

CHAPTER 7: LAWS RELATING TO CRIMINAL PROCEDURE

BHARATIYA NYAYA SANHITA, 2023

1. *This law repeals the IPC 1860 and has modernised & recognised new forms of crimes as well as new forms of punishments.*
2. *The BNS did not attempt to define the word "crime", rather a cross reference has been given to the word offence & the same can be used interchangeably.*
3. *Offence is anything which the law makes it punishable.
In simple; crime is a wrong committed by an individual against the society.*
4. *BNS is a substantive law, that is, it prescribes punishments.*

BHARATIYA NAQUIK SURAKSHA SANHITA

5. *This law repealed the Criminal Procedure Code with the purpose to simplify the procedural aspect and align it with the needs & expectations of the society*

JURISDICTION

6. *Jurisdiction means the area on the subject upon which the law applies.*
7. *The BNS has both intra-territorial as well as extra-territorial jurisdiction.*
8. *Whenever a crime is committed within the territory of India by anyone that is, a national or foreigner then the Indian courts can exercise jurisdiction upon them. This is known as Intra Territorial Jurisdiction*
9. *When any Indian commits a crime outside India, which is an offence in India, the Indian Courts can still exercise the jurisdiction, this is known as Extra Territorial Jurisdiction.*
10. *It is no defence by a foreign national that he was not aware of the law & the act was not punishable in his own country.*

The SC in Mubarak Ali Ahmed v/s State of Bombay held that in order to make law effective it must be published in the territory in which it operates & it is no Defense that the foreigner was not aware the Law.

11. However, the following are exempted from the purview of Intra Territorial purview of Jurisdiction-
- A. The constitution provides immunity to the president & governor from any criminal prosecution under the act.
 - B. Foreign sovereign/ambassadors/ diplomats are exempt.

STAGES OF CRIME:

12. There are a stages in a crime which are as follows :

- a) **Criminal Intention:-** This is the 1st Stage in a crime in which a conscious exercise of mind is involved for the purpose of accomplishing any purpose.
- Intention alone is not punishable & the court cannot punish someone because of his intentions.
 - Further, intention can also be imputed, which means there are 2 types of intentions - Specific & General.

- b) **Preparation:-** This is the 2nd stage in commission of a crime and is generally not punishable because it is difficult to prove that for what purpose the preparations were made

Under the BNS, following preparations are punishable-

- Preparation to wage war against the government.
- Preparation to commit dacoity.
- Preparation for counterfeiting of coins or government stamps
- Possessing counterfeiting coins & fraud documents.

- c) **Attempt:**

(I) It is the 3rd stage, also known as the preliminary crime.

(II) Attempt under the BNS has been further dealt under 4 categories. -

- Those sections in which attempt & offence are dealt side by side with diff punishments, that is they are dealt separately.
E.g.:- Murder & Attempt to Murder.
- Those sections in which the offense & the attempt are dealt within the same section and the punishments are also same.

E.g.:- To wage a war against Government of India attempt for same.

- *Attempt to commit suicide to compel any public servant to do OR not to do his work.*
- *Attempts which are neither separately covered nor have been covered under any section dealing with that offence, in such cases the punishment for the same can be one-half of the total punishment for the crime.*

d) Commission of crime:- *This is the last stage, If the accused is successful, he would be guilty for the offence and if he fails, he would be guilty for the attempt.*

E.g. Rape.

TYPES OF PUNISHMENT



13. The types of punishment recognized are:

a) **Death:** It is Considered the harshest punishment, given in "rarest of rare" cases (as per **Bachan Singh v/s State of Punjab**).

Under BNS, capital punishment is for cases like:

- Murder
- Dacoity with murder
- Waging war against Government of India
- Abetting mutiny actually committed
- Giving or fabricating false evidence upon which an innocent person suffers death
- Attempted murder by a life convict
- Abetment of suicide by minor or insane person
- Mob lynching
- Terrorism
- Organized crime

b) **Life Imprisonment:** Means rigorous imprisonment for life.

c) **Imprisonment:** Can be of two types: Simple or Rigorous.

d) **Forfeiture of Property:** Taking away property without compensation.

e) **Fine**

f) **Community Service:**

- This is a new form of punishment recognized under BNS which can be inflicted in case of minor offences.
- The purpose behind community service is rehabilitative justice and to reduce the burden on the current prison system.
- Here ,the court orders the culprit to perform community service like teaching the underprivileged, managing traffic, or other work of public interest .
- It can be ordered in cases like:
 - A public servant getting involved in trade while he is not allowed to.
 - Not appearing in front of the court even after proclamation.
 - Attempt to commit suicide to compel any public authority to do some act.

- When it is the 1st conviction in a petty theft where value does not exceed ₹5,000 and the property has been recovered.
- Misconduct by a drunken person.
- Defamation.

14. ELEMENTS OF CRIME

A crime typically requires the presence of four elements:

1. **Human Being:** The 1st requirement for commission of a crime is that the person must be physically & mentally fit & under a legal obligation.

