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AL-AMEEN COLLEGE OF LAW

Affiliated to Karnataka State Law University and Recognised by Bar Council of India

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**STUDY MATERIAL
FOR
BHARATIYA NYAYA SANHITA, 2023**

Prepared as per the syllabus prescribed by Karnataka State Law University (KSLU), Hubballi

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Unit 1

Q. What is Punishment? Explain the Various Types of Punishments under the Bharatiya Nyaya Sanhita, 2023.

Answer

Introduction

Punishment is the consequence imposed by law upon a person who is found guilty of committing an offence. It is an essential part of the criminal justice system and serves to maintain law and order, protect society, deter criminals, reform offenders, and ensure justice. The provisions relating to punishments are contained in **Section 4 of the Bharatiya Nyaya Sanhita, 2023**, which recognises six kinds of punishments that may be imposed upon offenders.

Section 4 – Types of Punishments

According to **Section 4 of the Bharatiya Nyaya Sanhita, 2023**, the following six punishments may be imposed:

1. Death Penalty
2. Imprisonment for Life
3. Imprisonment (Rigorous or Simple)
4. Forfeiture of Property
5. Fine
6. Community Service

1. Death Penalty (Capital Punishment)

Death penalty is the most severe form of punishment under criminal law. It involves taking the life of a person who has been found guilty of committing very serious offences. Under the Bharatiya Nyaya Sanhita, 2023, it is awarded only in exceptional cases such as murder, waging war against the State, and dacoity with murder.

In India, courts follow the "**Rarest of Rare Cases**" doctrine. This means that death penalty should be imposed only when life imprisonment is insufficient and the circumstances of the case justify the highest punishment.

Case Law: Bachan Singh v. State of Punjab

The Supreme Court upheld the constitutional validity of the death penalty and laid down the "Rarest of Rare Cases" principle. The Court held that life imprisonment is the rule and death penalty is an exception.

Case Law: Mithu v. State of Punjab

The Supreme Court struck down Section 303 of the IPC because it made death penalty mandatory without allowing judicial discretion. The Court held that such a provision violated Article 21 of the Constitution.

2. Imprisonment for Life

Imprisonment for life means imprisonment for the entire remaining life of the offender, that is, till death. It is one of the most serious punishments under the Bharatiya Nyaya Sanhita, 2023.

Although popularly believed that a life convict is released after 14 or 20 years, there is no automatic right to release. A prisoner can be released only if the appropriate Government grants remission or commutation under law.

This punishment is awarded for serious offences such as waging war against the Government and offences affecting national security.

3. Imprisonment

Imprisonment means deprivation of personal liberty by confining a person in prison as punishment for committing an offence. It is one of the most common punishments under criminal law.

Imprisonment is of two types:

(a) Rigorous Imprisonment

In rigorous imprisonment, the offender is required to perform hard labour such as digging, cutting wood, or other physical work. It is generally imposed for serious offences.

(b) Simple Imprisonment

In simple imprisonment, the offender is confined in prison but is not required to perform hard labour. It is usually awarded for less serious offences.

4. Forfeiture of Property

Forfeiture of property means taking away the property of the offender by the State as a form of punishment. Under the Bharatiya Nyaya Sanhita, 2023, this punishment is imposed in certain offences where the property is connected with unlawful activities.

The object of this punishment is to prevent offenders from enjoying the benefits of crime. Unlike earlier laws, modern criminal law does not permit absolute forfeiture of all property. Only the property connected with the offence may be forfeited.

For example, property obtained through illegal means or property used in the commission of an offence may be confiscated by the State. This punishment ensures that crime does not become profitable.

5. Fine

Fine is a monetary punishment in which the offender is ordered by the court to pay a specified sum of money as a penalty for committing an offence. It is one of the most common forms of punishment under the Bharatiya Nyaya Sanhita, 2023.

A fine may be imposed alone or along with imprisonment depending upon the nature of the offence. The amount of fine is determined by the court after considering the facts of the case and the financial condition of the offender.

The main object of fine is to punish the offender financially and discourage future violations of law.

6. Community Service

Community service is a new form of punishment introduced under the Bharatiya Nyaya Sanhita, 2023. It requires the offender to perform unpaid work for the benefit of society instead of undergoing imprisonment or paying a fine.

Examples of community service include:

- Cleaning public places,
- Maintaining parks,
- Assisting in social welfare programmes,
- Working for public institutions.

The main object of community service is reformation and rehabilitation of offenders. It helps offenders realise their mistakes and become socially responsible citizens.

Conclusion

Punishment is an essential element of criminal justice and plays a vital role in maintaining social order and protecting society from crime. **Section 4 of the Bharatiya Nyaya Sanhita, 2023** recognises six types of punishments, namely **Death Penalty, Imprisonment for Life, Imprisonment, Forfeiture of Property, Fine, and Community Service**. These punishments serve different objectives such as deterrence, prevention, reformation, and rehabilitation, thereby ensuring justice while maintaining the rule of law.

Q. Explain the Territorial and Extra-Territorial Application of the Bharatiya Nyaya Sanhita, 2023.

Answer

Introduction

The Bharatiya Nyaya Sanhita, 2023 lays down rules about where Indian criminal law applies. Generally, criminal law applies to offences committed within India, but in some situations it can also apply to offences committed outside India. Therefore, the application of BNS can be studied under two heads:

1. **Territorial (Intra-territorial) Application**
2. **Extra-territorial Application**

1. Territorial Application of BNS

Territorial application means that the Bharatiya Nyaya Sanhita applies to all crimes committed within the territory of India. If the offence takes place within India, the offender can be punished under this law.

Section 1(3) – Intra-Territorial Jurisdiction

Section 1(3) states that every person who commits an offence within India will be punished under the Sanhita. The law applies to anyone present in India, not only to Indian citizens.

This includes:

- Citizens of India
- Foreign nationals
- Tourists or visitors

The important point is where the crime is committed, not the nationality of the offender.

Example

If a tourist from another country commits theft in Mumbai, he can be punished under Indian criminal law.

Territory of India

The territory of India includes not only land but also several other areas connected with the country. Criminal law applies to offences committed in these areas as well.

These include:

- Land territory of India
- Ports and harbours
- Rivers and bays
- Airspace above India
- Territorial waters up to 12 nautical miles from the coast

Example

If a person commits a crime on a ship sailing within 12 nautical miles of the Indian coast, Indian courts have jurisdiction to try the offender.

Persons Having Immunity

Although the law applies to every person, some individuals are protected by international law or constitutional provisions and therefore cannot normally be tried in Indian courts.

These persons include:

- Foreign sovereigns (Kings or Heads of Foreign States)
- President of India and Governors during their term of office
- Ambassadors and diplomats
- Foreign armies stationed in India with permission
- Warships of foreign countries

These persons enjoy immunity from local criminal jurisdiction.

2. Extra-Territorial Application of BNS

Extra-territorial application means that the Bharatiya Nyaya Sanhita may also apply to certain crimes committed outside India. This is an exception to the general rule that laws apply only within the territory of a country.

This rule ensures that criminals cannot escape punishment simply by committing offences outside India.

Section 1(4) – Offences Committed Outside India

Section 1(4) states that if a person commits an offence outside India but is legally liable under Indian law, he will be punished according to the provisions of BNS as if the offence had been committed within India.

This means the law treats the offence as though it occurred in India.

Example

If a person commits forgery in another country to cheat someone in India, he can still be prosecuted in India.

Section 1(5) – Extension of BNS

(a) Offences by Indian Citizens Abroad

If an Indian citizen commits a crime in another country, Indian courts may still have the power to try that person when he is found in India.

Example

If an Indian citizen commits murder in another country and later returns to India, he can be tried and punished in India.

(b) Offences on Indian Ships or Aircraft

If an offence occurs on a ship or aircraft registered in India, Indian law applies even if the ship or aircraft is outside Indian territory.

Example

If a passenger commits assault on an Indian airline flying over another country, the offender can be tried under Indian law.

(c) Cyber Offences Targeting India

If a person outside India commits a crime against a computer system located in India, Indian courts can take action against that person.

Example

If a hacker sitting in another country hacks a bank server located in India, the offender can be punished under Indian criminal law.

Explanation and Illustration

The word "offence" includes any act committed outside India which would have been punishable if it had been committed within India.

Illustration

If A, an Indian citizen, commits murder outside India, he can still be tried and punished in India if he is found within Indian territory.

Case Law: Mobarik Ali Ahmed v. State of Bombay

Facts of the Case

The accused, Mobarik Ali Ahmed, was a foreign national who stayed outside India. He entered into a business transaction with a company located in Bombay. Through correspondence and communication from outside India, he dishonestly induced the company to send goods to him without making proper payment.

The accused argued that he could not be tried in India because he had never come to India and all his actions were done outside the country.

Issue

Whether a person who commits acts outside India can be prosecuted under Indian criminal law when the consequences of those acts occur in India.

Judgment

The Supreme Court held that the accused could be tried in India.

The Court observed that although the accused was outside India, the deception and cheating produced harmful effects within India. Therefore, Indian courts had jurisdiction to try the offence.

Principle Laid Down

- Physical presence of the accused in India is not necessary.
- If the essential part or consequence of the offence occurs in India, Indian courts can exercise jurisdiction.
- A person committing acts outside India that cause harm in India can still be punished under Indian criminal law.

Conclusion

The Bharatiya Nyaya Sanhita, 2023 mainly applies to offences committed within India, which is called territorial jurisdiction. However, in certain situations it also applies to offences committed outside India, such as offences committed by Indian citizens abroad, offences on Indian ships or aircraft, and cyber offences targeting India. These provisions ensure that criminals cannot avoid punishment simply by committing crimes outside the country and strengthen the effective administration of criminal justice.

Question:

What is Right of Private Defence? When does the Right of Private Defence of Body extend to Causing Death?

Answer:

Introduction

The **Right of Private Defence** is an important General Exception under the **Bharatiya Nyaya Sanhita, 2023 (Sections 34–44)**. It means the legal right of a person to protect his own body, the body of another person, and property from unlawful attacks or immediate danger.

This right is based on the principle that **self-preservation is the first law of nature**. The law recognizes that when a person is faced with imminent danger, he cannot always wait for the assistance of public authorities and may need to act immediately to protect himself or others.

However, the right of private defence is a **protective right (a shield) and not a punitive right (a sword)**. It can be exercised only to prevent harm and not to take revenge.

Meaning of Right of Private Defence

Section 35 of the Bharatiya Nyaya Sanhita provides that every person has a right to defend:

- His own body,
- The body of any other person,
- His own property, and
- The property of another person,

against offences affecting the human body or property.

For example, if a thief attacks a person with a knife, the victim can use reasonable force to protect himself.

When Does the Right of Private Defence of Body Extend to Causing Death? (Section 38 BNS)

As a general rule, only reasonable force may be used in private defence. However, **Section 38 BNS** permits a person to cause the death of the assailant in certain grave and exceptional situations where there is a reasonable apprehension of serious danger.

The right extends to causing death in the following cases:

1. Assault Causing Reasonable Apprehension of Death

When an assault creates a reasonable fear that death may result, the person attacked may cause the death of the attacker in self-defence.

Example:

A attacks B with a loaded gun intending to kill him. B may exercise the right of private defence even to the extent of causing A's death.

2. Assault Causing Reasonable Apprehension of Grievous Hurt

The right extends to causing death when the assault creates a reasonable apprehension of grievous hurt.

