's purse. Z in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

Essential Ingredients

The opening words of Section 390, IPC, show that there cannot be any robbery, if there is no theft or extortion. Both in theft and extortion, dishonesty is an essential ingredient. So, if there is no element of dishonesty in an act, there can be no offence of theft or extortion and consequently there cannot be an offence of robbery.

Similarly, removal of movable property from the possession of another is a necessary element to constitute an offence of theft. If this element is absent, then there is no theft and consequently, there will be no robbery either. Thus, in order to verify whether a particular act would amount to a robbery or not, one has to first establish that the offence has essential ingredients of theft or extortion, since robbery is nothing but an aggravated form of theft and extortion. Theft or extortion or attempt to commit any one of the two is an inevitable ingredient for robbery.

➤ Robbery by theft

In robbery by theft whatever is done or attempted to be done must be under any of these four circumstances only :

- b) in order to the committing of the theft, or
- c) in committing the theft, or
- d) in carrying away property obtained by theft, or
- e) in attempting to carry away property obtained by theft.

The offender must voluntarily cause death, hurt or wrongful restraint of anyone, or he must voluntarily attempt to cause death or hurt or wrongful restraint of someone, or he must voluntarily cause fear of instant death, or fear of instant hurt, or fear of instant wrongful restraint. All this must be done 'for that end'. The expression 'for that end' is very important and has been used to indicate any of the four ends already mentioned above.

➤ Robbery by extortion

In robbery by extortion the offender must be in presence of the person put in fear. This presence is proved only if he is sufficiently near to put the other person in fear of instant death, or of instant hurt, or of instant wrongful restraint. He must commit the extortion. This extortion must be committed by putting that person or some others persons in fear of instant death, or of instant hurt, or of instant wrongful restraint. By so putting him in fear, the offender must induce the person so put in fear then and there to deliver up the thing extorted.

Punishment for Robbery

Section 397 of the IPC prescribes the punishment for causing grievous hurt or attempting to cause death or grievous hurt to any person at the time of committing robbery while Section 398 of the

IPC prescribes the punishment if the offender is armed with any deadly weapon while attempting to commit robbery.

Conclusion

Robbery is an aggravated form of either theft or extortion. Robbery in common language means to deprive a person of his or her own property. The chief distinguishing element in robbery, theft, and extortion is the presence of imminent fear of violence. In all robbery there is either theft or extortion. The essence of offence of robbery is that the offender, for committing theft or for carrying away or attempting to carry away the looted property, voluntarily causes or attempts to cause death or hurt or wrongful restraint.

Q. No. 8. b) Write a note on Rape.

Rape is an unlawful sexual activity, most often involving sexual intercourse, against the will of the victim through force or the threat of force or with an individual who is incapable of giving legal consent because of minor status, mental illness, mental deficiency, intoxication, unconsciousness, or deception. In many jurisdictions, the crime of rape has been subsumed under that of sexual assault. Rape was long considered to be caused by unbridled sexual desire, but it is now understood as a pathological assertion of power over a victim. Rape is one of the most heinous crimes a person can commit. It is not just a heinous crime but a huge disgrace to mankind as a species.

Laws Regarding Rape in India

Rape has been defined under Section 375 of the Indian Penal Code, 1860, which runs as follows:

S. 375. Rape.—A man is said to commit “rape” if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora.

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

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

Exception 1.—A medical procedure or intervention shall not constitute rape.

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

Punishment for Rape

Prior to the *Nirbhaya Case*, Indian statutes considered only penile-vaginal intercourse under the definition of rape, and forcible penetration of any foreign object to vagina, mouth, or anus did not fall under this ambit. Due to the silence of law, many accused persons walked free even after having committed such heinous crimes. The definition was expanded after this case to include forceful insertion of foreign objects within the definition of rape.

The punishment for rape has been provided under Section 376 of the IPC. According to this section, the punishment for rape will be imprisonment for a term of not less than 7 years, which may extend

up to life imprisonment – depending on the facts and circumstances of the case. In more severe situations, the punishment will be rigorous imprisonment for at least 10 years, which may extend to life imprisonment. The convict may also be liable to pay fine, along with imprisonment. In situations like Nirbhaya Rape Case, wherein murder is committed after a rape, and the instance is so cruel in nature that it qualifies as ‘rarest of rare’, a death sentence is may also be given.

