



Department of Distance Education

Punjabi University, Patiala

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Lesson No.

- 1.1. : Jurisdiction**
- 1.2. : General Explanations in IPC (Section 6-52A)**
- 1.3 : Punishment (Sections 53,53A,55,60,63,73)**
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Section 149**
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LESSON NO. 1.1

JURISDICTION (Section 1-5)

Jurisdiction, in law, the authority of a court to hear and determine cases. This authority is constitutionally based. Examples of judicial jurisdiction are: appellate jurisdiction, in which a superior court has power to correct legal errors made in a lower court; concurrent jurisdiction, in which a suit might be brought to any of two or more courts; and federal jurisdiction (as opposed, for example, to state jurisdiction). A court may also have authority to operate within a certain territory. Summary jurisdiction, in which a magistrate or judge has power to conduct proceedings resulting in a conviction without jury trial, is limited in the U.S. to petty offenses.

The word jurisdiction is derived from two Latin words, “Juris” and “dicere”. ‘Juris’ means law and ‘dicere’ mean to speak. Jurisdiction refers to the practical authority or the dominion which is conferred upon a legal body so that it can administer justice within that defined field of authority. The term legal body includes within its ambit a court, political or government office or a law enforcement agency. Jurisdiction with respect to a judicial authority is the limit or the extent of judicial authority it has over dealing with the cases, appeals and other legal proceedings. The reason behind the introduction of the concept of jurisdiction is to ensure that the courts adjudicate and try only those matters which fall within the territorial and pecuniary limits of the court.

Under Indian Law, there are 5 types of jurisdiction:

1. Subject-matter Jurisdiction – This type places a limit on Courts to exercise their powers over a particular type of case or a particular subject matter.
2. Territorial Jurisdiction – This type places a limit on Courts to exercise their powers within a territorial limit.
3. Pecuniary Jurisdiction – This type deals with limitation of Courts regarding the monetary value or cost of suits or cases.
4. Original Jurisdiction – This type allows Courts to hear new cases that have been initiated.
5. Appellate Jurisdiction – This type allows Courts to re-hear or review judgments given by lower courts

The official criminal code of India is Indian Penal Code, 1860 and it deals with the substantive facet of criminal law. It was drafted in the year 1860 and came into effect in 1862. The Indian Penal Code deals with intra-territorial jurisdiction while Section 3 and 4 of the code deals with the extra-territorial jurisdiction of the Code.

Intra-territorial Jurisdiction & Extra-territorial Jurisdiction

Section 2 of the Indian Penal Code deals with the intra territorial jurisdiction of the Code. It makes the code universally applicable on all the persons on every act or omission contrary to the provisions of the Act. Section 3 and Section 4 confer extraterritorial jurisdiction to the Code. According to which a person can be held liable for any act committed beyond the territory of India.

Intra-territorial Jurisdiction

Section 2 of the Indian Penal Code states that every person who commits an act or omits to do an act which is contrary to the provisions of the code shall be liable for punishment. Here, every wrongdoer is made liable for punishment without any discrimination on the basis of his nationality, rank, caste or creed. The only requirement under this Section to incriminate a person is that he should commit the act or omission within the territory of India. Thus a foreigner who committed a wrong within the territory of the country cannot plead ignorance of Indian law. However, there are exceptions to the universal application of the code and so specific class of people are immune from criminal liability, the class of people include:

- Foreign sovereign;
- Diplomats;
- Enemy aliens;

- foreign army and warships;
- President and governors.

Scope of Section 2: Personal Jurisdiction

Section 2 of the code states that the provisions of the code are applicable to ‘every person’ who commits an act or omits to do an act within the territory of India which is in contravention to the provisions of the Act. The people who are covered under the ambit of the Code are as follows:

1. **Foreign nationals:** Foreign nationals who enter into the territory of India and thus accepts the protection of the Indian laws impliedly consent to the imposition of India laws and are obliged to respect the same. Also, a person who is for the time being present in India and instigates the commission of an offence outside the territory of India is also liable under the Act. It is also settled by the Indian courts that a person who initiates an offence outside the territory of India and which takes place within the territory of India will be liable for punishment prescribed under the Act.

In the case of *Mobarik Ali v. The State of Bombay*, a person who was a Pakistani national induced a person residing in Bombay through telegram, telephone conversations, letters and to send him money. When the case came in front of the court, the Pakistani national pleaded that he can not be made liable for the offence of cheating since he was not physically present within the territory of India. The court rejected the contention and held that the basis of jurisdiction under Section 2 of the Act is not the corporeal presence of the offender but the locality where the offence is committed and since the offender committed the offence in Bombay it is immaterial that at the time of commission of offence he was not present within the territory of India. Similarly, In the case of *State of Maharashtra v. Mayer Hans George*, the court held the foreigner liable under Foreign Exchange Regulation Act, 1973 where he without making an express declaration about the gold which he was carrying during his journey through the aeroplane and as soon as the plane landed the Indian territory, he was held liable.

Corporations: Section 11 of the Indian Penal Code defines the term “person” according to the Section “person” includes all the natural and legal person which include company, association or

body of persons which has a legal existence. A company can be held liable under the law even if it is unincorporated. A company can not commit a crime by itself but it can do so through its agent. The company can be punished by imposition of fine while its employers can be held liable for criminal conspiracy. In the case of *State of Maharashtra v. Syndicate Transport Company*, the court held that in cases of criminal act or omission by the director, authorized agent or servants of a particular company the presence of mens rea is immaterial and the company can be held liable for the act or omission which is in contravention to the Code. In case of *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Corporation of Calcutta*, the court held that even the state can be held liable for the wrongful acts or omission of its agent.

Exemption from Coverage of the Indian Penal Code, 1860

According to the provisions of Section 2 of the Indian Penal Code, every person who commits an act or omits to do an act which is contrary to the provisions of the code shall be liable to punishment. Every wrongdoer shall be subjected to punishment without any discrimination on the basis of his nationality, rank, caste or creed. However, there are certain exceptions to this universal application of the code in India and certain people are immune from criminal liability under the Code, the people who are exempted from the liability are as follows include:

Foreign sovereign: A foreign sovereign of any country possesses the ultimate or supreme authority of the country and is exempted from incrimination under the Code.

Ambassadors and Diplomats: Ambassador is an accredited permanent representative which one country sends to another country while a diplomat is a person who represents the country in another country. The ambassadors and Diplomats are exempted from liability under the Code, the reason for such exemption is that a foreign sovereign sends ambassadors and diplomats to as a representative of his country in good faith and so they are the representatives of the independent sovereign of that country, therefore, they should enjoy the same immunity which is provided to the sovereign of the country which he represents. The exemption given to them is on lines with the international laws like the United Nations Privileges and Immunities Act of 1947 which is a part of national laws.

Alien Enemy: When an alien enemy invades the country irrespective of the fact whether the country to which they belong to is at war or peace with our country, he will not be subjected to

the criminal laws of the country but will be dealt with by the martial laws of the country. If any alien enemy commits any crime which is in no way connected with war then, he shall be subjected to the criminal laws.

Foreign army: When the foreign armies are on the soil of another country with the permission of their own country. They are exempted from criminal liabilities of the state on the soil of which they stand.

Warships: Warships which enter the water which comes under the territorial jurisdiction of another country, they are not subjected to the penal laws of that country.

President and governors: The provisions of Article 361 under Part 19 of the Constitution constitutes an exception to Article 14 and Section 2 of Indian Penal Code. It states that:

1. That the governor and the president can not be made answerable to any court of law in the exercise of their duties during the term of office,
2. During the term of office of governor and president, the criminal proceeding can not be induced against them,
3. During the term of office, the president and the governor can not be arrested or imprisoned,
4. If the president or the governor does any act in his personal liability, during the term of their office no civil proceedings can be instituted against them.

Section 5: An Exception to Section 2

Section 5 is a saving clause and provides for limiting the jurisdiction of the Indian Penal Code, 1860 by excluding the application of the Code over the matter for which specific laws are already present. It limits the applicability of the law on the specific class of people for whom different laws are already present in the country. Section 5 states that nothing contained in the Act shall be made applicable which interferes with any of the special and local laws and also any existing laws on the matters of

- Punishment, mutiny or desertion of any officer, sailor, soldier or airmen who work for the Government of India.

- Section 5 is an exception to Section 2, Section 2 makes the Code universal in the application within the territory of India on every person irrespective of his nationality, rank, caste or creed while Section 5 limits the operation of the Code.

