

Criminal Law and IPC

Indian Penal Code(IP(c) was passed under the chairmanship of Lord Macaulay and was enforced in 1862, Lord Macaulay issued clarification for the people of India for implementation of this Code, because people were of the view that rule of Capital Punishment will be misused against them. Further more people were against foreign rule on Indian people.

Nature and Definition of Crime and Criminal Law

A crime occurs when someone breaks the law by an overt act, omission or neglect that can result in punishment. A person who has violated a law, or has breached a rule, is said to have committed a criminal offense. In other words, a crime is an unlawful act punishable by a state or other authority.

Definition

According to **Austin**: “crime as a wrong which is pursued by the sovereign or his subordinates.”

According to Section 40 of the Indian Penal Code, 1860: “the word ‘offence’ denotes a thing made punishable by this Code” except those sections and chapters made applicable by this section to some special or local or any other law.

Essential ingredients of crime

The essentials of crime are as follows:

- a. A human being or person;
- b. *Mens rea* (guilty mind or evil intent);
- c. *Actus reus* (act or omission);
- d. Injury to another person.

Mens rea and Actus reus

In criminal law, the crime consists of two elements i.e. *mens rea* and *actus reus*. The *mens rea* represents the mental aspects of crime where the *actus reus* represents the physical aspects of crime.

There can be no crime without an evil or guilty mind. It is principle of almost all the legal system in the world. **Coke** traces the origin of the maxim *actus non facit reum nisi mens sit rea* to the Sermons of **Augustin** as: “*ream linguam non facit nisi mens rea.*” *Actus non facit reum nisi mens sit rea* (act does not make a man guilty unless his intention were so) is a well known principle of natural justice in English law accepted by **Lord Kenyon** in *Fowler v. Padget* (1798. . No person could be punished in a proceeding of criminal nature unless it could be shown he had a guilty mind. It is the combination of act and intent which makes a crime.

In England the common law doctrine of *actus non facit reum nisi mens sit rea* i.e. *mens rea* still applies in common law offences

under the earlier statutes but it has no general application in case of modern statutory offences and these statutes are regarded themselves to be prescribing the mental element which is prerequisite to a conviction.

Mens rea and the Statutory Offences

The question whether the common law requirement of *mens rea* must be imported into every crime defined in the statute even where it is not expressly mentioned as an ingredient has been discussed in a number of cases both in English and Indian. These are as follows:

In **R v. Prince** (1875. L.R. 2 C.C.R. 154, in this case Henry Prince was prosecuted for abducting a girl below the age of 16 years under the belief that she was above 18 years of age. It was pleaded that the accused should not be held liable as he had no *mens rea*. The court did not accept the argument and Prince was convicted. According to **Justice Bramwell**, Prince intended to commit an immoral act. Justice Denman held him liable because he knowingly committed civil wrong. Only Justice Brett did not find Prince guilty.

Mens rea when not required

Although *mens rea* is a sacrosanct principle of criminal law, it can be waived in certain circumstances. These are as follows:

- a. Waging war against the government;
- b. Sedition;
- c. Kidnapping and abduction;
- d. Counterfeiting coins;
- e. Strict liability cases;
- f. Public nuisance;
- g. Ignorance of law; etc.

INDIAN PENAL CODE

Introduction

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| Section 1: | Title and extent of operation of the Code |
| Section 2: | Punishment of offences committed within India |
| Section 3: | Punishment of offences committed beyond, but which by law may be tried within, India |
| Section 4: | Extension of Code to extra-territorial offences |
| Section 5: | Certain laws not to be affected by this Act |

Stages in Commission of Crime

The stages in commission of crime are as follows:

- a. Intention;
- b. Preparation;
- c. Attempt; and
- d. Commission of crime.

Intention

Intention is the first stage in the commission of an offence and known as mental stage. Intent is a mental attitude with which an individual acts, and therefore it cannot ordinarily be directly proved but must be inferred from surrounding facts and circumstances.

Preparation

Preparation is the second stage in the commission of a crime. It means to arrange the necessary measures for the commission of the intended criminal act. Thus, preparations are acts or actions performed by criminal offenders during any period of time before the actual crime is committed and range from mere intent to overt action.

Preparation When Punishable

Generally, preparation to commit any offence is not punishable but in some exceptional cases preparation is punishable, following are some examples of such exceptional circumstances:

- Preparation to wage war against the Government (Sec. 122, IPC 1860);
- Preparation to commit depredation on territories of a power at peace with Government of India (Sec. 126, IPC 1860);

Attempt

There are three essentials of an attempt:-

- a. Guilty intention to commit an offence;
- b. Some act done towards the commission of the offence;
- c. The act must fall short of the completed offence.

Attempt under the IPC, 1860

The Indian Penal Code has dealt with attempt in the following four different ways-

- Firstly, completed offences and attempts have been dealt with in the same section and same punishment is prescribed for both. Such provisions are contained in Sections 121, 124, 124-A, 125, 130, 131, 152, 153-A, 161, 162, 163, 165, 196, 198, 200, 213, 240, 241, 251, 385, 387, 389, 391, 394, 395, 397, 459 and 460.
- Secondly, attempts to commit offences and commission of specific offences have been dealt with separately and separate punishments have been provided for attempt to commit such offences from those of the offences committed. Examples are- murder is punished under section 302 and attempt to murder under section 307; culpable homicide is punished under section 304 and attempt to commit culpable homicide under section 308; Robbery is punished under section 392 and attempt to commit robbery under section 393.
- Thirdly, attempt to commit suicide is punished under section 309;
- Fourthly, all other cases [where no specific provisions regarding attempt are made] are covered under section 511 which provides that the accused shall be punished with one-half of the longest term of imprisonment provided for the offence or with prescribed fine or with both.

Commission of crime

The last stage in the commission of an offence is its accomplishment or completion. If the accused succeeds in his attempt to commit the crime, he will be guilty of the complete offence and if his attempt is unsuccessful he will be guilty of an attempt only.

GENERAL EXPLANATIONS

- Section 6: Definitions in the Code to be understood subject to exceptions
- Section 7: Sense of expression once explained
- Section 8: Gender
- Section 9: Number
- Section 10: "Man" "Woman"
- Section 11: "Person"
- Section 12: "Public"
- Section 13: Definition of "Queen"
- Section 14: "Servant of Government"
- Section 15: Definition of "British India"
- Section 16: Definition of "Government of India"
- Section 17: "Government"
- Section 18: "India"
- Section 19: "Judge"
- Section 20: "Court of Justice"
- Section 21: "Public servant"
- Section 22: "Movable property"
- Section 23: "Wrongful gain"
- Section 24: "Dishonestly"
- Section 25: "Fraudulently"
- Section 26: "Reason to believe"
- Section 27: Property in possession of wife, clerk or servant
- Section 28: "Counterfeit"
- Section 29: "Document"
- Section 29A: "Electronic record"
- Section 30: "Valuable security"
- Section 31: "A will"
- Section 32: Words referring to acts include illegal omissions
- Section 33: "Act". "Omission"
- Section 34: Acts done by several persons in furtherance of common intention -
- Section 35: When such an act is criminal by reason of its being done with a criminal knowledge or intention
- Section 36: Effect caused partly by act and partly by omission
- Section 37: Co-operation by doing one of several acts constituting an offence
- Section 38: Persons concerned in criminal Act may be guilty of different offences
- Section 39: "Voluntarily"
- Section 40: "Offence"
- Section 41: "Special law"
- Section 42: "Local law"
- Section 43: "Illegal", "Legally bound to do"
- Section 44: "Injury"
- Section 45: "Life"
- Section 46: "Death"

Section 47: "Animal"
Section 48: "Vessel"
Section 49: "Year", "Month"
Section 50: "Section"
Section 51: "Oath"
Section 52: "Good faith"
Section 52A: "Harbour"

Joint or Constructive Liability

When a criminal act is committed by more than one person with a common intention or object, the liability is called joint or constructive liability. Normally a person may be a participant in the crime in following four ways:

- i. When he himself commits a crime;
- ii. When he participates in the commission of a crime;
- iii. When he sets some third party to work with a view to commit a crime; and
- iv. When he helps the offender in screening him from justice after the commission of a crime.

Essential elements of Joint liability

There are three main ingredients of joint liability as provided in Section 34. These are as follows:

- a. A criminal act must be done by several persons;
- b. The criminal act must be to further the common intention of all; and
- c. There must be participation of all persons in furthering the common intention.

Essential ingredients of Section 34

To attract the principle of constructive or joint liability under Section 34 there should be:

- a. Criminal act;
- b. Criminal act done by more than one person;
- c. Criminal act done by such person in furtherance of the common intention of all;
- d. Common intention in the sense of a pre-arranged plan between such persons;
- e. Participation in some manner in the act constituting the offence by the persons sought to be prosecuted.

One of the earliest case where the scope of Section 34 was considered at length was *Barendra Kumar Ghosh v. King Emperor* (AIR 1925 PC 1), it was held that, even if the appellant did nothing as to stood outside the door, it is to be remembered that in crimes as in other things they also serve who only stand and wait.

PUNISHMENTS

Section 53: Punishments
Section 53A: Construction of reference to transportation
Section 54: Commutation of sentence of death
Section 55: Commutation of sentence of imprisonment for life
Section 55A: Definition of "appropriate Government"
Section 56: (Repealed) Sentence of Europeans and Americans to penal servitude
Section 57: Fractions of terms of punishment

Section 58: (Repealed) Offenders sentenced to transportation how dealt with until transported
Section 59: (Repealed) Transportation instead of imprisonment
Section 60: Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple
Section 61: (Repealed) Sentence of forfeiture of property
Section 62: (Repealed) Forfeiture of property in respect of offenders punishable with death, transportation or imprisonment
Section 63: Amount of fine
Section 64: Sentence of imprisonment for non-payment of fine
Section 65: Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable
Section 66: Description of imprisonment for non-payment of fine
Section 67: Imprisonment for non-payment of fine, when offence punishable with fine only
Section 68: Imprisonment to terminate on payment of fine
Section 69: Termination of imprisonment on payment of proportional part of fine
Section 70: Fine leviable within six years, or during imprisonment – Death not to discharge property from liability
Section 71: Limit of punishment of offence made up of several offences
Section 72: Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which
Section 73: Solitary confinement
Section 74: Limit of solitary confinement
Section 75: Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction

Nature of Punishment

The concept of justice became more conspicuous with the growth of State which ensures justice to its people through the instrumentality of law. As the law grew and developed, the concept of justice also expanded its tentacles to different spheres of human activities. Thus, for example, today we have civil justice, criminal justice, economic and social justice, distributive justice and so on. Criminal law reflects those fundamental social values expressing the way people live and interact with each other in the society.

Aims and object of Punishment

The object of criminal jurisprudence is to prevent the preparation of acts classified as criminal because they are regarded as being socially damaged.

Theories of Punishment

The views regarding punishment also kept on changing with the changes in societal norms. The aim of protecting society is

sought to be achieved by application of the different theories. There are following theories of punishments:

1. **Deterrent theory:** According to this theory, the object of punishment is not only to prevent the wrong-doer from doing a wrong a second time, but also make him an example and warning to others who have criminal tendencies.
2. **Preventive theory:** The preventive theory is founded on the idea of preventing repetition of crime by disabling the offender through measures such as imprisonment, forfeiture, death punishment, suspension of licences, etc. The object of punishment is to prevent the crime.
3. **Retributive theory:** The theory is based on the rule of natural justice which is expressed by the maxim "*an eye for an eye and a tooth for a tooth*". The theory therefore, emphasises that the pain to be inflicted on the offender by way of punishment must outweigh the pleasure derived by him from his criminal act.
4. **Reformative theory:** the reformative theory of punishment emphasises on reformation of offenders through the method of individualization. It is based on the humanistic principle that even if offender commits a crime, he does not cease to be a human being. Therefore, an effort should be made to reform him during the period of his incarceration.
5. **Expiatory theory:** This theory holds that the punishment whips away the sin and the offender becomes innocent. These days this theory has become close to retributive theory.

The Concept of Restorative Justice

A new approach to crime and punishment through the process of mediation between the offender and the victim of his crime was adopted in U.S.A. and Western European countries during mid 1970s. It is termed as "*Victim Offender Mediation*". In restorative justice the process involved meetings between victims, offender and mediators offering opportunity to the offender to explain his conduct and apologise to the victim.

Forms of Punishment

It is well known that punishment is one of the oldest methods of controlling crime and criminality. However, variations in modalities of punishments, namely, severity, uniformity, and certainty are noticeable because of variations in general societal reaction to law-breaking. In some societies punishments may be relatively severe, uniform, swift and definite while in others it may not be so. This accounts for variations in use of specific methods of punishment. The common methods of punishment prevalent in different parts of the world included corporeal punishments, fines and confiscation of property, deportation Imprisonment, Imprisonment for life, solitary confinement and capital punishment. They are briefly summarised as follows:

1. **Corporeal Punishment:** This punishment was very common till late 18th century. It included flogging, branding, mutation and chaining, etc.
2. **Fines and confiscation of property:** The offences not serious in nature were punished with fine. The usual methods of enforcement of fine are forfeiture of property.

3. **Deportation:** The deportation of criminal is also called banishment. Incorrigible and hardened criminals were generally deported to far-off places with a view to eliminating them from the community.
4. **Imprisonment:** It is either simple or rigorous. It also ensures temporarily elimination of criminals apart from having a deterrent effect.
5. **Imprisonment for life:** to commute a sentence of imprisonment for life to one of rigorous imprisonment for 14 years.
6. **Solitary confinement:** this punishment may be considered as an aggravated form of imprisonment where convicts are confined in solitary prison-cells without any contact with their fellow-prisoners.
7. **Capital punishment:** death sentence has always been used as an effective punishment for murderer and dangerous offenders. It has both deterrent and preventive effect.

