

Chapter 12

The Bharatiya Nyaya Sanhita, 2023



1. Introduction to Crime

- Crime is a **social phenomenon** i.e., 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**.
- The concept of **crime changes from time to time** and as per the society.

2. Difference between Criminal and Civil Wrong

The difference between a **criminal offence** and a civil wrong is that while the former is considered a **wrong against the society** because of their grave nature, a **civil wrong is a wrong done to an individual**.

	The Bharatiya Nyaya Sanhita, 2023
▪	An Act to consolidate and amend the provisions relating to offences and for matters connected therewith or incidental thereto.
▪	The Bharatiya Nyaya Sanhita replaces the IPC 1860.
▪	It defines acts which constitute an offence and lays down punishment for the same.
▪	The Bharatiya Nyaya Sanhita retains most offences from the IPC. It adds community service as a form of punishment.
▪	Organized crime has been added as an offence. It includes crimes such as kidnapping, extortion and cyber-crime committed on behalf of a crime syndicate. Petty organized crime is also an offence now.
▪	The Bharatiya Nyaya Sanhita, 2023 consist 20 Chapters and 358 Sections.
4.	Intra Territorial v/s Extra Territorial Jurisdiction of Bharatiya Nyaya Sanhita, 2023
	The geographical area or the subjects to which a law applies is defined as the jurisdiction of that law. 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. Thus, for most of the laws, the territorial jurisdiction of a law is the international boundary of that country.

Intra-territorial jurisdiction

Where a crime under any provision of SANHITA is committed within the territory of India the SANHITA 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 1 (3) of the Sanhita deals with Intra-Territorial Jurisdiction of the Courts

The section declares the jurisdictional scope of operation of the Sanhita 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 (Belief), nationality, rank, status or privilege. The Sanhita applies to any offence committed:

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

Note:—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. (Ignorance of Law is no Excuse)

Exemptions from Intra-Territorial jurisdiction of Sanhita

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 (protection) is also enjoyed by the ambassadors and diplomats of foreign countries who have official status in India.
4.	This protection is extended to all secretaries and political and military attaches, who are formally part of the missions.
	Extra-territorial jurisdiction
	Countries, however, also make laws that apply to territories outside of their own country. This is called the extra-territorial jurisdiction.
	Section 1(4) and section 1(5) of the Sanhita 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 Indian courts.
	According to section 1(4) 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.
	Section 1(5) expands on section 1(4), while at the same time clarifying that the

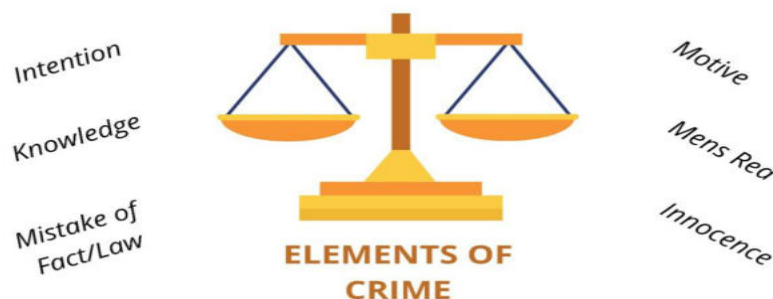
provisions of the Sanhita shall apply to first, in case of Indians, for any offence committed outside and beyond India; and second, in case of any person in any place without and beyond India for targeting computer resource located in India. (Computer Hacking)

Section 1(5) also talks about the applicability of Sanhita to any offence committed by any person on any ship or aircraft registered in India wherever it may be. (Indian Plane Hijacked in Nepal by Pakistani Terrorists)

5. Admiralty Jurisdiction

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'.

6. The Fundamental Elements of Crime



The basic function of criminal law is to punish the offender and to deter

	(discourage) 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.
	Case Law Girja Nath v State
	Supreme Court in Girja Nath v State said that mens rea is a loose term of

	elastic signification and covers a wide range of mental status and conditions the existence of which give criminal hue to actus reus.
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.
	A man may be held fully liable even when he has taken no part in the actual commission of the crime. For , if a number of people conspire to murder a person and only one of them actually shoots the person, every conspirator would be held liable for it. A person will also be held fully responsible if he has made use of an innocent agent to commit a crime.
7.	Forms of Mens Rea
	Intention, Negligence and recklessness are the important forms of mens rea.
1.	Intention
	<ul style="list-style-type: none"> ▪ 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 includes the specific intention includes the generic intention.
▪	For: 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.
2.	<u>Negligence</u>
▪	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.
▪	What amounts to reasonable care differs from thing to thing depending situation of each case. In criminal law, the negligent conduct amounts to means rea.
3.	<u>Recklessness</u>
	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.
	Note: -The mens rea or evil intent of the wrong-doer is indicated by the use of such words as intentionally, voluntarily, fraudulently, dishonestly, maliciously, knowingly etc.
8.	Exceptional cases where mens rea is not required
1.	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, <i>hotels, restaurants and chemists</i> establishments. The same is true of cases under the <i>Motor Vehicles Act and the Arms Act</i> , offences against the State like waging of war, sedition (incitement to rebellion) etc.
2.	<i>Where it is difficult to prove mens rea and penalties are petty fines.</i> 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.
3.	In the interest of public safety, strict liability is imposed and whether <i>a person causes public nuisance with a guilty mind or without guilty mind, he is punished.</i>
4.	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 ' <i>ignorance of the law is no excuse</i> '.
9.	[Section 2(26)] Corporate Body and Mens Rea
	<i>Section 2(26) of the Sanhita, the word 'person' includes any Company or Association, or body of persons, whether incorporated or not.</i> Thus, companies are covered under the provisions of the Sanhita . Virtually in all jurisdictions across the world governed by the rule of law, <i>companies can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea</i> for the commission of criminal offences. The criminal intent of the ' <i>alter ego</i> ' 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.

Case Law State of Maharashtra v M/s Syndicate Transport, 1964

In State of Maharashtra v M/s Syndicate Transport, 1964, 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.

10. The Stages of Crime

The commission of a crime consists of some significant stages.

1. Criminal Intention

- Criminal intention is the first stage in the commission of offence. Intention is the conscious exercise of mental faculties of a person to do an act for the purpose of accomplishing or satisfying a purpose.
- Law does not as a rule punish individuals for their evil thoughts or criminal intentions.
- Intention means doing any act with one's will, desire, voluntariness, malafides and for some purpose.
- In the SANHITA, all these varied expressions find place in the various sections of the Sanhita Intention can also be imputed under the law. For, 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 person can be presumed or deemed to have intended to cause the death of the death of a 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.

But in certain exceptional cases mere preparation is also punishable.

Some of them are as follows:

- Preparation to **wage war** against the Government.
- Preparation for counterfeiting of coins **or Government Stamps**.
- Possessing counterfeit coins, **false weights or measurements** and forged documents.
- Making **preparation to commit dacoit**.

3. Attempt

- **Attempt**, which is the third stage in the commission of a crime, **is punishable**.
- Attempt has been called as a **preliminary crime**.
- **Section 62** of the SANHITA provides for punishment for attempting to commit

	an offence.
▪	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.
	<u>Under the SANHITA, the sections on attempt can be divided into four broad categories</u>
a)	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. The s of this category are those offences against the State such as waging or attempting to wage war against the Government of India, assaulting or attempting to assault the President or Governor with intent to compel or restrain the exercise of lawful power, sedition, a public servant accepting or attempting to accept gratification, using or attempting to use evidence knowing it to be false, dacoity etc.
b)	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 s of this category are attempt to commit an offence punishable with death or imprisonment for life including robbery, murder etc.

c)	<i>Attempt to commit suicide</i> specifically provided under section 226 SANHITA.
d)	The fourth category relates to the <i>attempt to commit offences for which no specific punishment has been provided in the SANHITA. Such attempts are covered under section 62. Commission of Crime or Accomplishment</i>
	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. <i>If the offence is complete, the offender will be tried and punished under the specific provisions of the SANHITA.</i>
11.	Presumption of Innocence and Burden of Proof
	There is a presumption of innocence in favour of any person accused of committing any crime. <i>It means that in the eyes of the law, the accused person is innocent till it is proven otherwise by the prosecution.</i> So strong is this presumption that in order to rebut it, the prosecution must prove it 'beyond reasonable doubts' that the crime was committed by the accused. If the person accused of committing a crime, while defending himself, is able to introduce any doubt in the case of the prosecution, he will not be held guilty.
12.	Section-4 Punishment
	The punishments to which offenders are liable under the provisions of SANHITA are -
1.	<u>Death</u>
	A death sentence is the harshest of punishments provided in the SANHITA,

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 rarest cases'.

The SANHITA provides for capital punishment for the following offences:

- Murder
- Dacoit with Murder
- Waging War against the Government of India.
- Abetting mutiny actually committed.
- Giving or fabricating false evidence upon which an innocent person suffers death.
- Abetment of a suicide by a minor or insane person.
- 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 –

- **Rigorous Imprisonment**, that is hard labour;
- **Simple Imprisonment**

	<div style="text-align: center;"> <p>Kinds of punishments</p> <pre> graph TD Root[Kinds of punishments] --> Fine[Fine] Root --> Imprisonment[Imprisonment] Root --> LifeImprisonment[Life Imprisonment] Root --> Death[Death] Fine --> MonetaryPenalty["Monetary Penalty (+) Nonpayment of fine may lead to further extension of imprisonment"] MonetaryPenalty --> Forfeiture["Forfeiture of property"] Forfeiture --> Permitted["Permitted by section 153 & 154"] Imprisonment --> Simple[Simple] Imprisonment --> RigorousImprisonment[Rigorous Imprisonment] RigorousImprisonment --> HardLabour["Hard Labour (+) No meeting with outsider"] LifeImprisonment --> RigorousTillDeath["Rigorous till the last breath"] LifeImprisonment --> CommunityService[Community Service] Death --> JudicialKilling["(Judicial killing [Hang till death] (+)) Rarest of rare cases Eg: - Punishment of 1. Murder 2. Dacoity with murder 3. Waging war 4. Abetting mutiny etc.)"] </pre> </div>
13.	[Section 61] Criminal Conspiracy
	<u>Definition of criminal conspiracy (Section 61(1))</u>
	When two or more persons agree to do, or cause to be done, —
▪	An illegal act
	or
▪	An act which is not illegal by illegal means , such an agreement is designated a criminal conspiracy.
	Case Law R. Venkatkrishnan v CBI, (2009)
	The above ingredients of the offence of criminal conspiracy are laid down by the Supreme Court in R. Venkatkrishnan v CBI, (2009)

According to *Halsbury's Laws of England*, the essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied.

Case Law NCT of Delhi v Navjot Sandhu, 2005

In *NCT of Delhi v Navjot Sandhu, 2005* (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.

[Section 61 (2)] Punishment of Criminal Conspiracy

1. Whoever is a party to a criminal conspiracy to commit an offence punishable with **death, imprisonment for life or rigorous imprisonment for a term of two years or upwards**, shall, where no express provision is made in this Sanhita for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
2. Whoever is a party to a criminal conspiracy other than a criminal conspiracy to **commit an offence punishable** as aforesaid shall be punished with imprisonment of either description **for a term not exceeding six months, or with fine or with both**.

14. **[Section 318] Cheating**
Sections 318 of The Bharatiya Nyaya Sanhita, 2023 deal with the offence of cheating.

Section 318(1) provides that 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 were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation. —A dishonest concealment of facts is a deception within the meaning of this section.

(2) Whoever cheats shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(3) Whoever cheats with the knowledge that he is likely thereby 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 five years, or with fine, or with both.