Scope of Section 5

1. Section 5 is applicable to the officers, soldiers, sailors, airmen who render their services to the Government of India and have been made liable for desertion or mutiny against the Government of India.
2. Such above-mentioned people are to be punished in accordance with the Acts, provisions of any special or local laws and such wrongs demand to be tackled separately.
3. The Section limits the application of the Code on the Acts, provisions with respect to the prescription of punishment for desertion or mutiny against the Government of India by officers, soldiers, sailors, airmen who render their services to the Government of India. The main Acts in this connection are the Army Act, 1950, Air Force Act, 1950, Navy Act 1957, Air Force and Army Law (Amendment) Act, 1975.

Extra-territorial Jurisdiction

Section 3 and Section 4 of Indian Penal Code confers extraterritorial jurisdiction to the Code. Crime is said to be extraterritorial when it is tried in a country other than the one in which he committed it. According to Section 3 of the Act, any person who commits an act beyond the territorial limits of the country but the repercussions of such an act is such that it has been committed within the territory of India. Then such a person could be dealt with in accordance with the provisions of the Code for the act committed by him even though in the country in which he committed the act is not an offence under the ordinary laws of that country.

Section 4 of the Indian Penal Code expands the ambit of application of Section 3 of the Act. According to Section 4 of Indian Penal Code, when an offender has committed an offence outside the territory of India but is found within the territory of India. Then there are two courses of actions which may be resorted to:

- Extradition: He can be sent to the country where the effect of his wrongdoing took place,
- Extraterritorial jurisdiction: he may be tried in accordance with the criminal laws of India.

Scope of Sections 3 and 4, Indian Penal Code 1860

According to Section 4, the jurisdiction of the Code is applicable to any person beyond the territory of India who commits a crime. The Section also covers the following category of people:

1. Any Indian citizen who is present beyond the territory of India and has committed a wrong,
2. Any person travelling through any ship or aircraft which is registered in India,
3. Any person present in any place which is not under the territorial limit of India and targets the computer resources present in India.

About Liability of a Foreigner for Offences Committed in India

A foreigner committing an offence in India will be subjected to the provisions of Indian laws and shall be punished in accordance with the provisions of the Act even though he may not be physically present in India at the time of the commission of the offence. The court in the case of *Nazar Mohammad v. State* held that foreign citizen committing an offence in India will be held guilty under the Indian laws and ignorance of Indian laws is not an excuse although ignorance may be pleaded at the time of mitigation of the sentence. The prerequisite for the application of Section 3 and Section 4 is not the physical presence of the offender and the only requirement is that the wrong should take place in. The Section only means that the offence must take place in India although the offender is outside.

In the case of *State of Maharashtra v. M.H. George*, when the defendant pleaded ignorance in front of the court on the ground that he did not know about the recent changes which took place in the Indian legislation regulating the foreign exchange, the court rejected the plea and held him liable under the Act and held that the publication of changes made in the existing Indian laws

cannot be expected to be made in every country and therefore ignorance of Indian law cannot be pleaded.

In the case of *Sabu Mathew George v. Union Of India*, the plaintiff was an activist and he filed a writ petition challenging the display of an advertisement in the Indian search Engines contending that it was violative of Section 22 of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse Act), 1994 as the advertisement was related to pre-natal sex discrimination. The court took the issue in consideration and ordered the respondents Google, Microsoft and Yahoo to auto-block the advertisement.

The application of provisions under Section 3 and Section 4 is limited to offences committed within the circumscribed boundary of the territory of India. What constitutes the territory of India has been defined under Article 1(3) of the Indian Constitution. Which says that the territory of India comprises of:

- Territories of the states,
- Union territories which are specified in the first schedule, and
- Other acquired territories.

Liability of a Foreigner Who Obtains Indian Citizenship After Committing an Offence as a Foreigner

In the case of *Fatma Bibi Ahmed Patel VS. State of Gujarat*, the appellant was a citizen of Mauritius and her son and daughter-in-law were residing in Kuwait. The Appellant frequently visited India on Visas and used to stay in her relative's home. The son of appellant Hanif Ahmed Patel married the complainant. After some time the relation between the son and daughter in law of the appellant became strained and so the daughter in law filed a petition before the chief judicial magistrate, in Gujarat against the alleged physical and mental torture by her husband. The court held that the essential condition for the application of Section 4 is that the crime should be committed in India and so the law is not applicable on a foreigner who obtains the citizenship of India after the commission of the offence. Therefore, the petition filed by the daughter in law of the appellant was not maintainable.

Effect of Reading Sections 3 and 4, Indian Penal Code, 1860, with Section 188 of Criminal Procedure Code, 1973

According to Section 188 of the Criminal Procedure, 1973. When a wrong is committed outside the territory of India:

- By any citizen of India, either on the high sea or elsewhere, or
- By any non-citizen on ship or aircraft which is registered in India.

He may be made liable in accordance with the provisions of Indian laws as if the offence has been committed within the territory of India.

Thus, Section 3, Section 4 and Section 188 together form a class of law dealing with the trial of a person who has committed any act or omission outside the territory of India but that act or omission has resulted into a wrong in accordance with the provisions of the laws in force in India. Section 188 mandates the prior approval of the Government of India for the trial of every wrong committed outside the territory of India.

In the case of *Samaruddin v. Asstt. Director of Enforcement*, the court held that the courts in the country do not have the authority to try an offence committed outside the territory of India without the prior sanction of the central Government.

In the case of *Om Hemrajani v. State of U.P.*, the accused had the full knowledge of his inability to pay back the loan amount which he took from a bank at UAE and absconded from the place thus, defrauding the bank. In an appeal against the accused by the bank under Section 415, 417, 418 and 420 read with Section 120-B of the IPC before the magistrate's court at Ghaziabad. The court taking cognizance of the case, the court held the accused liable and issued a non-bailable warrant against him. The accused challenged the magistrate's order before High Court and also alleged that the said court had no jurisdiction over the matter. the court held that the Section 188 of the CrPC makes it elastic for the victim at a foreign land who has been wronged by any person within the territory of India to file a complaint before any court in India whichever he finds easier to approach. Any foreigner who has been victimized by a person within the territory of India cannot be expected to first come to the territory and then ascertain where the offender is or can be found thereby determining the court which has competent jurisdiction. Therefore, the

victim is at the liberty as per Section 188 of CrPC to approach any court which he finds convenient to approach.

Admiralty Jurisdiction

Admiralty Jurisdiction is the jurisdiction which confers the power to try offences which are committed on the high seas. Incorporation of Admiralty Jurisdiction into the Indian statutes was the result of various charters and British statutes, for example, Admiralty Offences Act, 1849, Colonial Courts of Admiralty Act 1890 conjointly read together with the Indian Colonial Courts of Admiralty Act 1891, and the Merchant Shipping Act, 1894. The notion that a ship which floats on the high seas is like a floating island is the basic principle behind the Admiralty Jurisdiction. The extension of Admiralty Jurisdiction is over the cases which involve the following offences:

- Offences which are committed on the Indian ships on the high seas;
- Offences which are committed on foreign ships within Indian territorial waters.

In Enrica Lexie Case, an Italian ship named Enrica Lexie while passing off the coast of Kerala fired at a fishing boat registered in India, thereof. The firing resulted in the on-spot death of 2 fishermen. Against the Italian mariners, an FIR was filed and the Italian ship marines were arrested. In response of which the Italian mariners filed a writ petition before the Kerala High Court challenging that the FIR is not maintainable since the incident took place at a place which was 20.5 nautical miles from the coast of India. The court quashed the writ and held that Section 2 of the IPC conferred the Kerala Police jurisdiction over such cases. Later, the Supreme Court held that subject to the provisions of Article 100 of The United Nations Convention on the Law of the Sea, 1982 the Union of India was entitled to prosecute the accused. Article 100 of The United Nations Convention on the Law of the Sea 1982 that such cases are outside the jurisdiction of provides that such cases are outside the jurisdiction of the State Governments and can be conducted only at the Federal/Central Government level. Therefore the court directed the Central Government to set up a Special Court to try such cases and the State of Kerala had no jurisdiction in the matter.