Q. No. 9. a) Discuss the offences relating to marriage.

Introduction

Chapter XX (section 493- 498), IPC, deals with offenses relating to marriage. All these offenses deal with infidelity within the institution of marriage in one way or another. Chapter XX-A, containing only one section (s 498A) dealing with cruelty to a woman by her husband or his relatives to coerce her and her parents to meet the material greed of dowry, was added to the IPC by the Criminal Law (Second Amendment) Act 1983. This law, along with The Domestic Violence Act (Passed in 2005), aims to provide substantial protection to female victims of cruelty and domestic violence.

The following are the main offenses under this chapter:

1. Mock or fraud or invalid marriages (Sections 493 and 496);
2. Bigamy (Sections 494 and 495);
3. Adultery (Section 497);
4. Criminal elopement (Section 498);
5. Cruelty by husband or relatives of husband (Section 498A)

1. Mock or Invalid Marriages – Sections 493 and 496

S. 493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.—Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

S. 496. Marriage ceremony fraudulently gone through without lawful marriage.—Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Essential Ingredients

The essential elements of both the sections i.e. 493 and 496, is that the accused should have practiced deception on the woman, as a consequence of which she is led to believe that she is lawfully married to him, though in reality she is not. In S. 493, the word used is 'deceit' and in S. 496, the words 'dishonestly' and 'fraudulent intention' have been used. Basically both the sections denote the fact that the woman is cheated by the man into believing that she is legally wedded to him, whereas the man is fully aware that the same is not true. The deceit and fraudulent intention should exist at the time of the marriage. Thus *mens rea* is an essential element of an offence under this section.

In a landmark case of *Subhransu Sekhar Samantray v. The State (2002)*, the Orissa High Court contended that the statement of the prosecutrix that she had resisted the establishment of sexual relations with the accused, but when he put vermilion on her head and declared her as his wife, and alleged that he would accept her status in his life publicly after getting a job she submitted herself to his advances, is sufficient to constitute an offence under Section 493 of the IPC.

2. Bigamy – Sections 494 and 495

S. 494. Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

Essential Ingredients

- i) Existence of a previous marriage.
- ii) Second marriage to be valid.
- iii) Second marriage to be void by reason of first husband or wife living.

However, the section provides for exceptions to Section 494 of IPC, viz:

- (a) If the first marriage has been declared void by the following by a court holding competent jurisdiction.

- (b) If the previous spouse has been continuously absent for a period of seven years and not heard of as being alive provided that the facts are disclosed to the person with whom the second marriage is contracted. The aforementioned offence is termed as bigamy. It can be afflicted by either of the spouses on to one another.

For a better understanding of the aforementioned provision, Section 17 of the Hindu Marriage Act and Section 108 of the Evidence Act along with the judgment of the Supreme Court in the landmark judgement of Smt. Sarla Mudgal vs Union Of India & Ors (1995) must be referred to. This case laid down the principles against the practice of solemnizing second marriage by conversion to Islam, with first marriage not being dissolved. The verdict discusses the issue of bigamy, the conflict between the personal laws existing on matters of marriage and invokes Article 44 of the Indian Constitution. It is considered a landmark decision that highlighted the need for a Uniform Civil Code.

S. 495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.—Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Essential Ingredients

- i) Existence of a previous marriage.
- ii) Second marriage to be valid.
- iii) Second marriage to be void by reason of first husband or wife living.
- iv) Non-disclosure of first marriage.

Pashaura Singh v state of Punjab, AIR 2010 SC 922, In this case it was held that, the first marriage should be substituting at the time of second marriage and should be validly contracted one. If the first marriage is not a valid marriage, the second marriage does not amount to bigamy.

3. Adultery – Section 497

S. 497. Adultery.—Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

In such case the wife shall not be punishable as an abettor.

Essential Ingredients

- ii) Woman must be married
- iii) Sexual intercourse between married woman and man who is not her husband.
- iv) Sexual intercourse must take place with woman consent .i.e., it must not constitute rape.
- v) Sexual intercourse with married woman must take place without the consent or connivance of her husband.