Example:

A attacks B with an iron rod intending to cause permanent injury. B may use force extending to causing death if necessary for protection.

3. Assault with Intention to Commit Rape

When an assault is made with the intention of committing rape, the victim may exercise the right of private defence even to the extent of causing the death of the assailant.

Example:

A forcibly attempts to rape B. B may cause A's death while defending herself.

4. Assault with Intention to Gratify Unnatural Lust

If an assault is made with the intention of gratifying unnatural lust against a person's will, the right extends to causing death.

Example:

A attempts to force an unnatural sexual act upon B. B may exercise the right of private defence to the extent of causing A's death.

5. Assault with Intention of Kidnapping or Abduction

When a person is assaulted with the intention of kidnapping or abducting him, the right of private defence extends to causing death.

Example:

A group of persons attempts to forcibly carry away a child. The guardian may use force, even causing death if necessary, to prevent the kidnapping.

6. Wrongful Confinement

When a person is wrongfully confined under circumstances which make it impossible to seek help from public authorities, the right extends to causing death.

Example:

A is locked in a room by armed persons and has no opportunity to seek assistance. He may use force extending to causing death to escape.

7. Acid Attack or Attempt to Throw Acid

The right extends to causing death when there is an act of throwing acid or an attempt to throw acid which creates a reasonable apprehension of grievous hurt.

Example:

A attempts to throw acid on B. B may use force extending to causing A's death to prevent the attack.

Limitations on the Right

The right of private defence is subject to **Section 37 BNS** and has the following limitations:

1. It cannot be exercised against a public servant acting in good faith.
2. It cannot be exercised when there is sufficient time to seek police assistance.
3. The force used must be necessary and proportionate.
4. The right exists only as long as the danger continues.
5. It cannot be used as a means of revenge or punishment.

Case Law: Deo Narain v. State of Uttar Pradesh**Facts**

The accused claimed that he acted in self-defence because he apprehended danger to his life and body.

Issue

Whether the right of private defence can be exercised on the basis of reasonable apprehension of danger and how long the right continues.

Judgment

The Supreme Court held that the right of private defence is **preventive and not punitive**. It arises as soon as there is a reasonable apprehension of danger and continues only so long as the danger exists. Once the danger ceases, the right also comes to an end.

Legal Principle

The right of private defence begins with a reasonable apprehension of danger and ends when the danger ceases. It cannot be used for retaliation or revenge.

Conclusion

The Right of Private Defence is a valuable legal right granted under the Bharatiya Nyaya Sanhita to protect life, liberty, and bodily safety. Under **Section 38 BNS**, this right extends to causing death only in exceptional situations such as apprehension of death, grievous hurt, rape, kidnapping, wrongful confinement, unnatural lust, and acid attacks. The right must always be exercised in good faith, with reasonable force, and only for protection against immediate danger.

Question:

Critically Examine the Rationale Behind the Enactment of the Bharatiya Nyaya Sanhita, 2023 Replacing the Indian Penal Code, 1860. Highlight the Key Reforms Introduced and Explain How the BNS Addresses Modern-Day Criminal Justice Challenges.

Answer:

Introduction

The **Bharatiya Nyaya Sanhita, 2023 (BNS)** is one of the most significant reforms in India's criminal justice system. It replaces the **Indian Penal Code, 1860 (IPC)**, which had served as the principal criminal law of India for more than 160 years. The IPC was enacted during British colonial rule and was primarily designed to maintain law and order under colonial administration. Over time, social conditions, technology, economic activities, and the nature of crimes changed substantially, making several provisions of the IPC outdated and inadequate.

To address these shortcomings and create a criminal law framework suited to contemporary India, Parliament enacted the Bharatiya Nyaya Sanhita, 2023. The Sanhita seeks to modernize criminal law, simplify legal provisions, strengthen protection of vulnerable groups, address emerging forms of crime, and ensure a more victim-centric and justice-oriented legal system.

Rationale Behind Replacing the IPC, 1860

1. Colonial Legacy of the IPC

The IPC was drafted by Lord Thomas Babington Macaulay during British rule. Its primary objective was not to deliver citizen-centric justice but to maintain colonial control over the Indian population.

Many provisions reflected colonial priorities and were no longer suitable for an independent democratic nation. Therefore, replacing the IPC was considered necessary to establish a criminal law system based on Indian constitutional values and contemporary needs.

2. Need to Address Modern Crimes

When the IPC was enacted in 1860, crimes such as:

- Cyber fraud,
- Digital theft,
- Organized crime,
- Terrorist activities,
- Online exploitation,
- Identity theft,

were unknown.

The BNS introduces provisions that directly address modern criminal activities and technological developments, making the law more relevant to present-day realities.

3. Simplification and Modernization of Criminal Law

Many provisions of the IPC used complex and archaic language that was difficult for ordinary citizens to understand. The BNS simplifies legal terminology, reorganizes offences, removes obsolete provisions, and makes the law more accessible.

4. Strengthening Protection of Women and Children

The increasing incidence of crimes against women and children demanded stronger legal protection. The BNS introduces new offences and enhances punishments to better safeguard vulnerable groups.

5. Victim-Centric Justice

The IPC largely focused on punishing offenders. The BNS seeks to balance offender accountability with victim protection and societal interests, thereby promoting a more comprehensive approach to criminal justice.

Key Reforms Introduced Under the Bharatiya Nyaya Sanhita, 2023

1. Introduction of Community Service as Punishment

One of the most innovative reforms under Section 4 of the BNS is the introduction of **Community Service** as a form of punishment.

It may be imposed for certain minor offences such as:

- Defamation,
- Public drunkenness,
- Petty theft,
- Failure to appear after proclamation.

Significance

This reflects the principle of **reformatory justice**, focusing on rehabilitation rather than merely punishing offenders.

2. Recognition of Digital and Electronic Records

The definition of "document" now includes:

- Electronic records,
- Digital records,
- Electronic communications.

Significance

This reform acknowledges the digital transformation of society and facilitates the prosecution of offences involving electronic evidence.

3. Expanded Definition of Gender

The BNS includes **transgender persons** within the definition of gender.

Significance

This reflects constitutional principles of equality, dignity, and inclusiveness and recognizes gender diversity in modern society.

4. Stronger Protection for Women

(a) Sexual Intercourse by Deceitful Means (Section 69)

The BNS creates a new offence where sexual intercourse is obtained through:

- False promise of marriage,
- Deception,
- Fraudulent representations.

Punishment may extend to ten years imprisonment and fine.

(b) Enhanced Punishment for Gang Rape of Minors

The BNS extends the death penalty to cases involving gang rape of girls below eighteen years of age.

Significance

These provisions strengthen protection of women and address contemporary forms of exploitation.

5. Protection of Children

Hiring a Child to Commit an Offence (Section 95)

The BNS criminalizes employing or using children for criminal activities.

Procurement of Child (Section 96)

The earlier offence relating only to girls has been expanded and made gender-neutral.

Significance

These reforms provide broader protection against child exploitation.

6. Mob Lynching as a Separate Offence

Section 103(2) specifically addresses mob lynching.

Where five or more persons commit murder based on:

- Religion,
- Caste,
- Community,
- Language,
- Place of birth,
- Personal beliefs,

they may be punished with:

- Death penalty, or
- Life imprisonment.

Significance

The IPC contained no specific provision dealing with mob lynching. The BNS directly addresses this growing social problem.

7. Introduction of Organised Crime and Terrorism Provisions

The BNS introduces separate offences relating to:

- Organised Crime (Section 111),
- Petty Organised Crime (Section 112),
- Terrorist Acts (Section 113).

Significance

Modern criminal networks operate across states and countries. These provisions strengthen the legal framework for combating organized criminal activities.

8. Hit-and-Run Offences

Section 106(2) introduces stringent punishment where a driver:

- Causes death by negligent driving, and
- Escapes without informing authorities.

Punishment may extend to ten years imprisonment and fine.

Significance

The provision seeks to improve accountability and road safety.

9. Expanded Scope of Theft

The definition of theft now covers:

- Intellectual property,
- Copyrights,
- Patents,
- Digital assets.

Significance

The IPC was designed primarily for tangible property. The BNS recognizes the economic value of intangible property in the modern digital economy.

10. Snatching as a Separate Offence

Section 304 introduces the offence of **Snatching**.

Examples include:

- Pulling a chain,
- Snatching a mobile phone,
- Grabbing a purse.

Significance

Previously such acts were generally prosecuted as theft. The BNS recognizes snatching as a distinct and common urban crime.

How the BNS Addresses Modern-Day Criminal Justice Challenges

1. Tackling Technology-Driven Crimes

By recognizing electronic records and broadening property-related offences, the BNS accommodates digital and cyber-related criminal conduct.

2. Combating Organised and Transnational Crime

Specific provisions dealing with organized crime, terrorism, and abetment from outside India strengthen India's ability to combat sophisticated criminal networks.

3. Protecting Vulnerable Groups

Enhanced safeguards for women, children, and transgender persons reflect contemporary concerns regarding human rights and social justice.

4. Responding to Social Violence

The inclusion of mob lynching as a specific offence addresses growing incidents of collective violence motivated by caste, religion, or communal hatred.

5. Promoting Reformatory Justice

The introduction of community service reflects a shift from purely punitive justice towards rehabilitation and social reintegration.

6. Improving Road Safety and Public Accountability

Stricter provisions relating to negligent driving and hit-and-run incidents seek to reduce road fatalities and encourage responsible conduct.

Critical Evaluation

While the BNS represents a major step toward modernization, certain concerns have also been raised:

Strengths

- Modern and simplified structure.
- Recognition of technological advancements.
- Stronger protection of women and children.
- Inclusion of organized crime and terrorism provisions.
- Reformatory approach through community service.

Criticisms

- Some provisions continue to attract debates regarding civil liberties and freedom of expression.
- Certain terms and offences may require judicial clarification.
- Effective implementation depends upon police reforms, judicial efficiency, and public awareness.
- Mere legislative change cannot by itself solve systemic issues such as delay in trials and overcrowded prisons.

Thus, while the BNS modernizes substantive criminal law, broader institutional reforms remain equally important for achieving effective criminal justice.

Conclusion

The **Bharatiya Nyaya Sanhita, 2023** represents a landmark transformation of Indian criminal law by replacing the colonial-era IPC, 1860. It seeks to create a more modern, victim-oriented, technology-friendly, and socially responsive criminal justice framework. Through reforms such as community service, recognition of digital records, stronger protection for women and children, provisions against mob lynching, organized crime, terrorism, and expanded property offences, the BNS attempts to address the challenges of the twenty-first century. Although certain concerns regarding implementation and interpretation remain, the Sanhita marks a significant step towards building a criminal justice system that is better aligned with the constitutional values and contemporary needs of India.

Unit 2

Q. Explain the Law Relating to Abetment under the Bharatiya Nyaya Sanhita (BNS), 2023.

Answer

Introduction

Chapter IV of the Bharatiya Nyaya Sanhita, 2023 deals with inchoate offences, namely Abetment, Criminal Conspiracy, and Attempt. Among these, abetment occupies an important place because a person may not directly commit an offence but may encourage, assist, or facilitate another person in committing it. Such a person is also held criminally liable. Therefore, abetment refers to the act of helping, instigating, or supporting another person in the commission of a crime. The law relating to abetment is contained in Sections 45 to 60 of the BNS, 2023.