Proposals for reform

1. Section 2 of the IPC specifically states that act or omission contrary to the provisions of the Code shall be punished in no other ways but according to the provisions of the Code. the main reason for the incorporation of such provision was that during the time when IPC came into force there a lot of other laws which were in force in the country but factually after Indian Penal Code came to force most of the old laws have already been repealed and therefore this provision of IPC in today's scenario is redundant and can be deleted from the statute.
2. Section 3 and Section 4 deals with the extraterritorial jurisdiction with the courts, according to these Sections a person can be held liable for any act or omission which is contrary to the provisions of the Act even if such an act or omission has been committed beyond the territory of India. Section 18 elucidates the meaning of India as territory of India except for the state of Jammu and Kashmir. The question which arises is that does the territorial water of India is included within the territory of India. The question is further concretized with the situation that what if the men in a foreign fishing boat hurt men in an Indian fishing boat when he boats are at 10 miles from the territory of India. Therefore it should be made clear by mentioning in Section 18 of the Act that the territorial waters are included within the meaning of territory of India.
3. Section 4(1) of the Code makes the provisions applicable to the offences committed by Indian citizens beyond the territory of India. It is desirable to extend the extraterritorial application of the Code to the aliens who render service to the state or central government;
4. With the technological expansion, the new concept of cyberspace has come up and so the Code must make provisions with respect to that as well to retain its comprehensive character.

Conclusion

Jurisdiction refers to the practical authority or the dominion which is conferred upon a legal body so that it can administer justice within that defined field of authority. The term legal body includes within its ambit a court, political or government office or a law enforcement agency. Jurisdiction with respect to a judicial authority is the limit or the extent of judicial authority it has over dealing with the cases, appeals and other legal proceedings. The reason behind the introduction of the concept of jurisdiction is to ensure that the courts adjudicate and try only

those matters which fall within the territorial and pecuniary limits of the court. The legislature time and again makes various laws related to a jurisdiction which is useful for proper dispersal of justice. Thus, making the country a better place to live in by making the judicial institution more sorted and organized.

LESSON- 1.2

General Explanations In IPC (section 6-52A)

In another landmark judgment, the Supreme Court criminalized sex with a minor wife aged between 15 and 18 years. The court overturned an exception in rape law which allowed a husband to have sex with his wife aged 15 years and above regardless of consent, including punishment. NGO Independent Thought filed a PIL in court which paved the way for this ruling and this rule will be applicable even in the case of Muslim Personal law. Criminal law deals with such type of cases in India which are assorted in different sections depending upon their nature

There is a list of general explanation in IPC which are given below:

Section : 6. Definitions in the Code to be understood subject to exceptions.—Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled “General Exceptions”, though those exceptions are not repeated in such definition, penal provision, or illustration. Illustrations (a) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age. (b) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that “nothing is an offence which is done by a person who is bound by law to do it”.

Section 7: Sense of expression once explained:

Every expression which is explained in any part of this code is used in every part of this code in conformity with the explanation.

Section 8: Gender:

The pronoun “he” and its derivation are used of any person, whether male or female.

Section 9: Number:

Unless the contrary appears from the context, words importing the singular number include the plural number, and word importing the plural number include the singular number.

Section 10: Man:

The word “man” means the male person and word “woman” denotes female human. Emperor v/s Talia, 14 Bom LR 961- A girl of six is a ‘woman’. An assault or criminal force to woman with intent to outrage her modesty is punishable under section 354.

State v/s Major Singh AIR 1967 S.C.

Section 11: Person:

- Any company or association whether incorporated or not is a person.
- In this section, a person included a ratification person and legal both.
- An idol is a legal person and to own property, therefore is a person under section 11.
- Jabbar v/s State AIR 1966 Allahabad – Fully developed unborn child is a person.
- Nagar Nigam is a person, but only fine can be imposed upon it as it cannot be sentenced by imprisonment.

ILLUSTRATION- This general explanation can be illustrated by the case study, Krishnan v/s Krishna Veni AIR 1997 S.C.

The word ‘person’ does not include the state as it is not a property owner institution.

Section 12: Public:

The word “public” includes any class of the public or any community.

Section 14: Servant of government:

The word “servant of government” denotes any officer or servant continued appointed or employed in India by or under the authority of government.

Section 17: Government:

The word “government” denotes the central government of the government of a state.

Section 18: India:

“India” means the territory of India excluding the state of JAMMU & KASHMIR.

Section 19: Judge:

The word “judge” denotes not only every person who is officially designated as judge, but also every person, who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons, is empowered by law to give such a judgment.

Section 20: Court of Justice:

The word “court of justice” denote a judge who is empowered by law to act judicially alone, or a body of judges which is empowered by law to act judicially as a body, when such judge or body of judges is acting judicially.

Only construction of building and venue is not the court, Vardakant Misra v/s. Registrar Orissa University AIR S.C 1974- when any judge is doing work in the administrative capacity in the court the comments against him not be considered as contempt of court.

T.R. Dhananjay v/s. Vasudevan- An importance related to contempt of court and public servant.

Section 21: Public servant:

The word “public servant” denote a person falling under any of the descriptions hereinafter following, namely:

1. Every commissioned officer in the military, naval or Air Force of India.
2. Every judge.
3. Every officer of a court of justice(including a liquidator, receiver or commissioner, whose duty is as such to investigate or report or to make a document, attestation of any document or to execute any judicial process.
4. Every juryman, assessor, or member of a panchayat.
5. The person who is empowered to place any person in confinement.
6. Government officer whose duty is to prevent offenses, to give information of offenses, to bring the offender to justice or to protect public health, safety.
7. Every government officer who on behalf of government take, receive, keep or expend property, to make any survey, to the investigation, to report on any matter affecting the pecuniary interest of the government or to prevent the infraction of any law for the protection of the pecuniary interests of the government.
8. Every officer whose duty is to take, receive, keep or to expend property, to make any survey or to levy any tax for any secular purpose of any place.
9. Every person empowered to prepare, publish, maintain or revise electoral roll to conduct the election.
10. (A) Every person in the service of the government or pay, fee or commission for the performance of any public duty.

In the service or pay of a local authority.

11. Every arbitrator

ILLUSTRATION- This general explanation can be illustrated by, a municipal commissioner is a public servant.

Clarification:

1. A person falling under any of the above descriptions are not necessarily be appointed by the government.
2. Every person who is in actual possession of the situation of a public servant is a public servant.
3. For elected member- “It is mandatory that elected member has acquired the post, following due process of election.

Besides above, a person who is appointed by the government takes a salary, the government has the full right in respect of his appointment, service, and termination of service, perform duties for public and has the power to bind public and government by his acts is also a public servant.

Every public servant is a government servant but every government servant is not a public servant. Dhanpal Singh v/s Punjab state, 1970.S.C.- An MLA is not a public servant, but when he becomes Minister, he is a public servant.

An IAS officer is not a public servant on being posted on a post/ position(Padsthapan)
Government servant and Public servant – A person appointed by the government is called government servant. Whereas the person who has the power to bind government and public is called a public servant.

Section 22: Movable Property:

The word denotes to include corporeal property of every description, except land and things attached to the earth.

- Property attached to the earth having the capability of movement from one place to another. Avtar Singh v/s State AIR 1965 S.C.: Electricity is not movable property.
Corporal Property – which can be felt by sense organs.

Section 23: Wrongful gain:

Wrongful gain is gain by lawful means of property to which the person gaining is not legally entitled. “Wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled.

ILLUSTRATION:

This general explanation can be easily understood by the example: selling in the market wheat/ oil/ sugar of Rashan at double price is the example of wrongful gain and the loss occurred to government is a wrongful loss.

- Wrongful- means trespassing of others legal right without any reasonable cause.
- Unlawful means- The means which are not permissible by law.

Wrongful gains – A person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully.

Section 24: Dishonestly:

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly”.

In this section, it is essential that the act has been done by the accused with the intention of wrongful gain or wrongful loss.

ILLUSTRATION- This general explanation can be illustrated by, while cleaning house the servant with the intention to take the wristwatch to hide it beneath the carpet.

Section 25: Fraudulently:

A person is said to do a thing fraudulently if he does those things with the intent to defraud but not otherwise.

The expression intent to defraud means intent to deceive in such a manner as to expose any person to loss or the risk of loss means not only a deprivation of property but includes the infringement of any right possessed by a person. S.P.Nadu v/s Jagannath 1994. When anything is exposed in the manner which is not actual. In defrauding right of property life and marriage is included.

Section 26: Reason to believe:

A person is said to have “reason to believe” a thing if he has sufficient cause to believe that thing but not otherwise. There must be sufficient cause, It does not include believe done with doubt.

Section 29: Document:

Any matter expressed upon any substance by means of letters, figures, or marks, intended to be used as evidence of the matter. The word evidence has been defined in section 2 of the Indian Evidence Act and also Section 3(18) of the General Clauses Act 1897.

