

*. Bharatiya Nyaya Sanhita
*. Bharatiya Nagrik, Sanhita
Swaksha.

Law Relating to crime and its procedure

*. Bharatiya Nyaya Sanhita.

- The Bharatiya Nyaya Sanhita, 2023 is a modern day legislation which has replaced the colonial Indian penal code of 1860 which was retained as a main.
- Enforced from 1st July 2024.

Community Service

- Under BNS, it has been introduced as a form of punishment for petty expenses.
- Serves as an alternative to fines or imprisonment for minor crimes.

Sedition Law

It criminalize acts that bring hatred or toward government.

It criminalize acts that endanger the sovereignty, unity and integrity of India.

- BNS has 358 sections in 20 chapters.

- *. IPC → BNS (Bharatiya Nyaya Sanhita)
- *. CrPc → BNSS (Bharatiya Nagrik Swaksha Sanhita)
- *. Evidence Act → BSA (Bharatiya Sakshya Adhinyam)

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.

Intera-territorial Jurisdiction.

px 9m

If crime is committed within the territory of India, BNS applies, and court can try and punish irrespective of the fact that person who committed crime is Indian, National or foreigner this is called intera-territorial jurisdiction.

Territory of India as defined in Article 1 of Constitution of India.

- section 1(4) and 1(5) of BNS deals with extra-territorial jurisdiction.

Extra-territorial Jurisdiction.

Any person liable by any law for the time being in force in India, to be tried for an offence beyond India shall be dealt with according to the provisions of BNS for any act committed beyond India in the same manner as if such act had been committed within India.

If any persons commit any offence outside India, they can still be prosecuted in India if such act is punishable under Indian law.

BNS applies to offences committed by :-

- (a) Any citizen of India in any place without and beyond India
- (b) Any person on any ship or aircraft registered in India wherever it may be
- (c) Any person in any place without and beyond India committing an offence targeting a computer resource located in India.

Case law

Mohamud Ali Ahmed vs. State of Bombay.

In Mohamud Ali Ahmed vs. State of Bombay Supreme Court held that Indian laws apply to foreigners when they are in India, even if law is not known in their own country.

The law only needs to be punished in India, not outside for it to affect anyone who enters or is within India's border.

Exemption from Intra-territorial Jurisdiction of DNS

- ① Article 361(2) of Indian Constitution grants immunities to President and governors from criminal proceedings during their tenure.
- ② Foreign sovereigns under international law principles are exempt from criminal proceedings in India.
- ③ Ambassadors and diplomats of foreign countries enjoy immunity from prosecution while serving in India.

Example :-

A, who is a citizen of India, commits a murder in any place within and beyond India. He can be tried and convicted of murder in any place in India in which he may be found.

The fundamental of elements of crime.

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

(i) Human Being

⇒ The first requirement of commission of crime is that the act must be committed by a human being. Only a human being under legal obligation and capable

Of being punished can be the proper subject of criminal law.

(ii) ~~MENS REA~~

→ ~~"Actus non facit reum nisi mens sit rea", means the act itself creates no guilt in the absence of a guilty mind.~~

Types of mens rea.

a) Intention ⇒ Intention is defined as the 'purpose or design with which an act is done'.

Intention indicates the position of mind, condition of someone at particular time of commission of offences.

b) Negligence ⇒ Negligence is the second form of mens rea. Negligence is not taking care, where there is a duty to take care.

Negligence or carelessness indicates a state of mind where there is absence of a desire to cause a particular consequence.

c) Recklessness ⇒ Recklessness occurs when the actor does not desire the consequences, but foresees the possibility and consciously takes the risk.

(iii) Actus Reus (act or omission) ⇒ The third 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 intention of a man. Actus reus is defined as a result of voluntary human conduct which law prohibits.

Exceptions to mens rea.

a) Statutory imposition.

⇒ where a statute imposes liability, the presence or absence of a guilty mind is irrelevant.
The classical view that 'no mens rea, no crime' has long been eroded and several laws in India and abroad.

b) Difficulty in proving mens rea.

⇒ where it is difficult to prove mens rea and penalties are petty fines.

In such petty cases, speedy disposal of cases is necessary and the proving of mens rea is not easy.

An accused may be fined even without any proof of mens rea.

c) Interest of public safety.

⇒ In the interest of public safety, strict liability is imposed and whether a person causes public nuisance with a guilty mind or without guilty mind, he is punished.

d) Violation without knowledge.

⇒ If a person violates a law even without the knowledge of the existence of the law, it can still be said that he has committed an act which is prohibited by law.

Stages of Crime.

There are 4 Stage of Crime:-

a) Criminal Intention.

⇒ Person must have Intention to commit a offence.

The Criminal Court does not punish a man for mere guilty Intention because it is very difficult for the prosecution to prove the guilty Intention of a man.

b) Preparation

⇒ means Arrange necessary measures for commission of Intended Criminal Act not punishable in Nature.

c) Attempt

⇒ means an effort to commit a crime but ~~not~~ failing to complete it. It involve Intention, Preparation, Execution.

d) Accomplishment

⇒ means Attempt Successful then it is called Commission of Crime.

Exception of Preparation

- (i) Wage war against the Government
- (ii) Counterfeiting of coins or about
- (iii) Making Preparation to commit dacoity.
- (iv)

(Define in next page)

Attempt divided into 4 types.

- (I) Attempt to commit suicide.
- (II) Attempt to commit offences for which no specific punishment provided in IPC.
- (III) Attempt to commit specific offences. Offences are dealt side by side with the offences but separate punishment provided for attempt.

Corporate Body and Mens Rea.

According to Section 2(20) of BNS, persons include companies or associations or body of persons whether or not separate or not.

Company cannot claim immunity from criminal prosecution simply because it lacks a human mind. Instead mens rea or individuals charge is imputed to the company. This is based on alter ego principal.

Case Law

State of Maharashtra vs. M/S Syndicate Transport

In state of Maharashtra vs. M/S Syndicate Transport court decided that corporate body liability depends on nature of offence role of its officers and agents and whether the company through its representatives intended to commit the crime.