Meaning and Nature of Abetment

The word "abet" means to aid, assist, encourage, or support. In criminal law, abetment means instigating, aiding, or engaging in a conspiracy for the commission of an offence. It involves a mental element because the abettor must have knowledge or intention that his conduct will lead to the commission of a crime.

Generally, abetment involves two persons:

- The person who actually commits the offence is called the **principal offender**.
- The person who encourages or assists him is called the **abettor**.

Thus, even though the abettor may not directly commit the crime, he can still be punished under the law.

Definition of Abetment (Section 45, BNS 2023)

Section 45 of the Bharatiya Nyaya Sanhita, 2023 provides that a person abets the doing of a thing if he:

1. **Instigates** another person to do that thing; or
2. **Engages in a conspiracy** for doing that thing and an act or illegal omission takes place in pursuance of that conspiracy; or
3. **Intentionally aids** the doing of that thing by an act or illegal omission.

Therefore, abetment may take place in three ways:

- Abetment by Instigation
- Abetment by Conspiracy
- Abetment by Aiding

1. Abetment by Instigation

Abetment by instigation occurs when a person provokes, incites, encourages, or urges another person to commit an offence. The instigation may be through words, gestures, conduct, or any other means.

There must be active encouragement or provocation. Mere casual advice or suggestion is not sufficient to constitute abetment.

Illustration

If A repeatedly persuades B to murder C and encourages him to do so, A is guilty of abetment by instigation.

2. Abetment by Conspiracy

Abetment by conspiracy takes place when two or more persons agree to commit an offence and some act or illegal omission is done in furtherance of that agreement.

Mere agreement is not enough. There must be some act done towards carrying out the conspiracy.

Illustration

If A and B agree to commit theft and purchase tools for breaking into a house, both are guilty of abetment by conspiracy.

Case Law: Pandala Venkatasami Case

Facts of the Case

The accused prepared a draft of a false document, purchased stamp papers, and collected information necessary for preparing the forged document. Although the forgery was not completed, all these acts were done in preparation for the offence.

Judgment

The court held that the accused was guilty of abetment because his acts were intentionally done to facilitate the commission of forgery. The court observed that any act done with the intention of assisting the commission of an offence amounts to abetment.

3. Abetment by Aiding

Abetment by aiding occurs when a person intentionally assists another person in committing an offence through an act or illegal omission.

The assistance must be voluntary and given with knowledge of the unlawful purpose.

Illustration

If A supplies a weapon to B knowing that B intends to commit murder, A is guilty of abetment by aiding.

Case Law: Kartar Singh v. State of Punjab (1994)

Facts of the Case

The case involved interpretation of the concept of abetment and the extent of liability of persons assisting in the commission of offences.

Judgment

The Supreme Court held that the word "abet" includes aiding, assisting, procuring, inducing, encouraging, or supporting another person in committing an offence. The Court emphasized that intentional assistance is the essence of abetment.

Abettor (Section 46)

Section 46 defines an abettor as a person who abets the commission of an offence by instigation, conspiracy, or intentional aid.

Even if the abettor does not directly commit the offence, he is legally responsible because of his participation in the criminal act.

Important Aspects of Section 46

1. Abetment of Illegal Omission

A person may abet another to omit doing an act which he is legally bound to do.

2. Completion of Offence Not Necessary

The offence need not actually be committed for the abettor to be guilty.

Example: If A instigates B to commit murder and B refuses, A is still guilty of abetment.

3. Person Abetted Need Not Be Capable

The person abetted may be:

- A child,
- A person of unsound mind, or
- A person incapable of forming criminal intention.

The abettor will still be liable.

4. Abetment under Misconception

Even if the principal actor acts under a mistake of fact and is innocent, the abettor remains liable because of his wrongful intention.

5. Abetment of Abetment

Abetting an abetment is itself an offence.

6. Abetment by Conspiracy

Direct communication between all conspirators is not necessary. Participation in the conspiracy is sufficient.

Case Law: Mst. Bakhtawar Case

Facts of the Case

A woman wanted to poison her son-in-law and approached a medical practitioner for medicine. Knowing her intention, the doctor supplied the medicine.

Judgment

The court held that the doctor was guilty of abetment because he knowingly assisted in the commission of the offence. By supplying the poison with knowledge of its purpose, he intentionally aided the crime.

Abetment in India of Offences Outside India (Section 47)

Section 47 provides that if a person in India abets an offence that is committed outside India, he can still be punished in India if the act would have been an offence had it been committed in India.

Illustration

If A, while in India, instigates B in a foreign country to commit murder, A is guilty of abetment.

Abetment Outside India for Offence in India (Section 48)

Section 48 provides that a person outside India who abets an offence committed within India is liable under Indian law.

Illustration

If A, residing abroad, instigates B in India to commit murder, A is guilty of abetment.

Punishment for Abetment (Sections 49–60)

Section 49

Where the act abetted is actually committed and no separate punishment is provided, the abettor receives the same punishment as the principal offender.

Section 51

If one act is abetted but a different act is committed as a probable consequence, the abettor is liable for the act actually committed.

Section 55

Abetment of offences punishable with death or life imprisonment, where the offence is not committed, is punishable with imprisonment up to seven years and fine.

Where hurt is caused, punishment may extend to fourteen years and fine.

Section 56

Abetment of offences punishable with imprisonment is punishable with imprisonment up to one-fourth of the maximum punishment prescribed for the offence, or fine, or both.

Section 57

Abetting the commission of an offence by the public or by more than ten persons is punishable with imprisonment up to seven years and fine.

Section 58

Concealing the design to commit an offence punishable with death or life imprisonment is punishable with imprisonment and fine.

Section 59

A public servant who conceals information regarding an offence which it is his duty to prevent is liable for punishment under this section.

Section 60

Concealing the design to commit an offence punishable with imprisonment is punishable with imprisonment, fine, or both.

Conclusion

Abetment is an important concept under the Bharatiya Nyaya Sanhita, 2023 because many offences are committed with the encouragement, assistance, or support of others. Sections 45 to 60 ensure that not only the principal offender but also every person who instigates, conspires, aids, or conceals the commission of an offence is held criminally liable. Thus, the law relating to abetment plays a vital role in preventing crime and ensuring that all persons involved in criminal activities are brought to justice.

Q. Explain Dowry Death under the Bharatiya Nyaya Sanhita, 2023.

Answer

Introduction

Dowry is one of the major social evils affecting Indian society. Despite various laws prohibiting the practice of dowry, many married women continue to face cruelty, harassment, and violence due to dowry demands. In extreme cases, such harassment results in the death of the woman. To deal with such offences, the Bharatiya Nyaya Sanhita, 2023 provides a specific provision relating to **Dowry Death** under **Section 80**.

Meaning of Dowry Death

Dowry death refers to the death of a married woman caused by burns, bodily injury, or occurring under unnatural circumstances within seven years of marriage, where it is shown that she was subjected to cruelty or harassment by her husband or his relatives in connection with dowry demands.

The law presumes that the husband or his relatives are responsible for the death if the required conditions are satisfied.

Section 80 of the Bharatiya Nyaya Sanhita, 2023

Section 80 deals with the offence of dowry death. It provides that where the death of a woman is caused by burns, bodily injury, or occurs otherwise than under normal circumstances within seven years of her marriage, and it is proved that soon before her death she was subjected to cruelty or harassment by her husband or his relatives for or in connection with any demand for dowry, such death shall be called a **dowry death**.

In such cases, the husband or his relatives shall be deemed to have caused her death.

Essential Ingredients of Dowry Death

To establish the offence of dowry death, the following ingredients must be proved:

1. Death of a Married Woman

The victim must be a married woman.

2. Death Must be Unnatural

The death must be caused by:

- Burns, or
- Bodily injury, or
- Any circumstance other than normal circumstances.

Natural death does not attract Section 80.

3. Death Must Occur Within Seven Years of Marriage

The death must take place within seven years from the date of marriage.

This period is considered crucial because dowry-related harassment generally occurs during the early years of marriage.

4. Cruelty or Harassment

The woman must have been subjected to cruelty or harassment by:

- Her husband, or
- Relatives of her husband.

5. Cruelty Must be Connected with Dowry Demand

The cruelty or harassment must be related to a demand for dowry.

Mere domestic disputes or ordinary quarrels are not sufficient.

6. Cruelty Must Have Occurred Soon Before Death

There must be a close and proximate connection between the harassment and the death.

The expression "soon before her death" does not mean immediately before death, but there must be a live link between the cruelty and the death.

Meaning of Dowry

The term "dowry" has the same meaning as given under Section 2 of the Dowry Prohibition Act, 1961.

Dowry means any property or valuable security given or agreed to be given directly or indirectly in connection with a marriage.

Presumption in Dowry Death Cases

One of the special features of Section 80 is the legal presumption against the husband and his relatives.

When the prosecution proves:

- Unnatural death within seven years of marriage, and
- Cruelty or harassment relating to dowry demands,

the court may presume that the husband or his relatives caused the dowry death.

This provision helps in securing justice where direct evidence is often unavailable.

Punishment for Dowry Death

Whoever commits dowry death shall be punished with:

- Imprisonment for a term not less than **seven years**, and

- The imprisonment may extend to **imprisonment for life**.

The law prescribes a severe punishment because dowry death is considered a grave offence against women and society.

Case Law: Kans Raj v. State of Punjab

Facts of the Case

A married woman died under suspicious circumstances within a few years of her marriage. Evidence showed that she was continuously harassed and subjected to cruelty by her husband and in-laws for additional dowry.

Judgment

The Supreme Court held that where the prosecution proves that the woman was subjected to cruelty or harassment in connection with dowry demands soon before her death, the offence of dowry death is established. The Court emphasized that dowry-related offences must be dealt with strictly.

Case Law: Satbir Singh v. State of Haryana

Facts of the Case

The deceased woman died under unnatural circumstances within seven years of marriage. Evidence revealed continuous harassment for dowry.

Judgment

The Supreme Court explained that the phrase "soon before her death" must be interpreted based on the facts and circumstances of each case. There must be a proximate and live link between the dowry-related cruelty and the death of the woman.

Conclusion

Dowry death is a serious offence under Section 80 of the Bharatiya Nyaya Sanhita, 2023. It occurs when a married woman dies under unnatural circumstances within seven years of marriage and has been subjected to cruelty or harassment in connection with dowry demands. The law imposes strict punishment and creates a presumption against the husband and his relatives to protect women from dowry-related violence and to eradicate the social evil of dowry from society.

Q. Discuss the Offences Relating to Rape and Other Sexual Offences Against Women under the Bharatiya Nyaya Sanhita (BNS), 2023.

Answer

Introduction

The Bharatiya Nyaya Sanhita, 2023 contains several provisions to protect women from sexual offences and to safeguard their dignity, bodily integrity, privacy, and personal liberty. The law not only punishes the offence of rape but also deals with various other sexual offences such as sexual harassment, voyeurism, stalking, gang rape, and offences relating to the modesty of women. These provisions are mainly contained in **Sections 63 to 79 of the BNS, 2023**.

I. Offence of Rape (Section 63)

Meaning of Rape

Section 63 defines rape and specifies the circumstances in which a man is said to commit rape against a woman. The offence is committed when sexual intercourse takes place under circumstances such as:

- Against her will;
- Without her consent;
- Consent obtained by fear of death or hurt;
- Consent obtained by deception regarding identity or marriage;
- When the woman is incapable of understanding the nature of the act;
- When she is under eighteen years of age;
- When she is unable to communicate consent.