2. **Mens Rea:-**

The fundamental element which makes an act crime is the intention behind the same, this is based upon maxim - *Actus non facit reum nisi men sit rea*, which means that an act does not amount to crime until done with guilty mind.

There are 3 types of mens rea -

(a) **Intention**

It is the purpose with which an act is done, i.e., the position of mind of a person at the commission of offence. Intention can be specific and it also includes general condition.

(b) **Negligence**

This is another form of mens rea and it happens when there is a duty to take care but the person didn't.

The standard of comparison is with any reasonable man in identical circumstance.

(c) **Recklessness**

This occurs when the person doesn't intent to cause any harm but could reasonably foresee the consequences and still takes the risk.

Note: All the above are forms of mens rea which are important to prove the guilt of any person.

15. *If all the above elements are present, then this amounts to crime.*

However in the following cases even absence of Mens Rea is no excuse & the same would still amount to crime.

a) *Statutory Imposition: The general rule is that no Mens Rea, no crime, However there are many laws in India which have included the requirements of Mens Rea while making a person liable.*

Matters relating to public health, food, drugs falls under this exception.

b) *Difficulty in proving Mens Rea: Where it is difficult to prove Mens Rea & the fine is petty then speedy disposal of such cases is done in a way where proving the presence of Mens Rea is not necessary*

c) *Interest of Public Safety: In matters of public safety strict liability is imposed & whether a person causes nuisance either with or without any guilty mind is irrelevant.*

d) *offences without knowledge: If a person violates any law even without the knowledge of law, it shall still be said & that he committed that offence. (Ignorance of law is no excuse]*

CORPORATE BODY & MENS REA.

16. *Earlier the corporates used to avoid criminal liability by stating that companies being artificial person cannot possess mens Rea.*

17. *However, companies can no longer claim Immunity from criminal prosecution because now the intention is imputed on the people behind the company.*

18. *In the case of Maharashtra v/s Syndicate Transport, it was held that whether a company should or should not be liable under criminal law depends upon the acts of the individuals & their position.*

19. *Cognizable & Non-Cognizable offences.*

A cognizable offence is an offence in which a police officer may arrest without warrant. On the contrary, non-cognizable offence means an offence in which the police officer cannot directly arrest without warrant

Cognizable offences are generally non-bailable while non-cognizable offences are generally bailable.

Classes of Criminal Courts and their power:

A. High Court: It can pass any sentence authorised by law including death sentence.

B. Session/add session courts: Any sentence authorised by law but a sentence of death needs to be confirmed from the High Court

C. Magistrates -

(I) Chief Judicial Magistrate: It can pass any sentence authorised by law up to 7 year of experience.

(II) Magistrate of 1st class: A Magistrate of 1st class can pass sentence authorised by law for any term not exceeding 3 Year or with fine not exceeding 50,000 or both

(III) Magistrate of 2nd Class: A Magistrate of 2nd class can pass any sentence authorised by law for any term not exceeding 1 year or with fine not exceeding 10,000 or both

20. *Sentence of imprisonment in default of Fine.*

Sec 24 allow the Court of Magistrate to award imprisonment in default of fine, provided that -

a) it should not be in excess of the power of the Magistrate.

b) Where already imprisonment has been awarded as a part of the sentence then the additional imprisonment should not be exceeding 1/4th of total term of the magistrate is competing to inflict.

21. *Sentence in case of conviction of several offence in one trial -When there are several offences being tried at one trial then such punishment which consists of imprisonment may commence one after the other unless the court directs the punishment concurrently.*

INHERENT POWERS OF THE COURT

22. The BNSS states that nothing can limit or affect the inherent powers of the HC to pass such orders in order to prevent the abuse of the process of any court or to secure the ends of justice.
23. These inherent power includes the power to quash FIR, investigation, criminal proceeding pending in front of the courts.
24. The rationale behind this power is to prevent miscarriage of justice, however the same should be exercised with caution & sparingly.
25. The SC in *Madhu Limaye v/s State of Maharashtra* held the for:
- The power is not to be resorted to if there is any specific provision in the court.
 - It should be exercised very sparingly to prevent the abuse of process of any court.
 - It should not be exercised against the express bar of Law
- Note:- So, it is clear that inherent power cannot be exercised when there is specific remedy available.