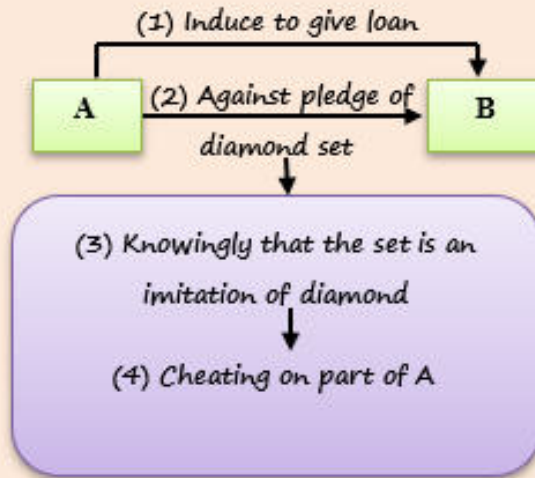
(4) Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished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

	<div style="text-align: center;"> <p>Section 318</p> <p>Essential elements of cheating</p> <pre> graph TD A[Section 318] --> B[Essential elements of cheating] B --> C[Deception of any person] B --> D[Fraudulently or dishonestly inducing] C --- E[+] D --- E E --> F[To deliver any property] E --> G[To retain any property] E --> H[To do or omit of do any thing] F --- I[or] G --- I H --- I I --> J[Likely to cause damage or harm to that person in] J --> K[Body] J --> L[Mind] J --> M[Reputation] J --> N[Property] </pre> </div>
	<p>Examples</p>
1.	<p><i>Cheating by Personation</i> - A, by <i>falsely pretending to be in the Civil Service</i>, 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.</p>

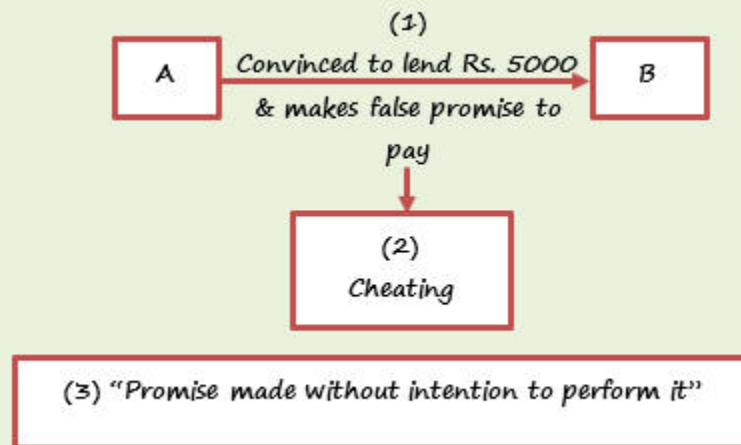
	<div style="text-align: center;"> <p>[Section 318] Cheating</p> <p>ILLUSTRATIONS</p> <p>(1) Pretended as Government officer</p> <p>(2) Goods on credit</p> <p>(3) No intention to repay</p> <p>Mr. A has committed cheating against Mr. B</p> </div>
<p>2.</p>	<p><i>A, by exhibiting to Z a false sample of 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.</i></p>
	<div style="text-align: center;"> <p>(1) Sample of goods</p> <p>(2) Placed order</p> <p>(3) Intentionally non-similar goods delivered</p> <p>(4) Cheating</p> </div>
<p>3.</p>	<p><i>A, by pledging as diamond articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A</i></p>



cheats.



4. A Intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.



15. Cheating – Main Ingredients



The main ingredients of cheating are as under:

1. *Deception* of any person.
2. *Fraudulently or dishonestly inducing* that person
 - *To deliver any property to any person*
 - or
 - *To consent that any person shall retain any property*
 - or

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.

Case Law Iridium India Telecom Ltd. v Motorola Incorporated and Ors., (2005)

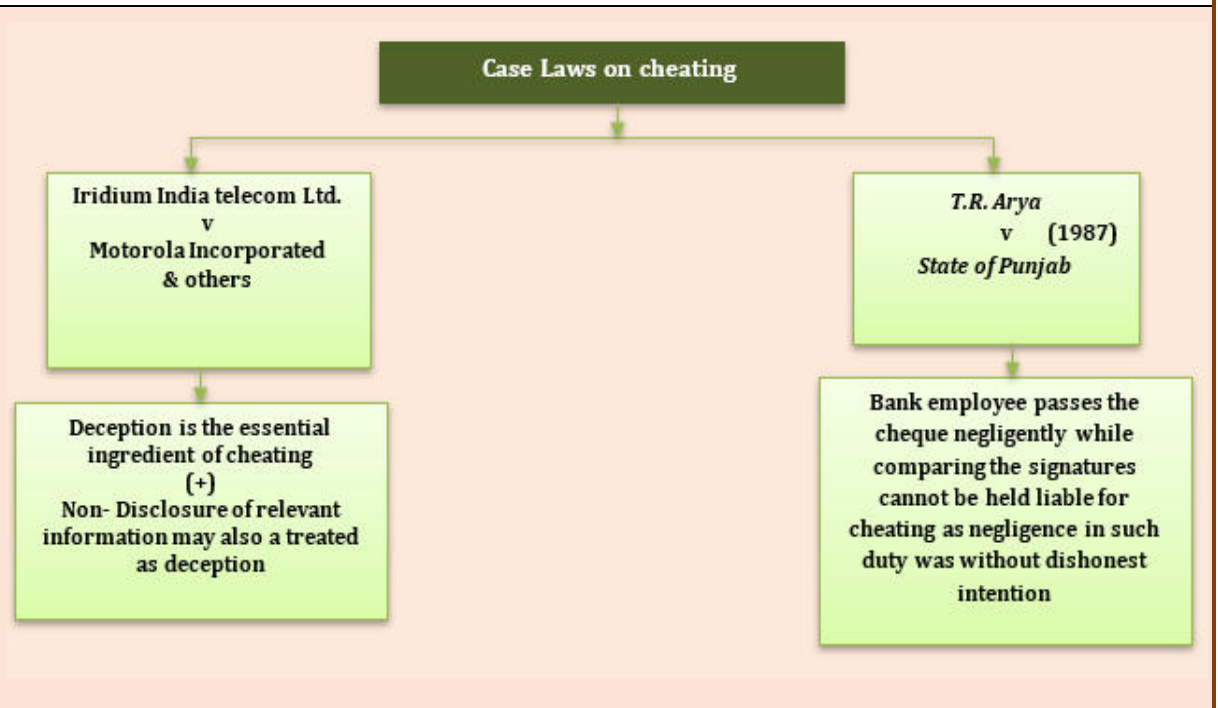
The Supreme Court in *Iridium India Telecom Ltd. v Motorola Incorporated and Ors., (2005)* has held that deception is necessary ingredient under both parts of section. Complainant must prove that inducement has been caused by deception exercised by the accused. It was held that non-disclosure of relevant information would also be treated a misrepresentation of facts leading to deception.

Case Law M.N. Ojha and others v Alok Kumar Srivastav, (2009)

The Supreme Court in *M.N. Ojha and others v Alok Kumar Srivastav, (2009)* has held that where the intention on the part of the accused is to retain wrongfully the excise duty which the State is empowered under law to recover from another person who has removed non-duty paid tobacco from one bonded warehouse to another, they are held guilty of cheating.

Case Law T.R. Arya v State of Punjab, (1987)

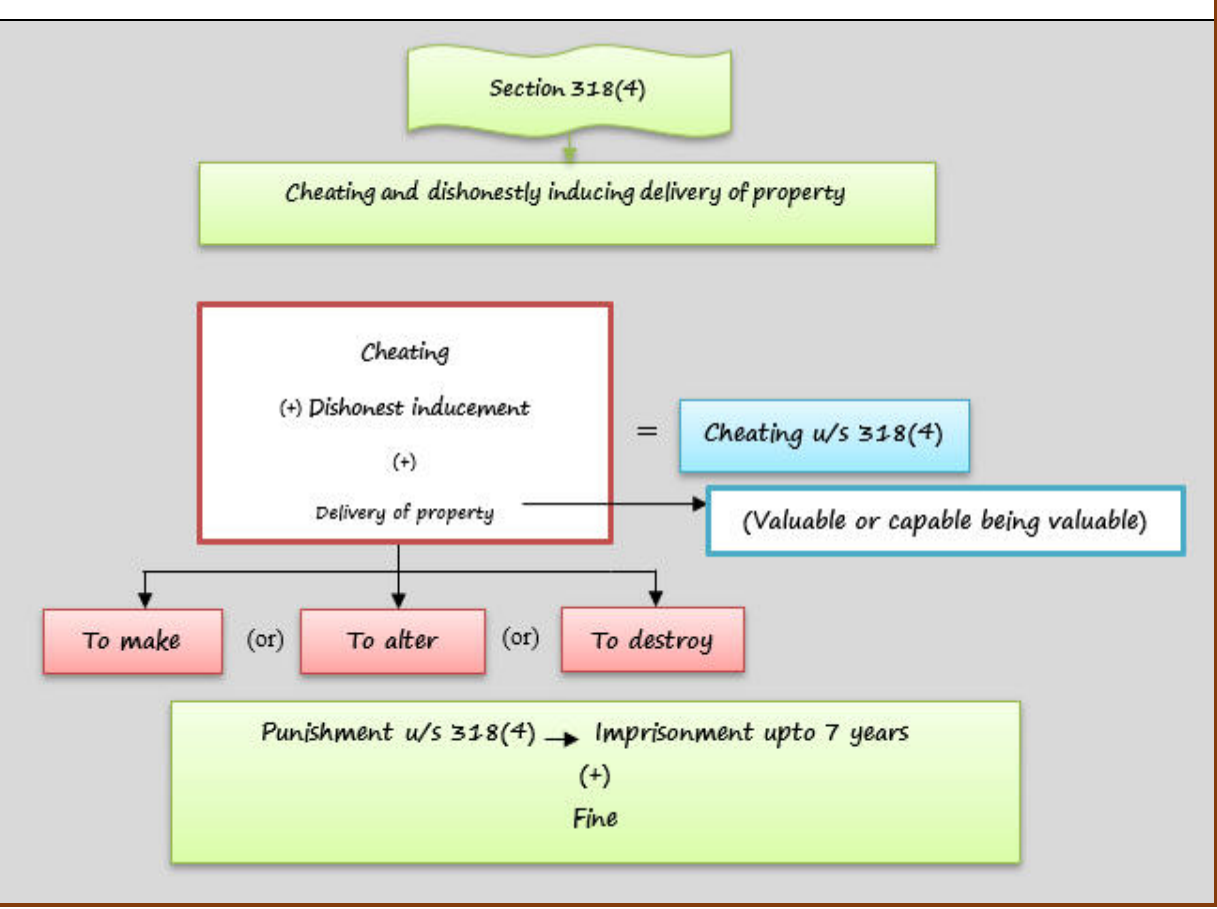
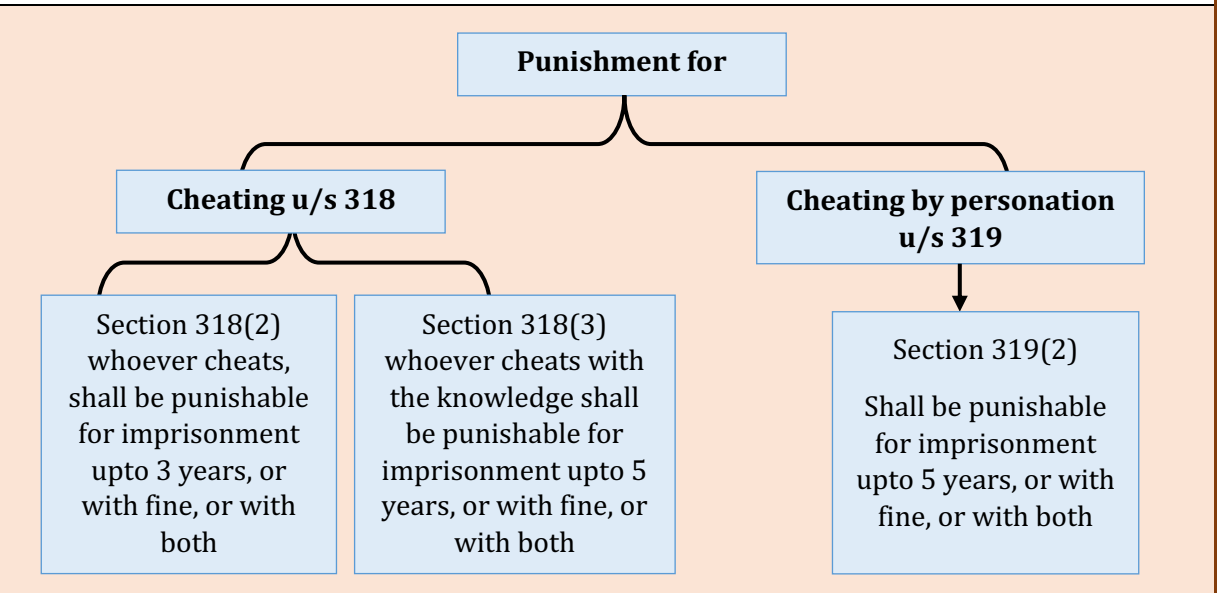
In T.R. Arya v State of Punjab, (1987), it was held that negligence in duty without any dishonest intention cannot amount to cheating. A bank employee when on comparison of signature of drawer passes a cheque there may be negligence resulting in loss to bank, but it cannot be held to be cheating.