It is immaterial by what means or upon what substance the letters have been formed, the important is to prove the existence.

Example – Signs or trees, currency notes are documents.

Section 30: Valuable Security:

The words “valuable security” denotes a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

ILLUSTRATION- This general explanation can be illustrated by an example of Endorsement, assignment, crossed.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is valuable security.

1. Income tax- assessment order is valuable security.
2. Passport- It creates a right so it is valuable security.
3. A certificate fraudulently prepared is not valuable security.
4. Valuable security of valuable security is not valuable security.

Section 31: A will: The words “a will” denotes any testamentary document.

Section 32: Words referring to acts include illegal omissions: In every part of this code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

Section 33: Act, “Omission”- The word “act” denotes as well as series of act as a single act the word “omission ” denotes as well as series of omission as a single omission.

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

Section 35 : When such an act is criminal by reason of its being done with criminal knowledge or intention- Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who join in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Section 36 : Effect caused partly by act and partly by omission – Wherever the causing of a certain effect, or any attempt to cause that effect by an act or by an omission, is an offense, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offense.

ILLUSTRATION- This general explanation can be illustrated by, A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

Section 37: Cooperation by doing one of several acts constituting an offense– When an offense is committed by means of several acts, whoever intentionally co-operation in the commission of that offense by doing any one of those acts, either singly or jointly with any other person, commits that offense.

ILLUSTRATION- This general explanation can be illustrated by, A and B are joint jailor, and such have the charge of Z, a prisoner, alternately for six hours at a time. A and B intending to cause Z's death, knowingly cooperate in causing that effect by illegally omitting, each during the time of his attendance, to furnish z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

Section 38: Persons concerned in criminal act may be guilty of different offenses– Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of the different offense by means of that act.

Section 39: “Voluntarily”- A person is said to cause an effect, “ voluntarily ”.when he cause it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

ILLUSTRATION- This general explanation can be illustrated by, A sets fire, by night to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

Section 40: ‘Offence’– Any act punishable under the Indian Penal Code is an offense. The definition of “offense” as given under section 40 of Indian penal code intends to cover the punishable act also under local and special laws. Only because of this the exception given in IPC is also applicable to special and local laws.

Section 41: “Special laws”– It is a law applicable to a particular subject.

Section 42: “Local law”- A “ local laws “ is a law applicable only to a particular part of India.

Section 43: “Illegal”-

1. Everything which is an offense.
2. Which is prohibited by law.
3. Which furnishes ground for a civil action.

Legally bound to do – A person is said to be legally bound to do whatever it is illegal in him to omit.

ILLUSTRATION- This general explanation can be illustrated by, Sami v/s State of Madras- Intercourse between unmarried persons if done by mutual consent is not illegal.

Section 44: “Injury”– The word “injury” denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

Section 52: “Good faith”- When any act is done with due care and attention, it is said to be done in good faith.

Section 52 A: “Harbour”- Supplying a person with shelter, food, drink, money clothes, arms, ammunition, or means of conveyance or the assisting a person by any means is called “Harbour”.

LESSION- 1.3

PUNISHMENT (SECTIONS 53, 53A, 55, 60,63, 73)

Under the sanction of the law, punishment is retribution on the offender to the suffering in person or property which is inflicted by the offender. Punishment is the way through which an offender can be stopped from doing offences against person, property, and government. Therefore, punishments can be of various types like deterrent, rehabilitative, restorative and retributive.

Fundamental Principles for Imposition of Different Types of Punishments

As per the United States Institute of Peace, the principle of the imposition of punishment can be based on:

1. The necessity for criminal justice compulsion; and
2. The proportionality of punishment based on the nature and degree of the danger which is present against the fundamental freedoms, human rights, social values, rights guaranteed and protected under the Constitution or international law.

In the case of *Soman v. Kerala*, the Supreme Court of India cited a number of principles while exercising discretionary powers by the Court. The general principles are proportionality, deterrence, and rehabilitation. In the proportionality principle aggravating and mitigating factors should be considered. Mitigating circumstances are related to the criminal and aggravating circumstances are related to the crime.

In para 12 of the *Soman's* case, the Supreme Court pronounced that "Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out just punishment to the accused facing trial before it after he is held guilty of the charges." Further, the court acknowledged and opined the observation made in the case of *State of Punjab v. Prem Sagar*, wherein the Court stated that "In our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which

punishment is imposed upon an offender have not issued any guidelines.” Therefore, there is a necessity to have a sentencing policy with due consideration to the recommendations made by the Madhava Menon Committee and Malimath Committee.

Principles for Sentencing

The principle for sentencing developed through court decisions and legislation. And these principles form the sentencing decisions. The principles which are generally followed by the court are as follows:

- **Excessiveness/Parsimony**– the punishment which is given shall not be severe unless required.
- **Proportionality**– the sentencing shall fit to the overall gravity of the crime.
- **Parity**– the punishment should be similar for similar types of offences committed by offenders under similar situations.
- **Totality**– when an offender is punished with more than one sentence, the overall sentence must be just and appropriate which shall be proportional to the offending behaviour.
- **Purpose**– the sentencing shall achieve the purpose of the punishment. The purpose of punishment can be a deterrent, rehabilitative, protection of the public, etc.
- **Simplicity and predictability**– sentencing shall not be depending on the bias or personality of the judge. There shall be a clear and definite scheme of sentencing.

Truthfulness- the sentencing shall reflect the actual term to be served by the prisoner
fundamental principles for imposition of different types of punishments

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Awarding Appropriate Sentence is the Discretion of the Trial Court

In the case of *Sibbu Munnial vs State Of Madhya Pradesh*, the three-judge bench of the Madhya Pradesh High Court had observed the scheme of punishment as follows:

1. The classification of offences is made with reference to the maximum punishment to which the offender is liable to receive.
2. In the case of the death penalty and imprisonment for life is provided as a punishment under a section. Imprisonment for life shall be considered as an alternative. And death penalty shall only be given if the case comes under the ambit of ‘rarest of rare case’. While giving the death penalty as punishment the Judge shall give due importance to the facts and nature of the case.
3. Imprisonment can be categorized into two categories- simple and rigorous.
4. Imprisonment for life means rigorous imprisonment for twenty years.

5. The difference between imprisonment for life and imprisonment is the former can be rigorous and the imprisonment is till his last breath, however, the duration of the latter can vary from period 24 hours to 14 years.
6. Lastly, offences punishable with fine means the offences for which the maximum penalty can be fine only.

In a recent case of 2017, in State Of H.P vs Nirmala Devi, the Supreme Court ruled that the trial court has the discretion to give punishments as per the scheme provided under the code.

SECTION 53

In the Indian Penal Code, 1861 (“Code”), Section 53, specifically deals with different types of punishments which can be given by the Criminal Courts if the person is held liable under the Code.

There are five kinds of punishments recognized under Section 53 of the Code:

1. Death;
2. Imprisonment for life;
3. Imprisonment:
 1. Rigorous Imprisonment; or
 2. Simple Imprisonment.
1. Forfeiture of property;
2. Fine.

Considering the above punishments, the courts are supposed to follow the procedures and provisions which are prescribed under other adjective and substantive laws.

As per the scheme of the Code the maximum punishment is prescribed, leaving the minimum to the discretion of the Judge. The Judge has all the means to form an opinion on the sentence which would meet the end of justice in a particular case. If the offence is grave in nature then the Code had prescribed the maximum and the minimum duration of the punishment

SECTION 53A. Construction of reference to transportation.—

(1) Subject to the provisions of sub-section (2) and sub-section (3), any reference to "transportation for life" in any other law for the time being in force or in any instrument or ORDER HAVING effect by virtue of any such law or of any enactment repealed shall be construed as a reference to "imprisonment for life".

(2) In every case in which a sentence of transportation for a term has been passed before the commencement of the Code of Criminal Procedure (Amendment) Act, 2*[1955], (26 of 1955), the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.

(3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.

(4) Any reference to "transportation" in any other law for the time being in force shall,-

(a) if the expression means transportation for life, be construed as a reference to imprisonment for life;

(b) if the expression means transportation for any shorter term, be deemed to have been omitted.]

The general meaning of imprisonment means captivity or to put someone in prison. Under Section 53 of IPC, imprisonment can be of two types. One is simple and the other is rigorous.

1. Wholly or partly rigorous; or
2. Wholly or partly simple; or
3. Any term to be rigorous and the rest simple.

Minimum Wages for Prisoners

The prisoners who are prisoned in jail get wages for doing work inside the jail. The work done by them either can be voluntary or it can be part of their punishment. The wages of the prisoners are fixed as per their skills. Their classification is based on a) skilled, b) semi-skilled and c) unskilled.

