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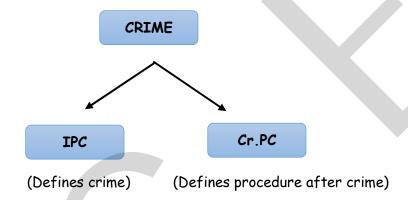
# JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

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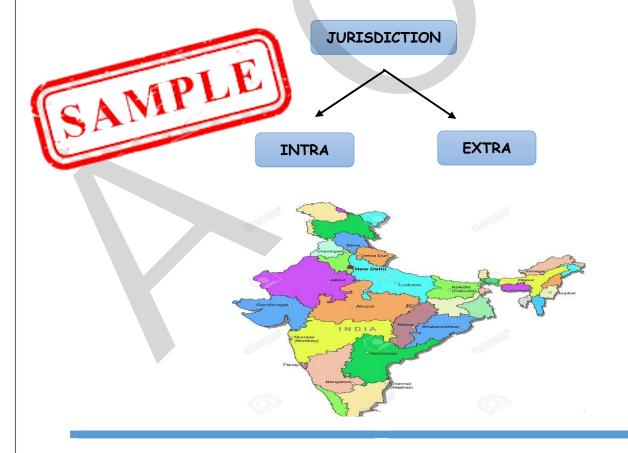
# INDIAN PENAL CODE, 1860

#### **INTRODUCTION**

Indian Penal Code defines various crimes and their penalties which are applicable in India. Every crime is divided into two procedures.



#### **★ WHAT IS THE JURISDICTION OF IPC?**



- 1. This code is applicable to whole of India.
- 2. If crime takes place within India then it is known intra territorial jurisdiction and if takes place outside India then it's known as extra territorial.
- 3. If crime is committed by Indian or foreigner in India then IPC is applicable.
- 4. If crime is committed within Indian territorial water limits of India then also IPC is applicable.
- 5. If crime is committed on any ship or aircraft owned by India or registered in India then IPC is enforceable.

#### **UEFINE EXEMPTED CATEGORIES UNDER JURISDICTION OF IPC?**

Following categories are exempted from IPC.

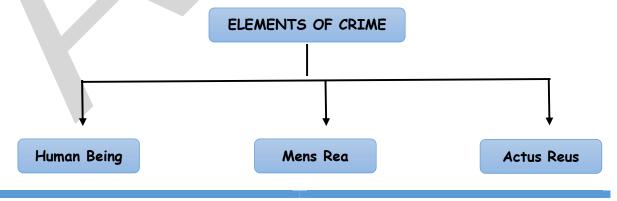
- 1. Constitution of India protects criminal proceedings against the President or Governor of a state in any court, during the time they hold office.
- 2. Foreign sovereigns are exempt from criminal proceedings in India.
- 3. This immunity is also enjoyed by the ambassadors and diplomats of foreign countries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

#### ■ DEFINE ADMIRALTY JURISDICTION UND R IPC.

The jurisdiction of a court over offences committed in high seased on the precept that a ship in the high seas is consider a most ingle 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'.

#### ■ WHAT ARE THE ELEMENTS OF CRIME?

In every crime there are main three elements.

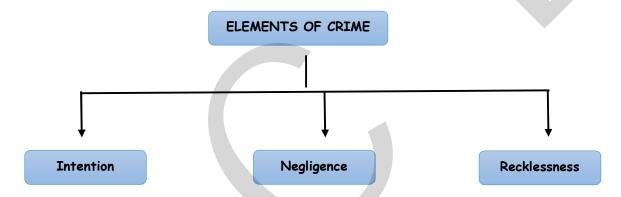


Human Being - Wrongful act must be committed by a human being. The human being must be under legal obligation to act in particular manner and be physically and mentally fit for conviction.
 Mens Rea - It means act must be performed with guilty mind and intention. It is based on maxim - actus non facitreum, nisi mens sit rea.
 Actus Reus - It means act must be wrongful in nature under any law of India.