Kinds of Punishment under the Indian Penal Code, 1860

The fundamental principles for imposition of different types of punishments are given under Section 53 of the Indian Penal Code, 1860. The punishments to which offenders are liable under the provisions of the Code are:

- a. Death;
- b. Imprisonment for life;
- c. Imprisonment, which is of two descriptions, namely:
 1. Rigorous, that is, with hard labour;
 2. Simple.
- d. Forfeiture of property;
- e. Fine

GENERAL EXCEPTIONS

- Section 76: Act done by a person bound, or by mistake of fact believing himself bound, by law
- Section 77: Act of Judge when acting judicially
- Section 78: Act done pursuant to the judgment or order of Court
- Section 79: Act done by a person justified, or by mistake of fact believing himself, justified, by law
- Section 80: Accident in doing a lawful act
- Section 81: Act likely to cause harm, but done without criminal intent, and to prevent other harm
- Section 82: Act of a child under seven years of age
- Section 83: Act of a child above seven and under twelve of immature understanding
- Section 84: Act of a person of unsound mind
- Section 85: Act of a person incapable of judgment by reason of intoxication caused against his will
- Section 86: Offence requiring a particular intent or knowledge committed by one who is intoxicated
- Section 87: Act not intended and not known to be likely to cause death or grievous hurt, done by consent
- Section 88: Act not intended to cause death, done by consent in good faith for person's benefit
- Section 89: Act done in good faith for benefit of child or insane person, by or by consent of guardian
- Section 90: Consent known to be given under fear or misconception

- Section 91: Exclusion of acts which are offences independently of harm cause
- Section 92: Act done in good faith for benefit of a person without consent
- Section 93: Communication made in good faith
- Section 94: Act to which a person is compelled by threats
- Section 95: Act causing slight harm
- Section 96: Things done in private defence
- Section 97: Right of private defence of the body and of property
- Section 98: Right of private defence against the act of a person of unsound mind, etc.
- Section 99: Acts against which there is no right of private defence
- Section 100: When the right of private defence of the body extends to causing death
- Section 101: When such right extends to causing any harm other than death
- Section 102: Commencement and continuance of the right of private defence of the body
- Section 103: When the right of private defence of property extends to causing death
- Section 104: When such right to causing any harm other than death
- Section 105: Commencement and continuance of the right of private defence of property
- Section 106: Right of private defence against deadly assault when there is risk of harm to innocent person

Introduction

Certain persons are exempt from the operation of the criminal law. Article 361 of the Constitution of India stipulates that the President of India, Governor of a State, or Rajpramukh are not answerable to any court for the matters pertaining to the exercise and performance of the powers and duties of their office.

Chapter IV of the IPC captioned "**General Exceptions**", comprising Section 76-106, these provisions exempt certain persons from criminal liability. An act or omission of an accused even though prima facie falls within the terms of a Section defining an offence or prescribing punishment therefore, does not liable if it is covered by any of the 'exceptions' contained in Chapter IV of the IPC.

Chapter IV consists of 31 Sections which may be grouped into eight heads, viz.,

1. Mistake of fact and mistake of law (Sec. 76, 79);
2. Privileged acts and judicial acts (Sec. 77, 78);
3. Accidental acts (Sec. 80);
4. Necessity (Sec. 81);
5. Incapability to commit a crime (Sec. 82-86);
6. Acts done with the consent (Sec. 87-90) or without consent (Sec. 92);
7. Triviality or trifling matters (Sec. 95);
8. Right of private defence (Sec. 96-106).

Mistake of Fact (Sec. 76 and 79)

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

Essential ingredients

1. The person must be bound by law;
2. A mistake of fact and not a mistake of law;
3. In good faith; and
4. Believes himself to be bound by law.

Illustrations:

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

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

In other words, if anything is done by accident or misfortune it would not be an offence. To claim the benefit of this section it has to be shown, that:

- a. The act done by accident or misfortune;
- b. The act done without any criminal intention or knowledge;
- c. The act done in the doing of a lawful act in a lawful manner and by lawful means; and
- d. The act done with proper care and caution.

Section 80 gives statutory recognition to the common law doctrine of *mens rea*, that there can be no crime without a criminal intention.

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

In *R. v. Walker* (1824. C & P 320), it was held that the driver of a cart with a pair of horses without reins was responsible for manslaughter because it was his duty to drive the cart in such a way as to prevent any accident or injury and not intoxicated condition of victim would not in any way mitigate the responsibility of the accused.

Act of a child under seven years of age (infancy-Sec. 82): Nothing is an offence which is done by a child under seven years of age.

Section 82 of the Code completely makes an infant below 7 years of age immune from criminal liability, since a child below this age is considered as *doli incapax* in law. That is to say, a child under such an age cannot form the necessary intention to constitute a crime since he possesses no adequate discretion or understanding at this age for his deeds.

Blackstone (Commentaries, Vol. IV, pp. 20, 22. has explained the reason for exempting infants from criminal liability in the following words:

"Infancy is a defect of the understanding, and infants under the age of discretion ought not to be punished by any criminal prosecution whatsoever."

Act of a child above seven and under twelve of immature understanding (Sec. 83): Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Essential ingredients

The following are the essential elements of Section 83:

1. Act done by a child above 7 years but under 12 years of age;
2. The child must not have attained sufficient maturity of understanding to judge of the nature and consequences of his conduct;
3. Incapacity must exist at the time of commission of the act.

According to this Section the presumption of innocence of a child is based on the principle that “the younger the child in age, the lesser the probability of being corrupt. This is to say, malice makes up for age, i.e., *militia supplet actatam*. In India a child above 7 years but below 12 years of age enjoys a qualified immunity and is presumed to be *doli capax*, therefore the burden to rebut the presumption lies upon him by proving that he was of that age group and was at the same time *doli capax* (i.e. incapable of understanding the nature, quality and consequences of the act).

Act of a person of unsound mind (Sec. 84.: Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Essential ingredient

The following are the ingredients of Section 84:

1. Act must be done by a person of unsound mind;
2. Such person must be incapable of knowing:
 - a. The nature of the act, or
 - b. That the act was contrary to law, or
 - c. That the act was wrong.
3. Such incapability must be by reason of unsoundness of mind of the offender.
4. The incapacity of the nature stated above in point 2 must exist at the time of doing the act constituting the offence.

The foundation for the law of insanity was laid down by the House of Lords in 1843, in a popular case of M’Naghten (1843. 8 Eng Rep 718, the accused by the name of Daniel M’Naghten suffered from a delusion that Sir Robert Peel, the Prime Minister of Britain had injured him. He mistook Edward Drummond, Secretary to the Prime Minister for *Sir Rober Peel*. He shot and killed him. The accused took the plea of insanity.

88. Act not intended to cause death, done by consent in good faith for person’s benefit.—Nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Essential elements of Section 88

1. The act is done without the intention of causing death though it may amount to an offence by reason of any harm;
2. The act is done with the consent of the victim;
3. Consent may be expressed or implied; or
4. The act is done in good faith for benefit.

Illustration: ‘A’, a surgeon, knowing that a particular operation is likely to cause the death of ‘Z’, who suffers under a painful complaint, but not intending to cause Z’s death and intending in good faith, Z’s benefit performs that operation on ‘Z’, with Z’s consent. ‘A’ has committed no offence.

Act done in good faith for benefit of child or insane person, by or by consent of guardian (S. 89): Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person.

Sec. 89 authorises guardian or other persons having lawful charge of:

- child below the age of 12 years;
- a person of unsound mind not competent to give consent in law to consent to inflict harm either himself or by another person, provided:
 - it is done in good faith and
 - for the benefit of the such minor/person of unsound mind, and
- the act is not either immoral or illegal.

Consent known to be given under fear or misconception (Section 90): It provides that it should be proved in order to mitigate the liability that the victim has consented to suffer wrong or injury freely. The consent should not be given by:

- a. A man under fear of injury or under misconception of fact;
- b. A child under 12 years of age;
- c. By an insane who is unable to understand the nature and consequences to which ha has given consent.

This Section does not define consent but describes what not consent is. We have already discussed the meaning of the word “consent” under Sec. 87. The object of this Sec. is not to lay down that a child under 12 years of age is in fact incapable of expressing or withholding his consent to an act, but to prove that where the consent of person may afford a defence to a criminal charge such consent must be a real consent, not vitiated by immaturity or in other cases by misconception, misunderstanding, fear, fraud, etc. In *Poonai Fattemah case*¹, the accused, who professed to be a snake charmer, persuaded the deceased to allow himself to be bitten by a poisonous snake, inducing him to believe that he had power to protect him from harm. It was held that the consent was given by the deceased under a misconception of fact arising out of the misrepresentation made by the accused that he had power by charms to cure snake bites and the accused knew that the consent was given in consequence of such misconception and therefore, the accused was not entitled to protection on the ground of consent of the accused.

91. Exclusion of acts which are offences independently of harm caused—The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration: Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence “by reason of such harm”; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Sec. 91 provides that consent will only condone the act causing harm to the person giving the consent which will otherwise be an offence. If the act is an offence independently of the harm which it has caused then the doer will not be prosecuted by the consent given. **For example,** causing miscarriage, public nuisance, offence against public safety, morals, etc. This Sec. is an exception to the general exceptions contained in Sec. 87, 88, and 89 of the code.

Act done in good faith for benefit of a person without consent (Section 92): Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person’s consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit. The benefit of Sec. 92 would not be available to the following acts:

1. Intentionally causing death;
2. The doing of anything which the person doing it knows to be likely to cause death if the work is not done for preventing death or grievous hurt or for causing any grievous decrease or infirmity;
3. Voluntarily causing hurt if it is not done for preventing death;
4. The abetment of any offence to the commission of which the exception of this Sec. would not apply.

Illustrations: ‘Z’ is thrown from his horse, and is insensible. ‘A’, a surgeon, finds that ‘Z’ requires to be trepanned. ‘A’, not intending Z’s death, but in good faith, for Z’s benefit, performs the trepan before ‘Z’ recovers his power of judging for himself. ‘A’ has committed no offence.

Communication made in good faith (Section 93): No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Against a criminal Sec. 93 gives protection to a person from criminal liability for making a communication to one which results in harm to him. To claim this protection:

- The communication must be made in good faith, and
- It must be made for the benefit of the person.

Illustration: ‘A’, a surgeon in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. ‘A’ has committed no offence, though he knew it to be likely that the communication might cause the patient’s death.

Section 95- Act causing slight harm:

This Section is based on maxim *de minimis non curat lex* i.e. the law will not take care of trifles. Sec. 95 intends to prevent

penalisation of negligible criminal wrongs, or offences of trivial nature. Though such acts fall within the letter of the law, they are not punishable within the spirit of law. Such acts are considered innocent.

For example, to take a sheet of paper from other’s drawer; Pressing a man and causing hurt while getting into a railway compartment; Calling a person a liar, though it attracts defamation.

In *Kishori Mohan v. Bihar* (1976 Cr. L.J. 654), fraternity of striking employees making fun of a non striking employee loyalist worker photographer with a garland of shoes around his neck not shown either to the complainant or to any one, it was held as trifle.

RIGHT OF PRIVATE OF DEFENCE (SECTIONS 96-106)

Things done in private defence (Section 96): Nothing is an offence which is done in the exercise of the right of private defence.

In *Laxman v. State of Orissa* (1988 Cri. L.J. 188), it was held that the right of private defence is available only to one who is suddenly confronted with immediate necessity of averting an impending danger not of his own creation. The necessity must be present, real or apparent.

Right of private defence of the body and of property (Section 97): Every person has a right, subject to the restrictions contained in Section 99, to defend:

Firstly, his own body and the body of any other person, against any offence affecting the human body;

Secondly, The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

This right is subjected to the restrictions under Sec. 99., i.e. there is no right of private defence:

- against the acts of public servant acting in good faith;
- against the acts of those acting under their authority or direction;
- where there is sufficient time for recourse to public authorities; and
- the quantum of harm that may be caused shall in no case be in excess of harm that may be necessary for the purpose of defence.

In *Biram Singh v. State of Bihar* (1975), two accused having received injuries, went back home, and fetched a sword and inflicted fatal blows. In this case the right of private defence was rejected.

- **Right of private defence of trespasser against true owner:** only when the trespasser has been successful in accomplishing his mission.

- **Aggressor cannot take the plea of self-defence:** In the case of *Jaipal v. Haryana* (2000), accused persons armed with deadly weapons and victims were without any arms, accused attacked the victims. In this case there is no right of private defence.

Right of private defence against the act of a person of unsound mind, etc (Sec. 98): When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations: 'Z', under the influence of madness, attempts to kill 'A'; 'Z' is guilty of no offence. But A has the same right of private defence which he would have if 'Z' were sane.

Section 98 lays down the principle that the right of private defence is also available against such other persons who may not be liable for their acts in view of the fact that certain specific defences have been provided to them by the IPC under Sec. 82-86 and 76 and 79.

Acts against which there is no right of private defence (Sec. 99): Section 99 lays down the certain limits beyond which the right of private defence cannot be exercised. According to Sec. 99, in the following cases, there is no right of private defence:

- a. in case of an act by a public servant;
- b. in case of an act under the direction of a public servant;
- c. when recourse to the direction of a public servant;
- d. no more harm than it is necessary.

For the purpose of (a) and (b) above:

1. the act should be done in good faith,
2. the act should be under colour of office,
3. the act does not reasonably cause the apprehension of death or grievous hurt,
4. act may not be strictly justified in law there should be reasonable ground to believe that the act is done by public servant and or under his direction and under colour of office.

In *Madan v. State of Madhya Pradesh* (2008) 4 Cri. L.J. 3950, that a plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence of body is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused the entire incident must be examined with care and viewed in its proper setting.

When the right of private defence of the body extends to causing death (Sec. 100): This Section provides that the right of private defence extends even to the causing of death or any other harm to the assailant under the following six circumstances:

- An assault causing reasonable apprehension of death. In such a case, if the defender cannot exercise this right without causing harm to an innocent person, he may even run that risk. (S.106);
- An assault causing reason apprehension of grievous hurt;
- An assault with the intention of committing rape;
- An assault with the intention of gratifying unnatural lust;
- An assault with intention of kidnapping or abduction;

- An assault with the intention of wrongfully confining a person under circumstances that may cause him to apprehend that he will not have any recourse to public authorities for his release.

The law authorises a man, who is under a reasonable apprehension that his life is in danger or his body in risk of grievous, to inflict death upon his assailant must be reasonable and not an imaginary one. The injury inflicted must also be proportionate to and commensurate with the quality and character of the act it is intended to meet. The right of private defence extends to the causing of death only when the offence which occasions the exercise of the right is one of the kinds mentioned in this Section. In *Harjinder Singh v. Karnail Singh* (AIR 1998 SC 1648), the accused entertaining apprehension that the complainant party had come to take forcible possession of land and to attack them, chased the complainant party and opened 30 to 40 rounds of gun shot at complainant party thereby killed some person. It was held that opening 30-40 rounds of gun shots was unnecessary and therefore accused exceeded the right of private defence and thereby committed offence under Sec. 304, Part I of the IPC.

When such right extends to causing any harm other than death (Sec. 101): Section 101 is a corollary to Sec. 100. Sec. 101 says that subject to the above restrictions, the right of private defence of body extends to the causing of any harm short of death. The right of self defence does not extend to the voluntary causing of death.

