

* Chapter, 7 *
* Law relating to Crime and procedure *

* Indian Penal Code.

• APPLICABILITY

2 - Jurisdictions

Intra territorial

Extra territorial.

1] Intra territorial.

→ If crime is committed in India then it does not matter who committed it is foreigner or Indian, IPC is applicable.

→ If crime is committed in Indian oceans then IPC applicable.

→ If any Aircraft / ship is registered or owned in India and if crime committed in it then also IPC is applicable.

→

2] Extra territorial.

→ If Indian citizen commits crime in other country then IPC is applicable.

→ If foreign citizen commits crime against the Indian in another country then IPC not applicable.

• If any dispute arises between foreign & Indian law or court then matter shall be forward to International Court.

* forms of Mens rea.

1) Intention :- Intention means purpose or design with which an act is done it indicates position of mind also will of accused.

For ex - A poisons the food which B was supposed to eat with the intention of killing B. C eats that food instead of B and is killed. A is liable for killing C although A never intended it.

2) Negligence :- Negligence is second form of mens rea

It means not taking care when there is duty to take care. Negligent amounts to mens rea.

As per law there is a duty to care by a reasonable man

For ex - Doctor negligence can be tried under IPC.

3) Recklessness :- Recklessness occurs when actor does not desire the consequence but foresee possibility and takes the risk. It is the form of mens rea.

For ex - drink & drive

* Elements of Crime.

Crime means that act or omission is committed by anyone which is forbidden by the code.

If anyone committed a crime then he or she shall be liable to punishment as may be prescribed under IPC.

Acts done by human being



Mens rea



Actus rea



Injury to another



Crime

① Human being - It is the first requirement of crime. The crime must be committed by a human being. Only human being is subject to IPC.

② Mens rea - It is a latin word which means guilty mind. It is a fundamental principal for crime. It is based on maxim 'actus non facit reum nisi mens sit rea' i.e. act itself creates no guilt unless done with guilty mind.

Exeptions to means rea :-

- Liability imposed by statue - When liability is imposed by statue / law the guilty mind i.e mens rea should not be considered.

- Petty cases - When the proving of mens rea is not easy and penalties are petty fines then accused should be punishable with fine without any proof of mens rea. In petty cases speedy disposal is needed.

- Public Interest - In case of public interest, when a person causes public nuisance with a or without a guilty mind he shall be punishable.

- Ignorance of Law - If a person violates law because he was not aware of law so, he did not intend to violate it is then no defence is liable. This follows maxim 'ignorance of law is no excuse'.

③ Actus rea - Actus rea it is a latin word. ~~It~~ It means criminal act. It is the actual physical act of committing a crime. If actual wrongful or criminal act has not take place, there should not be crime.

* Punishment :-

1] Death :- A death is a harshest punishment in IPC. It includes judicial killing & taking life of accused person as punishment.

Supreme Court held that death ought to be imposed only in 'rarest of rare cases'.

Capital Punishment of IPC for following cases :-

- Murder
- Dacoity with murder
- Waging war against Govt. of India.
- Abetting mutiny actually committed.
- Giving or fabricating false evidence upon which innocent person suffers death.
- Abetment of suicide by insane or minor person.
- Attempted murder by life convict.

2] Life imprisonment :- Imprisonment for life means harsh or rigorous imprisonment till the last breath of convict.

3] Imprisonment :- Imprisonment is of two descriptions which are

Rigorous imprisonment & Simple imprisonment
i.e. hard labour

4] Forfeiture of Property :- It is the forfeiting the specific property without compensation in consequence of default or act which is forbidden by law. The court may order for forfeiture of property of accused person in some cases.

5] Fines :- fine is forfeiture of money as a punishment. fine should be imposed individually, not collectively. If a court orders for punishment of fine to a accused person and he does not paid fine then he have to suffer imprisonment for a period as prescribed by court.

* Certain measures to be followed in exercise of power

- 1) Police officer should do accurate & clear identification of his name
- 2) Should prepare a memorandum of arrest which should be attested by one witness & counter signed by person arrested
- 3) Inform the person arrest that he can inform his relative or friend about the arrest

* Punishment for theft

Punishment for theft is imprisonment which may extend to 3 years or fine or both

Situation	Punishment
1) Theft in dwelling house	Imprisonment may extend to 7 years and fine
2) Theft by clerk or servant	Imprisonment may extend to 7 years & fine

* Punishment for Extortion

Punishment for extortion - ^{imprison}ment which may extended to 3 years or fine or both

Situation	Punishment
1) Putting person in fear of injury to commit extortion	Imprisonment which may extend to 2 years or fine or both
2) Extortion by putting a person in fear of death or ^{aggrievanc} [↑] heart grievous	Imprisonment which may extended to 10 years & fine

* Robbery.