#### # EXPLAIN SUPREME COURT GUIDELINES FOR ELEMENTS OF CRIME.

If it's not unlawful then it is not punishable.

Supreme Court stated guidelines for elements of crime which is divided into three categories and it was decided in the case of Girjanath v/s State.



- Intention It is defined as the purpose of the act. It indicates the position of mind, condition of someone at particular of commission of offence and also will of the accused selects of its unit vful conduct.
- 2 Negligence is not taking cite, where the is a duty to take care. It indicates a rate of find where there is sence of a desire to cause a particular con equence.
- Recklessness the possibility and consciously takes the risk.

#### **WHAT IS CORPORATE BODY AND MENS REA UNDER IPC?**

According to 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

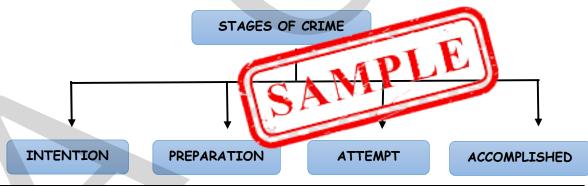
prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offences.

# ₩ WHAT ARE THE EXCEPTIONAL CASES WHERE THERE IS NO NEED OF MENS REA & STILL IT'S PUNISHABLE UNDER IPC?

- Social welfare They are many laws in India which indicates that even if there is no intention of wrongful act, person is liable for punishment. Such laws are passed for public safety and security. For example Restaurant related laws.
- Difficult to prove mens rea In petty cases court can check mens rea and they can directly imposed penalty. For example- Pick pocketing.
- Public safety 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.
- Violation of law without knowledge 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. It is based on principle of ignorance of law is not an excuse.

#### **₩** WHAT ARE THE STAGES OF CRIME?

Crime under IPC is divided into 4 categories and they are as follows.



- Intention Intention is the conscious exercise of mental faculties of a person to do an act for the purpose of accomplishing or satisfying a purpose. The criminal court does not punish a man for mere guilty intention because it is very difficult for the prosecution to prove the guilty intention of a man.
- 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.

- 3 Attempt Attempt has been called as a preliminary crime. Section 511 provides punishment for attempting to commit an offence.
- Accomplished 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.

#### **UPPLY** DEFINE DIFFERENT CATEGORIES UNDER ATTEMPT?

Attempt is divided into 4 categories.

Those sections in which the commission of an offence and the attempt to commit are dealt within the same section, the extent of the punishment being the same for both the offence as also the attempt. Examples waging war against the Government of India.

#### ATTEMPT / COMMISSION - SAME SECTION & SAME PENALTY

Those offences in which the attempt to commit specific offences are dealt side by side with the offences themselves, but separately, and separate punishments have been provided for the attempt other than that provided for the offences which have been completed. The examples of this category are attempt to commit an offence punishable with death or imprisonment for life including robbery, murder etc.

#### ATTEMPT / COMMISSION - DIFFERENT SECTION & DIFFERENT PENALTY

3 Attempt to commit suicide specifically provided under section 309 IPC.

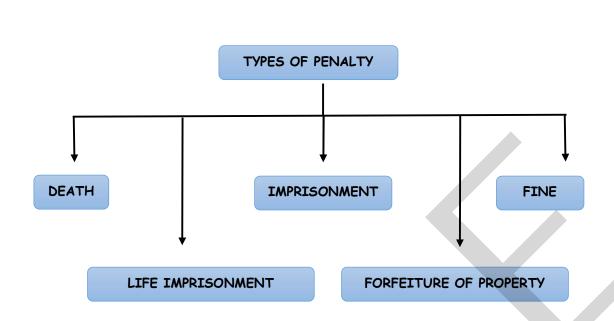
# ATTEMPT - PUNISHABLE COMMISSION - NOT PUNISHABLE

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. If an offence is committed publicly then its punishable and if its committed in private then its not punishable.

