Law Crimes –I: Indian Penal Code

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Q. 1. Briefly explain the concept of Crime under Indian Penal Code, 1860?

Ans. CRIME: The word "crime" has not been defined in Indian Penal Code. In its broad sense, however, it may be explained as an act of commission or omission which is painful to the society in general. But all acts tending to the prejudice of community are not `crime' unless they are punishable under the law.

`Crime' as defined in "The Oxford English Dictionary" is *"an act punishable by law as forbidden by statue or injurious to public welfare." It is a very wide definition and `Crime' according it includes anything, which is injurious to public welfare.* Blackstone in his "Commentaries on the Laws of England" has defined `Crime' as "*violation of public right and duties due to the whole community, considered as a community, in its social aggregate capacity."* Stephen has slightly modified this definition of `Crime' and presents it in the following form:

"Crime is a violation of a right, considered in reference to the evil tendency of such violation as regard the community at large." So according to Blackstone `crime' is an act done in violation of public rights But according to Stephen, it is an act done in violation of public right only.

Crime and Civil Wrong may be distinguished by the fact that `crimes' are graver wrong than `tort', as they constitute greater interference with the happiness of others and affect not only to the individual wronged but the community as a whole, Civil wrongs on the other hand are private wrongs and concern individuals The same act is either a crime or a civil wrong depends upon the fact, whether it is done with or without an evil intent. An act to be criminal must be done with criminal intent, no such malice or evil intent is necessary in case of civil wrong. Distinction between crime and civil wrong also lies on the fact that `Crime' since affects the whole community therefore law recognizes `punishment' for `criminal' in the form of imprisonment etc. but `Civil Wrong' being private wrongs and concern individuals only, therefore `damages' `compensation' etc. have been recognized remedy in civil wrongs. So it is apparent from the above that there is nothing which by itself is a crime, unless it is declared by the legislature as punishment. However following are the elements, necessary to constitute crime

(i) Human being under a legal obligation to act in a particular way and a fit subject for the infliction of appropriate punishment.

(ii) An evil intent on the part of such human being.

(iii) An act committed or omitted in furtherance of such intent.

(iv) An injury to another human being or to the society at large by such act.

The basis of criminal law is that there are certain standards of behavior of moral principles which society requires to be observed and breach of them is an offence not merely against the person who is injured but against the society as a whole.

Crime is therefore, a relative conception. Different society view different acts of commission and default as crime in different ages and according to different localities and circumstances For example, adultery is a civil offence against the law of matrimony in England and leads to divorce. But in India it is a crime within the meaning of Section 497 of the Indian Penal Code and is punishable with imprisonment of either description for a term, which may extend to five years or with fine or with both. The Code however, absolves the wife from punishment as an abettor and excuses her infidelity on account of some peculiarities in the state of society in this country. But it has to be remembered that our great Hindu lawgiver `Manu' provided punishment for the wife also in such a case. The recognition of a crime, therefore, varies with public opinion of a given society at a given time and there cannot be any rigid or absolute criterion to determine it.

Q. 2 What is meant by Mens Rea. Explain the dictum "ACTUS NON FACIT REUM NISI MENS SIT REA". How far a motive necessary for determining a crime? Are there any exceptions to the dictum of Mens Rea? Illustrate your answer.

Ans. The liability to conviction of an individual depends not only on his having done some outwards acts which the law forbids, but on his having done them in certain frame of mind or with certain will. Therefore an act in order to be crime must be committed with guilty mind. Mens rea means guilty intent. It is one of the principles of English criminology that a crime is not committed if the mind of the person doing the alleged act is innocent. The intent and act must both concur to constitute a crime. "Actus non facit reum nisi mens sit rea." This principle has been elaborately discussed by ***Wills, J.***, in ***Tolson's case, (1889) 23*** Q.B.D. 108. In that accused was convicted of bigamy, having gone through the ceremony of marriage within seven years after she had been deserted by her husband.

The Jury took the view that at the time of the second marriage she in good faith and on reasonable grounds believed her husband to be dead and that this bona fide belief afforded a good defence to the indictment and that the conviction was wrong.

Thus it is the combination of act and intent, which makes a crime. The basic requirement of principle of mens rea is that accused must have been aware of all those elements in his acts which make it the crime with which he is charged.

In ***State of Maharashtra v. M.H. George, AIR 1965 SC 722*** It was observed: It is a well settled principle of common law that mens rea is an essential ingredient of a criminal offence. However, a statute can exclude that element, but it is a sound Rule of construction adopted in England and also accepted in India, to construe a statutory provision by creating an offence in conformity with

the common law rather than against it, unless the statute expressly or by necessary implication excluded mens rea. There is a presumption that mens rea is an essential ingredient of a statutory offence. It may be rebutted by express words of a statute creating the offence or by necessary implication.

In ***State of Gujrat v. D. Pandey, 1971 Cri.L.J. 760 (SC)*** Supreme Court observed: "Unless a statute either clearly or by necessary implications Rules out mens rea as constituent part of crime, a person should not be found guilty of an offence against the criminal law unless he has got a guilty mind. But language of a provision either plainly or by necessary implication can Rule out the applications of that presumption. The court may decline to draw that presumption taking into consideration the purpose intended to be served by that provision."

So generally `**Mens Rea**' i.e. guilty mind is necessary to be proved for conviction of accused in respect of any offence unless such proof has been expressly and impliedly dispensed with by law.

Strict Liability: Ordinary a mind at fault is necessary along with act at fault to constitute crime. But there are some crimes in which necessity for mens rea or negligence is wholly or partly excluded. Strict liability means liability to punitive sanctions despite the lack of mens rea.

At common law there are three recognized exception to general principle of mens rea (i) Public Nuisance **(ii)** Criminal libel and **(iii)** Contempt of court. In Modern Times, the principle of strict liability is more noticeable in Public Welfare Offences These are offences connected with sale of adulterated food or drugs or offences of possession or offences connected with road traffic or offences against customs, Rules and foreign regulations

Q. 3 What are the different stages of crime? What are the differences between preparation and attempt?

Ans. All offences may be viewed in four distinct stages:

(i) Intention or mens rea

(ii) Preparation

(iii) Attempt

(iv) Completed Act.

As regards ***`Mens rea'***, while it is material, it is not sufficient to incur penal liability. Mere intention to commit crime is not punishable because it is always possible that a human being may change his evil intention, therefore only an evil intention accompanied with an overt act is made punishable in law.

After **`Intention'**, the next stage is of ***Preparation***. `Preparation' consists in devising or arranging means or measures necessary for the commission of offence. Ordinarily the preparation is not punishable because it would be impossible in most of the cases to show that preparation was directed to a wrongful end. However "preparation" is punishable in certain exceptional cases as such cases exclude the possibility of an innocent intention. These are:

(i) Collecting arms etc. with the intention of waging war against the Government of India (**Section 122**)

(ii) Committing or making preparation to commit depreciation on territories of any power in alliance or at peace with Government of India (**Section 126**)

(iii) Making or selling instrument for counterfeiting coin or Indian coin (**Sections 233** and 234)

(iv) Making preparation to commit decoity (**Section 399**).

Next stage is ***`Attempt'***. An attempt to commit a crime is an act done with intent to commit that crime and forming part of series of acts which would constitute its actual commission if it were not interrupted. Liability begins only at a stage when the offender has done some act which not only manifest `mens rea' but goes someway towards carrying it out.

In ***Sudhir Kumar Mukherjee v. State of W.B., AIR 1973 SC 2655*** It was observed:

*"**A person commits the offence or attempt to commit particular offence when (i) he intended to commit that particular offence and (ii) he having made preparation and with the intention to commit the offence, does an act towards its commission, such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence.**"* Indian Penal Code deals with "**Offence of Attempt to Commit Crime**" in three different ways:

(a) In some cases the commission of an offence and an attempt to commit it, are dealt in the same **Section** e.g. **Section 196**, 198, 239, 240, 241, 250, 251, 385, 387 and 391 I.P.C.

(b) In some cases attempt for commit an offence has been dealt with specifically and separately from offences themselves e.g **Section 307** 308 and 393 I.P.C.

(c) Attempt under **Section 511** is punishable where there is no express provision for punishment of such an attempt.

Section 511 reads as under:

"Whoever attempts to commit an offence punishable by the Code with imprisonment for life or imprisonment or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to onehalf of the imprisonment for life or, as the case may be, onehalf of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both." Following illustrations will make it clear:

(a) A intending to murder Z, buys a gun and loads it. A is not yet guilty of an attempt to commit murder. A fires the gun at Z, he is guilty of an attempt to commit murder.

(b) A, intending to murder Z, by poison, purchase poison and mixes the same with food which remains in A's keeping. A is not yet guilty of an attempt to commit.

DISTINCTION BETWEEN PREPARATION AND ATTEMPT In ***Abhaya Nand Mishra v. State of Bihar, AIR 1961 SC 1968***, it was observed:

"There is a thin line difference between the `preparation' and an `attempt' to commit an offence. Undoubtedly a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempt to commit the offence. If the attempts succeeds, he has committed the offence, if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence, therefore can be said to begin when the preparations are complete and the culprit commences to do something towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. This is clear from general expression "attempt to commit an offence" and is exactly what the provisions of Section 511 I.P.C. require Section "

Q. 4 How jurisdiction of criminal court is determined and

(A) Under what circumstances can an offence committed outside India be tried as an offence Committed in India.

(B) `A' an Indian citizen, commits a murder in Uganda can be he tried and convicted of murder in any place in India.

Ans. (A). Section 3 and 4 of Indian Penal Code deal with offences Committed beyond the territorial limits of India and Section 2 refers to offences committed within India. Section 2 of Code is to be looked into for determining the liability and punishment of persons who have committed offences within India. Section 2 says -

"Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to provisions thereof, of which he shall be guilty within India."

So the object of Section 2 is to declare the liability of every person, irrespective of rank, nationality, caste or creed to be punished under it's provision. It makes no distinction between an Indian Citizen and foreigner. It is no defence for a foreigner to say that he did not now, he was doing wrong or that the act being no offence in his own country.

Phrase "Every Person" in the section, clearly indicates all person without limitation of nationality, allegiance, lank, status, caste, "shall be liable to punishment" means that they run the risk of being punished and phrase "and not otherwise" means that no person can be punished for any act which amount to an offence under the Code otherwise than according to provisions thereof except when the same act is made punishable by some local or special law."

In ***Mobark Ali Ahmad v. State, AIR 1957 SC 857*** Supreme Court observed that this section must be under-stood as comprehending every person without exception barring such as may be specially exempt from criminal proceedings or punishment there under by virtue of constitution or any statutory provisions or some well recognized principle of International law."

Punishment For Offences Committed Beyond India. ; Section 3 of Code says "Any person liable, by any Indian law, to be tried for offence committed beyond India, shall be dealt with

according to provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India."

So section 3 provides for uniformity of trial of offenders committed by an Indian citizen beyond the limits of India, for which he is liable to be tried in India, in accordance with any Indian law Section does not authorize such a trial nor does it specify the offences that are so triable. It merely enacts that if a person is to be tried for such offences at all, it shall be under this Code.

Extra-territorial operation. - The enforcement of a law as a general rule, to exercise powers of Government within it. But the operation of a law may sometimes extend to persons, things and acts outside its territory. Extra- territorial operation means "the effect to be given in the Courts and within the territory of the enacting States as against person without that State or in respect to property situate or transaction happening abroad." 189, Cr.P.C. prescribes a procedure by which is conferred an extra-territorial jurisdiction as respect offences committed (i) by citizens of India in any place without and beyond India, or (ii) by any person on any ship or aircraft registered in India, wherever it may be;

Again, Section 4 of the Penal Code says provisions of this code apply also to any offence can ?

The combined effect of these sections is to attract the application of the penal Code in the following cases:

(1) If an offence is committed by an Indian citizen in India.

(2) If an offence is committed by a citizen of India in any place without and beyond India.

(3) If an offence is committed beyond India it may be tried in accordance with this Code as if such offence has been committed in India. But the person to be thus tried for an act must be liable by any Indian law.

(4) Where an offence is committed by any person on any ship or aircraft registered in India wherever it may be.

(5) If an offence is committed (a) by a foreigner in India, or (b) by a foreigner in a foreign territory but he continues the criminal act in India.

Ans. (B). `A' who is citizen of India and has committed a murder in Uganda, can lawfully be tried in accordance with law in India, wherever he is found in India by virtue of Section 4 of Indian Penal Code

Illustration to section 4. A who is citizen of India, commits murder in Uganda. He can be tried and convicted of murder in any place in India in which he may be found.

Q. 5 Define and explain following expressions :-

(a) "Public Servant"

(b) "Wrongful gain" and "Wrongful loss"

(c) "Dishonestly" and "Fraudulently"

(d) "Valuable Security"

Ans. *Public Servant* - Section 21 of Indian Penal Code defines "Public Servant" as - "the words "Public Servant" denote a person falling under any of the descriptions hereinafter following namely :-

First - (Repealed)

Second - Every Commissioned officer in Military, Naval or Air Forces of India;

Third - Every judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth - Every officer of a court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact or to make authenticate or keep any document or to take charge or dispose of any property or to execute any judicial process or to administer any oath or to interpret or to preserve order in the court, and every person specially, authorised by court of Justice to perform any of such duties;

Fifty. - Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth. - Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh. - Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth. - Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth. - Every officer whose duty it is, as such officer, to take receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

Tenth. - Every officer whose duty it is, as such officer, to take, receive keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh. - Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth. - Every person -

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation establishment by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).

A Municipal Commissioner is a public servant.

Explanation 1. - Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2. - Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3. - The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

So Section 21 describes the term `Public Servant' by enumeration. The term may generally he defined to signify any person duly appointed and invested with authority to administer any part of executive power of Government or to execute any other public duty imposed by law, whether it be judicial, ministerial or mixed. Section does not define public servants but describes them only by enumeration which itself is illustrative and not exhaustive.

(B) Wrongful Gain or Wrongful Loss Section 23 of Indian Penal Code provides -

"Wrongful gain". - "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss". - "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully: Losing wrongfully. - A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to be lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

Wrongful Gain ; So Two things are essential to constitute wrongful gain and it's correlative wrongful loss, namely (1) Use of unlawful means and (2) Unlawful acquisition. The existence of one without the other is not sufficient. Teem "unlawful" has double meaning but the word as used in criminal jurisprudence is limited to convey an act which is prohibited as well as punishable by law. The word "gain" means not only acquisition but also retention

Wrongful Loss - Term `wrongful loss' is the anti-thesis of wrongful gain. A person who loses his property by the unlawful means of another is said to suffer wrongful loss. If therefore he in possession of property to which he is not legally entitled he can not be said to suffer wrongful loss in respect of it.

In ***K.N. Mehra v. State of Rajasthan, AIR 1957 SC 369*** it was observed by Supreme Court that "wrongful gain" or "Wrongful Loss" under section 23 must (1) relate to property and (2) arise from the exercise of unlawful means--"

(c) Dishonestly and Fraudulently **Dishonestly.** - Section 24 of the Indian Penal Code says :-

"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "dishonestly"

The word is not to be equated with the commonly used word `dishonestly' which connotes an element of fraud or deceit.

The word `dishonestly' may be understood to mean unlawful gain or unlawful loss of property. It is confined to those acts only in which property is involved as the subject-matter to which the act or the series of acts constituting dishonestly relates. An another important point to be considered is that the `wrongful gain or wrongful loss of such property should be by unlawful means. It is well settled in ***Ahmed v. State, 1967 Cr LJ 1953 (Raj.)***., that an intention to cause wrongful gain or wrongful loss is not a sine qua non for a thing to be done dishonestly.

Section 24 emphasises on two essential elements (1) wrongful gain or wrongful loss. Wrongful gain includes wrongful retention of property as well as acquires such property wrongfully.

Fraudulently. - Section 25, I.P.C., defines "fraudulently" as follows :- A person is said to do a thing fraudulently if he does that thing with intent to defraud butt not otherwise." The definition is not logical inasmuch as the word sought to be defined is defined in its own terms. There is no definition of the word "defraud". Courts in India, interpreting the word `defraud' have generally followed the well-known analysis of the word by Sir James Stephen. Sir James Stephen has drawn attention to two essential elements which constitute fraud : (i) deceit or an intention to deceive or in some cases mere secrecy, and (ii) either injury or possible injury or an intent to expose some person to any such injury by such deceit or secrecy. We may summarise these two elements and call a fraudulent act an injurious deception.

The difference between these two views is a difference only in the point of emphasis, the one being an emphasis on motive on the ultimate end and the other being an emphasis not on such end but on the immediate act.

Dishonestly - Distinguished

Dishonestly, Fraud

(A) With intention to cause wrongful gain to one person or wrongful loss to another person. Any act does with intent to defraud but not otherwise.

(B) It consists wrongful gain or wrongful loss., It consists deceit or an intention to deceive or in some cases mere secrecy.

(C) Either injury or possible injury is not required to be proved., Injury or possible injury is required to be proved.

So a valuable security is a document of value that is to say a document which of itself creates or extinguishes legal rights or purports to create or extinguish them

In ***Prayag Das v. State, AIR 1963 All.131*** it was observed that "Valuable Security" as defined by section 30 of code denotes a document which is or purports to be document whereby any legal right is created, extended transferred, restricted, extinguished or released or whereby any person acknowledges that he lies under legal liability or has not a certain right. Any document whereby a person acknowledges legal liability is not a valuable security unless the person in whose favour the acknowledgment is made has a right to that document.

Q. 6 What is law of joint liability as provided under section 34 I.P.C. ? Whether acts of joint offenders can be distinguished?

Ans. The principle of joint liability or Vicarious Liability is contemptlated in Section 34 of Indian Penal Code in following words :-

"When a criminal act is done by several persons in furtherance of common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

Section 34 provide for rule of evidence and does not create a substantive offence. It simply says when two or more persons do a crime-in furtherance of their common intention then each accused will be constructively liable for the offence ultimately committed, as if he has done it alone. Common intention as contemplated by Section 34 requires a prior consent or pre-planning.

In ***Ajay Pal Singh v. State of Punjab, 1999(1) RCR (Cri) 437***. It was observed In order to attract the provisions of Section 34, it is necessary on the part of prosecution to establish that each one of the appellants shared the common intention which must be prior in time to the actual assault and any one of them had done the act in furtherance of said common intention."

Then Section 35 of Code says -

When such an act is criminal by reason of its being done with a criminal knowledge or intention. - Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Similarly section 37 of Code also provide the principle of joint liability in following words :-

Co-operation by doing one of several acts constituting an offence. - When an offence is committed by means of several acts, whoever intentionally co- operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations

A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effect of the several doses of poison so administered to him. Here A and B intentionally co-

operate in the commission of murder and as each of them an act by which the death is caused, they are both guilty of the offence though their acts are separate.

Q. 7 Compare the principle of joint liability for a criminal act committed by several persons not exceeding four with that of a criminal act committed by several person not less than five, bringing out clearly the points of distinction if any?

Ans. The general principle of criminal liability is that it is the primary responsibility of the person who actually commits an offence and only that person who has committed crime can be held guilty. **Section 34** of Indian Penal Code lays down a principle of joint liability in doing of a Criminal Act. **Section 34** of Indian Penal Code lays down:

"When a criminal act is done by several persons in furtherance of common intention of all, each of such persons, is liable for that act in the same manner as if it were done by him alone." So Section **34** of Indian Penal Code does not create any specific offence. It is a principle of constructive liability. A person could be convicted of an offence read with **Section 34** I.P.C. Section **34** of I.P.C. can be attracted only if accused share common intention. The essential constituent of the vicarious criminal liability prescribed by Section 34 is the existence of common intention.

Common Intention : Common Intention as contemplated by Section **34**, requires a prior consent or preplanning. It is intention to commit the crime and the accused can be convicted only if such intention has been shared by all accused. Such a common intention should be anterior in point of time to the commission of crime but may also develop at the instant when such crime is committed. It is difficult if not impossible, to procure direct evidence of such intention, in most cases it has to be inferred from the acts or conduct of the accused and other relevant circumstances

In ***Ajay Pal Singh v. State of Punjab, 1999(1) Recent Criminal Reports 437*** It was observed : "*In order to attract the provision of* ***Section 34, it is necessary on the part of the prosecution to establish that each one of the appellants shared the common intention, which must be prior in time to the actual assault and any one of them had done the act in furtherance of the said common intention. The law has always made a very categorical distinction between `common intention', `same intention' and `similar intention'. Common intention cannot be equated with similar intention or with the same intention."*** In a recent judgement reported in ***2001(2) Recent Criminal Reports 78 (Supreme Court) Suresh and others v. State of U.P.*** three judge bench has discussed the provision of **Section 34** I.P.C. in detail:

As per **K.T. Thomas, J**.:

(i) Section 34 is intended to meet a situation wherein all the co-accused have also done something to constitute the commission of criminal act.