When theft is robbery?

If during committing of theft offender voluntarily causes or attempt to cause

When extortion is robbery?

If during committing of extortion offender commits extortion by putting fear of instant death or instant hurt or instant wrongful restraint he commits robbery.

PUNISHMENT FOR ROBBERY

Punishment for robbery is rigorous imprisonment which may extend to 10 year and fine

If robbery is committed on highway between sunset & sunrise imprisonment may extend to 14 years

PUNISHMENT FOR ATTEMPT FOR ROBBERY. → Imprisonment may extend to 7 year and fine

* PUNISHMENT FOR DACOITY

Imprisonment for life or rigorous imprisonment which may extend to 10 year & fine.

* Dishonestly receiving stolen property.

Who so ever dishonestly receives or retains any stolen property with knowing the same to be stolen

shall be punishable with imprisonment which may extend to 3 year or fine or both.

* COGNIZABLE AND NON-COGNIZABLE OFFENCES.

- **Cognizable** : It means a case in which a police officer may arrest without warrant, under according to first schedule or under any other law.

Cognizable offence means an offence having cognizable case.

- **Non-Cognizable** : Non-cognizable means an offence having non-cognizable case.

It means a case in which a police officer can arrest with warrant. The police officer has no authority to arrest without warrant.

* CLASSES OF CRIMINAL COURTS

Section 5 :- It is mandatory following courts in every state -

- 1) Executive magistrate
- 2) Judicial magistrate of 2nd class
- 3) Judicial magistrate of 1st class
- 4) Court of session
- 5) High Court

* POWERS OF COURT

- Supreme Court → Any sentence authorised by law.
- High Court → Any sentence authorised by law under sec. 28(1) of (CRPC)
- Session Judge, Additional session Judge → It shall need confirmation by High court if any sentence of death passed by such judge.
- Assistant session Judge → Any sentence authorised by law except sentence of death / imprisonment for life / imprisonment upto 10 years.
- Chief Judicial magistrate, chief metropolitan magistrate → Any sentence authorised by law except sentence of death / imprisonment for life / imprisonment upto 7 years.

* ARREST OF PERSONS

The word "arrest" consists of taking into custody of another person under authority, empowered by law, for purpose of holding him to answer a criminal charge & to prevent the commission of criminal offence.

* Non - Preventive Arrest / Arrest without warrant

Following person can be arrested by Police officer without warrant -

- 1) Who commits a cognizable offence in presence of police officer.
- 2) Who has been proclaimed as offender under this code or by any order of state Govt.
- 3) Who has committed any act at any place outside India. If it is committed in India then it is punishable as an offence & for which he is liable to be apprehended / detained in custody in India.
- 4) If any release convict commits any breach of rule.
- 5) In whose possession anything is found which may reasonably or suspected to be stolen property.

6) Who obstructs a police officer while in the execution of his duty, or who has escaped or try i.e. attempts to escapes from lawful custody.

7) Who is suspected of being deserted from armed forces of Union.

8) For whose arrest any requisition whether written or oral has been received from another police officer, provided that requisition specifies person to be arrested and the offence or other causes for which arrest is to be made arrested & made it appears there from that the person might lawfully be arrested without warrant.

* Arrest on Refusal to Give Name & Residence

Section 42 : If any person who is accused of committing a non-cognizable offence does not give his name, residence or gives a name & residence which the police officer feels to be false, he may be taken into custody for not more than 24 hrs, then he shall be forwarded to the nearest Magistrate having jurisdiction.

* Arrest by Private Person

A private person may arrest / cause to be arrested any person who in his presence commits a non-bailable / or cognizable offence or who is proclaimed offender.

* Arrest by a Magistrate.

Section 44(1) : The Magistrate has been given power to arrest a person who has committed an offence in his presence & also commit him custody.

Section 44(2) : The Magistrate has power to arrest a person for which he is competent & has also been authorised to issue a warrant.

* Arrest of Person of Armed forces.

Sec. 45 ^{protect} protects members of Armed forces from arrest where they do something in discharged of their official duties. They can be only arrested only after obtaining consent of Central Govt.

* Arrest how made. (Sec. 46)

1) The section authorises a police officer or other person making an arrest to actually touch / confine the body of the person to be arrested.

