

IPC at a glance

IPC,1860 -An introduction

- Main criminal code of India
- Substantive criminal law=Defines offences & prescribes punishments
- The IPC in its various sections defines specific crimes and provides punishment for them. It is sub-divided into 23 chapters that comprise of 511 sections

Debated Provisions of the IPC

- *Attempt to Commit Suicide – S. 309*
- As per the non-obstante clause ('**notwithstanding anything contained**') contained in Section 115(1) of the Mental Healthcare Act, 2017, there is the presumption of severe stress on a person who attempted suicide and such person is not to be punished under Section 309 IPC. *(SHALL PRESUME/ REBUTTABLE PRESUMPTION OF LAW)*

PRESUMPTIONS

- Presumptions of fact = May Presume
- Presumptions of Law:-
 - (a) Rebuttable presumptions of law = Shall Presume
 - (b) Irrebuttable presumptions of law = Conclusive proof

May

Presume

- Discretion to presume or not to presume
- Discretion to presume in favour of this party or that party

**Shall Presume/
Conclusive Proof**

- Obligated to presume
- No discretion but to presume in the way directed by law

**May
Presume/Shall
Presume**

**Rebuttable=
Disprovable
(Presumption
drawn can be
disproved)**

**Conclusive
Proof**

**Irrebuttable=
Cannot be
disproved**

Adultery – Section 497

- This Section, which criminalised and prescribed punishment, was criticised for treating a woman as the private property of her husband and imposing moral principles on married couples. This Section was finally struck down by the Supreme Court in September 2018 while disposing of the case of Joseph Shine v. Union of India.
- Still a ground of divorce
- Domestic Violence Angle

Unnatural Offences-Section 377

- This Section, among other things, punished consensual sexual acts between consenting adults belonging to the same sex. With the advent of time, several voices advocated for the decriminalisation of this part which punishes homosexuality. The Supreme Court, finally in the case of Navtej Johar, obliged and **decriminalised the portion of this Section which punished consensual acts of this nature.**
- Unnatural offences=Against the order of nature
- POCSO



Exceptions to the Doctrine of Mens Rea

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

1. Sec. 121 (waging war),

2. Sec. 124 A (sedition),

Sedition=Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by **law**

Shreya Singhal -Conclusion

- The Supreme Court pointed that *a penal law would be void on the grounds of vagueness if it failed to define the criminal offence with sufficient definiteness.* Ordinary people should be able to understand *what conduct is prohibited and what is permitted.* Also, *those who administer the law must know what offence has been committed so that arbitrary and discriminatory enforcement of the law does not take place.*

II. Where a statute imposes strict liability

- 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 Arms Act; Narcotic Drugs and Psychotropic Substances Act, 1985; The Public Liability Insurance Act, 1991; Essential Commodities Act, Food and Drug Act, Consumer Protection Act* 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.

III. Public Nuisance

- Another exception to the doctrine of mens rea is in case of public nuisance// // **Private Nuisance**

Section 268:-A person is guilty of a **public nuisance** who does any **act** or is guilty of an illegal omission which causes any common injury, danger or **annoyance** to the **public** or to the people in general who dwell or occupy property in the vicinity, **or which must necessarily cause injury, obstruction, danger or annoyance to persons**

- **Difference=Criminal Law vis-à-vis Civil law**

IV. Ignorance of Law no excuse

Ignorance of law is no excuse. It is presumed that everybody knows the law of land. The principle of ignorantia juris non excusat is followed in almost all legal systems. This is an irrebuttable presumption that every person knows the law of the land

Child marriage=A 22 yr old boy marries a 17 year old girl

V. When it is difficult to prove Mens Rea

- When it is difficult to prove mens rea, where the penalties are **petty fines** and where a statute has done away with the necessity of mens rea on the basis of expediency, strict liability in criminal law may be imposed, e.g. *parking offences/Not wearing a helmet/mask*

Stages of crime

- Intention: Not necessary for waging war /sedition
- Preparation
- Attempt
- Commission

Conspiracy

- Conspiracy basically means ***an agreement between two or more persons to commit an unlawful act.***
- Thus, the conspirators must actively agree and prepare themselves to commit that offence, it becomes a conspiracy. Furthermore, ***the act which the conspirators conspire to commit itself must be illegal or punishable.***
- ‘Conspiracy’ consists in the agreement of two or more persons to do an unlawful act ***or to do a lawful act by unlawful means*** (***Giving a house/job for money***)

Preparation

- i) Preparation to commit
Dacoity
- ii) Waging war (Max P=Life)
- iii) Preparation for
counterfeiting coins and
government stamps;

