

# Indian Penal Code

Q- 1. **Define crime, discuss its essential elements.**

**Ans-** it is very difficult to give a correct and precise definition of crime, Glanville Williams, admitted the impossibility of having a workable content based definition of crime, points out that the definition of crime is one of the sharp intellectual problem of law.

Likewise **Russell** also admitted that – to define crime is a task which so far has not been satisfactorily accomplished by any writer.

Such a difficulty in ultimate analysis arises due to the changing nature of crime, an outcome of equally dynamic criminal and penal policy of a state.

However some sociologists, perceiving crime as a social phenomenon feel that criminal law in a sense, protects certain social interests, and any act which threatens or poses threat to this interests is define as crime.

In general terms crime is defined as an act punishable by law as forbidden by statute or injurious to the public welfare. It is very wide definition, any thing which is injurious to public welfare is crime, in modern complex society there are many things which are injurious or against the public welfare for example selling contaminated food molestation of young children, etc.

**Blackstone defines crime:**

An act committed or omitted in violation of a public law either forbidding or commanding it. But in this definition we have to understand what public law is?

**According to Austinian** public law is identical with constitutional law. That being so the crime would then mean an act done in violation of constitutional law. The definition thus would cover only the political offence leaving aside a vast area of other criminal behavior.

Blackstone also defines crime as violation of the public rights and duties due to the whole community considered as a community in its social aggregate capacity.

**Stephen** slightly modifies this definition and presents it in the following form:

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

Blackstone defines crime only the violation of public rights, while **Stephen** includes the element of violation of public duties as well.

But for example a directors of a company fail to manage its affairs properly the mill is closed, workers are rendered unemployed, production of a commodity essential for the society is stopped. Will it not be an act which is injurious to public or the society?

Can we prosecute the directors for any crimes? The answer certainly not then what is crime?

A crime is those forms of legal wrong which are regarded by the law as being especially injurious to the public at large.'

**Stephen** further defines crime is an act forbidden by law and which is at the same time revolting to the moral sentiments of the society.

If we look up to the penal codes of different countries we find that there are certainly some acts which though not immoral are highly criminal and at the same time there may be acts which are highly immoral but not criminal.

**Austin:** A wrong which is pursued at the discretion of the injured party and his representatives is a civil injury; a wrong which is pursued by the sovereign or his subordinates is a crime.

Thus according to Austin in case of civil wrong a State does not interfere until the wrong has been committed and proceedings are initiated by the injured party or by some other person acting on his behalf. in case of criminal wrong proceeding can be instituted by the sovereign or his subordinate along. There are many cases of crimes under the Indian Penal Code where prosecution cannot be launched unless a complaint is made by the aggrieved party. It is only in case of serious crimes that the State may on its own initiative take action to punish the wrong doer by initiation of criminal proceedings in its own name. for example in case of adultery under section 497 or criminal elopement under section 498 of the IPC a complaint by the person aggrieved is necessary. No court shall take cognizance of the offence under the section unless a complaint is made by the husband of the victim woman.

**Donald** also admitted the same thing " Crime is a social injury and an expression of subjective opinion varying in time and place.

**Conclusion:** A pattern of human behavior prohibited by criminal law at a given time in a given society, thus, depends upon the specific features of its organization.

A human conduct that, according to the policy-makers comes within the ambit of the prescribed sanctioned of a state of the purpose of criminal law can be labeled as Crime. An act or activities prohibited by Law (IPC).

### Elements of Crime

The fundamental principal of criminal liability is that there must be a wrongful act-actus reus, combined with a wrongful intention-mens rea. This principle is embodied in the maxim, **actus non facit reum nisi mens sit rea**. Meaning an act does not make one guilty unless the mind is also legally blameworthy.

**Actus Reus:** Comprises the following:

1. Human Conduct or an Activity.
2. The Result of the Act Prohibition by Law.

**Illustration:** A shoots at B using a rifle intentionally and B dies.

- *A physical act that attracts criminal sanctions.*

**Actus reus**, sometimes called the external element or the objective element of a crime, is the Latin term for the "guilty act". Which, when proved beyond a reasonable doubt in combination with the mens rea,

**Conduct:** Result but not prohibition by law (than no crime) i.e. Solders kills the enemy.

**Mens Rea:** No act per se (itself) is criminal, the act becomes a crime only when it is done with a guilt mind. The jurist determines the Mens Rea.

*"guilty mind", produces criminal liability in the common law-based criminal law jurisdictions.*

**Illustration.** A blacksmith is seized by a gang of robbers and he forced to break the doors of a house for robbery to enter, and the robbers committed a robbery.

**Q-** Whether the Act is voluntary or not.

**A-** No

**Q-** Whether the accused have foresight of the consequences.

**A-** Yes

**Conclusion-** If there would be two "Yes" in the above citation then only it becomes crimes.

**Illustration:** A while shooting at a tiger kills B, who was behind the bush, cancelled (hidden) from his view.

**Intention** to Kill (intention to caused death). Is a basic rule. Intention is to bring about a desired act. **Presumption of Intention- Natural and probable consequences should be presumed.**

**Consent**- Intention to have sexual pleasure from a person **without** her **consent**.

**Knowledge** – Direct appeal to your senses. Here the probability is very high (against to commit the act against Law).Exp to purchase a stolen good. **Theft**-To taking possession without the consent of the owner.