It is important to note that this law has since been decriminalised in **Joseph Shine vs Union Of India on 27 September, 2018** but continues to be strong ground for divorce.

4. Criminal Elopement – Section 498

S. 498. Enticing or taking away or detaining with criminal intent a married woman.—Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Essential ingredients

- i) Woman to be a married woman.
- ii) Takes or entices away.
- iii) The person enticing or taking away the married woman should have knowledge that she is the wife of another man.
- iv) Taken from control of husband or person having care of her on behalf of her husband.
- v) Intention to have illicit intercourse.
- vi) Conceals or detains any such woman.

In *Alamgir v state of Bihar*, AIR 1969 SC 436, it was observed that whilst the wife is living with the husband, man knowingly goes away with her in such a way as to deprive the husband of his control over her, with the intent to have illicit intercourse, then it constitutes an offence within the section.

5. Cruelty by husband or relatives of husband – Section 498A

S. 498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects 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.

Explanation.—For the purposes of this section, “cruelty” means—

(a) 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

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful 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.

For safeguarding the interest of a woman against cruelty the Indian Penal Code, 1860 was amended in 1983 and S.498A and S.304B was inserted which deals with Matrimonial Cruelty to a woman by husband and his relatives and dowry death respectively.

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

Conclusion

Among the various kind of offences against women prevalent today are the marital offences including bigamy, adultery, criminal elopement among others and the one that is probably the most common offence is cruelty. Over time, courts have broadened the ambit of the definition to include within it different instances. The provisions dealing with matrimonial offences been framed in a way that raises a presumption against the accused if certain minimum requirements are met.

Q. No. 9. b) Mischief

The definition of mischief is mentioned under Section 425 of IPC and the punishment is prescribed under Section 426 of IPC. Further Section 427 to 440 lays down the specific punishment prescribed for aggravated forms of mischief depending upon the nature & the value of the property damage.

The Law of Mischief under IPC is specifically drafted with an objective to provide protection against the destruction of the property causing any wrongful loss or damage to the public or an individual. It is an extension to the legal maxim *sic utere tuo ut alienum non laedas* which means “use your own property, but not in a way that can injure your neighbour’s or other’s property.”

Mischief – Section 425

S. 425. Mischief.—Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

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

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

Illustrations

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water in to an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

Ingredients of Mischief

Essentially there are three key elements to establish Mischief as per the definition laid down in section 425 of IPC which are as follows:

- i) An act done with intention or knowledge (mens rea) result in wrongful loss or damage
- ii) The act resulting in destruction, damage or change in the property or situation thereof; and
- iii) The change must lead to diminishing the value or utility.

Punishment for Mischief – Section 426

S. 426. Punishment for mischief.—Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Q. No. 10. a) Write the essentials of defamation and state exceptions.

Introduction

Defamation as the meaning of the word suggests is an injury to the reputation of a person resulting from a statement which is false. A man's reputation is treated as his property and if any person poses damage to property he is liable under the law, similarly, a person injuring the reputation of a person is also liable under the law. Defamation is defined in section 499 of Indian Penal Code and section 500 provides that a person committing an offense under this section is liable with simple imprisonment for a term of 2 years or fine or with both.

Defamation – Section 499

S. 499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says— “Z is an honest man; he never stole B's watch”; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

Essential Ingredients

This section require three essentials:

1. Making or publishing any imputation concerning any person.
2. Such imputation must have been made by:
 - a) Words, either spoken or intended to be read; or
 - b) Signs; or
 - c) Visible representations.
3. Such imputation was made with the intention of harming or with knowledge or reason to believe that it will harm the reputation of the person concerning to whom it is made.

Forms of Defamation

1. **Slander**– It is the publication of a defamatory statement in a transient form For example- Defaming a person by way of words or gestures.
2. **Libel**– It is the representation made in some permanent form For example- Defaming a person through a representation made in some permanent form like writing, printing etc.

The statement must be defamatory

The very first essential of the offense of defamation is that the statement must be defamatory i.e. which tends to lower the reputation of the plaintiff. The test to check if a particular statement is defamatory or not will depend upon how the right thinking members of society are likely to take

it. Further, a person cannot take a defence that the statement was not intended to be defamatory, although it caused a feeling of hatred, contempt or dislike.