Attempt- Examples

- “If ‘A’ shoots ‘B’ by pistol to kill him. *If ‘B’ dies, then ‘A’ is liable for murder. If ‘B’ is injured, then ‘A’ is liable for Attempt* to murder”.
- “If ‘A’ *makes an attempt to pick the pocket of ‘Z’* by inserting his hand into Z’s pocket. Nothing in Z’s pocket. A has committed Attempt.
- A, with intent to murder Z, by poison, purchases poison and mixes the same with food which remains in A’s keeping. A is not yet guilty of an attempt. *A places the food on A’s table or delivers it to Z’s servant to place it on Z’s table.* It is an ATTEMPT

Attempt =Essential elements

- i) Accused has an intention or means *rea* to commit the intended offence.
- ii) He has taken a step forward (that is ***an act or step which was more than preparatory*** to the commission of the intended offence towards the commission of the contemplated offence).
- iii)Direct movement towards the commission***
- iv) He ***failed to commit that intended offence*** by any reason.

Attempt = Punishment

- If the accused succeeds in his attempt, the offence is accomplished. If he missed then it is considered as an attempt.
- **Punishment=** Half of the longest term

Abetment by Instigation

- Abetment=the act of **helping or encouraging** someone to do something wrong or illegal
- Instigation basically means **suggesting, encouraging or inciting (PROVOKE)** a person to do or abstain from doing something. Instigation may take place either directly or indirectly, by written or oral words, or even by gestures and hints.
- The instigation must be sufficient to actively encourage a person to commit an offence. It should not be mere advice or a simple suggestion.

Abetment by Conspiracy

- **For abetment by conspiracy mere agreement is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to do the thing conspired for.** But in the offence of conspiracy, **the very agreement or plot is an act in itself and is the gist of the offence.**
- If act committed will amount to abetment by conspiracy, if the same is not committed will amount to conspiracy and will be punishable under section 120A and not for abetment by conspiracy.

Abetment by Aiding

- The third manner in which abetment may take place is by intentionally aiding the offender in committing that offence. This generally happens when the abettor facilitates the crime or helps in committing it. The intention to aid the offender is very important.
- For example, merely giving food or clothing to an alleged offender may not be punishable. But giving him food, clothing and shelter **to help him hide from the police or commit a crime is punishable.**

Abetment- Punishment

- Abetting waging war=Death sentence
- Abetment for an offence punishable with Death or Life IMP= 7 years (If an **act which causes harm be done in consequence of abetment**= 14 yrs)
- Other cases= $1/4^{\text{th}}$ if the offence abetted is not committed
- Offence committed as a consequence of abetment=punishment is the same as the offence
- Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc., and doing acts prejudicial to harmony=3 years

CHAPTER X OF CONTEMPTS OF THE

LAWFUL AUTHORITY OF PUBLIC SERVANTS

172. Absconding to avoid service of summons of other proceeding.

173. Preventing service of summons or other proceeding, or preventing publication thereof.

174. Non-attendance in obedience to an order from public servant.

175. Omission to produce document to public servant by person legally bound to produce it.

176. Omission to give notice or information to public servant by person legally bound to give it.

177. Furnishing false information.

178. Refusing oath or affirmation when duly required by public servant to make it.

179. Refusing to answer public servant authorised to question.

180. Refusing to sign statement.

181. False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.
182. False information, with intent to cause public servant to use his lawful power to the injury of another person.
183. Resistance to the taking of property by the lawful authority of a public servant.
184. Obstructing sale of property offered for sale by authority of public servant.
185. Illegal purchase or bid for property offered for sale by authority of public servant.
186. Obstructing public servant in discharge of public functions.
187. Omission to assist public servant when bound by law to give assistance.
188. Disobedience to order duly promulgated by public servant.
189. Threat of injury to public servant.

OFFENCES AGAINST HUMAN BODY

Culpable homicide and murder

- Culpable homicide is a wider offence than murder. Culpable homicide is a genus and murder is a species. Murder is a special case of culpable homicide.
- We can say that the offence of murder requires a higher degree of *mens rea* and far higher probability of the causing of death.

CULPABLE HOMICIDE & MURDER

- Where there is *certainty of consequences and criminal use of force results in death* of the person against whom such force is used, the offence is the higher offence of murder. Where there is *no certainty but only the likelihood of the happening of the consequences*, it means a lesser offence of “culpable homicide”.

Culpable homicide and murder

- There is no radical difference between culpable homicide and murder. The true difference between culpable homicide and murder is only ***the difference in degrees of intention and knowledge. A greater the degree of intention and knowledge, the case would fall under murder. A lesser degree of intention or knowledge, the case would fall under culpable homicide. It is therefore difficult to arrive at any categorical demarcations or strait jacket differences between culpable homicide and murder.***

Punishment for Culpable Homicide/304

Part1=Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing the death, or of causing such bodily injury as is likely to cause death.