**Motives**- Intention and motives are two different thing in a crime. Motive may be to get anything, Intention to Kill the person. Motive may be good or bad, but intention is bad than it becomes crime. Motive leads to intention , and ulterior intention is motive. **IN FIXING CRIMINAL LIABILITY MOTIVE MAY BE IRRELEVANT, BUT INTENTION IS MAINTAIN OR MAIN ELEMENT.**

**Recklessness (irresponsibility)**- Basic principle of fixing a criminal liability. Is the combination of : **Foresight and Indifference. DOING SOMETHING WITHOUT THE KNOWLEDGE BUT THE FORESIGHT.**

Illustration:

A steal food to feed the starving child.

Motive- To save the life of a child- Good.

Intention – To steal some food-Bad

**Q-2- Mens Rea- mental Element of Crime.**

**Mens Rea-**

One of the main characteristic of our legal system is that the individual's liability to punishment for crimes depends, among other things, on certain mental conditions. The liability of conviction of an individual depends not only on his having done some outward acts which the law forbids, but on his having done them in a certain frame of mind or with a certain will.

**Mens rea means a mental state, in which a person deliberately violates a law. Thus mens rea means intention to do the prohibited act**

These are known as mental elements in criminal liability. Therefore an act in order to be a crime must be committed with a guilty mind,

**Actus non facit reum nisi mens sit rea, is a well know principle of natural justice meaning no person could be punished in a proceeding of criminal nature unless it can be shown that he had a guilty mind.**

In justice concept, actus Reus represents the physical aspect of crime and mens rea the mental aspect, which must be criminal and co-operate with the former. Actus reus has been defined as such result of human conduct as the law seeks to prevent. Mens rea which is a technical term generally taken to mean some blameworthy mental condition or mind at fault, covers a wide range of mental states and conditions the existence of which would give a criminal hue to actus reus. No act is per se criminal, it becomes criminal only when the actor does it with guilty mind.

### **Development of Mens Rea**

in the earliest time it was the fundamental presumption that a man in every case intended to do what he has done. The English criminal law began with strict criminal liability, and there was no clear distinction between the Tort and crime.

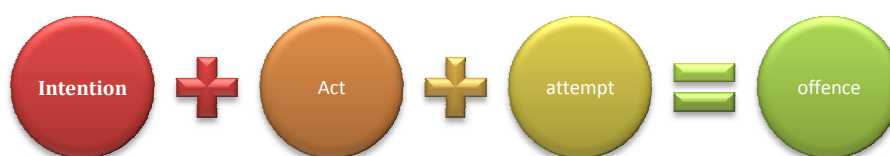
Therefore the mental attitude of a person was an irrelevant consideration in so far as trial and punishment was concerned.

But later on bodily punishment came as a substitute of the payment of damages. It was then the importance of mens rea or the mental attitude of a person, at the time of commission of crime was realized. With the passage of time requirement of mens rea as an essential element of a crime has firmly taken in its roots.

### **Mans rea in its root**

Now it is the combination of act (actus rea) and intent mens rea which makes a crime. And the maxim – Actus non facit reum nisi mens sit rea means act alone does not make a man guilty unless his intentions were so. Is a well know principle of natural justice.

There can be no crime large or small without any evil intent. The responsibility in crimes must depend on the doing of a willed or voluntary act and a particular intent behind that act. Most conscious and voluntary acts are directed towards a particular result or consequence. When one acts to produce a particular consequence he is said to do that act with that intention.



## Exceptions to mens rea.

**Crime = Voluntary + foresight of the consequences-**

### Act done under compulsion.

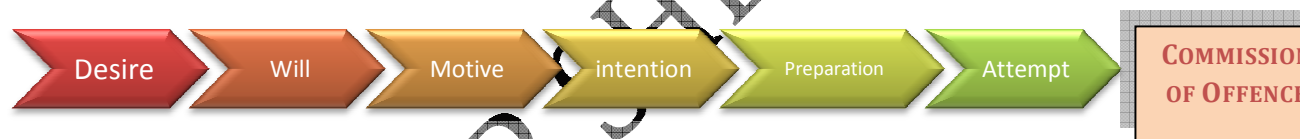
If the consequence not looked for the act may be voluntary but not intentional. For any criminal liability there must be a voluntary act, this proposition drive from the maxim-

***Actus me invite factus non est mens actus*** which means and act done by me against my will is not my act. This maxim support the doctrine of Mens Rea- for no person can be held liable for an act done under fear or compulsion.

### For example:

A holds B and compels him at gun point to open the lock of C's house. Here B's act not a willed or intentional act.

The basic requirement of the principle of Mens Rea is that accused must have been aware of all those elements in his act which make it the crime with which he charged.



Offence against state, police, nuisance, and stick liability etc mens rea is not requiring.

### Application of Mens Rea in Indian Penal Code

Technically the application of mens rea is not applied to the offences under IPC. Every offence is very clear under IPC 1860. The definition not only states what accused might have done, that also states about the state of his mind with regard to the act when he was doing it. Each definition of the offence is complete in itself. The word Mens Rea are not use anywhere in IPC. However the equivalent words to those of mens rea in the IPC code very frequently such expressions are – Dishonestly (S24), Fraudulently (s.25), reason to believe (s.26), voluntarily (s.39).