The law recognizes that valid consent is the foundation of a lawful sexual relationship.

II. Punishment for Rape (Section 64)

Section 64 provides punishment for the offence of rape.

In ordinary cases, the offender shall be punished with:

- Rigorous imprisonment for not less than ten years,
- Which may extend to imprisonment for life,
- And shall also be liable to fine.

The offence is cognizable, non-bailable, and triable by the Court of Session.

Aggravated Forms of Rape

The punishment becomes more severe when rape is committed under special circumstances such as:

- By a police officer;
- By a public servant;
- By a member of the armed forces;
- By jail or remand home staff;
- By hospital staff;
- By a guardian, teacher, or relative;
- By a person in a position of trust or authority;
- On a pregnant woman;
- On a woman suffering from mental or physical disability;
- During communal violence;
- Repeated rape on the same woman.

In such cases, the punishment may extend to imprisonment for the remainder of the offender's natural life.

III. Punishment for Rape of Minor Girls (Section 65)

Section 65 provides enhanced punishment where the victim is a minor girl.

Girl Below Sixteen Years

If rape is committed on a girl below sixteen years of age, the punishment shall be:

- Rigorous imprisonment of not less than twenty years,
- Which may extend to imprisonment for life,
- Along with fine.

Girl Below Twelve Years

If rape is committed on a girl below twelve years of age, the punishment shall be:

- Rigorous imprisonment of not less than twenty years,
- Imprisonment for life,
- Or death penalty,
- Along with fine.

The fine imposed must be paid to the victim for her medical treatment and rehabilitation.

IV. Causing Death or Persistent Vegetative State of Victim (Section 66)

Section 66 applies where rape results in:

- Death of the victim; or
- Persistent vegetative state of the victim.

The offender shall be punished with:

- Rigorous imprisonment for not less than twenty years,
- Imprisonment for life for the remainder of natural life,
- Or death.

This provision recognizes the extreme gravity of such offences.

Case Law: Aruna Shanbaug

Facts of the Case

Aruna Shanbaug, a nurse in Mumbai, was brutally assaulted and strangled by a hospital employee. The assault caused severe brain damage, and she remained in a persistent vegetative state for many years.

Judgment

The Supreme Court discussed the issue of passive euthanasia and laid down guidelines regarding withdrawal of life support under strict conditions. The case highlighted the severe consequences that violent sexual assaults can have on victims.

V. Sexual Intercourse by Husband During Separation (Section 67)

Section 67 deals with sexual intercourse by a husband with his wife while they are living separately.

If a husband has sexual intercourse with his wife without her consent during a period of separation, he shall be punished with:

- Imprisonment of not less than two years,
- Which may extend to seven years,
- And fine.

This provision recognizes the importance of consent even within marriage during separation.

VI. Sexual Intercourse by Deceitful Means (Section 69)

Section 69 punishes sexual intercourse obtained through deception.

The offence includes:

- False promise of marriage;
- False promise of employment;
- False promise of promotion;
- Concealment of identity for marriage.

The punishment may extend to:

- Ten years' imprisonment,
- And fine.

The object of this section is to prevent exploitation of women through fraud and misrepresentation.

VII. Gang Rape (Section 70)

Gang rape occurs when a woman is raped by one or more persons acting together with a common intention.

Every member of the group is treated as equally guilty, even if all of them did not physically commit the act.

Punishment

Under Section 70(1):

- Rigorous imprisonment of not less than twenty years,
- Which may extend to imprisonment for life,
- Along with fine.

Victim Below Eighteen Years

Where the victim is below eighteen years:

- Imprisonment for life for the whole life,
- Or death penalty,
- Along with fine.

VIII. Punishment for Repeat Offenders (Section 71)

Section 71 provides punishment for habitual offenders.

A person previously convicted under Sections 64, 65, 66, or 70 who commits such offence again shall be punished with:

- Imprisonment for life, or
- Death.

The provision aims to deter repeat offenders.

IX. Disclosure of Identity of Victim (Section 72)

Section 72 protects the identity and privacy of victims of sexual offences.

Any person who publishes information revealing the identity of the victim shall be punished with:

- Imprisonment up to two years,
- And fine.

Certain exceptions are permitted for investigation and welfare purposes.

X. Assault or Criminal Force with Intent to Outrage Modesty (Section 74)

Section 74 punishes any person who assaults or uses criminal force against a woman intending to outrage her modesty.

Punishment

- Imprisonment of not less than one year,
- Which may extend to five years,
- And fine.

This provision protects the dignity and modesty of women.

XI. Sexual Harassment (Section 75)

Section 75 deals with sexual harassment.

Acts constituting sexual harassment include:

- Unwelcome physical contact and advances;
- Demand for sexual favours;
- Showing pornography against the will of a woman;
- Making sexually coloured remarks.

Punishment

For serious acts:

- Imprisonment up to three years,
- Or fine,
- Or both.

For sexually coloured remarks:

- Imprisonment up to one year,
- Or fine,
- Or both.

Case Law: Vishaka v. State of Rajasthan

Facts of the Case

The case arose after the gang rape of Bhanwari Devi, a social worker who attempted to prevent child marriage in Rajasthan.

Judgment

The Supreme Court held that sexual harassment at the workplace violates Articles 14, 15, 19, and 21 of the Constitution and laid down the famous Vishaka Guidelines to protect women at workplaces.

Significance

The judgment led to the enactment of the Sexual Harassment of Women at Workplace Act, 2013.

XII. Assault or Criminal Force with Intent to Disrobe (Section 76)

Section 76 punishes assault or use of criminal force against a woman with the intention of disrobing her or compelling her to be naked.

Punishment

- Imprisonment of not less than three years,
- Which may extend to seven years,
- And fine.

XIII. Voyeurism (Section 77)

Meaning

Voyeurism means watching, capturing, or distributing images of a woman engaged in a private act without her consent.

Examples include:

- Secret recording in bathrooms;
- Recording intimate acts;
- Sharing private images without permission.

Punishment

First Conviction:

- One to three years imprisonment and fine.

Subsequent Conviction:

- Three to seven years imprisonment and fine.

XIV. Stalking (Section 78)

Meaning

A man commits stalking when he:

- Repeatedly follows a woman;
- Repeatedly contacts her despite her disinterest;
- Monitors her online activities or electronic communications.

Punishment

First Conviction:

- Imprisonment up to three years and fine.

Subsequent Conviction:

- Imprisonment up to five years and fine.

XV. Insulting the Modesty of a Woman (Section 79)

Section 79 punishes a person who:

- Uses words, gestures, or sounds;
- Shows objects;
- Intrudes upon the privacy of a woman;

with the intention of insulting her modesty.

Punishment

- Simple imprisonment up to three years,
- And fine.

Conclusion

The Bharatiya Nyaya Sanhita, 2023 provides comprehensive protection to women against rape and other sexual offences. Sections 63 to 79 cover a wide range of offences including rape, gang rape, sexual harassment, voyeurism, stalking, disrobing, and offences affecting the modesty and privacy of women. These provisions impose stringent punishments and reflect the legislative intent to ensure the safety, dignity, and empowerment of women in society.

Q. Explain the Provisions Relating to Criminal Conspiracy under the Bharatiya Nyaya Sanhita (BNS), 2023.

Answer

Introduction

Criminal conspiracy is an important inchoate offence under criminal law. The law punishes not only the actual commission of crimes but also the agreement between persons to commit unlawful acts. The rationale behind criminalizing conspiracy is that collective criminal planning poses a greater threat to society than individual criminal conduct. The provisions relating to criminal conspiracy are contained in **Section 61 of the Bharatiya Nyaya Sanhita, 2023.**

Meaning of Criminal Conspiracy

The term "conspiracy" means a combination or agreement between two or more persons to achieve an unlawful object.

Criminal conspiracy is complete when two or more persons agree to commit an illegal act or to accomplish a lawful act by illegal means. The essence of the offence is the **agreement itself**.

Definition of Criminal Conspiracy (Section 61)

Section 61(1) of the BNS, 2023 provides that when two or more persons agree with the common object to do, or cause to be done:

(a) An Illegal Act

or

(b) An Act Which is Not Illegal by Illegal Means

such an agreement is called a **criminal conspiracy**.

Essential Ingredients of Criminal Conspiracy

To constitute the offence of criminal conspiracy, the following essentials must be present:

1. Two or More Persons

There must be at least two persons involved in the agreement. A single person cannot commit conspiracy.

2. Agreement Between the Parties

There must be a meeting of minds between the conspirators. The agreement may be express or implied.

3. Common Objective

The parties must share a common intention to achieve a particular unlawful purpose.

4. Illegal Act or Illegal Means

The agreement must be:

- To commit an illegal act; or
- To do a lawful act through illegal means.

Overt Act Requirement

The proviso to Section 61 states that where the agreement is not directly for committing an offence, mere agreement is not sufficient. In such cases, some act in furtherance of the agreement must be done by one or more parties.

However, where the agreement itself is to commit an offence, the conspiracy is complete as soon as the agreement is made. No further act is necessary.

Explanation to Section 61

The explanation to Section 61 provides that it is immaterial whether the illegal act is the ultimate object of the agreement or merely incidental to it.

Thus, even if the illegal act is only a step towards achieving the final objective, the offence of conspiracy is established.

Illustration

Suppose A and B agree to rob a bank.

The moment they enter into the agreement, they commit criminal conspiracy because robbery is an offence.

Similarly, if A and B agree to obtain a government contract by bribing public officials, they are guilty of criminal conspiracy because a lawful object is being pursued through illegal means.

Punishment for Criminal Conspiracy

1. Conspiracy to Commit Serious Offences

Under Section 61(2)(a), where the conspiracy is to commit an offence punishable with:

- Death,
- Imprisonment for life, or
- Rigorous imprisonment for two years or more,

and no specific punishment is provided elsewhere, the conspirator shall be punished in the same manner as if he had abetted the offence.

2. Other Criminal Conspiracies

Under Section 61(2)(b), for conspiracies relating to less serious offences, the punishment is:

- Imprisonment up to six months, or
- Fine, or
- Both.

Case Law: State of Maharashtra v. Som Nath Thapa

Facts of the Case

Several persons were alleged to have conspired to carry out terrorist activities. The prosecution argued that there was a common agreement among the accused to commit unlawful acts.

Judgment

The Supreme Court held that the essence of criminal conspiracy is the agreement between two or more persons to commit an illegal act. Direct evidence of conspiracy is rarely available, and therefore it may be proved through surrounding circumstances and conduct of the accused.

Case Law: Kehar Singh v. State (Delhi Administration)

Facts of the Case

The case arose from the assassination of former Prime Minister Indira Gandhi. The prosecution alleged that several persons had conspired to commit the offence.

Judgment

The Supreme Court observed that conspiracy is generally hatched in secrecy and therefore can be proved by circumstantial evidence showing a meeting of minds among the conspirators.

Conclusion

Criminal conspiracy under Section 61 of the Bharatiya Nyaya Sanhita, 2023 is an offence that punishes agreements to commit unlawful acts or lawful acts by unlawful means. The essence of the offence lies in the meeting of minds between two or more persons. Since conspiracies are generally planned in secrecy and pose a serious threat to public order and security, the law imposes strict punishment on conspirators even before the intended offence is actually committed. Thus, criminal conspiracy serves as an important tool for preventing organized and planned criminal activities.