Kerala High Court was the first High Court which took the initiative of giving minimum wages to the prisoners. The National Human Rights Commission (NHRC) after taking into the recommendation of the Mulla Committee proposed Indian Prisons Bill 1996. As per the Bill, it was prescribed that the wages should be fair, adequate and equitable wage rates. While considering the minimum wage rate it shall be prevalent to each State and Union territory agricultural, industry, etc. wage rate. Units of work shall also be prescribed for such minimum wages. The average per capita cost of the food and clothing shall be reduced from the wages and the remaining wages shall be paid to the prisoners.

The wages are given on per day basis. The idea of the prisoner's wage is to compensate the victim or the relative of the victim from the fund made by the prisoner's wage. As per Prison Statistics India 2015 of National Crime Records Bureau (NCRB), the highest wages were paid in Puducherry, followed by Delhi's Tihar and Rajasthan. The wages for skilled varied from Rs.180- Rs.150, for semiskilled Rs.160- Rs.112 and for unskilled Rs.150- Rs.103 as per the top three high waged states.

Aggravating Circumstances

The aggravating circumstances to which the Judges consider are as follows:

1. The surrounding of the crime itself;
2. The circumstances relating to the criminal's background;
3. The circumstances relating to the criminal's conduct;
4. The criminal's future dangerousness;

The other factors which are considered under aggravating circumstances are as follows:

- Professionalism and premeditation;
- Prevalence of offence;
- Offences committed in the group;
- Breach of trust.

In the case of *Sangeet & Anr. v. State of Haryana*, the court noted that the approach which was laid down in the case of *Bachan Singh* was subsequently not fully adopted by the courts. The

mitigating factors and aggravating factors both need to be considered and balanced while sentencing a punishment to the accused.

SECTION 54. Commutation of sentence of death. 54. Commutation of sentence of death.--In every case in which sentence of death shall have been passed, 3*[the appropriate Government] may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

SECTION 55. Commutation of sentence of imprisonment for life.--In every case in which sentence of 4[imprisonment] for life shall have been passed, 5[the appropriate Government] may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

SECTION 60. Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple. 60. Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.--In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple or] that any part of such imprisonment shall be rigorous and the rest simple.

SECTION 63. Fine

The court may impose a fine as an alternative for imprisonment or can add it as an addition to the imprisonment. In certain cases the fine is added along with imprisonment. Section 63 to 69 covers various fines under the IPC. However, as per Section 64 of the Code, when there is a default in the payment of a fine, the court may order for imprisonment.

Amount of Fine should not be Excessive

As per Section 63 of the IPC, when the sum is not expressed under the provisions of the Code, the amount of fine to which the offender is liable is unlimited, however, the fine shall not be excessive.

In the case of Palaniappa Gounder v. State of Tamil Nadu, the Apex Court stated that the sentence given by the court shall be proportionate to the nature of the offence which includes the sentence of fine. And the punishment shall not be unduly excessive.

In the case of H.M Treasury (1957), the court said that in the case if the death of the convict has occurred then also the fine will be recovered from his property.

SECTION 73. Solitary confinement.

Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, ORDER that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say-- a time not exceeding one month if the term of imprisonment shall not exceed six months: a time not exceeding two months if the term of imprisonment shall exceed six months and [shall not exceed one] year: a time not exceeding three months if the term of imprisonment shall exceed one year.

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LESSION- 1.4

JOINT & CONSTRUCTIVE LIABILITY SECTION 34 & SECTION 149

The doctrine of joint liability deals with the conditions under which more than one person incurs responsibility before, during and after committing crimes. When one is accountable for another's conduct, it does not matter whether the defendant's own conduct, the conduct of the other or others or the conduct of all taken collectively or both together establish the elements of the crime charged.

The common law recognized four parties to Crime viz. (i) principals in the first degree- actual perpetrators; (ii) principals in the second degree – aiders and abettors, such as getaway drivers, conspirators; (iii) accessories before the fact – aiders and abettors not present when the crimes are committed, such as one who supplies the weapon that a third person uses in a murder; and (iv) accessories after the fact- individuals who give aid and assistance to criminals who are fugitive. If they were not convicted before the accomplices were brought on trial, common law complicity shielded the accomplices even in the face of sure proof of their guilt.

Normally and naturally the person who is liable for wrong is he who does it. Yet both ancient and modern laws admit instances of vicarious liability in which one man is made answerable for the acts of another.

In the Mosaic legislation it is deemed necessary to lay down the express rule that “Fathers shall not be put to death for the children, neither shall the children be put to death for the fathers; every man shall be put to death for his own sin.”

Modern civil law recognizes vicarious liability in two chief classes of cases. In the first place, masters are responsible for the acts of their servants done in the course of their employment. In the second place, representatives of dead men are liable for deeds done in the flesh by those whom they represent.

The rational basis of this form of vicarious liability is in the first place evidential. There are such immense difficulties in the way of proving actual authority, that it is necessary to establish a conclusive presumption of it. A word, a gesture, or a tone may be a sufficient indication for a

master to his servant that some lapse from the legal standard of care or honesty will be deemed acceptable service.

Introduction to Section 34 under IPC, 1860

Section 34 of IPC, 1860 is defined as– “*Acts done by several persons in furtherance of common intention.*”

The section can be explained as if two or more people commit any criminal offense and with the intent of committing that offense, then each of them will be liable for that act as if the act was committed by them individually.

Barendra Kumar Ghosh v. King Emperor’s case was one of the earliest instances in which another individual was sentenced by the tribunal for the act of another in support of common intention. The facts of the case are, on August 3, 1923, a group of armed people entered the police station. They asked the postmaster for cash where he counted the cash. They shot at the postmaster from the pistol, causing the postmaster to die on the spot. Without taking cash, all the accused ran away. The police were able to capture as a guard Barendra Kumar Ghosh who stood outside the post office. Barendra contended that he was merely standing as a guard but the court convicted him for murder under 302 r/w Section 34 of IPC, 1860. After that his appeal was rejected when he appealed to Privy Council.

In this Section the word ‘act’ is referred, which is defined under Section 33 of IPC, 1860 as:

Section 33. ‘Act’, ‘Omission’. – The term ‘act’ also denotes a sequence of acts as a single act: the term ‘omission’ indicates as well a sequence of omissions as a single omission.

Section 34 and Section 33 clearly indicate that the word “criminal act” relates to more than one act and would cover a whole sequence of acts.

Section 34 to Section 38 of Chapter Two of the Indian Penal Code on ‘General Explanation’ sets out the circumstances under which an individual may be constructively held responsible for the acts committed by the other group members.

Objective of Section 34

Section 34 is designed to deal with a situation in which it might be hard to differentiate between the criminal acts of individual party members acting in favor of a common intention of all, or to prove precisely what part each of them took. The reason why all are found guilty in such instances is that an accomplice's existence provides encouragement, help, safety, and trust to an individual who is actually engaged in an illegal act. Accordingly, every person who is engaged in the commission of a criminal offense is held liable by virtue of his involvement in the act performed, even if the specific act in question was not performed by either member of the group.

Ingredients of Section 34

- **Criminal Act Done By Several Persons: The said criminal act must have been performed by more than one person.** If the criminal act was a fresh and independent act that springs entirely from the doer's mind, the others will not be liable simply because they intended to be involved with the doer in another criminal act when it was done. The acts committed in the criminal action by different confederates may be different, but they all have to participate and engage in the criminal enterprise in one way or another.
- **Common intention:** The core of joint liability under Section 34 resides in the presence of a common intention to commit a criminal act in support of the common goal of all group members. The term 'common intention' means a prior concert, i.e. a meeting of minds and involvement of all group members in the execution of that plan. The acts performed by each participant may vary in personality but must be carried out with the same common intention.

In the case of *Mahboob Shah v. Emperor*, appellant Mahboob Shah was 19 years old and was convicted of the murder of Allah Dad by the Session Judge of the charge Section 302 with Section 34. He was convicted for death by the Session tribunal. The death sentence was also upheld by the High Court of Judicature. The conviction for murder and death sentence was overturned on appeal to the Lordship. It was argued before the appellant that—"when Allah Dad and Hamidullah attempted to run away, Wali Shah and Mahboob Shah came next to them and fired" and thus there was proof at the spur of the time that they formed a common intention. The lordship was not happy with this perspective and cordially advised his Majesty that his appeal

had been successful, the appeal must be allowed and the conviction of him for murder and death sentence should be set aside.

