

**CHAPTER 12****INDIAN PENAL CODE, 1860****INTRODUCTION :**

1. The Indian Penal Code, 1860 is the substantive law of crimes. It defines acts which constitute an offence and lays down punishment for the same. It lays down certain principles of criminal law. The procedural law through which the Indian Penal Code is implemented is the Criminal Procedure Code, 1973. Indian Penal Code consists of 23 chapters and more than 511 sections.
2. It is a wrong committed by an individual in a society. It arises first when a state is organized, people set up rules, the breaking of which is an act called crime. Crime being a relative conception is an act defined by State as a crime. The concept of crime changes from time to time and as per the society.
3. In India, the base of the crime and punitive provision has been laid down in Indian Penal Code, 1860. In this Code the definition of crime has not been attempted or defined but according to its section 40 the word 'Offence' denotes a thing made punishable by the Code.
4. The Indian Penal Code was passed in the year 1860 but it came into force on 1st January 1862, and it applies to the whole of India except the state of Jammu and Kashmir.
5. The State of Jammu and Kashmir, in view of the special status under Article 370 of the Indian Constitution, has a separate penal code, though substantially of the same nature and character as the IPC.

**JURISDICTION OF IPC, 1860**

Ordinarily, laws made by a country are applicable within its own boundaries because a country cannot have a legal machinery to enforce its laws in other sovereign countries. Countries, however, also make laws that apply to territories outside of their own country. This is called the extra-territorial jurisdiction.

**Intra-territorial jurisdiction:** Where a crime under any provision of IPC is committed within the territory of India the IPC applies and the courts can try and punish irrespective of the fact that the person who had committed the crime is an Indian national or foreigner. This is called 'intra-territorial jurisdiction' because the submission to the jurisdiction of the court is by virtue of the crime being committed within the Indian territory.

Section 2 of the Code deals with intra-territorial jurisdiction of the courts. The section declares the jurisdictional scope of operation of the IPC to offences committed within India. The emphasis on 'every person' makes it very clear that in terms of considering the guilt for any act or omission, the law shall be applied equally without any discrimination on the ground caste, creed, nationality, rank, status or privilege. The Code applies to any offence committed:

1. Within the territory of India as defined in Article 1 of Constitution of India.
2. Within the territorial waters of India, or
3. On any ship or aircraft either owned by India or registered in India.

It should be noted that it is not defence that the foreigner did not know that he was committing a wrong, the act itself not being an offence in his own country. In this regard the Supreme Court in *Mobarik Ali Ahmed v. State of Bombay*, 1957 AIR SC 857, held that it is obvious that for an Indian law to operate and be effective in the territory where it operates, i.e., the territory of India, it is not necessary that the laws should either be published or be made known outside the country in order to bring foreigners under its ambit.

Exemption from intra-territorial jurisdiction of IPC:-

1. Article 361(2) of the Constitution protects criminal proceedings against the President or Governor of a state in any court, during the time they hold office.
2. In accordance with well-recognized principles of international law, foreign sovereigns are exempt from criminal proceedings in India.
3. This immunity is also enjoyed by the ambassadors and diplomats of foreign countries who have official status in India. This protection is extended to all secretaries and political and military attaches, who are formally part of the missions.

*Extra –territorial jurisdiction*:-Section 3 and section 4 of the IPC provide for extra-territorial jurisdiction. Where a crime is committed outside the territory of India by an Indian national, such a person may be tried and punished by the India courts. According to section 3 if anyone commits any offence beyond India which is punishable in our country under any Indian law, he is liable to be convicted and punished in the same manner as if the crime was committed in India.

It is clear from these sections that courts in India have extra-territorial jurisdiction to try offences committed on land, high seas and air by Indian nationals or other. The jurisdiction of a court over offences committed in high seas is based on the precept that a ship in the high seas is considered to be a floating island belonging to the nation whose flag the ship flies. It does not matter where the ship or boat is, whether it is in high seas or on rivers, whether it is moving or stationery, having been anchored for the time being. This jurisdiction called the 'admiralty jurisdiction'.