**16. [Section 319 (1)] Cheating by Personation**

As per section 319(1) 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.

	<p>Section 319(1)</p> <p>Cheating by personation</p> <p>A → Cheat → B</p> <p>By pretending him</p> <p>As a son of Dev Anand (Deceased person) As a son of Anil Ambani (living person) (or) As a son of fictitious person</p> <p><u>Note</u> Cheating by false identity whether real or imaginary</p>
	<p>Explanation</p> <p>The offence is committed whether the individual personated is a real or imaginary person.</p>
	<p>Examples</p>
1.	A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.
2.	A cheats by pretending to be B, a person who is deceased. A cheats by personation.
17.	[Section 319(2)] Punishment for Cheating
	Section 319(2) provides that whoever cheats shall be punished with

imprisonment of either description for a term which may extend to five year, or with fine, or with both.



Case Law Mohd. Ibrahim and others v State of Bihar and another, (2009)

In Mohd. Ibrahim and others v State of Bihar and another (2009) the accused was alleged to have executed false sale deeds and a complaint was filed by real owner of property. The accused had a bonafide belief that the property belonged to him and purchaser also believed that suit property belongs to the accused. It was held that accused was not guilty of cheating as ingredients of cheating were not present.

Case Law Shruti Enterprises v State of Bihar and ors, (2006)

In Shruti Enterprises v State of Bihar and ors (2006) it was held that mere breach of contract cannot give rise to criminal prosecution under section 420 (Section 318(4) of Sanhita) unless fraudulent or dishonest intention is shown right at the beginning of transaction when the offence is said to have been committed. If it is established that the intention of the accused was dishonest at the time of entering into the agreement then liability will be criminal and the accused will be guilty of offence of cheating.

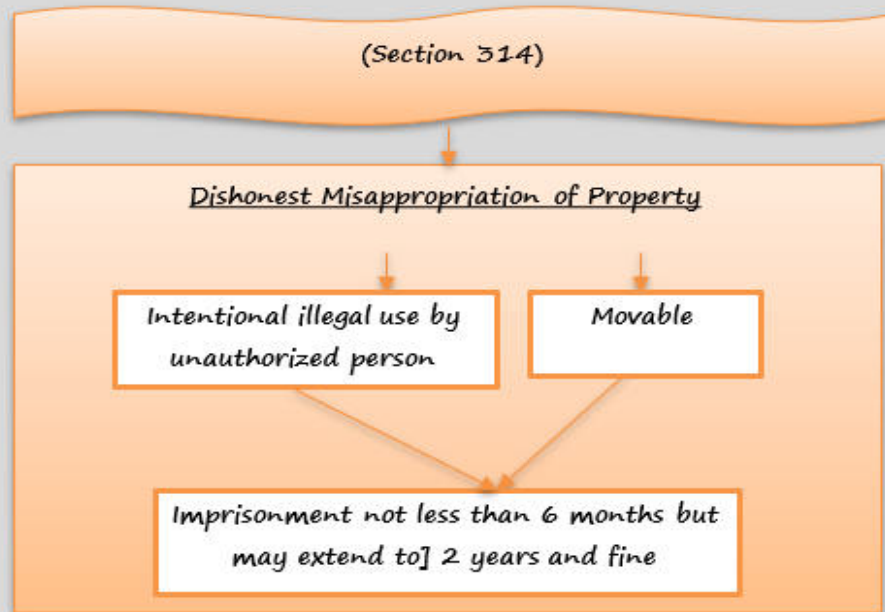
	<div style="text-align: center; border: 1px solid black; padding: 10px;"> <p>Case Laws</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>Mohd. Ibratim and others v (2009) State of Bihar & Another</p> </div> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>Shruti Enterprises V (2006) State of Bihar & Others</p> </div> </div> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>An accused is a bonafide believer of ownership of set property and the purchaser also believe the same. It was held that accused was not guilty of cheating when subsequently he is not the owner.</p> </div> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>Breach of contract (+) No dishonest intention at the beginning of the contract = Not liable u/s 420 [318(4)]</p> <p><u>Note</u> A person liable u/s [318(4)] if the deceptive representation is made by accused in the beginning and it is maintained throughout</p> </div> </div> </div>
18.	<p>[Section 314-315] Criminal Misappropriation of Property</p>
	<p>Section 314 and 315 of the Bharatiya Nyaya Sanhita, 2023 deal with Criminal Misappropriation of Property.</p>
	<div style="border: 1px solid black; border-radius: 15px; width: 80%; margin: 0 auto; padding: 10px; background-color: #ffcc99;"> <p>(Section 314 -315)</p> </div> <div style="border: 1px solid black; border-radius: 15px; width: 80%; margin: 10px auto; padding: 10px; background-color: #ffcc99;"> <p>Criminal Mis-appropriation of Property</p> <p>↓</p> <p>Mis-appropriation of Property with criminal intent (MensRea)</p> </div>



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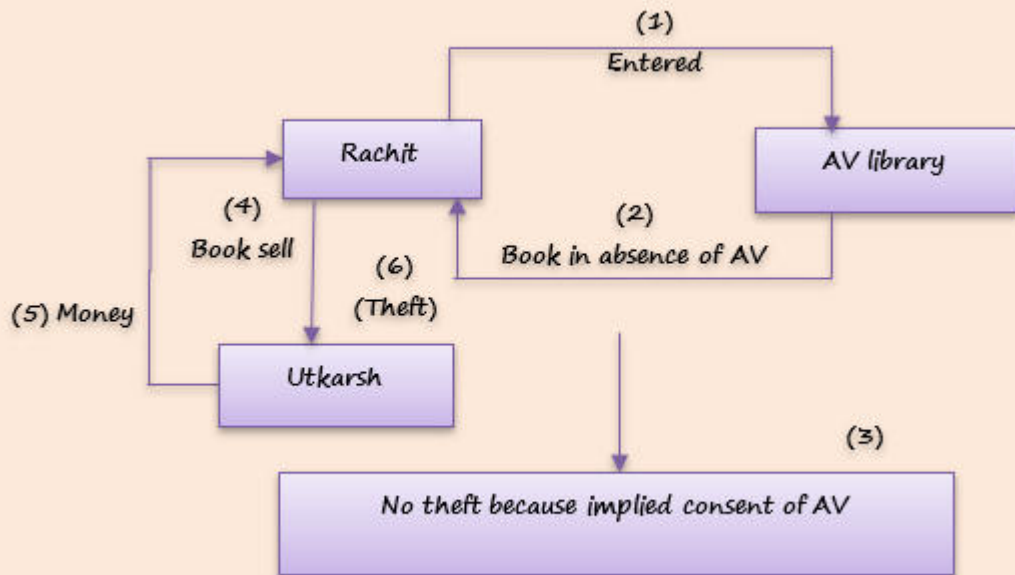
[Section 314] Dishonest misappropriation of property

Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which shall not be less than six months but which may extend to two years, or with fine, or with both.

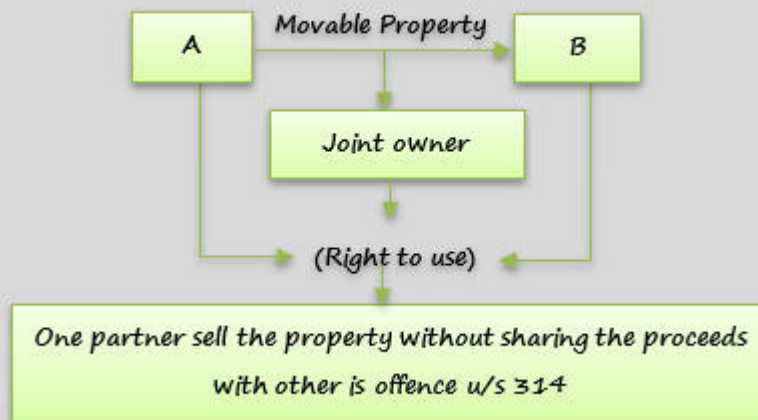
**Examples**

1. 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.

	<div style="text-align: center;"> <p>Example</p> <p>(2) Mistakenly</p> <pre> graph TD A["(1) A Goods"] -- "(2) Mistakenly" --> B["(3) B [Possession]"] A -- "(4)" --> C["(4) [Unaware]"] B -- "(5)" --> D["(5) Aware"] D -- "(or)" --> E["(6) Return"] D -- "(or)" --> F["(6) No Return"] C -- "(7) No Theft" --> G["(7) Theft"] E -- "(7) No Theft" --> G F -- "(7)" --> G </pre> </div>
2.	<p>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.</p>



3. 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.



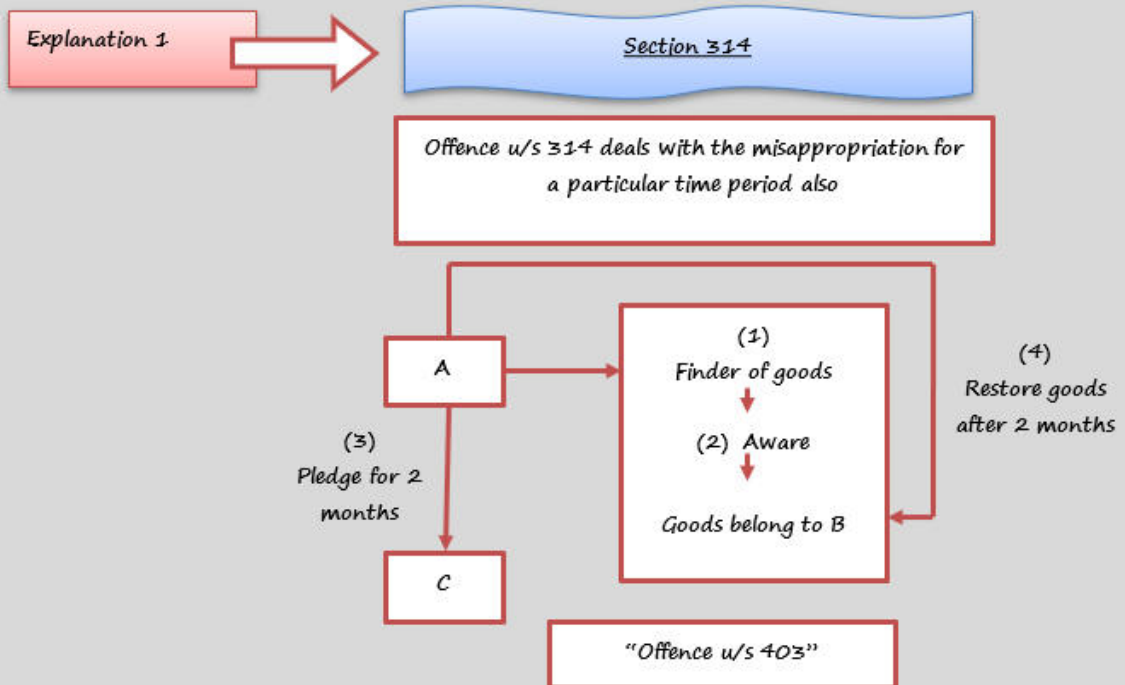
Explanation to Section 314

Explanation 1

A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Example

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security or a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

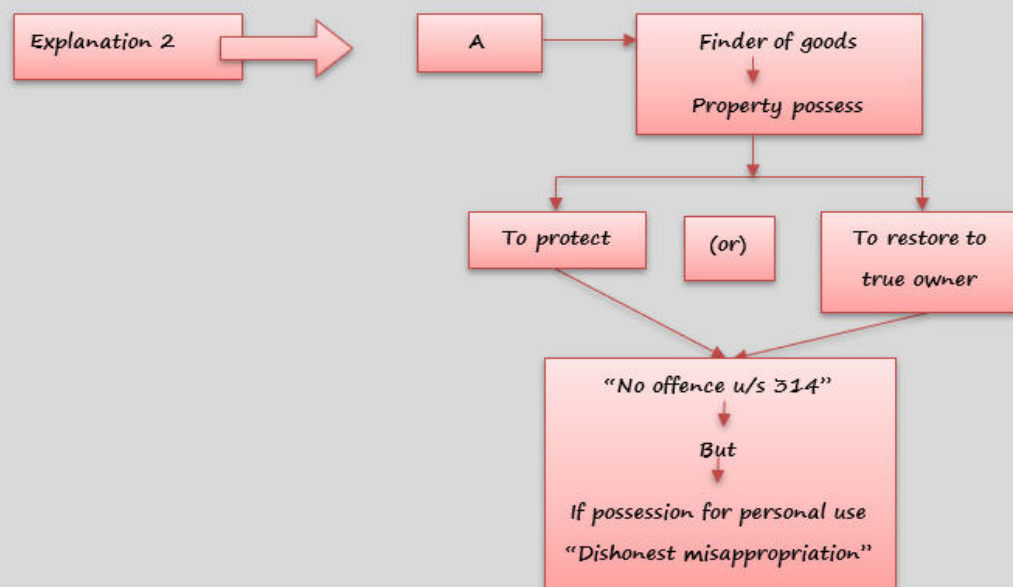


Explanation 2

A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of an offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

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.