(Note 5/1)

Attempt is when person takes direct actions to commit a crime after making preparation, but crime is not fully completed it is punishable under law. it is called a preliminary crime.

if crime is completed, it is treated as a full offence, if not it is treated as a attempt.

Categories of attempts:-

① Same punishment: for attempt and completion of crime

= Some crimes have same punishment whether crime is completed or just attempted

Ex:-

- Wage war against the Government

- Assaulting president or governor

- Sedition

- accepting or attempting to expect bribes

- using false evidence

- Dacoity

② Separate punishment for attempt, or completion of crime

= for some serious crimes there are different punishment for attempt and for completing the crime.

Ex:-

- attempt to murder

- attempt to commit robbery

- attempt to commit any crime punished by death or life imprisonment

③ Attempting suicide to influence a legal authority to take them to a certain way is a crime.

④ Attempt where no specific punishment exist when no specific punishment is given for attempt and person tries to commit a crime, they will still be punished.

Punishment for attempt will be upto half the punishment.

Types of Punishment

- ① Death
- ② Imprisonment of life.
- ③ Imprisonment which is of two descriptions namely:
 - ① Rigorous that is with hard labour
 - ② Simple
- ④ Forfeiture of Property
- ⑤ Fine
- ⑥ Community Service

① Death :- A death sentence is the highest of punishment provided in the BNS, which involves the judicial killing or taking the life of the accused as a form of punishment.

Death punishment only in 'rarest of rare cases'.

Q.4m The BNS provide capital punishment areas follows:-

- a) Murder
- b) Dauliy with murder
- c) Waging war against the Govt. or order
- d) Abetting mutiny actually committed.
- e) Giving or fabricating false evidence upon which an innocent person suffers death
- f) Attempted murder by a life convict
- g) Abetment of a suicide by a minor or insane/innocent person,

The BNS has increased the No. of offences punishable by death. It includes:-

Q.4m
• Mob lynching

⇒ The punishment for murder or grievous hurt by five or more people on specified grounds is a min 7 yrs imprisonment to life imprisonment or death.

Q.4m
• Terrorism

⇒ The punishment for attempting or committing terrorism is death or life imprisonment and a fine of Rs. 10,00,000 if it results in death.

• Organized Crime.

⇒ The punishment for attempting or committing organized crime is death or life imprisonment and a fine of Rs. 10,00,000 if it result in death.

② Life Imprisonment :- Imprisonment for life meant rigorous imprisonment that is till the last breath of the convict.

③ Imprisonment :- Imprisonment which is of two descriptions namely :-

- (i) rigorous Imprisonment
- (ii) simple Imprisonment.

④ forfeiture of Property :- forfeiture of Property is the loss of property without compensation as a penalty for illegal activity or breach of contract. It can also be the result of a failure to fulfill an obligation.
Ex- (Real estate, car payment, investing)

⑤ Fine :- Fine is forfeiture of money by way of penalty.

part
⑥

Community Service as Punishment
The BNS 2023 includes community service as a form of punishment for minor offenses.

Ex- public nuisance, false defamation complaints and drunken misconduct in public etc---

Community Service for offences under the BNS 2023

- Defamation
- Involvement of public servants in illegal trade

- Non appearance in response to a proclamation.
- Public misconduct by a drunken person.
- First conviction of petty theft involving property valued below 50000, and the property must have recovered.
- Attempt to commit suicide to influence legal authority.

जो नहीं करता या कर दिया = Act ↗ Both are punishable.
 जो करता या नहीं किया = Omission ↖

Arrest of Persons.

- The word 'arrest' when used in its ordinary and natural sense means the apprehension or restraint or the deprivation of one's personal liberty to go where he pleases.
- The word "arrest" consist of taking into custody of another person under authority empowered by law.
- For the purpose of holding or detaining him to answer a criminal charge and preventing the commission of a criminal offense.

* Any police officer may without an order from a Magistrate and without a warrant, arrest any person

S. 172

- (a) The person has been involved in a cognizable offenses.
- (b) There is a reasonable complaint against the person.
- (c) The Police have credible information that the person has been involved in a cognizable offense.
- (d) The person has an implement of house breaking without a lawful excuse.
- (e) The person has been proclaimed as an offender.
- (f) The person have found something in the person's possession that they suspect is stolen property.
- (g) The person is obstructing a police officer.
- (h) The person has escaped or attempted to escape from lawful custody.
- (i) The person is suspected of being a deserter from the Armed forces.

Cognizable offence and Non-Cognizable offence.

exam

According to section 2(1)(g) of BNSS, "cognizable offence" means an offence for which and "cognizable case" means a case in which a police officer may, in accordance with the First Schedule or under any other law for the time being in force arrest without warrant.

According to section 2(1)(o), "non-cognizable offence" means an offence for which and "non cognizable case", means a case in which a police officer has no authority to arrest without warrant.

Case Law.

Ahlesh Kumar vs. State of Bihar

In Ahlesh Kumar vs. State of Bihar Supreme Court criticised the routine of misuse of arrest power by police officer, emphasizing that arrest should not be made without valid reasons.

Power to arrest is often used arbitrarily by police officer leading to police arrogance and corruption.

Court emphasised the need for caution when exercising the drastic of arrest to prevent misuse and protect individual liberty.

The above judgement applies to crimes punishable with up to 7 yrs of imprisonment.

Procedure of Arrest

Section 36 provides the provision relating to procedure of arrest and duties of officer making arrest.

Every police officer while making an arrest shall :-

- a) The arresting officer must identify themselves clearly and visibly.
- b) The officer must inform the person of the reason for the arrest.
- c) The officer must inform the person of their right to have a relative or friend informed.
- d) Prepare a memorandum of arrest which shall be:
 - a) at least 4 witnesses who is a member of a family of the person
 - counter signed by the person arrested.

Certain measures to be followed in the exercise of power under (Section 35)

* Section 35(7) of BNS provides that no arrest shall be made without prior permission of the officer not below the rank of Deputy Superintendent of Police in case the offence is punishable for less than 3 yrs and such person is infirm or is above 60 yrs of age.

— Section 35(3) says that the police officer shall, in all cases where the arrest of a person is not required under section 35(1) issue a notice to appear before them in certain cases.

— This notice can be used when the police have reasonable suspicion that someone has committed a cognizable offence.