26. ARREST OF PERSONS

What are the cases in which a police officer may arrest without warrants

Ans:

- Arrest means taking into custody of another person for the purpose of holding him to answer a criminal charge & to prevent him from further committing of crime
- In the following cases, a person may arrest without a warrant:
 - If any person commits a cognizable offence in front of the police officer.
 - Against whom a complaint or credible Info has been received that he has committed a cognizable offence punishable with more than 7 years & the police officer believes that he has committed the said offence.
 - Where an info/ complaint has been received by a police officer about any person that he has committed a cognizable offence for a term not exceeding 7 years &

the police officer has reasonable belief that the person has committed the offence & further is satisfied that-

- a. The arrest is necessary to prevent further commission of offence.*
- b. For conducting proper investigation.*
- c. To prevent him from tampering the evidences or dissuading the witnesses.
Provided, in this case, he has to record the reason for the arrest.*
- d. The person is a proclaimed offender under BNSS*
- e. In whose custody any stolen property is found or suspected.*
- f. Who obstructs the police officer from performing his duty or escapes the lawful custody.*
- g. he is a deserter from the armed forces.*
- h. who being a released convicts commits a breach of any rule.*
- i. for whose arrest, a request has been received from another police officer who has the power to arrest*

Note: No arrest shall be made without the prior permission of DSP in offences which are punishable with imp for by and such person is an infirm or above the age of 60.

27. Certain Measures to be followed u/s 35

- a) In any case where the arrest is not required, the police officer shall issue a notice to the suspect to appear before him on a particular date or time.*
- b) Where such notice is issued to any person, then it shall be the duty of that person to comply with the terms of notice & where he complies it, he should not be arrested unless the police officer feels that arrest is required with reasons to be recorded.*

Procedure of Arrest:

- (1) Every Police officer while making an arrest shall -*
 - a) Bear an accurate visible identification of his name.*
 - b) Prepare an arrest memorandum which should be duly attested by the person belonging to his family or any other respectable person & should be counter-signed by the person to be arrested.*

- c) *Inform the arrested person that he has the right to connect with a relative / friend to inform about the arrest unless the Memorandum itself is attended by a family member*

Note: *The person arrested has a right to meet the advocate of his choice, though he cannot be with him throughout the interrogation.*

- d) *In Arnesh Kumar v/s State of Bihar, the SC held that the power of arrest is a lucrative source of police corruption & many a times. it becomes a tool of corruption & hence the court stated that whenever a crime happens, which is punishable up to 7 year then the person should not be arrested in a routine manner & all the pre-conditions must be satisfied.*

Arrest on Refusal to Give Name and Address:

28. *When any person is accused of committing a non-cognizable offence, refuses or provides false information all his name & residence then he may be arrested.*
29. *Provided further that the person arrested should be released as soon as the name & residence of the person is ascertained.*
30. *Further, if its true name & residence cannot be ascertained within 24 hours, then he should be forwarded to the nearest Magistrate within 24 hours.*
31. *Arrest by Private Person: If any person commits, a cognizable offence in the presence of a private person then he may arrest the person, however, he should handover the person to police officer within 6 hrs from such arrest.*

32. Arrest how to be Made?

- a) *While making an arrest, the Police officer can touch or confine the body unless the person voluntarily submits to custody.*
- b) *If the person shows resistance or attempts to evade the arrest, then the Police officer may use necessary force, however, this Sec does not give a right to cause death of a person who is not accused of an offence punishable with death & Life Imprisonment.*

- c) *The police officer further also has a right to pursue any offender at any place in India for the purpose of his arrest.*
- d) *Further, where a woman is to be arrested, then it shall require the presence of a female police officer.*
- e) *As per the gravity of the offence, the police officer may use handcuffs while making the arrest or producing the person before the court.*
- f) *Handcuffs are generally used when the person is a habitual offender or has escaped or is an accused in organized crime (illegal arms & ammunition, murder, rape, etc.).*
- g) *No woman shall be arrested after sunset and before sunrise, and in case of exceptional circumstances, a female police officer, after obtaining prior permission of a magistrate of the first class, can arrest.*
- h) *The police officer shall without any delay present the person in front of the court within 24 hours of arrest excluding the time of the journey.*
- i) *The Magistrate to whom the accused person is forwarded irrespective of him having jurisdiction or not can order detention of a person for a term not exceeding 15 days. However, at any time during the first 60 days out of the detention of 90 days (i.e., in the first 60 days out of the 90 days).*
- j) *For any further detention the accused must be sent to the competent Magistrate.*

SUMMONS & WARRANTS

- 33. *A Summon should always be in writing signed by the presiding officer & shall bear the seal of the court or it may be in any encrypted or other e-form leaving the seal of court digital signature.*
- 34. *Where the person to be summoned cannot be found then the person to be summoned may be informed to any adult member of his family by leaving a copy of the summon with them and the person receiving the summon shall Sign the acknowledgement.*
- 35. *Summon on Corporate Bodies can be sent to the Registered office by serving it on the director/secretary of the company.*
- 36. *In case of Firms, it may be served upon any partner of the firm.*

Substituted service of Summon:-

37. *If the person to be summoned cannot be found then, a duplicate of the summon can be pasted on any conspicuous part of the house and thereafter the court may declare that the summon has been served or order fresh service of summon.*
38. *Where the person to be summoned is a government officer then the court sends a copy of summon to the head of the office who should give his acknowledgement & be responsible to send the person before the Court.*
39. *The same procedure is followed while issuing a summon to a witness & if an acknowledgement is received by the court stating that witness refused to accept the summon then the court may declare summon to be duly served.*