Moreover Chapter IV of IPC General exceptions (s.76 to s.106) is provided the circumstances when options of criminal intent may be presumed.

### Case Reference

1. **Sankaran Sukumaran V/s Krishnan Saraswathi (1984 Cr Lj 317) SC held that**

**Mens rea is an essential ingredient of the offence under section 494 (bigamy), where the second marriage has been entered in a bona fide belief that the first marriage was not subsisting, no offence under this section committed.**

2. **C. Veerudu V/s State of Andhra Pradesh (1989 CRLJ 52 (AP) SC held that u/s 498 (A) cruelty means "willful conduct". Willful conduct includes mens rea.**
3. **Banvarila Agarwal v/s Surya Narayan (1994 CrLj 370) SC held that. The intention of the accused must be dishonest and there must be mens rea.**

**Conclusion:** in modern statutory offenses the maxim has no longer applicable and the statutes are to be regarded as themselves prescribing the mental element which is pre-requisite to a conviction. So mens rea is an essential element of crime, in every penal statute unless the same either expressly or by necessary implication is ruled out by the statute.

#### **Act to be voluntary:**

Act means a conscious or willed movement. It is a conduct, which results from the operation of the will. According to Austin any movement of the body, which is not in consequence of the determination of the will is not a voluntary act. It is only a voluntary act that amounts to an offence.

Illustration:

A fire at a wild animal but his fire missed and hit B who is behind the bush and B dies.

Here A would not be liable because he has no intention to kill B, but on the other hand if A knows B is there behind the bush then he will be liable.

**Intention + Act + Result = Crime**

**Crime = Voluntary + foresight of the consequences.**

#### **CONSTITUENT PART OF CRIME**

1. **Actus Reus- An Act which is prohibited by Law. It is the physical part of a crime.**
2. **Mens Rea- Mental element in crime. Intention.** mens rea means a mental state, in which a person deliberately violates a law. Thus mens rea means intention to do the prohibited act. In Allred v. Selfridge, it was held, intention to do an act which is made penal by statute or by common law.

**DESIRE IS CONSTRUCTED TO WILL AND THIS WILL FORMS MOTIVE  
AND THIS MOTIVE FORMS INTENTION AND INTENTION FORMS  
ATTEMPT AND ATTEMPTS FORM COMMISSION OF OFFENCE.**

**Actus non facit reum, nisi mens sit rea ' - '**

**An act does not make a person legally liable unless the mind is legally  
blameworthy'.**

Offence against state, police, nuisance, and strict liability etc mens rea is not required.

**Q- Define Section 34, and Section 149.**

**Or**

**Differentiate between common intention and common object.**

**Or**

**Explain the law relating to joint offenders under the IPC.**

**Or**

**Explain the facts and principles laid down in Barendra Kumar Ghosh V/s  
Emperor (AIR 1925 PC 1)**

**Ans-**

There is a close resemblance between common intention and common object, though both of them belong to different categories of the offence in criminal law.

(However joint offender is not defined under IPC, however various provisions of the IPC contemplated joint liability of each person who have committed a criminal act or offence in furtherance of common intention)

The principle of joint liability is defined u/s 34, and 149 of IPC.

**Exceptions of Section 34 -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.**

**Exceptions of S34:**

**1. Principle of Joint Liability:**

Section 34 of IPC explains the **principle of joint liability**, in doing the criminal act with **common intention**. This section attracts the principle of joint liability. A joint liability of a person is determined according to the manner in which he becomes associated with commission of the crime. Normally a person may be participant in a crime in the following ways:

- When he himself commit a crime.
- When he share in commission of it.
- When he, with a view to the commission of crime, sets some third agency to work, that is he makes some third party his own agent for committing the crime.
- When he helps the offender, after the commissions of the crime committing the crime.

**2. Several Person:**

in this section several person means two or more than two person, criminal act must be done by several persons.

It is held in **sachin jana and another v/s state of west**

**Bengal that act done by two or more persons jointly and intentionally can be taken as if done by each of them individually himself**

These word of this section deals with those cases when it is difficult to distinguish precisely the part taken by each of the participant, it is deemed necessary to declare all person liable for the criminal act..

**Furtherance of Common Intention: S34** deals with the doing of separate acts, similar or distinct acts by several people. If the criminal act is done in furtherance of common intention, each person is liable for the result of such act. Once is prove the criminal act was done in furtherance of common intention of all, each person is liable for the criminal act as if it were done by him alone. Section 34 is mainly intended to meet a case in which it may be difficult to distinguish between the acts of individual members of a party who act in further of the common intention of all or to prove exactly what part was taken by each of them. When such participation is establish section 34 can be attracted. **Sc 3 does not say- "common intention to all" nor does it says - "an intention common to all" but it says " in furtherance of common intention.**

It is held in **sevaram v/s state of UP** that: the **direct proof of common intention is seldom available. It can only be inferred from circumstances appearing from proved facts.**

Sec34 does not create distinctive substantive offence; it is only a rule of evidence.

Essential ingredient of S.34:

- There must be a criminal act.
- The criminal act done by several person.
- The act is done in furtherance of common intention of all.