(ii) Presence of co-accused at the scene is not necessary requirement to attract Section 34.

(iii) The accused who is to be fastened with liability on the strength of Section 34 I.P.C. should have done some Act which has nexus with the offence. The Act need not necessarily be overt, even

if it is only a covert act it is enough provided such covert act is proved to have been done by co-accused in furtherance of common intention. Even an `omission'. Can in certain circumstances amount to an act. Hence an act whether overt or covert is indispensable to be done by co-accused to be fastened with the liability of ***Section 34***. But if no such act is done by a person even if he has common intention with others, ***Section 34***, I.P.C. cannot be invoked. There may be other provisions in I.P.C. like Section ***120***B or ***Section 109*** which could be invoked then to catch such non-participating accused. Thus participation in the crime in furtherance of the common intention is sin quo non for Section ***34 I.P.C. As per R.P.Sethi and B.N. Aggerwal, J.J. Section 34*** I.P.C recognize the principle of vicarious liability in criminal jurisprudence. It makes a person liable for action of an offence not committed by him but by other person with whom he shared" Common intention". It is a Rule of evidence and does not create a substantive offence..... Dominant feature for attracting Section ***34*** I.P.C. is the element of participation in absence resulting in the ultimate "criminal act". The `Act' referred to in latter part of Section ***34*** means the ultimate criminal act with which accused is charged of sharing common intention. The accused is therefore made responsible for the ultimate criminal act done by several persons in furtherance of common intention of all. The Section does not envisage the separate act by all the accused persons for becoming responsible for the ultimate criminal act. If such an interpretation is accepted; the purpose of Section ***34*** shall be rendered infractuous *Participation in the crime in furtherance of the common intention can not conceive of some independent criminal act by all accused persons besides the ultimate criminal act because for that individual act, law takes care of making such accused responsible under the other provision of the Code. The word `act' in Section 34 denotes a series of acts as a single act. What is required under the law is that the accused persons sharing the common intention must be physically present at the scene of occurrence and be shown to not have dissuade themselves from the intended criminal act...."* ***Section 149*** of Indian Penal Code lays down: ***"If an offence is committed by any member of unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."*** So Section 149 IPC creates specific and distinct offence. The vicarious liability of the member of an unlawful assembly will extend only:

(**1**) the acts done in pursuance of the Common Object of the unlawful assembly and

(**2**) Such offences as member of unlawful assembly knew to be likely to be committed in prosecution of that common object.

In ***Umesh Singh v. State of Bihar, AIR 2000 SC 2111*** It was observed "Vicarious liability extends to members of the unlawful assembly only in respect of acts done in pursuance of common object of the unlawful assembly or such offences as members of the unlawful assembly are likely to commit in the execution of that common object. An accused whose case falls within the terms of Section 149 IPC as aforesaid, cannot put forward the defense that he did not with his own hands commit the offence. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he had joined. It is not necessary in all cases that all persons forming an unlawful assembly must do some overt act.... Indeed the provisions of Section 149 IPC

if properly analyzed will make it clear that it takes the accused out of the region of abetment and makes him responsible as a `Principle' for the acts of each and all, merely because he is member of unlawful assembly." ***Distinction Between Vicarious Liability under Section 34 and Section 149.*** (i) The basis of liability under Section **34** is the existence of common intention animating from the accused person. Liability under Section 149 is based on the existence of common object or knowledge of the probability of commission of offence.

(ii) Common intention as contemplated by **Section 34** denotes action in concert and necessarily postulates the existence of a prearranged plan implying a prior meeting of mind while common object does not necessarily require proof of prior meeting of mind.

(iii) The basis of constructive guilt under **Section 149** is mere membership of an unlawful assembly, the basis under **Section 34** is participation in some action with the common intention of committing a crime.

(iv) Common intention within the meaning of **Section 34** is undefined and unlimited. Common object is defined and limited to the five unlawful objects stated in Section 141 of Code.

(v) In order to hold a person liable for any offence by application of Section **34**, the offence must be committed by two or more than two persons For application of **Section 149** the offence must be committed by five or more persons because then only they can form an unlawful assembly.

(vi) Section 34 enunciates the principle of joint liability but creates no specific offence. Section 149 creates specific offence.

Q. 8 What are the different kinds of Punishment ? For what offences may a sentence of death he passed under Indian Penal Code?

Ans. Section 53 of Indian Penal Code provides different punishments to which offenders are liable under the provisions of Code, which are :-

First - Death

Second - Imprisonment for life

Thirdly - (Deleted)

Fourthly - Imprisonment, which is of two description, namely-

(i) Rigorous i.e. with hard labour

(ii) Simple

Fifthly - Forfeiture of property

Sixethy - Fine

So punishment is the suffering in person or property inflicted on the offender under the Sanction of law. The code measures the gravity of violation by seriousness of crime and it's general effect upon public tranquility. Therefore, measure of guilt is the measure of punishment. The true

doctrine of punishment in civilized state is based on prevention of crime but it is not only sole object.

A sentence of death may be given in the following cases :

(1) Waging or attempting to wage war or abetting the waging of ware against the Government of India (Section 121); (2) abetment of mutiny actually committed Section 132; (3) giving or fabricating false evidence upon which an innocent person suffers death (Section 194); (4) murder (Section 302); (5) punishment for murder by a life convict (Section 303); (6) abetment of suicide of a child, an insane or intoxicated person (Section 305); (7) attempt to murder by a person under sentence of imprisonment for life, if hurt is caused (Section 307); (8) Kidnaping for ransom etc. (Section 364-A); (9) and dacoity with murder (Section 396). A sentence of death shall be awarded for murder by a person undergoing imprisonment for life (Section 303). A sentence of death is the minimum punishment in such a case:

Q. 9 Discuss the nature and duration of sentence of imprisonment in default of payment of fine.

Ans. Section 64 of Indian Penal Code provide regarding sentence of imprisonment for non-payment of fine. Section 64 reads as under:

In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

The sentence of fine would be incapable of execution if the offender had no available means to pay up his fines if there were no alternative sentence to induce him to pay it up. This section therefore generally confers upon the Court the power of imprisonment in default of payment of fine which often acts as a screw to make the offender choose the lesser of two evils. Section 65 of Code then fixes the limits of such imprisonment for non-payment of fine. Section 65 says -

The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Section 66 of Code provide the description of imprisonment for non-payment of fine as -

The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Then Section 67 says about the imprisonment non-payment of fine when offence is punishable with fine only. It reads as -

If the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

Then Section 68 of Code says that imprisonment which is imposed in default of payment of fine shall terminate whenever that fine is either paid or levied by process of law and section 69 says -

If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Q. 10 Writ a short note on "Solitary Confinement."

Ans. Section 73 of Indian Penal Code provides regarding "Solitary Confinement". Section 73 says:

"Whenever any person is convicted of an offence for which under this code, the court has power to sentence him to rigorous imprisonment, the court may by it's sentencer, order that the offender shall be kept in solitary confinement for any portion or portions of imprisonment to which he is sentenced not exceeding three months in the whole, according to following scale, that is to say -

a time not exceeding one month if the term of imprisonment shall not exceed six months

a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year;

a time not exceeding three months if the term of imprisonment shall exceed one year."

Solitary confinement is isolation of prisoner from human intercourse and society. It causes a feeling of oppression. Prolonged isolation from human communion becomes intolerable and this feeling of loneliness gives him time to reflect upon utility of society.

In ***Ramanjulu Naidu v. State, AIR 1947 Madras 381***. It was observed that solitary confinement should not be ordered unless there are special features appearing in evidence such as extreme violence or brutality in the commission of offence. Section 745 of Code provide for limit of solitary confinement. It says -

"In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time with intervals between the periods of solitary confinement of no less duration than such periods, and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded with intervals between the periods of solitary confinement of not less duration than such periods."

Q. 11 What is the Law relating to enhanced punishment for subsequent offences?

Ans. Section 85 of Indian Penal Code deals with enhanced punishment. It lays down :-

"Whoever, having been convicted -

(a) by court in India of an offence punishable under chapter XII or XVII of this Code with imprisonment of either description for term of three years or upwards shall be guilty of any offence punishable under either of those chapter with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment of life or imprisonment of either description for a term which may extend to 10 years."

So for the applicability of Section 75 it is not necessary that actual sentences awarded for the purpose of previous conviction should be for three years or upwards but what is required is that previous conviction required should be for any one of the offences under Chapter XII or XVII of Indian Penal Code and for which the sentence of imprisonment is three years or upwards. So in other words the quantum of punishment awarded is not the criterion for enhanced punishment but it is necessary he must have committed any offence as contained in chapter XII or XVII of Code which are punishable at least three years or more. Underlying principle of Section 75 is that if the previous sentence undergone by accused had no effect on him then he should be sentenced more severely. However it is not an inflexible rule but court has to appreciate facts and circumstances of each case to determine whether enhanced punishment be awarded or not.

It is also important to point out that Court while convicting the accused for subsequent offence has to find that previous conviction is in operation (or undergone) on the date of subsequent conviction. If previous conviction was set aside then accused would not be liable for enhanced punishment because basis for enhancement in sentence i.e. earlier sentence has already been set aside and cannot be taken into consideration.

Q. 12 Write short notes on :

(i) Mistake of fact

(ii) Criminal liability of Minor

Ans. Mistake of Fact : **Section 76** of Indian Penal Code are para phrase of the English Common law maxim in its application to criminal law ***"ignoratia facit excusat ignoratia juris non excusat"*** that means in criminal law mistake of fact is a good defense while mistake of law is no defense. Every man is presumed to know law. The reason why ignorance of law is never a defense is that if it were a defense, it would screen offenders and lead to endless complication**s Section 76** lays down:

"Nothing is an offence which is done by a person who is or who by reason of mistake of fact and not by reason of mistake of law in good faith believes himself to be bound by law to do it." Section 79 I.P.C. provides***:***

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

So Section **76** is analogous to **Section 79**, the only difference between the two, being that a person under section 76 believes himself to be bound by law to do a thing whilst under section 79 he

similarly feels justified by law in doing it. Mistake of fact always supposes some error of opinion or implies a total want of knowledge in reference to the subject matter. Mistake of fact to be an excuse must be mistake in respect of a material fact, a fact essential to constitute the offence. However a mere mistake of fact is not enough. It must be an honest mistake of fact and it must not be known to the actor as a mistake when the deed was done.

In ***R. v. Tolson, (1889) 23*** Q. B.D. 168 It was observed "Honest and reasonable mistake stands on the same footing as absence of reasoning faculty as in infancy". In this case Accused had gone through the ceremony of marriage within seven years after she had been deserted by her husband. She believed in good faith and on reasonable grounds that her husband was dead. It was held that a bonafide belief on reasonable grounds in the death of the husband at the time of second marriage afforded a good defense to the charge of bigamy.

Similarly in ***Chiranji v. State, AIR 1952 Nag. 282*** A father kills his own son believing in good faith, him to be a tiger. It was observed that a hunter mistakes a man for an animal and fires, here through a mistake a man intending to do a lawful act, has done that which is unlawful. There has not been that conjunction between his act and his will, which is necessary to form a criminal act. If there was no mens rea, there was a mistake therefore it may be no crime.

However there are two exceptions to the Rule that mistake of fact is a good defense. **First** No one is allowed to plead ignorance of fact, when responsible inquiry would have elicited the true facts **Secondly** Mistake of fact is not a good defense when the act is penalized by statute without reference to mens rea of offender, e.g. selling adulterated food stuff is an offence under Prevention of Food Adulteration Act **1954** and in such like offence, mistake of fact is not acceptable.

(ii) Criminal Liability of Minor **Section 82** of the Indian Penal Code provides that

"Nothing is an offence which is done by a child under seven years of age".

Section 83 provides

"Nothing is an offence which is done by a child above seven years of age and under twelve who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion". **Section 82** and **82** lay down a Rule which owing to its origin to the Civil Law, had long since become established in the criminal system of all civilized countries **Section 82** I.P.C. confers an absolute immunity from criminal liability in case of child under seven years of age. An infant below **7** is absolutely "*doli incapax*". In the ordinary course of nature a person of such age is absolutely incapable of distinguishing between right and wrong. **Section 83** deals with the cases of qualified immunity because child above 7 but below 12 years of age is presumed to be possessed with maturity of understanding and capacity to commit crime. However this presumption is rebuttable and a child between 7 to 12 years of age is qualified to avail the defense of "*doli incapax*" if it is proved that he has not attained sufficient maturity to understand the nature and consequences of his conduct.

In ***Santosh Ray v. State of W.B., 1992 Cr L J 2493*** It was observed "In a child's life the period between 7 and 12 years of age is rather the twilight period of transaction to a minimal workable level of understanding of things in the firmament of worldly affairs and that is why both the Indian

Penal Code and the oaths Act have made special provisions for children below **12** years in respect of matters dependent on a minimal power of understanding. The Indian Penal Code provide no protection from culpable liability on ground of tender age to one who is aged **12** years or more."

Q. 13 `A' an illiterate boy, servant of 8 years stole a new `Parker' Fountain Pen worth Rs. 200/ from the table of his employee and sold to B, a student of law aged 21 years for Rs. 10/ only. Both `A' and `B' are put on trial. The former is charged with theft and latter for receiving the stolen property. How would you, as a judge, decide the case?

Ans. In India a child below the age of **7** years is immune from criminal liability because child below the age of **7** years is considered as "*doli in capex"* Section **82** of IPC says "Nothing is an offence which is done by a child under seven years of age."

Then **Section 83** IPC gives a qualified immunity to child who is above seven years but below twelve years of age. **Section 83** says:

"Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion."

So a child above the age of seven years and below 12 years may be exempted from criminal liability provided it is proved that due to want of maturity and understand, child did not understand the nature and consequence of his conduct. In ***Queen v. Begarayi Krishna, I.L.R. (1883) 6 Mad. 373*** a child of 9 years of age stole ornament worth Rs 2.8 and sold it to `B' accused for **5** annas Evidence at the trial and conduct of child showed that he had attained sufficient maturity of understanding to judge of the nature and consequence of his conduct, therefore child was held guilty.

In every case under **Section 411**, I.P.C., two facts, *viz*.

(**1**) that a theft was committed and certain articles were stolen and

(**2**) that the stolen articles were recovered from the possession of the accused,

have to be established by direct evidence. They cannot be presumed. If these two facts are established and the recovery from the possession of the accused is a recent one, it will be open to the Court to presume under illustration (a) to Section 114 of the Indian Evidence Act that the accused is either the thief or a receiver of stolen property. Although such presumption is discretionary.

The existence of knowledge of an accused person can be seldom proved affirmatively by positive evidence. The prosecution in cases under Section 411 of the Penal Code, has, therefore, to depend generally either on a presumption arising from possession of recently stolen properties or from inferences derived from proof of circumstances which render it difficult to exclude the fact of knowledge. One great question in that cases is the price actually paid for the thing. If it was a fair market price, it will in ordinary cases be sufficient to repel suspicion. But if there appears a gross

difference between the price paid and the price which represents its intrinsic value, it will be strong evidence no less to dishonestly than the property was known or believed to be stolen property.

In the present case, a new Parker pen worth Rs. 300/- was purchased by B for Rs. 10/- only. It is important to note that B is not an illiterate person who can be said to be ignorant about the quality and the market price of the pen. He purchased such a costly article for a negligent price from an illiterate boy. These circumstances are enough to convict B for an offence under **Section 411** of the Penal Code.

Q. 14 "Legal insanity is different from Medical insanity" Discuss this statement.

Ans. Section 84 of Indian Penal Code provides,

"Nothing is an offence which is done by one, who at the time of doing it, by reason of unsoundness of mind is incapable of understanding the nature of the act or that it was either wrong of contrary to law." So provision of **Section 84** embodies the fundamental maxim of criminal law "*actus non facit reum nisi mens sit rea*" (an act does not constitute guilt unless done with guilty intention). To attract the provision of Section **84**, it must be established that, when the act was committed, the accused was laboring under such a defect of reason as not to know the nature and quality of the act he was doing.

It must be born in mind that there is a clear distinction between legal insanity and medical insanity. Courts are concerned with the legal insanity and not with the medical view of the question. A man may be suffering some form of insanity in the sense in which the term is used by medical men but may not be suffering from unsoundness of mind as described in Section **84**. If the facts of a case showed that the accused knew that he had done something wrong, though he might be insane from the medical point of view, he could not be exonerated under section 84 IPC.

In ***Gour Chandra v. State of Orissa, 1990(1) Crimes 168*** It was observed that "it is only legal insanity that furnishes ground for exemption from criminal liability. There can be no legal insanity unless the cognitive faculty of the accused is, as a result of unsoundness of mind, completely impaired. In order to constitute legal insanity the unsoundness of mind must be such as to make offender incapable of knowing the nature of the act or that he is doing an act contrary to law."

Similarly in ***Sankaran v. The State, 1994(2) Recent Criminal Reports 446 Kerala High Court*** observed that Insanity as contemplated by Section **84** IPC is disorder of conduct i.e. the process of adjusting the self to circumstances is deranged, Insanity is an incapacity to know the nature of act or to know that the act is wrong or contrary to law. **Section 84** contemplates legal insanity and not medical insanity.

Q. 15 Discuss the law of defence of intoxication under Indian Penal Code.

Ans. Section 85 of Indian Penal Code provide:

"Nothing is an offence which is done by a person who, at the time of doing it, is by reason by intoxication, incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law: Provided that the thing which intoxicated him was administered to him without his knowledge or against his will." So Section **85** gives the same protection as

Section **84** does to person of unsound mind, who is by reason of intoxication incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law, provided that the thing which intoxicated him was administered without his knowledge or against his will.

Section 85 and **86** crystallize in tabloid form the law relating to intoxication or drunkenness as a defense or plea in mitigation of criminal offence.**Section 86** I.P.C. then provides :

"In cases where an act done is not offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated unless the thing intoxicated him as administered to him without his knowledge or against his will." So it is only involuntary drunkenness and that too when it makes a man incapable of knowing the nature of his act is a defense to criminal liability and a person voluntarily intoxicated will be deemed to have the same knowledge as he would have had if he had not been intoxicated.

In ***Basu Dev v. State of Pepsu, AIR 1956 SC 488*** Supreme Court has held that "so far as knowledge is concerned, the court must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, the court must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being ? If so, it would not be possible to fix him with requisite intention. But if he had not gone so deep in drinking and from the facts it could be found that he knew what he was about, we can apply the Rule that a man is presumed to intend the natural consequences of his act or acts" So the Rule of law is well settled:

(**1**) That insanity whether produced by drunkenness or otherwise, is a defense to the crime charged.

2) Evidence of drunkenness which renders the accused incapable of forming the specific intent, essential to constitute the crime, should be taken into consideration with other proved facts in order to determine whether or not he had this intent.

(**3**) That evidence of drunkenness falling short of a proved incapacity in the accused to form the intent and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his act**s** "

Turning to the case in hand, it has been found that although the accused was under the influence of drink, he was not so much under its influence that his mind was so obsessed by the drink that there was incapacity in him to form the required intention as stated. The following facts further support this conclusion:

1. That the accused was capable of moving himself independently, and talking coherently as well;

2. That the accused made a choice of his seat;

3. That after shooting the deceased the accused tried to got away and was secured at a distance.

4. That when the accused was secured by the witness he realized what he had done and thus requested the witnesses to be forgiven.

All these facts go to prove that there was not proved incapacity in the accused to form the intention to cause bodily injury sufficient in the ordinary course of nature to cause death. Therefore, it becomes evident that the accused is guilty of the offence of murder under section 302, I.P.C. A similar view, on identical facts, was expressed by the Supreme Court in ***Baldev v. State of Pepsu, AIR 1956 SC 488.***

Q. 16 Define "Consent". Discuss in which situation defence of consent, can lawfully he raised?

Ans. Definition of consent. - The I.P.C. does not define consent. But section 90 describes the consent in negative way. It does not provide that when there would be free consent instead it describes that when there would be no consent.

Section 90. - Section 90 defines a valid consent in negative terms. It tells us that a consent under the following circumstances shall not be valid consent for the purposes of the Penal Code :-

(1) If the consent is given by a person under fear of injury or under a misconception of fact and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear to misconception; or

(2) If the consent is given by a person who, from unsoundness of mind or into intoxication, is unable to understand the nature and consequences of that to which he gives his consent; or

(3) Unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age (Section 90).

Consent plays an important role in law of crimes. There are certain offences in I.P.C. in which consent is a material element ***Dasharath Paswan v. State of Bihar (A.I.R. 1958 Patna 190)***, accused due to successive failure in high examination decided to end his life. He communicated his plan to his wife. Wife asked her husband (i.e. accused) to kill herself first and then to himself. Accused killed his wife accordingly but before he could kill himself he was arrested. It was held by the court that consent given by wife was a valid consent. Therefore, husband was held liable not for murder, but for culpable homicide not amounting to murder.