40. Proclamation & Attachment

- a) *An order of proclamation or attachment is issued when a warrant remains unexecuted.*
- b) *If the court has reason to believe that any person against whom a warrant has been issued is concealing himself in order to avoid the warrant, then the court may publish a written proclamation requiring the person to appear before the court at a specified time which shall not be less than 30 days.*
- c) *The court issuing proclamation may for reasons to be recorded in writing at any time after the proclamation is issued order the attachment of the property. [movable or immovable]*
- d) *If at the time of issuance of proclamation, the court is of the opinion that the person may dispose off the whole or part of the property, then the court may attach the property at the time of issuance of period.*
- e) *The object of attaching property is not to punish but to compel his appearance.*

Summons to Produce:

- a) Where a court requires any person to produce a document then he may be compelled by issuing a summon or warrant.
 - b) A Search warrant may be issued in the for Circumstances:
 - (I) when the court believes that the person having the document will not produce the document
 - (II) Such a document is not known by the court to be in possession of any person.
 - (III) The Court considers a general search as an option to find out if there is any document
- Note: Warrant shall be issued for searching a document/ parcel in postal or telegraph authority by a magistrates other than CJM

41. Search of a Place suspected to have a stolen property

- a) A Magistrates of 1st Class or above, if has reason to believe that any place is used to store or sell any stolen property or has any objectionable. article then the Magistrate may by warrant authorise any Police officer above the rank of constable to-
 - (I) enter such place.
 - (II) search such place.
 - (III) Take possession of property or article which is reasonably suspected to be a stolen property or objectionable article.
 - (IV) Convey the property to nearest magistrate.
 - (V) To take every person arrested in front of the magistrate.
- b) objectionable Articles means,
 - (I) Counterfeit coins
 - (II) Counterfeit stamps.
 - (III) Counterfeit currency notes
 - (IV) forged documents.
 - (V) False seals.
 - (VI) Obscene objects.

(VII) instruments used for production of same

42. Search for person wrongfully confined:

If the magistrate of First class or above has reason to believe that any person is confined anywhere without any reason then he may issue a search warrant for the person confined & the person if found shall be produced before the magistrate & the magistrate may then take any suitable order.

43. Summary Trial

- a) Summary Trial, as the name suggests is, hearing & disposing off the case at once & is generally used in offences not punishable with imprisonment exceeding 3 years
- b) Sec 283(1) allows a CJM or a Magistrate of the First class to do the trials for matters in a summary way:-
 - (I) Theft, where the value of property does not exceed ₹ 20,000
 - (II) Receiving any stolen property, value of which does not exceed ₹ 20,000
 - (III) Helping in the concealment or disposition of the above mentioned property.
 - (IV) Insult with the intent to provoke Breach of peace.
 - (V) An attempt to commit any of the above offences or even abatement of the above offences.
- c) No appeal lies against the decision of magistrate to try any matter summarily.
- d) The maximum sentence of imprisonment in summary trials cannot exceed 3 months.
- e) When in the course of summary trials, it appears to the magistrate that the nature of the case is such that a summary trial would not do justice then he may recall all or any of the witness & proceed to re-hear the case as per BNSS.

44. Compounding:

- a) *It means settlement of offences between the parties with the consent of the court, in such cases the future proceedings do not take place in court.*
- b) *The following offences can be compounded:-*
 - (I) *Voluntary causing hurt or grievous hurt by the person to whom the hurt is caused*
 - (II) *Wrongfully restraining or confining any person by the person restrained or confined*
 - (III) *In case of theft, by the owner of the stolen property*
 - (IV) *In case of assault, the person assaulted.*
 - (V) *In case of criminal breach of trust, the owner of the property.*

45. BAIL:

- a) *It is the temporary release of any person from the judicial custody into private custody, when a person arrested in a bailable offence without warrant and is ready to give bail shall be released on bail*
- b) *If the court thinks that the person is poor & is unable to furnish surety then the court may give him bail without taking bail bond & discharge him on executing a bond.*
- c) *It shall be sufficient for court to presume that a person is poor if he is unable to give bail bond within a week of his arrest..*
- d) *If a person fails to comply with provision of Bail, then he may be arrested & refused of his right to bail.*

46. Anticipatory Bail:-

- a) *when any person has reason to believe that he. may be arrested for any non-bailable offence then he may apply to any High Court or session court for an Anticipatory bail.*
- b) *The court may make the following directions, if the following conditions can be complied:*
 - (I) *That the person makes homely available as and when required.*
 - (II) *That he will not induce any witness or tamper any evidence.*
 - (III) *That he will not leave India without the prior approval of court*
 - (IV) *Any other condition, as may be required*