Cases:

- **Nandu rasto v/s state of Bihar:**

Criminal conspiracy is the essential ingredient of common intention u/s34, of IPC. Participant in criminal act in some manner was also essential but physical presence at scene of occurrence is not always necessary.

- **Barendra Kumar Ghosh v/s Emperor:**

It has been observed that though the accused did not played any role to kill the post master but he was standing outside to – stand and wait , which prove he was helping in the criminal conspiracy.

Exception of Common intention:

- **Private defense:**  
In **Subramanian v/s State of Tamil Nadu**, -That if the appellant acted in exercise of their right of private defense of property it cannot be said that they committed a criminal act in furtherance of a common intention because it is protected u/s 96 of IPC.

**Section 149:** every member of unlawful assembly guilty of offense committed in prosecution of common object- if an offense committed by any member of an unlawful assembly in prosecution of common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who ,at the time of the committing of that offense, is a member of the same assembly, is guilty of that offense.

Exceptions of Section 149:

- **Principle of vicarious liability.** This section is the declaratory of the principle of vicarious liability of the members of an unlawful assembly for acts done in prosecution of common object of that assembly, all the

members of that assembly will be vicariously liable for that offence even one or more, but not all committed the said offence.

- **Unlawful assembly:** It is not necessary under any law that in all cases of unlawful assembly, with an unlawful object, the unlawful assembly must be unlawful object to attract this section. Also too attract section 149 of IPC, only member of unlawful assembly is not enough, the person should have understood that assembly as unlawful and was likely to commit any of the acts which fall within the purview of section 141 of IPC, and it must have been committed in prosecution of common object.
- **Common object:** the word Object means purpose or design to make it common, it must be share by all. It may be formed at any stage by all or few members. It may be modify or altered or abandoned at any state. Common object may be formed by express agreement after mutual consultation. *The sharing of common object would, however, not necessarily require the member present and sharing the object to engage himself in doing an over act.* Therefore this section is inapplicable in a case of sudden mutual fight between two parties, because of lack of common object.

**Essential ingredient of Section 149:**

- Unlawful assembly as contemplated my section 141 of IPC.
- Accused was a member of such assembly.
- The accused voluntarily joined that assembly.
- He knew the common object of that assembly.
- An offence was committed by one or few member of that assembly.
- Offence must be committed in prosecution of common object of that assembly.

Case Ref:

#### Difference between Section 34 and section 149 of IPC

| Base              | Section 34                                                                                                                                                   | Section 149                                                                                                                                                                             |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nature of Offense | This section is not a substantive offence it is only a <b>role of evidence</b> . it always read with other substantive offences. <b>Punishment cannot be</b> | This section is a <b>substantive offense</b> , it also read with other sections. <b>Punishment can be imposed solely upon this section</b> Where as prosecution file a charge sheet u/s |

|                                   |                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                   | <b>imposed solely upon this section.</b> For example if a person convicted u/s 302 r/w 34 of IPC can legally be convicted u/s 302 r/w 34.                                                                                                                               | 149 the court may convert it to section 34 and impose conviction.                                                                                                                                                                                                                                                                       |
| <b>Principle element</b>          | <b>Common intention-</b> the principle ingredient of this section is Common intention, any act which committed <b>in furtherance of common intention</b> attract this section                                                                                           | <b>Common Object:</b> the principle element of this section is Common Object, any act which <b>committed in prosecution of common object.</b> will attract this section                                                                                                                                                                 |
| <b>Range of Principle element</b> | Common intention within the meaning of section 34, is <b>undefined and unlimited.</b>                                                                                                                                                                                   | Common object is <b>defined and is limited to the five unlawful objects stated in section 141 of IPC.</b>                                                                                                                                                                                                                               |
| <b>Type of Offense</b>            | Common Intention requires under this section may be of <b>ANY TYPE.</b>                                                                                                                                                                                                 | Common object require under this section must be one of the object mentioned u/s 141 of IPC.                                                                                                                                                                                                                                            |
| <b>Necessity</b>                  | <b>Prior meeting of mind is necessary</b> before wrongful act is done under this section. <b>In Nanak Chand v/s State of Punjab Sc held that - common intention presupposes prior concert and meeting of minds, whereas a common object may be formed without that.</b> | Prior meeting of mind is <b>not necessary</b> under this section. <b>Mere membership of an unlawful assembly</b> at the time of committing the offense is sufficient. <b>In the same case (Chand v/s State of Punjab) Sc held that - there may be cases where the object of group is one, but the intention of participants differ.</b> |
| <b>Liability</b>                  | <b>It is a joint liability.</b> A joint liability of a person is determined according to the manner in which he becomes associated with commission of the crime. It is of <b>interpretative character.</b>                                                              | <b>It is a constructive liability and vicarious liability.</b> all the members of that assembly will be vicariously liable for that offence even one or more, but not all committed the said offence.                                                                                                                                   |
| <b>Number of Person</b>           | Minimum two people require attracting this section.                                                                                                                                                                                                                     | Minimum five people require attracting this section.                                                                                                                                                                                                                                                                                    |
| <b>Participation in Crime</b>     | <b>Active participation</b> in commission of crime is necessary.                                                                                                                                                                                                        | <b>Merely membership</b> of the unlawful assembly at the time of commissioning of crime would be sufficient for this section application, <b>active participation is not necessary.</b>                                                                                                                                                 |

#### Q. Right of private defense extends under certain circumstances of causing deaths discuss.

Chapter IV (general exception), section 96 to 106 explain the provision of the Right of private defense. The right of private defense rests on the general principle that where a crime is endeavored to be committed by force, it is lawful to repel that force in self defense.