## **FUNDAMENTAL ELEMENTS OF CRIME**

The basic function of criminal law is to punish the offender and to make people aware about the incidence of crime in the society. A criminal act must contain the following elements:

1. *Human Being* – The first requirement for commission of crime is that the act must be committed by a human being. The human being must be under legal obligation to act in particular manner and be physically and mentally fit for conviction in case he has not acted in accordance with the legal obligation. Only a human being under legal obligation and capable of being punished can be the proper subject of criminal law.
2. *Mens rea*: The basic principle of criminal liability is embodied in the legal maxim 'actus non facit reum, nisi mens sit rea'. It means 'the act alone does not amount to guilt; the act must be accompanied by a guilty mind'. The intention and the act must both concur to constitute the crime. *Mens rea* is defined as the mental element necessary to constitute criminal liability. It is the attitude of mind which accompanies and directs the conduct which results in the 'actus reus'. The act is judged not from the mind of the wrong-doer, but the mind of the wrong-doer is judged from the act. '*Mens rea*' is judged from the external conduct of the wrong-doer by applying objective standards.

Supreme Court in *GirjaNath v. State* said that *mens rea* is a loose term. Intention, Negligence and recklessness are the important forms of *mens rea*.

- (i) *Intention*:- Intention is defined as 'the purpose or design with which an act is done'. Intention indicates the position of mind, condition of someone at particular time of commission of offence and also will of the accused to see effects of his unlawful conduct. Criminal intention does not mean only the specific intention but it includes the generic intention as well. For example: A poisons the food which B was supposed to eat with the intention of killing B. C eats that food instead of B and is killed. A is liable for killing C although A never intended it.
- (ii) *Negligence*:- Negligence is the second form of *mens rea*. Negligence is not taking care, where there is a duty to take care. Negligence or carelessness indicates a state of mind where there is absence of a desire to cause a particular consequence. In criminal law, the negligent conduct amounts to *mens rea*.
- (iii) *Recklessness*:- Recklessness occurs when the actor does not desire the consequence, but foresees the possibility and consciously takes the risk. It is a total disregard for the consequences of one's own actions. Recklessness is a form of *mens rea*.

### **EXCEPTIONS TO MENS REA:**

There are many exceptional cases where mens rea is not required in criminal law. Some of them are as follows:

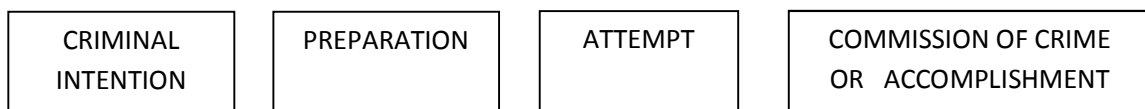
- a. Where a statute imposes liability, the presence of absence of a guilty mind is irrelevant.  
Many laws passed in the interest of public safety and social welfare imposes absolute liability. This is so in matters concerning public health, food, drugs, etc. There is absolute liability (*mens rea* is not essential) in the licensing of shops, hotels, restaurants and chemists establishments. The same is true of cases under the Motor Vehicles Act and the Arms Act.
  - b. Where it is difficult to prove mens rea and penalties are petty fines. In such petty cases, speedy disposal of cases is necessary and the proving of *mens rea* is not easy. An accused may be fined even without any proof of *mens rea*.
  - c. In the interest of public safety, strict liability is imposed and whether a person causes public nuisance with a guilty mind or without guilty mind, he is punished.
  - d. If a person violates a law even without the knowledge of the existence of the law, it can still be said that he has committed an act which is prohibited by law. In such cases, the fact that he was not aware of the law and hence did not intend to violate it is no defense and he would be liable as if he was aware of the law. This follows from the maxim 'ignorance of the law is no excuse'.
3. *Actus Reus (act or omission)*: The third essential element of crime is Actus Reus. A human being and an evil intent are not enough to constitute a crime for one cannot know the intentions of a man. Actus Reus means overt act or unlawful commission must be done in carrying out a plan with the guilty intention. Actus Reus is defined as a result of voluntary human conduct which law prohibits. It is the doing of some act by the person to be held liable. An 'act' is a willed movement of body.