Commencement and continuance of the right of private defence of the body (Sec. 102): Sec. 102 says that the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

Sec. 102 and 105 fix the time when the right of private defence commences and the time during which it continues.

When the right of private defence of property extends to causing death (Sec. 103): The right of private defence of property extends to the causing of death or any other harm to the assailant under the following circumstances:

- i. Robbery,
- ii. House-breaking by night,
- iii. Mischief by fire committed on any building, tent, or vessel, used as a human dwelling or as a place for the custody of property.
- iv. Theft, mischief or house trespass, reasonably causing the apprehension of death or grievous hurt.

When such right extends to causing any harm other than death (Sec. 104): Section 104 says that the right of private defence of property extends to the causing of any harm short of death.

Commencement and continuance of the right of private defence of property (Sec.105): Sec. 105 fixes the time when the right of private defence of property commences and when it comes to an end. This right commences as soon as a reasonable apprehension of danger to property commences and its continuation depends upon the nature of offence. It continues, in case of:

- theft till the offender retreated, or procurement of assistance of public authorities or till the property is recovered.
- robbery as long as the offender causes or attempts to cause any person death or hurt or instant personal restraint continues.
- criminal trespass or mischief as long as the offender continues in the commission of criminal trespass or mischief.
- House-breaking by night as long as such house trespass that began continues.

Right of private defence against deadly assault when there is risk of harm to innocent person (Sec. 106): If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration: 'A' is attacked by a mob who attempts to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. 'A' commits no offence if by so firing he harms any of the children.

ABETMENT

- Section 107: Abetment of a thing
 Section 108: Abettor
 Section 108A: Abetment in India of offences outside India
 Section 109: Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment
 Section 110: Punishment of abetment if person abetted does act with different intention from that of abettor
 Section 111: Liability of abettor when one act abetted and different act done
 Section 112: Abettor when liable to cumulative punishment for act abetted and for act done
 Section 113: Liability of abettor for an effect caused by the act abetted different from that intended by the abettor
 Section 114: Abettor present when offence is committed
 Section 115: Abetment of offence punishable with death or imprisonment for life if offence not committed
 Section 116: Abetment of offence punishable with imprisonment—if offence be not committed
 Section 117: Abetting commission of offence by the public or by more than ten persons
 Section 118: Concealing design to commit offence punishable with death or imprisonment for life
 Section 119: Public servant concealing design to commit offence which it is his duty to prevent
 Section 120: Concealing design to commit offence punishable with imprisonment

Introduction

A person who does not himself commit a crime, may however command, urge, encourage, induce, request, or help a third person

to bring it about and thereby be guilty of the offence of abetment. The term 'abet' in general usage means to assist, advance, aid, conduce, help and promote. In *Corpus Juris Secundum*, the meaning of the word 'abet' has been given as under:

"to abet has been defined as meaning to aid; to assist or to give aid; to command, to procure, or to counsel; to countenance; to encourage, counsel, induce, or assist, to encourage or to set another on to commit."

Relevant Provision: Sec. 107-120 of the IPC deals with the law of Abetment.

107. Abetment of a thing: A person abets the doing of a thing, who—

1. By instigation (Para 1 of Sec. 107); or
2. By conspiracy (Para 2 of sec. 107); or
3. By intentional aiding (Para 3 of Sec. 107).

By instigation: It means the act of inciting another to do a wrongful act. The necessary elements of instigation are: counselling, suggesting, encouraging, procuring or commanding another to do an act.

Illustration: 'A', a public officer, is authorized by a warrant from a Court of Justice to apprehend 'Z'. 'B', knowing that fact and also that 'C' is not 'Z', wilfully represents to 'A' that 'C' is 'Z', and thereby intentionally causes 'A' to apprehend 'C'. Here 'B' abets by instigation the apprehension of 'C'.

Kinds of Abetment

There are two kinds of abetment such as:

- i. Successful abetment, or
- ii. Unsuccessful abetment.

Successful abetment: When the person abetted does any act in pursuance of the act abetted then such abetment will be termed as successful abetment.

Unsuccessful abetment: When person abetted refuses to do an act in accordance with the abetment then such type of abetment will be termed as unsuccessful abetment.

In *Biswobhusan v. State* (1952 Cr. L.J. 1533., in this case the court held that the giver of a bribe to a public servant' whether the bribe is given voluntarily or in response to a demand made. In *Gurbachan Singh v. Satpal Singh* (AIR 1990 SC 209. , a newly wedded girl died of burns. The evidence of her father and sisters indicated that the deceased had complained about harassment and torture by her in-laws for bringing insufficient dowry. It was held that the deceased had committed suicide at the instigation of her husband and in-laws.

108. Who is Abettor: A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Illustrations:

- (a) 'A' instigates 'B' to murder 'C'. 'B' refuses to do so. 'A' is guilty of abetting 'B' to commit murder. Here 'A' is an abettor.
- (b) 'A' instigates 'B' to murder 'D'. 'B' in pursuance of the instigation stabs 'D'. 'D' recovers from the wound. 'A' is guilty of instigating 'B' to commit murder.

CRIMINAL CONSPIRACY

Section 120A: Definition of criminal conspiracy

Section 120B: Punishment of criminal conspiracy

Definition of criminal conspiracy (120(A)): When two or more persons agree to do, or cause to be done,-

1. an illegal act, or
2. an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

The word 'illegal' includes following three words:

1. An act which is an offence;
2. An act which is prohibited by law;
3. An act which furnishes grounds for civil action.

According to proviso to Section 120-A:

- i. An agreement to commit an offence.
- ii. An agreement to commit an act.

On the basis of above we can say that proviso to Sec. 120-A deal with the following two types of agreements:

1. An agreement to commit an offence.
2. An agreement to commit any of the following act:
 - a. An act which is prohibited by law;
 - b. An act which furnishes grounds for civil action.

Essential ingredients of Section 120-A

In order to constitute this offence following conditions must be satisfied:

1. There must be two or more persons;
2. There must be an agreement between such person;
3. Such agreement must be for any of the following purpose:
 - a. To do an illegal act; or
 - b. To do a legal act by illegal means.

In *R. v. Mulchay* (1868. LR 3 HL 306, the term criminal conspiracy firstly widened defined by House of Lords in this well-known case. In the case of *Barindra Kumar Ghose v. Emperor* (14 C.W.N. 1114., it was held that to establish the charge of conspiracy there must be agreement, there need not be proof of direct meeting or combination nor need the parties be brought into each other's presence; the agreement may be inferred from circumstances raising a presumption of a common plan to carry out the unlawful design.

Punishment of criminal conspiracy (120(B)): (1. Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) 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.

OFFENCES AGAINST THE STATE

Section 121: Waging, or attempting to wage war, or abetting waging of war, against the Government of India

Section 121A: Conspiracy to commit offences punishable by section 121

Section 122: Collecting arms, etc., with intention of waging war against the Government of India

Section 123: Concealing with intent to facilitate design to wage war

Section 124: Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power

Section 124A: Sedition

Section 125: Waging war against any Asiatic Power in alliance with the Government of India

Section 126: Committing depredation on territories of Power at peace with the Government of India

Section 127: Receiving property taken by war or depredation mentioned in sections 125 and 126

Section 128: Public servant voluntarily allowing prisoner of state or war to escape

Section 129: Public servant negligently suffering such prisoner to escape

Section 130: Aiding escape of, rescuing or harbouring such prisoner

Introduction

Sedition refers generally to the offence related to conduct or speech inciting people to rebel against the authority of a state or government. Rebellion is the attempted overthrow of a government; if it succeeds it is a coup, or revolution. In addition to these crimes treated as offences against the State, the Bureau also included offences promoting enmity between different groups as 'Offences against the State' as it disturb tranquillity in the society and very prejudicial to national integration.

Offences against the State (under Sections 121, 121A, 122, 123 & 124-A IP(c) and offences promoting enmity between different groups (under Sections 153A & 153 B IP(c) are construed as 'Offences against the State'.

Waging, or attempting to wage war, or abetting waging of war, against the Government of India (Sec. 121): Whoever, wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine.

Illustration: 'A' joins an insurrection against the Government of India. 'A' has committed the offence defined in this section.

Sedition (Sec. 124-(A)): Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

The word "Sedition" does not occur in Section 124-A of the Indian Penal Code or in the Defence of India Rule. It is only found as a marginal note to Section 124-A, and is not an operative part of the section but merely provides the name by which the crime defined in the section will be known.

According to the section 124-A, comments expressing strong disapproval of the 'administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.'

Gangadhar Tilak, were charged with sedition during freedom struggle When the first amendment was introduced, which also included detailed limitations on free speech, the then **Prime Minister Jawaharlal Nehru** was categorical in his belief that the offence of sedition was fundamentally unconstitutional. He had said: "*now as far as I am concerned [Section 124-A] is highly objectionable and obnoxious and it should have no place both for practical and historical reasons. The sooner we get rid of it the better.*"

OFFENCES AGAINST THE HUMAN BODY

Offences against Life

- Section 299: Culpable homicide
- Section 300: Murder
- Section 301: Culpable homicide by causing death of person other than person whose death was intended
- Section 302: Punishment for murder
- Section 303: Punishment for murder by life-convict
- Section 304: Punishment for culpable homicide not amounting to murder
- Section 304A: Causing death by negligence
- Section 304B: Dowry death
- Section 305: Abetment of suicide of child or insane person
- Section 306: Abetment of suicide
- Section 307: Attempt to murder
- Section 308: Attempt to commit culpable homicide
- Section 309: Attempt to commit suicide
- Section 310: Thug
- Section 311: Punishment
- Section 312: Causing miscarriage
- Section 313: Causing miscarriage without woman's consent
- Section 314: Death caused by act done with intent to cause miscarriage
- Section 315: Act done with intent to prevent child being born alive or to cause it to die after birth
- Section 316: Causing death of quick unborn child by act amounting to culpable homicide-
- Section 317: Exposure and abandonment of child under twelve years, by parent or person having care of it
- Section 318: Concealment of birth by secret disposal of dead body
- Section 319: Hurt
- Section 320: Grievous hurt
- Section 321: Voluntarily causing hurt
- Section 322: Voluntarily causing grievous hurt
- Section 323: Punishment for voluntarily causing hurt
- Section 324: Voluntarily causing hurt by dangerous weapons or means
- Section 325: Punishment for voluntarily causing grievous hurt
- Section 326: Voluntarily causing grievous hurt by dangerous weapons or means
- Section 326A: Voluntarily causing grievous hurt by use of acid, etc.
- Section 326B: Voluntarily causing grievous hurt by use of acid, etc.
- Section 327: Voluntarily causing hurt to extort property, or to constrain to an illegal act
- Section 328: Causing hurt by means of poison, etc., with intent to commit and offence
- Section 329: Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act
- Section 330: Voluntarily causing hurt to extort confession or to compel restoration of property
- Section 331: Voluntarily causing grievous hurt to extort confession, or to compel restoration of property
- Section 332: Voluntarily causing hurt to deter public servant from his duty
- Section 333: Voluntarily causing grievous hurt to deter public servant from his duty
- Section 334: Voluntarily causing hurt on provocation
- Section 335: Voluntarily causing grievous hurt on provocation
- Section 336: Act endangering life or personal safety of others
- Section 337: Causing hurt by act endangering life or personal safety of others
- Section 338: Causing grievous hurt by act endangering life or personal safety of others
- Section 339: Wrongful restraint
- Section 340: Wrongful confinement
- Section 341: Punishment for wrongful restraint
- Section 342: Punishment for wrongful confinement
- Section 343: Wrongful confinement for three or more days
- Section 344: Wrongful confinement for ten or more days
- Section 345: Wrongful confinement of person for whose liberation writ has been issued
- Section 346: Wrongful confinement in secret
- Section 347: Wrongful confinement to extort property, or constrain to illegal act
- Section 348: Wrongful confinement to extort confession, or compel restoration of property
- Section 349: Force
- Section 350: Criminal force
- Section 351: Assault
- Section 352: Punishment for assault or criminal force otherwise than on grave provocation
- Section 353: Assault or criminal force to deter public servant from discharge of his duty
- Section 354: Assault or criminal force to woman with intent to outrage her modesty
- Section 354A: Sexual harassment and punishment for sexual harassment
- Section 354B: Assault or use of criminal force to woman with intent to disrobe
- Section 354C: Voyeurism
- Section 354D: Stalking
- Section 355: Assault or criminal force with intent to dishonour person, otherwise than on grave provocation
- Section 356: Assault or criminal force in attempt to commit theft of property carried by a person

Section 357: Assault or criminal force in attempting wrongfully to confine a person
 Section 358: Assault or criminal force on grave provocation
 Section 359: Kidnapping
 Section 360: Kidnapping from India
 Section 361: Kidnapping from lawful guardianship
 Section 362: Abduction
 Section 363: Punishment for kidnapping
 Section 363A: Kidnapping or maiming a minor for purposes of begging
 Section 364: Kidnapping or abducting in order to murder
 Section 364A: Kidnapping for ransom, etc.
 Section 365: Kidnapping or abducting with intent secretly and wrongfully to confine person
 Section 366: Kidnapping, abducting or inducing woman to compel her marriage, etc.
 Section 366A: Procreation of minor girl
 Section 366B: Importation of girl from foreign country
 Section 367: Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.
 Section 368: Wrongfully concealing or keeping in confinement, kidnapped or abducted person
 Section 369: Kidnapping or abducting child under ten years with intent to steal from its person
 Section 370: Trafficking of person
 Section 370A: Exploitation of a trafficked person
 Section 371: Habitual dealing in slaves
 Section 372: Selling minor for purposes of prostitution, etc.
 Section 373: Buying minor for purposes of prostitution, etc.
 Section 374: Unlawful compulsory labour
 Section 375: Rape
 Section 376: Punishment for rape
 Section 376A: Punishment for causing death or resulting in persistent vegetative state of victim
 Section 376AB: Punishment for rape on woman under twelve years of age
 Section 376B: Sexual intercourse by husband upon his wife during separation
 Section 376C: Sexual intercourse by person in authority
 Section 376D: Gang rape
 Section 376DA: Punishment for gang rape on woman under sixteen years of age
 Section 376DB: Punishment for gang rape on woman under twelve years of age
 Section 376E: Punishment for repeat offenders
 Section 377: Unnatural offences

Culpable Homicide and Murder

Introduction

Unlawful homicide is of the following kinds:

- i. Murder (Sec. 302);
- ii. Culpable homicide not amounting to murder (Sec. 304);
- iii. Causing death by negligence (Sec. 304(a));
- iv. Dowry death (Sec. 304(b)) and
- v. Suicide (Sec. 305 and 306).