	<i>Examples</i>
1.	<i>A finds a rupee on the high road, not knowing to whom the rupee belongs, A picks up the rupee. Here A has not committed the offence defined in this section.</i>
2.	<i>A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.</i>
3.	<i>A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.</i>
4.	<i>A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.</i>
5.	<i>A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.</i>
6.	<i>A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.</i>

Important Points to Remember in relation to Section 314

1. Finder of money has not committed an offence by picking of money (Because tracing of true owner is impossible).
2. Finder of goods is not willing to return the goods even after the true owner is traced is guilty u/s 314.
3. Finder of a bearer cheque gets it realized at the counter of payer's bank, he has committed offence u/s 314 because owner can be traced easily.
4. Finder of ring sells it immediately without attempt to trace true owner. It is an offence u/s 314.

ILLUSTRATION

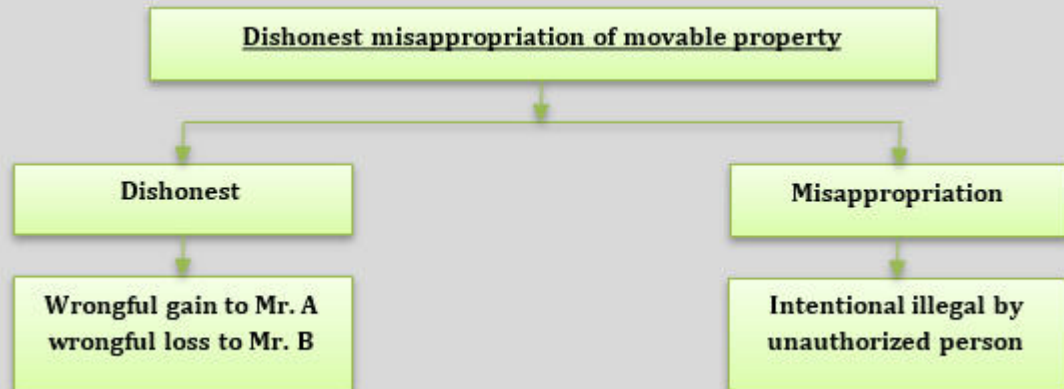
- | | |
|-----|--|
| (a) | Finder of money has not committed an offence by picking of many (Because tracing of true owner is impossible) |
| (b) | Finder of goods is not willing to return the goods even after the true owner is traced is guilty u/s 314 |
| (c) | Finder of bearer cheque gets it realized at the counter of payer's bank, he has committed offence u/s 314 because owner can be traced easily |
| (d) | Finder of ring sells it immediately without attempt to trace true owner, it is an offence u/s 314 |

Dishonestly is an essential ingredient of the offence and the Sanhita provides that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that 'dishonestly'.

Misappropriation means the intentional, illegal use of the property or funds of another person for one's own use or other unauthorized purpose.

There are two things necessary before an offence under section 314 can be

established. Firstly, that the property must be misappropriated or converted to the use of the accused, and, secondly, that he must misappropriate or convert it dishonestly.



Case Law Bhagiram Dome v Abar Dome, (1888) 15 Cal 388, 400

In *Bhagiram Dome v Abar Dome* (1888) 15 Cal 388, 400, it has been held that under Section 403 (Section 314) criminal misappropriation takes place even when the possession has been innocently come by, but where, by a subsequent change of intention or from the knowledge of some new fact which the party was not previously acquainted, the retaining become wrongful and fraudulent.

Case Law Mohammad Ali v State, 2006 Cr LJ 1368 (MP)

In *Mohammad Ali v State*, 2006 Cr LJ 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 (Section

314 of The Bharatiya Nyaya Sanhita, 2023). 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 (Section 314 of The Bharatiya Nyaya Sanhita, 2023).

Case Law U. Dhar v State of Jharkhand, (2003) 2 SCC 219

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.

	<div style="text-align: center;"> <p>3 Case Laws</p> </div> <div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; padding: 5px; width: 30%;"> <p><i>Bhagiram Dome</i> v <i>Abar dome</i></p> <p>Mistaken Possession</p> <p>Intentional Retention = Dishonest Misappropriation</p> </div> <div style="border: 1px solid black; padding: 5px; width: 30%;"> <p><i>Mohammad All V (2006) State</i></p> <p>Buyer of electric wire bundle from scrap sellers shall not be held liable u/s 314 even if he subsequently get to know that such bundle stolen by anonymous person from electricity deptt. and sold out to such scrap sellers.</p> </div> <div style="border: 1px solid black; padding: 5px; width: 30%;"> <p><i>U. Dhar v (2003) State of Jharkhand</i></p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 2px;"> <p>(4) Paid</p> <p>A</p> <p>(1) Principal</p> </div> <div style="border: 1px solid black; padding: 2px;"> <p>(5) Not Paid</p> <p>B</p> <p>(2) Contractor</p> </div> <div style="border: 1px solid black; padding: 2px;"> <p>C</p> <p>(3) Sub-Contractor</p> </div> </div> <div style="text-align: center; margin-top: 10px;"> <p>(6) Sec. 314 Complaint</p> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>(7) Supreme Court</p> <p>Being civil matter complaint is liable to be quashed</p> </div> </div> </div>
<p>21.</p>	<p>[Section 315] Dishonest misappropriation of property possessed by deceased person at the time of his death</p>
	<p>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.</p>



	<p>Section 315</p> <p>Dishonest misappropriation of property possessed by deceased person at the time of his death</p> <p>If any person dishonestly misappropriates the property of the deceased person which such deceased person was possessing at a timing of death shall be punished.</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;"> <p>Fine (+) upto 3 years imprisonment</p> <p>Offender is unknown to deceased person</p> </div> <div style="text-align: center;"> <p>(or)</p> </div> <div style="text-align: center;"> <p>Fine (+) upto 7 years imprisonment</p> <p>Offender is an employee of such deceased person</p> </div> </div>
	<p>Example</p> <p>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.</p> <p>The offence under this section consists in the pillaging of property during the interval which elapses between the time when the possessor of the property dies, and the time when it comes into the possession of some person or officer authorized to take charge of it.</p>

	<pre> graph TD A[A] --> CA["(1) Car Accident"] CA --> AD["(2) (A's Death)"] MT["(3) Mobile Theft"] --> CA B[B] --> OF["(4) Offence u/s 315"] OF --- MT </pre>
26.	[Section 316] Criminal breach of trust
	<p>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”.</p>
	<p><u>Explanation 1</u></p> <p>A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not who deducts the employee's contribution from the wages payable to the employee for the credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of contribution so deducted by</p>

	<pre> graph TD Employer[Employer] -- "(1) Salary after deducting contribution towards" --> Employee[Employee] Employer -- "(3) (No Deposits)" --> PF[PF Department or ESI Department] PF -- "(4) Criminal Breach of Trust" --> CB[] PF -- "(2) (+)" --> ESI[ESI] PF -- "(2) (+)" --> EPF[EPF] </pre>
	Examples
1.	A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.
2.	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.
3.	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

Meaning of Criminal Breach of Trust

Example: - 1

Wrong execution of will by an executive of deceased person
(+)

Example: - 2

Bailee sells the goods dishonestly
(+)

Example: - 3

Cashier (agent) did not invest money as per Principal
direction and personally
(+)

Example: - 4

Independent contractor gives an impression to the hirer
regarding accomplishment of project & charged full
consideration, whereas subsequently it had been discovered
that contract was partially performed by contractor.
(+)

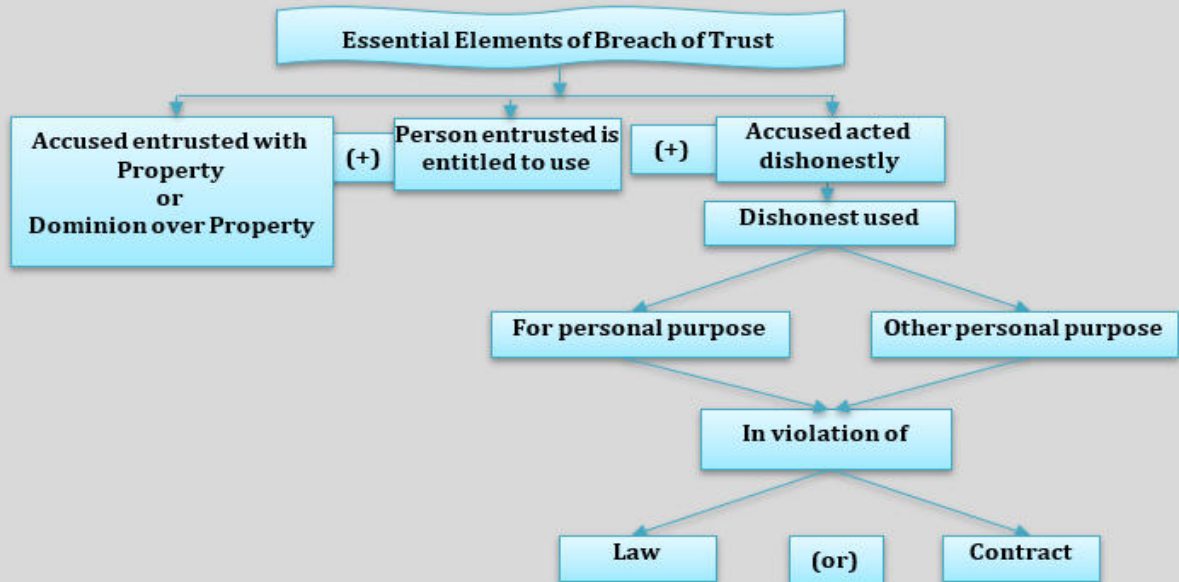
Example: - 5

Mr. MC Dua a property tax officer deposits the cheque in his
personal account

23. Essential Ingredients of 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:
 - Of any direction of law prescribing the mode in which such trust is to be discharged
 - or
 - Of any legal contract made touching the discharge of such trust.



Case Law V.R. Dalal v Yugendra Naranji Thakkar, 2008 (15) SCC 625

Pratibha Rani v Suraj Kumar, AIR 1985 SC 628

The Supreme Court of India in *V.R. Dalal v Yugendra Naranji Thakkar, 2008 (15) SCC 625*, has held that the first ingredient of criminal breach of trust is entrustment and where it is missing, the same would not constitute a criminal breach of trust. Breach of trust may be held to be a civil wrong but when mens-rea is involved it gives rise to criminal liability also.

The expression 'direction of law' in the context of Section 405 (Section 316 of The Bharatiya Nyaya Sanhita, 2023) would include not only legislations pure and simple but also directions, instruments and circulars issued by authority entitled therefor. *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.