**CORPORATE BODY AND MENS REA**

section 11 of the IPC, the word 'person' includes any Company or Association, or body of persons, whether incorporated or not. Thus companies are covered under the provisions of the IPC. Virtually in all jurisdictions across the world governed by the rule of law, companies can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary *mens rea* for the commission of criminal offences. The criminal intent of the 'alter ego' of the company/ body corporate, i.e., the person or group of persons that guide the business of the company, is imputed to the company.

In *State of Maharashtra v. M/s Syndicate Transport*, AIR 1964 Bom 195, it was held that the question whether

a corporate body should or should not be liable for criminal action resulting from the acts of some individual must depend on the nature of offence disclosed by the allegations in the complaint or in the chargesheet, the relative position of the officer or agent vis-à-vis the corporate body and other relevant facts and circumstances which could show that the corporate body, as such, meant or intended to commit that act.

**THE STAGES OF CRIME****1. Criminal Intention**

Criminal intention is the first stage in the commission of offence. Intention means doing any act with one's will, desire, voluntariness, malafides and for some purpose. In the IPC, all these varied expressions find place in the various sections of the Code. Intention can also be imputed under the law. For example, if a man drives in a rash and reckless manner resulting in an accident causing death of a person, the reckless driver cannot plead innocence by stating that he never intended to cause the death of the person. It may be true in the strict sense of term. But a reckless driver should know that reckless driving is likely to result in harm and can even cause death of the persons on the road, So, by virtue of definition of the word 'voluntarily' in the Code, a reckless driver who causes death of a person can be presumed or deemed to have intended to cause the death of the person.

**2. Preparation**

Preparation means to arrange necessary measures for commission of intended criminal act. Preparation itself is not punishable as it is difficult to prove that necessary preparations were made for commission of the offence. Under the IPC, mere preparation to commit offence is punishable as they are considered to be grave offences. Some of them are as follows:

- (i) Preparartion to wage war against the government
- (ii) Making preparation to commit dacoity
- (iii) Preparation for making fake coins or government stamps

**3. Attempt**

Attempt, which is the third stage in the commission of a crime, is punishable. Attempt has been called as a preliminary crime. Attempt means the direct movement towards commission of a crime after necessary preparations have been made. When a person wants to commit a crime, he firstly forms an intention, then makes some preparation and finally does something for achieving the object; if he succeeds in his object he is guilty of completed offence otherwise only for making an attempt. attempt to commit a particular offence is a question of fact depending on the nature of crime and steps necessary to take in order to commit it.

4. Commission of Crime or Accomplishment:- The last stage in the commission of crime is its accomplishment. If the accused succeeds in his attempt, the result is the commission of crime and he will be guilty of the offence. If his attempt is unsuccessful, he will be guilty for an attempt only. If the offence is complete, the offender will be tried and punished under the specific provisions of the IPC.