**Basic Principle:** self preservation is the private instinct of every human being. Every man has the right of private defense his own body, property and the body and property of his nearer. This basic principle has been recognized in the IPC to give protection to the wrong doer, who commits a criminal act in the course of protecting his person, property, body and property of his nearest.

**Russel:** Justified the killing of an aggressor, against the exercise of the right of private defense for saving her body and property.

**Bantham** also justified the principle of self preservation in his **principle of penal code**, he admit that Magistrate (State) is not such capable to vigilance (save) every individual, nor the fear of law can restrain bad men as the fear of the sum total of individual resistance.

### **Right to private defense and IPC.**

**S.96**, define that nothing is an offence which is done in the exercise of the right of private defense, which lays down the general rule on the right of private defense. While **S.97** which deals with the subject matter of the right of private defense of body and property and lays down the extent of the right of private defense, proclaims that every person, subject to restrictions contained in S.99, has a right to defend his own body and the body of another, against any offence affecting human, and right to defend the property of his own and his nearer or any other person against any act which is an offence falling under the definition of **theft, robbery, mischief, or criminal trespass**. and S.99 lists the situation wherein the right to private defense of body as well as property is not available to an individual, s102 and s105 deal with commencement and continuation of right to private defense of body and property.

Whereas SS.100,101,103,104 deals with the extent of harm (including voluntary death) that may be inflicted on the assailant in exercise of the right of body and of property respectively, while S.98 also provides the right of private defense against the lunatic person as well.

### **S100. Right of private defense of the body extends to causing death:**

The right of private defense of the body extends to causing death is recognized by S100 of IPC, but this right is subject to the restrictions mentioned in the S.99 of IPC, to the voluntary causing of death or of any other harm to the assailant, when any one of the six situations stipulated therein arise in the committing of the offence of body extend to the causing of voluntary death of the actual or potential assailant if he through either of the specified assaults causes reasonable and immediate apprehension of death or grievous hurt in the mind of the accused.

The categories of assault specified in the sections are:

1. **Assault to kill.**
2. **Assault to cause grievous hurt.**

3. **Assault to commit rape.**
4. **Assault to gratify unnatural lust.**
5. **Assault to kidnap or abduct**
6. **Assault to wrongfully confining a person and the accused cannot recourse to the public authority for his release.**

### **Reasonable apprehension of Death or Grievous hurt Sufficient:**

The first clause of s.100 stipulates that the right of private defense of body extends to causing death, when such an assault reasonably causes the apprehension that death will otherwise be the consequence of such assault.

the second clause of s.100 stipulates that when an assault caused the reasonable apprehension that grievous hurt will otherwise be the consequence of such an assault, the right of private defense extends to causing of death.

In order to avail of such exception of criminal liability under this clause, what is required to be established is that there was **reasonable circumstances giving rise to reasonable apprehension of either death or grievous hurt**. Such an apprehension of death or grievous hurt **must be real or reasonable and not an illusory or imaginary. It must be present and imminent and not remote or distant one**. The reasonable apprehension of cause of death or grievous hurt will be caused to him, however is required to be judged from the **subjective point of view** and it **cannot be subject to microscopic and pedantic scrutiny**.

The accused must be bona fide fear that death or grievous hurt would otherwise be the consequence of the assault if he does not defend. It is not essential that actual injury should be caused by the aggressor or the victim before the right of self defense can be availed of. Person apprehending danger is not required to wait for sustaining injury. Mere apprehension is sufficient to exercise his right of private defense.

### **Exception of Right to Private Defense**

#### **Right to private defense not available to aggressors.**

There is no right to private defense can be claimed by the aggressors. It is available against any offense and therefore, where an act is done in exercise of the right of private defense, such act cannot rise to any right of private defense in favor of the aggressor in return. **Chacko v/s state of kerala.**

### **Quantum of injuries:**

If a person exercising the right of private defense has the better of the aggressor, provided he does not exceed his right because the movement he exceeds it he commits

and offense. The injuries given to the aggressor by the accused must be in proportion to the assault.

### **Free fight:**

There is no defense available of right of private defense when there is a free fight between two parties or individual, one another using unlawful force against each other. Both the sides mean to fight from the start. And they have the same intention to give the injuries to other.

No right of private defense available in the following condition also:

- Against lawful acts.
- Unlawful assembly.

Case Laws.

### **Vishwantha v/s State of UP AIR 1960 SC 67**

SC held that appellant had the right of private defense of person under the fifth clause of s.100 IPC and did not cause more harm than was necessary and acquitted the appellant.

### **State of UP v/s Zalim and other.**

SC held that mere apprehension of death is not the ground of right to private defense.

### **State of UP v/s Chattr singh**

Hon'ble court held that accused intention and premeditated notion to murder is clear and accused is liable to be convicted to be murder.