- If the person complies with the notice, they cannot be arrested for the offense unless the police have a reason to do so.
- If the person does not comply with the notice, the police can arrest them.

Arrest on refusal to give name and residence (Section 39)

- Section 39 of Bharatiya Nagarik Suraksha Sanhita (BNSS) of 2023 allows police to arrest people who refuse to provide their name or residence.
- This section applies when the person is accused of or has committed a non-cognizable offense.
- The police can also arrest the person if they provide a name or residence that the police believe is false.
- If the person's identity is confirmed, they will be released on bail or bail bond.
- If the person's identity cannot be identified within 24 hrs, they will be sent to a magistrate.

Arrest by private person (Section 40)

- Section 40 of the BNSS 2023 allows a private person to arrest someone who commits a non-bailable and cognizable offense in their presence.
- The private person must then handover the arrested person to the police within 6 hrs

Arrest by Magistrate (Section 41)

- Section 41 of the BNSS 2023, gives magistrate the power to arrest people who commit crimes in their presence.
- This applies to both executive and judicial magistrates.
- Magistrate can arrest the offender themselves or order someone else to arrest the offender.
- Commit the offender to custody, subject to bail.

Exam Arrest how made: (Section 43)

- a) When making an arrest the police or person making the arrest must physically touch or restrain the person being arrested, unless the person agrees to go with them willingly.

save in exceptional circumstances, no women shall be arrested after sunset and before sunrise.

aditya
Date: _____
Page: 178

— if women is being arrested, she is assumed to go with the police if she is told she is under arrest, unless the situation suggests otherwise.

• The police officer should not touch women unless necessary or unless the officer is a female.

b) If the person resists arrest or tries to run away, the police officer or persons making the arrest can use whatever means necessary to arrest them.

e) The police officer can use handcuffs during the arrest or when taking the person to court if the person is a repeat offender, has escaped custody, or has committed serious crime like murder, terrorism, organised crime, rape etc.---

Nothing in this section gives a right to ~~death~~ cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

SECTION 44 OF BNSS

— Section 44 of BNSS of 2023 allow police officer to search a place to arrest someone.

— If a police officer or someone with an arrest warrant believes goods are in a place, they can ask the person in charge to let them in and search.

Section 78 of BNSS

— Section 78 of the BNSS of 2023, State must be brought before a court without delay.

They delay should not exceed 24 hrs, excluding the time of journey from the arrest site to the court. Article 22 of constitution

Section 59 of the BNSS

— Section 59 of the BNSS of 2023 requires police officer to report all arrests made without a warrant to the District Magistrate or the Sub divisional Magistrate.

— This is true regardless of whether the arrested person has been admitted to bail.

— This section applies to all arrests made within the limits of their respective stations.

Section 60 of the BNSS

— Section 60 of the BNSS of 2023 states that an arrested person can only be released on bail, their own bond or a magistrate order.

Section 61 of B.M.S.S.

If someone who is legally detained escapes or is helped to escape, the person responsible for keeping them detained can immediately chase and arrest them anywhere in India.

Summons and Warrants

The general processes to compel appearance are:-

- a) Summons
- b) Warrants.

When accused is brought before, Magistrate, the Magistrate has authority to decide whether person should remain in custody. Magistrate can allow accused to be detained for 15 days in whole or in part at any time during the initial 40 days or 60 days out of total detention of 60 days or 90 days as the case may be.

If Magistrate has no jurisdiction and considers further detention unnecessary, he may order accused to be forwarded to Magistrate having jurisdiction.

Summons

According to Section 63, every summons issued by a court under B.S. shall be:-

- (i) In writing, in duplicate, signed by the Presiding Officer of such court or such other officer as the High Court may, from time to time, by rule direct and shall bear the seal of the court.
- (ii) In an encrypted or any other form of electronic communication and shall bear the image of the seal of the court or digital signature.

→ further, as per Section 64 every summons shall be served by a Police Officer.

→ where the person summoned cannot by exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult member of his family residing with him.

Service of summons on corporate bodies, firms and societies.

→ To deliver a court summons to a company or corporation, you can give it to the Director, Manager, Secretary, or another officer of the company.

→ Alternatively, you can send it by registered mail to one of these officers in India. The summons will be considered delivered when the letter would normally arrive by mail.

— Regarding service of summons on any partner of a firm or other association of individual.

Procedure when service cannot be effected as before provided / substituted service of Summons.

Section 67

— If the serving officer cannot deliver the summons to the person as described in section 64 section 65 or section 66 despite trying hard, the officer should affix one of the duplicate summons to some conspicuous part of the house or household, in which person resides.

Section 68

— According to section 68, where the person summoned is in the active service of the government, the court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed.

Section 69

— As per section 69, when a court desires that a summons issued by it shall be served at any place outside its jurisdiction.

Service of Summons on witness. (Section 71)

Section 71 of the summons, typically referring to the 'Bharatiya Nagarik Suraksha Sanhita (BNSS)' in India, allows a court to serve a summons on a witness not only through traditional means but also electronically via registered post or email, essentially enabling the court to send a copy of the summons to the witness's usual residence, business address, or place of work through electronic communication, alongside a physical copy if necessary.

Warrant

A warrant is described as a legal document issued by a judge or magistrate which empowers a police officer to make an arrest, search or seize premises.

Requisites of a warrant

- It must be in writing
- It must be sealed
- It must state the offence charged
- It must give full name and description of the person to be arrested.

exams

Proclamation and Attachment.

When a warrant remain unexecuted, the Code of Procedure Code, 1973 provides for two Remedies:-

- ① Issuing a Proclamation (Section 84)
- ② Attachment and Sale of Property. (Section 85)

Section 84 provides that if any court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written Proclamation requiring him to appear at a specified place and at a specified time (not less than 30 days) from the date of publishing Proclamation.

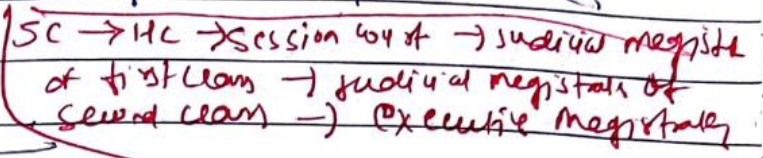
Section 85 provides that court issuing a Proclamation under Section 84 may, for reasons to be recorded in writing, at any time after the issue of the Proclamation order the attachment of any property, movable or immovable or both, belonging to the proclaimed person.

