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**LAW OF CRIMES, LAW OF TORTS,
CONSUMER PROTECTION ACT AND
COMMERCIAL LAW**



UGC NET - LAW

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CHAPTER

General Principles of Criminal Liability

FUNDAMENTAL ELEMENTS OF CRIME

CRIMINAL SCIENCE

The study of Criminal Law, Criminology and Penology is called Criminal Science. Criminology studies the causes of crime, Penology, punitive and preventive measures. Criminology nourishes penal policy and penal policy shapes criminal law and the entire three combine to constitute criminal science.

CRIME

Crime is such a breach of the Act that there is a punishment for the act and not mere compensation.

FUNDAMENTAL OR BASIC PRINCIPLES OF CRIMINAL LIABILITY

The doctrine of criminal law and fundamental or basic principles of criminal liability are called General Principles of Criminal Law. A large part of criminal law consists of specific rules which define various offences [Sections 121-510 of the IPC] but the enforcement of these specific rules is controlled by certain well-organised doctrines of criminal law which deal with various conditions relating to criminal liability, such as doctrines relating to mistake, accident, infancy, insanity, intoxication, necessity, compensation, attempt, solicitation etc which are essential parts of every definition.

These doctrines of criminal law have been derived from the fundamental principles relating to Criminology- the principle of legality, mens rea (guilty intention), Actus reus (conduct), harm and punishment. These fundamental principles of criminal liability and the doctrine of criminal law constitute Penal Law Theory. It is also called General Principles of Criminal Law.

The combined meaning of the fundamental principles and the doctrine can be stated in a single generation. Thus, the harm prescribed by a Penal Law must be imputed to a normal adult who voluntarily commits it with a criminal intention and such a person must be subject to a legally prescribed punishment. Criminal Law Theory or Penal Law Theory is largely concerned with the elucidation of this generalisation.

DEFINITION OF CRIME

Section 40 of the IPC says that "any act or omission made punishable by the IPC is an offence".

Similarly, Section 2(n) of the Criminal Procedure Code says that any act or omission made punishable by the IPC or any other law for the-time-being-enforced is an offence.

Both these definitions only specify the consequences of committing a crime i.e. punishment. These definitions do not clarify anything about the nature of criminal law and therefore are not satisfactory.

Sir Stephen-History and Principle of English Criminal Law, Vol. III (IPC) -

He has said that "crime is an act not only punishable by law but is also revolting to the moral sentiments of the society. This definition is true only with regard to traditional and serious or heinous types of offences such as murder, theft, dacoity etc, but it is not true with regard to all types of offences because at the present time, there is no necessary connection between law and morality.

According to **Kenny**, "crimes are wrongs whose sanction is positive and in no way remissible by any private person, but remissible by state alone, if remissible at all." Kenny's definition means that

punishment of wrongful deeds of people by the state is morally good. However, punishment must be inflicted by the state alone and not by a private vigilante or even by the victim to the offender.

Content of crime changes over the period of time, Once upon a time heresy or blasphemy used to be a crime punishable by burning the blasphemer at the scaffold. In some states, people of alternate religious beliefs used to be traumatized by the majoritarian theocratic state. But now even theocratic states do not punish persons of alternate religious beliefs. Polygyny (man having more than one wife) was not an offence among Hindus till 1955. However with the passing of Hindu Marriage Act, 1955 – polygamy in any form was completely outlawed among Hindus. Therefore, the content of crime changes with the evolution of time.

BURDEN OF PROOF IN CRIMES

The burden of proving a crime is on the prosecution. The prosecution must prove the guilt of the accused beyond reasonable doubt. If any doubt is present in the mind of the court, then the court shall have to acquit the accused. In civil litigation however the burden of proof is different than in criminal litigation. In civil litigation, one must prove the case on preponderance of probabilities. This is an easier burden of proof than in criminal litigation.

The burden of proving crime is more onerous and difficult to discharge in criminal litigation and all benefit of any doubt present in the mind of the court is reaped by the accused.

Prosecution and defense. The task of proving the guilt of the accused is performed by the prosecution. The task of proving the innocence of the accused is performed by the defense. The state is the prosecutor in the criminal trial. The state fights the case on behalf of the victim and the society at large. Criminal trials are adversarial in nature. Two adversaries show the guilt and innocence of the accused person to the court upon which the court gives a decision.