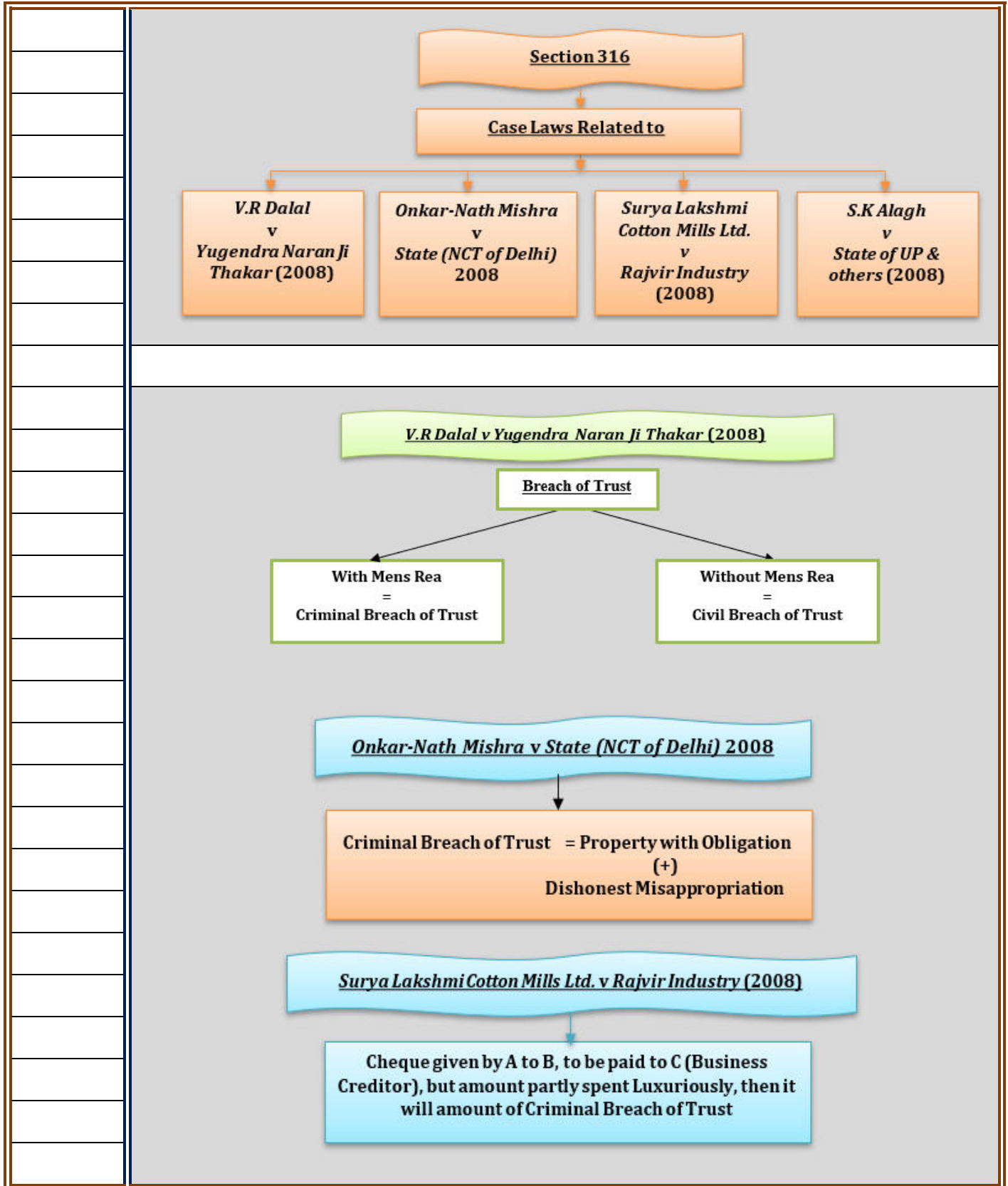
Case Law Onkar Nath Mishra v State (NCT of Delhi), 2008 CrLJ 1391 (SC)

Surya Lakshmi Cotton Mills Ltd. v Rajvir Industries Ltd. 2008 (13) SCC 678

The Supreme Court in Onkar Nath Mishra v State (NCT of Delhi), 2008 CrLJ 1391 (SC) has held that in the commission of offence of criminal breach of trust, two distinct parts are involved. The first consists of the creation an obligation in relation to property over which dominion or control is acquired by accused. The second is a misappropriation or dealing with property dishonestly and contrary to the terms of the obligation created. In another case, Suryalakshmi Cotton Mills Ltd. v Rajvir Industries Ltd. 2008 (13) SCC 678, 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 (Section 316(2) of The Bharatiya Nyaya Sanhita, 2023) may be found to have been made out.

Case Law S.K. Alagh v State of U.P. and others, 2008 (5) SCC 662

In S.K. Alagh v State of U.P. and others 2008 (5) SCC 662, where demand drafts were drawn in the name of company for supply of goods and neither the goods were sent by the company nor the money was returned, the Managing Director of the company cannot be said to have committed the offence under Section 406 of Indian Penal Code (Section 316(2) of The Bharatiya Nyaya Sanhita, 2023). It was pointed out that in absence of any provision laid down under statute, a director of a company or an employer cannot be held vicariously liable for any offence committed by company itself.

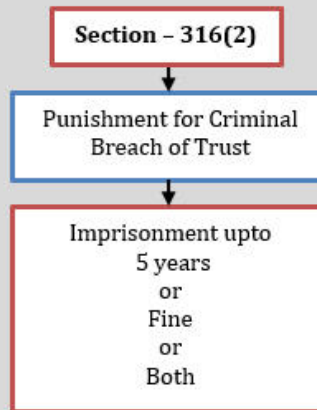


	<p><u>S.K Alagh v State of UP & others (2008)</u></p> <p>↓</p> <p>MD cannot be held liable for breach of trust when company neither supplies the goods nor refunds the amount</p>
	<p>After analyzing all the cases we may conclude that for an offence to fall under this section all the four requirements are essential to be fulfilled.</p>
1.	The person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them or to put him in position of trustee.
2.	The accused must be in such a position where he could exercise his control over the property i.e.; dominion over the property.
3.	The term property includes both movable as well as immovable property within its ambit.
4.	It has to be established that the accused has dishonestly put the property to his own use or to some unauthorized use. Dishonest intention to misappropriate is a crucial fact to be proved to bring home the charge of criminal breach of trust.
	<p><u>Section 316</u></p> <p>↓</p> <p>Points to be remember</p> <p>↓</p> <p>Accused entrusted with property (or) Dominion over property (+) Property can be Movable (or) Immovable (+) Fiduciary Relation (+) Dishonest And Unauthorized use</p>

24.

[Section 316(2)] Punishment for criminal breach of trust

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



25.

[Section 316(3)] Criminal breach of trust by Carrier

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.

	<p style="text-align: center;">Section - 316(3)</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Criminal Breach of Trust by carrier</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Carrier or Warehouse keeper</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Imprisonment upto 7 years (+) Fine</p>
26.	<p>[Section 316(4)] Criminal breach of trust by Clerk or Servant</p> <p>Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that 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.</p>
	<p style="text-align: center;">Section - 316(4)</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Criminal Breach of Trust by clerk and servant</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Entrusted with Property or Dominion over property</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Imprisonment upto 7 years (+) Fine</p>

27.	<i>[Section 316 (5)] Criminal breach of trust by Public servant or by Banker or</i>
	<i>Merchant Banker or Agent</i>
	<i>Whoever, being in any manner entrusted with property, or with any dominion</i>
	<i>over property in his capacity of a public servant or in the way of his business as</i>
	<i>a banker, merchant, factor, broker, attorney or agent, commits criminal</i>
	<i>breach of trust in respect of that property, shall be punished with</i>
	<i>imprisonment for life, or with imprisonment of either description for a term</i>
	<i>which may extend to ten years, and shall also be liable to fine.</i>
	<i>The acts of criminal breach of trust done by strangers is treated less harshly</i>
	<i>than acts of criminal breach of trust on part of the persons who enjoy special</i>
	<i>trust and also in a position to be privy to a lot of information or authority or</i>
	<i>on account of the status enjoyed by them, say as in the case of a public servant.</i>
	<i>In respect of public servants a much more stringent punishment of life</i>
	<i>imprisonment or imprisonment up to 10 years with fine is provided. This is</i>
	<i>because of special status and the trust which a public servant enjoys in the eyes</i>
	<i>of the public as a representative of the government or government owned</i>
	<i>enterprises.</i>
	<i>The persons having a fiduciary relationship between them have a greater</i>
	<i>responsibility for honesty as they have more control over the property</i>
	<i>entrusted to them due to their special relationship. Under this section the</i>
	<i>punishment is severe and the persons of fiduciary relationship have been</i>
	<i>classified as public servants, bankers, factors, brokers, attorneys and agents.</i>

Section - 316(5)

**Criminal Breach of Trust by public servant or Banker
or Agent**

**Public servant
(+)
Banker
(+)
Broker**

**Enjoy special status or trust in the eye of public being
representative of Government or Government
Enterprises**

**Imprisonment for Life
or
Imprisonment upto 10 years
(+)
Fine**

Case Law Bagga Singh v State of Punjab

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. (Section 316(5) of The Bharatiya Nyaya Sanhita, 2023).

Case Law Bachchu Singh v State of Haryana, AIR 1999 SC 2285

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. (Section 316(5) of The Bharatiya Nyaya Sanhita, 2023). 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 (Section 316(5) of The Bharatiya Nyaya Sanhita, 2023). was upheld by the Supreme Court.

Case Law Girish Saini v State of Rajasthan

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 the 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.

	<div style="text-align: center;"> <p>Section - 316(5)</p> <p>↓</p> <p>Case Laws</p> <p>↓</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p><i>Bagga Singh</i> v <i>State of Punjab</i></p> <p>↓</p> <p>Tax officer collect arrears of tax from tax payers did not deposits to committee</p> <p>↓</p> <p>But under the fear of being traced deposits after 5 months</p> <p>↓</p> <p>Liabe u/s 409</p> </div> <div style="text-align: center;"> <p><i>Bachchu Singh</i> v <i>State of Haryana</i></p> <p>↓</p> <p>Gram Sachiv collects house tax from 30 villages @ Rs. 648 each & executed receipts for the same but did not remitted to the government was convicted by the Haryana Court u/s 409 & his conviction was upheld by Supreme Court</p> </div> <div style="text-align: center;"> <p><i>Girish Saini</i> v <i>State of Rajasthan</i></p> <p>↓</p> <p>Stationary store manager misappropriates funds towards stationary required for official purpose was held liable for Criminal Breach of</p> </div> </div> </div>
28.	<p>[Section 320 to 323] Fraudulent Deeds and Dispositions of Property</p> <p>Fraudulent Deeds and Dispositions of Property are covered under section 320 to 323 of the Bharatiya Nyaya Sanhita, 2023. These sections deal with fraudulent conveyances referred to in section 53 of the Transfer of Property Act and the Presidency-towns and Provincial Insolvency Acts.</p> <div style="text-align: center;"> <p>Section 320 to 323</p> <p>↓</p> <p>Fraudulent deeds and dispositions (sell) of property (Movable or Immovable)</p> </div>
29.	<p>[Section 320] Dishonest or fraudulent removal or concealment of property to</p>



prevent distribution among creditors

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 shall not be less than six months but which may extend to two years, or with fine, or with both.

Section 320

Dishonest or fraudulent removal or concealment or delivery or transfer of movable or immovable property without adequate consideration with an intention to deceive creditor shall fall under the ambit of Section 320

Section 320 to 323 shall be read with section 53 Transfer of Property Act, 1882 i.e. Doctrine of fraudulent transfer & other insolvency laws.