Q. Explain the Offences Relating to Marriage under the Bharatiya Nyaya Sanhita (BNS), 2023.

Answer

Introduction

Marriage is a sacred and legally recognized institution in society. To protect the rights of spouses and maintain the sanctity of marriage, the Bharatiya Nyaya Sanhita, 2023 contains various provisions dealing with offences relating to marriage. These provisions punish acts such as dowry death, deceitful marriage, bigamy, fraudulent marriage ceremonies, cruelty by husband or relatives, and other offences affecting married women. The offences relating to marriage are mainly covered under **Sections 80 to 86 of the BNS, 2023**.

1. Dowry Death (Section 80)

Dowry death is one of the most serious offences against married women. It occurs when a woman dies under unnatural circumstances due to harassment or cruelty related to dowry demands.

Essential Ingredients

To constitute dowry death, the following conditions must be satisfied:

1. The death of a woman must be caused by burns, bodily injury, or occur otherwise than under normal circumstances.
2. Such death must occur within **seven years of her marriage**.
3. The woman must have been subjected to cruelty or harassment by her husband or his relatives.
4. Such cruelty or harassment must be in connection with a demand for dowry.
5. The cruelty or harassment must have occurred **soon before her death**.

Punishment

The offender shall be punished with:

- Imprisonment for a term not less than **seven years**, and
- Which may extend to **imprisonment for life**.

Case Law: Kans Raj v. State of Punjab

Judgment

The Supreme Court held that when a woman dies under suspicious circumstances within seven years of marriage and there is evidence of dowry-related harassment soon before her death, the offence of dowry death is established.

2. Cohabitation Caused by Deceitful Inducement of Belief of Lawful Marriage (Section 81)

A man commits this offence when he deceitfully induces a woman to believe that she is lawfully married to him and causes her to cohabit or have sexual intercourse with him on that belief.

Essential Ingredients

- The accused must be a man.
- The woman is induced to believe that she is legally married to him.
- Such belief is created by deceit.
- Cohabitation or sexual intercourse takes place because of that belief.

Punishment

- Imprisonment up to **10 years**
- Fine

3. Marrying Again During Lifetime of Husband or Wife (Bigamy) – Section 82

Bigamy means contracting a second marriage while the first spouse is still living and the first marriage is legally valid.

Essential Ingredients

- The accused has a living spouse.
- The first marriage is valid.
- The accused contracts another marriage.
- The second marriage is void because of the subsistence of the first marriage.

Punishment

- Imprisonment up to **7 years**
- Fine

Concealment of Former Marriage

If the previous marriage is concealed from the person with whom the second marriage is contracted:

Punishment

- Imprisonment up to **10 years**
- Fine

4. Marriage Ceremony Fraudulently Gone Through Without Lawful Marriage (Section 83)

This offence is committed when a person dishonestly or fraudulently undergoes a marriage ceremony knowing that no lawful marriage is thereby created.

Essential Ingredients

- A marriage ceremony is performed.
- The accused knows that the marriage is not legally valid.
- The ceremony is conducted fraudulently or dishonestly.

Punishment

- Imprisonment up to **7 years**
- Fine

Illustration

A person knowingly performs a marriage ceremony despite being legally incapable of entering into a valid marriage and conceals the fact from the other party.

5. Cruelty by Husband or Relatives of Husband (Section 85)

This section protects married women from physical and mental cruelty inflicted by the husband or his relatives.

Meaning of Cruelty

Cruelty includes:

(a) Wilful Conduct

Any conduct likely to:

- Drive a woman to commit suicide; or
- Cause grave injury to her life, limb, or mental or physical health.

(b) Harassment for Dowry

Harassment with the intention of compelling the woman or her relatives to meet unlawful demands for property or valuable security.

Punishment

- Imprisonment up to **3 years**
- Fine

Case Law: Arnesh Kumar v. State of Bihar

Judgment

The Supreme Court laid down guidelines regarding arrests in cruelty cases to prevent misuse while ensuring protection for genuine victims.

Conclusion

The Bharatiya Nyaya Sanhita, 2023 contains important provisions relating to marriage under Sections 80 to 86. These provisions deal with dowry death, deceitful marriage, bigamy, fraudulent marriage ceremonies, enticing married women, cruelty by husband or relatives, and abetment of suicide of married women. The primary objective of these provisions is to protect the dignity, safety, and rights of married women, preserve the sanctity of marriage, and punish those who misuse the marital relationship for unlawful purposes.

Unit 3

Q. Explain the Circumstances Under Which Culpable Homicide Amounts to Murder under the Bharatiya Nyaya Sanhita, 2023.

Introduction

The Bharatiya Nyaya Sanhita, 2023 classifies offences affecting human life into different categories based on the seriousness of the act and the intention of the offender. Among these offences, **culpable homicide** and **murder** are the most important. Although every murder is culpable homicide, every culpable homicide is not murder. The distinction depends upon the degree of intention and knowledge involved in causing death.

Culpable homicide is defined under **Section 100 of the BNS, 2023**, while the circumstances under which culpable homicide amounts to murder are provided under **Section 101**.

Meaning of Culpable Homicide

A person commits culpable homicide if he 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 his act is likely to cause death.

Thus, culpable homicide refers to causing the death of a person with intention or knowledge.

Example

If A strikes B on the head with a heavy iron rod knowing that such injury is likely to cause death and B dies, A commits culpable homicide.

Circumstances Under Which Culpable Homicide Amounts to Murder

According to **Section 101 of the Bharatiya Nyaya Sanhita, 2023**, culpable homicide amounts to murder in the following circumstances:

1. Intention to Cause Death

When the act causing death is done with the direct intention of causing death, the offence amounts to murder.

The offender deliberately intends to kill the victim and performs the act to achieve that result.

Example

If A intentionally shoots B with a gun to kill him and B dies, A is guilty of murder.

2. Intention to Cause Such Bodily Injury as the Offender Knows is Likely to Cause Death

When the offender intentionally causes a bodily injury and knows that the particular injury is likely to cause the death of that specific person, the offence amounts to murder.

The special knowledge of the offender regarding the condition of the victim is important.

Example

If A knows that B suffers from a serious heart disease and intentionally gives B a severe blow on the chest, causing death, A commits murder.

3. Intention to Cause Bodily Injury Sufficient in the Ordinary Course of Nature to Cause Death

When the offender intentionally causes a bodily injury which is sufficient in the ordinary course of nature to cause death, the offence amounts to murder.

The focus is on the seriousness of the injury inflicted.

Example

If A intentionally stabs B in the heart with a knife and B dies, the injury is sufficient in the ordinary course of nature to cause death. Therefore, A is guilty of murder.

Case Law: Virsa Singh v. State of Punjab

Facts of the Case

The accused inflicted a spear injury on the abdomen of the deceased. The injury was serious and resulted in death.

Judgment

The Supreme Court held that if the injury is intentionally inflicted and is sufficient in the ordinary course of nature to cause death, the offence amounts to murder.

4. Knowledge that the Act is So Imminently Dangerous that it Must, in All Probability, Cause Death

When a person commits an act which is so dangerous that he knows it will probably cause death or such bodily injury as is likely to cause death, and commits the act without any lawful excuse, the offence amounts to murder.

Example

If A fires a gun into a crowded market knowing that someone is likely to die, and a person dies as a result, A commits murder.

Another example is throwing a bomb into a crowd or derailing a train knowing that death is likely to occur.

Exceptions Where Culpable Homicide Does Not Amount to Murder

Even if the case falls within Section 101, it may not amount to murder in certain exceptional situations:

1. Grave and Sudden Provocation

When the offender loses self-control due to grave and sudden provocation and causes death.

Example

A suddenly finds B assaulting his spouse and, in a fit of anger, causes B's death.

2. Exceeding the Right of Private Defence

When a person exceeds the limits of private defence while acting in good faith.

Example

A is attacked by B. While defending himself, A uses excessive force and causes B's death.

3. Act of a Public Servant

When a public servant exceeds his powers while acting in good faith for the advancement of justice.

4. Sudden Fight

When death is caused during a sudden quarrel without premeditation and without taking undue advantage.

Example

During a sudden street fight, A strikes B in the heat of passion and B dies.

5. Consent of the Deceased

When a person above eighteen years voluntarily consents to suffer the risk of death.

Distinction Between Culpable Homicide and Murder

Culpable Homicide	Murder
Less serious offence	More serious offence
Death is likely	Death is intended or highly probable
Lower degree of intention or knowledge	Higher degree of intention or knowledge
Punishment is comparatively less	Punishment is more severe

Case Law: State of Andhra Pradesh v. Rayavarapu Punnayya

Judgment

The Supreme Court observed that:

"Culpable homicide is the genus and murder is the species."

This means that all murders are culpable homicides, but all culpable homicides are not murders.

Conclusion

Thus, culpable homicide amounts to murder when the act is committed with the intention of causing death, with the intention of causing a bodily injury known to be likely to cause death, with the intention of causing an injury sufficient in the ordinary course of nature to cause death, or with the knowledge that the act is so imminently dangerous that it will probably cause death. However, in certain exceptional circumstances such as grave and sudden provocation, sudden fight, or exceeding the right of private defence, culpable homicide may not amount to murder. Therefore, the distinction between culpable homicide and murder depends upon the degree of intention, knowledge, and surrounding circumstances of the case.

Q. What is Hurt? Explain the Circumstances Under Which Hurt Becomes Grievous Hurt.

Answer

Introduction

The Bharatiya Nyaya Sanhita, 2023 recognizes offences affecting the human body and provides punishment for causing bodily pain, disease, or infirmity to another person. Such offences are classified into **hurt** and **grievous hurt** depending upon the seriousness of the injury. While hurt refers to simple bodily injury, grievous hurt refers to injuries of a serious nature which have severe consequences on the victim.

Meaning of Hurt

According to **Section 114 of the Bharatiya Nyaya Sanhita, 2023**, a person is said to cause hurt when he causes:

- Bodily pain; or
- Disease; or
- Infirmity

to any person.

Thus, even a slight bodily injury causing pain is sufficient to constitute hurt.

Example

If A slaps B causing physical pain, A is said to have caused hurt.

Similarly, if A knowingly spreads an infectious disease to B, resulting in illness, A causes hurt.

Essential Ingredients of Hurt

The following essentials are necessary to constitute hurt:

1. Causing Bodily Pain

There must be physical pain suffered by the victim.

2. Causing Disease

The act must result in a disease affecting the victim.

3. Causing Infirmity

There must be temporary or permanent impairment of any bodily function.

Example

If A administers a substance causing temporary loss of eyesight to B, A causes hurt.

Punishment for Hurt

Under **Section 115 of the Bharatiya Nyaya Sanhita, 2023**, voluntarily causing hurt is punishable with imprisonment, fine, or both.

Circumstances Under Which Hurt Becomes Grievous Hurt

Not every hurt amounts to grievous hurt. Hurt becomes grievous hurt when it falls within any of the categories specified under **Section 116 of the Bharatiya Nyaya Sanhita, 2023**.

The following are the circumstances under which hurt becomes grievous hurt:

1. Emasculation

Emasculation means deprivation of a man's masculine power or reproductive capacity.

Example

If A intentionally injures B resulting in the permanent loss of his reproductive ability, it amounts to grievous hurt.