- c) *If such a person thereafter is arrested without warrant being prepared to give bail, then he shall be released & even if a magistrate issues warrant of arrest against the person then it shall be aailable Warrant*
- d) *Nothing here applies in case of an offence of rape covered u/s 65 & 70 (2) of BNS.*
- e) *If the surety dies or becomes insolvent then the court may require a fresh surety to be provided to the court.*

47. Limitation period in case of certain offences:

- a) *Although Limitation period does not apply in criminal cases delay may raise suspicions as well as be a hurdle in the investigation.*
- b) *The BNSS has prescribed certain limitation periods for certain offences which are as follows:*
 - (I) *A Limitation period of 6 months, if the offence is punishable with fine only.*
 - (II) *1 year, if the offence is punishable with imprisonment not exceeding 1 year.*
 - (III) *3 years, if the offence punishable with imprisonment not exceeding 3 years.*
- c) *If there are multiple offences which can be tried together then the limitation period of the most severe offence is to be taken.*

COMMENCEMENT OF PERIOD OF LIMITATION:

48. Limitation period shall commence:-

- a) *From the date of the offence*
- b) *Where the offence was not known to the person aggrieved, then the 1st day on which the offence comes into knowledge of the person*
- c) *Where it is not known as to who did the offence, then the 1st day on which the identity of the offender is known.*

Note: *The day on which from which the period is to be computed, shall be excluded*

49. Exclusion of time in certain cases:-

- a) The period during which another prosecution on the same facts was being prosecuted.
- b) The period of the stay order granted against the institution of prosecution.
- c) Where notice of prosecution is given in that period.
- d) Where previous consent of any authority is to be taken, then the time required to obtain the consent.
- e) The time during which offender is absent from India or is concealing himself.

Note: If the limitation period expires on the day the court is closed, then the period ends on the merit day when the court is re-opens.

50. Continuing offences:-

A continuing offence means when it is committed for a very long period. It is nowhere defined and clearly depends on its nature.

The offence which is happening again and again falls under the category of continuing offence. In such cases, a new period of limitation begins at every moment during which the offence continues.

In *Udai Shankar Awasthi v/s State of UP*, the court observed that this word has not been defined because it does not have a fixed meaning as crimes have a universal application.

In the case of *State of Bihar v/s Deokaran*, the court observed that a continuing offence is one which is susceptible of continuance & can be distinguished from those offences which are committed at once.

So, these are offences which arise out of failure to comply any rule and involves a penalty & the liability of which is continuous until it is complied with, it becomes an offence which is continuous and constitutes a fresh offence every time until it continues is a continuing offence.

In *Gokak Patel Volkart Ltd v/s Dundaaya*, the SC said that whether an offence is a continuing offence or not depends upon the language of the law declaring such act as an offence, the nature of offence & the purpose.

51. Offences against Property

Property here could either be movable or immovable & the offences could be of the following types:

Theft – Whosoever dishonestly takes away any movable property out of the possession of any person without his consent has said to commit theft.

The essentials of Theft are:

1. Intentionally & dishonestly taking away the property.
2. It should be a movable property.
3. Property must be taken out of possession without the consent.

The punishment of theft may extend up to 3years of imprisonment or with fine. And, in case of subsequent conviction with a rigorous imprisonment of 1 year but which may extend up to 5 years with fine.

Note – In case of theft, where it is the first conviction of the person & the value of property does not exceed ₹5000 and if the same is recovered, then the court may give community service as punishment.

There could be different kinds of punishments for theft:

- If from dwelling house/place of worship/means of transportation – imprisonment up to 7 years + fine. (Same for theft by clerk or servant.)
- Theft after preparation to commit grievous hurt/death – imprisonment up to 10 years and fine.

Snatching – A new sub-offence of theft is defined under the BNS in the name of snatching. A theft would be considered snatching if the offender suddenly or forcibly grabs or takes away any movable property from any person.

The punishment is up to 3years of imprisonment and fine.

52. Extortion

Whoever intentionally puts any person into a fear of any injury to the person or any other person, thereby dishonestly inducing the person to deliver any property or valuable security.

The essentials are

- a) Intention to put any person in fears*
- b) The fear relates to any injury in order to induce him to deliver any valuable property*
- c) Punishments:*
 - Any person who, for the purpose of committing extortion puts a person in fear of injury shall be punished with imprisonment up to 2 years or of fine*
 - Whoever commits extortion, then imp up to 7 years or fine*
 - If while committing extortion, the fear of death or grievous hurt is given, then imprisonment up to 7 year & fine.*
 - The above punishments is for attempt & whoever commits extortion by putting a person in fear of death shall be punished with imp up to 10 years or fine.*
 - The punishment remains the same when someone puts a person in fear of accusation of any offence punishable with death /LI/ imprisonment up to 10 years*

Case- Jadunadan Singh v/s Emperor. In this case, 2 persons were assaulted and their thumb impression was taken on multiple papers, the court held that this is not extortion as it does not involve inducing the victim to deliver property.

Distinction between Theft & Extortion

Extortion is done by consent which is wrongfully obtained whereas in theft there is no consent

In extortion, both movable & immovable property can be subject matter but in theft only movable property are covered.