When consent is a valid defence ? Sections 87, 88 and 89 specify the circumstances under which a valid consent may be a successful plea in defence of a charge for an offence. Acts which would otherwise be offences shall cease to be so in the following circumstances :-

(1) Section 87. - Nothing is an offence which is not intended to cause death on grievous hurt, if the person to whom such hurt is caused being above the age of 18 years has expressly or impliedly consented to suffer harm, or to take the risk of any harm.

A and Z agree to fence with each other for amusement; this agreement implies the consent of each to suffer any harm which in the course of such fencing may be caused without foul play and if A while playing fairly hurts Z, A has committed no offence (Section 87).

But this section will not afford any protection where the act by itself is one which is prohibited by law, as for example, if any, person wounded whilst dulling, and one of them is hurt even if they are fighting fairly, both will be liable, because duelling is prohibited by law.

(2) Section 88. - Nothing is an offence what is not intended to cause death by reason of the harm that has resulted from that act, if it is done in good faith for benefit of another who has given his consent, express or implied, to suffer that harm or to take the risk of that harm.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death and intending in good faith with Z's consent, performs operation. A has omitted no offence, even if it turns out that the operation is unsuccessful.

(3) Section 89. - Nothing is an offence which is in good faith for the benefit of person under twelve years of age, or of unsound mind or by consider, either express or implied, of his guardian or other person having lawful charge of that person by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause, to that person : Provided -

Firstly, that this exception shall not extend to the intentional causing of death or to the attempting to cause death.

Secondly, that this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death for any purpose other than the preventing of death or grievous hurt or the causing of any grievous disease or infirmity.

Thirdly, that this exception shall not extend to the voluntarily causing of grievous hurt or the attempting to cause grievous hurt, unless it be for the purpose of preventing death, grievous hurt, or the causing of any grievous disease or infirmity.

Fourthly, that his exception shall not extend to the abetment of any offence, to the committing of which offence it would be extend.

Q. 17 In what circumstances and to what extent will a plea of compulsion or necessity be a sufficient, defence against the charge of criminal offence? Does it give absolute protection?

Ans. Defence of compulsion is contemplated in Section 94 of Code which provide as under :-

Except murder and, offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1. - A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2. - A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

So in order to avail the exemption under this section one has to show that he was not a voluntary agent, he must also show that he was given no alternative but to do or die. So section 94 lays down that an act committed by a person under the fear of instant death is not a crime. In ***Queen Empress v. Magan Lal & Motilal, I.L.R. 14. Bom. 115 (At page 131)*** it was observed that "indeed in permitting a mean to commit a crime for the sake of his life, law does not by any means set an exalted standard of morality before the people, but the law is corrector of evil and not a moralist and it never places before itself a standard of altruism which people will generally find it easy to follow, if it did so, the law soon be more honoured in it's breach than by it's observance.--"

So the expression "threat which at the time of doing it.." in section 94 means that apprehension of instant death must be present at the time of the act and person must be under belief that he is to do or die

Does It Give a Absolute Protection Section 94 of I.P.C. enunciates a simple rule under which the law recognises that the presence of compulsion as a defence of criminality. However, section starts with the words "except murder and offence against the State punishable with death.....". So making the defence of compulsion qualifying and which does not justify murder and defence against State punishable with death.

Q. 18 Decide the liability of `A' in the following

(a) A received a divine Order in his sleep to sacrifice his child of five years of age. He carries on the Order and kills his son.

(b) B claimed to be proof against a sharpened instrument and invited `A' to get the fact tested. `A' cut B on Arm but B bled to death.

Ans. (a) **Section 84** of Indian Penal Code lays down that "nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law."

To earn exemption under **Section 84** I.P.C., the defense has to prove insanity of the accused at the time of the offending act. In ***Bhikari v. State of U.P., AIR 1966 SC 1*** Supreme Court observed: *"Every man is presumed to be sane and to possess sufficient degree of person to be responsible for his acts unless the contrary is proved. To establish insanity it must be clearly proved that at the time of committing the act the party is labouring under such defect of reason as not to know the nature and quality of the act which he is committing..."* So if the accused, claim the benefit of Section **84** he has to establish that he was not in position to understand the nature of his act. Question involved in the case in hand, whether `A' who sacrificed his five years old son to death on alleged divine Order in sleep is guilty of murder or would get benefit under section 84 of insanity. In ***Ashirudin Ahmad v. King, AIR 1949 Cal. 182*** Prosecution case was that Accused sacrificed his son in mosque and having done so went straight and informed his uncle and confessed his guilt. It was held in this case.

"..... Three elements necessary to be established under section 84, any one of which must be established by an accused to obtain benefit of the provisions, it appears that first the nature of the act was clearly known to the accused, secondly that he knew that the act was contrary to law, but the third element on which the case really turned is whether the accused knew that the act was wrong. In our opinion the correct view is that the accused was clearly of unsound mind and that acting under the delusion of his dreams, he made sacrifice of his son, believing it to be right." This decision of Calcutta Court was dissented from in an ***Allahabad High Court Case Lakshmi v. State, AIR 1959 All. 534***, where it was pointed out that the significant word in Section **84** I.P.C. is "Incapable" and **Section 84** requires that the accused should be incapable of knowing whether the act done by him is right or wrong.

The controversy was set at rest by decision of Supreme Court in ***Paras Ram and Other v. State of Punjab, 1981 SCC (Cri) 516***: "In that case, the father sacrificed his four year old son to propitiate diety. While maintaining the conviction under section 302 of the Penal Code, it was held that the said fact does not by itself prove insanity, and such primitive and inhuman actions must be punished severely to deter such deviant behavior.

In the case in hand, the accused knew and understood the nature and consequences of his act at the time he killed his son. The so called divine influence is no defense to what would otherwise be murder. Therefore, A is guilty of murder.

(b) **Section 87 of Indian Penal Code** says :

"Nothing, which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt is an offence, by reason of any harm which it may cause, or be intended be the doer to cause to any person, above eighteen years of age, who has given consent, whether expressed or implied to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm." So the law recognizes `Consent' as a good defense to the causing of any harm. This recognition of defense is on assumption that every one is the best judge of his own interest and therefore it is presumed that no one can consent to that which is hurtful to that interest. The main principle underlying Section **87** I.P.C. is that `consent' never justifies death or grievous hurt under section 87 any harm other than death or grievous hurt even though intended or known by the doer to be likely to be caused, will not be an offence (i) If act is done neither with the intention of causing death or grievous hurt nor the knowledge that it is likely to cause death or grievous hurt **(ii)** harm is caused to any person with his consent **(iii)** person giving consent is above **18** years of age and **(iv)** consent given may be expressed or implied.

The facts of the present case have been borrowed from ***Ngwa Shwe Kin v. Emperor, AIR 1915 Lower Burma 101.*** While acquitting the appellant of the charge under section 304, I.P.C., it was observed: *"The case is governed by Section 87 and 90 Indian Penal Code. The deceased gave his consent under a misconception of fact, erroneously believing that he was proof against da cuts But it cannot be said that the appellant knew of this misconception or had reason to believe that the deceased was mistaken in thinking himself invulnerable. He is a youth of 19 and the probability is that he really believed in the pretence of the deceased, a much older man than himself. Burmese*

cultivators are notoriously credulous and seeing that Pan Zan was willing to put his pretensions to proof on his own person, Shwe Kin probably expected the edge of the da to the chipped or turned aside. The appellant certainly had no intention of causing death or grievous hurt, and I think it is highly doubtful whether he can properly be said to have known that his act was likely to cause any such result. In the first place, he did not use great force, secondly, he had Pan Zan's assurance that he was invulnerable and the appellant was too ignorant to see the absurdity of it; lastly he inflicted the cut on the part of the body specially presented for the purpose by the deceased and this, moreover, was a part not ordinarily regarded as a vital part." Therefore, A is not guilty of any offence in this case.

Q. 19 Discuss the law relating to right of private defence?

Or

Under what circumstances the right of private defense of body extends to causing death?

Ans. The right of private defence is a very valuable right and it has been recognized in all free, civilized and democratic societies within certain reasonable limits Duty to protect the life and property of the subject is, primarily of the state, but no state, howsoever large its resources, can not provide protections in all situations Therefore right to defend and repel the unlawful attack has been given legal recognition.

When enacting Sections **96** to 106 of Indian Penal Code, excepting from its penal provisions Certain classes of acts, done in good faith for the purpose of repelling unlawful aggressions, legislature clearly intended to arouse and encourage the manly spirit of self defense amongst the citizens, when faced with grave danger. The law does not require a lawabiding citizen to behave like a coward when confronted with imminent unlawful aggression. Section **96** of Indian Penal Code lays down:

"Nothing is an offence which is done in exercise of the right of private defence." In ***Laxman Sahu v. State, 1988 Cri Law Journal 188*** Supreme Court observed "The right of private defence is available only to one who is suddenly confronted with immediate necessity of averting an impending danger not of his creation. The necessity must be present, real or apparent.

Section 97 of Indian Penal Code then says:

"Every person has a right, subject to the restrictions contained in Section 99, to defend

Firstly His own body and body of any other person against any offence affecting human body;

Secondly The property, whether moveable or immovable of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass or which is an attempt to commit theft, robbery, mischief or criminal trespass So Section **97** proceeds to divide the right of private defence into two parts: the first part dealing with the right of private defence of person and the second part dealing with the right of private defence of property.

Section 98 I.P.C. then provides, *"When an act, which would otherwise be a certain offence, is not that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence."* The principle underlying Section **98** is that right of private defence does not depend upon the actual criminality of the aggressor but on the wrongful character of the act attempted. **Section 99** I.P.C. then lays down the limit within which the right of private defence, must be exercised. **Section 99** reads as under:

"There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direct may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities

Extent to which the right may be exercised. The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1. A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant

Explanation 2. A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded." So Section **99** I.P.C. define the extent to which right may be pushed and its object is to lay down certain restrictions; first two of which are specially intended to protect public servants, the remaining two paragraphs being more general.

In ***State of U.P. v. Nayamat, AIR 1987 SC 1652*** It was observed that Section **99** specifically says that there is no right of private defence against an act which does not reasonably causes apprehension of death or grievous hurt if done or attempted to be done on the direction of public servant acting in good faith under colour of his office. The protection extends even to acts which will not be strictly justifiable in law.

WHEN THE RIGHT OF PRIVATE DEFENCE OF BODY EXTENDS TO CAUSING DEATH : **Section 100** of Indian Penal Code says:

"The right of private defence of the body extends, under the restrictions mentioned in the last preceding Section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:

First Such an assault, as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly An assault with the intention of committing rape;

Fourthly An assault with the intention of gratifying unnatural lust;

Fifthly An assault with the intention of kidnapping or abducting;

Sixthly An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release." So Section 100 IPC justifies the killing of an assailant when apprehension of atrocious crimes enumerated in several clauses is caused. It should be read subject to the provisions of Section **99**. In ***Kashmiri Lal v. State of Punjab, AIR 1997 SC 393*** It was observed that in terms of Section 100 IPC, the right of private defence of the body extends to the voluntarily causing of death if the offence which occasions the exercise of the right be inter alia, such an assault as may reasonably cause the apprehension that death or grievous hurt shall otherwise be the consequence of assault. Law however does not confer a right of private defence on such person who invite an attack on themselves by their own high headedness, threat or attack on another."

Section 101 of Code lays down: ***"If the offence be not of any of the descriptions enumerated in Section 100, the right of private defence of the body does not extend to voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in Section 99, to the voluntary causing to the assailant, of any harm other than death."*** **Section 102** the reads as under: "***The right of private defence of body commences as soon as reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed and it continues as long as such apprehension of danger to body continue Section*** In ***Yogendera Morarji v. State of Gujarat, AIR 1980 SC 660*** The Supreme Court has set out the extent and the limitations on the exercise of right of private defence of body. It observed:

(i) there is no right of private defence against an attack which is not in itself an offence under the Code;

(ii) the right commences as soon as and not before a reasonable apprehension of danger to the body arises from an attempt or threat to commit some offence although the offence may not have been committed and it is coterminous with the duration of such apprehension. Accordingly, the right avails only against a danger imminent, present and real;

(iii) it is a defensive and not a punitive or retributive right. Consequently, in no case, the right extends to the inflicting of more harm than it is necessary to inflict for the purpose of the defence. At the same time, it is difficult to expect from a person exercising this right in good faith to weigh golden scales what maximum amount of force is necessary to keep within the right. Every reasonable allowance should be made for the bona fide defender, if he with the instinct of self preservation strong upon him, pursues his defence with a little further than may be strictly in the circumstances to avert that attack.

(iv) The combined effect of the first two clauses is that taking the life of an assailant would be justified on the plea of private defence, if the assault causes reasonably apprehension of death or grievous hurt to the person exercising the right;

(v) the right being, in essence, a defensive right, does not accrue and avail where there is time to have recourse to the protection of the public authorities ***WHEN RIGHT OF PRIVATE DEFENCE OF PROPERTY EXTENDS TO CAUSING DEATH : Section 103*** of Indian Penal Code says *"The right of private defence of property extends, under the restrictions mentioned in Section 99, to the voluntary causing of death or of any other harm to the wrong doer, if the offence, the committing or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated namely:*

First Robbery,

Secondly House breaking by night,

Thirdly Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling or as place for the custody of property,

Fourthly Theft, mischief or housetrespass under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised." So a person may cause death in safeguarding his own property or the property of some one else when there is a reason to apprehend that the person whose death has been caused was about to commit one of the offences as mentioned in **Section 103** I.P.C. or to attempt to commit one of those offences.

In ***Mahavir Choudhary v. State of Bihar, 1996 Criminal Law Journal 2860 (SC)*** It was observed that **Section 103** IPC recognizes extension of the right of private defence up to the full measures but only if such acts or attempts are capable of in calculating reasonable apprehension in the mind that death or grievous hurt would be consequence if the right is not exercised in such full measure.

Section 104 I.P.C. says "If the offence committing of which or the attempting to commit which occasions the exercise of right of private defence, be theft, mischief or criminal trespass, not of any of the descriptions enumerated in the last precedings , that right does not extend to the voluntary causing of death, but does extends, subject to the restrictions mentioned in Section **99**, to voluntary causing to the wrong

Section 105 I.P.C. says:

"The right of private defence of property commences when a reasonable apprehension of danger to the property commences

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as offender causes or attempts to cause to any person death or hurt, or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continue***s***

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against housebreaking by night continues as long as the housetrespass which has been begun by such housebreaking continues "

Q. 20 A is attacked by a mob which attempts to kill him. A in exercise of his right of private defence fires at the mob, killing one of the several children mingled with the mob. What offence if any committed by A?

Ans. Section 106 of the Indian Penal Code provides that "if in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk."

In the case in hand, A was attacked by a mob who attempted to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence when by so firing he harms or kills any of the children.

Q. 21 (A) What do you understand by "Abetment of an Offence" ? Discuss with the help of decided cases and illustrations.

(B) What offence has been committed in following cases:

(i) A instigates a child `B' to poison `C' and provides poison for the purpose. B by mistake put the poison on D's plates, which happened to be on the side of C's plate, D took the food and die.

(ii) A instigates B to shoot C, B goes to C's house with a gun but finding C's car standing unattended, steals the car instead of shooting him.

Ans. (A) Chapter V of Indian Penal Code penalizes abetment as abetment leads to crime and many crimes would be impossible but for support and encouragement received from others who, though not actively cooperating with the criminal, still prepare his ground and facilitate his work. Therefore abetment of an offence has been made punishable offence by Code.

Section 107 of I.P.C. provides

"A person abets the doing of a thing, who

***Firstly** Instigates any person to do that thing; or*

Secondly Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy and in **order** to the doing of that thing; or

Thirdly Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1 : A person who by willful misrepresentation or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempt to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2 : Whoever, either prior to or at the time of the commission of an act, does anything in **order** to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act." So an abetment means some active suggestion or support to the commission of the offence. The word **`instigate'** literally means to goad, urge forward, provoke, incite or encourage to do an act and a person is said to instigate another when he actively suggests or stimulates him to act by any means or language. Instigation may consist not only in direct incitement to crime but it may be willful misrepresentation or concealment of a fact which a person is bound to disclose. In other words, a person may instigate directly or indirectly. In ***Sat Darshan Kalia v. State of Punjab, 1996(1) Recent Criminal Reports 371*** Punjab and Haryana High Court has observed "If a person instigates, abets or aids the other in commission of offence it would be an abetment contemplated under section **107** I.P.C. **Explanation 2** added to Section 107 I.P.C. further makes the position clear that whoever does any thing in order to facilitate the commission of the act, is said to aid the doing of that act."

Clause Second of Section 107 provides as to abetment by conspiracy and it consists when two or more persons engage in conspiracy for the doing of a thing and an act or illegal omission takes place in pursuance of the conspiracy and in order to the doing of that thing. In ***Pramtha Nath v. Saroj Ranjan, AIR 1962 SC 876*** Supreme Court observed "For an offence under clause Second of Section 107 a mere combination of persons or agreement is not enough, an act or illegal omission must also take place in pursuance of the conspiracy and the act or illegal omission must also be in order to the doing of the thing agreed upon between them. But for an offence under section120A, a mere agreement is enough if the agreement is to commit an offence.

Third clause of **Section 107** I.P.C. says a person abets the doing of a thing who intentionally aids, by any act or illegal omission, the doing of that thing. In ***CBI v. V.C. Shukla, AIR 1998 SC 1406*** It was observed:

*"....So far as the first two clause of **Section 107** are concerned it is not necessary that the offence instigated should have been committed. For understanding the scope of the word "**aid**" in the third clause of **Section 107** it would be advantageous to see **Explanation 2** to **Section 107** I.P.C. which reads thus:*

`Whoever either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act and thereby facilitates the commission thereof, is said to aid the doing of that act.'

It is thus clear that under the third clause when a person abets by aiding, the act so aided should have been committed in ***Order*** *to make such aiding an offence. In other words, unlike the first two clauses the third clause applies to a case where the offence is committed."* (B) ***Section 111*** of Indian Penal Code lays down: "When an act is abetted and a different act is done the abettor is liable for the act done, in the manner and to the same extent as if he had directly abetted it:

Proviso : Provided the act done was probable consequence of the abetment and was committed under the influence of the instigation or with the aid or in pursuance of the conspiracy which constituted the abetment."

So Section 111 I.P.C. proceeds on the maxim "every man is presumed to intend the natural consequence of his act." The main provision of the Section is applicable only when the act done is probable consequence of abetment.

In ***Sonappa Shina Shetty v. Emperor, AIR 1940 Bom. 126*** It was observed that definition of abetment in Section 107 I.P.C. includes not merely instigation, which is the normal form of abetment, but also conspiracy and aiding, and those three forms of abetment are dealt with in the proviso to Section 111. The Section comes to this where an act is abetted and the abetment takes the form of instigation of an act and a different act is done, that different act must be probable consequence and committed under the influence of instigation and where the abetment takes the form of aiding or a conspiracy, the different act must be probable consequence and also with the aid or in pursuance of the conspiracy.

Section 112 of I.P.C. provides: *"If an act for which the abettor is liable under the last preceding Section, is committed in addition to the act abetted and constitutes a distinct offence, the abettor is liable to punishment for each of the offence."* So Section 112 materially enlarges the liability of the abettor to punishment both for offence actually abetted as well as that which was a probable consequence of the abetment, provided that the two offences were distinct.

Section 113 of I.P.C. then provides: *"When an act is abetted with the intention on the part of the abettor of causing a particular effect and an act, for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect."*

(i) In this case, the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment. Therefore, A is liable in the same manner and to the same extent as if he had instigated the child to put poison into the food of D. See illustration (a) to **Section 111** of the Code.

(ii) In the second case, A had instigated B to shoot C. Instead of shooting C, B committed theft in respect of the car belonging to C. This act is quite distinct and not even the probable consequence

of the act abetted. Therefore, A cannot be convicted for abetment in respect of the offence of theft. See illustration (b) to **Section 111** of the Code.

Q. 22 A asked B to help him in committing murder of C. B agrees but nothing is subsequently done in pursuance of such an agreement. Can A and B be charged with offence of conspiracy?

Or

Define and explain offence of criminal conspiracy.

Ans. Section 120A of Indian Penal Code has defined "Criminal Conspiracy" as:

"When two or more persons agree to do or cause to be done:

(i) an illegal act,

(ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation : It is immaterial whether the illegal act is the ultimate object of such agreement or is merely incidental to that object." So the essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be expressed or implied. The conspiracy arises and the offence is committed as soon as the agreement is made. The *actus reus* in a conspiracy is the agreement to execute the illegal conduct not the execution of it.

Following are the ingredients of the offence of conspiracy:

(**1**) There must be an agreement between two or more persons who are alleged to conspire.

(**2**) The agreement should be to do, or cause to be done:

(i) an illegal act

(ii) an act which is though not illegal by illegal means.