2) The section does not give a right to cause the death of a person who is not accused of an offence punishable with death sentence / life imprisonment. Some special safe guards have been made for women who are to be arrested.

3) ~~Except~~ Except in exceptional circumstances

no women shall be arrested after sunset & before sunrise by women police officer.

4) When a person is arrested under a warrant & arrest without warrant, he can be kept into custody for period not exceeding 24 hrs & before expiry of that period Magistrate order his detention for term not exceeding 15 days. Magistrate can remand him custody for term which may exceed 15 days but not more than 60 days.

* SUMMONS [section 61]

A summons is issued either for appearance or for producing a document or thing which may be issued to an accused person or witness.

- Essentials -
 - 1) It should be in writing
 - 2) It should be in duplicate
 - 3) It should be signed by presiding officer or such Court or by such officer as authorised by High Court.
 - 4) It contains seal of Court
 - 5) The summons should be clear and specific in terms as to title of Court, the place at which, the day & time of day, when attendance of the person summoned is required

• Service of summons

1) Summon to be served to a person

→ Sec. 62 summon to be served by police officer / an officer of court / other public servant if practicable to served personally

2) Summon on Corporations

→ sec. 63 summon can be served on secretary / local manager / other principal officer of corporations

3) Summons if the concerned person not found

→ Sec. 65 summon can be ^{served} made to the male adult of family

4) If noone is found at home / household

→ Sec. 65 If noone is found at home then affix the duplicate copy of summon to conspicuous part of home or household where the summoned person ordinarily resides

5) Summon in case of Govt. employee

→ Summon shall ordinarily be sent to Head of office in which such person is employed

* WARRANTS

A warrant is described as legal document issued by judge / magistrate which empowers police officer to make arrest, search / seize premise.

Requisites of Warrant

- 1) It must be in writing.
- 2) It must bear the name & designation of person who is to execute it.
- 3) It must give full name & description of the person to be arrested.
- 4) It must state offence charged.
- 5) It must be signed by preceding officer.
- 6) It must be sealed.

Section 76 : The police officer / person executing warrant at arrest shall bring the person arrested without unnecessary delay & such delay shall not exceed 24 hours.

* SEARCH WARRANT.

The search warrant can be issued in following cases -

1) When Court has reason to believe that person summoned to produce any document / other thing will not produce it.

2) When such document / other thing is not known to Court to be in possession of any person.

3) When general inspection & search is necessary. However, search warrant may be general / restricted in its scope as to any place / part thereof.

* Security for keeping the peace & for good behaviour

When Court of session / Court of Magistrate is of opinion that it is important to take security from such person to keep peace, can order him to execute bond for period not exceeding 3 years.

The offences specified as follows :-

- 1) Any offence punishable under IPC, 1980.
- 2) Any offence which consists of assault / using criminal force / committing mischief.
- 3) Any offence of criminal intimidation.
- 4) Any offence which is likely to cause breach of peace.

* INFORMATION IN COGNIZABLE CASES.

- Every information related to commission of cognizable offence, if given orally to an officer in charge of police station, shall be reduced to writing by him.
- The information given to police officer reduced in writing is called as First Information Report (FIR).
- In case of cognizable offence police may conduct investigation without order of Magistrate.

* INFORMATION IN NON-COGNIZABLE CASES.

- When information of commission is given to in-charge of police station within limits of such station of non-cognizable offence then he shall enter substance of offence information in book in such form as S. Govt may prescribe.
- The Police officer is not authorised to investigate a non-cognizable case without order of Magistrate.

- * When Executive Magistrate receives information that any person is likely to
 - commit breach of peace, or
 - disturb the public tranquillity, or
 - do any wrongful acthe may require such person to show why he should not be ordered to execute bond for keeping peace for one year.

* SUMMERY TRIALS

- Summery trial is speedy trial by dispensing with formalities or delay in proceedings.
- Summery case means a case which can be tried & disposed at once.
- It applies to such offences not punishable with imprisonment for term exceeding two years.
- Cases can undergo summery trials -
 - 1) Cases which relate to offences punishable with imprisonment upto 2 years
 - 2) Insult with intention to provoke breach of peace
 - 3) Cases where value of property does not exceeds Rs. 20,000/-
 - 4) Abatement of any of foregoing offences
 - 5) offences under sec. 454 & 456 of IPC.
 - 6) Attempt to commit any of foregoing offences
- No sentence of imprisonment shall be passed in conviction of summery trials for term exceeding 3 months.
- following persons can conduct summery trials -

- Any chief judicial magistrate
- Any Metropolitan Magistrate
- Magistrate of 1st class

* COMPOUNDING OF OFFENCES

- Compounding means settlement of offence committed by a person
- The settlement must be done with consent of Court or law.
- In many cases parties to suit do not want to continue proceedings in court & want settlement of matter out of court, then compounding comes into picture.