The common intention is most often confused with Section 149, which states that each member of the unlawful assembly is guilty of the offense committed in prosecuting a common object. It must be recognized that there are differences between the operations of both the sections.

Both Section 149 and Section 34 of the Indian Penal Code deal with a person's association that becomes responsible for punishment for the act they commit. It is not essential to prove that each and every one of them was engaged in the overt act in order to hold an individual vicariously responsible under IPC Section 34 or Section 149.

In the leading case *Barendra Kumar Ghosh v. King Emperor*, this case is also named as the Shankari Tola Post Office Murder Case. Several people, in this case, appeared before the sub-post master who counted the cash on the table and demanded the money. Meanwhile the sub-post master was murdered by opening fire and those people ran away without taking any cash. However, Brendra Kumar was caught in his hand with a pistol which was handed over to the police. The accused was prosecuted under Sections 302/34 as he was one of the three males who fired at the sub-post master according to the prosecution. The accused rejected his complaint on the ground that he was just standing outside and that he had not shot at the dead. After being satisfied that the sub-postmaster was murdered in support of the common intention of all, the trial court, held the accused guilty though he had not even fired the shot. The Calcutta High Court and the Privy Council both agreed with the trial court's results and found the accused guilty of killing. Section 34 deals with the performance of separate acts, similar or diverse by several persons; if all are performed in the pursuit of a common intention, each individual shall be liable for the consequence of all such acts as if they were performed by themselves.

Introduction to Section 149 under IPC, 1860

Section 149 of IPC, 1860 is defined as: *Every member of unlawful assembly guilty of offence committed in prosecution of common object.*

This Section can easily be understood as, where an offense is committed by any member of an unlawful assembly in the prosecution of the common purpose of that assembly, or as the

members of that assembly knew likely to be committed in the prosecution of that purpose, any person who is a member of the same assembly at the time of the commission of that offense shall be guilty of that offense.

In the case of *Bhudeo Mandal v. the State of Bihar*, the Apex Court ruled that the proof must obviously establish not only the common object but also demonstrate that the common object was illegitimate before convicting any individual with the help of section 149.

In the case of *Ram Dhani v. State*, there was a land dispute and the plaintiff resorted to the accused party's crop cutting. The latter were in number more than five and assembled to avoid cutting. The tribunal ruled that individuals acting in the property's self-defense could not be members of an unlawful assembly. And so it could not be said that they formed an illegal assembly.

The penalty pursuant to Section 149 is the same as the offense committed in the unlawful assembly. If the prosecution wishes to prove an individual under section 149 of the IPC, it must show the person's presence on the site and his involvement in the unlawful assembly. This chapter generates a positive or vicarious liability for the illegitimate acts committed in pursuit of the common item on the members of the unlawful assembly.

Ingredients of Section 149

- **An offense committed by members of an unlawful assembly**-The Supreme Court in *Yunis vs. Madhya Pradesh State* held that the presence of the accused as part of an unlawful assembly was sufficient for the conviction to be held. The fact that the accused was a participant of the unlawful assembly and his presence on the spot of the event is adequate to hold him liable even if he is not accused of any overt act. However, mere presence in an unlawful assembly cannot make an individual responsible unless he is acting by common object and that object is one of the objects set out in Section 141.

The specifics of an unlawful assembly are detailed in Section 141 of the Indian Penal Code. It states that if the common object of such assembly is any of the following, an assembly of five or more persons is an unlawful assembly.

1. In order to demonstrate criminal power.
2. Resisting law enforcement or legal proceedings.
3. Committing criminal offense or wrongdoing.
4. Forcing others to do what they are not legally bound to do by a criminal force demonstration.
5. Taking possession of property by using criminal force.
6. Exempting anyone from using incorporeal law by using or demonstrating criminal force.

(A) **In prosecution of the common object**– “In prosecution of the common object “does not mean” the persuasion of the common object of the assembly. The words” in prosecution the common object” show that the offense committed was immediately linked to the common object of the assembly of which the accused were members. The act must be the way it was done to achieve the common purpose attributed to the members of the unlawful assembly. The words “in the prosecution of the common object” must be interpreted strictly as equivalent to “in order to achieve the common object.”

(B) **Members knew to be likely**- the second part refers to a situation in which members of the assembly knew that the offense was likely to be committed in prosecuting the common object. A thing is likely to occur only when it will probably occur or may very well occur/happen. At the time of the commission of an offense, the word’ knew’ indicates a state of mind and not the latter. Knowledge must be proved. The word’ likely’ means some strong proof that such knowledge was available to the unlawful assembly. The prosecution must show that not only did the accused know that the offense was likely to be committed, but also that it was likely to be committed in prosecuting the assembly’s common object.

(C) **Five or more persons**- to apply this section, it is essential to prove that the common object was shared by at least five people. While it may happen that some of them are identifiable or that their identity was doubtful, the presence of five or more people must be unquestionably proven. Even less than five people may be convicted in some cases. But if it is doubtful that under this section there were at least five people, no conviction is possible.

Section 142 of the Indian Penal Code, 1860 makes it easier to identify the factors that make someone a part of an illegal assembly. It says that if someone joins an assembly or continues to

be a member of that unlawful assembly even after being aware of the facts that make such assembly unlawful.

Conclusion

Section 34 merely defines joint liability and does not impose any penalties for the same. This section has to be read with multiple other sections of IPC such as Section 120A defining criminal conspiracy, Section 120 B providing a penalty for criminal conspiracy, and Section 149 dealing with unlawful assembly. This Section 34 cannot be implemented alone and must be implemented together with some other section in order to make an individual jointly liable for the offense. There is no need for people to always share the common intention and commit a crime. It might be possible that they are present at the scene just by mere chance and shared no common intention which is the core ingredient of Section 34 of IPC.

Fixing vicarious liability under Section 34 or Section 149 depends on their method adopted to furnish the crime. There are two sections managing 'common intention' and 'common object' beneath two chapters of IPC 'General Explanation' and 'Of Offences against Public Tranquility' respectively.

Sometimes there arises difficulty in proving with proof that whether they shared common intention or not and also how many individuals with the same common object were members of the unlawful assembly. However, the Supreme Court abolished these ambiguities in various instances after determining each case's facts and condition.

In order to have a clear and better knowledge, India's Law Commission also gave the Legislature many suggestions to amend some parts of the statute. Finally, I can say that both Section 34 and Section 149 make an individual vicariously responsible for his companions' actions. Both sections cannot always be provided by direct proof, and it should be inferred from the facts and conditions of the case.

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LESSION -1.5

(A) ABETMENT (section 107&108)

Sometimes, indirectly participating in committing an offence itself may also become a punishable offence. In such crimes, the offenders do not directly involve themselves in the offence. However, their abetment can become punishable in itself. These offences relate to Section 107, IPC under the chapter of abetment.

Abetment under Section 107, IPC

Chapter 5 of the Indian Penal Code, 1860 deals with offences relating to abetment. Abetment basically means the action of instigating, encouraging or promoting a person into committing an offence. It can also mean aiding the offender while he is committing a crime.

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

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

Definition of Abetment

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

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

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

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

(1) Abetment by Instigation

Instigation basically means suggesting, encouraging or inciting 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. The Instigator need not even possess *mens rea* (a guilty intention to commit the crime).

Explanation 1 of this Section throws some lights on what instigation may mean in this context. It says that instigation may generally happen even by:

- (a) wilful misrepresentation; or
- (b) willful concealment of a material fact which a person is bound to disclose.

For example, a court directs Amit, a police officer, to arrest Raj under an arrest warrant. Brijesh informs Amit that Chandan is Raj despite knowing that he is not. Under this misrepresentation, Amit ends up arresting Chandan instead of Raj. In this case, Brijesh is guilty of abetting Amit in wrongfully apprehending Chandan.

(2) Abetment by Conspiracy

Conspiracy basically means an agreement between two or more persons to commit an unlawful act. Merely intending to commit an offence is not sufficient for this purpose.

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.

For example, in dowry death cases, the in-laws of the victim are often guilty of abetment by conspiracy. They may do so by constantly taunting, torturing or instigating the victim. Even suicides may take place in this manner through abetment by conspiracy.

(3) 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 under the Indian Penal Code

Abetment is constituted by:

1. Instigating a person to commit an offence; or
2. Engaging in a conspiracy to commit it; or
3. Intentionally aiding a person to commit it.

