

INDIAN PENAL CODE

Q.1. What is the Penal Code?

Ans: It is central Legislation which classifies and define offences, prescribes punishment therefore and provides for Those Exceptional Circumstance where criminal liability do not arises.

Subject of Penal code is offence

Q.2. What is offence?

Ans: There are different concept of offence.

1. Is any Act done against morality is offence.
2. Act against society is offence.
3. Legal concept of offence is the act which is expressly declared as punishable offence. This is done by penal laws only

Civil law do not creates offence.

Hutti Singh: Any law never become punishable law only because it is made penal law criminal liability arises when any person commits offence,

- What is basic of criminal liability how it arises.

There are mainly two principle applicable.

- i. Principle of mens rea-
- ii. Actus reius.

1. Mens Rea : This term is coming from English criminal law no one can be punished for act without mens rea.

To impose the criminal liability it is to be decide that act was done with mens rea. It is basic adminent.

However element of Mens rea is important, it is not used in Indian penal code.

The basic reason is that it is a narrow concept. It covers only particular state of mind of person only. That state of mind is related to revenge only not beyond that.

That's why this term is not used this term in the penal code. They have used different term for this purpose to impose criminal liability.

- 1) **Intention:** It is not alone for ex. Intention to cause death.....
- 2) **Motive:** Motivates a person and methodology is intention; where methodology is prohibited, that method is not legal, it is illegal.
- 3) **Knowledge:** Knowledge of result of act. Where a person does some act with knowledge of result.

- 4) **Knowingly:** Where a person does some act with intention and knowledge. He is said to be done with voluntarily.
- 5) **Specific Intention:** Dishonestly- A person is said to have acted, dishonestly when he does it with intention to causes.
Wrongful loss to someone and wrongful gain to someone.
- 6) **Fraudulently:** Intention to defraud fraudulently not otherwise, person is said to do fraudulently when he does intentionally
- 7) **Fraud:** Fraud is available in Sec-17 of contract.
- 8) **Negligently:** Causing death 304(A) breach of duty to take care.
- 9) **Rashness:** Criminal liability imposed.

2. Actus reus: A person can be punished when acts that is done with mens rea. When-no-act is done with mens rea, it is not punishable only with mens rea, both mens rea & act are required for quality.
Mens rea is primarily state of mind, and it is not proved unless such act is done by inspiring from such state of mind.

Q. What is needed – Q. what actus reus.

Ans. Means act which is declared punishable by law.

When act is done in violated of law such act is I legal but every act do not become punishable only on act.

It must be declared expressly as offence.

Q. How can a offence be committed?

Ans. It is done by act and omission thereof.

Q. What is act?

Ans. Where doing something is prohibited by law, and it is done.

Q. what is omission?

Ans. Where law imposes duty to do something, non doing of that thing is omission.

Offence: offence can be done by single act or two or more act also similarly offence can be committed by single omission or one or more omission.

Offence can be done partly by act and partly offence omission.

Term offence may include.

- 1) **Preparation:** Collection of means to do something general rule is that preparation mere is into offence but where such preparation is declared as offence. For ex. Preparation to wage war against GOI, dacoit.
- 2) **Abetment:** Encouraging another person to do offence but under penal code. It is offence, it is declared separately punishable. It is not important whether abetted person did such actor not.
- 3) **Conspiracy Criminal:** Conspiracy to commit offence is criminal conspiracy. Agreement by two or more person to do that act offence.
- 4) **Attempt:** Intentional act, If it would have successfully done it gives could have provided desired result.

Q. Whether offence can be committed by legal person?

Ans. There are some which can be done. Ex. Definition E.Hulton vs Jones, Nuisance, etc.

Q. Whether-two-or more person commits offence.

Ans. There are some doctrine to apply Joint liability two principle.

- 1) Rule of Joint Liability: Based on, theory of participation in offence.
- 2) Whoever intentionally participates in offence is liable for such offence.
- 3) Rule of constructive liability under this liability in imposed even due to presence. (149 IPC, 114 IPC)

Q. Against whom offence committed.

Ans. Against anybody but there must be injury or possibility thereof time of Injury, Extent is not material.