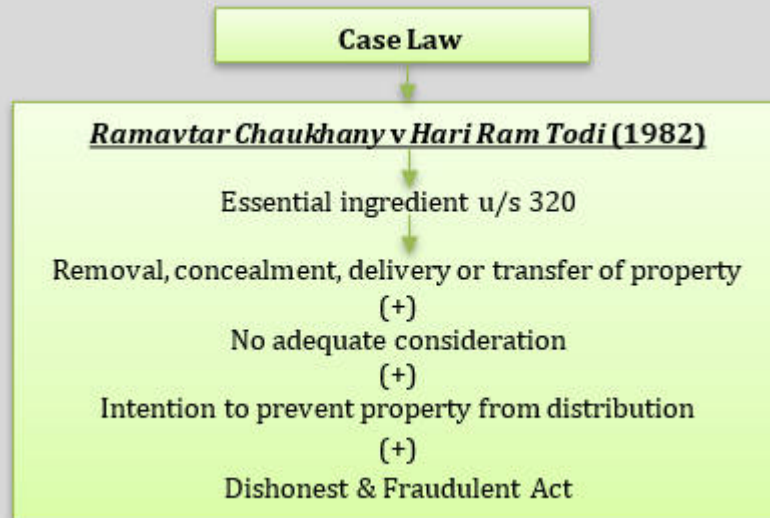
Case Law Ramavtar Chaukhany v Hari Ram Todi 1982

Guwahati High Court in Ramavtar Chaukhany v Hari Ram Todi 1982, held that an offence under this section has following essential ingredients:

- 1. That the accused removed, concealed or delivered the property or that he transferred, it caused it to be transferred to someone.*
- 2. That such a transfer was without adequate consideration.*
- 3. 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.

4. That he acted dishonestly and fraudulently.



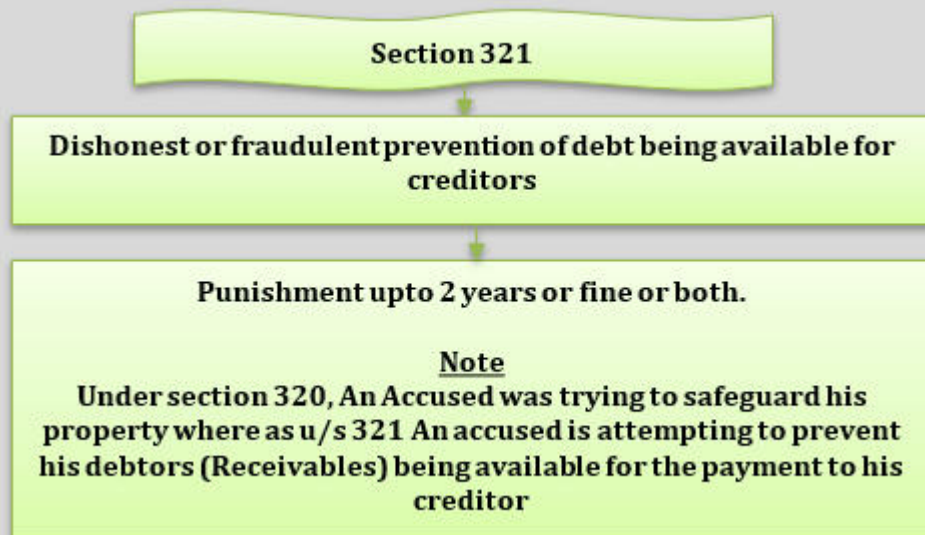
This section specifically refers to frauds connected with insolvency. The offence under it consists in a dishonest disposition of property with intent to cause wrongful loss to the creditors. It applies to movable as well as immovable properties. In view of this section, the property of a debtor cannot be distributed according to law except after the provisions of the relevant enactments have been complied with.

30. [Section 321] Dishonestly or fraudulently preventing debt being available for creditors

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.

This section, like the preceding section 320, is intended to prevent the defrauding of creditors by making property.



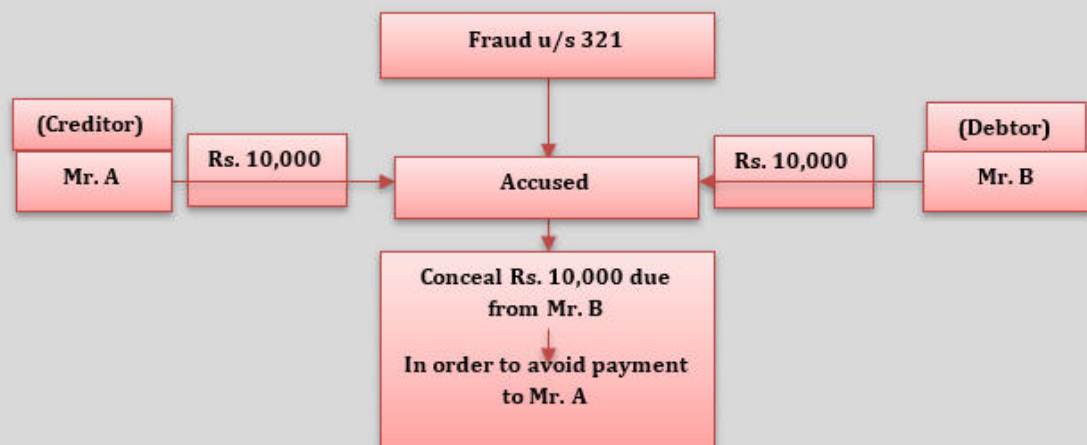
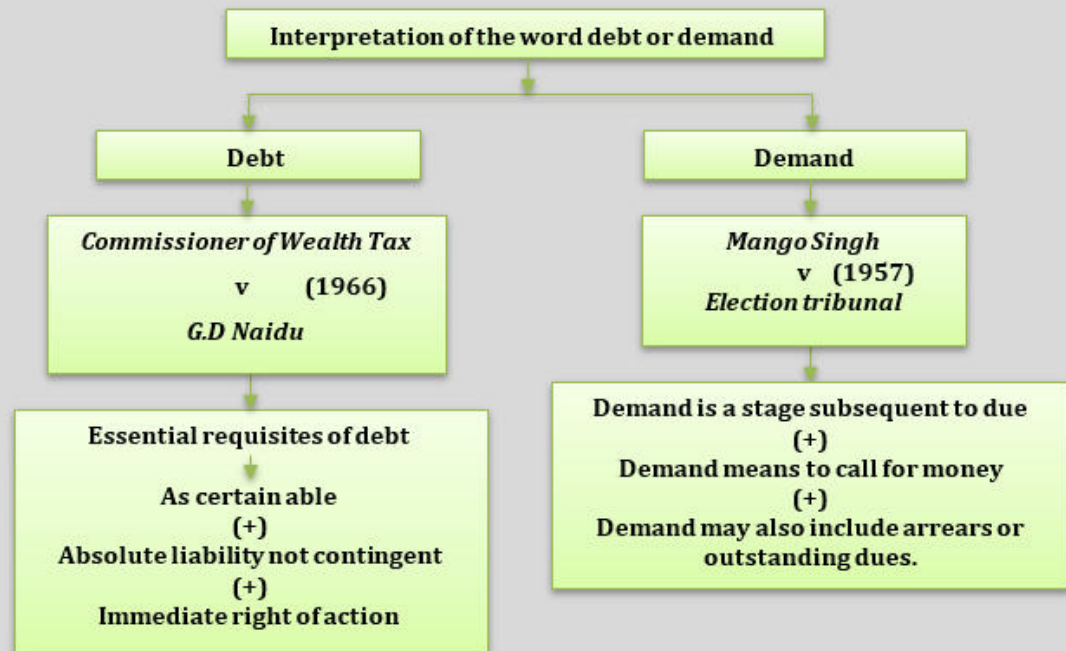
Case Law Commissioner of Wealth Tax v G.D. Naidu, AIR 1966 Mad 74

The expression 'debt' has not been defined in the Sanhita or in the General Clauses Act but there are judicial pronouncements on the same. In Commissioner of Wealth Tax v G.D. Naidu, AIR 1966 Mad 74, it was held that the essential requisites of debt are-

- ♣ Ascertained or ascertainable
- ♣ An absolute liability, in present or future
- ♣ An obligation which has already accrued and is subsisting. All debts are liabilities but all liabilities are not debt.

Case Law Mangoo Singh v Election Tribunal, AIR 1957 SC 871

The Supreme Court in *Mangoo Singh v Election Tribunal*, AIR 1957 SC 871, has laid down that the word 'demand' ordinarily means something more than what is due; it means something which has been demanded, called for or asked for, but the meaning of the word must take colour from the context and so 'demand' may also mean arrears or dues.



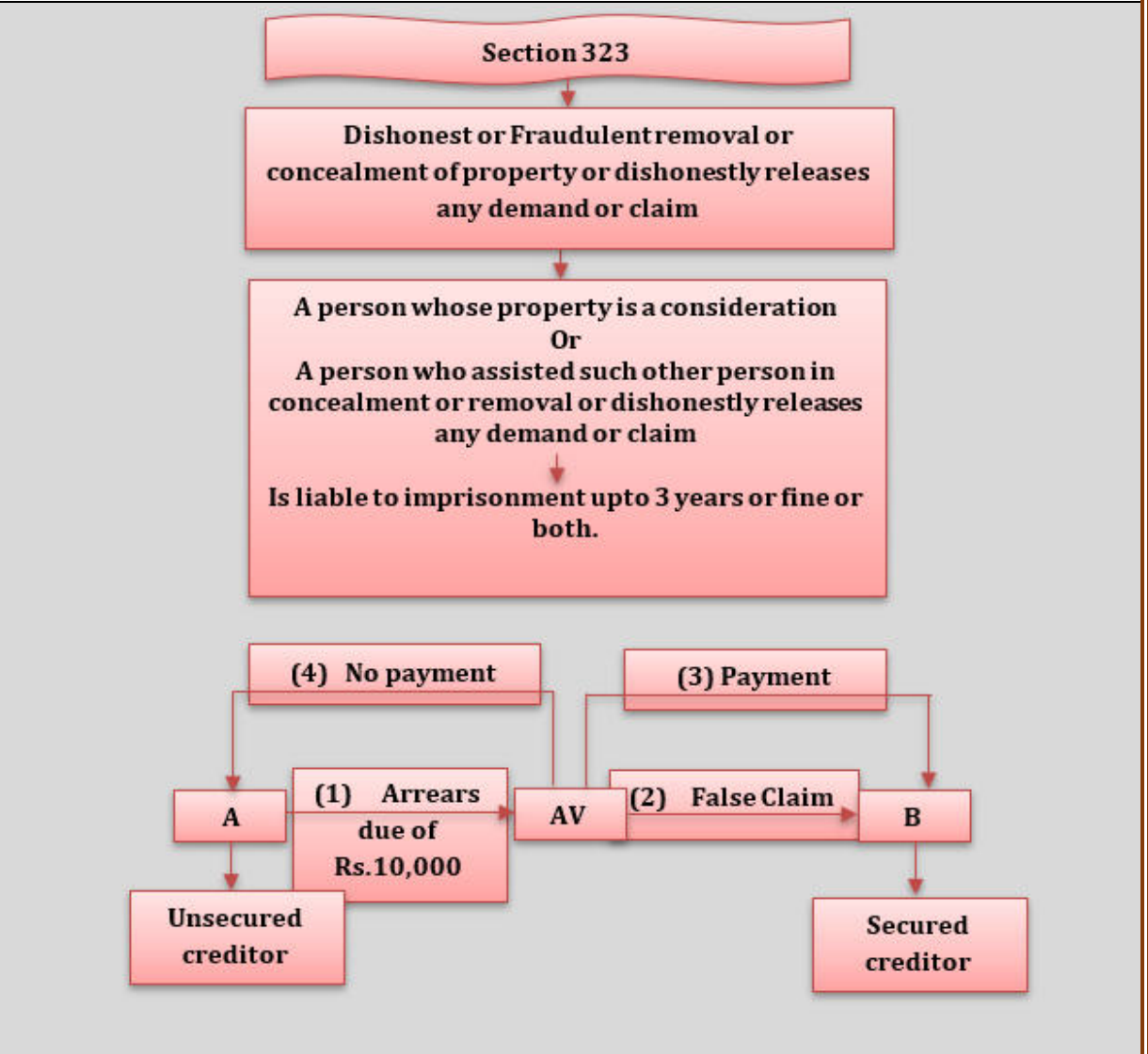
31.	<i>[Section 322] Dishonest or fraudulent execution of deed of transfer containing</i>
	<i>false statement of consideration</i>
	<i>Whoever dishonestly or fraudulently signs, executes or becomes a party to any</i>
	<i>deed or instrument which purports to transfer or subject to any charge on</i>
	<i>property, or any interest therein, and which contains any false statement relating</i>
	<i>to the consideration for such transfer or charge, or relating to the person or</i>
	<i>persons for whose use or benefit it is really intended to operate, shall be</i>
	<i>punished with imprisonment of either description for a term which may extend</i>
	<i>to three years, or with fine, or with both.</i>
	<i>This section deals with fraudulent and fictitious conveyances and transfers. The</i>
	<i>essential ingredient of an offence under section 322 is that the sale deed or a</i>
	<i>deed subjecting an immovable property to a charge must contain a false</i>
	<i>statement relating to the consideration or relating to the person for whose use</i>
	<i>or benefit it is intended to operate.</i>
	<i>Though dishonest execution of a benami deed is covered under this section, the</i>
	<i>section stands superseded by The Prohibition of Benami Properties Transactions</i>
	<i>Act, 1988 because the latter covers a wider field, encompassing the field</i>
	<i>covered by this section.</i>