In view of proviso, distinction is drawn between an agreement to commit an offence and an agreement of which either object or means employed are illegal but does not constitute the offence. In case of an agreement to commit offence mere Agreement is sufficient. But in case of an agreement to do an act which would not amount to an offence, some overt act besides the agreement must be proved to establish the charge of criminal conspiracy.

Therefore in the problem asked above, A and B reached to an agreement to commit the murder of C, which is offence, so in this case, it is sufficient to prove that A and B made agreement to commit offence of murder of C, even though no overt act subsequently done by either A or B. Offence of criminal conspiracy is committed.

In ***State of Kerala v. P. Sugathan, 2000(4) Recent Criminal Reports 369*** Supreme Court while discussing offence of criminal conspiracy and provision under **Section 10** of Indian Evidence Act observed:

"*Offence of criminal conspiracy can be established by direct evidence or by circumstantial evidence. Section 10 of Evidence Act introduces the doctrine of agency and will be attracted only when court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence.... To prove criminal conspiracy, there must be evidence direct or circumstantial to prove that there was an agreement between two or more persons to commit an offence, there must be the meeting of mind resulting in ultimate decision taken by conspirator regarding commission of an offence and where factum of conspiracy is sought to be inferred from circumstances, prosecution has to show that circumstances giving rise to conclusive and irresistible inference of an agreement between two or more persons to commit an offence.... A few hits her and few hits from there, on which prosecution relies cannot be held to be adequate for connecting the accused with commission of crime of criminal conspiracy. The circumstances relied for drawing an inference should be prior in time than actual commission offences in furtherance of alleged conspiracy.... Law of conspiracy in India is in line with the English law by making an overt act in essential when conspiracy is to commit any punishable offence*"

Section 120B of Indian Penal Code provides for the punishment of offence of criminal conspiracy:

(***1***) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(***2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.*** **Abetment and Conspiracy :** As regard the difference between abetment and conspiracy, the former is wider of the two in point of fact it is a genus of which the offence of conspiracy is a species Abetment may be committed in various ways enumerated in s 107 and 108 and conspiracy is one of them. In the next place abetment per se is not a substantive offence, while criminal conspiracy is a substantive offence by itself and is punishable as such.

Distinction between Sections 34, 107, 109 and 120A Section 34 embodies the principle of joint liability in the doing of a criminal act, the essence of that liability being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. **Section 109**, on the other hand, may be attracted even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to the conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission.

Criminal conspiracy, as defined in **Section 120**A, differs from other offences In that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by **Section 107**, I.P.C. A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarter or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferences though the inference must be founded on solid fact**s**

Q. 23 What are the ingredients of offence of waging or attempt to wage war against the Government of India ? How is it punishable?

Ans. Section 121 of Indian Penal Code provides:-

"Whoever, wages war against the Government of India or attempts to wage such war or abets the waging of such war shall be punished with death or imprisonment of life and shall also be liable to fine."

So Section 121 of I.P.C. deals with the offence of waging, attempting to wage and abetting the waging of war against Government of India. The abetting of waging of war, thus is as much an offence of treason as the waging war itself. The expression "Waging war" in section 121 can only mean "waging war in the manner usual in War. It is not necessary that as a result of the abetment the War should be waged in fact. But main purpose of the instigation should be the "Waging of War". It should not merely remote and incidental purpose, but the thing principally aimed at by the instigator (***Vasu Nair v. Trav-Co. State, 1955 Cri. L.J. 414***).

Section 121-A of code lays down "Whoever within or without India conspires to commit any of the offences punishable by Section 121 or conspires to overawe, by means of criminal force or the shown of criminal force, the Central Government or any State Government shall be punished with imprisonment for life or with imprisonment of either description which may extend to ten years and shall also be liable to fine.

Explanation - To constitute a conspiracy under this section it is not necessary that any act or illegal omission shall take place in pursuance thereof."

Section 121-A deals with conspiring to wage war against Central or State Government. This Section embraces two kinds of conspiracy -

(1) Conspiring within or without India to commit an offence punishable under section 121 and

(2) Conspiracies to overawe by means of criminal force or show of criminal force, the Central or State Government.

For Section 121-A it is not necessary that any act or illegal omission must take place in pursuance of conspiracy. The agreement in itself is enough to constitute the offence. It is also not necessary that a person should be participant in conspiracy from start to finish (***Raghubir Singh v. State, 1987 Cri.L.J. 157***).

Then Section 122 of Code deals with punishment for collecting arms etc. with intention of waging war against government which is imprisonment of life or imprisonment of either discription upto 10 years and fine also. Section 123 makes punishment for offence of concealing existence of designs to wage war against Government or facilitation thereof, upto 10 years and fine.

Q. 24 Define `Sedition' and explain the law relating to it. State the principles laid down in the "Amrit Bazar Patrika Press Ltd." Case.

Ans. Section 124-A of Indian Penal Code provides regarding *"Sedition"*, it says -

Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excise disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1. - The expression "disaffection" includes disloyalty and all feeling of enmity.

Explanation 2. - Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3. - Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

So sedition consists in acts, words or writing intended or calculated in the circumstances of the time to disturb the tranquility of the State by creating ill-will, discontent, disaffection, hatered or contempt towards the constitution, of Parliament or the Government or the established institutions of country by exciting ill-will between different classes or encouraging any class of them to endeavour to disobey, defy or subvert the law or to do any act of violence.

In ***Balawant Singh v. State of Punjab, 1995 Supreme Court Cases (Cri) 432***. It was observed -

The offence of sedition is the resultant of the balancing of two contending forces, namely freedom and security in their pure form are antagonistic poles : one pole represents the interest of the individual in being afforded the maximum right of self-assertion free from governmental other interference while the other represents the interest of the politically organized society in its self-preservation. While conceding the imperative necessity of freedom of speech and expression in its full width and amplitude, it is necessary at the same time to remember that the first and most fundamental duty of every Government is the preservation of order. The security of the State and organized Government are the very foundation of freedom of speech and expression which maintains the opportunity for free political discussion to the end that Government may be responsive to the will of the people and it is, therefore, essential that the end should not be lost sight of in an over- emphasis of the means. The protection of freedom of speech and expression should not be carried to an extent where it may be permitted to disturb law and order to create public disorder. It is, therefore, necessary to strike a proper balance between the competing claims

of freedom of speech and security of the State on the other. This balance has been found by the Legislature in the enactment of Section 124-A which defines the offence of sedition for our country. The words, deeds, or writings constitute sedition punishable under Section 124-A only if they incite violence or disturb law and order or create public disorder or have the intention or tendency to do so. The acts or words have a tendency to create public disorder, they cannot be considered seditious as sedition is essentially an offence against public order.

Q. 25 Enumerate offences relating to the Army, Navy and Air Force

Ans. 1. Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty. - Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation. - In this section the words "officer", "soldier", "sailor" and "airman" include any person subject to the Army Act, the Army Act, 1950 (46 of 1950), the Naval Discipline Act, the Indian Navy (Discipline) Act, 1934 (34 of 1934), the Air Force Act or the Air Force Act, 1950 (45 of 1950), as the case may be. [Section 131]

2. Abetment of mutiny, if mutiny is committed in consequence thereof. - Whoever abets the committing of mutiny by an officer, soldier, sailor or airman in the Army, Navy or Air Force of the Government of India, shall, if mutiny be committed in consequence of that abetment, be punished with death or with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.[Section 132]

3. Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office. - Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.[Section 133]

4. Abetment of such assault, if the assault is committed. - Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.[Section 134]

5. Abetment of desertion of soldier, sailor or airman. - Whoever abets the desertion of any officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.[Section 135]

6. Harbouring deserter. - Whoever, except as hereinafter expected, knowing or having reason to believe that an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, has deserted, harbours such officer, soldier, sailor or airman, shall be punished with

imprisonment of either description for a term which may extend to two years, or with fine, or with both.[Section 136]

7. Deserter concealed on board merchant vessel through negligence of master. - The master or person in charge of a merchant vessel, on board of which any deserter from the Army, Navy or Air Force of the Government of India is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.[Section 137]

8. Abetment of act of insubordination by soldier, sailor or airman. - Whoever abets what he knows to be an act of insubordination by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.[Section 138]

Q. 26 Wearing garb or carrying token used by soldier, sailor or airman whether a crime?

Section 140 of the IPC provides that whoever, not being a soldier, sailor or airman in the Military, Naval or Air service of the Government of India, wears any garb or carries any token resembling any garb or token used by such a soldier, sailor or airman *with the intention that it may be believed that he is such a soldier, sailor or airman,* shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Q. 27 Define Unlawful Assembly and Discuss the more aggravated forms of offence related to unlawful assembly.

Ans. Section 141 of Indian Penal Code defines "Unlawful assembly" as:-

Unlawful assembly. - An assembly of five or more persons is designated an "unlawful assembly", if the common objection of the persons composing that assembly is -

First. - To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second. - To resist the execution of any law, or of any legal process; or

Third. - To commit any mischief or criminal trespass, or other offence; or

Fourth. - By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporation right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth. - By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation. - An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

the objection of Section 141 I.P.C. is to prevent to resort to criminal force by five or more persons to do any of the acts set out in the Section. To constitute an "unlawfully assembly" there must be -

(1) an assembly, of five or more persons

(2) they must have common object

(3) the common object must be one of five specified in Section 141.

Theoretically there can be an unlawful assembly, the common object of which is one of those specified in Section 41 without anything further being done in carrying out that common object. But it is well settled that mere presence in an assembly does not make such a person a member of assembly unless it is shown that he had done something or omitted to do something which would make him member of such assembly. Section 142 of the Code says

"Whoever, being aware of facts, which renders any assembly an unlawful assembly, intentionally joins that assembly or continues in it, is said to be member of an unlawful assembly."

Then Section 144 says.

Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 144 is aggravated form of section 141 and the aggravation consisting in carrying of lethal arms which by itself a menace to peace and which shows preparation and an intention to use force.

Then section 145 says -

Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

So it is only when an assembly is an unlawful one as defined in Section 141 and is commanded to disperse, that any person who joins or continues in such assembly commits an offence under section 145.

Q. 28 What is Riot, distinguish between Riot and Affray.

Ans. Section 146 of Indian Penal Code defines offence of "Rioting" as: "Whenever force or violence is used by an unlawful assembly or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting."

Section 159 has defined offence "Affray" as: "When two or more persons by fighting in a public place, disturb the public peace, they are said to "commit any affray".

Distinction between affray and riot : The two differ from each other in the following respects:

(**1**) An affray cannot be committed in a private place; a riot may take place anywhere, i.e., both at a public and a private place

(**2**) An affray can be committed by two or more persons, a riot can be committed by at least five persons

(**3**) Rioters are those who first constitute an unlawful assembly; an affray need not be so.

(**4**) The punishment awarded in the case of riot is imprisonment for two years, but in the case of an affray it is one month or fine up to Rs. 100 or both.

Q. 29 What is the liability of a member of an unlawful assembly for an act committed by another member in prosecution of common object?

Ans. Section 149 of Indian Penal Code deals with rule of Constructive liability that is to say, liability for an act not actually done by accused. Section 149 days :-

"If an offence is committed by any member of an unlawful assembly in prosecution of common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of committing of that offence, is member of same assembly is guilty of that offence."

So section 149 I.P.C. requires primarily that person should be member of unlawful assembly, that in prosecution of the common object of that assembly, as offence should be committed by a member of that assembly and offence should be of such a nature tha member of assembly knew the offence likely to the committed in prosecution of their common object.

In ***Shiva Shankar Pandey & other v. State, 2002(4) RCR (Cri) 101*** - Supreme Court observed that vicarious Liability of members of unlawful assembly arises where offence is committed by another member or members of unlawful assembly if the commission of such offence is common object of that assembly of if members of unlawful assembly knew that the offence of nature committed was likely tot be committed though the common object may be something different.

Q. 30 Discuss the law relating to hiring a person or being hired to join an unlawful assembly. Discuss also the law relating to harbouring persons hired for an unlawful assembly.

Ans. Section 150 of I.P.C. lays down as under :-

"Whoever engages or hires or employs or promotes or connives at the hiring, engagement or employment of any person to join or become member of any unlawful assembly, shall be punishable as member of such unlawful assembly and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring engagement or employment in the same manner as if he had been a member of such unlawful assembly or himself had committed such offence."

In short, liability for hiring a person to join unlawful assembly is that any such person shall be treated as member of such assembly and further held liable for any offence committed by person hired to the same extent as if he had committed such offence himself.

Being hired to join an unlawful assembly. - The person who is hired to join an unlawful assembly shall be punishable with imprisonment of either description for a term which may extend to 6 months or with fine both and if he goes armed or offers to go armed with any deadly weapon or with anything which, used as a weapon of offence is likely to cause death, he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

The person who hires is punished as above under Section 150, I.P.C., which deals with persons who are engaged or hired or offer or attempt to be hired or engaged to do or assist in doing any of the acts which constitute an assembly of five or more persons into an unlawful assembly.

The liability thus is the same whether one is actually hired or attempts to be hired. The circumstances in which attempt to be hired is punished is that such attempt must be to do or assist in doing any act which may render an assembly an unlawful assembly as defined in the Indian Penal Code.

Harbouring persons hired for an unlawful assembly. - Whoever harbours, receives, or assembles, in any house or premises in his occupation, or charge, or under his control any persons, knowing that such persons have been hired, engaged or employed or are about to be hired, engaged or employed to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both (Section 157).

Q. 31 When a person is said to commit the offence of promoting enmity between different classes?

Ans. Section 153-A of I.P.C. penalize the offence of promoting enmity between different groups on grounds of religion, race, language etc. This section was added by Indian Penal Code (Amendment) Act of 1898 and latter old Section 153-A was substituted by new, which provides:-

(1) Whoever -

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, or

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely

that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity, for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc. - (2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Section 153-A was enacted to supplement the law of section which found to be in sufficient to prevent the conflict of classes for which it was obviously inadequate. The section may however he said to deal with defamation of a class as distinguished from the defamation of a person punishable under section 500 of the Code or Section 295-A which deals with the defamation of religion. The essential ingredients of Section 153-A are:-

(1) That the accused promoted or attempted to promote feelings or enmity and hatred between different religious, racial or language groups or castes or communities or that the accused has done an act which is prejudicial to the maintenance of harmony between such groups or castes or communities and which is likely to disturb public tranquility.

(2) That he promoted or attempted to promote feelings of enmity of hatred by words or signs or visible representations or otherwise or had acted prejudicially to the maintenance of harmony which disturbs or is likely to disturb public tranquility.

In ***Gopal Vinayak Godse v. Union of India, AIR 1971 Bom. 56***. It was observed by Chandrachud J. that in order to bring a case within the purview of section 153-A, intention to promote enmity hatred or haltered apart from what appeared from the writing itself was not a necessary ingredient. It was enough to show that the language of writing was of a nature calculated to promote feelings of enmity and hatred for, a person must be presumed to intent the natural consequence of his act.

Q. 32 Define and Explain Affray.

Ans. Definition of Affray. - When, (1) two or more persons, (2) by fighting in a public place, (3) disturb the public peace, they commit an affray, (Section 159), punishable with simple or rigorous imprisonment up to one month, or fine up to Rs. 100 or both (Section 60).

Affrays, are the fighting of two or more persons in some public place, to the terror of His Majesty's subject, for if the fighting be in private, it is no affray, but in assault (Blackstone). The offence of affray as defined in Section 152 postulates the commission of a defined assault or a breach of the peace, mere quarrelling or abusing in a street without exchange of blows is not sufficient to attract

the application of Section 159. The gist of the offence consists in the terror it causes to the public. There can be no affray in a private place. An affray is an offence against the public peace because it is committed in a public place and is likely to cause general alarm and disturbance.

Ingredients of affray. - (i) Two or more persons should fight, (ii) fighting place should be a public place, (iii) it should cause the disturbance of the public peace.

Q. 33 Enumrate various offences by or relating to Public Servants

Ans. Following are the various offences by or relating to Public Servants

1. Public servant disobeying law, with intent to cause injury to any person. - Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.[Section 166]

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

2. Public servant framing an incorrect document with intent to cause injury. - Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.[Section 167]

3. Public servant unlawfully engaging in trade. - Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.[Section 168]

4. Public servant unlawfully buying or bidding for property. - Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.[Section 169]

5. Personating a public servant. - Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.[Section 170]

6. Wearing garb or carrying token used by public servant with fraudulent intent. - Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.[Section 171]

Q. 34 What is meant by contempt of Lawful authority of Public Servants ? What offences full under this?

Ans. By contempt of lawful authority of Public Servants simply means doing any act or omission which has effect of violation of lawful directions given by such public servant or any act which tend mislead such public servant or which obstruct such public servant in discharging his lawful duties.

Offences punishable for contempt of the lawful authority of public servant. - (1) Absconding to avoid service of summons or other proceedings. (Section 172).

(2) Preventing service of summons or other proceeding or preventing publication thereof. (Section 173).

(3) Non-attendance in obedience to an order from a public servant. (Section 174).

(4) Omission to produce document to public servant by a person legally bound to produce it. (Section 175).

(5) Omission to give notice or information to public servant by person bound by give it. (Section 176).

(6) Furnishing false information to a public servant by a person legally bound to do so. (Section 177).

(7) Refusing oath or affirmation when duly required by public servant to make it. (Section 178).

(8) Refusing to answer public servant authorized to question (Section 179).

(9) Refusing to sign statement. (Section 180).

(10) False information on oath or affirmation public servant or person authorized to administer an oath or affirmation. (Section 181).

(11) False information with intent to cause public servant to use his lawful power to the injury of another person (Section 182).

(12) Resistance to taking of property by lawful authority of public servant. (Section 183).

(13) Obstructing sale of property offered for sale by authority of public servant. (Section 184).

(14) Illegal purchase or bid for property offered for sale by authority of public servant (Section 185).

(15) Obstructing public servant in discharge of public functions (Section 186).

(16) Omission to assist public servant when bound by law to give assistance. (Section 187).

(17) Disobedience to order duly promulgated by public servant. (Section 188).

(18) Threat of injury to public servant. (Section 189).

(19) Threat of injury to induce person to refrain from applying for protection to public servant. (Section 190).

Q. 35 Discuss the provision of Indian Penal Code dealing with the offence of giving false information with intent to cause public servant to use his lawful power to the injury of another.

Ans. Section 182 of Indian Penal Code.

"Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant -

(a) to do or omit anything which such public servant ought not to be or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Illustrations

(a) A informs a Magistrate that Z, a police officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

So in order to establish the offence punishable under section 182 I.P.C. it must be established that a person gave information which he knew or believed to be false to a public servant to do something which such servant ought not do or that he knew it to be likely that he would thereby cause such public servant to do some thing which he ought not to do

In ***Sukhdev Singh v. State, 1961 PLR 566*** - It was observed that the scope of Section 182 IPC is restricted to those cases where an accused person give information which he either knows or believes to be false, this apparently means that the prosecution must affirmatively establish that accused had either positive knowledge or he positively believed the information given by him to

he false. It is no doubt true that evidence need not be direct but it must be sufficient to enable the court to came to a safe conclusion that the accused must have known or believed the information given by him to be false.

Section 211 of Indian Penal Code is analogous to this section which reads as under.

Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable t fine.

So an accused can commit both offences under section 182 and 211 in the pursuit of the same purpose, one after the other but their circles are clearly, separated and they do not overlap each other. In ***State of Punjab v. Brij Lal Palta, 1969 Cri. L.J. 645 (SC)*** Supreme Court observed that offences under section 182 of I.P.C. is distinct from one under section 211 though the latter is more serious and may include the offence under the former section. The magistrate can take cognizance of offence under section 182 on a complaint in writing of Police Officers by virtue of provisions contained in Section 195(1)(a) of Cr.P.C. But it would virtually lead to circumstances of provision of Section 195(1)(b) of Cr.P.C. if proceedings under section 182 can continue where the offence disclosed is covered by the Section 211 IPC and a complaint is pending which has been filed by informant on same facts and allegations as where contained in F.I.R.

Q. 36 Discuss the difference between provisions of Section 182 and 211 of I.P.C. Can a person who has been convicted under section 211, be convicted under section 182 on same facts?

Ans. Distinction between Section 182 and 211 of I.P.C.

Section 182 of Code lays down as -

"Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant -

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person.

Shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Section 211 deals with false charge of offence made with intent to injure it and provides as under :

"Whoever with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding, against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both;

and if such criminal proceeding be instituted, on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine."

A fine distinction between the two offences has been pointed out by the Allahabad High Court per Edge C.J. in ***Re Raghu Tiwari, (1893) 15 All. 336*** while distinguishing between Sections 182 and 211, I.P.C. observed as follows :

"Although it is difficult to see what case would arise under Section 211 to which Section 182 could not be applied, yet Section 182 would apply to a case which might not fall under Section 211. The offence under Section 182 is complete, when false information is given to a public servant by a person who believed it to be false, but who intends thereby to cause such public servant to institute criminal proceedings against a third person. The offence is complete although the public servant takes no steps towards the institution of such criminal proceedings. There is no restriction imposed by the Penal Code or by the Criminal Procedure Code upon the prosecution of an offence either under Section 182 or Section 211. It appears that it has been left to the discretion of the Court to determine when and under what circumstances prosecution should be proceeded with under Sections 182 and 211."