Reputation

To sue any person it is necessary to establish that real damage or harm has occurred to the reputation of the person. Only speaking or writing the words, picturing or gesturing does not amount to defamation until the reputation of the person has been harmed. Harm to reputation is the only negative consequence that can arise from the act of defamation.

Publication

For a person to be sued for defamation, it is required that the publication of the words he spoke or wrote must have happened. What does it mean?

It means that damage to the reputation of the person happens when the defamatory words have reached to any third person. Publication means that the third person has read, heard or seen the written, spoken, gestured or pictured defamatory words. If it has not happened then there is no ground to sue for defamation.

If any defamation is made directly to the defamed and is not heard by anybody else, then it is not defamation. It is necessary that any third party hears it through which the reputation of the defamed goes down.

Imputations concerning 'Any Person' - The statement must refer to the complainant

In Section 499 of the Indian Penal Code the 'imputation concerning any person', is mentioned. Imputation in general terms means accusation or claim that someone has done something wrong.

As far as the term 'concerning any person' is concerned, this means that defamation should be clear enough to point out the person to whom the defamation is intended to be made and if it is published to others then the third person is also able to clearly understand who is defamed by the publication.

Intention to Injure

There has to be a knowledge or reason to believe that the act will certainly cause the defamation of the character of the person. It implies the mens rea of the person, that is the person should have the intention to harm the reputation of the other person. To win a defamation lawsuit, the defendant should prove that he had honest intentions and no malice, and it was just an honest mistake.

Cases

Subramaniam Swamy v. Union of India, in 2014, Dr. Subramaniam Swamy made corruption allegations against Ms. Jayalalitha. In response, the Tamil Nadu State Government filed defamation cases against Dr. Swamy. Thereafter, Dr. Swamy and other prominent politicians challenged the constitutionality of the criminal defamation law in India, i.e., Sections 499 and 500 of the Indian Penal Code. The Apex Court, in this case, upheld the constitutional validity of the offense of criminal defamation, and ruled out that Section 499 and Section 500 of the India Penal Code, impose reasonable restrictions on the right to freedom of speech and expression.

In *S. Khushboo v. Karniammal*, it was complained that the statement of accused given in news magazine amounts to his defamation. It was held that the statement of accused was given to news magazine calling for societal acceptance of pre-marital sex. He did no attack on reputation of anyone in particular. It does not amount to defamation under Section 499 I.P. Code. Moreover complainant was not an aggrieved person. Hence complaint was held liable to be quashed.

In *Ashok kumar jain v. State of Maharashtra*, it was held that where a defamatory statement against a person is published in a newspaper, the editor, printer, and publisher who has made declaration and is shown in paper as such is liable.

Exceptions

Section 499 of IPC provides 10 exceptions to defamation:

First exception: Truth – Imputation of truth made or published for the general public good.

Second exception: Public conduct of public servants – Opinion expressed in honest manner respecting the conduct of a public servant within the discharge of his public functions or respecting his character close to for as his character appears in that conduct.

Third exception: Conduct of any person touching any public question – Opinion expressed in honest manner respecting the conduct of someone touching any public question, and respecting his character so far as his character appears in that conduct, and no further.

Fourth exception: Publication of reports of proceedings of courts – Publication of a substantially true report of the proceedings of a court of justice or of the results of any such proceedings.

Fifth exception: Merits of case decided in Court or conduct of witnesses and others Concerned – Opinion expressed in honest manner respecting the merits of any case decided by a court of justice or respecting the conduct of someone as a party, witness or agent in any such case or respecting the character of such person, to date as his character appears in that conduct, and no further.

Sixth exception: Merits of public performance – Opinion expressed in honest manner respecting the merits of any performance which the author has submitted to the judgment of the general public or respecting the character of the author so far as his character appears in such performance .

Seventh exception: Censure passed in good faith by person having lawful authority over Another – Censure passed in honest manner on the conduct of someone by someone having authority over him (conferred by law or arising out of a lawful contract) where the conduct is in matters to which such lawful authority relates.