53. Robbery [Sec 309]

- a) *In all cases of Robbery, there is either theft/extortion. Theft becomes robbery when while committing theft/carrying away the property the offender voluntarily attempts to cause any person death/ grievous hurt / fear of instant death*
- b) *Extortion becomes robbery when offender while committing extortion puts the other person in fear of instant death/grievous hurt/wrongful restraint in order to make other person deliver property.*
- c) *The punishment for robbery may extend up to 10 years of imprisonment & shall also be liable to fine & in case the same is committed on a highway between sunset & sunrise, the imprisonment may extend up to 14 year:*
- d) *Whoever attempting to commit robbery shall be punished with imprisonment up to 7 year and fine.*

54. Dacoity [sec 310].

- a) *When 5 or more persons commit or attempts to commit robbery including those who are present or helping then every person shall be said to have community dacoity*
- b) *The ingredients are: 5 or more persons committing robbery, even includes those persons who are present & helping*
- c) *Emperor v/s Lashkar : In this case, one of a person of the gang, after looting shot a villager, it was held that the offence committed by the dacoits while carrying away the property away the property was murder during dacoity & every offender were punished likewise.*
- d) *In all such cases, the punishment increases up to death*

55. Criminal Misappropriation, of Property. (Sec 314 & 315)

- a) *Whoever dishonestly misappropriates any movable property for his own use shall be punished with imprisonment for a period not less than 6 months but which may extend up to 2 year & fine*
- b) *The exception to the above is when the property is taken in good faith, however if there is a subsequent change in the intention of the person, he would be guilty u/s 34.
[Bhagiram Dome v/s Abar Dome]*
- c) *Ingredients - dishonestly taking away, the property / misappropriation*
- d) *In Mohammad Ali v/s State : 15 wire bundles were ceased from a person on the ground that he did not pass the bill, however no one claimed that the wires were stolen including the electricity department.*
- e) *In another case of Udhar v/s State Of Jharkhand, a sub-contractor filed a case against the contractors of criminal misappropriation of property as the payment from the principle received by the principle was not paid to him. The SC stated that the matter was in civil nature & the criminal complaint cannot be filed & stated that the money belonging to the contractor is not of the sub-contractor hence, there is no question of misappropriation*

- **Dishonest Misappropriation Of Property By Deceased Person At The Time Of His Death (Section 315)**

Whoever dishonestly Misappropriates any property knowing that the property belongs to deceased person at the time of person's death & no other person who is legally entitled for the possession was present shall be punished with imprisonment which may extend to 3 year and fine

- **Criminal Breach of Trust**

Whoever has been interested or has been given dominion over any property, dishonestly misappropriates or dishonestly uses or converts for his own use that property in violation of any direction of law or against any contract which was made between the parties & which causes harm to the other parties/person has said to commit Criminal Breach Of Trust.

Ingredients:

1. *Entrustment or dominion over the property*
 2. *Dishonest use of the property.*
 3. *The accused dispose of the property in violation of any law or any contract touching the discharge of trust.*
- *In V.R Dalal v/ Yogendra Naranji Thakkar- The SC held the entrustment is the most essential ingredient or if that is missing the act cannot constitute CBT. The Court further observed that Breach of Trust is civil but when dubbed with Mens Rea, it brings the act within purview of CBT*
 - *In Pratibha Rani v/s Suraj Kumar - The appellant alleged that she entrusted her stri Dhan to her in laws & who misappropriately used the same, the court held entitled upon CBT.*
 - *Omkar Nath Mishra*
The count asserted that 2 things are important to bring an act under the section, one being entrustment & the other being misappropriation.

Punishment for CBT

Whoever commits CBT, the punishment may extend up to 5 years or Fine.

Whoever being entrusted by the property or the carrier or warehouse keeper commits CBT; then 2 year & fine (Same for Clerk)

If the offence committed by a public servant or a banker, then the punishment can be up to 10 years of rigorous imp & fine or LI

In Bagga Singh

A taxation clerk after collecting tax from tax payer did not deposit the sum for 5 months & pleaded that the money was deposited with the cashier but upon conclusion the cashier was acquitted but clerk was held Liable & was punished.

Bachu Singh case

The appellant was a Gram Sachiv who collected certain sum from 3 villages towards house tax receipts, he collected the same in the capacity of public servant but did not transfer to the SG, it was held to be CBT.