Elements of Crime

The elements of crime are described as follows -

1. Human being -

The first element of crime is the human being. Only human beings are liable for their criminal acts. Animals or plants are not liable under the Indian Penal Code for causing harm to humans. A dog biting an 8 year old boy is not liable for causing simple hurt. Only humans are liable under the Indian Penal Code.

Actus non facit reum nisi mens sit rea -

This Latin maxim constitutes the second element of crime. It includes the mental element and the physical element. The mental element is called Mens Rea. The physical element is called actus Reus. Mens rea means guilty mind. Actus Reus means guilty act. The literal translation of actus non facit reum nisi mens sit rea is that act is not guilty and not liable to be punished unless it was performed with a guilty mind. The act is not guilty unless the mind is also guilty. The Indian Penal Code only punishes people who are capable of taking responsibility for their actions.

• Mens rea -

Mens rea means guilty mind. Almost all crimes have some mental element. Examples of mens rea include intent, knowledge, rashness, recklessness, reason to believe, fraudulent, dishonest, corruptly, allowing, omitting, maliciously, deliberately, voluntarily etc. The expression mens rea is nowhere used in the IPC. However essence of mens rea is found through expressions like intent, knowledge and reason to believe etc.

- **Actus Reus** - Actus Reus means guilty act. It consists of physical actions which are prohibited by law. Examples of actus Reus include theft, extortion, murder, cheating, bribery, forgery, hurt, assault, rioting, cruelty, bigamy etc.

2. Legal obligation to act in a particular way or to abstain from certain conduct -

The Indian Penal Code, 1860 imposes legal obligations to act in a particular way or abstain from certain conduct. The Indian Penal Code punishes wrongful conduct. It punishes conduct which is harmful such as murder, or immoral such as bigamy. The offenders are punished for any violation of penal law.

3. Injury to human being or society at large -

Conduct which is harmful to human beings such as hurt or cruelty to the wife is punished by the penal law. Conduct which is harmful to society at large such as drug trafficking and dowry is also punished by special penal laws like Narcotic Drugs and Psychotropic Substances Act, 1985 and Dowry Prohibition Act, 1961.

Injury to human beings is defined in **Section 44** of the Indian Penal Code. Injury means injury to mind, body, reputation or property. Cruelty is an example of injury to mind; simple hurt is an example of injury to body; defamation is an example of injury to reputation; and mischief is an example of injury to property.

Kinds of Men's Rea

1. Intention -

Intention means desired objective or desire to achieve a certain purpose. Humans are able to desire things which they consider are beneficial for them. This human foreseeability and desire is sometimes deleterious for other human beings or the society at large.

The Indian Penal Code deals with bad or guilty intentions of human beings. Intention in the IPC is reflected by terms such as intentionally, voluntarily, willfully or deliberately.

For example, **Section 298** of the IPC deals with deliberate intent to wound religious sentiments.

2. Transferred Intention -

A intends to murder X. For achieving this objective A mixes poison in X's food and places it on X's table. However, Y feeling unusually hungry raids X's lunch and dies. A is liable for Y's murder even though he did not intend it. This is known as transferred intention and is mentioned in Section 301 of the IPC.

3. Knowledge -

Knowledge is the awareness of consequences of any act or omission. For instance, a bus driver has knowledge that if he doesn't keep his eyes on the road while driving, an accident may ensue even if he doesn't intend it. Here the bus driver has knowledge, but may have no intention to commit an accident.

4. Negligence -

Negligence is of two kinds –

1. **Advertent negligence** - It is also known as , rashness or recklessness or willful negligence. It is known as negligence where risk is foreseen yet the risk is undertaken foolishly by thinking no bad consequence shall result. This is common in rash driving wherein the driver in a hurry knows that he is not driving in a proper manner yet takes the risk thinking no bad consequence will result. If an accident ensues the driver is liable for advertent negligence or rashness or recklessness. This is also known as willful negligence. The expression advertent means avoidable. The person knows he can avoid this conduct by refraining from it, yet he goes along to bear the risk in a devil may care attitude. This is known as advertent negligence.

2. **Inadvertent negligence** - It means absence of duty to take care and due precaution. A doctor who leaves the scissors inside the patient's wound is liable for simple negligence because he did not have knowledge of them being inside when he sewed the wound. The doctor thus commits inadvertent or simple negligence because he did not have opportunity to prevent it lest by due care and caution which he failed to do.