Problem - A person prosecuted under Section 211 I.P.C. cannot be convicted under Section 182 I.P.C. on the same facts. The Rajasthan High Court has laid down in ***Ramdeo v. State of Rajasthan, A.I.R. 1962 Raj. 149***, that where a complaint has been preferred under Section 211 of the Indian Penal Code, a complaint by police under Section 182 is incompetent and not maintainable.

Q. 37 Explain the law relating to offence of giving false evidence.

Ans. - Section 191 of I.P.C. defines giving of false evidence as:

Whoever, being legally bound by oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon an subject, makes an statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1. - A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2. - A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

(a) A. in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

So this section defines the giving of false evidence, an offence which is designated "Perjury" under English Law. The salient feature of offence of giving false evidence are the intentional making of a false statement or declaration by a person who was under legal obligation to speak the truth. The offence comprises:

(i) false statement made by a person who is

(a) bound by an oath or

(b) by an express provision of law

(ii) a declaration which a person is bound by law to make on any subject; and

(iii) Which statement or declaration is false and which he either knows or believes to be false or does not believe to be true.

In ***Ranjit Singh v. State, AIR 1959 SC 843***. The opening words of Section 191 "Whoever being legally bound by an oath or by express provision of law to state the truth....." means what whenever in a court of law a person binds himself on oath so State the truth, he is bound to state the truth and he cannot be heard to say that he should not have gone into the witnesses-box or should not have made an affidavit.

Q. 38 What does the offence of fabricating false evidence consist in?

Ans. Section 192 of Indian Penal Code says:-

Fabricating false evidence. - Whoever causes any circumstances to exist or makes any false entry in any book on record, or makes any document containing a false statement; intending that such circumstances, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator and that such circumstances, false entry or false statement, so appearing in evidence, may cause may person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstances may cause Z to be convicted of theft. A has fabricated false evidence.

The Section is generally worded and applies to any "circumstances" whether it is caused by forgery or fraud. Offence of fabricating false evidence, is closely allied to the more general offence defined under section 191 still it presents some distinguishing features. The offence has five principal ingredients :-

(i) There must be the causing of any circumstance to exist, or making any false entry in any book or record, or making any document containing a false statement;

(ii) it must be with the intention that it may appear in evidence;

(iii) such evidence must be before a Judge, arbitrator or public servant;

(iv) that it may cause him to entertain an erroneous opinion;

(v) upon any material point.

Q. 39 Define "Coin" and "Indian Coin". What do you understand by "Counter felting Coin". What are the offence relating to them?

Ans. - Chapter XII of Indian Penal Code deals with offences relating to coin and Government stamps. Section 230 of Code says -

"Coin" defined. - Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

Indian coin. - Indian coin is metal stamped and issued by the authority of the Government of India in order to be used as money; and metal which has been so stamped and issued shall continue to be Indian coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.

So the term "Coin" means only "Current Coin". A coin obsolete or no longer in use is not then "Coin" within the meaning of this definition.

Section 231 of Code says

Counterfeiting coin. - Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation. - A person commits this offence who intending to practice deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

Then *Section 232* of Code Says.

Counterfeiting Indian coin. - Whoever counterfeits, or knowingly performs any part of the process of counterfeiting Indian coin, shall be punished with imprisonment for life, or which imprisonment of either description for a term which may extend to ten y ears, and shall also be liable to fine.

The term "Counterfeiting" is used here, in the sense in which it is defined in Section 28 of Code. `Counterfeit Coin' means coin not genuine but resembling or apparently intended th resemble for genuine. In order to constitute the offence of "Counterfeiting Coin" it is essential ingredient that there is intention to deceive

Section 233 punish for making or selling instrument for counterfeiting coin, similarly section 235 of the Code says -

Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall not be liable to fine;

[**if Indian coin**] and if the coin to be counterfeited is Indian coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The gist of offence under section 235 consists in being -

(i) in possession of tools and materials, (ii) For the purpose of using the same for counterfeit coin or (iii) knowing or having reason to believe that the same is intended to be used for that purpose.

Section 240 of Indian Penal Code says -

Whoever, having any counterfeit coin, which is a counterfeit of Indian coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of Indian coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished, with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 241 of Code Says -

Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when to took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Q. 40 What are various offences relating to weights and measures?

Ans. Following are the various offences relating to weights and measures

1. Fraudulent use of false instrument for weighing. - Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.[Section 264]

2. Fraudulent use of false weight or measure. - Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.[Section 265]

3. Being in possession of false weight or measure. - Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be

false, intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.[Section 266]

4. Making or selling false weight or measure. - Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.[Section 267]

Q. 41 What is a "Public Nuisance" ? Distinguish it from a "Private Nuisance".

Ans. Section 268 of I.P.C. provides.

"A person is guilty of Public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to Public or to People in general who dwell or occupy property in vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A Common nuisance is not excused on the ground that it causes some convenience or advantage."

So According to Section 268, Public Nuisance is committed by one :-

(i) Who does any act or guilty of illegal omission which causes (a) Common injury or (b) danger or (c) Annoyance

(ii) To Public or to people in general who dwell or occupy property in the vicinity or

(iii) Which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

In ***S. Ventataramiahah v. State, 1989 Cri.L.J. 784*** - It was observed that the Public Nuisance under section 268 must affect Public or People in general living in vicinity; Common injury, danger or annoyance mentioned in the section must be to public at large dwelling in the vicinity and not to a particular individual.

Q. 42 Enumerate the offence affecting Public health as defined in I.P.C. What punishments are provided for them?

Ans. There are five groups of offences affecting Public health. Which are discussed as follows :-

1. Public Nuisance : Section 268 of I.P.C. deals with Public Nuisance, it lays down that a person is guilty of public nuisance who does any act or being guilty of any illegal omission which cause any common injury, danger or annoyance to persons who may have occasion to use any public right.

2. Acts likely to spread infection. - This includes negligent act likely to spread infection of disease dangerous to life, malignant act likely to spread infection of diseases dangerous to life and disobedience to quarantine rule.

Whoever, unlawfully or negligently does any act which is and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term whcih may extend to six months, or with fine, or with both, (Section 269).

Whoever, malignantly does any which is, and which he knows or has reason to believe to be likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term, which may extend to two years or with fine or with both (Section 270)

Whoever, knowingly disobeys any rule made and promulgated by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where, an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or, with fine, or with both. (Section 271).

3. Adulteration of food or drink. - This includes adulteration of food or drink intended for sale or noxious food or drink.

Whoever, adulterates any article of food or drink, so as to make such articles noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months with fine which may extend to one thousand rupees or with both, (Section 272).

Whoever, sell or offers or exposes for sale, as food or drink, any article which has been tendered or has become noxious, or is in a state unit for food or drink knowing or having reason to believe that the same is noxious as food or drink shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both. (Section 273).

(4) Adulteration of drugs. - This includes sale of adulterated drugs and sale of drugs as a different drug or preparation.

Whoever, adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation or to make it noxious intending that it shall be sold or used or knowing it to be likely that it will be sold, used for, any medical purposes, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (Section 274).

Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation or to render it noxious sells the same, or offers, or exposes it for sale, or issues it from any dispensary for medical purposes as unadulterated or causes it to be used for medical purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both (Section 272).

Whoever, knowingly sells, or offers or exposes for sale, or issues from a dispensary for medical purposes any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both. (Section 276).

(5) Fouling water and vitiating atmosphere. - Whoever voluntarily corrupts or fouls the water of any public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both (Section 277).

Whoever, voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighborhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees. (Section 278).

Q. 43 What is `obscenity'. Distinguish between `obscenity' and `vulgarity'. What offence if any is made out in following cases:

(i) Atul and Monika were found kissing and embracing each other in a Maruti Van, parked at 40 paces from police post located at a lonely place.

(ii) During the search of Residential house of accused for offence under section 120B, 420, 467, 468 and 471 IPC. One video cassette containing pornographic scene is recovered from an almirah, key of which was supplied by accused.

Ans. The word `absence' used in **Section 292** of Indian Penal Code has not been defined anywhere in the code. Clause (**1**) to the Section explains the connotation of the expression `obscenity'. **Section 292(1)** lays down "For the purposes of ***Sub- Section (2***), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene, if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it." Clause (**2**) of **Section 292** punishes a person who sells or in any manner conveys publicly obscene books of other material. **Section 292** IPC does not, indeed it could not, punish all obscenity or immorality. It can only attack obscenity which is destructive of the morals of society. It therefore punishes only the sale, distribution, importation or printing for sale or hire or public exhibition of obscene things Any attempt to publish, sell etc. and an offer to do so are likewise punishable. There must be thus two things proved under section 292 namely that (i) the matter must be obscene and **(ii)** Accused must have sold, distributed, imported, printed or exhibited it or attempted or offered to do, so.

Meaning and scope of word "**obscene**" as used in **Section 292** of the Penal Code came up for consideration before Supreme Court in ***Ranjeet D. Udeshi v. State of Maharashtra, AIR 1965 SC 881*** It was observed that `main test of obscenity is whether the tendency of matter charged as obscene is to deprave and corrupt those whose mind are open to such immoral influences and into whose hands a publication of this sort may fall. In this connection, the interest of our contemporary society and particularly influence of matter on it must not be overlooked.

In ***Chandrikant Kalyan Das v. State of Maharashtra, AIR 1970 SC 1390*** Supreme Court observed:

"The concept of obscenity differs from country to country depending on standard of morals of contemporary society. The test is whether a class, not an isolated class in whose hand the impugned book would fall suffer in their moral outlook or become depraved by reading it, or have impure and lecherous thoughts developed in their mind **Section** "

DISTINCTION BETWEEN OBSCENITY AND VULGARITY Distinction between obscenity and vulgarity was pointed out by Supreme Court in ***Samaresh Bose and other v. Amal Mitra and other, 1986 Cri.L.J. 24 (SC)*** "It was observed `Vulgar writing is not necessarily obscene. Vulgarity arouses the feeling of disgust, revulsion and boredom whereas the obscenity has the tendency to deprave and corrupt those whose minds are open to such immoral influences A novel written with a view to expose evils prevailing in society by laying emphasis on sex and use of slangs and unconventional language did not make it obscene."

(i) **Section 294** IPC provide that :

Whoever to the annoyance of others,

(a) does any obscene act in public place

(b) sings, recites or utter any obscene songs, ballad words, in or near public place

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

So following are Ingredients for offence under section 294 IPC

(a) Accused must have done some act, sings, recites or utter something which is obscene.

(b) It was done or performed in `Public place'.

(c) It caused annoyance to other**s** So above stated ingredients must be proved. Mere obscene act done in public place is not sufficient it must have to cause annoyance also to others

It is important to point out that mere fact that the song or act is obscene does not conclude the matter, in order to constitute an offence, it must cause annoyance to other**s** There must be some persons to say that act done or song sung had annoyed him.

In ***Atul Jain v. State of Haryana, 1989 Recent Criminal Reports 8 (P&H)*** J. H. Rai observed in para **7** of the Judgement that `there is no allegation that accused committed any obscene act in any public place to the annoyance of other**s** ..."

In the problem Atul and Monika were found kissing and embracing each other inside the car at a lonely place and there was no one nearly who could have felt annoyed by acts of Atul and Monika and thus no offence is made out.

(ii) Section 292(**1**) IPC explains specifically the connotation of express obscenity and Section 292(**2**) punish a person who sells or in any other manner conveys publicly the obscene books or

any other material of same effect. **Section 292** punish a person who sell, lets on hire, distribute publicly exhibits or in any manner put into circulation any obscene article.

In the problem in hand one video cassette containing pornographic scenes is recovered from the possession of accused, that by itself does not hiring within the purview of Section 292(**2**) IPC and thus no offence is made out.

Q. 44 What are the offences relating to Religion?

Ans. Offences relating to religion are :-

(1) Injury or defiling place of worship with intent to insult the religion of any class. (Section 295).

(2) Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs. (Section 295-A).

(3) Disturbing religious assembly (Section 296).

(4) Trespassing on burial places or offering indignity to human corpse. (Section 297)

(5) Uttering words or making sound and gesture with deliberate intent to wound religious feeling. (Section 298).

(b) The principle underlying these offences :

The principle underlying these offences is that every man should not be suffered to profess his own religion and that no man should be suffered to insult the religion of another. It is the bounden duty of a secular democratic Government to see that no disruption tendencies are allowed to appear owing to religions which is prone to it in the hands of fanatics.

Q. 45 Define `Culpable Homicide and state the circumstances under which culpable homicide amounts to murder.

Or

When Culpable Homicide does not amounts to murder.

Ans. Culpable Homicide : **Section 299** of Indian Penal Code lays down:

"Whoever causes death by doing an act with the intention of causing death, or with the intention causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide." In ***Jaya Raj v. State of T.N. 1976, Criminal Law Journal 1186 (SC)*** Supreme Court observed: "intent and knowledge in the ingredients of **Section** 299 postulate the existence of positive mental attitude and this mental condition is the special `mens rea' necessary for the offence. The guilty intention in first two conditions contemplates the intended death of the person hammered or intentional causing of an injury likely to cause his death. The knowledge in the third condition contemplates knowledge of the likelihood of the death of the person."

In ***Sreenarayan's case (1947) 27 Patna 67,*** X struck B on the head a single blow with piece of fire wood. B fell down bleeding from her nose and became unconscious, A and his wife W believing B to be dead, placed B on a wooden pyre and set fire on it which caused her death It was held A and his wife W, committed Culpable Homicide.

Murder is aggravated form of Culpable Homicide. Offence of Murder has been defined in Section 300 of IPC **Section 300** reads as under:

"Except in the cases herein after excepted, culpable homicide is murder:

Firstly the act by which death is caused is done with the intention of causing death or,

Secondly If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of person to whom the harm is caused or,

Thirdly If it is done with intention of causing bodily injury to any person and bodily injury intended to be inflicted is sufficient in ordinary course of nature to cause death or,

Fourthly If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely cause death and commits such act without any excuse for incurring the risk of causing death of such injury as aforesaid." **Section 300** IPC, further provide five exceptions wherein Culpable Homicide does not amount to murder. Joint reading of **Section 299** and four clauses of **Section** 300 makes it clear that every murder is Culpable Homicide. But Culpable Homicide may or may not amount to murder.

WHEN CULPABLE HOMICIDE AMOUNTS TO MURDER (a) ***Death must have been caused by an Act, done with the intention of causing death*** : This clause covers cases where accused has clear cut intention of causing death and he in pursuance of that intention caused the death by doing some act or illegal omission. In ***Jaya Raj v. State T.N. (supra)*** In para **34**, it was observed that "The first clause of **Section 300** reproduces the first part of Section 299, therefore ordinarily if the case comes within clause (1) of **Section 299**, it would amount to murder.."

(b) ***With the Intention of Causing Such Bodily Injury as Offender Knows to be Likely to Cause Death*** : Under the **2**nd clause of **Section 300**, mental attitude of Accused is two fold, **First** there is intention to cause bodily harm and **Secondly** there is subjective knowledge that the death will be likely consequence of the intended injury. It applies to cases where victim was in such state of body or health, which offender, being very much aware of such state of body or health, cause such bodily injury which is sufficient to cause death of that particular victim.

(c) Injury sufficient in ordinary course of nature to cause death : This clause of Section 300 covers those cases where offender does an act with the intention of causing such bodily which not only to a particular person, but to any person and such bodily injury is sufficient in ordinary course of nature to cause death. In ***Jagrup Singh v. State of Haryana, 1981 SCC (Cri) 768*** Supreme Court observed "***Culpable Homicide amounts to murder under clause thirdly of Section 300 I.P.C. if (1) a bodily injury is present (2) nature of injury is proved (3) there was an intention to inflict that particular injury and (4) that injury is sufficient to cause death in the ordinary course of nature. The injury found to be present must be the injury that was intended to be inflicted....***

The whole thing depends upon the intention to cause death and the case may be covered by either clause firstly or clause thirdly. The nature of intention must be gathered from kind of weapon used, the part of body hit, the amount of force employed and the circumstances attendant upon the death."

(d) ***Knowledge of imminently dangerous act*** : This clause of **Section 300** comprehends those situations where offender does such act, very much knowingly that such act is imminently dangerous and still he takes the risk of doing of such act and thereby caused death of some one.

So in other words Culpable Homicide will amount to murder when firstly acts of accused comes within definition of Culpable Homicide and then comes within any of the **4** clauses as enumerated in **Section 300**.

When Culpable Homicide Does Not Amount to Murder: **Section 299** I.P.C. define Culpable Homicide as "Whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such acts to cause death; commits the offence of Culpable Homicide.

Section 300 I.P.C. define `**Murder**'. **Section 300** starts with words "except in the case hereinafter excepted...." Section 300 enumerate **5** exceptional circumstances where Culpable Homicide does not amount to murder. These **5** exceptions as given in **Section 300** IPC are following:

Exception 1 : Culpable Homicide is not murder if the offender whilst deprived of power of self control by grave and sudden provocation causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to following provisos:

Firstly That provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly That provocation is not given by anything done in obedience to law or by public servant in lawful exercise of powers of such public servant.

Thirdly That provocation is not given by anything done in lawful exercise of the right of private defence.

In ***Gura Singh v. State of Rajasthan, 1984 Cri.L.J. 1423*** Provocation under exception must be both sudden and grave. Provocation is an external stimulus which must be looked at as such. Grave and sudden provocation does not arise merely by use of the defamatory words.

Exception 2 : Culpable Homicide is not murder if the offender in exercise in good faith of right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3 : Culpable Homicide is not murder if the offender being Public Servant or aiding a public servant acting for advancement of public justice exceeds the powers given to him by law, and causes death by doing an act which h e in good faith believes to be lawful and necessary for

due discharge of his duty as such public servant and without ill will towards the person whose death is caused.

Exception 4 : Culpable Homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in cruel or unusual manner.

Exception 5 : Culpable Homicide is not murder when the person whose death is caused being above the age of eighteen years suffers death or takes the risk of death with his own consent.

In ***State of A.P. v. Rayavarapu Punnaya, AIR 1975 SC 45***, the Supreme Court observed : "From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder" on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be whether the accused has done an act by doing which he has caused the death of another. Proof of such casual connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage of considering the operation of Section 300 is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300. If the answer to this question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending respectively, on whether the second or the third clause of 299 is applicable. If the answer is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the first part of Section 304."

The Supreme Court in the case of ***Ruli Ram v. State of Haryana, 2002(4) Recent Criminal Reports 187 (SC)*** observed that a culbable homicide will be murder if following conditions are satisfied :-

(i) The act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury;

(ii) The injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death, viz., that the injury found to be present was the injury that was intended to be inflicted.

(iii) Even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder.

Q. 46 A has a enlarged spleen. B knows this and gives him a kick on the abandon which ruptures the spleen. A week later, A dies in consequence of the injury received. Discuss the guilt of B.

Ans. Clause Second of **Section 300** of Indian Penal Code provides:

"***Except in the cases hereinafter excepted, culpable homicide is murder:***

Firstly....

Secondly : If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of person to whom the harm is caused or

....."

So under clause secondly of Section 300 IPC mental attitude of Accused is two fold First there is intention to cause bodily harm and **Second** there is subjective knowledge that the death will be likely consequence of the intended injury **Clause Secondly of Section 300 I.P.C.** applies to cases where victim was in such state of body or health which, offender being very much aware of such state or health intentionally causes such bodily injury which keeping in view the state of body and health of particular victim is sufficient to cause death.

Illustration (b) of Section 300 I.P.C. makes it clear which reads `A, knowing that Z is laboring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of Murder."

In ***Rajwant v. State, AIR 1966 SC 1874*** Supreme Court held that the essence of crime under the second clause of **Section 300** is that there must be intention of causing such bodily injury as the accused knows it to be likely to cause death of the person to whom the injury is caused.

In the case in hand, the Accused B knew that the deceased `A' had an enlarged spleen. A's blow is likely to cause death of such person. The mere fact that the deceased died after seven days is immaterial since the death was in consequence of the blow given by B.

Q. 47 (i) ***A is lawfully arrested by B, a bailiff A is excited to sudden and violent passion by the arrest and kills to B.*** **(ii) B attempts to horsewhip A in such a manner as to cause grievous hurt to A. A draws out a pistol. B however persists in the assault A believing in good faith that he can by no means prevent himself from being horsewhipped shoot B dead.**

(iii) A under the influence of passion excited B provocation given by B kills C intentionally.

State what offence if any, A is guilty of in each of the three cases given above.