Cheating (Sec 318)

- a) Whoever deceives any person & dishonestly induces him to deliver any property or retain any property. or intentionally induces him to do or omit to do something which he would have not done had it been he was not so deceived and such act is likely to cause harm to a person in body, property or reputation
- b) The difference in cheating & any other offence relating to property is, that in case of any other offence, the accused only gets the possession but in case of cheating he also gets the title.
- c) **Ingredients**
Deception - including any person to deliver /retain any property, or to induce him to do or not to do anything such act causes or is likely to cause harm to the body, mind & reputation.
- d) **Punishments.**
 - (I) whoever cheats shall be punished with imprisonment which may extend up to 3 year or with fine
 - (II) Whoever cheats with any person whose interest is being bound to protect, he shall be punished with an imprisonment which may extend up to 5 years or fine.
 - (III) Whoever Cheats & dishonestly induces to deliver a valuable property shall be punished with imp which may extend up to 7 years & with fine
 - (IV) Case Laws:
 - a) In Iridium India Telecom v/s Motorola & others the SC held that deception is one of the most essential ingredients & if that it is not present it does not amount to cheating.

- b) In *TR Arya v/s State of Punjab*, it was held that negligence without any dishonest intention cannot amount to cheating. In this case, a bank employee was negligent in comparing a sign on cheque which caused loss to the bank. But the same was held not to be cheating.
- c) In *Kuriachan Chacko vs State of Kerala*, a money circulation scheme was mathematically impossible was circulated & the promoters. We're well aware that it was unworkable & still made false representation to induce persons. to part with their money, the SC held that it is cheating.
- d) In *Mohammed. Ibrahim v/s State of Bihar* - The accused executed a false sales deed believing in good faith that the property belongs to him, however it turned out that the property belongs to someone else but the court held that the accused is not guilty of cheating as dishonesty was not present.

Cheating by Personation:-

If a person cheats by pretending to be some other person or representing himself or any other person as any other one other than who he really is, has committed the offence of cheating by personation.

Punishment - 5 years or fine

Fraudulent Deeds & Disposition of Property

1. Sec 320 - Whoever dishonestly removes/ conceals/delivers or transfers without adequate consideration any property in order to prevent the same from getting distributed amongst its creditors shall be punished with imprisonment of not less than 6 months but which may extend up to 2 year & fine.
 - Case Law *Ramautar Chaukhany vs. Hari Ram Todi & Anr.* following are the essential ingredients as per Sec 320-
 - a) The accused dishonestly transformed the property.
 - b) Without adequate consideration.
 - c) To prevent distribution of his property amongst the creditors

- *This section refers to frauds connected with insolvency & deals with both movable as well as Immovable property.*
2. *Sec 321 - whoever dishonestly releases any debt/demand due to himself to prevent the debt being available for payment to his creditors*
Punishment - up to 2 years of imprisonment or fine.
Case Law: Commissioner of Wealth Tax v/s GD. Naidu
In this, the court held that the following are the requisites of debt
 - (I) *Ascertained or Ascertainable.*
 - (II) *an absolute liability, in present or future, and*
 - (III) *an obligation which has already occurred & is subsisting.*

All debts are liability.
All Liability are not debts.
 3. *Sec 322: Whoever Fraudulently signs & executes any instrument which purports to transfer any property & contains false statement regarding the consideration then he shall be punished with an imprisonment up to 3 year or with fine*
Note: *This section stands superseded as the Benami Transaction Act has been notified & which covers a of wider field in this area.*
 4. *Sec 323: Whoever fraudulently conceals or removes any property or assists in the same or releases any claim to which he is entitled shall be punished with imprisonment of either description which may extend up to 3 years or with fine.*

Forgery

1. According to Sec 336, Whoever makes any false doc (including electronic Record) with the intent to cause damage to the public or any person or to support any claim with the intent to commit fraud, commits forgery.
2. Punishment-
 - a) Forgery - 2 year or with fine
 - b) Forgery with the intent to commit cheating - 7 year and fine
 - c) Forgery with the intent to harm the reputation - Imprisonment of 3 years & fine
3. Case Laws
 - a) In Parminder Kaur v/s State of UP
it was held that mere alteration does not make it a forged document unless the same is done to obtain any unfair gain.
 - b) In Balbir Kaur v/s State of Punjab
An allegation was made against a teacher & a certificate was furnished to get employment as the school was not recognised you the period given in certificate.
The court held that the certificate was to indicate her teaching experience & not to claim that the school was recognised Hence, the offence of Forgery was not committed

Defamation

Whoever by words, either spoken or written or by signs or representations makes any statement or publishes the same intending to harm or believing that It will harm the reputation of the person has said to commit defamation

Exceptions to the Above Rule-1

1. It will not be defamation if the representation made is true or if it is made for the public good
2. It will not be defamation if any opinion is given in good faith respecting the conduct of a public servant while discharging his public function.
3. It is not defamation to express an opinion in good faith regarding the conduct of any person touching any public question.

4. *It will not be defamation to publish a true report of the proceedings of a court*
5. *It would not be defamation to express any opinion in good faith about the merits of any performance which an author has submitted to the judgement of the public.*
6. *Any censure passed in good faith by a person having authority over another.*
7. *Accusation against any person made in good faith .*
8. *It would not be defamation to convey any caution in good faith to another person.*

Types of Defamation:

- a) *Libel - Representation made in any permanent forum*
- b) *Slander - Representation made in any transitory forum*

Punishments.