5. **Motive** -

Motive is not a mens rea. Motive prompts a man to form an intention. Motive is not an essential element of crime. Motive however is relevant under the Evidence Act. Motive helps in indicating intention. While investigating, the police use motive to find out who must have committed the crime or who has the best reason to commit the crime. Motive helps the investigating agencies to narrow down on the accused. Motive is not the same as intention. Motive and intention are quite different from each other even though they appear to be similar.

For example, when one feels hungry the motive is to satisfy hunger by eating. Whereas the intention may be to steal bread if one doesn't have money to pay for it. This is the difference between motive and intention.

Group Liability

Sections 34 and 149 are the relevant provisions of group liability in the Indian Penal Code. **Section 34** defines common intention, whereas Section 149 defines the liability of group acting in the prosecution of a common object.

Section 34: Acts Done by Several Persons in Furtherance of Common Intention - According to Section 34, when a criminal act is done by several persons in furtherance of 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.

Objective of Section 34 - Section 34 lays down only a rule of evidence and does not create a substantive offence. This section is intended to meet cases in which it may be difficult to distinguish between the acts of the individual members of a party or to prove exactly what part was taken by each of them in furtherance of the common intention of all. This section really means that if two or more persons intentionally do a thing jointly, it is just the same as if each of them has done it individually. The reason why all are deemed guilty in such cases is that the presence of accomplices gives encouragement, support and protection to the person actually committing an act.

Elements of Section 34 - To attract the application of Section 34, the following conditions must be satisfied -

1. **Some Criminal Act** - 'Criminal act' used in section 34 does not refer to individual acts where a crime is committed by a group of persons. Where a crime is committed by several persons in furtherance of common intention of all of them, each of them doing some act, similar or diverse, big or small shall be liable for that act. 'That act' refers to the 'criminal act' used in section 34 which means the unity of criminal behaviour which results in something for which an individual would be punishable if it were all done by himself alone in an offence.
2. **Criminal Act Done By Several Persons** - The criminal act in question must have been done by several persons i.e. by more than one person. The number of wrong doers should be at least two. Most importantly, if the criminal act was fresh and independent act springing wholly from the mind of the doer, the others are not liable merely because when it was done they were intending to be partakers with the doer in a different criminal act.

3. **Common intention** - The core of joint liability under Section 34 resides in the presence of a common intention to commit a criminal act in support of the common goal of all group members. The term 'common intention' means a prior concert, i.e. a meeting of minds and involvement of all group members in the execution of that plan. The acts performed by each participant may vary in personality but must be carried out with the same common intention.

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

4. **Participation in the Criminal Act** - Participation in a criminal act of a group is a precedent condition for fixing joint liability and there must be some overt act indicative of a common intent to commit an offense. The law requires the accused to be present on the spot during the crime and participate in its commission; it is sufficient if he is present somewhere nearby.

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

Section 149 Common Object - It runs as under: "If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the assembly, is guilty of that offence."

Elements Of Section 149 - The essence of offence under Section 149 is assembly of several (five or more) persons having one or more of the common objects mentioned in Section 141 and it could be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence. Section 149 creates joint liability of all members of an unlawful assembly for criminal act done by any member in prosecution of the common object of the said assembly. So the essential ingredients of Section 149 are –

1. There must be an unlawful assembly, as defined in Section 141;
2. Criminal act must be done by any member of such assembly;
3. Act done is for prosecution of the common object of the assembly or such which was likely to be committed in prosecution of the common object;

4. Members have voluntarily joined the unlawful assembly and knew the common object of the assembly.
5. Mere presence and sharing of common object of the assembly makes a person liable for the offence committed even if he had no intention to commit that offence.

Scope of Section 149 - The Section is divided into two parts-

1. **In Prosecution of The Common Object** - The words “in prosecution of the common object” show that the offence committed was immediately connected with the common object of the unlawful assembly of which accused were members. The act must have been done with a view to accomplish the common object of the unlawful assembly.

In **Queen v. Sabid Ali**, 11 BLR 347 the words “in prosecution of the common object” were construed as meaning “with a view to achievement of the common object”.