- a) court can dispose of the whole or any part of his property
- b) is about to remove the whole or any part of his property from the local jurisdiction of the court.

* The object of attaching property is not to punish him but to compel his appearance.

10A ✓

Power of Courts (Exam)



Power of the court to pass sentences

a) Sentences which High Courts and session judges may pass

⇒ According to section 22 of BNSS, a High Court may pass any sentence authorised by law. A session judge or additional session judge may pass any sentence authorised by law, but any sentence of death passed by Sub judge shall be subject to confirmation by the High court.

b) Sentence which Magistrates may pass

⇒ Section 23 lays down the quantum of sentence which different categories of magistrates are empowered to impose.

(i) The court of chief judicial magistrate may pass any sentence except a sentence of death or imprisonment of life or of imprisonment for a term exceeding seven years

(ii) The court of a magistrate of a first class may pass a sentence of imprisonment for a term not exceeding 3 years or of fine not exceeding 50,000 rs. or both or community service

(iii) the court of magistrate of the second class may pass a sentence of imprisonment for a term not exceeding 1 year or of fine not exceeding 10000 or of both or of community service.

c) Sentence of imprisonment in default of fine

According to section 24 the court of a magistrate may award such term of imprisonment in default of payment of fine.

(i) is not excess the power of the magistrate under Sec. 23,

(ii) shall not, where imprisonment has been awarded as part of the substantive sentence exceed 1/4th of the term of imprisonment.

Search warrant (Section 96)

When any court has reason to believe that a person to whom a summons order under section 94 or a requisition under section 95 has been or might be, addressed will not or would not produce the document or thing as required by such summons or requisition.

But such warrant shall not be issued for searching documents, parcel or other things in the custody of the postal or telegraph authority, by a magistrate other than a district magistrate or chief judicial magistrate.

The objectionable articles to which section 97 applies are:-

- a) counterfeit coin
- b) forged documents
- c) false seals.
- d) counterfeit currency note; counterfeit stamps.
- e) Instruments or material used for the production of any of the articles mentioned in clauses (a) and (f)
- f) obscene objects referred to in section 294 of the BNS 2023.

Search of Person wrongfully confined (Section 100)

As per section 100 of BNSS, any District Magistrate, sub-Divisional Magistrate or Magistrate of first class allows to search for people who are believed to be wrongfully confined. and he may issue a search warrant for the search of the person so confined.

The person if found shall be immediately produced before the Magistrate for making such order.

Recording of search and seizure through audio-video electronic means (Section 105)

Section 105 of the BNSS of 2023 requires that searches and seizures be recorded using audio-visual electronic devices. This includes the presence of

- making a list of seized items and the signature of witnesses

✓ Summary Trials - (Section 283)

Exam
Summary Trial is a speedy trial by dispensing with formalities or delay in proceedings. By summary cases is meant a case which can be tried and disposed of at once. Generally it will apply to such offences not punishable with imprisonment for a term exceeding 3 yrs.

Section 283(1) of the BNSS, sets out the provisions for summary trials. It states :-

- Notwithstanding anything contained in BNSS -
- a) any chief judicial magistrates
 - b) Magistrate of the first class.

Exam
Shall try in a Summary way all or any of the following offences:-

- ① theft, under sub-section (2) of section 303, section 305 or section 306 of BNSS 2023 where the value of the property stolen does not exceed 20000 Rs.
- ② receiving or retaining stolen property where the value of the property does not exceed 20000 Rs.
- ③ assisting in the concealment or disposal of stolen property where the value of such property does not exceed 20000 Rs.

- 4) offences under sub-section (2) and (3) of section 331 of the BNS 2023
- 5) insult with intent to ~~provoke~~ provoke a breach of the peace, and criminal intimidation, of BNS 2023
- 6) abetment of any of the foregoing offences,
- 7) an attempt to commit any of the foregoing offences, when such attempt is an offence

The Magistrate may after giving the accused a reasonable opportunity of being heard for reasons to be recorded in writing, try in a summary way all or any of the offences not punishable with

- death
- imprisonment for life or imprisonment

for a term exceeding 3 yrs, However no appeal shall lie against the decision of a Magistrate to try a case in a summary way.

* Maximum sentence in summary trial = 3 months

Theft (Section 303)

~~Oran~~ whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft.

The essential elements of theft are:-

- ① There should an intention to dishonestly take the Property.
- ② The property should be movable property.
- ③ The property should be moved in order to take that property.
- ④ The property should be taken out of the possession without that person's consent.

ex:- opening the ~~trap~~ for the purpose of taking the expensive liquid kept.

Punishment for theft

- According to section 303(2) of BNS, whoever commits theft shall be punished with imprisonment of either description for a term which may extend to 3 years or with fine or both.
- In case of second or subsequent conviction of any person under this section, he shall be punished with rigorous imprisonment for a term which shall not be less than 1 year but which may extend to 5 yrs and with fine.
- In case of theft where the value of stolen property is less than Rs. 5000, and a person convicted for the first time, shall upon return of the value of property or restoration of the stolen property shall be punished with community service.

However, there are different punishment for theft depending upon situation, which may understood with the help of below:-

| <u>Description</u> | <u>Punishment</u> |
|---|--|
| ① Theft in a dwelling house, or means of transportation or place of worship etc. | = Shall be punished with imprisonment of either description for a term which may extend to <u>7 yrs</u> and shall be liable for <u>Fine.</u> |
| ② Theft by clerk or servant of property in possession of master | = shall be punished with imprisonment of either description for a term which may extend to <u>7 yrs</u> and shall be liable for <u>Fine.</u> |
| ③ Theft after preparation made for causing death, hurt or restraint in order to committing of theft | = shall be punished with rigorous imprisonment for a term which may extend to 10 yrs and shall be liable to fine. |

Snatching (Section 304)

→ A new, sub-offence from theft has been defined in the BNS namely "snatching".