Q. Injury- What is Injury?

Ans. Term includes

- i. Injury to body.
- ii. Injury to mind.
Causing Annoyance.
- iii. Injury to property
- iv. Injury to Reputation.

Operation of Penal Code:

Q. What is operation of penal code and who can be punished in penal code?

Ans. Operation of penal code can be classified into a group they are.

1. Territorial operation (Sec 2) operation of penal code within territory of India.

2. Extraterritorial operation (Sec 4)

1. Territorial operation (Sec 2)

Operation of penal code within territory of India.

Q. What is included in Territory of India four things are included.

Ans.

1. Surface of Land included under international law.
2. Land Beneath the earth.
3. Sky over Territory of India.
4. Territorial sea up to exclusive economic zone.

Q. What is the rule?

Ans. Every person who commits offence within India is punishable by this code. Term every person includes Citizen of India and of any other countries person.

If Foreigner enters Territories of India, then he is bound to follow law of India, If he commits offence, he will be punished within India.

A Foreigner can defend himself that he did not know law of India and because Ignorance of law is no excuse nor a non citizen can defend himself that offence done by him is not offence in his own country.

2. Extraterritorial operation of Penal Code (article 245): Law made by parliament are throughout India, It cannot be challenged that it has extra territorial enforcement.

SC held: Laws made sovereign can enforce the extra territorial law.

There are two basic laws rules.

- 1) If an India citizen goes beyond India and commits offence, he can be punished under penal code.

Q. What is the idea behind it?

Ans. When he goes outside (Citizen) he takes along with his luggage the Indian law (he is governed by India law)

- 2) If any person commits offence on any ship or aircraft registered in India. Where even such or aircraft may be such person may be punished in India.

Exceptions: Not Applicable in following cases.

- i. Foreign Sovereign
- ii. Foreign Ambassadors: He is representative of foreign Sovereign that's why penal code not applicable immunity available official capacity.
- iii. Foreign Embassy.

- iv. Offices of International Institutions
- v. Foreign Army: It foreign army pass in Indian Territory with permission of Government Indian our. Indian law not applicable.
- vi. Foreign man in warship.

There are some exceptions under constitutional law :-

- 1) President of India
- 2) Governor of State

Similarly nothing which is done on floor of legislation is not offence.

Sec-IPC- Section 76-106:- General exceptions are provided in these section. To avoid repetitions of these sections 6 is incorporated in it.

General Exception are equally applicable to all offence covered in the code.

Section 7: Any term once explained in equally applicable thought this code until court explains some other interpretation particular.

Section 8: Male- includes female, female include male. (sec- 122)

Section 9: Singular includes plurals, and plurals includes single Otherwise provided in this code.

Section 10: Male means – Male human being of any age.

Word female-means- female, human being of any age.

Section 11: Person :- This word person includes any company or Association or body of person whether incorporated or not.

Section 12: Public :- Any group of people within specific class it is in generic term, includes group of people.

Section 14:

- Servant of Government
- Appointed, Employed, Continued
- To-do-a work on behalf of Government- is Govt-Servant-because Government is legal person but legal person only.

Section 17: Section 17 because there is federal system. That's why State Govt. and Central Govt. both are included when any proceeding is instructed against Government of India.

Union of India is made party and if any case is institution State Government of India State is mode of party.

Section 21: Any person appointed or elected Authorized to perform any function provided in section 21 of IPC is public Servant.

Section 22: Movable Property-

1. Properties to be classified into two parts.
2. Following are included in the term immovable properties.
3. Land
4. Things attached to land. This land attachment may be of two type
 - a) Things growing out of land. Ex. Tree.
 - b) Things inserted into land.
 - c) Things permanently attached to such thing permanently. As soon as they are separated they become movable property.

Noting:- Indian Constitution office of profit.