	<p style="text-align: center;">Section 322</p> <p style="text-align: center;">Dishonest or Fraudulent execution of Deed of transfer containing false statement of consideration is punishable with imprisonment upto 3 year or fine or both.</p> <pre> graph TD A[Mr. A] -- "(1) Claim his money" --> AV[AV] A -- "(3) Sell me your house" --> AV AV -- "(2) No money" --> A AV -- "(4) Already mortgaged" --> Z[Mr. Z] Z --- F["(5) Fictitious person"] </pre> <p style="text-align: center;">Note</p> <p style="text-align: center;">Section 322 must be read with Benami Transaction (Prohibition) Act, 1988</p>
32.	<p>[Section 323] Dishonest or fraudulent removal or concealment of property</p>
	<p>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 three years, or with fine, or with both.</p>
	<p>The essential ingredients to bring an offence under section 323 are as follows:</p>
▪	<p>There is a property.</p>
▪	<p>That the accused concealed or removed the said property or assisted in concealing or removing the said property.</p>
▪	<p>That the said concealment or removal or assisting in removal or concealment</p>

was done dishonestly or fraudulently.

Or

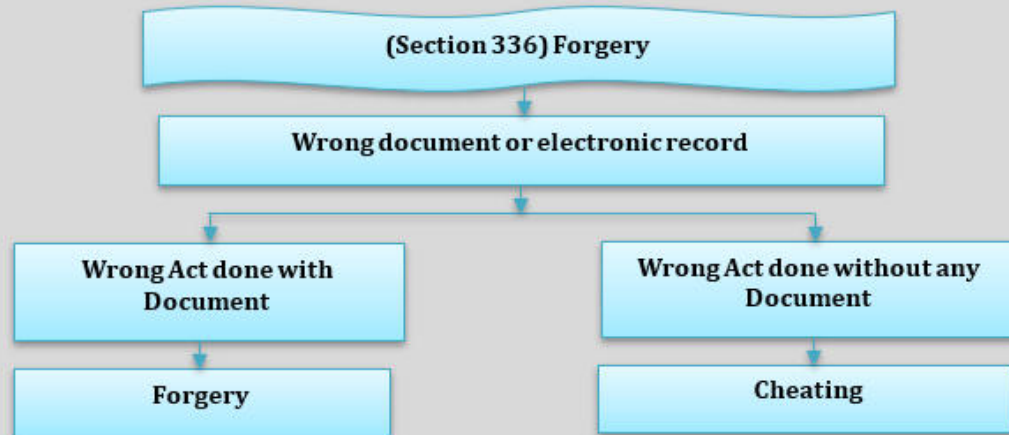
- That the accused was entitled to a demand or claim.
- That the accused released the same.
- That he so released dishonestly or fraudulently.



33.

[Section 336] Forgery





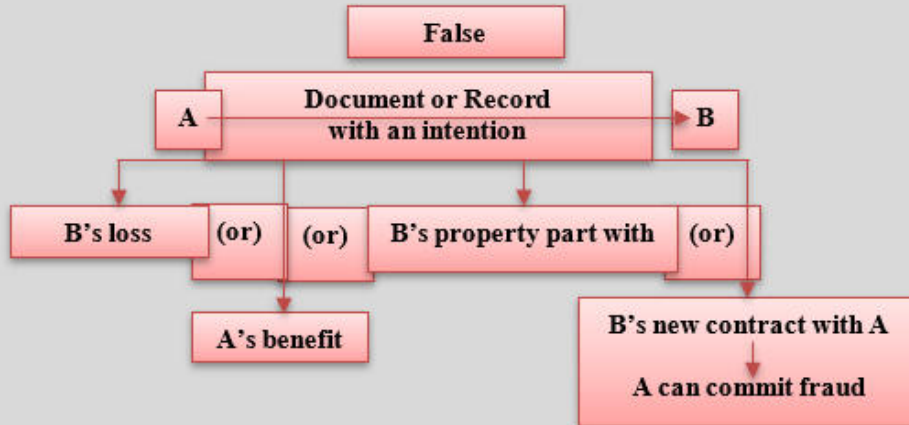
[Section 336] Forgery

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.

Section 336

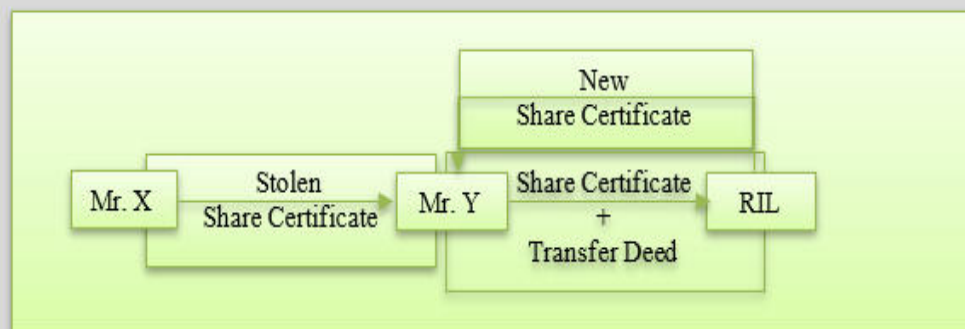
In other words, whenever a person is willing to cause damage or injury to other or profit or benefit to himself on the basis of false document or record wholly or partially, such an attempt if accomplished is called forgery.



Definition of forgery

In order words, whenever a person is willing to cause damage or injury to other or profit or benefit to himself on the basis of false document or record (electronic), wholly or partially, such an attempt if accomplished is called forgery.

Example of forgery



Section 336(2) Punishment for Forgery

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.

Section
336(2)

Punishment for forgery

↓
Imprisonment upto 2 years or fine or both

34.

*Case Laws related to Forgery****Case Law Ramchandran v State, AIR 2010***

The Supreme Court in Ramchandran v State, AIR 2010 has held that to constitute an offence of forgery document must be made with dishonest or fraudulent intention. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

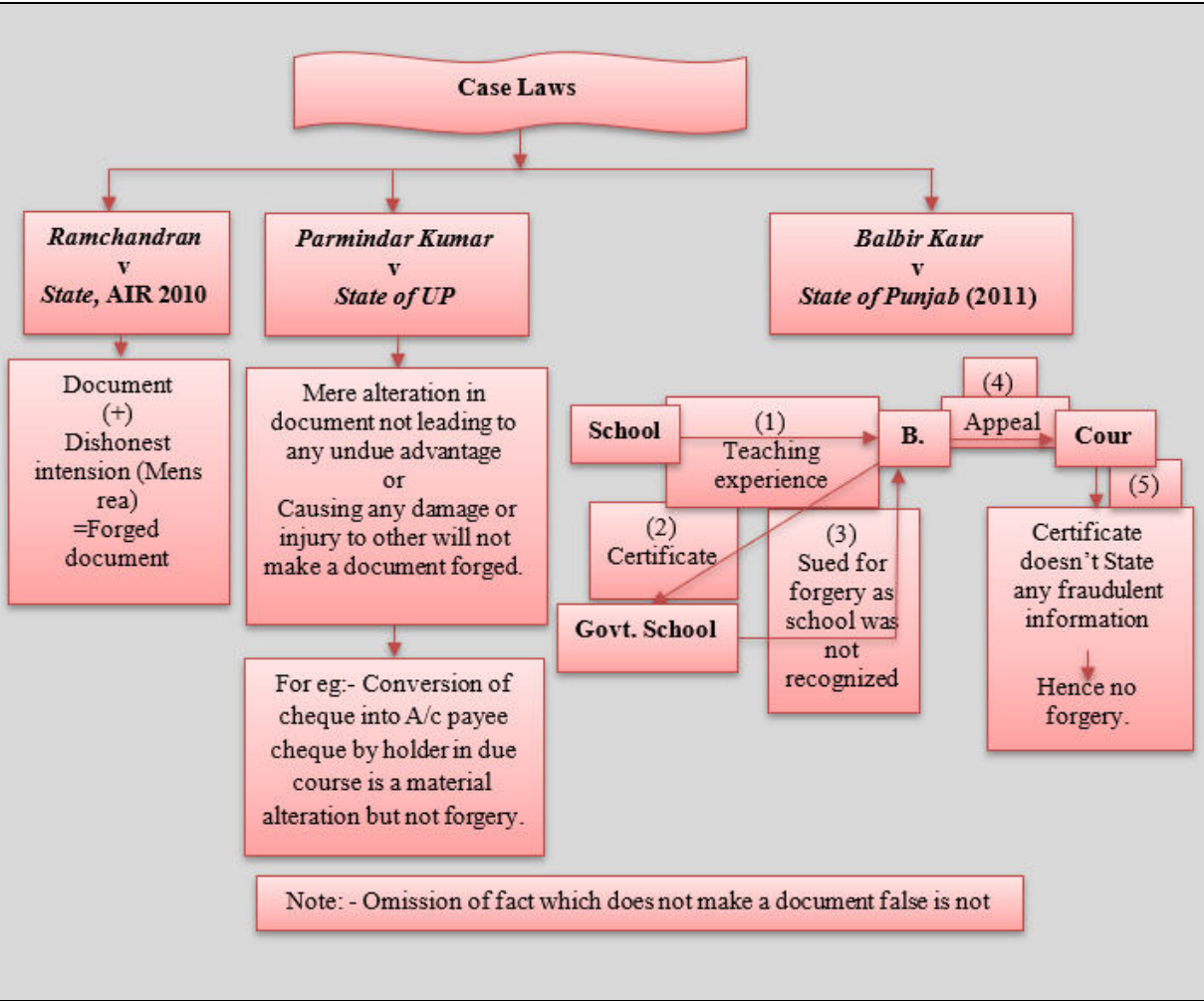
Case Law Parminder Kaur v State of UP

The Supreme Court in Parminder Kaur v State of UP, 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.

Case Law Balbir Kaur v State of Punjab, 2011

Similarly, in Balbir Kaur v State of Punjab, 2011, the allegation against the accused was that she furnished a certificate to get employment as ETT teacher which was found to be bogus and forged in as much as school was not recognized

for period given in certificate. However, the certificate did not anywhere say that school was recognized. It was held that merely indicating teaching experience of the accused, per-se, cannot be said to indicate wrong facts. So the direction which was issued for prosecution is liable to be quashed.



35. [Section 356] Defamation

Section 356(1) provides that whoever,

- by words either spoken or intended to be read,
- or
- by signs



	<i>or</i>
	<ul style="list-style-type: none"> ▪ <i>by visible representations</i>
	<p><i>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.</i></p>
	Explanation 1
	<p><i>It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.</i></p>
	Explanation 2
	<p><i>It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.</i></p>
	Explanation 3
	<p><i>An imputation in the form of an alternative or expressed ironically, may amount to defamation.</i></p>
	Explanation 4
	<p><i>No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.</i></p>

	<i>Examples</i>
1.	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.
2.	A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.
3.	A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch.
	<i>Exceptions under Defamation</i>
1.	<i>Imputation of truth which public good requires to be made or published</i> 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.
2.	<i>Public conduct of public servants</i> 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.
3.	<i>Conduct of any person touching any public question</i> 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.