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

Essential elements

Based upon the above definition, the following are the essential elements of Culpable Homicide:

- By doing an act with the intention of causing death; or
- With the intention of causing such bodily injury as is likely to cause death; or
- With the knowledge that one is likely by such act to cause death.

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

In *Sumer Singh case* (1941. O.W.N. 791), A gave blows on the head of B which he intended or knew to be likely to smash the victim's skull. A would be taken to have known that he was likely to cause death of B. A was, therefore, guilty of culpable homicide not amounting to murder.

Murder (Sec. 300): Section 300 of Indian Penal Code provides 'Murder'. Culpable homicide is murder, if it is done with:

1. Intention to cause death,
2. Intention cause bodily injury, knowing that the injury caused, is likely to cause death,
3. Intention of causing bodily injury sufficient in the ordinary course of nature to cause death,
4. Knowledge that the act is so imminently dangerous that in all probability it will cause death or bodily injury likely to cause death and such act should be without justification.

Exception to Murder

Culpable homicide is not a murder in following cases:

1. Where the act is done on grave and sudden provocation; or
2. Where the act is done in exceeding the right of private defence of person or property; or
3. Where the act is done in exceeding the right by public servant or in aiding a public servant; or
4. Where the act is done in sudden fight without premeditation; or
5. Where the act is done with the consent of deceased of the age of above 18 years.

303. Punishment for murder by life-convict: It says that whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death.

The question of unconstitutionality of section 303 was raised in *Mithu v. State of Punjab* (AIR 1983 S(c)), on the ground that it is violative of Articles 14 and 21 of the Constitution. Chief Justice Chandrachud, who delivered the judgment on behalf of four of the judges including him, held that Sec. 303 violates the guarantee of equality contained in Article 14 as also the right conferred by Article 21 that no person shall be deprived

of his life or personal liberty except according to procedure established by law.

304A. Causing death by negligence: Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Essential ingredients

The essential elements in order to invoke the applicability of this section are as follows:

- i. Death of a human being;
- ii. The accused caused the death;
- iii. The death was caused by the doing of a rash and negligent act, though it did not amount to culpable homicide.

In *Shivder Singh v. State* [(1995. 2 Cr. L.J. 2142 (Del.)], a passenger was standing on the foot-board of a bus to the knowledge of the driver and even so the driver negotiated a sharp turn without slowing down. The passenger fell off to his death. The driver was held to be guilty under Section 304-A.

304B. Dowry death: This Sec. inserted by Act 43 of 1986. It defines dowry death and provides punishment for it. The basic elements to attract the provisions of Sec. 304-B are as follows:

1. The death of a woman should be caused by burns or fatal injury or otherwise than under normal circumstances;
2. Such death should have occurred within seven years of her marriage;
3. She must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
4. Such cruelty or harassment should be for in connection with demand for dowry.

In *Kamesh Panjiyar v. State of Bihar* (2005 Cri. L.J. 1418), the Supreme Court observed that the marriages are made in heaven is an adage. A bride leaves the parental home for the matrimonial home; leaving behind sweet memories there with a hope that, she will see a new world full of love in her groom's house. She leaves behind not only her memories, but also her surname, gotra and maidenhood. She expects not only to be a daughter-in-law, but a daughter in fact. It was held that a conjoint reading of Sec. 113-B of the Evidence Act and Sec. 304-B of IPC shows that there must be material to show that soon before her death, the victim was subjected to cruelty and harassment.

Section 305- Abetment of suicide of child or insane person:

If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

This offence is cognizable, non-bailable and it is tried by Court of Session.

Abetment of suicide (Sec. 306) : If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

To attract the provision of abetment of suicide, there must be allegation that the accused had instigated the deceased to

commit suicide. In other words, In order to attract the provisions of section 306 of IPC (abetment to suicide), there must be an intention of the accused to bring about the suicide of the person concerned as a result of that abetment is required.

309. Attempt to commit suicide: Whoever attempts to commit suicide and does any act towards the commission of such offence shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

Suicide (self annihilation) is a common incident affecting the people of all classes throughout the globe. It is a peculiar crime where both the accused and victim is same person. Attempt to suicide is punishable under Sec. 309 of Indian Penal Code. Attempt of suicide is punishable because it violates the Right to Life explained in Article 21 of the Indian Constitution.

Illustration: If 'A', with an object to commit suicide, throws him into a well is guilty of an attempt to commit suicide and this is punishable under this section, if he fails in his attempt. The essence of suicide is an intentional self destruction of life.

In the case of *Queen Emperor v. Ramakka* (AIR 1962 All 262., if a person because of family discord, distraction, loss of near and dear relation or other cause of a like nature overcomes the instinct of self-preservation and decides to take his life, he should not be held guilty for attempt to commit suicide.

Causing miscarriage (Sec. 312.: Sec. 312 punishes the offence of causing miscarriage. The essential elements to attract this Sec. are as follows:

1. Voluntarily causing a woman with child to miscarry;
2. Such miscarriage should not have been caused in good faith for the purpose of saving life of the pregnant woman.

Essential elements

The essential ingredients of hurt are as follows:

- a. Bodily pain, disease or infirmity must be caused bodily pain, except such slight harm for which nobody would complain, is hurt. For example, pricking a person with pointed object like a needle or punching somebody in the face, or pulling a woman's hair.
- b. It should be caused due to a voluntary act of the accused.

Grievous Hurt (Sec. 320): Section 320 of IPC defines Grievous Hurt as:

1. Emasculation;
2. Permanent privation of the sight of either eye;
3. Permanent privation of the hearing of either ear;
4. Privation of any member or a joint;
5. Destruction or permanent impairing of powers of any member or joint;
6. Permanent disfiguration of the head or face;
7. Fracture or dislocation of a bone or tooth;
8. Any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe body pain or unable to follow his ordinary pursuits.

Force (Sec. 349): According to this Sec. to exercise one's energy upon the other human being is a force. The force may be exercised directly or indirectly. If a man by raising his stick causes another man to move away although he does not strike it upon him, he used force.

Essential ingredients

In order to constitute force there must be at least:

- a. Causing of a motion;
- b. Change of a motion;
- c. Cessation of a motion.

In *Chandrika Sao v. State of Bihar*, the Supreme Court held that it would be clear from a bare perusal of the Sec. that one person can be said to have used force against another if he causes motion or cessation of motion to that other. By snatching away the accused necessarily caused a jerk to the hand or the hands of official would be to affect the sense of the feelings of the hands of the official. Therefore, the Court held that the action of the accused amounts to use of force as contemplated by Sec. 349 of IPC.

Criminal Force (Sec. 350):

Illustration: 'Z' is riding in a chariot. 'A' lashes Z's horses, and thereby causes them to quicken their pace. Here 'Z' has caused change of motion to 'Z' by inducing the animals to change their motion. 'A' has therefore used force to 'Z'; and if 'A' has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy 'Z', 'A' has used criminal force to 'Z'.

Essential elements

There are following ingredients of criminal force:

- a. Intentionally using of force to any person;
- b. The force is used without the consent of that person;
- c. The force should be used:
 - i. In order to committing of an offence; or
 - ii. With the intention to cause or knowingly it to be likely that the injury, fear or annoyance will be caused to the person to whom the force is used.

Assault (Sec. 351):

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

Essential ingredients

The following are the essential ingredients of this Section:

1. Making any gesture, or any preparation by a person in presence of another;
2. Intention or knowledge that such gesture or preparation will cause any person present to apprehend that the person making it is about to use criminal force to him;

KIDNAPPING AND ABDUCTION

Introduction

Kidnapping constituted only on the basis of *actus reus*. It is based upon the doctrine of strict liability i.e., no *mens rea* is required to constitute this offence.

For example, if 'A' takes 'B' without his consent or without B's lawful guardians consent to Pakistan, 'A' would be committing this offence.

Essential ingredients

The essential ingredients of Kidnapping are as follows:

1. The person should be conveyed out of the borders of India;
2. The person should be conveyed without his consent or without the consent of the person who is legally authorized to consent on his behalf.

Kidnapping from Lawful guardianship (Sec. 361):

"Whoever takes or entices any minor less than 16 yrs of age if male or 18 yrs of age if female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."

Essential elements of Kidnapping from Lawful guardianship

The following are the essential ingredients of Kidnapping from Lawful guardianship:

1. Kidnapping must be in his lawful guardianship at the time of the commencement of offence;
2. He must be deprived from his lawful guardianship;
3. It must be done without the consent of lawful guardian;
4. Kidnapping must have been taking away or inciting away from his lawful guardianship; and
5. The kidnapping at the time of commencement of the offence must be of following age:
 - i. If male below 16 years;
 - ii. If female below 18 years;
 - iii. In case of person of unsound mind he may be of any age.

In the case of *Varadarajan v. State of Madras* (AIR 1965 SC 942.), the Supreme Court clarified that if the person leaves his/her parental house:

- a. On his own account; or
- b. On account of ill treatment and behind this there is no active participation on the part of accused then accused shall not be held liable.

Abduction (Sec. 362): It means compelling a person, or to induce him to go from where he is to another place. The offence of abduction is continuing offence.

Essential ingredients

The essential ingredients are:

- a. Compelling by force or inducing by deceitful means;
- b. To go from any place; and
- c. It should have been done with some specific intention.

For example: 'A' threatens 'B' on gun point to go from his house to another city. Here, 'A' has compelled 'B' to go from his house and is thus guilty under this section.

Types of abduction

There are two kinds of abduction:

1. Abduction general (Sec. 362.);
2. Abduction simpliciter (Sec. 100. .

Abduction General: In order to constitute this type of offence two things are required:

- i. Actus reus;
- ii. Mens rea.

For the offence of abduction specific *mens rea* is required. In other words, the offence of abduction will be constituted only with it is commenced with some specific intention.

SEXUAL OFFENCE

Rape (Sec. 375)—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

Firstly: Against her will.

Secondly: Without her consent.

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

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

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

Sixthly: With or without her consent, when she is under sixteen years of age.

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception: Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Essential elements

This Section consists of the following essentials:

1. Sexual intercourse by a man with a woman;
2. The sexual intercourse must be under circumstances falling under any of the six clauses of Sec. 375.

The rape laws of the country were amended in the year 2013 after the *Justice J.S. Verma* Committee Report, to address the prevalent inadequacies. The word rape is derived from the Latin term ‘*rapio*’, which mean ‘*to seize*’. Thus rape literally means a forcible seizure. It signifies in common terminology, “*as the ravishment of a woman without her consent, by force, fear, or fraud*” or “*the carnal knowledge of a woman by force against her will.*” In other words, rape is violation with violence of the private person of a woman.

Punishment for rape (Sec. 376): Whoever, commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

Section 376A: Punishment for causing death or resulting in persistent vegetative state of victim.

Section 376B: This Sec. makes punishable when sexual intercourse by husband upon his wife during separation.

Section 376C: This Sec. makes punishable when sexual intercourse by person in authority.

Section 376D: This Sec. provides punishment for Gang rape.

Section 376E: This Sec. provides punishment for repeat offenders.

OFFENCES AGAINST PROPERTY

Section 378: Theft

Section 379: Punishment for theft

Section 380: Theft in dwelling house, etc.

Section 381: Theft by clerk or servant of property in possession of master

Section 382: Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft

Section 383: Extortion

Section 384: Punishment for extortion

Section 385: Putting person in fear of injury in order to commit extortion

Section 386: Extortion by putting a person in fear of death or grievous hurt

Section 387: Putting person in fear of death or of grievous hurt, in order to commit extortion

Section 388: Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc

Section 389: Putting person in fear or accusation of offence, in order to commit extortion

Section 390: Robbery

Section 391: Dacoity

Section 392: Punishment for robbery

Section 393: Attempt to commit robbery

Section 394: Voluntarily causing hurt in committing robbery

Section 395: Punishment for dacoity

Section 396: Dacoity with murder

Section 397: Robbery or dacoity, with attempt to cause death or grievous hurt

Section 398: Attempt to commit robbery or dacoity when armed with deadly weapon

Section 399: Making preparation to commit dacoity

Section 400: Punishment for belonging to gang of dacoits

Section 401: Punishment for belonging to gang of thieves

Section 402: Assembling for purpose of committing dacoity

Section 403: Dishonest misappropriation of property

Section 404: Dishonest misappropriation of property possessed by deceased person at the time of his death

Section 405: Criminal breach of trust

Section 406: Punishment for criminal breach of trust

Section 407: Criminal breach of trust by carrier, etc.

Section 408: Criminal breach of trust by clerk or servant

Section 409: Criminal breach of trust by public servant, or by banker, merchant or agent

Section 410: Stolen property

Section 411: Dishonestly receiving stolen property

Section 412: Dishonestly receiving property stolen in the commission of a dacoity

Section 413: Habitually dealing in stolen property

Section 414: Assisting in concealment of stolen property

Section 415: Cheating

Section 416: Cheating by personation

- Section 417: Punishment for cheating
 Section 418: Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect
 Section 419: Punishment for cheating by personation
 Section 420: Cheating and dishonestly inducing delivery of property
 Section 421: Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors
 Section 422: Dishonestly or fraudulently preventing debt being available for creditors
 Section 423: Dishonest or fraudulent execution of deed of transfer containing false statement of consideration
 Section 424: Dishonest or fraudulent removal or concealment of property
 Section 425: Mischief
 Section 426: Punishment for mischief
 Section 427: Mischief causing damage to the amount of fifty rupees
 Section 428: Mischief by killing or maiming animal of the value of ten rupees
 Section 429: Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees
 Section 430: Mischief by injury to works of irrigation or by wrongfully diverting water
 Section 431: Mischief by injury to public road, bridge, river or channel
 Section 432: Mischief by causing inundation or obstruction to public drainage attended with damage
 Section 433: Mischief by destroying, moving or rendering less useful a light-house or sea-mark
 Section 434: Mischief by destroying or moving, etc., a landmark fixed by public authority
 Section 435: Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees
 Section 436: Mischief by fire or explosive substance with intent destroy house, etc.
 Section 437: Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden
 Section 438: Punishment for the mischief described in section 437 committed by fire or explosive substance
 Section 439: Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.
 Section 440: Mischief committed after preparation made for causing death or hurt
 Section 441: Criminal trespass
 Section 442: House-trespass
 Section 443: Lurking house-trespass
 Section 444: Lurking house-trespass by night
 Section 445: House-breaking
 Section 446: House-breaking by night
 Section 447: Punishment for criminal trespass
 Section 448: Punishment for house-trespass
 Section 449: House-trespass in order to commit offence punishable with death
 Section 450: House-trespass in order to commit offence punishable with imprisonment for life
 Section 451: House-trespass in order to commit offence punishable with imprisonment
 Section 452: House-trespass after preparation for hurt, assault or wrongful restraint
 Section 453: Punishment for lurking house-trespass or house-breaking
 Section 454: Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment
 Section 455: Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint
 Section 456: Punishment for lurking house-trespass or house-breaking by night
 Section 457: Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment
 Section 458: Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint
 Section 459: Grievous hurt caused whilst committing lurking house-trespass or house-breaking
 Section 460: All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them
 Section 461: Dishonestly breaking open receptacle containing property
 Section 462: Punishment for same offence when committed by person entrusted with custody
Theft (Sec. 378): Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.
Illustration: shows that when 'A' cuts down a tree on Z's ground with the intention of dishonestly taking the tree out of Z's possession without his consent, 'A' is guilty of theft. Extraction of teak timber without licence amounts to theft.
Essential elements
 To constitute theft, the following ingredients are required:
1. The property must be movable;
 2. The property must be taken out of possession of another person resulting in wrongful gain by one and wrongful loss to another;
 3. The accused must have a dishonest intention to the property;
 4. Taking must be without that person's consent (express or implied);
 5. The property must be moved in order to such taking i.e., obtaining property by deception.
- The Supreme Court, in line with the *Pyare Lal dictum*, in *State of Maharashtra case* [(1979. Cr LJ 1193 (S(c))], held that the transfer of movable property without consent of the person in possession need not be permanent or for a considerable length of time nor is it necessary that the property should be found in possession of the accused. Even a transient transfer of possession is sufficient to meet the requisites of theft.