Eighth exception: Accusation preferred in good faith to authorised person – Accusation preferred in honest manner against someone to at least one who has lawful authority over that person with regard to the subject-matter of accusation.

Ninth exception: Imputation made in good faith by person for protection of his or other's Interests – Imputation on the character of another made in honest manner for the protection of the interests of the person making it, or of the other person, or for the general public good.

Tenth exception: Caution intended for good of person to whom conveyed or for public good – Caution conveyed in honest manner to one person against another provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Conclusion

After analyzing all the key aspects of defamation as laid in section 499 IPC, we have found that the essence of defamation lies in the injury to the reputation of a person. And for this injury, he can very much sue the defendants. Defamation is of two types libel and slander. Both are considered as criminal offenses in India. There are certain exceptions to this known as privilege.

Q. No. 10. b) Criminal Trespass

The Indian Penal Code has discussed criminal trespass in 22 sections, commencing from Section 441 till Section 462. The object of making criminal trespass an offence is to ensure that people can enjoy their private property without any kind of interruption from outsiders.

Criminal Trespass – Section 441

S. 441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

Essential Ingredients

Criminal trespass has two limbs, firstly, entering into the property of another with criminal intent and secondly, entering lawfully but remaining in the property with a criminal intent to harm or cause annoyance. Thus the essential ingredients for committing Criminal trespass are:

‘Whoever enters’ – Entry into another person’s property

To commit the offence of criminal trespass, there must be an actual entry into the property of another by the accused person. No trespass can occur if there is no physical instrument by the accused into the private property of the victim. In the *State of Calcutta vs Abdul Sukar*, the court held that constructive entry by a servant does not amount to entry, under this Section as even though there was no possession in law, there was possession in fact. For instance, X throws garbage outside Y’s house on a daily basis, in this case, X may be liable for nuisance but he has not committed criminal trespass as there is no entry by X into Y’s property.

Property may be Movable or Immovable

The term property under this Section includes both movable and immovable property. Wrongful entry into one’s car or other movable property would have similar liability as wrongful entry into one’s house. In *Dhannonjoy v Provat Chandra Biswas*, the accused drove away the boat of the possessor after attacking him. The court held that this would amount to criminal trespass even though it was a movable property. But the term property does not include incorporeal property or something which cannot be touched, such as patent rights.

Possession of another

The possession of the property should be in the possession of the victim and not the trespasser. Having the ownership of the property is not necessary, mere possession is sufficient to claim criminal trespass against the trespasser. However, it is not necessary for the person having possession or the owner of the property to be present at the time when the trespassing occurred, no presence of owner or possessor would also amount to trespassing as long as the premises are entered into by the trespasser to annoy.

Intention

If it is proved that the intention of the accused parties was not to insult, harm or annoy the owners or possessors of the property, then it would not amount to criminal trespass. The Intention is the essence of this crime, and if there is no dominant motive to commit the crime, no criminal trespass. The test for determining whether the entry was done with an intent to cause annoyance or any kind of harm is to determine the aim of a trespasser at the time of such entry.

Punishment for Criminal Trespass – Section 447

Punishment for criminal trespass, as prescribed in Section 447 of IPC is imprisonment of either description which may extend to three months, or fine which may extend to INR 500 or both.

Aggravated Forms of Criminal Trespass

The offence of criminal trespass may be committed at different occasions having different magnitudes and penalties. Depending upon the time of the trespass, its purpose and nature of the property trespassed, the offence may be aggravated and specific punishments are prescribed for those specific cases. Further, a crime may be aggravated by the way it is committed and the end for which it is committed.

Trespassing into the property where a man resides and stores his belonging is an aggravated form of criminal trespassing as the greatest safeguard is required against the habitation of people. Trespassing against such property is known as **house trespass** and is governed by **Section 442** of IPC.

House trespass may be further aggravated if it is done in a way to avoid attention, known as **lurking house-trespass** and is governed by **Section 443** of IPC. House trespass is also aggravated when it is done violently, known as **house-breaking** and governed by **Section 445** of IPC.

House trespass of any form may be aggravated based on the time when it is committed, an offence taking place at night is more serious than an offence that took place during the day time. **Housebreaking by night** is governed by **Section 446** of IPC.

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