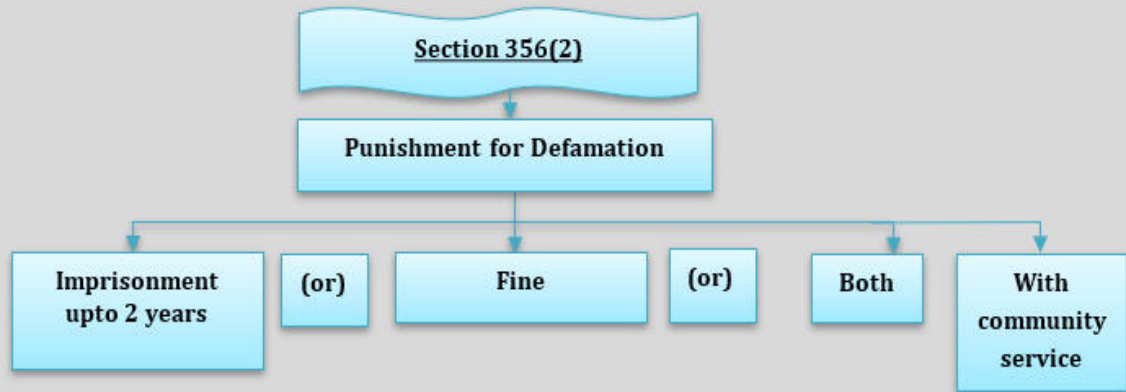
	Example
	It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.
4.	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.
5.	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.
	Examples
A.	A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, in

	as much as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.
B.	But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, in as much as the opinion which express of Z's character, is an opinion not founded on Z's conduct as a witness.
6.	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.
	Examples
A.	A person who publishes a book, submits that book to the judgment of the public.
B.	A person who makes a speech in public, submits that speech to the judgment of the public.
C.	An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.
D.	A says of a book published by Z— "Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, in as much as the opinion which he

	expresses of Z respects Z's character only so far as it appears in Z's book, and no further.
E.	But if A says "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.
7.	Censure (Warning) 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.
	Example A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier are within this exception.
8.	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.

	Example
	If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father- A is within this exception.
9.	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.
	Examples
A.	A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.
B.	A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z.
	Here, if the imputation is made in good faith, and for the public good, A is within the exception.
10.	Caution intended for good of person to whom conveyed or for public good
	It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

	<pre> graph TD A[Exceptions of Defamation] --> B[Imputation of Truth (+) Disclose in public interest] A --> C[Merit of conduct of witnesses decided in court] A --> D[Imputation made in good faith by person for his interest or other] A --> E[Publication of judicial pronouncement] B --> B1[Expression in good faith regarding conduct of any person touching any public question (class action suit)] C --> C1[Warning given by senior to his junior in good faith] D --> D1[Expression of public conduct of public servant in good faith] E --> E1[Merit of public performance] E --> E2[Acquisition preferred in good faith to authorized person] E --> E3[To convey a caution in good faith] </pre>
37.	<p>[Section 356(2)] Punishment for defamation</p>
	<p>According to section 356(2) whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both, or with community service.</p>



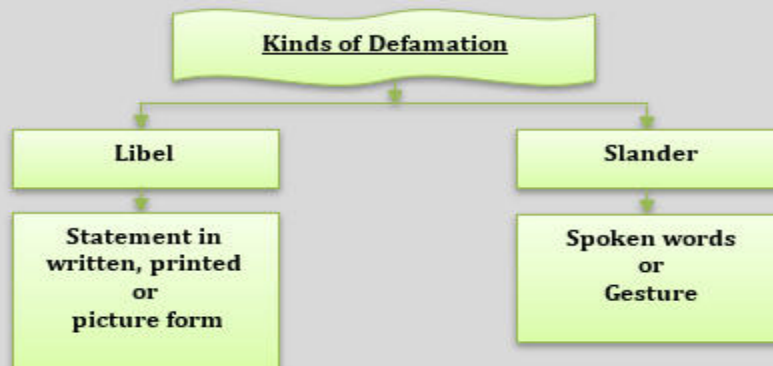
38. Kinds of Defamation

The wrong of defamation is of two kinds- libel and slander.

In libel, the defamatory statement is made in some permanent and visible form, such as writing, printing or pictures.

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

The ambit of 'publish' is very wide. The publication of defamatory matter means that it is communicated to some person other than the person about whom it is addressed.



39.

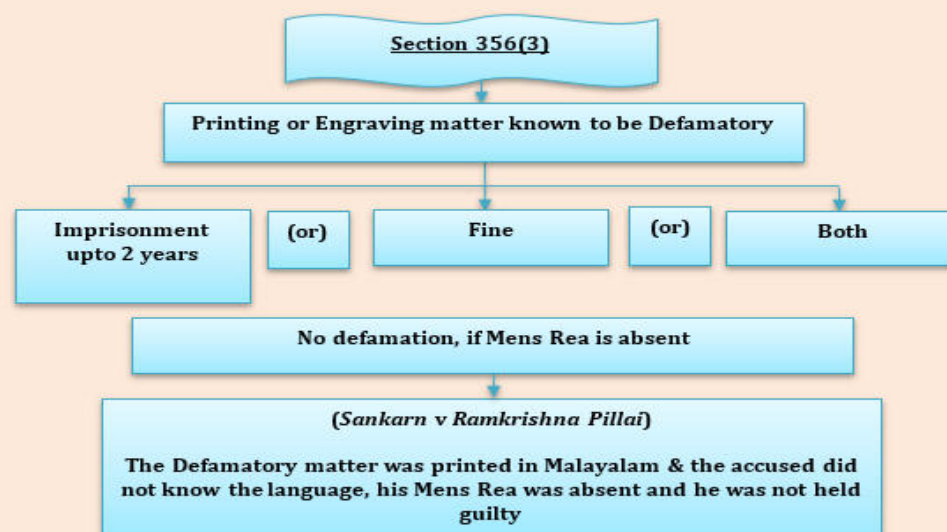
[Section 356(3)] Printing or engraving matter known to be defamatory

Section 356(3) provides that whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

A person printing or engraving defamatory matter abets the offence of defamation and is guilty under section 356(3).. Printing or engraving of defamatory material is not sufficient and the court is required to be satisfied that the accused knew or had good reasons to believe that such a matter was defamatory before holding a person guilty under section 356(3)..

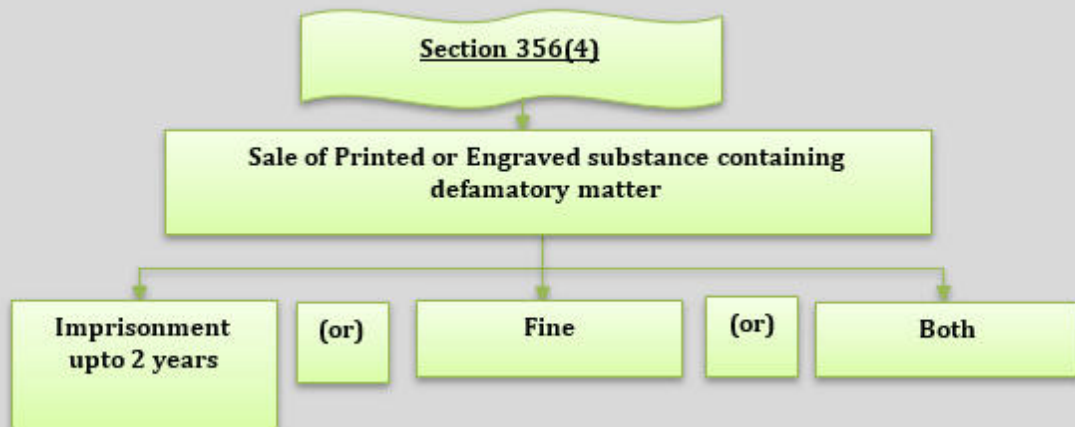
Case Law Sankaran v Ramkrishna Pillai, AIR 1960 Ker 141

In Sankaran v Ramkrishna Pillai, AIR 1960 Ker 141, the defamatory matter was printed in Malayalam and the accused did not know the language, his mens rea was absent and he was not guilty



[Section 356(4)] Sale of printed or engraved substance containing defamatory matter

Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.



To bring an offence under section 356(4), it must be:

- 1. That the published material was defamatory as per section 356(1) of the Sanhita.*
- 2. That the published material was either printed or engraved.*
- 3. That the accused knew that such matter contained defamatory imputation.*
- 4. That the accused sold or offered for sale the defamatory matter.*

	<div style="text-align: center;"> <p>Section 356(4)</p> <p>Essential element</p> <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <div style="border: 1px solid black; padding: 5px; width: 20%;">Publish was defamatory under [Section 499]</div> <div style="border: 1px solid black; padding: 5px; width: 20%;">Material in printed or Engraved form</div> <div style="border: 1px solid black; padding: 5px; width: 20%;">Accused is aware of defamatory information</div> <div style="border: 1px solid black; padding: 5px; width: 20%;">Sold or offer for sale</div> </div> </div>
41.	<p>[Section 14 to 33] General Exceptions or Defences under The Bharatiya Nyaya Sanhita, 2023</p> <p>The Bharatiya Nyaya Sanhita, 2023 also provides for general exceptions for a person accused of committing any offence under the Sanhita to plead in his defense. General defences or exceptions are contained in sections 14 to 33 of the Sanhita. 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 defense of the accused in a criminal case, the burden of proving lies on him under section 105 of the Indian Evidence Act, 1872 (Section 108 of THE BHARATIYA SAKSHYA (SECOND) BILL, 2023).</p>
1.	<p>[Section 14] Mistake of Fact bound by law</p> <p>According to section 14, if any one commits any act which he is bound to do or mistakenly believes in good faith that he is bound by law to do it, he is not guilty. The mistake or ignorance must be of fact, but not of law. If the mistaken facts were true, the act would not be an offence. Mistake of fact, is a general defence based on the Common Law maxim - ignorancia facit excusat; ignorancia juris non excusat- (Ignorance of fact excuses; Ignorance of law does not excuse). In mistake of fact the accused does not possess mens rea or guilty mind.</p>

2.	[Section 15] 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.
3.	[Section 16] 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.
	Section 15 protects judges from any criminal liability for their judicial acts.
	Section 16 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.	[Section 17] Mistake of Fact-justified by law
	According to section 17 of the Sanhita, 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.	Section 18] Accident in doing a lawful act
	According to section 18, if any one commits any offence by accident or misfortune without mala fide or without knowledge in performance of his legal duty in legal manner with proper care and caution is no offence.
	The protection under this section will apply only if the act is a result of an accident or a misfortune. The word 'accident' is derived from the Latin word 'accidere' signifying 'fall upon, befall, happen, chance. It rather means an unintentional, an unexpected act. Thus, injuries caused due to accidents in

	games and sports are all covered by this section.
6.	[Section 19] Act likely to cause harm, but done without criminal intent, and to prevent other harm 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.
7.	[Section 20] Act of a child under seven years of age 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.	[Section 21] Act of a child above seven and under twelve 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 is not liable to be convicted and punished.
9.	[Section 22] Act of a person of unsound mind 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.	[Section 23] Act of a person incapable of 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.
11.	[Section 24] Offence requiring a particular intent or knowledge committed by one who is intoxicated 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 commit any offence he is liable for punishment.
12.	[Section 25] Act not intended and not known to be likely to cause death or grievous hurt, done by consent 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.	[Section 26] Act not intended to cause death, done by consent in good faith for

	<i>person's benefit</i>
	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.
	Section 26 extends the operation of consent to all acts except that of causing death intentionally provided that the act is done in good faith for the benefit of the consenting party.
	For:- 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.	<i>[Section 27] On consent of guardian if any act is done in good faith to it</i> This section gives power to the guardian of a child under 12 years of age or a person of unsound mind to consent to do an act done by a third person for the benefit of the child or a person of unsound mind. 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.	<i>[Section 28] Consent</i>

	<i>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.</i>
16.	[Section 29] Exclusion of acts which are offences independently of harm caused <i>The exceptions in sections 25, 26 and 27 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.</i>
17.	[Section 30] Act done in good faith for benefit of a person without consent <i>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.</i>
18.	[Section 31] Communication made in good faith <i>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: 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</i>