Extortion (Sec. 383): This is defined in section 383 of the code which in short lays down that if one puts any person in fear of any injury and induces him to deliver any property or valuable security commits extortion. The punishment for the offence is shown in section 384 of the code which is the same as that for theft.

Illustrations: 'A' threatens to publish a defamatory libel concerning 'Z' unless 'Z' give him money. He thus induces 'Z' to give him money. 'A' has committed extortion.

Essential elements

Main ingredients of the offence are-

1. intentionally putting a person in fear of injury to himself or another, and
2. Dishonestly inducing the person so put in fear to deliver to any person any property or valuable security. The distinction between theft and extortion is-
 - a. In extortion the consent is obtained and in theft no consent is required;
 - b. In extortion both the property movable or immovable may be the subject matter, but in theft only movable property can be stolen
 - c. In extortion the delivery is there by inducing fear while in theft the thief takes away the property without getting delivery from the owners; and lastly
 - d. In extortion the overpowering of the will of the will of the owner exists. While in theft the element of force is absent.

Robbery (Sec. 390) and Dacoity (Sec. 391): Robbery is committed by five or more persons or even it is attempted or aided by that number of persons it will become dacoity. The punishment for the offence of robbery vide section 392 may extend to 10 years of rigorous imprisonment, but if it is committed on a high way between sunrise and for the offence of dacoity is given in section 395 which says that the offender may be punished with transportation for life or rigorous imprisonment for a term which may extend to 10 years and also be liable to fine.

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

Criminal misappropriation of property (Section 403): Section 403 of the Code which says whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment which may extend to 2 years or with fine or both.

Illustrations: 'A' takes property belonging to 'Z' out of Z's possession, in good faith, believing, at any time when he takes it, that the property belongs to him. 'A' is not guilty of theft; but if 'A', after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

Criminal breach of trust (Sec. 405): This offence is defined in section 405 and its punishment is detailed in section 406 of the code. The main ingredients to complete the offence are: Entrusting any person with property The person so entrusted Either dishonestly misappropriates or converts that property to his own use Dishonestly using or disposing of that property in

violation of any direction of law in which such trust is to be discharged; or Any legal contract made touching the discharge of such trust, this offence can be committed by carrier, wharfinger, ware housekeeper, clerk, servant, public servant, banker, merchant, agent, broker, attorney.

Illustrations: 'A', being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriate them to his own use. 'A' has committed criminal breach of trust.

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

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

The main ingredients of the offence of cheating are:

1. Description of any person;
2. It include:
 - a. fraudulently of dishonestly inducing that person:
 - i. to deliver any property to any person; or
 - ii. to consent that any person shall retain any property; or
 - iii. intentionally inducing that person to do or omit to do anything which he would not do or omit if he was not so deceive, and which act or omission caused or is likely to cause damage or harm to the person in body, mind, reputation or property.

Cheating is a very common offence and is generally heard of in the society. It is dealt with in Section 412 to 423. Out of this Section 416 deals with cheating by impersonation which is punished vide section 419. Section 417 punishes for the offence of cheating and the last Section 420 which is very commonly known deals with the offence of cheating and dishonestly inducing delivery of property. The punishment in this section is prescribed as imprisonment for either description for a term which may extend to seven years and also liable to fine.

Criminal trespass: Offences of this type are dealt in sections 441 to 460. The 3 essential heads of this offence are:

1. Entry into the property which is in possession of other person without consent;
2. if such entry is with permission then staying after the permission is withdrawn, that is, if the said entry was lawful in the beginning, but if one remains there unlawfully afterwards;
3. The entry and remaining there unlawfully with the intention:
 - a. To commit offence;
 - b. To insult, annoy or intimidate the person who is in possession of the property.

This offence is defined in section 440 of the code. There are several types of trespass as house trespass, house breaking, and lurking house trespass.

EXERCISE

DIRECTIONS (Qs. 1-8): Given below is a statement of legal principle followed by a factual situation. Apply the principle to the facts given below and select the most appropriate answer.

1. **LEGAL PRINCIPLE :** Ignorance of Fact is excused but ignorance of Law is not an excuse to criminal liability.

FACTUAL SITUATION: X was a passenger from Zurich to Manila in a Swiss Plane. When the plane landed at the Airport of Bombay on 22 November 2014 it was found on searching that X carried 34 kg of Gold Bars on his person and that he had not declared it in the 'Manifest for Transit'. On 24 November 2014, the Government of India had issued a notification modifying its earlier exemption, making it mandatory now that the gold must be declared in the "Manifest" of the aircraft.

DECISION :

- (a) X cannot be prosecuted because he had actually no knowledge about the new notification issued two days ago.
- (b) X cannot be prosecuted because ignorance of fact is excusable
- (c) X can be prosecuted because ignorance of law is not excusable
- (d) X's liability would depend on the discretion of the court

2. **LEGAL PRINCIPLES :** Whoever dishonestly takes away any property from the possession of another, with an intention of such taking away, without his permission is liable for theft.

FACTUAL SITUATION : Raja, a famous gangster, moves into an apartment in Kankurgachi, Calcutta. There, he discovers that the previous owner of the apartment had left behind a pair of beautiful ivory handled combs. Mesmerized by their beauty and confused as to whom he should be returning them to, he decides to retain them and starts using them. The previous owner of the combs gets to know this and registers an FIR for theft against Raja. Is Raja liable ?

DECISION :

- (a) Raja is liable for theft as he failed to return the property even when he knew it was someone else's property.
- (b) Raja is not liable as he is not taken it away from anyone else's possession and there was no dishonest intention.
- (c) Raja is liable as you don't expect anything better from a gangster.
- (d) Raja is not liable as he was confused as to whom he should be returning the property to.

3. **LEGAL PRINCIPLE:** Whoever dishonestly misappropriates or converts to his own use any movable property is guilty of criminal misappropriation of property.

FACTUAL SITUATION : A finds a government promissory note belonging to Z, bearing a blank endorsement. A knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending to restore it to Z at a future time Has A committed criminal misappropriation ?

DECISION :

- (a) Yes since he deprived Z from using his property and used it for his own use.
- (b) No, since he intended to return the property to Z in the future.
- (c) No, it is theft and not criminal misappropriation.
- (d) Yes since he deprived Z from using his property.

4. **LEGAL PRINCIPLES :**

- 1. Whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death commits the offence of culpable homicide.
- 2. Mens rea and actus reus must concur to result in a crime which is punishable by the law.

FACTUAL SITUATION : A and B went for shooting. A knows Z to be behind a bush. B does not know it. A induces B to fire at the bush. B fires and kills Z Has an offence been committed ?

DECISION :

- (a) A had mens rea but no actus reus. B had actus reus but no mens rea. No one is guilty.
- (b) A induced B to fire at the bush with the knowledge that Z is there. A is guilty of culpable homicide but B is not guilty of any offence.
- (c) Both A and B are guilty.
- (d) None of the above.

5. **LEGAL PRINCIPLES :**

- 1. The crime of kidnapping involves taking someone away from the custody of their lawful guardian.
- 2. The crime of abduction involves inducing or forcing somebody to go away from some place against their will.

FACTUAL SITUATION : A steals B's slave. Is it a crime?

DECISION:

- I. Kidnapping II. Abduction III. Neither

REASON :

- (A) Slavery is illegal.
- (B) A has taken him away from B's lawful custody.
- (C) A has forced somebody to go with him against his will.

DECISION :

- (a) I (B) (b) II (C) (c) III (A) (d) I (A)

6. **LEGAL PRINCIPLE :** Whoever delivers to another person as genuine any counterfeit currency which he

knows to be counterfeit, but which that other person is not aware of at the time when he received it, is guilty of counterfeiting currency.

FACTUAL SITUATION : While returning home one day, Roshni realizes that the local shopkeeper has given her a fake note of ₹1,000. Disappointed, she goes to the same shop and buys cosmetics worth ₹600. She then passes the same fake note to the shopkeeper. The shopkeeper while inspecting the note finds out that it is fake. Is Roshni guilty?

DECISION :

- (a) No, as she was merely attempting to return the note to the same shopkeeper who gave her the note.
- (b) No, she is not guilty of any offence as neither did she manufacture the note nor did she circulate it with a view to deceive the public.
- (c) Yes, as she attempted to pass on a note which she knew was counterfeit.
- (d) No, the shopkeeper is guilty as he was the one who circulated the counterfeit note to Roshni.

7. LEGAL PRINCIPLES :

- 1. To constitute a punishable criminal offence, guilty intention must accompany an illegal act.
- 2. Criminal mischief means causing damage to public property intentionally or with the knowledge that harm may occur.

FACTUAL SITUATION : Neel being a Shahrukh Khan fan went for the premier of the movie, Happy New Year. As usual, he carried his pen-knife, a gift from his dead mother. At the security check, impatient of waiting in the queue, Neel slunk past the guards and the metal detector when no one was watching. Later, he was apprehended in the hall and charged for mischief and possession of a weapon when it was expressly forbidden.

DECISION:

- (a) Neel is not criminally liable since he had no intention to commit mischief.
- (b) Liable for possession of the weapon since it was expressly forbidden and mere possession was enough; although he might not be liable for mischief as he did not do anything.
- (c) Neel is not liable since the pen knife had an emotional value and rather the guards should be punished for the security breach.
- (d) Liable for both possession of weapon and criminal mischief since he slunk past the guards which shows his intention to commit the crime.

8. LEGAL PRINCIPLE : A suit shall be instituted in the court within whose jurisdiction the cause of action arises; or the defendant actually and voluntarily resides or carries on business, or personally works for gain.

FACTUAL SITUATION : 'Y' carries on business in Mumbai. 'Z' carries on business in Delhi. 'Z' buys goods of 'Y' in Mumbai through his agent and request 'Y' to deliver them at Delhi. Accordingly, 'Y' delivered the goods at Delhi. But he did not get the price of the goods delivered in Delhi. Therefore, he intends to move the Civil Court for recovery of amount from 'Z'. Which court may 'Y' approach?

DECISION :

- (a) 'Y' may institute the suit either at Delhi where Z carries on business or at Mumbai where the cause of action-arose.
- (b) 'Y' may institute the suit at Delhi where 'Z' carries on business.
- (c) 'Y' may institute the suit simultaneously at Delhi where 'Z' carries on business and at Mumbai where the cause of action arose.
- (d) 'Y' may institute the suit at Mumbai where the cause of action arose.

DIRECTIONS (Qs. 9-33): Given below is a statement of legal principle followed by a factual situation. Apply the principle to the facts given below and select the most appropriate answer.

9. Principle: In criminal law, misappropriation is the intentional, illegal use of the property or funds of another person for one's own use or other unauthorized purpose, particularly by a public official, a trustee of a trust, an executor or administrator of a dead person's estate or by any person with a responsibility to care for and protect another's assets. Embezzlement is misappropriation when the funds involved have been lawfully entrusted to the embezzler. On the contrary, theft is the illegal taking of another person's property or services without that person's permission or consent with the intent to deprive the rightful owner of it.

Facts: A went for swimming at the Municipal Swimming Pool. A handed over all his valuables, including some cash to X, the guard on duty for safe custody, as notified by the Municipality. After swimming for an hour, A came out and searched for X. He found another guard on duty and that guard informed A that X had gone home after completing his shift and did not hand over anything to be given to A. A registered a complaint with the police. X was traced but he told the police that he sold all the valuables and the entire cash was used for drinking liquor. What offence, if any, was/were committed by X?

- (a) If at all X is liable, it is for criminal misappropriation only.
- (b) X is liable for theft as he took A's property without X's permission.
- (c) X is liable for criminal misappropriation and embezzlement.
- (d) X is not guilty of criminal misappropriation as he did not make any personal gain out of those items with him.

10. Principle: When a person falsifies something with the intent to deceive another person or entity is forgery and is a criminal act. Changing or adding the signature on a document, deleting it, using or possessing the false writing is also considered forgery. In the case of writing/painting to fall under the definition, the material included must have been fabricated or altered significantly in order to represent something it is actually not.

Facts: David made a living traveling from city to city, selling paintings that he claimed were done by great artists. Since the artists' signatures were in place, many people fell for them and purchased the paintings. One of

these artists saw three of his alleged paintings in a City gallery containing his name. He knew these were not his works and he complained to the police. Police traced David and initiated legal proceedings. Is David guilty of any offence?

- (a) David is guilty of forgery as the addition of the signature was with an intention to make people believe that those were the paintings of the great artists.
- (b) David is not guilty of any offence as he was selling the art pieces for his living.
- (c) There is no point in taking legal action against David as the signature has not done any alteration to the art work.
- (d) Those who buy the art pieces from David ought to have been careful in checking it and ensuring that they were originals before purchasing it.

11. In *Youth Bar Association V. Union of India*, the Supreme Court directed to upload copies of FIR within hours on police website.

- (a) 48
- (b) 12
- (c) 24
- (d) 48–72

12. **Legal Principle:** Nothing is an 'offence', if committed by a child below seven years of age.