#### **EXPLAIN ALL TYPES OF PENALTIES UNDER IPC.**



6



1	Death - It involves the judicial killing or taking the life of the accused as a
	form of punishment. For example, death penalty is given under rape or giving
	false evidence upon which, an innocent person suffers death.
2	Life Imprisonment - Imprisonment for life meant rigorous imprisonment, that
	is, till the last breath of the convict.
3	Imprisonment - There are two types. First type is simple imprisonment and
	another type is Rigorous imprisonment (Imprisonment with hard labour work)
4	Forfeiture of property - The Courts may order for forfeiture of property of
	the accused in certain occasions. The courts are empowered to forfeit
	property of the guilty under section 126 and section 127 of the IPC.
5	Fine - It is monetary penalty.

#### **EXPLAIN CRIMINAL CONSPIRACY. (SECTION 120A AND 120B)**

When 2 or more person commits any wrongful act then it is known as criminal conspiracy. If act is not illegal but if it is done with illegal means then also it is treated as wrongful in nature.

#### NCT DELHI V/S NAVJOT SANDHU

It is a case of parliament attack for the year 2005. Navjot Sandhu was wife of one of the deceased terrorist. She was not involved in attack directly or indirectly but had helped one of the conspirators to flee to a safer place after incident. It was claimed that she must be held guilty for attack but Court stated that there was no involvement of Navjot Sandhu directly or indirectly and therefore she is only responsible for helping criminals and not any other crime.

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#### PENALTY

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.

#### # CRIMINAL MISAPPROPRIATION OF PROPERTY. (SECTION 403 AND 404)



SECTION 403	SECTION 404
It deals with criminal misappropriation	It deals with criminal misappropriation of
of property.	property in case of death of person.
Whoever dishonestly misappropriates or	Whoever dishonestly misappropriates or
converts to his own use any movable	converts to his own use property, knowing
property, shall be punished.	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.
Punishment is imprisonment of either	Punishment is imprisonment of either
description for a term which may extend	description for a term which may extend
to 2 years, or with fine, or with both.	to 3 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 7 years.
Example - A and B, being, joint owners	Example - Z dies in possession of
of a horse, A takes the horse out of B's	furniture and money. His servant A,
possession, intending to use it. Here, as	before the money comes into the



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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.

possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

#### # EXPLAIN CRIMINAL BREACH OF TRUST. (SECTION 405)

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

- 1. The accused must be entrusted with the property.
- 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 of any direction or any legal contract.

#### SURYALAKSHMI COTTON MILLS LTD. V/S RAJVIR INDUSTRIES LTD.

It was held that a cheque is property and if the said property has been misappropriated or has been used for a purpose for which the same had not been handed over, a case under Section 406 of the Code may be found to have been made out.

PENA	ALTY
Criminal breach of trust	Imprisonment of either description for
	a term which may extend to 3 years, or
	with fine, or with both.
Criminal breach of trust by carrier (Like	Imprisonment of either description for
warehouse keeper)	a term which may extend to 7 years and
	fine.
Criminal breach of trust by servant	Imprisonment of either description for
	a term which may extend to 7 years and
	fine.
Criminal breach of trust by public	Imprisonment of either description for
servant	a term which may extend to 10 years
	and fine.

#### **■ DEFINE CHEATING ALONG WITH ITS PENALTY. (SECTION 415)**

The essential ingredients of the offence of cheating are as under-

- 1. Deception of any person. Deception means making somebody believe or being made to believe something which is not true.
- 2. Fraudulently or dishonestly inducing that person to deliver any property to any person with an intention to create any harm or any type of damage.

#### ARYA V/S STATE OF PUNJAB

It was held that negligence in duty without any dishonest intention cannot amount to cheating. A bank employee when on comparison of signature of drawer passes a cheque there may be negligence resulting in loss to bank, but it cannot be held to be cheating.

#### PENALTY

Section 417 provides that whoever cheats shall be punished with imprisonment of either description for a term which may extend to 1 year, or with fine, or with both.

