

# LAW OF CRIMES

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### 5.1 INDIAN PENAL CODE, 1860 – AT A GLANCE

#### Indian Penal Code - An Introduction

##### 1. Title - Its meaning

- (a) It consists of three words, namely:
- Indian
  - Penal
  - Code
- (b) Out of these three, the key word is “code”.

##### Code - What it means?

It is systematic, complete, written collection of a body of laws, arranged methodically in a coherent manner. A Code is the end product of codification. Codification is a process which consists of compilation arrangement, systemization and promulgation of a body of laws by the authority competent to do so.

##### Examples:

- i. Code of Menu
- ii. Code of Napoleon
- iii. Code of Justinian
- iv. Hindu Code
- v. Indian Penal Code
- vi. Criminal Procedure Code
- vii. Civil Procedure Code

##### (c) Codification - its advantages

- i. Simplicity
- ii. Symmetry
- iii. Intelligibility
- iv. Logical coherence
- v. Certainty

##### (d) Penal - What it means ?

It is an adjective. It qualifies the noun “code”. It means “relating to punishment”.

Indian Penal Code is a penal statute, because it not only defines offences but also prescribes punishments for commission of such offences.

(e) **“Indian”**

The term “Indian” signifies that it is the penal code for India. The preamble indicates that the I.P.C. was enacted to provide a General Penal Code for India.

(f) **India in the context of the IPC**

IPC extends to the whole of India except the State of Jammu & Kashmir.

Article 1(3) of the Constitution of India, read with the First Schedule, will tell you the extent of the territory of India.

2. **Historical Background**

- (a) The year 1833 was very crucial in the history of development of law in British India.
- (b) The Charter Act of 1833 was passed by the British Parliament with a view to facilitating codification of Indian Laws.
- (c) The Charter Act of 1833
  - (i) established an All India Legislature namely Governor General in Council, for the whole of British India.
  - (ii) created the office of Law Member in that Council.
  - (iii) provided for the appointment of a Law Commission.
- (d) Mr. T.B.Macaulay was appointed to fill the office of the Law Member.
- (e) In Pursuance of the Charter Act of 1833, the first Law Commission was set up in 1834.
- (f) Mr. Macaulay, later on Lord Macaulay, became its President.
- (g) The first task assigned to the Law Commission was to prepare a draft penal code for India.
- (h) A draft Code was drawn up and submitted to the Governor-General in Council on the 14<sup>th</sup> October 1837.
- (i) The draft was then circulated to the Judges and the Legal Advisers of the crown for eliciting their comments and views.
- (j) It was thereafter revised thoroughly.
- (k) The Bill so revised remained pigeon-holed for many years.
- (l) It was ultimately passed and placed on the statute book on the 6<sup>th</sup> October, 1860.

3. **Date of commencement of the Indian Penal Code**

The IPC was brought into force on the first day of January 1862. Hence, its date of commencement is 1.1.1862.

It has, therefore, been in force for more than 152 years.

4. **I.P.C. its nature**

- (i) It is a codifying statute.
- (ii) It contains the general law of crimes in India.
- (iii) It is a substantive law. The Code of Criminal Procedure is an adjective law.
- (iv) It is exhaustive in respect of the matters covered by it. It is a complete Code.
- (v) It lays down the general principles of criminal liability.
- (vi) It also provides for general exceptions to criminal liability.
- (vii) It defines specific offences and prescribes punishments therefor.

**5. Scheme of the Code**

- (a) The Code is broadly divided into twenty-three Chapters.
- (b) To be more precise, the Code at present contains 26 Chapters, because three Chapters, namely, VA, IXA and XXA have been added subsequently.
- (c) Each Chapter is again sub-divided into several Sections.
- (d) Each Section has been given a numeral figure for distinguishing it from the others.
- (e) The last Section of the IPC bears the number 511.
- (f) That, however, does not imply that the IPC has 511 Sections.
- (g) Many Sections have been added and several Sections have been omitted.

**6. Arrangement**

- (a) There are two broad divisions of the Code, they are:
  - (i) General Principles and
  - (ii) Specific offences.
- (b) Specific offences may be roughly categorised under two heads, namely (i) offences against the State and the public and (ii) Offences against the person and the property.
- (c) The general principles are embodied in Chapters I, II, III, IV, V, VA and XXIII as detailed below:
  - Chapter I - Title and extent of operation of the Code.
  - Chapter II - Definition of certain terms.
  - Chapter III - Punishments. (General)
  - Chapter IV - General Exceptions
  - Chapter V - Abetment of offences
  - Chapter VA - Criminal conspiracy
  - Chapter XXIII - Criminal Attempts
- (d) Specific offences
  - Chapter VI to - Offences against the State and the public

Chapter XV	-	Offences Relating to Religion
Chapter XVI	-	Offences affecting human body.
Chapter XVII	-	Offences against the properties (corporeal and Incorporeal)
Chapter XIX	-	to Chap. XXII