2. **Members Knew To Be Likely** - The second part relates to a situation where the members of the assembly knew that the offence is likely to be committed in prosecution of the common object. A thing is likely to happen only when the situation is like “it will probably happen” or “may very well happen”. The word ‘knew’ indicates a state of mind at the time of commission of an offence, knowledge in this regard must be proved. The word ‘likely’ means some clear evidence that the unlawful assembly had such a knowledge.

Difference between Common Intention and Common Object -

1. Under Section 34 number of persons must be more than one. Under Section 149 number of persons must be five or more.
2. Section 34 does not create any specific offence but only states a rule of evidence. Section 149 creates a specific offence.
3. Common intention required under Section 34 may be of any type. Common object under Section 149 must be one of the objects mentioned in Section 141.
4. Common intention under Section 34 requires prior meeting of minds or pre-arranged plan, i.e. all the accused persons must meet together before the actual attack participated by all takes place. Under Section 149, prior meeting of minds is not necessary. Mere membership of an unlawful assembly at the time of commission of the offence is sufficient.
5. Under Section 34 some active participation is necessary, especially in a crime involving physical violence. Section 149 does not require active participation and the liability arises by reason of mere membership of the unlawful assembly with a common object.

Common Intention May Also Develop On The Spot - Exception To The General Rule Generally, it is said that, “a common object may develop on the spot but a common intention cannot”. But, in certain circumstances common intention also may develop suddenly on the spot and such common intention may be inferred from the facts and circumstances of the case and conduct of the accused persons. Following cases are illustrative on this point-

In **Kripal Singh v. State of U.P.**, AIR 1954 SC 706; the Supreme Court held that a common intention may develop on the spot after the offenders have gathered there. A previous plan is not necessary. Common intention may be inferred from the conduct of the accused and the circumstances of the case.

In **Rishi Deo Pandey v. State of U.P.**, AIR 1955 SC 331; ‘A’ and ‘B’ two brothers were seen standing near the cot of the victim who was sleeping. One of them was armed with a ‘gandasa’ and another with a ‘lathi’, when a hue and cry was raised by the two brothers ran together, and both of them were seen running from the bed room of the victim. The victim died of an incised wound on the neck,

which according to medical evidence was necessarily fatal. The court found that the two brothers shared the common intention to cause death. It was held that common intention may develop on the spot also.

In **Khacheru Singh v. State of U.P.**, AIR 1956 SC 546; several persons attacked a man with lathis when he was passing through a field. The man eluded them and they gave chase, on overtaking him they once again attacked him. It was held that, these facts were sufficient to prove that the accused persons had been actuated with the common intention to assault the victim. Conviction under Section 326 read with Section 34 was sustained.

In **Sheoram Singh v. State of U.P.**, AIR 1972 SC 2555; the Supreme Court held that common intention may develop suddenly during the course of an occurrence, but still unless there is cogent evidence and clear proof of such common intention.



Stages of Crime and Inchoate Crime

Stages of crime

1. **Intention (Mens Rea)** - This stage is a significant progress from mere deliberation towards actual commission of the crime. At this stage, the person has made up his mind to actually implement or execute his devious plans. There is an intention to cause harm but he hasn't yet taken any action that manifests his intention. Further, there is no way to prove an intention because even the devil can't read a human mind. Thus, this is not considered a crime. For example, intention to kill anyone is not a crime in itself. However, it is an essential ingredient of crime because without intention to cause harm, there can be no crime. On the other hand, even a thoughtless act, without any deliberation, can be a crime if there is an intention to cause harm.
2. **Preparation** - At this stage, the intention to cause harm starts manifesting itself in the form of physical actions. Preparation consists of arranging or building things that are needed to commit the crime. For example, purchasing poison. However, it is possible for the person to abandon his course of action at this stage without causing any harm to anyone. In general, preparation is not considered a crime because it cannot be proved beyond doubt the goal of the preparation. For example, purchasing a knife with an intention to kill someone is not a crime because it cannot be determined whether the knife was bought to kill someone or to chop vegetables.
However, there are certain exceptions where even preparation for committing an offence is crime. These are -
 - **Sec 122** - Collecting arms with an intention of waging war against the Govt. of India.
 - **Sec 126** - Preparing to commit depredation on territories of any power in alliance or at peace with the Govt. of India.
 - **Sec 235** - Counterfeiting operations for currency. Sec 399 - Preparation to commit dacoity.
3. **Attempt** - This stage is attained by performing physical actions that, if left unstopped, cause or are bound to cause injury to someone. The actions clearly show that the person has absolutely no intention to abandon his plan and if the person is left unrestricted, he will complete the commission of the crime. Since the intention of the person can be determined without doubt from his actions, an attempt to commit a crime is considered a crime because if left unpunished, crime is bound to happen and prevention of crime is equally important for a healthy society.
4. **Actual commission of the offence** - This is the final stage where the crime is actually done.
5. **Distinction between Preparation and Attempt**
There is a very fine line between preparation and attempt. While IPC does not define either of them, it is very important to distinguish between them because attempt is a crime but preparation is not. Both, Preparation and Attempt are physical manifestations of the criminal intention. But attempt goes a lot farther than preparation towards the actual happening of crime. While in Preparation, there is a possibility that the person may abandon his plan, but attempt leaves no room for that. For example, keeping a pistol in a pocket and looking for the enemy to kill is a preparation because one can abandon the plan anytime, but taking out the piston and pulling the trigger is an attempt because it leaves no room for turning back.