The offence of abetment by instigation relies on the intention of the individual who abets and not upon the act which is finished by the individual who has abetted. The abetment might be by instigation, connivance or purposeful aid as given under Section 107 of the Indian Penal Code. However, the words articulated in an angry state or omission without any intention cannot be termed as instigation.

For an individual to be called liable for Abetment, and so as to proceed against an individual for a criminal offence under Section 107, prosecution must claim the component of mens rea.

Negligence or carelessness can't be named to be abetment in order to punish the liable, according to the arrangement of penal laws.

So as to establish abetment, the abettor must have appeared to “deliberately” support the commission of the wrongdoing. In such a case we need to just prove that the wrongdoing charged couldn’t have been done without the association as well as intervention of the supposed abettor isn’t sufficient with the prerequisites of Section 107.

Thus the person in question, who is generally honest, is tricked into carrying out a wrongdoing on the confirmation of secrecy and confidentiality of the transaction bringing up the potential issues with respect to how such a victim can be considered in-charge of wrongdoing, which he would not have done had he not been given the assurance. In such conditions, should the individual, i.e., the sting administrator be held criminally liable for commission of the offense? This is a bewildering question when there is a claim that the sting administrator is asserted to have committed the abetment of the offense.

The Supreme Court in *Rajat Prasad v. C.B.I* saw that a wrongdoing does not stand crushed or exonerated just in light of the fact that its benefit extends to the general public at large.

Suppose an individual failed to prevent an offense from taking place, so the inquiry emerges as to whether this failure will add up to Abetment or not. This situation of law later has been attested by the Supreme Court, which anyway held that even though he isn’t an accomplice, the Court would even now need proof on material specifics, as he is the main observer of the wrongdoing and as it is dangerous to hang the accused on his sole declaration, except if the Court feels persuaded that he is talking reality.

Such confirmation need not, be that as it may be, on the subject of the actual commission of the offense; what the law requires is that there ought to be such support of the material piece of the story connecting the person who is blamed with the wrongdoing as will assure a reasonable man that the man can be viewed as an honest person and his statement can be relied upon. Often, abetment may also consist of a passive assistance.

For example, in a case where the accused was found with a spear on the scene of the fight, his participation in the fight was proved. It was immaterial whether or not they actually made use of their weapons, they were still held liable for the injuries caused to the defendant party.

In the case of Tuck v. Robson, a publican(the person who manages a pub or a bar) by not making any effort to make his customers leave the premises after the pub was closed, was said to have aided the crime of abetment of consumption of the liquor after the hours in which it was permitted. Similarly, let's talk of a situation wherein an owner of a car who was not driving on that particular instance and had entrusted the task of driving the car to his friend that day. The friend was involved in driving in a very haphazard manner and the owner of the car was charged with abetment because he had failed to stop the driver from indulging in such driving.

On having analysed the law, It was seen that an act involving any sort of assistance or inducement was needed in order to book a person for abetment. Thus if we talk about a case wherein mere abstention from preventing an offence is said to have happened, it is generally not considered enough in order to book a person for abetment. But in a case where a person is in direct control of the conduct of the other person and then he fails to prevent the other person from committing the offence, it will constitute abetting.

The aforementioned provision of law hypothesizes the presence of one, who perpetrated the offense. It is important to talk about, in a nutshell, the ramifications of the articulation 'Perpetrator'. For the most part it is clear who the culprit is, he is the person who, with the significant mens rea, shot the deadly shot in the homicide, or indulges in sexual intercourse or appropriates the property in robbery. Obviously, there can be more than one perpetrator, as where two men by their joint violence murder the other individual.

Two individuals may likewise be joint culprits, where each with the relevant mens rea does acts which together comprise an adequate representation of the actus reus of an offense; for instance, in an offense including driving, A and B have been held both to drive, where A was inclining over and controlling the steering while B worked the foot pedals the gears. On the off chance that an individual makes use of an innocent agent so as to obtain the commission of an offense, that individual, not the agent, is the culprit, despite the fact that he is absent at the location of the wrongdoing and does nothing with his very own hands.

An innocent agent is one who performs the actus reus of an offense yet is himself lacking responsibility, either by reason of inadequacy or infancy or in light of the fact that he needs mens rea or has a safeguard, for example, pressure.

A striking case of innocent agency is the case where a girl, following up on her mom's guidelines, gave some powder to her dad to calm his cold. Obscure to the little girl, it was a toxic substance and consequently the father died.

It was held that the mother was the culprit of the wrongdoing since the little girl who was coming up short on the mensrea, was an innocent agent by means of whom, the mother had carried out the wrongdoing. Obviously if, as the report takes note of, the little girl had realized that the powder was poison, she would have been blameworthy as culprit and the mother as an accessory.

A bribe-giver is an accessory, just when he gives it with the aim of acquiring some favour which was not possible to acquire by legitimate means, yet the person who offers it to aid detention of a crime is not an accessory, the important mens rea being missing. People giving unlawful gratification under stress, dread and compulsion are not accomplices.

It isn't vital for each situation that the key wrongdoer put up at the same trial must be indicted for the offense charged, before the abettor can be sentenced for abetment of that offense. Each case must be decided keeping in mind its own set of facts.

By and large, the facts demonstrate that there can be no conviction for abetment when the prosecution has neglected to substantiate the commission of the essential offense, but conviction of the abettor for his act of abetment would be perfectly justified, even when the principal offender is acquitted, provided the evidence on record satisfactorily establishes that the offence was committed in consequence of abettor's act of abetment.

A case may arise in which, on the evidence of the same witness, whose evidence has been found to be insufficient for the conviction of the principal offender, the conviction of the abettor would be quite proper.

So far as the principal offender is concerned, the same evidence may be suffering from an infirmity from which it may not suffer so far as the abettor is concerned, and in such a case, though the Court may have acquitted the principal offender by giving him the benefit of doubt, it would be perfectly justified in convicting the abettor, by reason of the fact that the same considerations which applied to the principal offender do not apply equally to the case against the abettor.

Abettor

Abetment under the Penal Code involves active complicity on the part of the abettor at a point of time prior to the actual commission of that offence, and it is of the essence of the crime of abetment that the abettor should substantially assist the principal culprit towards the commission of the offence. Nowhere, concurrence in the criminal acts of another without such participation therein as helps to give effect to the criminal act or purpose, is punishable under the Code.

The definition of an Abettor is laid out in Section 108 of the Indian Penal Code. Abettor under this section, means the person who abets (1) the commission of an offence, or (2) the commission of an act, which would be an offence if committed by a person not suffering from any physical or mental incapacity. In the light of the preceding section, he must be an instigator or a conspirator or an intentional helper. Merely because the accused's brother was carrying out criminal activities in her house, the appellant cannot be held guilty unless there is some material to show her complicity. The section is coupled with five explanations which are discussed below:

Explanation 1

If a public servant is guilty of an illegal omission of duty made punishable by the Code, and a private person instigates him, then he abets the offence of which such public servant is guilty, though the abettor, being a private person, could not himself have been guilty of that offence.

Explanation 2

The question regarding the abettor's guilt depends on the nature of the act abetted and the manner in which abetment was made. Commission of the act abetted is not necessary for the offence of abetment. The offence of abetment is complete notwithstanding that the person abetted refuses to do the thing, or fails involuntarily in doing it, or does it and the expected result

does not follow. The offence of abetment by instigation depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets.

Explanation 3

This explanation makes it clear that the person abetted need not have any guilty intention in committing the act abetted. It applies to abetment generally and there is nothing to indicate that it applies only to abetment by instigation and not to other kinds of abetment. The offence of abetment depends upon the intention of the person he employs to act for him.

Explanation 4

The explanation is to be read as follows: “When the abetment of an offence, is an offence, the abetment of such an abetment is also an offence”. In view of Explanation 4 appended under Section 108 of the Penal Code, the contention of the accused that there cannot be any abetment of an abetment is unknown to criminal jurisprudence, holds no merits and consideration.

Rationale of Punishing those involved in an Abetment

It goes without saying that a threat by a group of criminals is greater than a threat by a single person. If we dive deeper into this scenario, we can make out why a team or a gang of criminals is more likely to succeed than a single criminal. First off, a single person committing a crime would be limited in terms of execution of the crime as he would not be able to foresee everything beforehand. He would try to act around his plan which will proceed with a very narrow sighted execution.

As opposed to a single perpetrator, imagine how many possibilities a gang of criminals might open. Each one could think of his/her idea and all of them in conjunction could come up with a totally foolproof plan. Also, an aspect that may be grossly overlooked is the encouragement side of the crime. When someone is acting all by himself, there is little he can do to uplift his encouragement but when a bunch of people are on a mission together, losing motivation will be a rare sight.