Fact Situation: Adil, aged six years, is a student of class one. He placed his sharpened pencil on the bench with its pointed end up when his classmate Ajay stood up to answer a question from the teacher. Ajay gets hurt when he sits on the pencil and Adil and his friends have a good laugh. Ajay's father, on seeing his son injured when he returns home, wants action against Adil.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- (a) Adil has committed an 'offence'.
- (b) Adil has not committed any 'offence'.
- (c) Childish pranks cannot be investigated by the police.
- (d) The class teacher must be arrested.

13. **Legal Principle:** It is an offence to obstruct a public servant in the due discharge of his duty. Right of private defence is available to protect one's person and property.

Fact Situation: Sidhu comes to the rescue of his uncle who is sought to be taken into a car by some men. In the process, he causes injury to some of them. Later, it turns out that the men were police persons in plain clothes trying to enforce a warrant against his uncle.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- (a) Sidhu has committed the offence of obstructing a public servant in due discharge of his duty.
- (b) Sidhu has not committed an offence since he did not know that the men were from the police.
- (c) Sidhu's uncle has resisted arrest and should be proceeded against.
- (d) Sidhu should not have tried to help his uncle without ascertaining the fact

14. What does FIR stand for under the Criminal Law?

- (a) Forensic Investigation Report
- (b) First Investigation Report

- (c) First Information Report
- (d) Formal Interrogation Record

15. Examine the Statement and Conclusions given below and choose a suitable answer from the options given:

Statement: A punishment is the imposition of an undesirable or unpleasant outcome upon a group or individual, meted out by an authority.

Conclusions:

- 1. Eye for an eye and tooth for a tooth is an example of punishment.
 - 2. Imposition of fine on someone who inflicted bodily injury on another is justified by the statement.
- (a) Only Conclusion 1 follows.
 - (b) Only Conclusion 2 follows.
 - (c) Conclusions 1 and 2 follow.
 - (d) Neither Conclusion 1 nor 2 follows.

16. **Legal Principle:**

- 1. Any intentional false communication, either written or spoken, that harms a person's reputation; decreases the respect, regard, or confidence in which a person is held; or induces disparaging, hostile, or disagreeable opinions or feelings against a person.
- 2. The statement must tend to lower the claimant in the estimation of right-thinking members of society.
- 3. A mere vulgar abuse is not defamation.
- 4. Sometimes a statement may not be defamatory on the face of it but contain an innuendo, which has a defamatory meaning.
- 5. Defamation encompasses both written statements, known as libel, and spoken statements, called slander.

Factual Situation: In May 2017, a memorial commemorating the women of World War II was vandalized during an anti-government demonstration following the General Election. An offensive political slogan was spray painted across the plinth of the memorial. This act caused public outrage and widespread condemnation.

On Twitter, a political writer, Asha Mehta said that she did not have a problem with the vandalism of the memorial building. Chandna reacted to this negatively, suggesting that Asha should be sent to join Terrorist Organization. Asha's comments and Chandna's reactions both received national media coverage.

A few days later, Chandna published a tweet asking the question "Scrawled on any war memorials recently?" to Anshika Chauhan, another political activist. Anshika Chauhan responded stating that they had never vandalised any memorial building, and moreover had family members serving in the armed forces. Chandna followed with a second tweet, in which she asked if someone could explain the difference between Mehta (an "irritant") and Anshika Chauhan (whom she described as "social anthrax").

Anshika Chauhan asked for a retraction via Twitter and was promptly blocked by Chandna. Anshika Chauhan asked Chandna to make a public apology and claimed compensation for libel alleging that the First Tweet suggested that she had either vandalised a war memorial, which was a criminal act; and the Second Tweet suggested

that she approved or condoned that vandalism. What is the meaning of the Tweets and whether those meanings had defamatory tendency?

- (a) Both the tweets were defamatory to Anshika Chauhan as the hypothetical ordinary reader can be expected to understand defamatory tendency of the tweet in the context of the situation.
- (b) Second tweet was not defamatory as it was not referring directly to Anshika Chauhan. So, she cannot claim compensation.
- (c) Natural and ordinary meaning of the tweets are not defamatory. So, she claim compensation.
- (d) First tweet was not defamatory because the natural and ordinary meaning of the statement which is conveyed to a hypothetical ordinary reader is not defamatory.

17. Legal Principle:

- 1. An assault is an act which intentionally causes another person to apprehend the infliction of immediate, unlawful force on a person.
- 2. A battery consists of an intentional application of force to another person without any lawful justification.
Factual Situation: Jagan was in his car when he was approached by a police officer who told him to move the vehicle. Jagan did so, reversed his car and rolled it on to the foot of the police officer. The officer forcefully told him to move the car off his foot at which point Jagan swore at him and refused to move his vehicle and turned the engine off. Jagan was convicted for assaulting a police officer in the execution of his duty. Is he liable for battery or assault?
 - (a) He is not liable because there cannot be an assault in omitting to act and that driving on to the officer's foot was accidental, meaning that he was lacking mens rea when the act causing damage had occurred.
 - (b) He is not liable as the act neither amount to an attempt nor a threat to commit a battery that amounts to an actionable tort of assault.
 - (c) Jagan's crime was not the refusal to move the car but that of having driven on to the foot of the officer and decided not to cease the act, he had established a continual act of battery.
 - (d) He is neither liable for assault nor battery as he accidentally drove his car on the police officer's foot.

18. An accused is entitled to statutory bail (default bail) if the police failed to file the charge-sheet within _____ of his arrest for the offence punishable with 'imprisonment up to 10 years'.

- (a) 30 days
- (b) 60 days
- (c) 90 days
- (d) 180 days

19. Principle: Whoever takes away any moveable thing from the land of any person without that person's consent is said to commit theft.

Facts: During his visit to the home of C, A asks B, the son of C, to accompany A to a forest. Neither A nor B inform C in this regard. B accompanies A to the forest.

- (a) A has committed theft.

- (b) A has not committed theft.
- (c) A has committed theft as soon as he entered the home of C.
- (d) A has not committed theft till B did not accompany him.

20. Principle: Nothing is an offence if it is done in good faith for the purpose of preventing or avoiding greater harm or damage to person or property.

Facts: A jumps into a swimming pool to save a boy from drowning. While pulling the boy from water A was hit by C. A left the boy in the water and attacked C. The boy died in the water.

- (a) A has not committed the offence of killing the boy.
- (b) A has committed the offence of killing the boy.
- (c) The boy has committed the offence of suicide.
- (d) The boy has committed the offence of drowning.

21. Principle: Nothing is an offence which is done in the exercise of the right of private defence. Nothing is an offence which is done in madness.

Facts: A, under the influence of madness, attempts to kill B. B to save his life kills A.

- (a) A has committed the offence of attempt to murder
- (b) A has committed an offence of being mad
- (c) B has committed an offence
- (d) B has not committed an offence

22. Principle: Whoever attempts to commit the offence of cheating, commits an offence.

Facts: A with an intention to defraud B, obtains from him an amount of ₹ 500.

- (a) A has committed no offence
- (b) A has committed the offence of cheating
- (c) A has attempted to commit the offence of cheating
- (d) A has attempted to commit and has committed the offence of cheating

23. Principle: Whoever by words publishes any imputation concerning any person is said to defame that person.

Facts: During a marriage ceremony, A circulated a pamphlet saying sister of the bride 'S' is a thief, she has stolen the shoes of the bridegroom.

- (a) A defamed S
- (b) A did not defame S
- (c) A defamed the bridegroom
- (d) A defamed the bride

24. Principle: Everyone shall be permitted to take advantage of his own wrong.

Facts: A legatee was heavily drunk and driving his car at a speed of 100 km/per hour in a crowded market. All of a sudden his testator came on the road. There were other people on the road at that time. The car driven by the legatee hit the testator and four other persons. All the five persons hit by the car died.

- (a) The legatee can take the benefit under the will
- (b) The legatee cannot take the benefit under the will
- (c) The legatee will be punished
- (d) The property of the testator will go to his heirs

25. Principle: Existence of all the alleged facts is relevant whether they occurred at the same time and place or at different times and places.

Facts: A, a citizen of England, is accused of committing murder of B in India by taking part in a conspiracy hatched in England.

- (a) The facts that A is accused of commission of murder and of conspiracy are relevant facts
- (b) Only the fact that A is accused of committing murder of B is relevant
- (c) Only the fact that A is accused of conspiracy hatched in England is relevant
- (d) A citizen of England cannot be tried in India

26. **Principle:** One who asserts must prove.

Facts: A desires a Court to give judgment that B, C and D shall be punished for a crime which A says B, C and D have committed.

- (a) A must prove that B, C and D were present at the place of crime
- (b) A must prove that B, C and D have committed the crime
- (c) B, C and D must prove that they have not committed the crime
- (d) Police must prove that B, C and D have committed the crime

27. **Principle:** Nothing is an offence by reason of any harm it may cause to another person, if it is done in good faith and for the benefit of that person even without that person's consent.

Facts: A is attacked by a lion and the lion drags him while he is crying for help. B, a passer by picks up A's gun in good faith and fires at the lion which injures A. B has never used the gun before.

- (a) B is liable for the injury because he knew that he can injure A as he has never used any gun before
- (b) B is not liable as he has done the act in good faith
- (c) B is liable because he has not taken A's consent before firing
- (d) B is liable because he has used A's gun without his consent

28. **Principle:** Nothing is an offence if it is done under intoxication and the person committing the offence was incapable to understand the nature of the Act. Intoxication should be without knowledge or against the will of the person.

Facts: A, B and C were having a party in Bar where A persuaded B and C to take alcoholic drinks. On persistent persuasion B and C also consumed alcohol along with A. B and C had never consumed alcohol before. After intoxication, there was some argument between B and C where C pushed B with full force causing serious injury to B.

- (a) C is liable
- (b) C is not liable because he was intoxicated
- (c) A is liable because A persuaded them to consume alcohol whereas they had never consumed alcohol
- (d) A and C both are liable

29. **Principle:** Everyone has the right of private defence to defend his body and property by use of reasonable force

unless that person had time to have recourse to protection of public authorities.

Facts: X receives information at 5.00 pm that Y along with few friends is planning to burn his crop at midnight which is ready to be harvested. He does not inform the village Police Station which was just one kilometer away. He gathers his family members and directs them to collect some weapons in the form of swords and lathis to protect his field/crop. At around 11.00 pm Y and his aides attack the crop and a severe fight ensues wherein Y is seriously injured.

- (a) X is not liable as he was exercising his right of private defence
- (b) X and his family are not liable for the injuries caused as they were exercising the right of private defence
- (c) X is liable
- (d) X and his family is liable as they have not informed the police

30. **Principle:** Anyone who induces or attempts to induce a voter to vote in a particular manner on the ground that the voter will face divine displeasure, shall be guilty of offence of interfering with free exercise of right to vote.

Facts: During election campaign period one candidate X told the voters that if they do not vote for her, voters will be cursed because the election candidate is the God's own child and those who do not vote for her, they will not be liked by God.

- (a) X has committed an offence
- (b) X has not committed an offence because she only narrated what she felt
- (c) X has not committed an offence because she has freedom of speech and expression
- (d) X has not committed an offence because she did not compel anyone to vote for her

31. **Principle:** Killing is not murder, if it is committed in a sudden fight without pre-meditation in a heat of passion upon a sudden quarrel.

Facts: X and Y were buying liquor from a liquor shop at 7 pm. Y abused X and there was quarrel between them. X told Y that he will not spare him and Y shouted that his house is adjoining the shop only and if X had the guts, he can come anytime. X went back to his shop which was nearby, procured a knife and went to Y's residence at 9 pm and stabbed him to death.

- (a) X has committed murder
- (b) X has not committed an offence of murder since it was committed in sudden fight in a heat of passion
- (c) X has not committed murder of Y because he had no enmity with Y
- (d) X has committed no offence

32. **Principle:** Use of criminal force intentionally knowing that it would cause or is likely to cause injury or annoyance to the person against whom force is used, is an offence.

Facts: X, a renowned social worker who had launched a movement for liberation of women, pulls up a Muslim

woman's veil in public in good faith without her consent causing annoyance to her.

- (a) X is a renowned social worker and he has committed no offence because his motive was good
- (b) X acted in good faith to liberate her from clutches of tradition and has hence committed no offence
- (c) X has done the act in public and not in secrecy therefore has not committed any offence
- (d) X has committed an offence by use of criminal force

33. Principle: Inducing any animal to move or to change its motion and thereby intentionally causing fear of injury or annoyance to others by such act, is an offence of use of criminal force.

Facts: X incites his dog to chase and run after his neighbour Y, to teach Y to stay away from him. The act is done without the neighbour's consent and against his will

- (a) X has committed no offence
- (b) X has committed no offence because no harm is caused to Y
- (c) X has committed no offence because he intention only to put fear in the mind of Y
- (d) X has committed an offence of use of criminal force

DIRECTIONS (Qs. 34-36): Apply the legal principles to the facts given below and select the most appropriate answer.

Legal Principles:

1. An attempt is an act committed in part execution of a criminal design or intent, more than mere preparation, but falling short of actual commission.
 2. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do/omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat",
 3. Preparation is the second stage in the commission of a crime. It means to arrange the necessary measures for the commission of the intended criminal act.
 4. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that his act is likely to cause death, commits the offence of murder.
 5. Whoever causes the death of any person by doing any rash or negligent act shall be guilty of negligence.
- 34.** In which of the following cases, X is guilty of attempting to commit the offence?
- (a) X, in order to forge a document purporting to be executed by Y, sends his servant to buy a stamp paper in the name of Y. As the servant reaches the shop, he is arrested.
 - (b) X shoots at Y whose back is towards him, Y is not hurt as he is beyond the range of the gun.

- (c) X pours half a pint of substance from a bottle marked 'poison' into the drink of Y. Y is not aware of it. Later, it turns out that the bottle did not contain any poison.
- (d) X administers some noxious substance to Ria so that an abortion results. The woman was not pregnant.

35. Facts : Amar applied for the post of P. G. Teacher in a government school and submitted his application along with his degrees. He was called for the interview on 10 June 2018. But the school authorities on 10 May 2018 discovered that the copy of the degrees attached with Amar's application are forged and so the interview was cancelled. Is any offence committed by Amar?

- (a) Amar is guilty of cheating.
- (b) Amar is guilty of preparation to cheat.
- (c) Amar is guilty of 'attempt' to cheat.
- (d) Amar is not guilty of any offence as he is not called for the interview.

36. Facts : X tries to pickpocket Z. Z has a loaded pistol in his pocket. X's hand touches the pistol and triggers it, resulting in the death of Z. Which of the following offence is committed by X ?