Thus, in general, Preparation involves collecting material, resources, and planning for committing an act while attempting signifies a direct movement towards commission after the preparations are made.

Ordinarily, to constitute an attempt the following elements are needed

1. mens rea to commit the crime
2. an act which constitutes the actus reus of a criminal attempt
3. failure in accomplishment

In the case of *R vs Cheesman 1862*, Lord Blackburn identified a key difference between the two. He says that if the actual transaction has commenced which would have ended in the crime if not interrupted, there is clearly an attempt to commit the crime.

Abetment

According to **section 107**, A person abets the doing of a thing if he

1. Instigates another to do that thing, or
2. Conspires with others in the doing of the act or
3. Intentionally aids the doing of that thing

Example - A, a police officer, with a Warrant is empowered to arrest Z. B who knew this, instigated A to arrest C who he mis-represented as Z. A arrests C. B abets. General advice is not an abetment.

Instigation means the instigator actively suggests, or stimulates by any means i.e., by words, hints, encouragement etc.

Abetment by conspiracy - For this there should be at least two persons, engaged in commission of an act in pursuance of conspiracy and there should be the doing of the thing.

Abetment by aid - The person aids to facilitate commission of an offence. It should be intentional aid. Example supplying food to facilitate an offence. A police man A, who stands and does nothing to prevent torture of B by C, is guilty of abetment by omission example, noninterference.

Abettor

According to section 108, an abettor is a person who abets:

- Either the commission of the offence or
- The commission of an act which would be an offence if done by a person capable by law of committing the offence with intention or knowledge of that of the abettor.

Scope -

1. Abetment of an illegal omission amounts of an offence
2. Abetted act need not be committed, to constitute an offence
 - The abetment of an offence is an offence. Hence, an abetment of such abatement is also an offence. A instigate C to murder D. B accordingly instigates C who commits murder of D. B is guilty and punishable under 302 I.P.C. A has instigated. Hence, A is also liable for the same punishment. It is not necessary that the person abetted should be capable of committing a crime. A child, a lunatic etc. may be used by the abettor to do the crime. In such cases, the abettor is guilty of the offence committed through the child, lunatic etc. 'A with guilty intention abets a child of 5 years to set fire to a house of B. B is grievously hurt. A is liable.

Criminal Conspiracy(Section 120 A and B)

It is an agreement by two or more persons to do an illegal act or to do any legal act by illegal means. But when the agreement contemplates the commission of the offence, and some act is done by one or more persons, then the offence is completed.

It is immaterial whether the illegal act is the ultimate object or incidental thereto. This section was introduced in 1913. The gist of the offence is that the agreement must be to break the law whether or not any act is done in pursuance thereof. An agreement to commit the offence makes criminal conspiracy completed. But, if the agreement is to do a legal act by illegal means, there must be some act done by one or more persons, to the conspiracy, e.g., Recovery of a debt by illegal use of force or assault.

Hussainumar V. Dalip Singh

The Supreme Court held that agreement was essential and there should be a common design & a common intention in furtherance of the common design. All need not agree on a single illegal act. There may be the commission of a number of acts.