Part2= or with imprisonment of either description for a term which may extend to ten years(or fine), if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death ,or to cause such bodily injury as is likely to cause death.

Punishment for Murder

- Whoever commits murder shall be punished with death, or imprisonment for life and shall also be liable to fine.

EXCEPTIONS IN SECTION 300

- There are certain circumstances (exceptions in section 300) the existence of which reduces the offence of murder to culpable homicide not amounting to murder.

Circumstances which reduce the offence of murder to that of culpable homicide

- **The circumstances which reduce the offence of murder to that of culpable homicide not amounting to murder are -----**

- 1. Grave and sudden provocation**
- 2. Exceeding right of private defence;**
- 3. Public servant exceeding his powers;**
- 4. Sudden fight; and**
- 5. Consent (Mercy Killing).**

The towel that Ahuja was wearing was intact on his body and had neither loosened nor fallen off. In the case of a scuffle, it is highly improbable that the towel would have stayed intact

Death by rash and negligent act

- S. 304 – A deals with death being caused by rash or negligent act of the accused. It has no application to a case where death is caused by an act which is in its nature, criminal, i.e. where there is an intention to cause death. Section 304-A applies where there is neither intention nor knowledge to cause death. In other words, the section covers those offences which are outside the range of sections 229 and 300.

Death by rash and negligent act

The ingredients of the offence under the section are :-

1. The accused should cause the death of human being by an act.
2. The act should be rash and negligent
3. Neither intention nor knowledge to cause death.

Punishment=imprisonment for 2 years/fine/both

Dowry Death (Section 304-B)

1. Where the death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called Dowry Death, and such husband or relative shall be deemed to have caused her death.
2. Whoever commits dowry death shall be punished with imprisonment for a term **which shall not be less than seven year but which may extend to imprisonment for life.**

Ingredients of Section 113B (Presumption)

1. The woman must have died on account of burns, bodily injury or otherwise in abnormal circumstances.
2. She must have died within 7 years from the date of the marriage
3. It must be shown that soon before her death she was subjected to cruelty or harassment for or in connection with a demand of dowry
4. When the above points are established then court shall presume that the person who shown to have subjected her to cruelty or harassment caused dowry death.
5. The presumption can be raised only if the accused is being tried for the offence under section 304-B, IPC

113-A Presumption as to abetment of suicide

1. The case must be of suicide, not murder.
2. Suicide must have occurred within 7 years from the date of the marriage
3. The question in issue must be whether suicide was abetted by husband or his relatives.
4. The evidence must have been adduced to show that her husband or the relatives of her husband had subjected her to cruelty.
5. The law presumes that her husband and his relatives abetted her to commit suicide.
6. It is a may presumption

Distinction between Ss. 113-A & 113-B

- Section 113-A is read with Section 498-A of the IPC. Whereas, section 113-B is read with section 304-B of the IPC
- Under section 113-A, the presumption is May presumption. Whereas, under section 113-B, the presumption is shall presumption
- Under Section 113-A of the Evidence Act and Section 498-A of the IPC, the woman is subjected to cruelty and lastly she is compelled to commit suicide herself while under Section 113-B of the Evidence Act and Section 304-B of the IPC it raises an adverse presumption against the accused that he had caused the dowry death **(killed her)** in question.
- Under section 113-A, dowry element not necessary.

306. Abetment of suicide

- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.

Burden of Proof

- ✓ **CRIMINAL CASES**= Burden on Prosecution
- ✓ **CIVIL CASES**=Burden on Both Parties to prove
- ✓ **CRIMINAL CASES**= Prosecution's burden is to prove the guilt beyond reasonable doubt

Accused's burden = is just to create a doubt about his innocence

- ✓ **CIVIL CASES**= Court determines on the basis of preponderance of probabilities whether a party has proved (WEIGHT in terms of QUALITY)
- ✓ **CRIMINAL CASES**= Conviction Rate low because of the operation of these principles(100 let free)

Medical Negligence

- Criminal negligence is *when a person does an act which is in regard to the obvious risk to the safety of human life* whereas Civil negligence is negligence where a person *omits to take ordinary care which is also known as due diligence.*
- But we can not neglect a situation where a doctor forgets a scissor inside the body of the patients during the operating the patient. We can also not neglect a situation where a doctor operates the left limb of the patient instead of the right limb. Are these are not examples of medical negligence? The answer to this question is very easy it is not about the medical negligence these are clear cases of negligence.