- (a) X is guilty of causing Z's murder.
- (b) X is guilty of culpable homicide by negligence.
- (c) X is guilty of causing grievous hurt.
- (d) X is guilty of pickpocketing.

37. Which of the following offences can be prosecuted under the newly enacted Fugitive Economic Offenders Act, 2018?

- I. Economic offences involving ₹ 100 crore and more
 - II. Dishonouring of cheques
 - III. Money laundering
 - IV. Benami transactions
- (a) III, IV
 - (b) I, II, III, IV
 - (c) II, IV
 - (d) I, III, IV

38. What is the punishment under the Official Secrets Act, 1923 for the offence of spying in relation to any work of defense establishment or in relation to any secret official code?

- (a) Sentence of Death
- (b) Imprisonment for 14 years
- (c) Imprisonment for 10 years
- (d) Imprisonment for life

39. The Supreme Court has said that FIR in respect heinous and serious offences cannot be quashed solely on the ground that the dispute was settled amicably between the parties. Which of the following were included in the list of "heinous and serious offences"?

- I. Offences under Prevention of Corruption Act
 - II. Some Offences under Arms Act
 - III. Rape
 - IV. Offences by public servants in their official capacity
- (a) I, III
 - (b) II, III
 - (c) I, II, III
 - (d) I, II, III, IV

DIRECTION (Q. 40): The following questions consist of two statements, one labelled as 'Assertion' and the other as 'Reason'. Read both the statements carefully and answer using the codes given below.

- (a) Both A and R are true and R is the correct explanation of A
- (b) Both A and R are true but R is not the true explanation of A
- (c) A is true but R is false
- (d) A is false but R is true

40. Assertion (A) : An accused person cannot be forced to give his thumb impression.

Reason (R) : An accused person cannot be compelled to be a witness against himself.

41. Principle: Section 34 of Indian Penal Code provides that '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.'

Facts: Three vagabonds, Sanju, Dilbag and Sushil decided to commit burglary. In the night, Sushil opened the lock and they broke into a rich man's house when the entire family was on a pilgrimage. Sanju had gone to that house earlier in connection with some cleaning job. There was only a servant lady in the house. Hearing some sounds from the master bed room, the servant switched on the lights and went upto the room from where she heard the sound. Noticing that the servant was going to cry for help, Sanju grabbed her and covered her mouth with his hands and dragged her into the nearby room. The other two were collecting whatever they could from the room. When they were ready to go out of the house, they looked for Sanju and found him committing rape on the servant. They all left the house and the servant reported the matter to the police and identified Sanju. Subsequently, all three were arrested in connection with the offences of house breaking, burglary and rape. Identify the legal liability of the three.

- (a) All three are liable for all the offences as there was common intention to commit the crimes.
- (b) Sanju will be liable only for housebreaking and rape as he did not participate in the burglary.
- (c) Only Dilbag and Sushil are liable for burglary in looting the house, and all three will be liable for housebreaking and rape as they did not stop Sanju from committing the offence and hence were accomplice to the offence.
- (d) Only Sanju will be liable for rape as he was the one who actually committed the offence.

42. Principle: Nothing is an offence which is done in the exercise of the right of private defence.

Facts: 'A', under the influence of madness, attempts to kill 'B'. 'B' to save his life kills 'A'

- (a) 'A' has not committed an offence because he was mad.
- (b) 'B' has committed an offence.
- (c) 'B' has not committed any offence.
- (d) 'A' has committed the offence of attempt to murder.

43. Legal Principle:

1. Battery is the intentional causation of harmful or offensive contact with another's person without that person's consent.
2. When lawfully exercising power of arrest or some other statutory power a police officer had greater rights than an ordinary citizen to restrain another.

Factual Situation: Two police officers on duty in a police car observed two women in the street who appeared to be soliciting for the purpose of prostitution. One of the women was known to the police as a prostitute but the other, X, was not a known prostitute. When the police officers requested X to get into the car for questioning she refused to do so and instead walked away from the car. One of the officers, a policewoman, got out of the car and followed X in order to question her regarding her identity and conduct and to caution her, if she was suspected of being a prostitute, in accordance with the approved police procedure for administering cautions for suspicious behaviour before charging a woman with being a prostitute. X refused to speak to the policewoman and walked away, where upon the policewoman took hold of X's arm to detain her. X then swore at the policewoman and scratched the officer's arm with her fingernails. X was convicted of assaulting a police officer in the execution of her duty. She appealed against the conviction, contending that when the assault occurred the officer was not exercising her power of arrest and was acting beyond the scope of her duty in detaining X by taking hold of her arm. The police contended that the officer was acting in the execution of her duty when the assault occurred because the officer had good cause to detain X for the purpose of questioning her to see whether a caution for suspicious behaviour should be administered. Decide whether the police officer is liable for battery.

DECISION :

- (a) X is liable for trespass on the person of a police officer while performing her official duty.
- (b) The policewoman had not been exercising her power of arrest when she detained X, and since in taking hold of the appellant's arm to detain her the police woman's conduct went beyond acceptable lawful physical contact between two citizens, hence the officer's act constituted a battery on X and that she had not been acting in the execution of her duty when the assault occurred.
- (c) The fact that the reason the police officer detained X was to caution her regarding her suspicious behaviour render the officer's conduct lawful if in detaining her she used a degree of physical contact that went beyond lawful physical contact as between two ordinary citizens.
- (d) The police officer was on duty and performing her duty in the regular course of the work so is not liable for battery.

44. Legal Principle:

1. A careless person becomes liable for his negligence when he owed a duty of care to others.
2. Volenti non fit injura is defence to negligence.

Factual Situation : K was a friend of L and was teaching her to drive. Prior to such an arrangement K had sought assurances from L that appropriate insurance had been purchased in the event of accident. On the third day, L was executing a simple manoeuvre at slow speed when she panicked which resulted in the car crashing into a lamp-post injuring K. L was subsequently convicted of driving without due care and attention. L denied liability to pay compensation to K on the ground of *volenti non fit injuria* and also that she was just learning to drive and was not in complete control of the vehicle. Decide.

DECISION :

- (a) L is liable as the defence of *volenti non fit injuria* was not applicable. Secondly, that the duty of care owed by a learner driver to the public (including passengers) was to be measured against the same standard that would be applied to any other driver.
- (b) L is not liable as K voluntarily accompanied her.
- (c) L is not liable as she is just learning to drive and duty of care rests upon the instructor.
- (d) L is not liable as a learner driver do not owe a duty of care towards public ingeneral and towards the passenger in specific.

45. **Principle:** A person is said to have committed assault when an apprehension is caused in the mind of a person that he is about to use physical force against his body.

Facts: 'A' abuses 'B' while he was sitting in a moving train, by aggressively shaking his fists when 'B' was standing on the railway platform at a distance.

- (a) 'A' has caused fear of assault in the mind of 'B'.
- (b) 'A' has committed assault against 'B'.
- (c) A has not committed assault against 'B'.
- (d) 'A' has caused apprehension of assault in the mind of 'B'.

46. **Principle:** Killing is not murder if the offender, whilst deprived of the power of self-control by intense and sudden provocation, causes the death of the person who gave the provocation.

Facts: 'A', a man found his girl friend sleeping, in her own bed room, with another man named 'B'. 'A' did not do anything but went to his home, picked a gun and cartridges, returned to the girl friend's bed room with loaded gun but found the place empty. After fifteen days he saw his girl friend dining in a restaurant. Without waiting for even a second, 'A' fired five bullets at his girl friend who died on the spot.

- (a) 'A' could have killed both 'B' and his girl friend.
- (b) 'A' did not kill his girl friend under intense and sudden provocation.
- (c) 'A' could have killed 'B' instead of his girl friend.
- (d) 'A' killed his girl friend under intense and sudden provocation.

47. **Principle:** Whoever does not arrest the killer and report the matter to the concerned authorities commits an offence.

Facts: 'A', a woman, sees 'B', another woman, killing a third woman 'C'. 'A' neither attempted to arrest 'B' nor informed the concerned authorities.

- (a) 'B' has not committed an offence.
- (b) 'A' has not committed an offence.
- (c) 'B' has committed an offence.
- (d) 'A' has committed an offence.

48. **Principle:** Whoever by words or writing conveys to others any imputation concerning any person's reputation is said to defame that person.

Facts: During a marriage ceremony, 'A' circulated a pamphlet saying that 'S', sister of the bride, is a thief, she has stolen the shoes of the bridegroom.

- (a) A' has defamed 'S'.
- (b) A' has defamed the bridegroom.
- (c) 'A' defamed the bride.
- (d) 'A' did not defame 'S' as he never intended it.

49. **Principle:** Whoever takes away any moveable thing from the land of any person without that person's consent, he is said to have committed theft.

Facts: During his visit to the house of 'C', 'A' asked 'B', the son of 'C', to accompany 'A' to the forest. Neither 'A' nor 'B' informed 'C' in this regard. 'B' accompanied 'A' to the forest.

- (a) 'A' has not committed theft.
- (b) 'A' has not committed theft till 'B' did not accompany him.
- (c) 'A' has committed theft.
- (d) 'A' has committed theft as soon as he entered the house of 'C'.

50. **Principle:** Nothing is an offence which is done by a child under twelve years of age, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion.

Facts: Himesh, 11 years old boy, picks up a gold ring worth ₹ 5000/- lying on a table in his friend's house and immediately sells it for ₹ 2000/-, and misappropriates the money.

- (a) Himesh would be protected under the principle stated above because he is below 12 years of age.
- (b) Himesh would not be protected under the principle stated above because his acts show that he was sufficiently mature to understand the nature and consequences of his conduct.
- (c) Himesh would be protected under the principle stated above because his acts show that he was not sufficiently mature to understand the nature and consequences of his conduct.
- (d) Himesh would not be protected under the principle stated above because, irrespective of the age, stealing is an offence.

51. **Principle:** Penal laws provide that whoever voluntarily has carnal intercourse against the order of nature with any man or woman, shall be punished for rape.

Facts: A Police Officer found a man engaged in carnal intercourse with an animal. The Police Officer arrested the man and produced him before the Court.

- (a) Court will punish the man for rape.
- (b) Court will punish the police officer.
- (c) Court will not punish the man for rape.
- (d) Court will not punish the police officer.

52. **Principle:** A person is said to do a thing fraudulently, if he does that thing with intent to defraud, but not otherwise.
Facts: 'A' occasionally hands over his ATM card to 'B' to withdraw money for 'A'. On one occasion 'B' without the knowledge of 'A', uses 'A's ATM card to find out the balance in 'A's account, but does not withdraw any money.
- 'B' has committed misappropriation
 - 'B' has committed the act fraudulently
 - 'B' has committed breach of faith
 - 'B' has not committed the act fraudulently
53. **Principle:** There are legal provisions to give authority to a person to use necessary force against an assailant or wrong-doer for the purpose of protecting one's own body and property as also another's body and property when immediate aid from the state machinery is not readily available; and in so doing he is not answerable in law for his deeds.
Facts: X, a rich man was taking his morning walk. Due to the threat of robbers in the locality, he was carrying his pistol also. From the opposite direction, another person was coming with a ferocious looking dog. All of a sudden, the dog which was on a chain held by the owner, started barking at X. The owner of the dog called the dog to be calm.
They crossed each other without any problem. But suddenly, the dog started barking again from a distance. X immediately took out his pistol. By seeing the pistol the dog stopped barking and started walking with the owner. However, X shot at the dog which died instantly. The owner of the dog files a complaint against X, which in due course reached the Magistrate Court. X pleads the right of private defence. Decide.
- Shooting a fierce dog is not to be brought under the criminal law. So the case should be dismissed.
 - As there was no guarantee that the dog would not bark again, shooting it was a precautionary measure and hence within the right available to X under law.
 - There was no imminent danger to X as the dog stopped barking and was walking with the owner. Hence, shooting it amounted to excessive use of the right of private defence and hence liable for killing the dog.
 - The right of private defence is available to persons against assailants or wrong-doers only and a dog does not fall in this category.
54. **Principle:** When a person falsifies something with the intent to deceive another person or entity is forgery and is a criminal act. Changing or adding the signature on a document, deleting it, using or possessing the false writing is also considered forgery. In the case of writing to fall under the definition, the material included must have been fabricated or altered significantly in order to represent something it is actually not.
Facts: John was a publisher of ancient books and papers. In one of his books on the World Wars, he gave photograph of some letters written by famous historic personalities. A researcher in history noted that in the pictures of some of the letters printed in the book, John had added some words or sentences in his own handwriting to give completeness to the sentences, so that the readers will get a clear picture of the writer's intention. The researcher challenges the originality of those pictures and claims that the book containing the forged letters' should be banned. Examine the validity of the researcher's demand.
- The additions in the letters were made by the publisher in his own handwriting would have made material alteration to the original meaning and hence amounted to forgery.
 - As forgery amounts to adding or deleting anything from an original document, the demand of the researcher is valid.
 - Allowing forged publications to be circulated among the public is as good as committing fraud on the public, so the publication should be banned.
 - The additions were made to give clarity to the original document and did not in any sense change the contents of the documents and hence there is no forgery as alleged by the researcher.
55. Conspiracy is
- absconding from the police
 - secret plan to commit a crime
 - disobeying the criminal process
 - wilful deceiving of the fact
56. 'alibi' means a plea by an accused person that he-
- was present elsewhere
 - remained in judicial custody.
 - underwent preventive detention.
 - was facing trial.

Hints & Solutions

- (c) Ignorance of law is not excusable. Or ignorantia juris non excusat
- (b) Option (b) is correct. Here Raja did not take comb's out of the possession of previous owner. However the previous owner can claim them back.
Under the section 378 Indian Penal Code defines theft. whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taken, is said to commit theft.
The consent mentioned in the definition may be express or implied, and any may be given either by the person in possession, or by any person having for that purpose authority either express or implied.
- (a) Section 403 of Indian Penal Code defines criminal misappropriation of property. In the present matter A used the Z's property for its own use, hence A committed criminal misappropriation.