→ Theft is Snatching, if in order to commit theft, the offender suddenly, quickly or forcibly seizes or secures

Or grabs or takes away from any person or from his possession any movable property,

Whoever commits Snatching, shall be punished with imprisonment of either description for a term which may extend to 3 years and shall also be liable to fine

Extortion (Section 308)

(Imp)
Exam
Whoever intentionally puts any person in fear of any injury to that person, or to any other and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits extortion

The essential/features of extortion

- ① There should be an intention to put any person in fear of any injury.
- ② By the fear of injury, dishonestly induces the person so put in fear to deliver any property, valuable security or signed or sealed which may be converted into a valuable security.

Punishment of Extortion.

- whoever commits extortion
=> shall be punished with imprisonment of either description for a term which may extend to 7 yrs or with fine or both.

- whoever, in order to committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury
=> shall be punished with imprisonment of either punishment description for a term which may extend to 2 yrs or with fine or both

- whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other
=> shall be punished with imprisonment of either description, for a term which may extend to 7 yrs and shall also be liable to fine.

- whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other
=> shall be punished with imprisonment of either description for a term which may extend to 10 yrs and shall also be liable to fine.

- Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, of having committed or attempted to commit
⇒ shall be an offence punishable with death or with imprisonment for life,
= shall be punished with imprisonment of either description for a term which may extend to 10 yrs and shall also be liable for fine.

Case law

Jadunandan Singh vs. Emperor

In Jadunandan Singh vs. Emperor, the accused, along with other assaulted, along with others, assaulted two persons and forcibly took their thumb impressions on three blank papers. The Court observed that cases frequently occur which turn on the difference b/w the given and taking of thumb impression.

The forcible taking of the victim to deliver paper w/ thumb impression does not necessarily involve inducing victim to deliver paper with thumb impression. Therefore the offence of extortion is not established. It is not the case of theft because papers were not taken from the victim's possession. It is the case of criminal force or assault.

Difference between Extortion and Theft

= Both are different from in following aspects:-

① Extortion is done by wrongfully getting the consent of the owner while, there is no present of consent in case of theft-

② Both movable and immovable property may be the subject of an extortion whereas, theft is limited to movable property only, because of its nature.

Robbery (Section 309).

As per Section 309 of BNS, in all robbery there is either theft or extortion.

Theft is robbery, if, in order to the committing of the theft or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end voluntarily causes or attempt to cause to any person death or hurt or wrongful restraints, or fear of instant death or of instant hurt or of instant wrongful restraint.

Extortion is robbery if the time offender, at the time of committing the extortion is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, or instant hurt, or of instant wrongful restraint to that person or to some other person, and by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Punishment for Robbery

— whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to 10 years and shall also be liable for fine.

— if robbery is committed on highway b/w sunset and sunrise, the imprisonment may be extended to 14 years.

— whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to 7 years and shall also be liable for fine.

— if any person, is committing or attempting to commit robbery, voluntarily causes hurt such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life.

Or with rigorous imprisonment of a term which may extend to 10 years and shall also be liable for fine

Dacoity (Section 310).

When five or more persons conjointly commit or attempt to commit a robbery or where the whole number of persons conspiring or attempting to commit a robbery and persons present and aiding in commission or attempt, amount of five or more, every person so committing attempting or aiding is said to commit dacoity.

Essential elements of dacoity are:-

- (i) They will commit robbery or its attempt.
- (ii) There should be at least 5 persons by active participation or aiding.
- (iii) Every person whether committing or aiding is said to commit dacoity.

Punishment of dacoity.

- (i) Robbery, or dacoity with attempt → shall be punished shall not to cause death or grievous hurt be less than 7 years.
- (ii) Attempt to commit robbery or dacoity → shall be punished shall not be when armed with deadly weapon less than 7 yrs.

- (3) Punishment for belonging to gang of robbers etc -
 → shall be punished with rigorous imprisonment for a term which may extend to 7 years, and shall also be liable to fine.

Criminal Misappropriation of Property (Section 314 and Section 315)

Utkar
Case Study
Exam

Dishonest Misappropriation of Property

The definition of criminal misappropriation of property has not been provided by the provisions.

The Section directly states 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 6 months but which may extend to 2 years and with fine.

Illustrations

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.

Misappropriation

A finds a blank 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 for a loan, intending at a future time to restore it to Z.

A has committed an offence under this section

Essential Ingredients of Dishonest misappropriation of property.

Dishonesty is an essential ingredients of the offence and BNS 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, illegitimate 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.

Secondly, that he must misappropriate or convert it dishonestly.

Case laws.

① Bhagistam Dome vs. Abast Dome.

≡ In Bhagistam Dome vs. Abast Dome, it has been held that section 403 criminal misappropriation takes place even when the possession has been innocently come by, but where, by a subsequent change of intention as from the knowledge of some new fact which the party was not previously acquainted with the retaining, become wrongful and fraudulent.

② Mohammad Ali vs. State of Maharashtra

= Fifteen bundles of electric wire were seized from the appellant but none including electricity department claimed that wire were stolen property.

Evidence on records showed that impugned electric wire was purchased by the appellant 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.

Charge of stealing charge was, therefore, quashed by the Supreme Court and the accused was not held guilty under Sec 403.

Dishonest Misappropriation of Property possessed by deceased person at the time of his death (Section 315)

If someone takes or uses any property for themselves in a dishonest way, knowing that the property belonged to a person who has died and that no one who has the legal right to the property has taken possession of it yet, they can be punished.

Essential ingredients of Criminal Breach of trust

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

Essential of dishonest misappropriation of property

- (1) There should be misappropriation or conversion of property
- (2) The misappropriation or conversion should be dishonest
- (3) The property should be movable property.

Case laws.

① Pratibha Rani vs. Suresh Kumar.

= 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.

② V. R. Dalal vs. Yugendra Narayni Thakkur

= In V. R. Dalal vs. Yugendra Narayni Thakkur Supreme court 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 would include not only regulations pure and simple but also directions, instruments and circulars issued by authority entitled therefor.

③ Suryalakshmi Cotton Mills Ltd. vs. Raynor Industry Ltd.