Ans. (i) In this problem A is guilty of murder. A is not entitled to Exception 1 of **Section 300** because Exception **1** provide that culpable homicide is not murder where offender, whilst deprived power of self control by grave and sudden provocation, causes death of the person who gave provocation or causes death of any other person by mistake or accident. However second proviso attached to this exception says that provocation is not given by anything done in obedience to law or by a public servant in the lawful exercise of powers of such public servant.

In problem in hand, B a bailiff had lawfully arrested A. So B being public servant doing his acts in obedience of law and in exercise of his powers therefore A's sudden and violent passion by arrest will not bring A's case within Exception 1 of **Section 300** IPC [See Illustration (c)]

(ii) In this problem A is guilty of culpable homicide. Because Except. No.2 to Section 300 provide that culpable homicide is not murder if the offender, in exercise in good faith of right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such light of private defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

In this problem B attempted to horsewhip A in such a manner as to cause grievous hurt to A. A draws out a pistol but B kept on assaulting. A apprehend in good faith that he can not be prevented by any means from being horsewhipped and shoot B dead. So on being assaulted by B, A had reasonable apprehension of being horsewhipped, A in good faith and without premeditation in exercise of right of private defence shoot dead B, A however exceeded in exercise of his light of private defence of person and thus Exception II to **Section 300** IPC will apply in this case.

(iii) In problem in hand, A is guilty of murder. Because Exception **1** to **Section 300** IPC says culpable homicide is not murder if the offender, whilst deprived of self control by grave and sudden provocation, causes the death of either (i) Person who gave the provocation, or **(ii)** Any other person by mistake and accident. In this problem A was provocated by B, but A killed C intentionally, therefore Exception No.**1** will not apply. See Illustration (a) to said exception.

Q. 48 Decide the liability of `A'

`A' and `B' are fighting and B's wife with a lady on her shoulder intervene Section A struck the lady but it fell on the infant who is killed.

Ans. Section 301 of Indian Penal Code embodies what the English authors describes as the doctrine of "Transfer of malice" or transmigration of motive. The underlying idea behind **Section 301** appears to be that where an act is in itself criminal, the doing of that act is an offence irrespective of the individuality of the person harmed. **Section 301** I.P.C. says:

"If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of description of which it would have been, if he had caused the death of the person whose death he intended or knew himself to be likely to cause." In ***Hawa Hembram v. State of W.B., 1998 Criminal Law Journal 3990*** It was observed: " **Section 301** I.P.C. applies only to a case where an act fails to have its full intended or known to be likely effect upon the victim aimed at, but has that very effect upon another, unintentionally. The effect or known to be likely effect, for which the accused can be held liable, has necessarily to be judged with reference to the intended and not the unintended victim.

In ***Hari Shankar v. State, 1980 Supreme Court Cases (Cri.) 107*** It was observed that when culpable homicide is not committed in respect of intended victim but of some one else, then the

question whether it amounts to murder or not will be determined by a consideration of the intention or knowledge of the offender in respect of the intended victim.

See Jageshwar v. Emperor, AIR 1924 Oudh 228 also in which occurred was heating a person with fists when the Latter's Wife, with two months old child on her shoulder, interfered, Accused hit the woman but the blow struck the child on his head. The child died from the effect of blow. It was held that although the child was hit by Accident, but accused was not doing lawful act by lawful means and in lawful manner of therefore defence under section 80 IPC could not be availed of by accused.

In the present case, A had no intention to kill B or B's wife, nor the knowledge that he was likely to kill him or her. Further, no intention or knowledge to cause grievous hurt to either of them can be imputed to him under the circumstances of the case. Therefore, A can be held to be guilty of an offence of causing simple hurt under **Section 323** of the Penal Code. A similar view on identical facts was expressed by a Division Bench of the Bombay High Court in ***Chatur Nath v. Emperor, AIR 1920 Bom. 224.***

Q. 49 Discuss the criminal liability of `A'. `A' with the intention to kill B, gives him poisoned apple, but `B' passes it to `C' a child who eats and die Section

Ans. Section 301 of Indian Penal Code provide that if a person by doing anything which he intends or knows to be likely to cause death commits culpable homicide by causing death of any person whose death he neither intends nor knows himself to be likely to cause the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Section 301 I.P.C. embodies the doctrine of transfer of malice or transmigration of motive. Basic idea behind the provision is that where an act is in itself criminal the doing of the act is an offence, irrespective of the individuality of the person harmed.

In ***Jagpal Singh v. State of Punjab, 1991 Cri.L.J. 597 (SC)***. Accused when aims at one and kills another, he would be punishable for murder under the doctrine of transfer of malice as embodied in **Section 301** I.P.C.

Similar views have been taken by Supreme Court in ***Gianendra Kumar v. State of U.P., AIR 1972 SC 502; Shankar Lal and other v. State of Gujrat, AIR 1965 SC 1200.*** Therefore in problem in hand, A is guilty of murder.

Q. 50 `A' was driving a Bus on a Kacha Road at high speed. There were iron sheets placed on the top of the bus. On the way some of the iron sheets fell down on the head of B and also injured some other persons walking on the road. B was carried to the Hospital by `A'. B died after a month. Has `A' committed any offence? If so what?

Ans. Section 304A of Indian Penal Code lays down as:

"Whoever causes the death of any person, by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or both." So the requirement of applicability of **Section**

304 A are that the death of any person must have been caused by accused by doing any rash and negligent act. In other words there must be proof that the rash and negligent act of accused was the proximate cause of the death. There must be direct nexus between the death of a person and the rash and negligent act of the accused.

In ***Kurhan Hussain Mohd. Rangawalla v. State of Maharashtra, AIR 1965 SC 1616*** It was observed that Section **304**A by its own definition totally excludes the ingredients of **Section 299** and 300 of I.P.C. In order to attract the **Section 304**A, death must be direct result of rash and negligent act of accused and the act must be efficient cause without the intervention of another's negligence. It must be the `causa causans, it is not enough that it may have been the causa sin qua non. Thus where death is not the direct result of rash and negligence act on the part of the accused and was not proximate and sufficient cause without the intervention of another negligence, then offence under **Section 304**A I.P.C. not established."

In the case in hand, the accused drove the bus on a kacha road at a high speed. Further, the iron sheets were placed on the top of the bus without taking any precaution to avoid their fall. Therefore, driving the bus at a high speed on such a path and not taking of precaution while placing iron sheets on the top of the bus amount to criminal rashness and negligence. B died due to injuries received by him on being hit on his head with the iron sheets. Therefore, there is a direct nexus between the death of B (although took place after one month of the accident) and the rash and negligent act of A. Hence, A is guilty under **Section 304**A of the Penal Code.

Q. 51 Discuss the ingredients of offence of Abetment of Suicide.

Ans. Section 306 of Indian Penal Code lays down the offence of Abetment of Suicide. It provides:

"If any person commits suicide, whoever abets the commission of such suicide, shall be punished with the imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."

So Section 306 makes punishable abetment of suicide. Before a person can be convicted of abetting the suicide of any other person, it must be established that such other person committed suicide. In the absence of proof of any direct or indirect acts of incitement to the commission of suicide or a conspiracy or any act facilitating the commission of suicide, Section 306 can not be said to be attracted. But as direct evidence is hardly available, it is the circumstantial evidence and conduct of accused are to be taken into consideration for adjudicating upon truthfulness or otherwise of prosecution case (***Gurcharan Singh v. Satpal Singh, AIR 1990 SC 209***). It is important to point out that offence of abetment must conform to definition of that term as given under section 107 of Code that is to say there must be instigation cooperation and intentional assistance given to the deceased.

Section 306 of Indian Penal Code should be read with section 114-A of Indian Evidence Act. Section 113A of Act says that if a woman had been subject to cruelty as defined in Section 498A IPC Court may presume having regard to all circumstances of the case, that such suicide has been abetted by her husband or his relative provided suicide has been committed within 7 years of her marriage.

Q. 52 'A' with the intention of causing the death of an illegal child of tender age, exposes it in a desert place. Thereafter a passerby saves the child from dying. What offence has been committed by 'A'?

Ans. Section 307 of the Indian Penal Code provides as: "Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is herein before mentioned." To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wound. This section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned but still there may be cases in which the culprit would be liable under this section . If a person knows that a certain result will ensue from his act he must be deemed to intend such result by the act. Further, it is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under certain circumstances mentioned in this section . An attempt in order to be criminal need not be the penultimate act. It is sufficient by law, if there is present an intent coupled with some overt act in execution thereof. For purposes of criminal liability, it is sufficient, if the attempt had gone so far, that the crime would have been completed, but for the extraneous intervention which frustrated its consummation.

Illustration (b) to the **Section** reads: "***A with the intention of causing the death of a child of tender years exposes it in a desert place. A has committed the offence defined by this Section, though the death of the child does not ensue.***" Thus, in the case in hand A is guilty under **Section 307** of the Code.

Q. 53 Explain briefly the law relating to attempt to commit an offence and examine whether `A' who intends to kill `B' is guilty of attempt to murder in the following cases:

(a) A fires a gun at B but misses his aim.

(b) A shoots at B believing him to be sleeping but infact, B had died of heart failure before `A' shot at him.

Ans. Commission of crime has normally four stages i.e. (a) Intention (b) Preparation (c) Attempt and (d) Actual and complete act. First stage is intention which implies forming an idea in the mind to do a particular act. As long as intention remains in mind and is not implemented by some act it is not punishable for obvious reasons that anything which as long as is in the mind of a man can not be proved. Second stage is Preparation to commit offence, it involves arranging means etc. for

commission of crime. However it is a stage in which offender still has opportunity to change his idea and therefore preparation to commit crime subject to certain exceptional situation has not been made punishable in law. After forming an intention and preparing for crime if offender does an act in implementation of his intention, it amounts to attempt.

Attempt thus means implementation of criminal intention by some overt act. Whether or not give the desired effect. Attempt reflect the intention of offender by his acts and thus is punishable. ***In State of Maharashtra v. Mohd. Yakule and others, 1980 Supreme Court Cases (Cri.) 513***. Chinnappa Reddy, J. observed `In order to constitute an attempt first there must be an intention to commit a particular offence second some act must have been done which would necessarily have to be done towards the commission of offence and third such act must be proximate to intended result. Though in I.P.C. attempt to commit a particular offence has been specifically and separately made as offence. Like attempt to commit murder is an offence punishable under section 307 IPC. However, Chapter XXIII consisting of **Section 511** give general Rule of penalty in case of attempt to commit any offence. **Section 511** provides that "whoever attempts to commit an offence punishable by code with imprisonment for life or imprisonment or to cause such an offence to be committed and in such attempt does any act towards the commission of offence shall where no express provision is made by this code for punishment of such attempt be punished with imprisonment of either description provided for the offence, for a term which may extend to one half of imprisonment for life or as the case may be one half of longest term of imprisonment provided for that offence or with such fine as is provided for offence or with both."

(a) **Section 307** define and penalize offence of attempt to murder. It provide whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of murder shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life or to such punishment as herein before mentioned.

So **Section 307** makes distinction between act of accused and its result (if any). Such an act may not be attended by any result so far as the person assaulted is concerned but still there may be cases in which culprit would be liable under this Section . In ***State of Maharashtra v. Balram Bama Patil, 1983 Cri.L.J. 331 (SC)*** It was held that to justify a conviction under section 307 it is not essential that bodily injury capable of causing death should have been inflicted. Although nature of injury actually caused may often give considerable assistance in coming to finding as to intention of the accused such intention may be deduced from other circumstances and may even in some cases be ascertained without any reference at all to actual wounds

Therefore in present problem, A is guilty under section 307 of IPC.

(b) In the present problem A is not guilty of any offence. Because gist of offence of culpable homicide or murder is killing of human being. But where person who is already dead can not be murdered. In **R v. Percy Delton (London) Ltd., 1949 L.R.J. 1626** It was observed `steps on the way to commission of what would be crime, if the acts were completed, may amount to attempts to commit that crime to which unless interrupted they would have led, but steps on the way to the

doing of something which is, therefore, done and which is no crime cannot be regarded as attempts to commit a crime. Therefore in present problem A is not guilty of an attempt to murder of B also because B was already dead.

Q. 54 Define Hurt and Grievous Hurt.

Ans. ***Hurt and Grievous Hurt*** **Section 319** of Indian Penal Code defines `Hurt' as "***Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt."*** **Section 319** I.P.C. does not define the offence of causing hurt. It defines only the term "hurt". As such it does not describe the circumstances under which it may be caused or those which aggravate or extenuate the liability for causing it.

Section 320 of Indian Penal Code then defines "Grievous Hurt" as:

"The following kinds of hurt only are designated as `grievous hurt':

Firstly Emasculation

Secondly Permanent privation of the sight of either eye.

Thirdly Permanent privation of the hearing of either ear.

Fourthly Privation of any member or joint.

Fifthly Destruction or permanent impairing of the powers of any member or joint.

Sixthly Permanent disfiguration of the head and face.

Seventhly Fracture or dislocation of bone or tooth.

Eighthly Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits".

Distinction between simple and grievous hurt. Section 319, I.P.C. specifies hurt as "bodily pain, disease or infirmity" caused to one person by another. **Section 320** specifies what constitutes grievous hurt. The expression `simple hurt' has nowhere been defined or explained. It follows that a hurt which does not come within the scope of grievous hurt (**Section 320**) is simple.

In ***Harilal v. State of U.P., AIR 1970 SC 1969*** It was observed

A hurt in order to amount to grievous hurt must come under any of the clauses of **Section 320** of IPC, else the hurt will be simple. Clause (**7**) deals with fracture or dislocation of bone or tooth and clause (**8**) with any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuit. To amount to a fracture, it is not necessary that a bone should be cut through and through or that a crack in the bone must extend from the outer to the inner surface or there should be displacement of any

fragment of the bone. If there is a rupture or fissure in it, it would amount to a fracture within the meaning of clause (**7**) of **Section 320** of IPC.

A person can not therefore be said to cause grievous hurt unless the hurt caused is one of the clauses specified above.

Section 321 I.P.C. then provides "*Whoever does any act with the intention of thereby causing hurt to any person or with the knowledge that he is likely thereby to cause `hurt' to any person and does thereby cause hurt to any person is said "voluntarily to cause hurt."* **Section 323** punishes for causing voluntarily hurt and **Section 324** I.P.C. punishes for voluntarily causing hurt by dangerous weapon or means**. Section 322** on the other hand says "Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is "grievous hurt" and if the hurt which he causes is grievous hurt is said "Voluntarily to cause grievous hurt" **Section 325** I.P.C. punishes for voluntarily causing grievous hurt and **Section 326** provide punishment for causing grievous hurt by dangerous weapon and means**.**

Q. 55 Distinguish between:

(i) Wrongful Restraining and Wrongful Confinement

(ii) Kidnapping from lawful guardianship and abduction

Ans. (i) Wrongful Restraint and Wrongful Confinement Wrongful Restraint: According to **Section 339** I.P.C. "Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has right to proceed, is said wrongfully to restrain that person".

So wrongful restraint is partial restraint of the personal liberty of a man. In a wrongful restraint there need not to be any stoppage. Restraint necessarily implies abridgement of the liberty of a person to move to particular direction.

Wrongful Confinement: According to **Section 340** I.P.C. *"Whoever wrongfully restrains any person in such a manner as to prevent from proceeding beyond circumscribing limits, is said "Wrongfully confined that person."* So wrongful confinement is total restraint of the personal liberty of a person leaving no choice for him to move in any direction for howsoever short a period it may be amounts to wrongful confinement.

DISTINCTION

(i) Wrongful restraint is partial restraint of personal liberty of a person; wrongful confinement is absolute or total restraint or obstruction of personal liberty.

(ii) Wrongful confinement implies wrongful restraint but viceversa is not correct.

(iii) In wrongful confinement certain circumscribing limits are always necessary, but in wrongful restrain no such limits or boundaries are required.

(iv) In wrongful confinement movement in all directions is obstructed but in wrongful restraint movement in only one or some direction is obstructed leaving thereby a choice for victim to move in other direction.

Ans. (ii). ***Kidnapping From Lawful Guardianship and Abduction***; Offence of kidnapping from lawful guardianship is defined by **Section 361** of I.P.C. as:

"Whoever takes or entices any minor under sixteen years of age if a male or under eighteen years of age if a female or any person of unsound mind, out of keeping of Lawful guardian, of such minor or person of unsound mind without consent of such guardian is said to kidnap such minor or `person' from Lawful guardianship." *Explanation :* The words "lawful guardian" in this Section includes any person lawfully entrusted with care and custody of such minor or other person.

Exception : The Section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child or who in good faith believed himself to be entitled to the lawful custody of such child unless such act is committed for immoral or unlawful purpose."

So in **Section 361** which defines the offence of kidnapping from lawful guardianship all that is required is that a minor, under the age of **16** in case of a male and under **18** in case of female must be "taken and enticed" from the keeping of lawful guardian. In ***State of Haryana v. Raja Ram, AIR 1973 SC 819*** It was observed "The gist of offence of kidnapping is taking or enticing away of minor out of keeping of lawful guardian. Kidnapping within the meaning of **Section** is effected not only by taking or enticing away a person but also by alluring such person to go away from the protection of the guardian."

The word "**taking**" implies neither force nor misrepresentation and if girl is of less than **18** years of age, taken away from keeping of lawful guardian, even at her own wishes, the offence of kidnapping is established. The word `Entice' involves an idea of enticement by exciting hope or desire. Words "**takes**" and "**entice**" are comprehensive enough and are of widest import so that no one, who is responsible for removing the child from the keeping of his or her guardian whether physically or by inducement, may escape from the penalty of the law.

Term "**Lawful guardian**" as used in **Section 361** is different from "Legal guardian" a guardian may be lawful without being legal, **Explanation** to **Section 361** makes it clear that lawful guardian is one to whom care and custody of child is lawfully entrusted. Expression "**keeping**" in **Section 361** means within protection and care and it is not necessary that minor should be in physical possession of the guardian.

Abduction: Offence of abduction has been defined by **Section 362** as:

"Whoever by force compels or by any deceitful means induces any person to go from any place, is said to abduct that person."

Abduction as defined by this Section requires two essentials:

(**1**) Forcible compulsion, inducement by deceitful means, and

(**2**) The object of such compulsion or inducement must be the going of a person from any place.

A person would be guilty of an offence under **Section 362** if by force he compels or even by deceitful means induces any person to go from any place.

Distinction between kidnapping and abduction

(i) Offence of kidnapping is committed only in respect of minor under **16** years of age if male and under **18** years if a female or a person of unsound mind. Offence of abduction may be committed in respect of a person of any age.

(ii) In kidnapping, a person kidnapped is removed out of lawful guardianship, therefore there can be no kidnapping of an orphan or child without guardian. But the person abducted need not to be in keeping of any body.

(iii) In kidnapping consent of person taken or enticed is immaterial because they are not competent to signify a valid consent. In offence of abduction, consent of person moved if freely and voluntarily given, condones the offence.

In ***Gurdas v. State, AIR 1953 Punjab 258*** It was observed: In `kidnapping' consent of the person enticed is immaterial. In `abduction' consent of person removed, if freely and voluntarily given condones it. In `kidnapping' the intent of the offender is irrelevant, but in `abduction' it is the all-important factor. Kidnapping from lawful guardianship is not a continuing offence for as soon as the minor is removed out of his or her guardianship the offence is completed, but the person is abducted not only when he is removed from one place to another.

Q. 56 What do you understand by "Force" and "Criminal Force" ? Discuss the ingredients of "Criminal Force" and "Assault".

Ans. ***Force.*** - A person is said to use force to another if he causes the motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion or cessation of motion, as brings that substance into contact with part of that other's body or with anything which that other is wearing or carrying on with anything so situated that such contact affects that other's sense of feeling : provided that the person causing the motion, or change of motion or cessation of motion, causes the motion, change of motion, cessation of motion, in one of the three ways hereinafter described :

Firstly. - By his own bodily power.

Secondly. - By disposing any substance in such a manner that motion or change or cessation of motion take place without any further act on his part or the part of any other person.

Thirdly. - By inducing any animal to move, to change its motion or to cease to move (Section 345).

Criminal Force. - Whoever, intentionally uses force to any person without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person whom the force is used, is said to use criminal force to that other person (Section 350).

The section says that the force becomes criminal (1) when it is used without consent and in order to the committing of an offence or (2) when it is intentionally used to cause injury, fear or annoyance to another to whom the force is used.

The term criminal force includes what in English law is called battery. It will however be remembered that criminal force may be so slight as not to amount to an offence and it will be observed that the criminal force does not include anything that the doer does by means of another person. The definition of criminal force is so used as to include force of almost every description of which a person is the ultimate object.

Ingredients Of Criminal Force Thus the ingredients of criminal force are :-

(1) the intentional use of force to any person;

(2) such force must have been used without that person's consent;

(3) the force must have been used :-

(a) in order to the committing of an offence :

(b) with the intention to cause, or knowing it to be likely that it will cause injury, fear or annoyance to the person to whom it is used.