### **Conclusion:**

Right to private defense is essentially a defensive right circumscribed by the IPC and it is available only when the circumstances clearly justify it. It is exercised only to repel unlawful aggression and to punish the aggressor for the offence committed by him. It is basically preventive in nature and not punitive. It is neither a right of aggression nor a reprisal. Its exercise cannot be vindictive or malicious.

Discuss the conditions where culpable homicide does not amount to murder.

or

Discuss the law relating to grave and sudden provocation as laid down in IPC and state the extent to which it mitigates the responsibility of the accused for the offence of murder. Refer to case law to write your answer.

Is grave and sudden provocation" a defense to charge of murder? If so under what circumstances and to what extent?

Culpable homicide is genus, but murder is its species. Elucidate?

Discuss the theory of grave and sudden provocation, and explain how it affects the liability for culpable homicide not amounting to murder.

**Ans-** Chapter XVI- section 299 to 304 dealt with culpable homicide and murder.

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.

**Ingredients of S.299**

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

Section 299 defined Culpable Homicide in simple way. Culpable homicide are of two kinds:

- I. **Culpable homicide amounting to murder.**
- II. **Culpable homicide not amounting to murder.**

Culpable homicide is the Genus, and murder is the Species. All murder are culpable homicide but not vice-versa, it has be held in **Nara singh Challan v/s Sate of Orrisa (1997)**. Section 299 cannot be taken to be definition of culpable homicide not

amounting to murder. Culpable homicide is the **genus**, section 300 defines murder which means murder is the **species** of culpable homicide. It is to be noted here that culpable homicide not amounting to murder is not defined separately in IPC, it is defined as part of Murder in the section 300 of IPC.

**Section 300 - 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**

**Culpable Homicide is not amounting to murder:**

**Exception 1 to 5 of s300 of IPC defines conditions when culpable Homicide is not amounting to murder:**

- I. Provocation.**
- II. Right of private defense.**
- III. Public servant exceeding his power.**
- IV. Sudden fight.**
- V. Consent.**

**Exception-1**-culpable homicide is not amounting to murder if the offender, whilst **deprive of self control by grave and sudden provocation**, caused the death of the person who gave the provocation or causes the death of any person **by mistake or accident**.

The above exception is subject to the following provisions:-

1. The **provocation is not sought or voluntarily provoked by the offender** as an excuse for killing or doing harm to any person.
2. The **provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise** of the powers of such public servant.
3. The provocation is not given by anything done in the **lawful exercise of the right of private defense**.

**Provocation must be grave: upheld in Venkatesan v/s State of Tamil Nadu (1997)**

1. The test of grave and sudden provocation is whether a reasonable men belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to loss his self control.
2. In India words and gestures may also, under certain circumstances, cause grave and sudden provocation.
3. The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

Illustrations:

1. Y" gives a grave and sudden provocation to A. A on this provocation fires a pistol at Y" neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not amounting to murder, but merely culpable homicide.
2. A attempts to pull Z's nose, in the exercise of private defense, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence kills Z. this is murder, in as much as the provocation was given by a thin done in exercise of the right of private defense.

**Exceptions-2-** Culpable homicide is not amounting to murder if the offender, in the **exercise in good faith of the right of private defense** of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defense without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defense.

**Illustration-**

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped shoots z dead. A has not committed murder but only culpable homicide.

**Exceptions 3.-** Culpable homicide is not murder if the offender, being a **public servant, or aiding a public servant acting for the advancement of public justice exceeds the powers given to him by law**, and caused death by doing an act which he , in good faith, believes to be lawful and necessary for the due discharge of this duty as such public servant and without ill will towards the person whose deaths is caused.

**Exceptions 4-** Culpable homicide is not amounting to murder if it is committed without **premeditation in a sudden fight** in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

**Explanation-** it is immaterial in such cases which party offers the provocation or commits the first assault.

**Exceptions- 5-** culpable homicide is not amounting to murder when the murder whose death is caused, being above the age of 18 years, suffers death or take the risk of death **with his own consent**.

**Scope – In Raghunath v/s State of Haryana AIR 2003 SC 165, Sc held that –**

It is no well settled principle of law that if two views are possible, one in favor of the accused and the other adversely against it, the view favoring the accused must be

accepted.

### **Culpable homicide amounting to murder**

**Section 300** also defines the circumstance when culpable homicide turn into murder which is punished u/s 302. Under following 4 circumstances:

#### **Intention to causing death-**

- I. Culpable homicide turn into murder if the act by which the death is caused is done with the **Intention of Causing death** or
- II. If an act done with the intention of **causing such bodily injury** as the offender knows to be likely to cause the death of the person to whom the harm is caused, or
- III. If it is done with the intention of causing bodily injury to any person and the **bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death**, or
- IV. If the person committing the **act knows that it is so imminently dangerous that it must, in all probability, cause death** or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

#### **Illustration**

A, knows that Z is suffering such a disease that a blow is likely to cause his death, strike him with the intention of causing bodily injuries. 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, knowing that Z is laboring 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.

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

In State of Rajasthan v/s Dhool Singh AIR 2004 SC 1264. SC held that – **Culpable homicide becomes murder if the attacker cause an injury which he knows is likely to cause death and, of course, consequent to such injury the victim should die.**

#### **Conclusion-**

The main element which is distinguish between murder and culpable homicide is **Intention or in presence of a special mens rea.**

If death is the **most likely result of an act**, it will be **murder**. If death is the **likely result of an act**, it will be culpable homicide not amounting to murder.