If conspirators commit several offences, all of them will be liable even if some of them had not participated in the commission of the offence. Criminal conspiracy is an independent offence punishable under Sn. 120 B of the I. P. C. (6 months, fine or both).

Sedition

According to **section 124 A**, "A person who by words, (spoken or written), by signs or by visible representation brings or attempts to bring hatred or contempt or excites disaffection towards the Government of India, is guilty of sedition." He is punishable with imprisonment which may extend to three years, or fine or both. The explanation states that disaffection includes disloyalty and ill feelings of enmity.

Mere criticism of Government or its measures or the administrative bodies or seeking alteration of lawful means is not sedition. The leading cases are; R.V. BalGangadharTilak R.V. Sadasiva Narayan R.V. DhirendranathSen R.V. Jogendra Chandra Bose Criticism of the Government or its measure is part of democratic institutions. But, what constitutes sedition is the Animus of the person with the words, calculated to bring the popular Government to hatred or contempt.

Everything should be decided according to the time and place of the commission of the act. Publication is of course an essential ingredient.

The section is not against the freedom of speech and expression guaranteed under **Art. 19 (1) (a)** of the Constitution.

The words excite disaffection, includes the tendering or intention to create disorder or disturbance of public peace by resort to violence. **Kedarnath V. State of Bihar.**

Hence, according to the Supreme Court, what is punishable under **Section 124 A**, is therefore not a criticism of the Govt. in power, but utterances which either intend or have a tendency to subvert the existing Govt. by means of violence.

Attempt

Attempt is the third or the penultimate stage of a criminal offence. Attempt is generally punishable under **Section 511** of the IPC. Whereas specific sections such as 307, 308 and 309 specifically cast the liability of attempt to commit murder, attempt to commit culpable homicide and attempt to commit suicide.

Asgarali Pradhania vs. Emperor

Asgarali was a married man with a wife and two children. He was having an affair with a neighbor woman who was a divorcee. Asgarali promised marriage to her and she agreed to have sexual relations with him. After a few months she became pregnant with Asgarali's child. Asgarali became increasingly nervous and requested the woman to abort the child, but she refused and asked him to come good on his promise of marriage. Asgarali went to medical quack and purchased Copper Sulphate tablets for aborting the child.

The next day he asked her to ingest the Copper Sulphate tablets but she refused. Upon which Asgarali held her throat and made her ingest a few tablets. The issue arose whether Asgarali had attempted to cause miscarriage u/s. 312/511 of the IPC. The Doctors informed the court that Copper Sulphate cannot cause an abortion. Attempt takes place when the accused does everything from his own side, yet fails due to some extraneous reason in the commission of an offence. Here, as Copper Sulphate is harmless, the accused cannot be held liable for attempting to commit miscarriage as such miscarriage was impossible. The accused was therefore acquitted.

Queen vs. Paterson

H and W were husband and wife respectively. He wanted to marry a second time with X. When the wife, W found about the wedding cards of her husband H's, marriage with X, she prosecuted her husband of attempt to commit bigamy i.e. u/s. 494/511. According to the court, the act of getting wedding cards published was only preparation and not attempt. Preparation for marriage is not punishable. The husband was acquitted.

Abhayanand Mishra vs. State of Bihar

Abhayanand Mishra wanted to take admission in Patna University. However he did not have the requisite Class XIIth qualifications. Abhayanand deposited forged mark sheets to Patna University upon which Admit Card for an entrance test was dispatched to him. However, the University clerk discovered his fraud and informed the police. Abhayanand was prosecuted under an attempt to cheat i.e. u/s. 420/511 of the IPC. The court decided that Abhayanand had indeed attempted cheating and it was not merely a preparation for cheating since he had done everything from his own side to cheat the University. He had thus crossed over from preparation to attempt. He was held guilty of attempting to cheat.

Om Prakash vs. State of Punjab

Bimla married Om Prakash in the year 1951. They used to fight a lot and Bimla left her husband. However, on assurance of Om's parents she returned back to her marital home. When she returned to her marital home, the husband acted very sweetly for a few days but after some time became viciously abusive towards her. He locked her up in the bathroom for days without giving her any food for weeks. One day Bimla found the door unlocked and escaped and went to a nearby hospital. The Doctor wrote down that she was so emaciated that her cheeks were hollow, she had no strength or muscles left, her bones were protruding and she was looking like a dead body. The issue arose was whether the husband had attempted to murder his wife. According to the court, the accused Om Prakash did everything in his own capacity to bring about Bimla's death by starving her, and she did not die because of an extraneous circumstance, wherein she escaped death by sheer luck. S. 307 Illustration (d) provides that attempt to murder need not be the penultimate act. Therefore, Om Prakash was held liable for attempt to murder u/s. 307 of the IPC.