2. Permanent Privation of Sight of Either Eye

Permanent loss of vision in one or both eyes constitutes grievous hurt.

Example

If A throws acid into B's eyes causing permanent blindness in one eye, it amounts to grievous hurt.

3. Permanent Privation of Hearing of Either Ear

Permanent loss of hearing in one or both ears is grievous hurt.

Example

If A causes an explosion near B resulting in permanent deafness, A commits grievous hurt.

4. Privation of Any Member or Joint

Loss of any limb or joint amounts to grievous hurt.

Example

If A cuts off B's finger or hand, the injury amounts to grievous hurt.

5. Destruction or Permanent Impairment of Powers of Any Member or Joint

Even if the limb remains attached to the body, permanent loss of its normal function amounts to grievous hurt.

Example

If A injures B's leg resulting in permanent paralysis, it amounts to grievous hurt.

6. Permanent Disfiguration of Head or Face

Any permanent injury affecting the appearance of the head or face constitutes grievous hurt.

Example

If A throws acid on B's face causing permanent scars, the offence amounts to grievous hurt.

7. Fracture or Dislocation of a Bone or Tooth

Any fracture or dislocation, however small, is treated as grievous hurt.

Example

If A breaks B's arm during an assault, A causes grievous hurt.

Similarly, breaking a tooth also amounts to grievous hurt.

8. Any Hurt Which Endangers Life or Causes Severe Suffering

Any injury which:

- Endangers life; or
- Causes the victim to suffer severe bodily pain for twenty days; or

- Makes the victim unable to follow ordinary pursuits for twenty days,

amounts to grievous hurt.

Example

If A stabs B and the injury puts B's life in danger, it amounts to grievous hurt.

Similarly, if B remains hospitalized and unable to perform normal activities for more than twenty days, the injury becomes grievous hurt.

Punishment for Grievous Hurt

Under **Section 117 of the Bharatiya Nyaya Sanhita, 2023**, voluntarily causing grievous hurt is punishable with imprisonment and fine. The punishment is more severe because of the serious nature of the injury caused.

Conclusion

Hurt means causing bodily pain, disease, or infirmity to another person and is defined under Section 114 of the Bharatiya Nyaya Sanhita, 2023. However, hurt becomes grievous hurt when it results in serious injuries such as emasculation, permanent loss of sight or hearing, loss of a limb or joint, permanent disfigurement, fracture or dislocation of bone or tooth, or injuries endangering life. Since grievous hurt causes serious and often permanent harm to the victim, the law prescribes stricter punishment for such offences.

Q. Define Wrongful Restraint. Distinguish it from Wrongful Confinement with Suitable Illustrations.

Answer

Introduction

The right to move freely from one place to another is an important aspect of personal liberty. Any unlawful interference with this freedom constitutes an offence under the Bharatiya Nyaya Sanhita, 2023. The offences of **Wrongful Restraint** and **Wrongful Confinement** are provided under **Sections 126 and 127 of the BNS, 2023** respectively. While wrongful restraint involves partial

obstruction of a person's movement, wrongful confinement involves complete restriction of a person's liberty within certain limits. Both offences are punishable because they violate an individual's freedom of movement.

Wrongful Restraint

Definition

According to **Section 126 of the Bharatiya Nyaya Sanhita, 2023**, whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed is said to commit **Wrongful Restraint**.

The essence of the offence is unlawful obstruction of a person's movement.

Essential Ingredients

The following essentials are necessary to constitute wrongful restraint:

1. There must be a voluntary obstruction.
2. The obstruction must prevent a person from proceeding.
3. The person obstructed must have a legal right to proceed in that direction.

Illustration

A is walking on a public road. B stands across the road and prevents A from moving forward. A has a right to use the road, and B's act prevents him from proceeding. B commits wrongful restraint.

Punishment

Wrongful restraint is punishable with simple imprisonment, fine, or both.

Wrongful Confinement

Definition

According to **Section 127 of the Bharatiya Nyaya Sanhita, 2023**, whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said to commit **Wrongful Confinement**.

Wrongful confinement is an aggravated form of wrongful restraint.

Essential Ingredients

The following essentials are required:

1. There must be wrongful restraint.
2. The victim must be confined within certain limits.
3. The victim must be prevented from moving beyond those limits.
4. The confinement must be unlawful.

Illustration

A locks B inside a room and does not allow him to come out. B is prevented from moving beyond the four walls of the room. A commits wrongful confinement.

Punishment

Wrongful confinement is punishable with imprisonment, fine, or both. The punishment is more severe because the restriction on personal liberty is greater.

Distinction Between Wrongful Restraint and Wrongful Confinement

1. Meaning

Wrongful restraint means preventing a person from proceeding in a particular direction in which he has a right to proceed.

Wrongful confinement means completely restricting a person within certain limits and preventing him from going beyond those limits.

2. Nature of Restriction

In wrongful restraint, the restriction is only partial because the person is prevented from moving in one particular direction.

In wrongful confinement, the restriction is complete because the person cannot move beyond the area in which he is confined.

3. Freedom of Movement

In wrongful restraint, some freedom of movement still remains available to the victim.

In wrongful confinement, all freedom of movement beyond the prescribed limits is taken away.

4. Seriousness of the Offence

Wrongful restraint is a less serious offence because it involves only partial interference with personal liberty.

Wrongful confinement is a more serious offence because it results in complete deprivation of liberty.

5. Scope

Wrongful restraint is a broader offence.

Wrongful confinement is a specific and aggravated form of wrongful restraint.

6. Illustration

If A blocks a doorway and prevents B from entering a room, A commits wrongful restraint.

If A locks B inside the room and prevents him from leaving, A commits wrongful confinement.

Conclusion

Wrongful restraint and wrongful confinement are offences against personal liberty recognized under Sections 126 and 127 of the Bharatiya Nyaya Sanhita, 2023. Wrongful restraint involves preventing a person from proceeding in a particular direction, whereas wrongful confinement involves complete restriction of a person's movement within certain limits. Therefore, wrongful confinement is a more serious offence as it results in total deprivation of personal freedom.

Q. What is Kidnapping? Distinguish it from Abduction.

Answer

Introduction

The Bharatiya Nyaya Sanhita, 2023 protects the liberty and security of individuals, especially minors and persons of unsound mind. Among the offences affecting the human body, **Kidnapping**

and **Abduction** are important offences relating to the unlawful removal of a person from one place to another. These offences are dealt with under **Sections 137 and 138 of the BNS, 2023**. Although both involve taking away a person, they differ in their nature, ingredients, and legal consequences.

Kidnapping

Definition

According to **Section 137 of the Bharatiya Nyaya Sanhita, 2023**, kidnapping is of two kinds:

1. **Kidnapping from India**
2. **Kidnapping from Lawful Guardianship**

Kidnapping from lawful guardianship occurs when a person takes or entices a minor or a person of unsound mind out of the keeping of the lawful guardian without the consent of such guardian.

Essential Ingredients

1. The person kidnapped must be a minor or a person of unsound mind.
2. There must be taking or enticing.
3. The person must be removed from the custody of the lawful guardian.
4. Such removal must be without the consent of the guardian.

Illustration

A takes away a 15-year-old boy from the custody of his parents without their consent. A commits kidnapping from lawful guardianship.

Abduction

Definition

According to **Section 138 of the Bharatiya Nyaya Sanhita, 2023**, a person commits abduction when he compels or induces another person by force or deceitful means to go from any place.

Essential Ingredients

1. There must be force or deceitful means.
2. The person must be compelled or induced.
3. The person must move from one place to another.

Illustration

A threatens B with a knife and forces him to accompany him to another town. A commits abduction.

Distinction Between Kidnapping and Abduction

1. Meaning

Kidnapping means taking or enticing a minor or person of unsound mind from the lawful custody of a guardian without consent.

Abduction means compelling or inducing any person by force or deceitful means to move from one place to another.

2. Age of the Person

In kidnapping, the victim must be a minor or a person of unsound mind.

In abduction, the victim may be a person of any age.

3. Consent

In kidnapping, the consent of the minor is immaterial. The consent of the lawful guardian is important.

In abduction, the absence of free consent is essential, and force or deceit must be used.

4. Means Employed

In kidnapping, the offence is committed by taking or enticing.

In abduction, the offence is committed by force or deceitful means.

5. Nature of Offence

Kidnapping is a complete and substantive offence by itself.

Abduction becomes punishable only when it is committed with a specific criminal intention such as murder, ransom, forced marriage, or wrongful confinement.

6. Continuity of Offence

Kidnapping is completed as soon as the minor or person of unsound mind is removed from lawful guardianship.

Abduction is a continuing offence as long as the person is being moved from one place to another.

7. Consent of Victim

In kidnapping, the consent of the victim is irrelevant.

In abduction, the victim's consent obtained through force or deceit is not valid.

Illustration

If A persuades a 14-year-old girl to leave her parents' house and accompany him without the consent of her parents, A commits kidnapping.

If A threatens an adult woman and forces her to accompany him to another city, A commits abduction.

Conclusion

Kidnapping and abduction are distinct offences under the Bharatiya Nyaya Sanhita, 2023. Kidnapping involves taking a minor or person of unsound mind from lawful guardianship without consent, whereas abduction involves compelling or inducing any person by force or deceitful means to move from one place to another. While kidnapping is an independent offence, abduction becomes punishable when committed with a particular unlawful object. Therefore, the two offences differ significantly in their ingredients, scope, and legal consequences.

Q. What is Force? When Does It Become Criminal Force? Explain.

Answer

Introduction

The Bharatiya Nyaya Sanhita, 2023 protects every individual against unlawful interference with his or her body and personal liberty. The provisions relating to **Force, Criminal Force, Assault and related offences are contained in Sections 128 to 136 of the BNS, 2023**. While force may be lawful or unlawful, criminal force involves the intentional use of force without consent for causing injury, fear, or annoyance. These provisions aim to safeguard the physical security and dignity of individuals.

Meaning of Force

According to **Section 128 of the Bharatiya Nyaya Sanhita, 2023**, a person is said to use force against another if he causes motion, change of motion, or cessation of motion to that person, or to any substance, so that the substance comes into contact with any part of that person's body, clothing, or anything carried by him.

Force may be applied directly by bodily power, indirectly through an object, or even by causing an animal to move.

Thus, force simply means causing physical movement or physical contact with another person.

Example

If A pushes B and causes him to move backward, A uses force.

If A throws a stone at B and it strikes him, A uses force.

If A sets a dog upon B causing the dog to attack him, A uses force through an animal.

Essential Ingredients of Force

The following ingredients are necessary:

1. There must be motion, change of motion, or cessation of motion.
2. Such motion must be caused by the accused.
3. The act may be direct or indirect.
4. The motion must affect another person or bring an object into contact with that person.

When Does Force Become Criminal Force?

According to **Section 129 of the Bharatiya Nyaya Sanhita, 2023**, force becomes **criminal force** when a person intentionally uses force against another person without that person's consent:

- In order to commit an offence; or
- With the intention of causing injury, fear, or annoyance; or
- Knowing that such force is likely to cause injury, fear, or annoyance.

Therefore, every criminal force is force, but every force is not criminal force.

Essential Ingredients of Criminal Force

1. Use of Force

There must be use of force as defined under Section 128.

2. Intention

The force must be used intentionally and voluntarily.

3. Absence of Consent

The force must be used without the consent of the person against whom it is applied.