* COMPOUNDABLE OFFENCE & ITS AUTHORITY

Section	Name of offence	who can compound offence
1) Sec. 325, 337, 388 of IPC	→ Voluntarily causing grievous hurt	→ To whom hurt has been caused.
2) Sec. 357 of IPC	→ Assault / criminal in attempting wrongfully confine to person	→ Person who is assaulted
3) Sec. 381 of IPC	→ Theft by clerk / servant or property in possession of master	→ The owner of property stolen

Types of bail

- 4) Sec. 406, 408 of IPC → Criminal breach of trust → The owner of property on which breach of trust has occurred.
- 5) Sec. 418 of IPC → Cheating with knowledge → The person who has been cheated
- 6) Sec. 420 of IPC → Cheating & dishonestly inducing delivery of property → Person who has been cheated.

* BAIL

- Bail means the ~~re~~ release of accused from the custody & entrusting him to private custody of persons who are sureties to produce accused to answer charge at stipulated time / date.

- Bail in case of bailable offence. (Sec. 436)

If person accused in offence other than non-bailable offence is arrested without warrant by police officer & brought before court & prepared to give bail such person shall be released on bail.

If such person is unable to furnish surety then Court may discharge him on his execution bond without sureties for his appearance.

- Bail in case of non-bailable offence

If any person accused of any non-bailable offence is arrested by officer in charge of police station is brought before court, then he may be released on bail.

but subject to - such person shall not be released if he has been guilty of offence punishable with death or imprisonment for life.

- Such person shall not be released if offence is cognizable offence

1) punishable with life imprisonment for 7 years or more

2) He has convicted 2 or more cognizable offence punishable with imprisonment for 3 years but not less than 7 years.

- Bail to require accused to appear before next appellate court

* TYPES OF BAIL

- Regular bail :- A bail which is granted after the offence is committed.

- Interim Bail :- A bail which is given during pendency of application.

- Anticipatory bail :- A bail which is given when person has apprehension that he may be arrested on accusation of having

committed a non-bailable offence.

When court grants bail it may include following conditions -

- 1) Person shall make himself available for interrogation whenever required by police officer.

- 2) Person shall not make any inducement to any person familiar with facts of case to dissuade him from disclosing such facts to court or police officer.

- 3) Person shall not leave India without permission of Court.

- 4) & other conditions as imposed under Section 437(3).

* CONTINUING OFFENCE

- It means a offence which is committed for long period.
- Whether the offence is continuing or not it is not defined in IPC or CRPC, but it clearly depends on its nature.
- The offence which is happening & continuing again & again comes under continuing offence.

* OFFENCES AGAINST PROPERTY

I] THEFT (Section. 378)

- Theft is intending to take dishonestly any movable property out of possession of any person without

that person's consent.

- The following are elements of theft -
 - There should be intention to take property dishonestly.
 - The property should be movable.
 - Property should be taken out of possession without that person's consent.
 - The property should be moved in order to take that property.

2] EXTORTION

• It is intentionally putting any person in fear of injury or to any other and dishonestly inducing person put in fear to deliver to any person any property / anything signed / sealed which may be converted into valuable security.

- The following are elements of extortion -
 - There must be intention to put any person in fear of injury.
 - By fear of injury, dishonestly induces person to deliver any property.

3] DACOITY

- When 5 or more persons commits robbery, then it is 'Dacoity'
- Followings are essentials of dacoity -
 - There should be atleast 5 persons
 - They will commit robbery or its attempt.
 - Every person whether committing / aiding is said to commit dacoity.

* Dishonest misappropriation of property possessed by deceased person at time of his death.
(Section 404)

- If any person misappropriates his own use property & knowingly that it was in possession of a deceased person at his death, & that it has not since been in the possession of any person legally entitled to it, then imprisonment → 3 years & fine
- If there is clerk or servant, imprisonment may extend to 7 years.

* CRIMINAL BREACH OF TRUST

- It is laid down under sec. 405 of IPC 'dishonest misappropriation' or 'conversion to own use' anothers property.
- In criminal breach of trust, the accused is entrusted with property or with dominion or control over the property.
- The following are essential elements -
 - 1) The accused must be entrusted with property or dominion over it

- 2) The person so entrusted must use that property.
- 3) The accused must dishonestly use or dispose of that property.