**7. Jurisdiction**

- (a) IPC has two kinds of jurisdiction, namely,
  - (i) Intra-territorial (Sec.2).
  - (ii) Extra-territorial (Sec.3 and 4).
- (b) If any offence under the IPC is committed by a person within the territory of India, whether Indian or foreigner, he is liable to be prosecuted and punished by the Court in India having jurisdiction.
- (c) If an Indian commits an act of commission or omission outside India, which is an offence under the IPC, he may still be prosecuted and punished under the IPC by a competent Indian Court, even though the act may not constitute an offence under the law of that land.
- (d) If any offence under the IPC is committed on any ship or aircraft, registered in India, the person committing it shall be liable to be dealt with under the IPC by a competent Indian Court, even though the ship or aircraft, at the time of commission of such offence has remained outside India.

- Note :
- i. In this context, reference may be made to Sec.188 of the Criminal Procedure Code.
  - ii. A person can not however, be prosecuted and punished twice for the same offence, one under the IPC and the other under the Foreign Law.

## 5.2 GENERAL EXCEPTIONS UNDER IPC

### Meaning of General Exceptions

Certain acts, or acts in particular circumstances have been removed from the ambit of being treated as offences under the IPC by virtue of Chapter IV of the IPC. The provisions of the IPC must be read in such a manner so as to be subject to the exceptions contained in Chapter IV.

### **Burden of Proving Exception**

The onus of proving that an act lies within an exception is on the accused. Under S. 105 of the Indian Evidence Act, 1872, the burden of proving the existence of circumstances bringing the case within exceptions lies on the accused, and the court shall presume the absence of such circumstances.

In *Nanavati*, the Court said that it shall regard the non-existence of such circumstances as proved, until they are disproved. (*K. M. Nanavati v. State of Maharashtra*, AIR 1962 SC 605)

### **Standard of Proof for Proving Exception**

The Supreme Court has held that the standard of proof required for an accused to discharge his burden of proving that his acts come within a general exception is that of preponderance of probabilities. (*Vijayee Singhand others v. State of Uttar Pradesh*, (1990) 3 SCC 190). The test is not whether the accused has proved beyond all reasonable doubt that he comes within an exception, but whether in setting up the defence, he has established a reasonable doubt in the case of the prosecution and thereby earned his right of acquittal. (*Kanali Barui v. Subhas Das*, 1983 Cri. L. J. 1474)

Although an exception must normally be proved in trial by the accused, the Supreme Court in *Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker and Another*, AIR 1960 SC 1113, has recognized that where an act falls within one of the exceptions provided in the IPC, and this is apparent on the complaint itself, the Magistrate is within her powers to decline to issue process.

The Supreme Court held:

*“The short question before us is - was the High Court right in its view that when a Magistrate directs an enquiry under S.202 of the Code of Criminal Procedure for ascertaining the truth or falsehood of a complaint and receives a report from the enquiring officer supporting a plea of self-defence made by the person complained against, it is not open to him to hold that the plea is correct on the basis of the report and the statements of witnesses recorded by the enquiring officer? Must he, as a matter of law, issue process in such a case and leave the*

person complained against to establish his plea of self-defence at the trial? *It may be pointed out here that the High Court itself recognised that it would not be correct to lay down a proposition in absolute terms that whenever a defence under any of the exceptions in the Indian Penal Code is pleaded by the person complained against, the Magistrate would not be justified in dismissing the complaint and must issue process. Said the High Court: "As we have already observed, if there is a complaint, which itself discloses a complete defence under any of the exceptions, it might be a case where a Magistrate would be justified in dismissing such a complaint finding that there was no sufficient ground to proceed with the case."*

#### **Exceptions Provided under Chapter IV: General Categories**

##### **Mistake of Fact**

S.76 of the IPC excuses a person who has done what by law is an offence under a mistake of facts (and not under a mistake of law), that lead her to believe in good faith that she was bound by law to do such an act.

*Illustration:* A, soldier, fires on a mob by the order of his superior officer, in conformity with the command of the law. A has committed no offence.

*Illustration:* A, an officer of a court, being ordered by that court to arrest Y, and after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

##### **S.79 of the IPC**

S.79 of the IPC excuses a person who has done what by law is an offence under a mistake of fact (and not under a mistake of law) that lead her to believe in good faith that she was justified in law to do such an act.

*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 person of apprehending murderers in the act, 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.

S.76 and 79 of the IPC are based on the principle that ignorance of a fact may be excused, but ignorance of the law cannot be excused. The distinction between Ss.76 and 79 of the IPC is that in the former, a person is assumed to be *bound*, and in the latter to be *justified*, by law.

### **Judicial Acts**

S.77 of the IPC protects acts done by a Judge while acting judicially and in exercise of the powers given to him by law.

S.78 of the IPC protects acts done in pursuance of, or in consequence of the judgment or order of a Court.