**ICSI may ask this as a separate question**

Under the IPC, the sections <b>on attempt</b> can be divided into four broad categories		
Offences and the attempt to commit are given in the same section	Punishment would be same for both the offence as well as the attempt	For Example : wage war against govt, a public servant accepting or attempting to accept gratification, dacoity etc.
Offences and the attempt to commit are dealt separately	Punishment would be different for both	For Example : Murder, robbery
Attempt to do something	Only attempt is punishable under law	For Example : Attempt to commit suicide

NOTE : The fourth category relates to the attempt to commit offences for which no specific punishment has been provided in the IPC. Such attempts are covered under section 511. This section of the Code provides that whoever attempts to commit an offence punishable by IPC with imprisonment for life or imprisonment, or cause such an offence to be committed, and in such attempt does any act towards commission of the offence, shall, where no express provision is made by IPC for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one- half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both

**PUNISHMENT PROVISIONS UNDER IPC**

- 1. Death:-** A death sentence is the harshest of punishments provided in the IPC, which involves the judicial killing or taking the life of the accused as a form of punishment. The Supreme Court has ruled that death sentence ought to be imposed only in the 'rarest of rare cases'. The IPC provides for capital punishment for the following offences: (a) Murder (b) Dacoity with Murder. (c) Waging War against the Government of India. (d) Giving or fabricating false evidence upon which an innocent person suffers death (e) Abetment of a suicide by a minor or insane person; (f) Attempted murder by a life convict.
- 2. Life Imprisonment:-** Imprisonment for life meant rigorous imprisonment, that is, till the last breath of the convict.

3. **Imprisonment:-** Imprisonment which is of two descriptions namely –
  - (i) Rigorous Imprisonment, that is hard labour;
  - (ii) Simple Imprisonment
4. **Forfeiture of property:-** Forfeiture is the divestiture of specific property without compensation in consequence of some default or act forbidden by law. The Courts may order for forfeiture of property of the accused in certain occasions.
5. **Fine:-** Fine is forfeiture of money by way of penalty. When court sentences an accused for a punishment, which includes a fine amount, it can specify that in the event the convict does not pay the fine amount, he would have to suffer imprisonment for a further period as indicated by the court, which is generally referred to as default sentence.

### **TYPES OF OFFENCES UNDER IPC, 1860**

#### **CRIMINAL CONSPIRACY (section 120A and 120B)**

Definition of Criminal conspiracy under Sec.120-A

When two or more persons agree to do or cause to be done

- I) An illegal Act
- II) An act which is not illegal but when it is done by illegal means.

Such an agreement is designated/made a criminal conspiracy.

#### **INGREDIENTS:-**

1. There shall be minimum two or more person.
2. Agree for illegal act.

The expression 'illegal' has been defined in Sec.43 of the code. According to this section, the word illegal is applicable to everything :

- i) Which is an offence
- ii) Which is prohibited by law
- iii) Which is furnishes ground for a civil action
- iv) Act is done by illegal means.

Further provided that no agreement except an agreement to commit an offence, shall amount to a criminal conspiracy.

Explanation : It is immaterial whether the illegal act is the ultimate object of such agreement or is merely incidental to that object. In other words, the conspirator is guilty of criminal conspiracy; whether the illegal act is the ultimate object of the agreement or it is merely incidental to the object of the agreement. The law does not treat these cases differently.

Case : Mohd. Usman v/s State 1981 : In this case the accused persons were selling explosive substances without valid license for a very long time. The SC held that they were guilty of criminal conspiracy, as they had been doing this for a very long time, which could not have been possible without an agreement between them, and this agreement was proved by necessary implication.

Case : In *NCT of Delhi v. Navjot Sandhu*, 2005 CrLJ 3950 (SC), (Parliament attack case) the accused had never contacted the deceased terrorist on place but had helped one of the conspirators to flee to a safer place after incident was not held guilty as conspirator.

ILLUSTRATION: 'A' the wife of 'B' had illicit connection with 'C', who wanted to murder 'B'. Instead of telling B that C wanted to murder him, told C that B would go to lonely place on a particular day & time. C murdered B at that particular place, date and time. Thus A and C both are guilty of the offence of criminal conspiracy. C is also guilty of adultery and murder.

Section 120-B : Punishment of criminal conspiracy: 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 there is no express provision is made in this code for punishment of such conspiracy, be punished in the same manner as if he had abetted of such offence.

Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable with imprisonment for a term not exceeding six months or with fine or with both.