1. President: 58(2)-59. President shall not any office of profit GOI or State controlled by State Government.
2. Vice President: Vice President shall not hold any officer of profit 66(4).
3. Members of Parliament – 102 Disqualification of LS member.
4. Section 103:- Disqualification of president.
5. Article 191:- Members of Legislature disqualification Governor has right.

But following are not included in Immovable property.

1. Grass
2. Growing Crops : These are movable property.

Movable Property : Every property which is not immovable is movable but it must be corporeal nature (मूर्तता का गुण)

Q. What do you mean of incorporeal nature?

Ans. When a property the ownership & possession element than we calls it is. it is of incorporeal nature, it becomes movable property.

So long as Tree is an earth. It is immovable property. As soon as tree is cut down it becomes movable property.

- Bird and Animal, wild animal which are free by nature are not property.
- Pat Animal Tammed animals are property, live stock also.
- Fishes are property; but if incorporeal nature.

- Electricity- not a subject of Theft-in-IPC but so far as electricity act concerned it is matter of theft.

Section 23: Wrongful gain and wrongful loss.

Gain- to get, to receive- The profit anything gains by person by lawful means than it is called. Lawful gain when gain is either by unlawful means than it is wrongful gain.

It is not material whether- The Person gaining known or not whether it is not lawful.

Western European rule-

Thus wrongful gain means gain, obtained by person either by unlawful means and he is not entitled to have it legally.

Wrongful loss: - When a person is deprived of his property than it is said loss occurred to him but every loss is not wrongful loss. When a person is bound by law to make such payment loss can't be deemed to be unlawful.

When a person is deprived from his property by unlawful act or means the loss occur to him shall be known as wrongful loss because he is not legally bound to make such thing.

It is not essential that if wrongful gain or loss occurred to someone but also wrongful gain occurred to someone.

Section 24: Dishonestly: A person is said to have acted dishonesty when he does it with intention wrongful gain to someone and wrongful loss to someone.

Section 25: Fraudulently: When is a person is said to have acted fraudulently.

Ans. A person is said to have acted fraudulently when he does it to defraud and not otherwise.

Section 17: Contract: of describes fraud it says when a person with intention.

1. Knowing declared on true thing to be false.
 2. Knowing declared false thing to be true.
 3. Keep silence where duty to speak.
 4. Does anything which is declared by law a fraud and hence. It can be said it incase of fraud there is intention of fraud.
- Misrepresentation: In cases of misrepresentation statement is made honestly in good faith no intention to defraud.

Section 26: Reason to believe: The ground of reason to a belief is or med known as reason to believe.

Section 27: Property in Possession of wife servant clerk- It is said that property is in possession of that money.

In matter of offence even if a caused is not present but possession of accused is not consider.

Section 28: Deals with concept of Counterfeiting: Concept of Counterfeiting is related to imitation copying one thing is made resembling with another.

Act of Counterfeiting should be done with intention deception. When are thing is made resembling to another that with intention that deception thereby is caused, it is said it is counterfeiting.

It is not necessary that thing made by a caused is exact copy of original. It is sufficient by seeing that thing person is misled by consider it as original. In such cases text of reasonable and prudent man in applied and not extraordinary person a caused cannot defend himself that if such person would have taken same countries that he could have find the reality. Whether the copying is more beautiful/impressive than original, it is still counterfeiting.

To punish a caused for counterfeiting mere making counterfeit is punishable, delivering is additional offence. It is also not necessary whether any person really accepted or not. Counterfeiting is done even by making allegation in original items. Coin, government stamp, currency notes and blank notes.

Section 29: Documents: Any matter expressed described upon any substance by means of letter figures, or mark or by mere than oral of these means indented.

Section 30: Valuable Security means: is basically a document, when does a doc. Become valuable security, a document creating, abolishing or extinguishing increasing, decreasing any right or durability, is called valuable security.

To become valuable security it is not mandatory that document be executed each by two or more person.

- Decree of Court is valuable security.