Attempt to commit murder

Section 307 of IPC states that whoever does any act with intention or knowledge, and under such circumstances, that, if by that act he caused death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act the offender shall be either liable to imprisonment for life.

This means that if a person intentionally does something to kill another and if the other person is not killed, he would be liable for attempt to murder. However, his action must be capable of killing. For example, if a person picks up a pebble and throws it on someone saying, "I will kill you", it is not attempt to murder because it is not possible to kill someone with a pebble. But if someone swings a thick lathi and misses the head of another person, it is attempt to murder.

Illustrations -

1. A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.
2. A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.
3. A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.
4. A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section.

Is Injury Necessary

From the wordings of this section, it is clear that a person is liable under this section even if no injury is caused to anyone. However, if hurt is caused, the punishment is more severe. Further, as held in the case of the State of Mah. Vs Balram Bama Patil 1983, SC held that for conviction under sec 307, it is not necessary that a bodily injury capable of causing death must be inflicted but the nature of the injury can assist in determining the intention of the accused. Thus, this section makes a distinction between the act of the accused and its result.

Whether act committed must be capable of causing death

In Vasudev Gogte's Case 1932, the accused fired two shots at point blank range at the Governor of Bombay. However, it failed to produce any result because of defects in ammunition or intervention of leather wallets and currency. It was held that to support conviction under this section the accused must have done the act with intention or knowledge that but for any unforeseen intervention, it would cause death. Thus, he was held guilty.

Penultimate Act not necessary

In the case of Om Prakash vs State of Punjab, AIR 1961, SC held that a person can be held guilty under this section if his intention is to murder and in pursuance of his intention he does an act towards its commission, even if that act is not the penultimate act. As per J B K Sharma, the intention of the culprit is the key and it must be gathered from all the circumstances and not merely from the location, number, and type of injury.

Attempts are dealt with in IPC in three ways

Some sections such as 196 and 197, deal with the offence as well as an attempt for that offence. Some sections such as 307 and 308 deal exclusively with an attempt of an offence.

The attempts for offenses that are not dealt with in above two are covered by section 511. Thus, a case of attempt to murder may fall under section 307 as well as section 511. There is a conflict of opinion among the high court's regarding this matter.

In the case of R vs Francis Cassidy 1867, Bombay HC held that section 511 is wide enough to cover all cases of attempt including attempt to murder. It further held that for application of section 307, the act might cause death if it took effect and it must be capable of causing death in normal circumstances. Otherwise, it cannot lie under 307 even if it has been committed with intention to cause death and was likely, in the belief of the prisoner, to cause death. Such cases may fall under section 511.

In the case of Queen vs Nidha 1891, Allahabad HC expressed a contrary view and held that sec 511 does not apply to attempt to murder. It also held that section 307 is exhaustive and not narrower than section 511.



General Exceptions

According to **Section 6, IPC**, every offence is subject to General Exceptions though these exceptions are not repeated in such penal provisions. This implies that General Exceptions have to be read with every offence irrespective of their absence from the said penal provision.

The general rule is that it is the duty of the prosecution to prove the prisoner's guilt beyond doubt and if there is any reasonable doubt then the benefit of doubt is given to the accused. The prosecution must prove beyond doubt that the accused performed the act with intention and with full knowledge of the consequences of the act. This is based on the maxim, *actus non facit reum, nisi mens sit rea*, which means that mere doing of an act will not constitute guilt unless there be a guilty intent.

IPC defines certain circumstances in which it is considered that the accused had no evil intention. These circumstances are nothing but exceptional situations that negate mens rea. They create a reasonable doubt in the case of the prosecution that the act was done by the accused with evil intention. However, it is the burden of the accused to prove that such circumstances existed at the time of crime and the presumption of such circumstances is against the accused. If the accused proves that such circumstances indeed existed, then his act is not considered a crime.