### **CRIMINAL MISAPPROPRIATION OF PROPERTY (SECTION 403 and 404)**

#### **DISHONEST MISAPPROPRIATION OF PROPERTY (SECTION 403)**

It says that whoever either dishonestly misappropriates, or dishonestly converts to his own use, any movable property, shall be punished with simple or rigorous imprisonment for a term extending up to two years, or with fine, or with both.

#### **ICSI MODULE EXAMPLES (ATLEAST WRITE ONE EXAMPLE IN EXAM PAPER)**

- (a) A takes property belonging to Z out of Z's possession, in good faith believing at the time when he takes it, that the property belongs to himself. 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.
- (b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.
- (c) A and B, being, joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

#### **NOTE**

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

#### **CASE STUDY**

In *Mohammad Ali v. State*, 2006 CrLJ 1368 (MP), fifteen bundles of electric wire were seized from the appellant but none including electricity department claimed that wires were stolen property. Evidence on records showed that impugned electric wire was purchased by the applicant from scrap seller. Merely applicant not having any receipt for purchase of impugned

wire cannot be said to be guilty of offence punishable under Section 403 of the Code. Order of framing charge was, therefore, quashed by the Supreme Court and the accused was not held guilty under section 403 of the Indian Penal Code, 1860.

In *U. Dhar v. State of Jharkhand*, (2003) 2 SCC 219, there were two contracts- one between the principal and contractor and another between contractor and sub-contractor. On completion of work sub-contractor demanded money for completion of work and on non-payment filed a criminal complaint alleging that contractor having received the payment from principal had misappropriated the money. The magistrate took cognizance of the case and High Court refused to quash the order of magistrate. On appeal to the Supreme Court, it was held that matter was of civil nature and criminal complaint was not maintainable and was liable to be quashed. The Supreme Court also observed that money paid by the principal to the contractor was not money belonging to the complainant, sub-contractor, hence there was no question of misappropriation.

### **DISHONEST MISAPPROPRIATION OF PROPERTY POSSESSED BY DECEASED PERSON AT THE TIME OF HIS DEATH (SECTION 404)**

Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's death, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and if the offender at the time of such person's death was employed by him as a clerk or servant, the imprisonment may extend to seven years.

#### *Illustration*

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

### **CRIMINAL BREACH OF TRUST (Section 405 - 409)**

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

- (a) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.
- (b) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.



The essential ingredients of the offence of criminal breach of trust are as under;

1. The accused must be entrusted with the property or with dominion over it,
2. The person so entrusted must use that property, or;
3. The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,
  - (i) of any direction of law prescribing the mode in which such trust is to be discharged, or;
  - (ii) of any legal contract made touching the discharge of such trust.

### **CASE STUDY**

In a landmark judgment of *Pratibha Rani v. Suraj Kumar*, AIR 1985 SC 628, the appellant alleged that her stridhan property was entrusted to her in-laws which they dishonestly misappropriated for their own use. She made out a clear, specific and unambiguous case against in-laws. The accused were held guilty of this offence and she was held entitled to prove her case and no court would be justified in quashing her complaint.

### **PUNISHMENT FOR CRIMINAL BREACH OF TRUST SEC 406**

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

### **CRIMINAL BREACH OF TRUST BY CARRIER SEC 407**

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

### **CRIMINAL BREACH OF TRUST BY CLERK OR SERVANT SEC 408**

Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **CRIMINAL BREACH OF TRUST BY PUBLIC SERVANT, BANKER, AGENT SEC 409**

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **CASE STUDY ON SECTION 409**

In *Bagga Singh v. State of Punjab*, the appellant was a taxation clerk in the Municipal Committee, Sangrur. He had collected arrears of tax from tax-payers but the sum was not deposited in the funds of the committee after collection but was deposited after about 5 months. He pleaded that money was deposited with the cashier Madan Lal, a co-accused, who had defaulted on the same but the cashier proved that he had not received any such sum and was acquitted by lower court. The mere fact that the co-accused cashier was acquitted was not sufficient to acquit accused in the absence of any proof that he had discharged the trust expected of him. As such the accused was liable under section 409 of Indian Penal Code, 1860.