Definition of Assault `Assault' has been defined in Section 351 as : "Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture of preparation is about to use criminal force to that person, is said to commit an assault."

Explanation. - Mere words do not amount to an assault. But the words which a person uses may give to his gesture of preparation such a meaning as may make those gestures of preparation amount to assault.

Assault has two ingredients :-

(1) Making any gesture or preparation by a person in the presence of another.

(2) Intention or knowledge of likelihood that such gesture or preparation will cause the person to apprehend that the person making it, is about to use criminal force to him.

Thus, assault has been defined to consist in those overt acts of preparation, which indicate an intention to use criminal force, that of themselves are intended or known to warn the other of the approach. The explanation excludes mere words or empty boaster which are intended to frighten another by threats of terrible pains and penalties, but which the speaker as well as the listener know, and not intended to be put in execution.

Q. 57 Decide the liability of `A'

`A' without knowledge of the guardian takes `H', a girl of 16 years, out of the possession of her guardian on the request of the girl. He restores her after one week to parents.

Ans. The offence of `kidnapping' has been defined in **Section 361** I.P.C. as *"Whoever takes or entices any minor under sixteen years of age if a male or under eighteen years of age if a female or any person of unsound mind, out of the keeping of lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."* **Explanation** : The words "**lawful guardian**" in this Section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception : This Section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

So in **Section 361** I.P.C. which defines the offence of kidnapping from lawful guardianship all that is required is that a minor, under the age of **16** in case of male and under **18** years of age in case of female must be `taken' or `enticed from the keeping of lawful guardian. In ***State of Haryana v. Raja Ram, AIR 1973 SC 819*** It was observed "the gist of offence of kidnapping is taking or enticing away of minor out of keeping of lawful guardian. Kidnapping within the meaning of **Section** is effected not only by taking or enticing away a person but also by alluring such person to go away from the protection of guardian."

The word "taking" implies neither force or misrepresentation, therefore if a girl is a less than **18** years of age, taken away from the keeping of lawful guardian even at her own wish, the offence of kidnapping is established.

It is important to point out that offence under **Section 361** is complete when the minor is actually taken from lawful guardianship and offence is not continuing one. Duration for which a minor was kept out guardianship is immaterial and consent of prosecutrix is also immaterial, as in ***Rasool v. State, 1976 Criminal Law Journal 363*** It was observed;

"The fact that the prosecutirx had agreed to accompany the accused does not take the case out of the purview of the offence of kidnapping from lawful guardianship as contemplated by Section 361 I.P.C. It is only the guardian's consent which takes the case out of its purview. It is not necessary that taking or enticing must be shown to have been by means of force or fraud. Persuasion by accused which creates a willingness on the part of the prosecutrix to be taken out of the keeping of the lawful guardian would be sufficient to attract the penal Section." Therefore `A' is guilty of an offence of kidnapping in the case in hand.

Q. 58 A child hardly 15 hours old was kidnapped by B from the lawful custody of the mother of that child. 15 days thereafter on secret information police raided the room of C. B has found present there in the company of C along with that child. It was found that B had not delivered a child within 15 days of kidnapping. C was not having any child of her own. What offence if any is committed by C ? Give detail Section'

Ans. Section 368 of Indian Penal Code provides:

"Whoever knowingly that any person has been kidnapped or has been abducted wrongfully conceals or confines such person shall be punished in the same manner as if he had kidnapped

or abducted such person. With the same intention or knowledge or for the same purpose as that with or for which he conceals or detains such person in confinement. So to constitute the offence under section 368 following ingredients must be established

(i) a person has been kidnapped or abducted by any one.

(ii) Accused knew that such person has been kidnapped or abducted.

(iii) Accused having such knowledge wrongfully conceals or confines such person.

So knowledge that the person he is confining was kidnapped or abducted is necessary element determining the offence under section 368. Besides knowledge of kidnapping or abduction the accused must confine or conceal the person so kidnapped wrongfully.

In ***Sohan Singh v. Emperor, AIR 1939 Lahore 180***. `Accused may not know the actual kidnapper by name, but must know that the person whom he wrongfully confining or concealing was secured by kidnapping or abduction. This may be matter of proof or presumption. It may be proved by evidence of the kidnapped who may have told the accused and the circumstances of his case or it may be inferred from facts evidencing conspiracy and common purpose.

In problem in hand it was clear that B had not delivered a child within **15** days of kidnapping. It is also clear that C was not having any child of her own. At the time of said child was in the company of C. B who is guilty of kidnapping the child was also present in that room and C. So in such situation it can easily be inferred that C had knowledge that child was kidnapped and facts also disclose that C by keeping a child of tender age of **15** days

Before discussing the penal liability of C in this problem it is pertinent to discuss precisely the penal provisions of kidnapping and abduct.

Kidnapping **Section 359** IPC says kidnapping is of two kinds: Kidnapping from India and kidnapping from lawful guardianship.

Section 360 says whoever conveys any person beyond the limits of India without the consent of that person or of some person legally authorized to consent on behalf of that person is said to kidnap that person from India. **Section 361** provide for kidnapping from lawful guardianship. Whoever takes or entices any minor under sixteen years of age if a male under eighteen years of age if female or any person of unsound mind out of the keeping of lawful guardian is said to kidnap such minor or person from lawful guardianship.

Abduction **Section 362** whoever by force compels or by any deceitful means induces any person to go from any place is said to abduct that person.

There is no doubt of the fact that B in the problem in hand is guilty of kidnapping. Now problem is what offence `C' had committed by wrongfully concealing or confining the child. Therefore C is guilty of offence under section 368 IPC (See ***Smt. Saroj Kumari v. State of U.P., 1973 Supreme Court Cases (Cri.) 475).***

Q. 59 `A' a girl below 18 years of age was in the keeping of her mother. Her father `B' lived separately. B by deceitful means took `A' and kept her with him. Is `B' guilty of kidnapping?

Ans. The offence of kidnapping has been defined by **Section 361** of the Indian Penal Code as under:

"Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation. The words "**lawful guardian**" in this Section include any person lawfully entrusted with the care or custody of such minor or other person.

Explanation. This Section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose."

So one of the essentials to constitute this offence is that minor must have been take or enticed out of keeping of lawful guardian of such minor without the consent of such guardian.

If the husband and wife live separate and children are given in the custody of the wife under an order of an court, the father cannot take away the children from the mother. If he does so he will be guilty of kidnapping. But if there is no order of the Court, the removal by the father of his child from the custody of its mother, who has been deserted by him, will not amount to kidnapping from lawful guardianship because a Hindu father in preference to the mother is recognized as the legal guardian of all his legitimate male or female minor children.

In the present case, if the minor girl was in the keeping of her mother under the orders of a court, the father is liable to be convicted for an offence of kidnapping. But if there is no such order, the removal of the minor out of the keeping of her mother by father would not amount to any such offence since the father is the natural guardian of the minor, and he cannot be said to have removed the minor from the keeping of lawful guardian. However, in case the parties are Mahomedan or Christian, different considerations would arise.

Q. 60 What are the ingredients of the offence of rape ? What is the maximum punishment provided for this offence? What do you understand by 'custodial rape'?

Ans. Ingredients of the offence of rape. A man is said to commit "rape" who, except in the case hereinafter expected, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

First. Against her will.

Secondly. Without her consent.

Thirdly. With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death, or of hurt.

Fourthly. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or un- wholeness substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. With or without her consent, when she is under sixteen years of age.

Explanation. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception. Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

In ***Phul Singh v. State of Haryana, A.I.R. 1980 SC 249***, it was observed: "Ordinarily, rape is violation, with violence, of the private person of a woman an outrage by all canons

Punishment for rape. Section 376 of I.P.C. says:

(**1**) Whoever, except in the case provided for **Sub- Section** (**2**) commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years

(**2**) Whoever,

(a) being a police officer commits rape

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age, or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine;

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment of either description for a term of less than ten years

Explanation 1. Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this **Sub- Section** .

Explanation 2. "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3. "Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation. (**Section 376**).

Custodial rape. The Criminal Law (Amendment) Act, **1983** (known as the anti-rape law amendment) received the assent of the President on **25**th December, **1983**. It provides for penalties varying from seven years' rigorous imprisonment to life term to those found guilty of committing rape. The amended provision makes sexual intercourse by a person in the question of a custodian of his victim termed "**custodial rape**" as an offence punishable with imprisonment of at least ten years which may extend to life and also to fine.

The following are the categories of "**custodial rape**":

1. A police officer committing rape in the local area to which he is appointed, or in any police station whether or not situated in such local area, or a woman in his custody or in the custody of a police officer subordinate to life.

2. A public servant taking advantage of his official position and committing rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him.

3. Any person being on the management or on the staff of a jail, remand home or other place of custody or of a women's or children's institution, taking advantage of his official position and committing rape or any inmate of the institution.

4. Any person concerned with management or being on the staff of a hospital, committing rape on a woman who is receiving treatment in that hospital.

Rape on a woman knowing her to be pregnant and gang rape, i.e., where a woman is raped by three or more persons acting in furtherance of a common intention to rape, has been made punishable and treated on par with "**custodial rape**".

The factors like the character or reputation of the victim are wholly alien to the very scope and object of **Section 376** and can never serve either as mitigating or extenuating circumstances for imposing the sub-minimum sentence with the aid of the proviso to **Section 376(2)**. Thus, where the Supreme Court in its judgment reported expression "conduct" in the lexicographical meaning for the limited purpose of showing as to how the victim had behaved or conducted herself in not telling anyone for about five days about the sexual assault perpetrated on her and it was observed that "the peculiar facts and circumstances of the case coupled with the conduct of the victim girl do not call for the minimum sentence as prescribed under **Section 376(2)**", it could be said that the Supreme Court neither characterized the victim, as a woman of questionable character and easy virtue nor made any reference to her character or reputation. (***State of Haryana v. Prem Chand and others, AIR 1990 SC 538***).

Q. 61 In what way is the offence of decoity different from a robbery and theft?

Ans. Section 378 of Indian Penal Code says:

"Whoever, intending to take dishonesty any moveable 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." Robbery is an aggravated form of either theft or extortion. **Section 390** of I.P.C. says that "theft is `robbery' if in order to the committing of the theft or in committing theft or in carrying away or attempting to carry away property obtained by theft, the offender for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or of instant wrongful restraint."

Section 391 I.P.C. defines "Decoity" as "When five or more persons conjointly commit or attempt to commit a Robbery or where the whole number of persons conjointly committing or attempting to commit a robbery and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit "decoity".

(i) So Decoity is different from Robbery, in respect of the number of offenders Decoity is more severely punishable because the offence is considered to be graver than Robbery by reason of terror it causes by the presence of greater number of offenders

(ii) Decoity includes robbery and because Robbery is aggravated form of theft or extortion, therefore Decoity includes theft and extortion also. Therefore every case of decoity is primarily a case of robbery, but viceversa is not correct.

Q. 62 `A' along with the child was crossing a river bridge. B appears suddenly on the bridge, picks up the child and threatens to throw it down into the river unless `A' gives him his golden ring and the money bag. When `A' refuses to part with the above objects, B put back the child on the bridge and runs away from the sight. What offence, if any was committed by B?

Ans. Section 390 of I.P.C. defines Robbery:

"When Theft Is Robbery : Theft is `robbery' if in order to the committing of the theft, or in committing theft or in carrying away or attempting to carry away property obtained by theft, the offender for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or of instant wrongful restraint.

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

So in all robbery there is either theft or extortion. Extortion is Robbery if the offender at the time of committing extortion is in immediate presence of the person put in fear of instant death or of instant hurt or of instant wrongful restraint.

In the case in hand, B has attempt to commit extortion by being present and causing A to be in fear of instant hurt to the child. Therefore, B is guilty of an attempt to commit robbery, and is liable to be punished under ***Section 396*** I.P.C.

Q. 63 Explain criminal misappropriation. Distinguish it from theft.

Ans. Criminal Misappropriation. The offence of criminal misappropriation consists in dishonest misappropriation or conversion to his own use and any movable property. [**Section 403**]. It takes place when the possession has been innocently come by, but by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent. 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 **Section 403** of dishonest misappropriation of property. Similarly A and B, being joint owners of a horse. A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under **Section 403**, I.P.C.

Explanation 1 to **Section 403** provides that a dishonest misappropriation for a time only is misappropriation within the meaning of this Section . For example, A finds Government promissory note belonging to Z, bearing a blank endorsement; A knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this Section .

Explanation 2 to this Section provides that a person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to the owner, does not take, or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence defined above, if he appropriates it to his own use, when he knows or has the means to discovering the owner, or before he has used reasonable means to discover and give

notice to the owner and has kept the property for a reasonable time to enable the owner to claim it.

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

It is not necessary that the finder should know who is the owner of the property or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustration. (a) A finds a rupee on the high road, not knowing to whom the rupee belongs A picks up the rupee. Here A has not committed the offence defined in **Section 403**. (b) A finds a letter on the road containing a bank note. From the direction and contents of the letter he learns to whom the note belongs He appropriates the note. He is guilty of an offence of dishonest misappropriation of property under the **Section** . (c) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence of dishonest misappropriation. (d) A finds purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under the above **Section** . (e) A finds valuable ring, not knowing to whom it belongs A sells immediately without attempting to discover the owner. A is guilty of an offence under **Section 403** of the Indian Penal Code.

It would thus appear from the above illustrations that the two main ingredients of the offence are dishonest misappropriation or conversion of property for a person's own use and such property must be movable. The punishment prescribed for the offence is imprisonment for a term which may extend to two years, or with fine, or with both.

DIFFERENCE BETWEEN THEFT AND CRIMINAL MISAPPROPRIATION The object of the offender is to take property from another person's possession, and the offence is complete as soon as the offender has moved the property dishonestly.

1. The offender is already in possession of the property and his possession is not punishable either because he has lawfully obtained it, or because he has found it, or is a joint owner of it or has acquired it under some mistaken notion. **2**. The moving of property itself is an offence.

2. The moving of property may be perfectly lawful; it is the subsequent intention to dishonestly misappropriate or convert it to his own use which is an offence. **3**. The moving of property takes place without the consent of the owner. **3**. The possession may even be with the consent of the owner, e.g., may be a joint owner. **4**. The dishonest intention proceeds the act of taking.

4. It is the subsequent intention to misappropriate or convert to his own use the constitutes the offence.

Q. 64 "A" contracted to construct a house for `B' for Rs. 75,000 which covered cost of building materials of labor. According to the contract, Rs. 15,000 were to be paid to A as advance and the balance was to be paid in four equal installments at the completion of certain stages of construction. Accordingly the advance was paid to A but he did not construct the

house nor did he pay back to B the amount of advance. Can A be held guilty of criminal breach of trust?

Ans. Section 405 of Indian Penal Code defines the offence of "criminal breach of the trust" as:

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of the trust". In ***C.M. Narayan Ittiravi Namburdiri v. State of Travancore Cochin, AIR 1953 SC 478*** It was observed: "Before a person can be convicted under **Section 405** IPC, it must be proved that there was entrustment of property or a dominion over property, **Secondly** it must be proved that there was dishonest misappropriation or conversion by a person to his own use of that property or that there was dishonest use or disposal of that property in violation of any direction of law prescribing the mode in which such trust was to be discharged or of any legal contract express or implied which he has made touching the discharge of such trust or that he willfully suffered any person to do so."

So first of all it must be established that Accused was `Entrusted' with property or with dominion over property. Entrustment means showing faith or reposing trust in ***C.B.I. v. Duncans Agro Industries Ltd., 1996 Supreme Court Cases (Cri) 1045*** It was observed *"The expression `entrusted with property' or `with any dominion over property' has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for specific purpose and dishonestly disposed of in violation of law or in violation of contract..... The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person."* In the case in hand question for decision is whether `B' can be said to have entrusted the amount of Rs. 15000 to within the meaning as contemplated by **Section 405** I.P.C. In ***Birender Kumar Lahiri Choudhari v. State 1957 Criminal Law Journal 265.*** It was observed "There can be no doubt that if money is paid as advance or as part price for the purchase of certain property, then it becomes the property of the person to whom it is paid and it is open to him to utilize it in any manner he likes and he cannot be convicted of criminal misappropriation or criminal breach of trust for not returning it."

In the case in hand, B had paid a sum of Rs. 15,000 to A by way of advance in accordance with the conditions of the contract. The property in the amount immediately passed to A. Therefore, it cannot be said that there was any `entrustment' of property to A. It was essentially a case of civil nature. The fact that A did not construct any house for A within the stipulated period or that he did not return the amount when demanded by B, did not amount to criminal breach of trust. Therefore, A is not guilty of an offence under **Section 406**, I.P.C.

Q. 65 `A' causes cattle to enter upon the field belonging to B intending to cause and knowing that he is likely to cause damage to the Crops of B. What offence has been committed by `A'.

Ans. Section 425, I.P.C. defines the offence of mischief as under:

"Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief". **Explanation 1** : It is not essential to the offence of mischief that the offender should intent to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2 : Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly."

In view of above definition, A has committed an offence of mischief. See illustration (h) to **Section 425** of the Code.

Q. 66 The accused entered at night into a house to carry on an intrigue with an unmarried girl on her information that her father was absent. However he was caught by her uncle before he could get away. Of what offence, if any, the accused is guilty?

Ans. The offence of criminal trespass has been defined by **Section 441** of the Penal Code as:

"Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit any such person or with intent to commit any offence is said to commit `criminal trespass'." In ***Mathri v. State of Punjab, AIR 1964 SC 986*** it was observed: "The aim or dominant intention of the accused must be proved for committing an offence of intimidation, insult or annoyance, etc. An accused cannot be held guilty of the offence of criminal trespass merely with reference to the natural and probable consequence of his action. The character of the initial action of the accused must be determined from the facts and circumstances of each case.

In the case in hand, the accused entered the house of complainant on the information of the latter's daughter that her father (complainant) was absent. In other words, the accused had taken all possible precautions to keep his entry secret. In other words, the accused had no intention to annoy the complainant, though he might be having knowledge that if discovered, he was likely to cause annoyance to the owner of the house. Therefore the accused is not guilty of offence of criminal trespass

Q. 67 Distinguish between :

(a) Theft and Extortion

(b) Cheating and Criminal Breach of trust

(c) Criminal trespass and Mischief.

Ans. (a) ***Theft and extortion*** : **Section 378**, I.P.C. defines the offence of theft as: 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. **Section 383**, I.P.C. defines the offence of extortion as: 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.

Distinction Between Theft and Extortion

(i) In theft the offender takes property without the consent of the owner, extortion is committed by wrongfully obtaining of consent.

(ii) Only moveable property may be the subject matter of theft, the property obtained by extortion is not limited only to moveable one, even immovable property may be subject matter of extortion.

(iii) In theft property is taken by offender, in Extortion the property is delivered to offender.

(iv) In theft no force or threat is used or fear is caused in taking the property, in Extortion, the property is obtained by intentionally putting a person in fear of injury to that person or any other and thereby dishonestly inducing him to part with his property.

(b) ***Cheating and Criminal Breach of Trust*** **Section 405** of I.P.C. has defined the offence of **"Criminal Breach of Trust"** as:

*"Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in such trust is to be discharged or of any legal contract, express or implied, which he had made touching the discharge of such trust, or willfully suffers any other person so to do commits `Criminal Breach of Trust'.* **Section 415** of Code has defined the offence of `Cheating'

"Whoever, by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property, to any person or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, reputation or property is said to "Cheat". In ***Hridaya Ranjan Pd. Verma v. State, AIR 2000 SC 2341*** Supreme Court observed that "Definition of cheating set forth two separate classes of acts which the person deceived may be induced to do. In first place he may be induced fraudulently or dishonestly to deliver any property to any person. Second class of acts set forth in the **Section** is doing or omitting to do anything which the persons deceived would not do or omit to do if he were not so deceived.

Difference between Cheating and Criminal Breach of Trust (**1**) In cheating possession of the property is obtained by practicing deception or fraudulent means**.** In criminal breach of trust the offender is lawfully entrusted with the property, but he dishonestly misappropriates or converts to his own use that property, or suffer any other person so to do.

(**2**) Cheating involves practicing of deception for acquiring property. There is neither fiduciary relationship nor any conversion of property. In criminal breach of trust there is the conversion of property held by a person in a fiduciary relationship.

(c) ***Criminal trespass and mischief*** : **Section 425**, I.P.C. lays down that *"whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits mischief."* Mischief comprises two elements mental and physical. The mental element consists of intention, express or implied, to cause wrongful loss or damages and the physical element is in the act of destruction or causing injurious change to the property. The mere causing loss is not enough for a conviction of the offence of mischief. Criminal intention to cause or the knowledge of the likelihood of causing such wrongful loss should also be established. A person cannot be prosecuted for the offence of mischief where the dispute between the parties is purely of a civil nature.