4. Criminal Object

The force must be used:

- To commit an offence; or
- To cause injury; or
- To create fear; or
- To cause annoyance.

Circumstances Under Which Force Becomes Criminal Force

1. Force Used to Commit an Offence

When force is used to facilitate the commission of an offence, it becomes criminal force.

Example

A pushes a security guard in order to enter a building and commit theft. The force used is criminal force.

2. Force Used to Cause Injury

When force is applied with the intention of causing bodily harm, it becomes criminal force.

Example

A intentionally slaps B during an argument causing pain and humiliation. A commits criminal force.

3. Force Used to Cause Fear

When force is used to create fear in the mind of another person, it amounts to criminal force.

Example

A forcibly grabs B by the collar and threatens him. The act amounts to criminal force.

4. Force Used to Cause Annoyance

Even where no physical injury is caused, force becomes criminal force if it is used to annoy another person.

Example

A deliberately throws dirty water on B to insult and annoy him. This amounts to criminal force.

5. Knowledge of Likely Consequences

Force also becomes criminal force when the accused knows that his act is likely to cause injury, fear, or annoyance.

Example

A throws a handful of dust at B knowing that it will cause irritation and annoyance. A uses criminal force.

Distinction Between Force and Criminal Force

1. Meaning

Force means causing motion, change of motion, or cessation of motion to another person or to any object which comes into contact with that person. Mere application of force does not necessarily amount to an offence.

Criminal Force, on the other hand, means intentionally using force against another person without that person's consent in order to commit an offence or to cause injury, fear, or annoyance.

2. Intention

In the case of **Force**, the presence of criminal intention is not necessary. A person may use force for a lawful purpose without any wrongful intention.

In the case of **Criminal Force**, criminal intention or knowledge is essential. The force must be used with the intention of causing injury, fear, annoyance, or for committing an offence.

3. Consent

Force may be used with the consent of the person concerned. When consent is present, the use of force is generally lawful.

Criminal Force is always used without the consent of the person against whom it is applied. Absence of consent is one of its essential ingredients.

4. Nature

Force may be lawful or unlawful depending upon the circumstances. Every use of force is not prohibited by law.

Criminal Force is always unlawful because it violates the personal liberty and security of another person.

5. Punishment

Force by itself is not punishable under law unless it is accompanied by unlawful intention or criminal elements.

Criminal Force is punishable under the Bharatiya Nyaya Sanhita, 2023 because it involves the intentional and unlawful use of force against another person.

Illustration

A doctor holds the hand of a patient during treatment with the patient's consent. This is merely force and not criminal force.

However, if A forcibly catches B's hand during a quarrel to threaten or intimidate him, A uses criminal force because the act is intentional, without consent, and intended to cause fear and annoyance.

Conclusion

Thus, force and criminal force are closely related concepts, but they differ in their nature and legal consequences. Force simply refers to causing motion or physical contact, whereas criminal force involves the intentional and unlawful use of force without consent to cause injury, fear, annoyance,

or to commit an offence. Therefore, every criminal force is force, but every force is not criminal force.

Unit 4

Q. Explain the offences against the State under the Bharatiya Nyaya Sanhita, 2023.

Q. What is meant by waging war against the Government of India? Explain the relevant provisions and punishment under the BNS, 2023.

Q. Discuss the provisions relating to acts endangering the sovereignty, unity and integrity of India.

1. Waging War Against the Government of India – Section 147

Section 147 punishes any person who wages war, attempts to wage war, or abets the waging of war against the Government of India.

The offence is considered one of the gravest offences against the State because it threatens the sovereignty and security of the nation.

Definition

Whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, commits an offence under this section.

Essential Ingredients

- There must be waging of war or attempt to wage war
- The act must be against the Government of India
- The accused may:
 - directly participate,
 - attempt, or
 - abet the act

Illustration

- A supplies weapons and actively helps a militant organisation that is fighting against the Government of India. Even if A does not directly fight, he is guilty of abetting the waging of war.
- A joins an armed group which attacks Government military camps with weapons in order to overthrow the Government of India. A is guilty of waging war against the Government of India.
- A and several others organise an armed rebellion against the Government and attack public authorities to challenge the authority of the State. This amounts to waging war under Section 147.

Punishment

- Death, or
- Imprisonment for life, and
- Fine

Section 148 – Conspiracy to Wage War Against the Government of India

Section 148 deals with conspiracy to wage war against the Government of India. Even planning or agreeing with others to wage war or to use criminal force against the Government is punishable under this section.

The offence is complete as soon as the conspiracy or agreement is made. Actual war or violence need not take place.

Definition

Whoever conspires:

- to commit offences punishable under Section 147, or
- to overawe the Central Government or any State Government by criminal force or show of criminal force,

commits an offence under Section 148.

Essential Ingredients

- There must be a conspiracy or agreement between two or more persons
- The conspiracy must relate to:
 - waging war, or
 - using criminal force against Government
- Intention to threaten or overpower Government authority

Explanation

Under this section, it is not necessary that any illegal act should actually occur. Mere agreement is sufficient to constitute the offence.

Punishment

- Imprisonment for life, or
- Imprisonment up to ten years, and
- Fine

Section 149 – Collecting Arms with Intention of Waging War

Section 149 punishes preparation for war against the Government of India. A person who gathers weapons, ammunition, or men with intention to wage war commits an offence even if war has not yet started.

Definition

Whoever collects men, arms, ammunition, or otherwise prepares to wage war against the Government of India commits an offence under this section.

Essential Ingredients

- Collection of:
 - men,
 - arms,
 - ammunition, or
 - preparation for war
- Intention to wage war against the Government of India

Punishment

- Imprisonment for life, or
- Imprisonment up to ten years, and
- Fine

Section 150 – Concealing Design to Wage War

Section 150 punishes a person who knowingly hides information relating to plans or designs to wage war against the Government of India. The law imposes liability on persons who intentionally conceal such dangerous activities.

Definition

Whoever conceals the existence of a design to wage war against the Government of India, intending or knowing that such concealment is likely to facilitate the waging of war, commits an offence under this section.

Essential Ingredients

- There must exist a plan or design to wage war
- The accused must conceal such design by:
 - act, or
 - illegal omission
- Intention or knowledge that concealment may help the war effort

Object of the Section

The object is to prevent assistance or support to anti-national activities through silence or concealment.

Punishment

- Imprisonment up to ten years, and
- Fine

Section 151 – Assaulting President or Governor

Section 151 protects constitutional authorities such as the President of India and Governors of States from assault, wrongful restraint, or criminal force intended to influence their official powers.

Definition

Whoever assaults, wrongfully restrains, or overawes the President or Governor with intent to compel or restrain the lawful exercise of official powers commits an offence under this section.

Essential Ingredients

- Assault, restraint, or criminal force
- Against:
 - President of India, or
 - Governor of a State
- Intention to compel or prevent lawful exercise of powers

Punishment

- Imprisonment up to seven years, and
- Fine

Section 152 – Act Endangering Sovereignty, Unity and Integrity of India

Section 152 punishes acts that threaten the sovereignty, unity, and integrity of India. The section mainly targets activities that promote secession, armed rebellion, separatism, or subversive activities against the nation.

The offence may be committed through spoken words, written words, signs, electronic communication, financial support, or any other means.

Definition

Whoever purposely or knowingly:

- excites or attempts to excite secession,
- armed rebellion,
- separatist activities,
- subversive activities, or
- endangers the sovereignty, unity, and integrity of India,

commits an offence under this section.

Essential Ingredients

- Use of words, signs, visible representation, electronic communication, financial means, or other acts
- Intention or knowledge
- Encouragement of:
 - secession,
 - armed rebellion,
 - separatism,
 - subversive activities

- Threat to national unity and integrity

Explanation

Lawful criticism of Government policies or administrative actions with the intention of seeking change through lawful means does not amount to an offence, provided it does not incite rebellion or separatist activities.

Punishment

- Imprisonment for life, or
- Imprisonment up to seven years, and
- Fine

Object of the Section

- To protect national sovereignty and unity
- To prevent anti-national activities
- To maintain integrity and security of India

Section 153 – Waging War Against Friendly Foreign State

Section 153 punishes persons who wage war or attempt to wage war against a foreign State that is at peace with the Government of India.

The section protects India's friendly international relations.

Definition

Whoever wages war against any foreign State at peace with the Government of India, or attempts or abets such war, commits an offence.

Essential Ingredients

- Waging war, attempt, or abetment
- Against a foreign State
- Such State must be at peace with India

Punishment

- Imprisonment for life, or
- Imprisonment up to seven years, or

- Fine

Object of the Section

- To maintain peaceful foreign relations
- To prevent hostile activities against friendly nations

Section 154 – Depredation on Territories of Foreign State

Section 154 punishes acts of robbery, plunder, or violent attack on territories of a foreign State friendly with India.

Definition

Whoever commits or prepares to commit depredation on territories of any foreign State at peace with India commits an offence.

Essential Ingredients

- Commission or preparation of depredation
- Against territories of friendly foreign State
- Intention to commit violent plunder or attack

Punishment

- Imprisonment up to seven years
- Fine
- Forfeiture of property used in committing offence

Object of the Section

- To prevent unlawful attacks on foreign territories
- To preserve international peace and harmony

Section 155 – Receiving Property Taken by War or Depredation

Section 155 punishes persons who knowingly receive property obtained through war or depredation mentioned in Sections 153 and 154.

Definition

Whoever receives property knowing that it was obtained through offences relating to war or depredation commits an offence.

Essential Ingredients

- Receiving property
- Knowledge that property was illegally obtained through war or depredation

Punishment

- Imprisonment up to seven years
- Fine
- Forfeiture of property received

Object of the Section

- To discourage support for unlawful war activities
- To prevent use and circulation of illegally obtained property

Section 156 – Public Servant Allowing Prisoner of State or War to Escape

Meaning

Section 156 punishes a public servant who intentionally allows a State prisoner or prisoner of war to escape from custody.

Definition

Whoever, being a public servant having custody of a State prisoner or prisoner of war, voluntarily allows such prisoner to escape commits an offence.

Essential Ingredients

- Accused must be a public servant
- Custody of State prisoner or prisoner of war
- Voluntary or intentional escape allowed

Punishment

- Imprisonment for life, or
- Imprisonment up to ten years, and
- Fine

Object of the Section

- To ensure strict custody of dangerous prisoners
- To maintain national security and discipline

Section 157 – Public Servant Negligently Allowing Escape

Section 157 punishes negligent conduct of a public servant resulting in escape of a State prisoner or prisoner of war.

Definition

Whoever negligently allows a State prisoner or prisoner of war to escape from confinement commits an offence.

Essential Ingredients

- Accused must be a public servant
- Custody of prisoner
- Negligence leading to escape

Punishment

- Simple imprisonment up to three years
- Fine

Object of the Section

- To ensure careful performance of duty by public servants
- To prevent negligence affecting national security

Section 158 – Aiding Escape of State Prisoner or Prisoner of War

Section 158 punishes persons who help, rescue, harbour, or assist State prisoners or prisoners of war in escaping lawful custody.

Definition

Whoever knowingly:

- aids escape,
- rescues,
- harbours,
- conceals, or
- resists recapture of a State prisoner or prisoner of war,

commits an offence under this section.