In *Bachchu Singh v. State of Haryana*, AIR 1999 SC 2285, the appellant was working as 'Gram Sachiv' for eight gram panchayats. He collected a sum of Rs. 648 from thirty villagers towards the house tax and executed receipts for the same. As he was a public servant, and in that capacity he had collected money as house tax but did not remit the same, he was charged under Section 409 of Indian Penal Code, 1860. It was held that the appellant dishonestly misappropriated or converted the said amount for his own use and his conviction under section 409 of Indian Penal Code, 1860 was upheld by the Supreme Court.

In *Girish Saini v. State of Rajasthan*, a public servant was accused of neither depositing nor making entries of stationery required for official purpose. Accused public servant was in charge of the store in the concerned department at the time of commission of offence. Hence entrustment was proved. It was held accused could not take the benefit of misplacing of one of registers of company as he could not prove maintenance of two registers by department. Therefore, the accused was held guilty of committing criminal breach of trust.

### **CHEATING (Section 415 - 420)**

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 or omit if he was 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". (S. 415).

#### *Illustrations*

- (a) 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.
- (b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c) A, by exhibiting to Z a false sample of an article intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

#### **INGREDIENTS:**

1. Making any person believe
2. (a) Fraudulently or dishonestly inducing that person
  - (i) to deliver any property to any person; or
  - (ii) to consent that any person shall retain any property; or
- (b) Intentionally inducing that person to do or omit to do anything which he would not do or 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.

### **SECTION 416 CHEATING BY PERSONATION**

As per section 416 a person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

- (a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.
- (b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

**SECTION 417 PUNISHMENT FOR CHEATING**

Section 417 provides that whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**SECTION 418 CHEATING WITH KNOWLEDGE THAT WRONGFUL LOSS MAY OCCUR TO PERSON WHOSE INTEREST OFFENDER IS BOUND TO PROTECT**

According to section 418 whoever cheats with the knowledge that he is likely to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**SECTION 419 PUNISHMENT FOR CHEATING BY PERSONATION**

Section 419 states that whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**SECTION 420 CHEATING AND DISHONESTLY INDUCING OF PROPERTY**

As per section 420 whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Simple cheating is punishable under section 417 of the IPC. Section 420 comes into operation when there is delivery or destruction of any property or alteration or destruction of any valuable security resulting from the act of the person deceiving.

In Ram Prakash Singh v. State of Bihar [AIR 1998 SC 296], it was held that where the officers of LIC introduced fake proposals without any actual gain for themselves as well as a real loss for corporation, still they are liable for cheating under Section 420, as such fake proposals are likely to harm the reputation of corporation. The aim of such officers was to show inflated business in their branch and secure the promotion in future on its basis.

The term 'property' as used in Section 420 is wide enough to include anything capable of ownership. For example, an admission card which enables a candidate to sit for the M.A. Examination of a University is 'property'.

**FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY (Section 421 - 424)****DISHONEST OR FRAUDULENT REMOVAL OR CONCEALMENT OF PROPERTY TO PREVENT DISTRIBUTION AMONG CREDITORS (Section 421)**

Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any

other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Guwahati High Court in *Ramautar Chaukhany v Hari Ram Todi & Anr*, 1982 CrLJ 2266, held that an offence under this section has following essential ingredients:

- (i) That the accused removed, concealed or delivered the property or that he transferred, it caused it to be transferred to someone;
- (ii) That such a transfer was without adequate consideration;
- (iii) That the accused thereby intended to prevent or knew that he was thereby likely to prevent the distribution of that property according to law among his creditors or creditors of another person;
- (iv) That he acted dishonestly and fraudulently.