Whoever defames or prints or sells any material containing defamatory matter! shall be liable for imp which may extend up to 2 year or fine.

Note: In Sankaran v/s Ram Krishnan Pilai, the defamatory matter was painted in Malayalam & the accused did not know the language Hence, Mens Rea was absent and he was not guilty.

General Exceptions

The BNS has provided certain general exceptions to plead in defence by accused which have been categorised in the following 6 head's-

- (I) *Judicial Act*
- (II) *Mistake of Facts*
- (III) *Accidents*
- (IV) *Trifling Acted*
- (V) *Consent*
- (VI) *Absence of criminal intention*

1. *Act done by a person by mistake of fact believing that he is bound to do it -
Nothing should be an offence which is done by a person because of mistake of fact in good faith believing that he is bound to do it. [Mistake of Fact is excused but mistake of Law is not excused.]*
2. *Act of a Judge
It would not be an offence if an act is done by a judge in good faith believing that he has a power to do so*
3. *Act done Pursuant to order of court-
It would not be an offence if an act being done is pursuant to the judgement of court even if court did not have jurisdiction but person believed in good faith that the court had jurisdiction*
4. *Accident -
Nothing is an offence which happened by accident without any criminal intention in doing any lawful act*
5. *Act of a child under the age of 7 years.*
6. *Act of a child under 7 but above 12 years of age of immature understanding
It would not be an offence if a child does not have the maturity to understand the consequence of his conduct.*
7. *Act of a person of unsound mind -
Nothing is an offence which is done by a person who was of unsound mind at the time of commission of the Act.*
8. *Act by a person who is intoxicated against his will -
Nothing would be an offence done by the person who by reason of intoxication & unable to know the nature & consequence of the act but for this defence, he should have intoxicated without his knowledge or will.*
9. *Act not intended & not known to cause grievous hurt or death but was known to the person that it may cause hurt or death but it was done good faith with the consent of other person such act would not amount to an offence as It falls within the maxim 'volenti- non-fit-Injuria', which means he who consents suffers no injury.*

10. *Act not intended to cause death but was known to the person that it may cause grievous hurt or death but it was done in good faith, with the consent of other person for his benefit*
11. *Act Causing Slight harm-*
Nothing would be an offence which causes such slight harm that no ordinary person would complain of such harm.
12. *Communication made in good faith -*
It is not an offence its a communication made in good faith to other person for his benefits even if it causes harm.
13. *Act done by a person who has been compelled by threats -*
Except murder an offence punishable with death, nothing is an offence If the same is done by a person under threat, who believes that if he does not do it, then instant death would be an a consequence. (however, the person should not have put himself in this condition by his own misdeeds]
14. *Consent which was taken under fear/misconception.*

Right of Private Defence:

1. *As per sec 34 of BNS, nothing is an offence which is done by a person as a private Defense.*
2. *Every person has a right to defend his body or body of any other person or any property whether movable or immovable against any theft / robbery.*
3. *Right of private defence is also available against any person who does not have the maturity to understand the gravity of this act or is further intoxicated.*
4. *A private defence is NOT available in following cases*
 - a) *When a person has time to ask for protection from public authorities.*
 - b) *Against any act which does not create any apprehension that it may cause death or grievous hurt which is done by a public servant in good faith.*
 - c) *The above act, if done by any person under similar circumstances at the direction of a public servant.*
5. *When right to private defence allows death:*
In the following cases, right to private defence extends to causing death:

- a) *An assault which creates an apprehension that death may be the consequence if not responded.*
 - b) *An assault which creates an apprehension that grievous hurt may be the consequence if not responded.*
 - c) *Assault with the intention to commit rape.*
 - d) *Assault with the intention of unnatural Lust.*
 - e) *Assault with the intention of kidnapping.*
 - f) *An act of throwing or attempting to throw acid on another person.*
 - g) *Assault with the intention of wrongfully confining a person which creates an apprehension that he would be unable to reach public authorities.*
6. *In all other cases, the person does not have the right to cause death but can cause harm to protect himself.*
 7. *The right to private Defense commences from the time, the apprehension that is created in the mind & continues as long as the apprehension of danger continues.*
 8. *Right to private defence of property extends to causing of death in the following cases:*
 - (I) *Robbery*
 - (II) *House breaking after sunset & before sunrise.*
 - (III) *Mischief by fire on any explosive substance committed on any building*
 - (IV) *Theft, mischief, house trespass under such circumstances as may reasonably cause any apprehension that death or grievous hurt would be the consequence*
 9. *In all other cases, it does not extend to causing of death but allows to cause harm to other person.*
 10. *Right of private defence of property commences when there is reasonable apprehension of danger to the property & continues until the theft / robbery trespass continues or until the assistance of public authority is obtained*
 11. *Right to private defence also extends to causing harm to an innocent person if the same cannot be avoided by defending against an offender which might cause death of the person.*