Section 441, I.P.C. provides that "whoever enter into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy such person, or with intent to commit an offence, is said to commit criminal trespass" Thus, to constitute an offence of criminal trespass, the following ingredients are to be satisfied:

1. (a) unauthorized or unlawful entry into or upon property in the possession of another, or

(b) having lawfully entered unlawfully remaining there.

2. With intent, in either case (a) to commit an offence or (b) intimidate, insult or annoy any person in possession of such property.

In committing criminal trespass, criminal force may be used, but the use of criminal force is not an essential element of the offence.

Q. 68 Distinguish between

(i) Cheating and Forgery

(ii) Hurt and Grievous Hurt

(iii) Rape and Adultery

Ans. ***Cheating and Forgery*** ***Cheating*** : Offence of cheating is defined in **Section 415** of Indian Penal Code, which provide as under:

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, to intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation A dishonest concealment of facts is a deception within the meaning of this Section ."

In ***G.V. Rao v. L.H.V. Prasad and other, AIR 2000 SC 2474*** Supreme Court observed " **Section 415** I.P.C. has two parts while in the first part, the person must "dishonestly" or "fraudulently" induces the complainant to deliver any property, in the second part the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In second part inducement should be intentional... a guilty intention in an essential ingredient of the offence of cheating. It is not correct that offence of cheating necessarily relates to property only. While the first part of definition relates to property, second part of **Section 415** speaks of intentional deception which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind reputation or property."

Section 463 of the Indian Penal Code defines the offence of `forgery' as: *"Whoever make any false document or part of a document 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."* In order to constitute forgery, the first essential ingredient is that the accused should have made a false document, or a part of such document. **Section 464** of the Code lays down the circumstances under which a person is said to make a false document. In the absence of proof of this ingredient, a person cannot be made liable for an offence under **Section 463** of the Code.

In addition to establishing that the document is a false document, it must be further proved that it was forged by the accused with one of the intents mentioned above. The mere making of a false document without any of the intents referred to above would not constitute an offence under **Section 463**. It is not necessary that the document should be used by the accused. It may also be stated that Section **463** defines a forgery simpliciter, whereas **Section 465** to 471 define an aggravated form of forgery.

Hurt and Grievous Hurt **Section 319** of Indian Penal Code defines `Hurt' as "***Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt."*** **Section 319** I.P.C. does not define the offence of causing hurt. It defines only the term "hurt". As such it does not describe the circumstances under which it may be caused or those which aggravate or extenuate the liability for causing it.

Section 320 of Indian Penal Code then defines "Grievous Hurt" as:

"The following kinds of hurt only are designated as `grievous hurt':

Firstly Emasculation

Secondly Permanent privation of the sight of either eye.

Thirdly Permanent privation of the hearing of either ear.

Fourthly Privation of any member or joint.

Fifthly Destruction or permanent impairing of the powers of any member or joint.

Sixthly Permanent disfiguration of the head and face.

Seventhly Fracture or dislocation of bone or tooth.

Eighthly Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits".

Distinction between simple and grievous hurt. Section 319, I.P.C. specifies hurt as "bodily pain, disease or infirmity" caused to one person by another. **Section 320** specifies what constitutes grievous hurt. The expression `simple hurt' has nowhere been defined or explained. It follows that a hurt which does not come within the scope of grievous hurt (**Section 320**) is simple.

In ***Harilal v. State of U.P., AIR 1970 SC 1969*** It was observed

A hurt in order to amount to grievous hurt must come under any of the clauses of **Section 320** of IPC, else the hurt will be simple. Clause (**7**) deals with fracture or dislocation of bone or tooth and clause (**8**) with any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuit. To amount to a fracture, it is not necessary that a bone should be cut through and through or that a crack in the bone must extend from the outer to the inner surface or there should be displacement of any fragment of the bone. If there is a rupture or fissure in it, it would amount to a fracture within the meaning of clause (**7**) of **Section 320** of IPC.

A person can not therefore be said to cause grievous hurt unless the hurt caused is one of the clauses specified above.

Section 321 I.P.C. then provides "*Whoever does any act with the intention of thereby causing hurt to any person or with the knowledge that he is likely thereby to cause `hurt' to any person and does thereby cause hurt to any person is said "voluntarily to cause hurt."* **Section 323** punishes for causing voluntarily hurt and **Section 324** I.P.C. punishes for voluntarily causing hurt by dangerous weapon or means**. Section 322** on the other hand says "Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is "grievous hurt" and if the hurt which he causes is grievous hurt is said "Voluntarily to cause grievous hurt" **Section 325** I.P.C. punishes for voluntarily causing grievous hurt and **Section 326** provide punishment for causing grievous hurt by dangerous weapon and means**.** ***Rape and Adultery*** **Section 375** of the Indian Penal Code defines the offence of rap. It deals with three categories of the offence; (**1**) rape of a woman who is **16** or above **16** years of age; (**2**) rape of a woman under **16** years of age; and (**3**) rape of a wife by the husband. The gist of the offence falling under first category is sexual intercourse with the woman without her free consent given with knowledge that the ravisher is not her husband. In the second category, the consent or otherwise is an immaterial factor. In the third category, the wife must be under **15** years of age.

The offence of `adultery' has been defined by **Section 497** of the Code as: "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not

amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine or with both. In such case the wife shall not be punishable as an abettor."

Thus, when a married woman is above 16 years of age and has consent to the sexual intercourse by the accused, the act of the accused will amount only to the offence of `adultery' and not `rape'. ***1985 Raj. L.W. 60.*** The distinction between the two offences lies in the factum of free consent given by the married woman of full age to the act of sexual intercourse by the accused.

Q. 69 Define the offence of forgery ? What are essential ingredients of offence of Forgery?

Ans. Definition. - Forgery. - Whoever makes any false document or false electronic record or part of a document or electronic record with intent cause damages or injury to the public or to any person or to support any claim or title, or to cause any person to part with property or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits "forgery" (Section 463).

The ingredients of an offence of forgery are :

(1) The making of a false document or part of it.

(2) Such making should be with intent to :-

(i) cause damage or injury to the public or to any person; or

(ii) support any claim to title; or

(iii) cause any person to part with property; or

(iv) enter into any express or implied contract; or

(v) commit fraud or that fraud may be committed.

The offence of forgery has something to do with the making of a document. Making of a document. Making of a document is not an offence in itself, it will be an offence if the document or any part thereof is false, that is the matter of which the document purports to be an evidence is not such matter, in other words facts are contrary to what they appear in such writing or inscription. Documents involving an exhibition of initiative skill or copies meant to appear like original but not the originals themselves; are not for that reason, only false documents for constituting forgery. A false document must be coupled with a criminal intent to constitute the crime; that is, an intent of a dishonest and fraudulent character must precede; i.e., cause the false document to be made.

To constitute the crime of forgery, it is not essential that the forged instrument should be so made that if it were in truth what it purports to be, it would be a valid but the false instrument and must not be obviously an illegal document. It is not necessary forged one should exactly resemble to genuine instrument, it is sufficient if forged instrument is so alike so as to calculated to deceive a person on ordinary observation.

Q. 70 What is false document and when a person is said to make false document?

Ans. Section 464 of Code says - A person is said to make false document or false electronic record:

First - Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record.

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed transmitted or affixed by or by the authority not made, signed, sealed, executed or affixed or

Secondly - Who without lawful authority dishonestly or fraudulently, by cancellation or otherwise alters a document or an electronic record in any material part thereof, after it has been made executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration ; or

Thirdly - Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature or any electronic record knowing that such person by reason or unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.";

Explanation 1 - Aman's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of fictitious person intending it to be believed that the document as made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his life time may amount to forgery.

Explanation 3 - For the purposes of this section, the expression "affixing digital signature" shall have the meaning assigned to it in clause (d) of sub-section (1) of Section 2 of the Information Technology Act, 2000."

The expression, `defraud' involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss, that is deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See ***Dr. Vimala v. Delhi Administration, (1963) All. Law Journal 999)***].

Q. 71 What breaches of contracts are offence in Indian Penal Code?

Ans. Section 491 of I.P.C. provides regarding those breaches of contract which are punishable under criminal law. Section 491 of Code reads as under :-

"Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who by reason of youth, or of unsoundness of mind, or of a disease, or bodily weakness is helpless or incapable or providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to Rs. 200, or with both.

Reason assigned that breach forms civil action. - The authors of the Code observe : "We agree with the great body of jurists thinking that in general a mere breach of contract ought to be an offence, but only to be the subject of a civil action."

"To this general rule there are, however, some exceptions. Some breaches of contract are very likely to cause evil such as no damage or only very high damages can repair, and are also very likely to be committed by persons from which it is exceedingly improbable that any damages can be obtained. Such breaches of contracts are we conceive, proper subject to penal legislation."

Ingredients. - This section requires -

1. Binding of a person by a lawful contract.

2. Such contract must be to attend on or to supply the wants of a person who is helpless or incapable of providing for his own safety or of supplying his own wants by reason of -

(i) youth, or

(ii) unsoundness of mind, or

(iii) disease, or

(iv) bodily weakness.

3. Voluntary omission to perform the contract by the person bound by it.

Q. 72 `W' the wife, being dissatisfied with her husband `H' left his house and protection voluntarily and of her free will. She went to `P' who allowed her to stay in his house as `mistress' what offence if any committed by `P' and `W'.

Ans. Section 498 of Indian Penal Code lays down:

"Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man or from any person having care of her on behalf of that man, with intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both." So following are the ingredients of this Section :

(i) The woman in question is the wife of another man.

(ii) She was under the care of her husband or of some one on his behalf.

(iii) The accused enticed or took away from her husband or that other person or detained her.

(iv) The accused knew or had reason to believe that she was the wife of another person.

(v) The accused detained or enticed or concealed such a woman with the intent that she might have illicit intercourse with some person.

In ***D.R. Kumthekar v. The State, AIR 1967 Punjab 330*** While relying upon Supreme Court decision in ***Alamgir v. State of Bihar,*** reported in ***AIR 1959 SC 436*** It was observed "The provisions of **Section 498** like those of **Section 497** are intended to protect the rights of the husband and not those of the wife. The gist of the offence under **Section 498** appears to be deprivation of the husband of his custody and his proper control over his wife with the object of having illicit intercourse with her. The consent of the wife to deprive her husband of his proper control over her would not be material. It is the infringement of the rights of the husband with the intention of illicit intercourse that is essential ingredient of offence under **Section 498**.... Word `detention' in the context of **Section 498** means keeping back a wife from her husband. For this Section **498** such keeping back, need not be by force, it can be the result of persuasion, allurement or blandishments which may either caused the willingness of the woman or may have encouraged or cooperated with, her initial inclination to have her husband."

In the case in hand, although `W' left her husband's house and protection voluntarily but it was accused `P' who gave her shelter in his house and kept her as mistress Thus there cannot be any doubt that `P' intended to have illicit sexual intercourse with her and also `detained' her within the meaning of **Section 498** I.P.C. and therefore `P' is liable to be convicted under **Section 498** of Penal Code. (See ***D.R. Kumthekar v. The State, 1967 Cri.L.J. 919 : AIR 1967 Punjab 330***).

Q. 73 Discuss the offence of subjecting a married woman with cruelty punishable under section 498-A IPC.

Ans. Section 498-A of Indian Penal Code says -

"Whoever, being the husband or the relative of the husband of a woman subjects such woman to cruelty, shall be punished with imprisonment for term which may extend to three years and shall also be liable to fine."

Explanation - For the purpose of this section "Cruelty" means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her, to meet such demand."

Section 498-A was introduced by Criminal Law (Second Amendment) Act of 1983. Reading of Section shows that whoever being husband or relative of the husband of a woman subjects her to cruelty shall be said to have committed the offence under this Section.

Cruelty - The gist of offence under section 498-A IPC is thus subjecting a married woman with cruelty at the hands of her husband or relatives of husband. Expression `Cruelty' takes within its sweep both mental and physical agony and torture. Perusal of *Explanation (a)* would show that Prosecution has to establish firstly a willful conduct offender, Secondly that nature of such conduct was to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (Whether physical or mental). *Clause (b)* of Explanation makes harassment to coerce such woman or any person related to her to meet unlawful demand of property or valuable security or on account of failure by her or any person related to her to meet such demand, included in Expression of cruelty.

Q. 74 A married young woman, who was discarded by her husband, lived with her father and brother in Madras she became intimate with the accused who was her next door neighbour. The two ran away from Madras and eventually settled in Bombay. The woman's brother filed a complained against accused for offences under Section 497/498 of Indian Penal Code. Decide.

Ans. Before going in detail as to whether offences punishable under **Section 497**/498 of I.P.C. is made out or not. It is important to point the relevant provision of Criminal Procedure Code in respect of offence punishable under Chapter XX of I.P.C. Though as a general Rule any person having knowledge of commission of an offence may set the law in motion by making a complaint. But **Section 198** of **Criminal Procedure Code** is important exception to the abovesaid general Rule. It lays down as under:

"(1) No court shall take cognizance of an offence punishable under Chapter XX of Indian Penal Code except upon a complaint made by some person aggrieved by the offence.

(2) For the purpose of Sub-Section (1) no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under Section 497 or 498 of the said Code:

Provide that in the absence of the husband, some person who had care of the woman on his behalf at the time when offence was committed, may with the leave of the court make a complaint on his behalf."

So in respect of offences punishable under **Section 497** or 498 which come within the chapter XX of the Indian Penal Code, a complaint can be filed in competent court by aggrieved person and according to **Section 198** of Cr.P.C., aggrieved person for the purpose of offences punishable under **Section 497** or 498 I.P.C. is the husband of the woman or in his absence, some person who had care of woman **"on behalf"** of her husband at the time of commission of offence.

In ***Ramnarayan Bahu Rao Kapur v. Emperor, AIR 1937 Bom. 186*** It was observed "Under **Section 198** Cr.P.C., in the absence of husband, the complaint may be made by some person who had care of the woman "**on his behalf**" at the time when the offence was committed. An express delegation is not necessary but the words "**On his behalf**" must be given some

meaning. It is not enough that a person should take care of the wife instead of the husband because the husband will not take care of her and there is no one else to do it. It must be shown that the person had the care of her on behalf of her husband."

In the case in hand, the brother and father of woman, though having care of woman but not by any authority of her husband or on behalf of her husband. Therefore complaint made by the brother of the woman for offence under **Section 497** and 498 of I.P.C. is hit by **Section 198** of Code of Criminal Procedure **1973** and thus is liable to be dismissed.

Even on merits, offence under **Section 498** of I.P.C. is not made out because one of the necessary ingredient of offence punishable under **Section 498** is that accused must have taken or enticed away, a married woman, knowingly from care and protection of husband of such woman or any person having care of her on behalf of her husband. But in case in hand, woman having already discarded by her husband, was living with her father and brother in Madras. She developed intimacy with her next door neighbor and elopement was a joint venture in which motivating force was mutual affection and love. Therefore ingredients of **Section 498** are not there, therefore, offence under **Section 498** is not made out [See: ***Ramnarayan Bahu Rao Kapur v. Emperor (Supra)].***

Q. 75 `K' sent a notice to `B' demanding payment of price of certain ornaments said to have been purchased from him by `B' on the occasion of his brother's marriage. In his reply sent by registered post, `B' denied any such purchase and characterized the demand as `false'. He further alleged that the false claim has been made because `K' had attempted to outrage the modesty of a woman whose husband had, at the instance of B, lodged a complaint against `K'. The reply was received by `K' and he filed a complaint for an offence under Section 500, I.P.C. against `B'. It was proved that the imputation made against `K' was false and actuated by illwill and previous enmity. Decide.

Ans. Section 499 of the Indian Penal Code provides as:

"Whoever by words either spoken or intended to be read, or by signs or by visible representation, make or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person".

Thus, there are three main ingredients of the offence of defamation:

(***1***) making or publishing any imputation concerning any person.

(**2**) Such imputation must have been made by

(a) Words, either spoken or intended to be read; or

(b) Signs; or

(c) Visible representation

(**3**) Such imputation must be made with the intention of harming or with the knowledge or with reasons to believe that it will harm the reputation of that person.

Publication is, therefore, an essential element of defamation. The offence of defamation lies in the dissemination of harmful information concerning another. This is expressed in the section by the words "makes or publishes". It becomes clear that if a person merely composes a libel, but refrains from making it public, he could not be held liable for his offence.

When the communication containing the imputation is sent by the accused to the complainant by post in a registered over addressed to the complainant himself, there is no publication and the offence of defamation is not committed. Unless there is a publication to third party there can be no offence. Consequently, the complainant filed by K is liable to be dismissed.

Q. 76 What offence, if any, has been committed by `A' in following cases:

(i) A maliciously says that B is suffering from plague.

(ii) A, got married a woman thinking that her husband was alive but infact he was dead.

(iii) A, a pickpocket attempts to take the purse of B, who has a loaded pistol in his pocket. A touches the trigger, the pistol goes off and B is thus shot dead.

Ans. (i) **Section 499**, I.P.C. provides: *"Whoever, by words either spoken or intended to be read or by signs of by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. Explanation 4 says : "No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person or causes it to be believed that body of that person is in a loathsome state, or in a state generally considered as disgraceful." "Malice in common acceptation's means ill will against a person, but in its legal sense it means a wrongful act, done intentionally, without just cause or excuse". A man acts maliciously when he willfully and without lawful excuse does that which he knows will injure another in person or property. The term `maliciously' denotes wicked, perverse and incorrigible disposition. It means and implies an intention to do an act which is wrongful, to the detriment of another. Where any person willfully does an act injurious to another without lawful excuse he does it maliciously.'* In the present case, the imputation regarding state of body of B has been made by A maliciously. Such an imputation is enough to cause it to be believed that the body of B is in a loathsome state, or in a state generally considered as disgraceful. Therefore, A is guilty of an offence of defamation punishable under **Section 500**, I.P.C.

(ii) Section 494, I.P.C. enacts : *"Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."* This Section punishes the offence known to English law as bigamy. It makes the offence of bigamy punishable both as regards a person, having a wife living, marrying another and as regards a wife, having her husband living, remarrying, in any case in which such remarriage would be void by reason of its taking place during the life of such wife or

husband. The person whom the woman has remarried cannot be punished under this Section. He can only be charged with abetment of that offence.

In the case in hand, no offence of bigamy has been committed by the woman in as much as her former husband is already dead on the date of her remarriage with A. When the substantive offence is not established against the principal, a charge of abetment must fail. Therefore, A is not guilty of any offence in this case.

(iii) Section 299 of Indian Penal Code defines the offence of "***Capable Homicide***" and lays down: "***Whoever causes death, by doing an act with the intention of causing death or with the intention of causing such bodily injury, as is likely to cause death or with the knowledge that he is likely, by such act to cause death, commits the offence of capable homicide***."

For the offence of `Capable Homicide' or `Capable Homicide which amounts to Murder', essential ingredient to establish the offence is that offender must have acted with **"intention"** to cause death or cause such bodily injury which is likely to cause or with **"knowledge"** that his act may cause death of other.

In the case in hand, `A' was trying to take purse of B from his pocket. So `A' cannot be attributed with the intention to cause death of `B' nor `A' had the knowledge that his act would cause the death of B. It is only, when A was trying to take purse of B, A touched the trigger of loaded pistol in the pocket of B which accidentally goes off and B died.

It is also important to point out here that `A' in the case in hand is not exempted under **Section 80** I.P.C. also, which lays down: "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 lawful manner by lawful means and with proper care of caution."

In the case in hand, act of `A', of attempting to take out purse of B from his pocket, cannot be said to be doing a lawful act, therefore `A' is not entitled to benefit of **Section 80** I.P.C. Facts of the case clearly show that `A' was attempting to take purse of B and thus `A' can be held responsible for offence of attempt to commit theft punishable Under **Section 379** r/w 511 I.P.C.

Q. 77 Write a short note on : 'Criminal Intimidation'

Ans. Section 503 of Indian Penal Code has defined the offence of **Criminal Intimidation** as :

"Whoever threatens another with any injury to his person or property or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation." The most important ingredient of the offence of criminal intimidation as defined under **Section 503** I.P.C. is that there should be intention to cause alarm or to cause the person threatened to do any act which he is not legally bound to do.

In ***Ramesh Chandra Arora v. State AIR 1960 SC 154*** Accused took indecent photographs of a girl and threatened her father that if "hush money" is not paid to him he would publish the photographs Supreme Court while holding the accused guilty of criminal intimidation observed:

"This Section is in two parts; the first part refers to the act of threatening another with injure to his person, reputation or property or to the person or reputation of any one in whom that person is interested; the second part refers to the intent with which the threatening is done and it is of two categories: one is intent to cause alarm to the person threatened, and the second is to cause that person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do as, the means of avoiding the execution of such threat."

In order to constitute this offence, it is not necessary that the threat should be addressed directly to the person intimidated, it is sufficient if it is intended to be and is communicated to such person. Further, it is immaterial whether the person threatened was actually frightened by the threat.