= It was held that a cheque is property and if the said property has been misappropriated or has been used for a purpose for which the same had not been handed over.

Analysis of the cases.

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 out 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.

1) Its honest intention to misappropriate is a crucial fact to be proved to bring home the charge of criminal breach of trust.

Section 316

Punishment for the criminal breach of trust.

— whoever commit criminal breach of trust, shall be punished with imprisonment of either description for a term which may extend to 5 years or with fine or with both.

— 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 7 years and shall also be liable to fine.

— 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 shall be punished with either description for a term which may extend to 7 years, and shall also be liable to fine.

— ~~other~~ whoever, being a banker, merchant, factor, broker, attorney, or agent commits criminal breach of trust shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years and shall also be liable for fine.

Case law

Bagga Singh vs. State of Punjab.

- In Bagga Singh vs. State of Punjab the appellant was a taxation clerk in the 'Municipal Committee, Sangour'.
- He had collected arrears of tax from tax payers but the sum was not deposited in the funds of the committee after collecting but was deposited after about 5 months.
- He pleaded that money was deposited with the cashier Madan Lal, but Madan Lal refused that he did not take any money from Bagga Singh.
- It was decided that 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 as the accused was liable.

Exam

Cheating Section 318 and 319

Section 318 of the Bharatiya Nyaya Sanhita (BNS) defines cheating and the punishment for it. Cheating is a criminal offence that involves deceiving someone to gain property, money or an unlawful benefit.

Cheating means:-

- Concealing facts
- Making false claims
- Using counterfeit marks
- Making false promises
- Modifying, misusing or destroying securities

Main ingredients of Cheating

- ① Deception of any person.
- ② (a) fraudulently or dishonestly inducing that person
 - (i) to deliver any property to any person
 - (ii) to consent that any person shall retain any property
- (b) damage or harm to that person in body, mind, reputation or property.

examples

- ① A by falsely pretending that he is in a civil service, intentionally deceives Z and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- ② 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.

Case law

① In Indium India Telecom Ltd. vs. Motorola incorporated and ors, supreme court held that deception is necessary ingredient under both parts of section 420. 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 as a misrepresentation of fact leading to deception.

out a matter uncon-
spite may be relev

crime, A absconde
affected by facts in
ad sudden and u
ne fact that the le
relevant, except

ervice made by
as made me a b
is relevant as a

ty to B, who is s
statement is rel

at the head of a
ction.

about the fact

Statem-
made u
speci
circumst

h as "admis

entary or c
which is r
nether a str
e persons

② In *M. N. Osha and Others vs. AIDK Kurian Brivastan* and another. Supreme Court held that where the intention on the part of the accused is to detain 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 bounded warehouse to another, they are held guilty of cheating.

③ In *T. R. Arya vs. State of Punjab*, it was held that negligence in duty without any dishonest intention cannot amount to cheating.
A bank employee when on comparison of signature of drawer passes a cheque there may be negligence resulting in loss to bank but it cannot be held to be cheating.

Punishment of Cheating

→ Whoever cheats shall be punished with imprisonment of either description for a term which may extend to three (3) years or with fine or with both.

→ Whoever cheats with the knowledge that he is likely to cause wrongful loss to a person's ~~intention~~ interest either by law or by legal contract shall be punished with imprisonment of either description for a term which may extend 5 (five) years, or with fine or with both.

— 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 7 yrs and also be liable for a fine.

Case laws

① Kuriachan Chacko vs. State of Kerala

= the money circulation scheme was allegedly mathematical impossibility and promoters knew fully well that scheme was unworkable and false representations were being made to induce persons to part with their money.

The Supreme Court held that it could be assumed and presumed that the accused had committed offence of cheating.

② Mohd. Ibrahim and others vs. State of Bihar and another

= 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 (good faith) that the property belonged to him and purchaser also believed that the suit property belongs to accused, it was held that accused was not guilty of cheating as ingredients of cheating were not present.

Cheating by Personation (Section 319)

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 or another, or representing that he or any other person is a person other than he or such other person really is.

Punishment for cheating by personation

Whoever cheats by presenting shall be punished with imprisonment of either description or a term which may extend to 5 (five) years or with fine or with both.

Illustration

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.

Fraudulent Deeds and Dispositions of Property
(It is covered under section 320 to 323)

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.
(Section 320)

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, shall be liable for punishment with imprisonment of either description for a term which shall not be less than 6 months but which may extend to 2 years, or with fine or with both.

Example

A is debtor and B is creditor. A has to pay INR 1 Cr to B. A has certain movable and immovable property. A does not want to payback INR 1 Cr to B.

For that, A transferred the property to X just to prevent the distribution of his properties to B. A is liable under section 320.

Case Law

Allahabad High Court in Ramautar Chaulkany vs. Hari Ram Poddhi & Anr. held that an offence under this section has following essential ingredients:-

- a) That the accused removed, concealed, or delivered the property or that he transferred, or cause it to be transferred to someone.
- b) That such a transfer was without adequate consideration

Dishonestly or fraudulently preventing debt being available for creditors (Section 321).

- whoever dishonestly or fraudulently prevents any debts or demand due to himself or to any other person from being made available to law for payment of his debts or the debts of such other person shall be liable of either description for a term which may extend to 2 yrs or with fine or with both.

Example

A is debtor and B is creditor. A has to pay Rs. 1 cr to B but A does not have any money. But X, a person who has to pay INR 1 cr to A, if X pays back his money to A, A can pay back that money to B.

But A does not want to give money to B, and informs X not to pay any amount to B. This is clearly a fraudulent intention and A is liable under Section 321.

Case law

In Commissioner of wealth tax vs. G-D Naidu it was held that the essential requirements of debt are :-

- ascertained or ascertainable
- an absolute liability in present or future and
- an obligation which has already accrued and is subsisting.

d) All debts are liability but all liabilities are not debts.

Dishonest or fraudulent execution of deed of transfer containing false statement of consideration. (Section 322)

Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument with purpose to transfer or subject to any charge any property, or any interest therein

shall be punished with imprisonment of either description for a term which may extend to 3 yrs or with fine or with both.

example

While making agreement of lease the actual amount should be entered is INR 5cr but parties made the lease agreement for only INR 4cr just to avoid stamp duty and other taxes.