• Punishment -

1) Sec. 406 : Punishment for cases other than following cases → imprisonment 3 years or fine or both.

2) Sec. 407 : Breach of trust by carrier, wharfinger or warehouse keeper

↓
Imprisonment upto 7 years & fine

3) Sec. 408 : Breach of trust by clerk / servant

↓
Imprisonment upto 7 years & fine

4) Sec. 409 : Breach of trust by public servant, banker, merchant, broker, attorney or agent

↓
Imprisonment for life or imprisonment upto 10 years & fine.

* CHEATING

• It is defined as dishonest or unfair act done to gain advantage over the other.

• Whoever fraudulently or dishonestly deceives a person in order to induce that person to deliver a property to any person or to consent to retain any property.

- Main ingredients -

- 1) The accused must deceive another person
- 2) The act deceiving was done intentionally.
- 3) The person who is deceived should be induced to deliver any property or to do an act.
- 4) Such inducement should be fraudulent / dishonest.

- Cheating by personation -

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.

- Punishments -

1) Sec. 417 : Cases other than following cases

↓
Imprisonment upto 1 year / fine / both.

2) Sec. 418 : If a person cheats who is bound to protect another person's interest.

↓
Imprisonment upto 3 years / fine / both.

3) Sec. 419 : Cheating by personation

↓
Imprisonment upto 3 years / fine / both.

4) Sec. 420 : When cheating leads to dishonestly inducing delivery of property.

↓
Imprisonment upto 7 years & fine.

* Sec. 421 :- If someone dishonestly, transfers property, to another person without adequate consideration, with the intention to prevent its distribution among creditors, they can be punished with imprisonment upto 2 years / fine / both

* Sec. 422 :- When a person fraudulently, prevents the payment of debt amount to the creditor, then such person is punishable with - imprisonment upto 2 years / fine / both

* Sec. 423 :- If someone dishonestly signs or participates in a document that transfers or charges property, & that document contains false statement information about consideration / the intended beneficiaries; they can be punished with imprisonment upto 2 years / fine / both

Essentials -

1) The sale / deed subjecting on immovable property to charge must contain false statement

2) false statement is related to -

- Consideration

- Beneficiary

* Sec. 424 :- If someone dishonestly, hides, takes away or helps in hiding property or fraudulently, gives up a legitimate reasonable claim, then such person shall be punishable with imprisonment upto 2 years / fine / both

* FORGERY

Sec. 463 :- • Whoever makes any false document or false electronic record or part of a document or electronic record, with intention to cause damage / injury.

• In simple words, forgery is committed when someone creates a false document or part of a document with intention to cause harm, deceive others, support claim, acquire property or engage in fraudulent activities.

• Essentials

1) The accused must have made a false document / electronic record or part of it.

2) The intention of making false document as follows - To cause damage / injury to public or any person.

- To support any claim / title

- To separate a person from his property.

- To enter into express / implied contract

- To commit fraud.

• Punishment :- Imprisonment upto 2 years / fine or both.

* DEFAMATION

Sec. 499 :- • If someone makes / publishes false statement, signs or visible representations with the intention to harm or with knowledge that it will harm the reputation of another person, they are said to defame that person, except in specific exempted cases.

• Essentials :- 1) An imputation or accusation is made by words, either spoken or written or signs or visible representation.

2) Such imputation should be published to third party.

3) The intention behind such imputation is to harm the reputation of person against whom it is made.

• Exceptions -

1) Imputation of truth which public good requires to be made or published.

2) Publication of reports or proceedings of court.

3) Censure passed in good faith by person having lawful authority over another.

4) Public conduct of public servants.

5) Merits of case decided in court or conduct of witness & others concerned.

6) Accusation preferred in good faith to authorised person.

7) Caution intended for good of person to whom conveyed or for public good.

8) Conduct of any person touching any public question.

9) Merits of public performance.

10) Imputation made in good faith by person for protection of his or other's interests.

• Punishment :- Imprisonment upto 2 years / fine / both.

• kinds of defamation

i) libel :- defamatory statement is made in visible form such as writing, printing / pictures.

ii) Slander :- If defamatory statement is made in spoken words.

• Sec. 502 :- Whoever sales or offers to sale defamatory matter, knowingly that it contains such matter, shall punished with imprisonment upto 2 years / fine / both.