In the case of *K M Nanavatis State of Maharashtra AIR 1962*, it was held that it is the duty of the prosecution to prove the guilt of the accused or the accused is presumed to be innocent until his guilt is established by the prosecution beyond doubt.

Upon close examination of **chapter 4 IPC**, it can be seen that it defines two types of circumstances - one that make the **act excusable (Sec 76 to 95)**, which means that the act itself is not an offence, **and second (Sec 96 to 106) that makes the act justifiable**, which means that although the act is an offence but it is otherwise meritorious and the accused is justified by law in doing it.

Mistake of fact, accident, and act of child, insanity, and intoxication - All these cases are defined in General Exceptions of IPC and they make the act of the accused excusable. The presence of any of these conditions is a good defense because they negate the mens rea. Let us look at them one by one.

Mistake of fact

Sometimes an offence is committed by a person inadvertently. He neither intends to commit an offence nor does he know that his act is criminal. He may be totally ignorant of the existence of relevant facts. The knowledge of relevant facts is what really makes an act evil or good. Thus, if a person is not aware of the facts and acts to the best of his judgment, his act cannot be called evil. Under such circumstances he may take the plea that his acts were done under the misconception of the facts. Such a mistake of fact is acknowledged as a valid defense in section 76 and 79 of IPC.

Meaning of Mistake

A mistake means a factual error. It could be because of wrong information, i.e. ignorance or wrong conclusion. For example, an ambulance driver taking a very sick patient to a hospital may be driving faster than the speed limit in order to reach the hospital as soon as possible but upon reaching the hospital, it comes to his knowledge that the patient had died a long time back and there was no need to drive fast. However, since he was ignorant of the fact, breaking the speed limit is excusable for him. A person sees someone remove a bulb from a public pole. He thinks the person is a thief and catches him and takes him to the police only to learn that the person was replacing the fused bulb. Here, he did the act in good faith but based on the wrong conclusion so his act is excusable.

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

Illustration -

- A, a soldier fires on a mob upon orders from his superior, in conformity with the commands of the law. He has committed no offence.
- A, an officer of the court of justice, upon orders by that court to arrest Y, after due inquiry, believing Z to be Y, arrests Z. He has committed no offence.

Section 79 - Act done by a person justified or by a mistake of fact believing himself justified by law - Nothing is an offence which is done by the a person who is justified by law , or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, in doing it.

Illustration -

- A sees Z doing what appears to be murder. A, in the exercise to the best of his judgment, exerted in good faith of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence though it may turn out that Z was acting in self-defense.

Difference Between Sec 76 and 79

The only difference between sec 76 and 79 is that in section 76, a person believes that he is bound by a certain act while in 79, he believes that he is justified by law to do a certain act. For example, a policeman believing that a person is his senior officer and upon that person's orders fires on a mob. Here, he is bound by law to obey his senior officer's orders. But if a policeman believes that a person is a thief, he is not bound by law to arrest the person, though he is justified by law if he arrests the person.

To be eligible in either of the sections, the following conditions must be satisfied -

- It is a mistake of fact and not a mistake of law that is excusable.
- The act must be done in good faith.

To be excusable, the mistake must be of a fact and not of law. A mistake of fact means an error regarding the material facts of the situation, while a mistake of law means an error in understanding or ignorance of the law. A person who kills someone cannot take the defense of mistake saying he didn't know that killing is a crime because this is a mistake of law and not of fact. But, as in *Waryam Singh vs Emperor AIR 1926*, he can take a defense of mistake saying he believed that the killed person was a ghost because that would be a mistake of a fact.

R vs Prince 1875 is an important case where a person was convicted of abducting a girl under 18 yrs of age. The law made taking a woman under 18 from her guardian without her guardian's permission a crime. In this case, the person had no intention to abduct her. She had gone with the person with consent and the person had no reason to believe that the girl was under 18. Further, the girl looked older than 18. However, it was held that by taking a girl without her guardian's permission, he was taking a risk and should be responsible for it because the law made it a crime even if it was done without mens rea. In this case, five rules were laid down which are guidelines whenever a question of a mistake of fact or mistake of law arises in England and elsewhere -

- When an act is in itself plainly criminal and is more severely punishable if certain circumstances coexist, ignorance of the existence is no answer to a charge for the aggravated offence.
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