#### **₩** WHAT IS CHEATING BY PERSONATION? (SECTION 416)

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. The offence is committed whether the individual personated is a real or imaginary person.

#### ■ WHAT IS FRAUDULENT REMOVAL OF PROPERTY TO PREVENT DISTRIBUTION AMONG CREDITORS? (SECTION 421)

The essential ingredients are as under-

- 1. That the accused removed, concealed or transferred, it caused it to be transferred to someone.
- 2. That such a transfer was without ad putte conideration.
- 3. That the accused thereby intended prevent or become the was thereby likely to prevent the distribution of that property according to law among his creditors or creditors of another person.
- 4. That he acted dishonestly and fraudulently.

#### **PENALTY**

Section 417 provides that whoever cheats shall be punished with imprisonment of either description for a term which may extend to 2 years, or with fine, or with

both.

#### **₩** WHAT IS 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.

#### PARMINDER KAUR V/S STATE OF UP

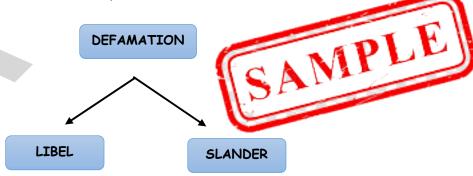
It was has held that mere alteration of document does not make it a forged document. Alteration must be made for some gain or for some objective.

#### PENALTY

Section 465 provides that whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to 2 years, or with fine, or with both.

# ₩ WHAT IS DEFAMATION? EXPLAIN TYPES OF DEFAMATION ALONG WITH EXCEPTIONAL CASES. (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, except in the cases hereinafter excepted, to defame that person.



Libel - defamatory statement is made in some permanent and visible form, such as writing, printing or pictures.

2 Slander - it is made in spoken words or in some other transitory form, whether visible or audible, such as gestures or inarticulate but significant sounds.

#### **PENALTY**

Section 500 provides that whoever commits defamation shall be punished with imprisonment of either description for a term which may extend to 2 years, or with fine, or with both.

Following are the exceptional cases of defamation.

- Publishing true information If any person is publishing any true information about any information with proper evidence and documents then it cannot be treated as defamation.
- 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.
- 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.
- 4 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. (Book review or movie review)
- Imputation made in good faith by person for protection of his or other's interests It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.
- Accusation preferred in good faith to authorised person It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

#### # EXPLAIN ANY 10 EXCEPTIONAL CASES WHERE IPC IS NOT APPLICABLE.

- 1 Act of Judge when acting judicially If any judge in his authority in good faith believing authorized by law commits any act, no offence is attracted.
- Act done pursuant to the judgment or order of Court 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. (Person who is performing encounter or person who is giving death penalty)
- Act of a child under seven years of age If any child who is below 7 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.
- Act of a child above 7 and under 12 of immature understanding 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 punish
- Act of a person of unsound minimum of ning done by a person of unsound mind is an offence if a settleme of doing it by regard of soundness of mind, is incapable of knowing the nature of the act, or the doing what is either wrong or contrary to la
- Act of a person incap. Judgment by reason of intoxication caused against his will 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.
- Act not intended to cause death, done by consent in good faith for person's benefit Nothing, which is not intented 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. 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.
8	Act done in good faith for benefit of a person without consent - 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. Example- To damage someone's property to prevent it from fire.
9	Accident in doing a lawful act - 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. (Accident committed by train driver)
10	Communication made in good faith - 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.

#### THE END



# **ABOUT THE AUTHOR**

Prof. JIMIT MARADIA is a Law graduate & Company Secretary. He has been associated as a Legal Advisor for various companies and worked for various legal firms. His experience ranges in different fields like Arbitration, Non Compliance matters, Labour Law matters, Corporate & Matrimonial matters.

He is teaching Law subjects to students of CS, CA, CMA & LLB. He is also teaching Law at different Law colleges as a visiting faculty. He is currently teaching at ACE TUTORIALS (Mumbai) for CS course.



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