**What is abetment? What are various methods by which abetment is possible?**

**Ans-** Chapter V, section S 107 to 120, relating with Abetment.

When several person s take part in the commission of an offence, each one of them may contribute in a manner and degree different from the others to the commission of it. The offence may be committed by the hands of one person at the instigation of another person, while some other may only be present for offering help at the time of commission of it, and still others may help the principal culprit in procuring the tools. It is necessary, therefore, to mark the nature and degree of participation of each of the persons to determine their degree of culpability. However several gradations of action do not necessarily imply different measures of guilt with a view to distinctions in punishment.

In English Law, differently treat the principle offender who may be of first degree and accessories who may be second degree.

**IPC-** The Indian penal code makes a broad distinction between principals and abettors but does not recognize the accessory after the fact except that offenders has been made a substantive offence in some cases.

Under IPC abetment is constituted in the following ways:

1. **Instigating.**
2. **Engaging**
3. **Aiding.**

**Instigating-** Means the act of inciting another to do a wrongful act. One may abet the commission of an offence by counseling, suggestions, encouraging, pouring or commanding another to do an act. **In order to constitute abetment by instigation some active proceeding towards the preparation of the crime is necessary.** To instigate means to actively suggest or stimulate by any means or language, direct or indirect, whether it take the form of express solicitation or of hints, insinuation or encouragement, or to provoke, incite, urge or encourage to do an act. Any form of language may be used but there must be reasonable certainty in regard to the meaning of the words which an inciter may use.

Illus-

A and B discovering that C intended to commit theft in Z's house. Arrange together to persuade him to steal there from certain articles from them. Here A and B will be liable for abetment and C for theft.

**Mere acquiescence, silent assent or verbal permission would not constitute instigation.**

A tells B that he intends to murder C, B says **do as you like**, A kills C, here B cannot be said to have instigated.

Reason- it was meant actively to suggest or stimulate the commission of an offence.

**Willful misrepresentation or Concealment:**

Explanation I of section 107 of IPC says that instigation may be constituted of willful misrepresentation or willful concealment of a material fact by one who is bound to disclose it.

**Instigation by Letter:** Instigation may be direct or it may be by a letter. Where A writes a letter to B instigating thereby to murder C, the offence of abetment by instigation is completed as soon as the contents of the letter become known to B. If the letter never reaches B, it is only an attempt to abet but not abetment.

**Abetment by Engaging**

**Abetment by conspiracy:** abetment of conspiracy consists when two or more persons engage in a conspiracy for doing a thing which is an illegal thing or act or illegal omission. Thus in order to constitute abetment by conspiracy following conditions must be there:

1. A conspiracy between two or more persons.
2. An act or illegal omission may take place of that conspiracy.

Conspiracy means an agreement between two or more persons:

To do an illegal act or

To do an act which is not illegal by illegal means.

Thus clause II of section 107 of IPC, a mere combination of persons or agreement is not enough; an act or illegal omission must also take place in pursuance of the conspiracy and the act or illegal omission must also be in order to the doing of the thing agreed upon between them.

But for an offence u/s 120A a mere agreement is enough, if the agreement is to commit an offence.

Clause 2 has to be read together with Explanation 5 of section 108, which provides that it is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It would be

sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

### **Conviction for conspiracy-**

No person can be convicted for conspiracy, if the charge against all other conspirators has failed, or if other alleged conspirators are acquitted.

### **Abetment by Aid-**

A person abets the doing of a thing who intentionally aids, by any act or illegal omission, the doing of that thing.

It would be clear if we read clause 3 of s107 with explanation 2, that a person cannot be held guilty of aiding the doing of an act when the act has not been done at all.

Mere intention to facilitate, is not sufficient to constitute abetment, unless the act which it is intended to facilitate actually take place.

#### **Illustration-**

A servant keeps open the gate of his master's house, so that thieves may come, and thieves do not come. But the servant intended and informed thieves the door is open and they can come, he would be held liable for abetment.

**Mere giving of aid-** A mere giving of help is not amount of abetment, until the person who provides the aid does not know that an offence was being committed or constituted.

#### **Illustration-**

A wanted to kill B, he perused C to call B, C calls B and B is murdered, here C provide the aid, but he did not know that A wanted to kill B. So he would not be held liable for abetment.

### **Mere presence does not amount to aiding-**

Mere presence at the commission of an offence does not amount to intentional aid, unless it was intended to have that effect, and the person is aware that an offence is about to be committed, or he actively support or present hold some position, authority, or rank in committing the offence.

### **Aid by illegal omission-**

When law impose a duty on someone and he intentionally for adding some one in an illegal, failed to discharge his duty he shall be liable for abetment.

**Q-Define wrongful restraint and wrongful confinement and distinguish between the two.**

### **Section 339. Wrongful restraint**

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has right to proceed, is said wrongfully to restrain that person.

Wrongful restraint means preventing a person from going to a place where he has a right to go. In wrongful confinement, a person is kept within certain limits out of which he wishes to go and has a right to go. In wrongful restraint, a person is prevented from proceeding in some particular direction though free to go elsewhere. In wrongful confinement, there is restraint from proceeding in all directions beyond a certain area. One may even be wrongfully confined in one's own country where by a threat issued to a person prevents him from leaving the shores of his land.