Differences between Abetment and a Common Intention

- Abetment is a stand alone offence and can be punished all by itself but having a common intention is no offence on its own and has to be read with in consonance of other crimes.
- For Abetment, the accused may not be present at the crime scene but under Common Intention, his presence is an indispensable element and participate whether actively or passively.
- For Abetment, the crime need not be committed but for Common Intention, the crime must be committed.

Types of Abetment under the Indian Penal Code

Abetment by Instigation

A person is said to 'instigate' another to an act, when he actively suggests or stimulates him to the act by any means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement.

The law does not require that instigation, in a case of abetment by instigation, should be in particular form or that it should be only in words and may not be by conduct; for instance, a mere gesture indicating beating or a mere offering of money by an arrested person to the constable who arrests him, may be regarded as instigation, in the one case to beat and in the other to take a bribe. Whether there was instigation or not, is a question to be decided on the facts of each case. It is, however, not necessary in law, for the prosecution to prove that the actual operative cause in the mind of the person abetted was the instigation, and nothing else, so long as there was instigation and the offence has been committed or the offence would have been committed, if the person committing the act had the same knowledge and intention as the abettor. It is impossible for any human tribunal to decide exactly how much the instigation actually weighed in the mind of the person abetted, when he committed the act or offence. The mere commission to bring the notice of the higher authorities, offences committed by other persons, may form the foundation for disciplinary action against him in a departmental way, but it cannot in law amount to abetment of the offence committed by his fellow clerk.

Instigation is to urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of “instigation”, though it is not necessary that actual words must be used to that effect or what constitutes “instigation” must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out.

Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, “instigation” may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

Thus, to constitute ‘instigation’, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by “goading” or ‘urging forward’. In order to hold a person guilty of abetting it must be established that he had intentionally done something which amounted to instigating another to do a thing. Instigation may also be of an unknown person. A mere permission does not amount to instigation.

Wilful Misrepresentation or Wilful Concealment

Explanation 1 to this section says that a person who (1) by wilful misrepresentation, or (2) by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done is said to instigate the doing of that thing. Instigation by ‘wilful concealment’ is where some duty exists which obliges a person to disclose a fact.

Harassment from the Superior Officers

Deceased was a qualified engineer who had suffered persistent harassment and humiliation and also had to endure continuous illegal demands made by the accused and upon non-fulfilment of which he would be mercilessly harassed by the accused by a prolonged period of time. Such harassment coupled with the utterance of words to the effect that, had there been any other person in his place, he would certainly have committed suicide. In *Madan Mohan Singh v. State of Gujarat*, the deceased was a driver in the Microwave Project Department.

He had undergone a bypass surgery for his heart, just before the occurrence of such incident, his doctor had advised him against performing any stressful duties. The accused was a superior officer to the deceased. When the deceased failed to comply with the orders of the accused, the accused became very angry and threatened to suspend the deceased, rebuking him harshly for not listening to him. The accused also asked the deceased how he still found the will to live, despite being insulted so. The driver committed suicide.

For the purpose of bringing home any charge against the accused, the Supreme Court stated that there must be allegations to the effect that the accused had either instigated the deceased in some way, to commit suicide, or engaged with some other persons in a conspiracy to do so, or that the accused had in some way aided any act or illegal omission to cause the said suicide. If the making of observations by a superior officer, regarding the work of his subordinate, is termed as abetment to suicide, it would become almost impossible, for superior officers to discharge their duties as senior employees.

No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether the circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide.

By illegal omission

The definition of abetment as given in Section 107 of the Penal Code not only includes instigation but also intentional aiding by an illegal omission. Accordingly, the appellant, being the person responsible for creating circumstances provoking or forcing the victim to take the extreme step to avoid a more miserable life and not making any attempt to save her life, was liable to be convicted for the offence of abetment of suicide.

In a case where a lady advocate was attending the chamber of her senior advocate, the accused. On the day of the incident she was talking with the accused at her residence. At that moment in his presence, she poured kerosene on her and set herself on fire. The accused did nothing to save

her. It was held that this did not amount to “illegal omission” and he was not held guilty of abetment to suicide.

Abetment of offences under other laws

The offence of aiding and abetting is applicable to all statutory offences unless specifically excluded by statute and accordingly it was held to apply to offences created by the English Public Order Act 1986. Abetment of an offence under the Prevention of Corruption Act, 1988 can be made by a non-public servant. Abettors are to be prosecuted through trial under the Prevention of Corruption Act.

Solved Questions on Section 107, IPC

- (a) The provision under which the definition of abetment has been explained is_____.
- (b) An instigator need not possess_____while abetting an offence.
- (c) Abetment of_____has a specific punishment under Section 306.
- (d) Abetment may happen by instigation,_____or aid.

(B) CRIMINAL CONSPIRACY (section 120A&120B)

Introduction

Conspiracy at common law originated as a civil wrong and after that this concept entered into the field of criminal law. The original Indian Penal Code, 1860 (herein after read as IPC) did not have an offence by the name of criminal conspiracy. However, this concept was added in the IPC by the Criminal Law (Amendment) Act, 1913 and Chapter V-A relating to criminal conspiracy with only

two sections in it, section 120-A which provides the definition of criminal conspiracy and section 120-B providing its punishment. It is very interesting to note that this Chapter has been given the name “Criminal Conspiracy” and not ‘Conspiracy’. It is crystal clear that the use of word ‘criminal’ is perhaps redundant in view of the fact that IPC deals only with the matters which are criminal in nature. Thus, with the inclusion of sections 120A and 120B of IPC now encompasses the law of conspiracy to cover the following:

Conspiracy as a substantive offence under Chapter VA: Sections 120 A and 120B

Conspiracy as a form of abetment under Chapter V: Section 107 Conspiracy to wage, attempt to or abet war against the Government of India under Chapter VI: Section 121

Conspiracy involvement in specific offences under chapter XVI: Sections 310

and 311; Chapter XVII: Sections 400, 401 and 402.

Definition of Criminal Conspiracy

Glanville Williams expressed that, “if the mere intention of one person to commit a crime is not criminal, why should the agreement of two people to do it make it criminal? The only possible reply is that the law is fearful of numbers and that the act of agreeing to offend is regarded as such a decisive step as to justify its own criminal intention.” In this context, section 120A of the IPC defines the term “Criminal Conspiracy” in following way:

Section 120A. Definition of criminal conspiracy

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

an illegal act, or an act which is not illegal by illegal means, such

an agreement is designated a criminal conspiracy:

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

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

Ingredients of Section 120A

From the careful reading of this definition, the important ingredients of section 120A of the IPC, are:

There should be two or more persons.

There should be an agreement between themselves.

The agreement must be to do or cause to be done: An
illegal act A legal act by illegal means

Nature and Scope of the Law of Conspiracy

Conspiracy is a substantive offence. Agreement is the *sine qua non* for constituting the offence of criminal conspiracy. Thus, to constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition. It is not necessary that all the conspirators must know each and every detail of conspiracy. The gist of the offence of criminal conspiracy is to break the law. There is no condition imposed in the provision that all the parties should agree to do a single illegal act. The conspiracy may comprise the commission of a number of illegal acts. It is important to note that if there are more than two persons involved in a conspiracy and if it is shown that the object of the conspiracy has been achieved, then if some of the other accused had been acquitted, the remaining, if it is one, could be convicted under section 120B of the IPC. In the case of **Mulcahy v. R (1868)**, House of Lord widened the scope of criminal conspiracy into followings words:

“A conspiracy consist not merely the intention of two or more but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise *actus contra actum* capable of being enforced if lawful, punishable if for a criminal object or for the use of criminal means.”

Punishment of Criminal Conspiracy: Section 120B

Section 120B of the IPC provides the punishment for criminal conspiracy and it runs as under:

Section 120B: Punishment of criminal conspiracy

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

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

Thus, section 120B divides criminal conspiracies into two classes. First, if party commit serious offence then such offence shall be punishable with imprisonment for two years or with more severe punishment. Secondly, if party commit less serious nature of offence of conspiracy, then it shall be punishable with imprisonment upto six month or fine or without fine or both.

However, section 120B is required to read with section 196 of the Code of Criminal Procedure, 1973. It mandates a court, without prior sanction of the Central Government and State Government, not to take cognizance of Criminal Conspiracy in the following cases:

To commit an offence against State
Promote communal disharmony
Insult a religion
Cause public mischief etc.

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