This section specifically refers to frauds connected with insolvency. The offence under it consists in a dishonest disposition of property with intent to cause wrongful loss to the creditors. It applies to movable as well as immovable properties.

#### **DISHONEST OR FRAUDULENTLY PREVENTING DEBT BEING AVAILABLE FOR CREDITORS (Section 422)**

Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

This section, like the preceding section 421, is intended to prevent the defrauding of creditors by masking property.

#### **DISHONEST OR FRAUDULENT EXECUTION OF DEED OR TRANSFER CONTAINING FALSE STATEMENT OF CONSIDERATION (Section 423)**

Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge on property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The essential ingredient of an offence under section 423 is that the sale deed or a deed subjecting an immovable property to a charge must contain a false statement relating to the consideration or relating to the person for whose use or benefit it is intended to operate.

#### **DISHONEST OR FRAUDULENT REMOVAL OR CONCEALMENT OF PROPERTY (Section 424)**

Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The essential ingredients to bring an offence under section 424 are as follows:

- (i) There is a property;

- (ii) That the accused concealed or removed the said property or assisted in concealing or removing the said property;
  - (iii) That the said concealment or removal or assisting in removal or concealment was done dishonestly or fraudulently.
- Or,
- (i) That the accused was entitled to a demand or claim;
  - (ii) That the accused released the same;
  - (iii) That he so released dishonestly or fraudulently.

**FORGERY (Section 463)**

Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

**PUNISHMENT FOR FORGERY (Section 465)**

Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**DEFAMATION (Section 499)**

Section 499 provides that 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 (except in the cases hereinafter excepted)

*Illustrations*

- (a) A says— “Z is an honest man; he never stole B's watch”; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.
- (b) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

**EXCEPTIONS**

*First Exception.—Imputation of truth which public good requires to be made or published.—*It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

*Second Exception.—Public conduct of public servants.—*It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

**Third Exception.—Conduct of any person touching any public question.**—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

**Fourth Exception.—Publication of reports of proceedings of courts.**—It is not defamation to publish substantially true report of the proceedings of a Court of justice, or of the result of any such proceedings.

**Explanation.**—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

**Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.**—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

**Sixth Exception.—Merits of public performance.**—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

**Explanation.**—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

**Seventh Exception.—Censure passed in good faith by person having lawful authority over another.**—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

### **PUNISHMENT FOR DEFAMATION (Section 500)**

According to section 500 whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

### **GENERAL EXCEPTIONS**

The Indian Penal Code, 1860 also provides for general exceptions for a person accused of committing any offence under the Code to plead in his defence. General defences or exceptions are contained in sections 76 to 106 of the IPC. In general exceptions to criminal liability there will be absence of mens rea (guilty mind) on the part of the wrong-doer. If there is any general defence of the accused in a criminal case, the burden of proving lies on him under section 105 of the Indian Evidence Act, 1872. The exceptions strictly speaking came within the following six categories. (1) Judicial acts (2) Mistake of fact (3) Accident (4) Trifling Act (5) Consent (6) Absence of Criminal Intention.

#### **1. Mistake of Fact- bound by law [Section 76]**

A person will not be guilty of an offence if he commits any act –

- Which he is bound to do or
- Mistakenly believes in good faith that he is bound by the law to do.

Mistake of fact, is a general defence based on the Common Law maxim - ignorantia facti excusat; ignorantia juris non excusat- (Ignorance of fact excuses;

Ignorance of law does not excuse). In mistake of fact the accused does not possess mensrea or guilty mind.

**2. Act of Judge when acting judicially (section 77):**

If any judge in his authority in good faith believing authorized by law commits any act, no offence is attracted.

**3. Act done pursuant to the judgment or order of Court (section 78)**

When any act is committed on judgment or order of the Court of Justice which is in force, it is no offence even if the judgment or order of the Court is without any jurisdiction, though the person who executes the judgment and order must believe that the Court has the jurisdiction.