The parties are liable under section 322.

Dishonest or fraudulent removal or concealment of property. (Section 323)

Whoever dishonestly, fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment shall be punished with description of either imprisonment, or 3 yrs or with fine or both.

Forgery

Section 336

Receiving Stolen Property (Section 317).

Property, the possession whereof has been transferred by theft or extortion or robbery or cheating and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed is designated as stolen property, whether the transfer has been made or the misappropriation or breach of trust has been committed within or without India but if such property subsequently comes into the possession of a person legally entitled to the possession thereof it then ceases to be stolen property.

Punishment

— whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished for imprisonment of either description for a term which may extend to 3 years or with fine or with both,

— whoever, habitually deals in stolen property shall be punished for life or with imprisonment for a term

which may extend to 10 yrs and shall also be liable for fine.

— whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity or dishonestly receives from a person shall be punished for life imprisonment, for a term which may extend to 10 yrs and shall be liable for fine.

— whoever voluntarily assists in concealing or disposing of or making away with property which he knows or he has reason to believe to be stolen property shall be punished with imprisonment of either description for a term which may extend to 3 yrs, or with fine or with both.

Offences relating to Documents and Property marks

Forgery Section 336

According to section 336, whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person or to support any claim or title or to cause any person to part with property, or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed commits forgery.

Punishment for forgery

- 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.
- Whoever commits forgery, intending that the document or electronic record forged shall be punished with imprisonment of either description for a term which may extend to 7 yrs and for fine.
- Whoever commits forgery for the purpose of harming the reputation of any person — 3 yrs and fine.

11 exams
Defamation. (Section 356)

Whoever by words, either spoken or intended to be heard or by signs or by visible representation, makes or publishes in any manner, 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 expected to defame that person.

Explanation 1 :- It may amount to defamation to impute anything to a deceased person if the imputation hasm the reputation of that person and is intended to the feeling of his family or other near relatives

Explanation 2 :- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3 :- An imputation in the form of an alternative or expressed ironically (द्वि-सं-दि-क-त-व) may amount to defamation.

Explanation 4 :- No imputation is said to harm a persons 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 his calling or lower of the credit.

Illustration

- a) A says "Z is an honest man; he never stole B's watch" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.
- b) 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 falls within one of the exceptions.
- c) A draws a picture of Z summing away with B's watch, intending it to be believed that Z stole B's watch: this is defamation, unless it falls within one of the exceptions.

Exception

①

It is not defamation to impute anything which is true concerning any person, if it to be for the public good. Whether or not it is for the public good is question of fact.

②

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

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.

Illustration.

It is not defamation in A to express in good faith any opinion whatsoever respecting Z's conduct in petitioning Govt. on a public question, in signing a requisition for meeting on a public Ques, in presiding or attending at such meeting

Exception

(4) It is not defamation to publish substantially true report of the proceedings of a court, or of the result of any such proceedings.

(5) It is not defamation to express in good faith any opinion whatsoever respecting the merits of any case, civil or criminal which has been decided by a court or conduct of any person as a party witness or agent, in any case or respecting the character of such person as far as his character appears in that conduct and no further.

Explanation

A Magistrate or other officer holding an inquiry in open court preliminary to a trial in a court within the meaning of the above section

Illustration.

- a) A person who publishes a book, submits that book to the judgement of the public.
- b) A person who makes a speech in public, submits that speech to the judgement of the public.
- c) An actor or singer who appears on a public stage, submits his acting or singing to the judgement 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 the exception, in as much as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Exception - 6

A is not defamatory in a person having over another any authority, either conferred by law or arising out of a lawful contact 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.

Illustration

- 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 in child of a presence of other children.
- A school master whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils.
- A servant in good faith for remission in service.
- A banker censuring on the conduct of that order in of such cashier as such cashier are within this exception.

Exception 7

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.

Illustration

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.

Explanations

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

Punishment for Defamation

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two yrs (2 yrs) or with fine, or both or community service.

Whoever defames any person by printing or engraving any matter shall be punished with simple imprisonment for a term which may extend to 2 yrs or with fine or with both

Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, shall be punished with imprisonment for a term which may extend to two yrs (2 yrs) or with fine or with both.

Explain kinds of Defamation

① In libel, the defamatory statement is made in the some permanent and visible form, such as writing, printing or pictures.

② In slander, it is made in spoken words or in some other transitory form, whether visible or audible, such as gestures or articulate but significant sounds.

Exam.

Case laws

In Sankaran vs. Ramkrishna Pillai, the defamatory matter was printed in Malayalam and the accused did not know the language, his means sheet was absent and he was not guilty.

Exam Offences relating to Property Mark. Section 345

A mark used for denoting that movable property belongs to a particular person is called a property mark.

Whoever uses any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year or with fine or with both.

Section 14

General Exceptions

Exam
only 10

1) Act done by a person bound, or by mistake of fact believing himself bound by law

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

Maxim = Ignorantia facti excusat, et ignorantia juris non excusat.

Ignorance of fact excuses, ignorance of law does not excuse.
The mistake or ignorance must be of fact but not of law.

Section 15

(2) Act of Judge when acting judicially; nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is or which is in good faith he believes to be given to him by law.

Section 16

(3) Nothing which is done in pursuance of, or which is warranted by the judgement or order of a court if done whilst such judgement or order remains in force, is an offence, notwithstanding the court may have had no jurisdiction to pass such judgement or order, provided the person doing the act in good faith believes that court had such jurisdiction.

Section 17

(4) Nothing is an offence which is done by any person who is justified by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Section 18

(5) Nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Section 19

(6) Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it is done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Section 20

(7) Nothing is an offence which is done by a child under seven yrs of age.

Section 21

(8) Nothing is an offence which is done by a child above 7 yrs of age and under 12, who has not attained sufficient maturity of understanding to judge of the nature

Section 21

(9) Nothing is an offence which is done by a person who, at the time of doing it, by reason of mental illness, is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law

Section 23

(10) A person is not guilty of a crime if, at the time they committed the act, they were so drunk that they could not understand what they were doing or that it was wrong.