### **Accident**

S.80 of the IPC exempts the commission of any innocent or lawful act, done in an innocent or lawful manner, which has led to an unforeseen result that may have ensued from an accident or misfortune. For the accused to avail of this exception, it must be shown that due care and caution were exercised at the time of commission of the act. *Bhupendrasinh A. Chudasama v. State of Gujarat*, AIR 1997 SC 3790.

### **Absence of Criminal Intent**

These exceptions, including for unsoundness of mind and intoxication, are based on the premise that the accused, while committing the acts in question had no criminal/*malafide* intent. For instance, under S.82 of the IPC, acts done by a child under the age of seven are not offences.

### **Unsound Mind**

S.84 of the IPC lays down the test of responsibility in cases of alleged unsoundness of mind. There is no definition of 'unsoundness of mind' under the IPC. However, courts have treated this term as being equivalent to insanity.

Insanity itself, however, has no precise definition and is a term used to describe varying degrees of mental disorder. Therefore, every person suffering from some sort of a mental ailment is not ipso facto exempted from criminal responsibility and thereby come within the ambit of the protection provided by S.84 of the IPC. (*Bapu and Gajraj Singh v. State of Rajasthan*, (2007) 8 SCC 66)

A person is exonerated from liability for doing an act on the ground of unsoundness of mind, if she, at the time of doing the act, is either incapable of knowing the nature of the act, or that she is doing what is either wrong or contrary to law.

In *Nanney Khan v. State (Delhi Administration)*, (1986) 2 Crimes 328 (Del), since no questions were put to witnesses regarding the alleged insanity of the accused at the time of the commission



of the crime, and since the accused didn't set up any defence of insanity, the Court held that a plea of insanity before the appellate court taken for the first time cannot prevail, and the accused is not entitled to the benefit of S.84 of the IPC.

In *Jagdish v. State of M.P.*, JT 2009 (12) SC 300, the Supreme Court rejected a plea of insanity under S. 84 of the IPC that was taken by the accused/convict for the first time before the Supreme Court.

### **Intoxication**

Under S.85 of the IPC, a person will be exonerated from liability for doing an act while in a state of intoxication, if at the time of the act, the person (due to intoxication) was incapable of knowing the nature of his act, or that he was doing what was either wrong or contrary to law.

### **Consent**

S.87 of the IPC provides that nothing is an offence if the person to whom harm is caused is above eighteen years of age and has given consent to suffer such harm. The provision however, provides that the act for which consent is offered should not be intended to cause death or grievous hurt.

*Illustration:* A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

### **Trifling Acts**

S.95 of the IPC provides that if the harm caused by an act is so slight that a person of ordinary sense and temper would not complain of such harm, the act would not be an offence. This defence is often known as the 'defence of triviality'.

The High Court in revision came to the conclusion that the injuries were trivial and the case was one in which the injury intended to be caused was so slight that a person of ordinary sense and temper would not complain of the harm caused thereby and accordingly set aside the conviction and acquitted the accused.

While upholding the decision of the High Court, the Supreme Court held:

*"The next question is whether, having regard to the circumstances, the harm caused to the appellant ... ..was so slight that no person of ordinary sense and*

*temper would complain of such harm. S.95 is intended to prevent penalisation of negligible wrongs or of offences of trivial character. Whether an act, which amounts to an offence, is trivial would undoubtedly depend upon the nature of the injury, the position of the parties, the knowledge or intention with which the offending act is done, and other related circumstances. There can be no absolute standard or degree of harm which may be regarded as so slight that a person of ordinary sense and temper would not complain of the harm. It cannot be judged solely by the measure of physical or other injury the act causes ... An assault by one child or another, or even by a grown-up person on another, which causes injury may still be regarded as so slight, having regard to the way and station of life of the parties, relation between them, situation in which the parties are placed, and other circumstances in which harm is caused, that the victim ordinarily may not complain of the harm". (Neelam Mahajan Singh v. Commissioner of Police & Others, 1994 (2) Crimes 75)*

### **Private Defence**

Ss.96 to 106 of the IPC deal with the right of private defence and are a recognition of the right of a person to protect his or her life and property against the unlawful aggression of others.

S.96 of the IPC states that nothing is an offence which is done in the exercise of the right of private defence. S.97 of the IPC defines the right of private defence of the body and property. Every person has a right to defend his own body and the body of any other person against any offence affecting the human body, subject to the restrictions contained in S. 99 of the IPC.

Among the restrictions stated in S.99 of the IPC, the provision stipulated the extent to which the right of private defence may be exercised, namely that it in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. Further, S. 100 details instances in which the right of private defence of the body extends to causing death.

For the plea of right to defence to succeed in totality, it must be proved by the accused that there existed a right to private defence in favour of the accused, and that this right extended to causing death. Hence, if the Court were to reject this plea, there are two possible ways in which this may be done. On one hand, it may be held that there existed a right to private defence of the body. However, more harm than necessary was caused or, alternatively, this right did not extend to causing death. The other situation is where, on appreciation of facts, the right of private defence is held not to exist at all. (*Bhanwar Singh v. State of MP*, (2008) 16 SCC 657)