**Object** – The object of this section is to **protect the freedom of a person** to utilize his right to pass in his. The slightest unlawful obstruction is deemed as wrongful restraint. Physical obstruction is not necessary always. Even by mere words constitute offence under this section. The main ingredient of this section is that when a person obstructs another by causing it to appear to that other that it is impossible difficult or dangerous to proceeds as well as by causing it actually to be impossible, difficult or dangerous for that to proceeds.

#### **Ingredients:**

- 1. An obstruction.**
- 2. Obstruction prevented complainant from proceeding in any direction.**

#### **Obstruction:-**

Obstruction means physical obstruction, though it may cause by physical force or by the use of menaces or threats. When such obstruction is wrongful it becomes the wrongful restraint. For a wrongful restraint it is necessary that one person must obstruct another voluntarily.

In simple word it means keeping a person out of the place where he wishes to, and has a right to be.

**This offence is completed if one's freedom of movement is suspended by an act of another done voluntarily.**

**Restraint necessarily implies abridgment of the liberty of a person against his will.**

What is required under this section is obstruction to free movement of a person, the method used for such obstruction is immaterial. Use of physical force for causing such obstruction is not necessary. Normally a verbal prohibition or **remonstrance** does not amount to obstruction, but in certain circumstances it may be caused by threat or by mere words. **Effect of such word upon the mind of the person obstructed is more important than the method.**

#### **Obstruction of personal liberty:**

Personal liberty of a person must be obstructed. A person means a human being, here the question arises whether a child of a tender age who cannot walk of his own legs could also be the subject of restraint was raised in **Mahendra Nath Chakarvarty v. Emperor**. It was held that the section is not confined to only such person who can walk on his own legs or can move by physical means within his own power. It was further said that if only those who can move by physical means within their own power are to be treated as person who wishes to proceed then the position would become absurd in case of paralytic or sick who on account of his sickness cannot move.

Another point that needs our attention here is whether obstruction to vehicle seated with passengers would amount to wrongful restraint or not.

An interesting judgment of our **Bombay High Court in Emperor v. Ramlala** : "Where, therefore a driver of a bus makes his bus stand across a road in such a manner, as to prevent another bus coming from behind to proceed further, he is guilty of an offence under Sec 341 of the Penal Code of wrongfully restraining the driver and passengers of another bus".

"It is absurd to say that because the driver and the passengers of the other bus could have got down from that bus and walked away in different directions, or even gone in that bus to different destinations, in reverse directions, there was therefore no wrongful restraint" is the judgment of our High Court which is applicable to our busmen who suddenly park the buses across the roads showing their protest on some issues.

Illustrations-

- I. A was on the roof of a house. B removes the ladder and thereby detains A on the roof.
- II. A and B were co-owner of a well. A prevented B from taking out water from the well.

### Section 340. Wrongful confinement.

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

**Object** – The object of this section is to **protect the freedom of a person** where his personal liberty has totally suspended or abolished, by voluntarily act done by another.

#### Ingredients:

#### I. Wrongful confinement of person.

1. Wrongful restraint of a person
2. Such restraint must prevent that person from proceeding beyond certain limits.

#### Prevent from proceedings:

Wrongful confinement is a kind of wrongful restraint, in which a person kept within the limits out which he wishes to go, and has right to go.

There must be total restraint of a personal liberty, and not merely a partial restraint to constitute confinement.

For wrongful confinement proof of actual physical obstruction is not essential.

#### Circumscribing Limits:

Wrongful confinement means the notion of restraint within some limits defined by a will or power exterior to our own.

**Moral force:** Detention through the exercise of moral force, without the accomplishment of physical force is sufficient to constitute this section.

| Base Degree of Offense | Section 339- Restraint                                                                                              | Section 340-Confinement                                                                                              |
|------------------------|---------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
|                        | Wrongful restraint is not a serious offence, and the degree of this offence is comparatively less than confinement. | Wrongful confinement is a serious offence, and the degree of this offence is comparatively intensive than restraint. |
| Principle element      | Voluntarily wrongful obstruction of a person's personal liberty, where he                                           | Voluntarily wrongfully restrains a person where he wishes to, and he has a                                           |

|                         |                                                                                                                                                             |                                                                           |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
|                         | wishes to, and he have a right to.                                                                                                                          | right to, within a circumscribing limits.                                 |
| <b>Personal liberty</b> | It is a partial restraint of the personal liberty of a person. A person is restraint is free to move anywhere other than to proceed in a partial direction. | it is a absolute or total restraint or obstruction of a personal liberty. |
| <b>Nature</b>           | Confinement implies wrongful restraint.                                                                                                                     | Wrongful confinement not implies vice-versa.                              |
| <b>Necessity</b>        | No limits or boundaries are required                                                                                                                        | Certain circumscribing limits or boundaries requires.                     |

**Conclusion** — persuasion is not obstruction, physical presence, for obstruction is not necessary, reasonable apprehension of force is sufficient, restraint implies will and desire are some of the salient features of such decisions.

**Q- Define kidnapping and abduction and distinguish between them are they continuing offences.**