4. (b) At the time of shooting B was not aware about the presence of Z at the bush, but A was fully aware about the same, still he induces A for shooting. Therefore, it concludes that actus rea is present at the time of shooting but with no mens rea. Hence, A is liable because of his knowledge of presence of Z at the bush and B is innocent.
5. (c) Though, A has committed a crime but slavery itself is an illegal act.
6. (c) Roshni acted with malafide intention by using the same note even though she was fully aware that the shopkeeper had given her the counterfeited note. Her intention was clear at the time she had reused the same note for purchasing cosmetics from it.
7. (b) Neel is liable for the possession of the weapon because it was already mentioned that no weapons are permitted in the hall, but not for mischief because his intention was not to harm and also he didn't misuse the same to create any mischief.
8. (a) 'Y' may institute the suit either at Delhi where Z carries on business or at Mumbai where the cause of action arose.
According to an illustration provided under Section 20 of the Code of Civil Procedure, A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.
9. (c) X is liable for criminal misappropriation and embezzlement.
According to Section 403 of the Indian Penal Code, when an individual dishonestly converts another person's movable property to his own, there is misappropriation of property. According to the given facts, X had the responsibility to care and protect valuables and cash of A. X dishonestly misappropriates and sells A's possessions and uses the cash to drink liquor. (Narayan Singh v. State of MP [1986 CrLJ 1481])
X will also be held under Embezzlement because A lawfully entrusted his property i.e. the valuables and cash in the possession of X which were misappropriated by X.
X will not be held under theft because A himself handed over his property (valuables and cash) to X and thus there was implied consent of A.
10. (a) David is guilty of forgery as the addition of the signature was with an intention to make people believe that those were the paintings of the great artists.
According to Section 468 of the Indian Penal Code, an individual committing forgery on a document for the purpose of cheating will be held guilty.
In this question, David sold fake paintings by forging the signatures of great artists with the purpose of cheating customers. He will be held guilty for the same. (Dinesh Chandra vs State Of U.P. And Others on 7 March, 2011)
11. (c)
12. (b) According to the section 82 of Indian Penal Code (IPC), nothing is an offence which is done by a child under seven years of age. Thus, anything done by Adil, who is 6 yrs old, cannot be termed as offence hence option (a) can be eliminated easily and option (b) seems to be most appropriate in relation to the given principle.
13. (b) Right of private defense of body, this right has been given by the state to every citizen of the country to take law into his own hand for their safety of themselves or anybody else. The right is not dependent on the actual criminality of the person resisted. It depends solely on the wrongful or apparently wrongful character of the act attempted, if the apprehension is real and reasonable, it makes no difference that it is mistaken. IPC Section 96
Nothing is an offence, which is done in the exercise of the right of private defense
In the light of above arguments option (2) is the most appropriate and it can be clearly said that Sidhu has not committed an offence since he did not know that the men were from police and he was only trying to save his uncle in good faith.
14. (c) FIR stands for First Information Report. It is a written document prepared by Police when they receive an information about a cognizable offence. Hence option (c) is correct.
15. (c) A sentence may include a punishment. Or not. The sentence is what the judge determines the defendant should do in order to pay for his crime. Or a sentence may be the defendant is not guilty. On the other hand punishment is the imposition of an undesirable or unpleasant outcome upon a group or individual, meted out by an authority-in contexts ranging from child discipline to criminal law-as a response and deterrent to a particular action or behaviour that is deemed undesirable or unacceptable.
Hence option (c) is correct and conclusions 1 & 2 follow.
16. (a) Central Government Act Section 499 in The Indian Penal Code
499. Defamation.-Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, to defame that person.
In the present scenario Chandana's tweet directly or indirectly, in the estimation of others, lowers the moral or intellectual character of Anishika, and lowers the character of Anishika to a loathsome state, or in a state generally considered as disgraceful.
Thus in the light of above stated arguments and the given guiding principles option (a) is correct. i.e. both the tweets were defamatory to Anshika Chauhan as the hypothetical ordinary reader can be expected to understand defamatory tendency of the tweet in the context of the situation.

17. (c) There are 3 elements which are essential to prove an act of assault :
- (1) INTENTION: The intention of the person is the first and the foremost thing that is considered regarding an assault.
 - (2) REASONABLE APPREHENSION: Reasonable apprehension means that when the person who is going to get hurt perceives or gets an idea that he is going to get harmed.
 - (3) HARM:- The harm can be physical harm, harm out of threat or by offensive contact.
- Battery basically means an intentional application of force to another person with an unlawful intent. The major 2 essentials of a battery are:-
- Use of force:- Use of force is an essential element to commit a battery.
- Without Lawful Justification:- It is important that use of force is essential but another important factor is that the act should be unlawful,
- Assault is basically an apprehension that he is going to be harmed. The person basically feels that he is going to get hurt by the actions or gestures of the other person. It is basically a stage before a battery is committed.
- In the case presented before us we can easily conclude that Jagan committed battery and not assault as there was no apprehension but force was used without lawful justification. Hence option (c) is correct.
18. (b) Supreme Court of India has held that an accused is entitled to statutory bail (default bail) under Section 167(2)(a)(2) of Code of Criminal procedure if the police failed to file the charge-sheet within 60 days of his arrest for the offence punishable with imprisonment up to 10 years.
- 19 (b) A has not committed theft. According to the principle someone commits theft only when they take away something moveable from the property of another person. B, the son of C is a living being not a thing (or lifeless object)
- 20 (a) A has not committed the offence of killing the boy. A was trying to save the boy from drowning. A was acting in good faith for the purpose of preventing or avoiding greater harm to the boy who was drowning and left him only for self - defence when hit by C.
- 21 (d) B has not committed an offence as he acted in private defence. Being mad, or anything done in madness is not an offence.
- 22 (b) A has committed the offence of cheating. The principle clearly states that someone who attempts to commit an offence of cheating commits a fraud. The fact given is that A obtains from B a sum of Rs.500 with the intention to defraud B. Here the intention to defraud B is an attempt to commit the offence of cheating.
- 23 (a) A defamed S. This is evident from the principle stated. A circulated a pamphlet which means A by words published. The imputation that the sister of bride S was a thief. Therefore, A has defamed S.
24. (a) The legatee can take the benefit under the will. The legatee had done wrong as a drunken driver by accidentally killing his testator. Therefore, based on the principle "everyone will be permitted to take advantage of his own wrong" the legatee will be permitted to take the benefit under the will.
25. (a) The facts that A is accused of commission of murder and of conspiracy are relevant facts based on the principle: "Existence of all the alleged facts is relevant whether they occurred at the same time and place or at different times and places." It doesn't matter whether A was in India or England.
26. (b) A must prove that B,C, and D have committed the crime. This is based on the principle "one who asserts must prove". In this case A desires (which is nearly same as A asserts) a Court to give judgment that B, C and D shall be punished for a crime they have committed.
27. (b) B is not liable as he has done the act in good faith. The principle states that if a person has done some action in good faith for the benefit of another person even without his consent and if his action does some harm to that person, his action is not an offence. In this case B used the gun in good faith to save A.
28. (a) C is liable. According to the principle a person under intoxication is not liable for an offence if intoxication is without his knowledge or against his will. In this case, C had the knowledge of his intoxication and it happened with his consent. In other words, C was persuaded, not forced to drink.
29. (d) X and his family is liable as they have not informed the police. According to the principle, the right to private defence ceases if the person using this right has the time to take help of the authorities. In this case, the police station is only 1 km away and there is a clear 6 to 7 hours to seek the help of the police.
30. (a) X has committed an offence because the principle is clear that any one who induces or attempts to induce a voter to vote in a particular manner on the ground that the voter will face divine displeasure commits the offence of interfering with free exercise of the right to vote.
31. (a) X has committed murder. According to the principle killing is not murder if it occurs in a heat of passion and is not pre-meditated. In this case, the killing is not under the heat of passion. There is a time difference of 2 hours between the quarrel and the killing. Moreover, it is pre-meditated because X procures knife from somewhere and goes to the house of victim with the clear intent of killing him.
32. (d) X has committed an offence by use of criminal force. The act has caused annoyance to the victim. Moreover, X used criminal force (using his physical power to unveil the woman) and the use of criminal force is intentional. According to the principle intentional use of criminal force and the knowledge that it would cause annoyance makes it an offence.

33. (d) X has committed an offence of use of criminal force. The principle defines criminal force as "Inducing any animal to move or to change its motion and thereby intentionally causing fear of injury or annoyance to others." X inciting his dog to chase Y is an instance of criminal use of force. X intentionally causes the fear of injury or annoyance, which makes it an offence.
34. (b) The fact that X shoots at Y is an "attempt" and X is guilty of this offence. If you read the legal principle (1) carefully you will know that the action of X comes under the category of "attempt" because it is accompanied by criminal intent or design, which falls short of actual commission but is more than mere preparation. It is an act committed in part execution of a criminal design or intent.
35. (c) Amar is guilty of attempt to cheat. This is because Amar did not actually cheat as he was caught before he could cheat. According to the principle, attempt is defined as an act committed in partial execution of criminal design or intent, more than mere preparation but falling short of actual commission. In this case Amar fell short of actual commission of this offence.
36. (b) X is guilty of pick pocketing. X will be liable only for attempting to pick pocket and not for killing because he cannot be treated differently from all other pick pockets who steal under exactly similar circumstances and same intention with no risk of causing death and with no greater care to avoid it.
37. (b) The Fugitive Economic Offenders Act, 2018 is an Act of the Parliament of India that seeks to confiscate properties and assets of economic offenders that evade prosecution by remaining outside the jurisdiction of Indian courts. The offences include economic offences of Rs 100 crore or more, Dishonouring of cheques, Money laundering, and Benami transactions.
38. (b) A person charged of spying under official secrets act 1923 shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defense, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.
39. (d) Heinous and serious offences include all the offences listed under options I, II, III, and IV. In *The State of Madhya Pradesh v. Laxmi Narayan and ors.* That power under Section 482 of CrPC is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.
40. (d) A is false but R is true. Clause (3) of Article 20[i] of the Indian Constitution, 1950 provides that "No person accused of any offence shall be compelled to be a witness against himself." This principle is espoused on the maxim "nemo tenetur prodere accusare seipsum", which essentially means "NO MAN IS BOUND TO ACCUSE HIM". However, there are exceptions to this provision. It follows that giving thumb impressions, or impression of foot or palm or fingers or specimens of writings or exposing body for the purpose of identification are not covered by the expression 'to be a witness' under Article 20(3).
41. (d) Only Sanju will be liable for rape as he was the one who actually committed the offence. Sanju, Dilbag and Sushil together decided to commit burglary and would hence be together charged for burglary and as it was only Sanju who was committing the act of rape and only he will be charged under it. (*Durga Prasad @ Bablu vs State* on 28 August, 2009)
42. (c) 'B' has not committed any offence. 'A' attempted to kill 'B' and to save one's own life 'B' kills 'A'. 'A' has committed no offence. It is private defence. (*Kamparsare vs Putappa*)
43. (b) The policewoman had not been exercising her power of arrest when she detained X, and since in taking hold of the appellant's arm to detain her the policewoman's conduct went beyond acceptable lawful physical contact between two citizens, hence the officer's act constituted a battery on X and that she had not been acting in the execution of her duty when the assault occurred. The policewoman trespassed into the comfortable personal space of X by holding X's arm which is an unacceptable act between two citizens. The policewoman was not exercising her power of arrest and was acting beyond her duty.
44. (a) L is liable as the defence of volenti non fit injuria was not acceptable. Secondly, that the duty of care owned by a learned driver to the public (including passengers) was to be measured against the same standard that would be applied to any other driver. L even though was a learner driver had a duty just like any other driver to undertake proper care towards the public and co-passengers (K). She will be held liable for the injuries caused to K. Volenti non fit injuria will not be applicable as L.
45. (c) Mere words do not amount to assault. Here in the above noted problem B was standing at a distance. For the assault there must be minimum touching body of A. The reasonable conclusion drawn A has not committed assault against B. Hence option (c) is correct.
46. (d) According to the section 300 IPC defines murder except hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death.

The reasonable conclusion drawn in the present problem that A did not kill his girl friend under the intense and sudden provocation. There was clear intention to kill her, waiting for sufficient time of 15 days without waiting second, he shot her down. Hence there is no question even after of sudden and grave provocation.

47. (d) According to guiding principle it was duty of A to inform the concerned authorities about the murder of 'C' by B. Hence 'A' has committed an offence leading option (d) is correct.

48. (a) The three valid conditions for defamation.

1. The statement must be defamatory.
2. The said statement must refer to the plaintiff.
3. The statement must be published.

The reasonable conclusion drawn that all the three conditions were fulfilled against S. Hence A defamed S.

49. (a) Under section 378 Indian Penal Code defines theft. whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taken, is said to commit theft.

1. A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.
2. A moving object effected by the same act which effects the severance may be a theft.
3. A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.
4. A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.
5. The consent mentioned in the definition may be express or implied, and any may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

The reasonable conclusion drawn that A has not committed theft.

50. (c) Under Section 83 of Indian Penal Code defines nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

The reasonable conclusion drawn Himesh would be protected under the principle stated above because his acts show that he was not sufficiently mature

to understand the nature and consequences of his conduct.

51. (c) According to the principle, any carnal intercourse against the order of nature with any man or woman is punishable for rape by the Court. The principle does not include the act with an animal and thus, the man will not be punished by the court.

52. (d) For fraud, it is necessary that a person intentionally makes a false statement to deceive another party and thereby induce him to enter into a contract. If the intention to deceive the party is absent, there is no fraud.

'B' does not have any intention of withdrawing money from account of 'A' without the consent of 'A' and no withdrawal has been carried out by 'B' who only checks the balance in the account. (Derry v Peek (1889) LR 14 App Cas 337, UKHL 1)

53. (c) There was no imminent danger to X as the dog stopped barking and was walking with the owner. Hence, shooting it amounted to excessive use of the right to private defence and hence liable for killing the dog.

The principle provides that a person can use force against an assailant or wrong doer in self-defence when imminent danger is present. The right to private defence can only be exercised when the circumstances justify it and not otherwise.

In the given question, the dog stopped barking after which X used his gun to kill the dog. Therefore, the force used by X was excessive and unnecessary.

54. (d) The additions were made to give clarity to the original document and did not in any sense change the contents of the documents and hence there is no forgery as alleged by the researcher.

John has only made additions to make the contents clearer. There was no intent of deceiving another person or entity. The additions did not change the sense of the original content and it was not fabricated or altered significantly. There was only an intent of clarity and not to represent something which is factually incorrect. (Iqbal Singh Marwah & Anr vs Meenakshi Marwah & Anr on 11 March, 2005)

55. (b) Option (b) is correct. An agreement between two or more persons to engage jointly in a unlawful or criminal act, or an act that is innocent in itself but becomes unlawful when done by the combination of actors. Example one who conspires with another to commit burglary and in fact commits the burglary can be charged with both conspiracy to commit burglary and burglary.

56. (a) The plea of Alibi which means his presence elsewhere at the time of the crime. Hence option (a) is correct.