Section 77 protects judges from any criminal liability for their judicial acts. Section 78 extends this protection to ministerial and other staff, who may be required to execute orders of the court. If such immunity was not extended, then executing or implementing court orders would become impossible.

**4. Mistake of Fact-justified by law (section 79)**

If any one commits any act which is justified by law or by reason of mistake of fact and not by reason of mistake of law believes himself to be justified by Law.

**5. Accident in doing a lawful act (section 80)**

According to section 80, if any one commits any offence by accident or misfortune without malafide or without knowledge in performance of his legal duty in legal manner with proper care and caution is no offence.

In simple words, if a person is carrying out a lawful act in a lawful manner, with proper care but accidentally commits crime, it will not be treated as an offence.

**6. Act likely to cause harm, but done without criminal intent, and to prevent other harm (section 81)**

Any act done by anyone without any criminal intent for saving or preventing harm to third person or property in good faith is no offence.

Example – A sees a great fire. With an intention to avoid spreading the fire and to save human and property he pulls down and destroy the stable which caught fire. It will not be treated as offence. As the harm prevented was more eminent than the harm done.

**7. Act of a child under seven years of age (section 82)**

If any child who is below seven years of age commits any offence, he is not guilty because it is the presumption of law that that a child below 7 years of age is incapable to having a criminal intention (mens rea) necessary to commit a crime.

**8. Act of a child above seven and under twelve of immature understanding (section 83)**

If any minor child is in between seven and twelve years of age and not attained the maturity of what is wrong and contrary to law at the time of commission of offence in not liable to be convicted and punished.

**9. Act of a person of unsound mind (section 84)**

Nothing done by any person of unsound mind is an offence if 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.

**10. Act of a person incapable of judgment by reason of intoxication caused against his will (section 85)**

Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

**11. Offence requiring a particular intent or knowledge committed by one who is intoxicated (section 86)**

In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will. If the accused himself takes and consumes intoxicated thing or material with knowledge or intention and under intoxication he commits any offence he is liable for punishment.

**12. Act not intended and not known to be likely to cause death or grievous hurt, done by consent (section 87)**

When anyone commits any act without any intention to cause death or grievous hurt and which is not within the knowledge of that person to likely to cause death or grievous hurt to any person who is more than eighteen years of age and has consented to take the risk of that harm, the person doing the act has committed no offence.

This section is based on the principle of 'volenti-non-fit injuria' which means he who consents suffers no injury. The policy behind this section is that everyone is the best judge of his own interest and no one consents to that which he considers injurious to his own interest.

**13. Act not intended to cause death, done by consent in good faith for person's benefit (section 88)**

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.

For example:- A, a surgeon, knowing that a particular operation is likely to cause the death of Z who suffers under the 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. But if surgeon while performing the operation leaves a needle inside the abdomen of the patient who die due to septic - He would be liable criminally for causing death by negligence because he did not perform the operation with due care and caution.



- 14. On consent of guardian if any act is done in good faith to it (section 89)**  
Anything done by the third person will not be an offence provided that it is done in good faith and for the benefit of the child or a person of unsound mind. This section gives protection to the guardians as well as other person acting with the consent of a guardian of a person under 12 years of age or a person of unsound mind.
- 15. Consent (section 90)**  
The consent is not valid if it is obtained from a person who is under fear of injury, or under a misconception of fact and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception. The consent is also not valid if it's given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent. The consent is given by a person who is under twelve years of age is also not valid unless the contrary appears from the context.
- 16. Exclusion of acts which are offences independently of harm caused (section 91)**  
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.
- 17. 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. This defense is subject to certain exceptions.
- 18. 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.  
For example: 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.
- 19. Act to which a person is compelled by threats (section 94)**  
Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence.
- 20. Act causing slight harm (section 95)**  
Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.