NEGLIGENCE IN MEDICAL TREATMENT

- Medical negligence is covered under Consumer Law, Criminal Law and also under Tort Law. It attracts civil liability under Consumer Law and Torts while under Criminal Law it attracts punishment (imprisonment, as well as fine, can be imposed).
- The apex court has recognized this fact and ruled against criminal prosecution of doctors **unless gross negligence is established**
- The person has acted negligently, and has **created a high risk of death or bodily injury**

307. Attempt to murder

- Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which **may extend to ten years**, and shall also be liable to fine: and **if hurt is caused to any person by such act, the offender shall be liable to imprisonment for life**.
- **Note:** As per S.511 if there is no express provision pertaining to punishment for an attempt then the punishment would be **half of the maximum punishment**

307. Attempt to murder-illustrations

- A, intending to murder Z buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section.
- A intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping. A has not yet committed the offence defined in this Section. A places the food on Z's table or delivers it to Z's servant to place it to Z's table. A has committed the offence.

308 Attempt to commit culpable homicide

- Whoever does any act with such intention of knowledge and under such circumstances that if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to **three years** or, with fine or with both; and **if hurt is caused** to any person by such act shall be punished **with imprisonment of either description for term which may extend to seven years**, or with fine or with both.

Voyeurism (Section 354C)

- As per this section, as incorporated by Criminal Law (Amendment) Act, 2013, any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description ***for a term which shall not be less than one year***, but which may extend to three years, and shall also be liable to fine, and be punished on a **second or subsequent conviction**, with imprisonment of either description **for a term which shall not be less than three years**, but which **may extend to seven years**, and shall also be liable to fine.

Amendment Act, 2018

- Anyone who commits the offence of rape shall be punished for the **minimum period 10 years** earlier it was for 7 years.
- If any person rapes a girl, who is below **16 years** of age, shall be punished for a **minimum period of 20 years**.
- If a person rapes a girl, who is below the age of 12 years, shall be deemed to be punished **rigorous imprisonment for 20 years or imprisonment for life or maybe liable for the death penalty**.
- In case if the offence of rape, is committed with the girl age below 16 years, the **anticipatory bail** will not be granted to the accused.

Amendment Act, 2018

- Convicted persons bound to **compensate the victim**, and such compensation will be used for the **victim's medical expenses and for rehabilitation**.
And the compensation will be just and reasonable.
- If the offence of rape, is committed by the **Police Officer**, **irrespective of the place shall be punished for rigorous imprisonment which is not less than 10 years**.
- In the matter of rape, the police are under compulsion to **complete the Investigation within the period of 2 months after the FIR lodged**.

IPC –DP

1. A instigates B to murder C, but B does not do so, Has A committed any offence?
2. A instigates B to kill D, B in pursuance of the instigation stabs D. D recovers from the wound. Is A liable for abetment of murder?
3. A abets B to abet C to commit the murder of D. B accordingly abets C to commit the murder of D. But C does not do so. Have A and B committed the offence of abetment?
4. W ,the wife of A harbours or conceals A whom she knows to have committed robbery with intention of screening A from punishment. Is W liable?(212)

- A, by shooting at a fowl with intent to kill and steal it and steal it, kills B, who is behind a bush; A not knowing that he was there. Has A committed the offence of culpable homicide?
- A, a landlord, after repeatedly demanding and not getting the rent of his house from B, the tenant, one day locked the house in order to allow B to enter, till he pays-off the rent to A. Is A liable for any offence?
- A performs sexual intercourse with his wife aged 20 years without her consent. Has A committed the offence of rape?
- A goes to the house of B and finds a pen lying on the table believing it to be his own pen. Is A liable?

- A threatens to publish a defamatory libel concerning B unless she gives him 1 lakh. B , an unmarried girl, gives him the money. Is A liable?
- Theft= Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent in order to such taking, is said to commit theft.

PROBLEMS

- M, a male of 25 years of age performs sexual intercourse with W, an unmarried women of 20 years of age with her consent. While they were in a compromising position, F the father of W sees them. Out of anger, F with a sharp weapon injures M and causes grievous hurt .Can F take the plea of private defence on prosecution.
- A passerby, sees B beating his wife BW mercilessly. A attacks B to save BW from B and in the process causes grievous hurt to B. Can A take the plea of private defence on prosecution.
- Section 97=Every person has right to defend his own body as well as body of any other person, against any offence affecting the human body

Theft

- Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent in order to such taking, is said to commit theft.

Two are more parties to a crime(Acad)

- Principals in the First Degree, i.e., those who actually commit the crime with their own hands or through innocent agents.
- Principals in the Second Degree, i.e. those who are present at the commission of the crime and extend aid and assistance for its commission
- Accessories before the fact
- Accessories after the fact: receive, harbour or assist him from escaping from the clutches of law