Section 24

(11) 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 not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

Section 25

(12) No offence is committed when an act not intended to cause death or grievous hurt has not been known by the doer to be likely to cause such harm and has caused harm to a consenting adult.

Section 26

(13) An act of good faith for the benefit of a person who has given his consent with ~~out~~ not intending to cause death or grievous hurt, would not be unlawful.

Section 27

(14) Provides legal protection for those who act in good faith for the benefit of a child or a person of unsound mind.

Section 28

(15) States that consent is not valid if it is given under fear, misconception or by a child under 12 yrs old. It also states that consent must be given freely, knowingly and without pressure.

Section 29

(16) States that some actions are crimes, even if they don't cause harm or if the person involved agrees to them.

Section 30

(17) States that an act done in good faith for the benefit of a person is not a crime if consent is impossible or the person is unable to give consent.

Section 31

(18) States that communication made in good faith is not a crime, even if it causes harm to the person being communicated.

Section 32

(19) States that an act is not an offence if it is committed under threat of immediate death.

Compounding of Offences:

Offence

Person by whom offence may be compounded.

- Voluntarily causing hurt

- The person to whom the hurt is caused.

- Wrongfully restraining or confining any person.

- The person restrained or confined.

- Assault or use of criminal force

- The person assaulted or to whom criminal force is used.

- Theft

- The owner of the property stolen.

offence

Person by whom offence may be compounded

- Voluntarily causing grievous hurt.

- The person to whom hurt is caused

- Assault or criminal force in attempting wrongfully to confine a person

- The person assaulted or to whom the force was used.

- Theft by clerk or servant of property in possession of master

- The owner of the property stolen.

- Criminal breach of trust

- The owner of the property in respect of which breach of trust has been committed.

Bail , (Section 478)

According to section 478, when any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such court give bail, such person shall be released on bail.

However, such officer or court, if such person is indigent and is unable to furnish surety, instead of taking bail bond from such person, discharge him on his executing a bond for his appearance as hereinafter provided.

Direction for grant of bail to person apprehending arrest (Anticipatory Bail).
(Section 482)

When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the Court of Session.

or
When the HC ~~and~~ Court of Session makes a direction under section 482 (1) it may include such conditions in such direction, in the light of the facts of the particular case as it may

think fit, including —

- a) person shall make himself available for interrogation by a police officer as and when required.
- b) person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case as to dissuade him from disclosing such facts to the law or to any police officer.
- c) person shall not leave India without the previous permission of the court.
- d) such other conditions as may be prescribed.

Limitation for taking cognizance of certain offences

The period of limitation shall be —

- Six months, if the offence is punishable with fine only
- One year, if the offence is punishable with imprisonment for a term not exceeding one year
- Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years

Commencement of the period of limitation (Section 515)

According to section 515 the period of limitation, in relation to an offender, shall commence —

- a) On the date of offence
- b) first day on which such offence comes to the knowledge of such person or to any police officer whichever is earlier

c) - first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence which ever is earlier.

* In computing the said period, the day from which such period is to be computed shall be excluded.

EXCLUSION OF TIME IN CERTAIN CASES. (Section 516)

a) the period during which another prosecution was diligently prosecuted.

b) the period of the continuous or the stay or injunction

c) where notice of prosecution has been given, the period of notice

d) the period required for obtaining such consent or sanction including the date of application for obtaining the sanction and the date of the receipt of the order.

e) the period during which the offender is absent from india or from territory outside india under central chaut. Administration

f) period when the offender is absconding or concealing himself.

continuing offences

continuing offence means an offence which is committed for a very long period.

The offence which is happening and continuing again and again comes in the category of continuing offence.

Case laws

(1) Udai Shankar Awasthi vs State of U.P.
= Supreme court observed that the expression, 'continuing offence' has not been defined in Cr. P.C.

(2) Golak Patel Volkart Ltd. vs. Dundaaya Gurusiddhiah Hiremath
= Supreme court held that the question whether a particular offence is a 'continuing offence' or not must, therefore necessarily depend upon the language of the statute which creates that offences

Exant Inherent power of court

BNSS grants the special inherent power to make orders necessary to ensure justice and prevent the abuse of court processes.

This can include actions like:-
Quashing FIR or criminal investigations or proceedings.

(Exam)

Supreme Court in *Moolan* vs. State of Maharashtra outlined key principles.

- (1) HC should not use these powers if specific remedy exist
- (2) It should be exercised cautiously to prevent abuse of process of court or to achieve justice
- (3) they should not contradict other legal provision.

Fine and Penalty

Fine:-

It is financial sum imposed as a punishment for an offence.

Penalty:-

Penalty sum to be forfeited due to non-fulfillment of agreed conditions, such as failing to comply with regulations.

Fine is typically associated with offences.

Penalty is linked to non-compliance referring to situation where individual fails to follow a rule or regulation.

As per section 2(38) of General Clauses Act offence means any act or omission made

punishable by law for time being enforce

Fine.

Example = if company defaults in complying with directions given under Section 16 (1) of the company shall be punishable with fine of ₹ 10000 for every day during which default continues and officer in default shall be punishable with fine which shall not be less than ₹ 50000 which may extend to ₹ 100000. ~~1A-1~~

In this provision default is in nature of offence and that is why here is fine as a punishment

Penalty.

According to section 12(8) of companies Act 2013, if any default is made in complying with requirements of section 12 comply and every officer who is in default shall be liable to pay penalty of ₹ 1000 for every day during which default continues but not exceeding ₹ 100000.

In this provision default is in nature of non-compliance that's why there is liability of liability.

Bharatiya Nyaya Sanhita (BNS)

BNS is an Act introduced to replace Criminal Procedure Code with the aim of modernizing and improving criminal justice system in India.

The BNS seeks to make criminal procedures more efficient victims centric and align with current societal needs - it integrates technology speedup trials, enhances digital evidence handling and ensures transparency.

Act focuses on:-

- ① Streamlining criminal procedures to reduce delays and redundancies.
- ② safeguarding individuals rights while ensuring justice.
- ③ strengthening fairness & transparency legal process.
- ④ Incorporating technological advancement to improve investigation and judicial system.

Case Laws

Barbie Kaur vs. State of Punjab

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. Her 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 teacher's experience of the accused per se,