Essential Ingredients

- Knowledge of prisoner's status
- Assistance or harbouring
- Escape from lawful custody

Explanation

A prisoner on parole beyond permitted limits is also treated as escaping lawful custody.

Punishment

- Imprisonment for life, or
- Imprisonment up to ten years, and
- Fine

Object of the Section

- To prevent escape of dangerous prisoners
- To maintain security and lawful custody
- To punish persons assisting such escape

Sedition

Introduction

Sedition is a serious criminal offence involving any act, speech, writing, or conduct that promotes hatred, disaffection, or attempts to excite violence against the Government established by law. The main objective of sedition law is to protect the sovereignty, unity, and stability of the State by preventing activities that may disturb public order or encourage rebellion against the Government.

In Indian law, sedition was earlier covered under **Section 124A of the Indian Penal Code (IPC)**. However, with the introduction of the **Bharatiya Nyaya Sanhita, 2023 (BNS)**, the concept has been redefined. The focus has shifted from punishing criticism of the Government to addressing acts that threaten the **sovereignty, unity, and integrity of India**.

It is important to note that sedition law does not prohibit criticism of the Government. Under **Article 19(1)(a)**, citizens have the right to freedom of speech and expression. However, this right is subject to reasonable restrictions under **Article 19(2)**, particularly when speech incites violence or public disorder.

Thus, sedition law balances two interests:

- Protection of national security and public order
- Protection of democratic freedom of speech

Meaning of Sedition

Sedition means encouraging people to hate, oppose, or rebel against the Government established by law through words, speeches, writings, signs, or other acts. It refers to acts or expressions that create disloyalty or discontent against the Government and may disturb public order or threaten the security of the State.

In simple words, sedition means trying to create hatred or rebellion against the Government.

Definition of Sedition

Under Section 124-A of the Indian Penal Code, sedition was defined as:

“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 excite disaffection towards the Government established by law in India, commits the offence of sedition.”

The word “disaffection” includes disloyalty and feelings of enmity against the Government. However, lawful criticism of Government policies without inciting violence or public disorder does not amount to sedition.

Examples of Sedition

1. A person gives a public speech asking people to take up weapons and overthrow the Government of India. This amounts to sedition because it encourages rebellion and violence against the Government.

2. A group spreads messages on social media encouraging people to wage war against the State and create armed rebellion. Such acts may amount to sedition.
3. A person publishes articles or speeches that openly incite people to attack Government institutions and create public disorder against the State. This can amount to sedition.

HISTORICAL BACKGROUND OF SEDITION

Origin of Sedition in England

The law of sedition originated in **England**. In early English law, any speech or writing against the King or Government was treated as a serious offence because the King was considered supreme. The offence of “seditious libel” developed to punish persons who created hatred, contempt, or discontent against the Government.

Later, laws such as the Criminal Libel Act, 1819 strengthened sedition law by allowing seizure and destruction of seditious materials. However, after 1832, English courts narrowed the scope of sedition and held that only direct incitement to violence or disorder should be punished.

Introduction of Sedition in India

In India, the law of sedition was introduced during British rule. The original draft of the Indian Penal Code prepared by Thomas Babington Macaulay in 1837 contained a provision relating to sedition. However, when the IPC was enacted in 1860, the provision was accidentally omitted.

Later, the British Government felt the need to suppress revolutionary activities and political opposition. Therefore, Section 124-A was inserted into the Indian Penal Code in **1870 by Sir James Stephen**.

Purpose Behind Introducing Sedition

The main object behind introducing sedition law was to control nationalist movements and suppress voices against British rule. The British administration used this law as a weapon to silence criticism and opposition.

The law was particularly introduced to stop revolutionary activities, Wahabi movements, and growing political awareness among Indians.

Use of Sedition Against Freedom Fighters

The British Government frequently used sedition law against Indian freedom fighters and nationalist leaders. Prominent leaders such as Bal Gangadhar Tilak and Mahatma Gandhi were prosecuted under Section 124-A for criticizing British policies and demanding independence.

Mahatma Gandhi described sedition as:

“The prince among the political sections of the IPC designed to suppress the liberty of the citizen.”

Amendment of 1898

In 1898, Section 124-A was amended to widen its scope. The words “hatred” and “contempt” against the Government were added, making the law stricter. As a result, even strong criticism of the Government could be treated as sedition.

Sedition After Independence

After independence in 1947, sedition law continued to remain in the Indian Penal Code. However, many scholars and jurists criticized the provision because it affected the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India.

The judiciary later restricted its scope by holding that only acts involving incitement to violence or public disorder would amount to sedition.

The history of sedition shows that it was originally a colonial law introduced to suppress dissent and silence opposition against the ruling Government. Even after independence, the law remained controversial because of its impact on democratic freedoms and fundamental rights.

Kedar Nath Singh v. State of Bihar

Facts of the Case

Kedar Nath Singh was a member of the Forward Communist Party in Bihar. During a public political meeting, he delivered a speech criticizing the ruling Congress Government and Government officials. In his speech, he used strong and harsh words against the Government and accused it of corruption and exploitation of poor people.

The Government considered the speech inflammatory and charged him under Section 124-A of the Indian Penal Code for the offence of sedition.

Kedar Nath Singh challenged the validity of the sedition law by arguing that Section 124-A violated the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India.

Issue

Whether Section 124-A IPC (Sedition) violated the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India.

Judgment

The Supreme Court upheld the constitutional validity of Section 124-A IPC but limited its scope.

The Court held that:

- Mere criticism of the Government is not sedition.
- Sedition applies only when the speech or expression:
 - incites violence,
 - creates public disorder, or
 - encourages rebellion against the Government.

The Court stated that citizens have the right to criticize Government policies as long as they do not incite violence or disturb public peace.

Thus, the conviction of sedition can arise only when there is intention or tendency to create disorder or violence against the State.

Importance of the Case

- It is the leading and landmark judgment on sedition law in India.
- The case protected freedom of speech and expression.
- It restricted misuse of sedition law by limiting it to acts involving violence or public disorder.

2. Balwant Singh v. State of Punjab (1995)

Facts of the Case

The accused shouted slogans like “**Khalistan Zindabad**” outside a cinema hall shortly after the assassination of Prime Minister Indira Gandhi.

Issue

Whether raising slogans such as “Khalistan Zindabad” amounts to sedition under Section 124A IPC.

Judgment

The Supreme Court held that **mere raising of slogans in a casual manner without any incitement to violence or public disorder does not amount to sedition.**

Ratio Decidendi

There must be **clear evidence of incitement or tendency to create public disorder**; isolated slogan shouting is insufficient.

3. Tara Singh Gopi Chand v. The State (1951)

Facts of the Case

This was one of the earliest post-independence challenges to Section 124A IPC. The petitioner argued that the sedition law violated the fundamental right to freedom of speech.

Issue

Whether Section 124A IPC is constitutionally valid after the adoption of the Indian Constitution.

Judgment

The Punjab High Court initially held that **Section 124A IPC was unconstitutional**, as it violated Article 19(1)(a) (freedom of speech).

This decision was effectively **overruled by the Supreme Court in Kedar Nath Singh (1962)**, which restored the validity of Section 124A with limiting interpretation.

This case represents the early judicial resistance to colonial sedition law before constitutional clarification by the Supreme Court.

Sedition and Freedom of Speech

1. Constituent Assembly Debates and Constitutional Intent

During the framing of the Indian Constitution, there was strong opposition to the inclusion of sedition as a restriction on the freedom of speech and expression under the then Article 13 of the Draft Constitution. Many members of the Constituent Assembly viewed sedition as a colonial legacy used to suppress political dissent during British rule. It was argued that such a provision had no place in a free and democratic India. As a result of this strong opposition, the Constituent Assembly was unanimous in deleting the word “sedition” from the Constitution.

2. Vision of Free Speech in the Constituent Assembly

During the debates, Shri M. Ananthasayanam Ayyangar emphasized the importance of free speech in a democracy. He stated that every citizen must have the fundamental right to criticise the government, expose its faults, and even persuade people to change it, provided it is done without violence. This reflects the intention of the framers that dissent and criticism are essential components of a democratic system, and should not be criminalised.

3. Constitutional Position on Sediton

Consequently, the word “sediton” does not appear in the Indian Constitution. Instead, the Constitution under Article 19(2) permits only “reasonable restrictions” on freedom of speech and expression in the interests of specified grounds such as public order, security of the State, and others. Thus, sediton as a concept was deliberately excluded, and restrictions on speech are constitutionally controlled and limited.

4. Freedom of Speech and Judicial Interpretation – Shreya Singhal Case

In *Shreya Singhal v. Union of India* (2015), the Supreme Court held that freedom of speech and expression is a cardinal value of democracy and is of paramount importance under the constitutional scheme. The Court struck down Section 66A of the Information Technology Act, 2000, as unconstitutional on the ground that it was vague and had a chilling effect on free speech. The judgment reinforced that any restriction on speech must be clear, reasonable, and narrowly tailored.

5. Sediton and Limits of Criticism – Javed Habib Case

In *Javed Habib v. State of Delhi*, the Court clarified that holding an opinion against the Prime Minister, criticizing government actions, or drawing adverse inferences from political speeches does not amount to sediton under Section 124A of the IPC. The Court emphasized that criticism of the government is not only permissible but is the hallmark of a democracy. The essence of democratic governance lies in the ability of citizens to question and criticize those in power.

Reasonable Restrictions on Sediton (Simple Exam Notes)

Sediton is closely connected with the **freedom of speech and expression under Article 19(1)(a)** of the Indian Constitution. However, this right is not absolute. The Constitution under **Article 19(2)** allows the State to impose **reasonable restrictions** in certain situations, including in matters related to sediton.

1. Meaning of Reasonable Restriction

A reasonable restriction means:

- A legal limitation on fundamental rights
- Imposed by the State
- Must be **fair, just, and not excessive**
- Must serve a **public interest or national interest**

2. Reasonable Restrictions Related to Sedition

Under Article 19(2), speech that amounts to sedition can be restricted in the interest of:

(a) Sovereignty and Integrity of India

Any speech or act that:

- threatens the unity of India
- promotes secession
- encourages rebellion

can be restricted.

(b) Security of the State

Speech that:

- incites armed rebellion
 - promotes violent overthrow of Government
- can be restricted.

(c) Public Order

If speech:

- creates riots
 - leads to violence
 - disturbs peace in society
- it can be restricted.

3. Judicial Interpretation (Important Case Law)

Kedar Nath Singh v. State of Bihar (1962)

- Supreme Court upheld sedition law but **narrowed its scope**
- Held that:

- Mere criticism of Government is allowed
- Only **incitement to violence or public disorder** is punishable

This case is the main basis for “reasonable restriction in sedition.”

Balwant Singh v. State of Punjab (1995)

- Mere slogan shouting without violence is not sedition
- No reasonable restriction unless there is real threat to public disorder

Shreya Singhal v. Union of India (2015)

- Restrictions must be **clear and not vague**
- Free speech cannot be restricted unless it directly causes public disorder

Section 152 of Bharatiya Nyaya Sanhita (BNS)

Section 152 of the Bharatiya Nyaya Sanhita (BNS), 2023 is a law that punishes acts which threaten India’s **sovereignty, unity, and integrity**. It replaces the old sedition law (Section 124A IPC), but it is written in a different way and focuses more on **national security** rather than criticism of the government.

2. What the Law Covers

This section applies when a person:

- Speaks, writes, or shows something (words, signs, videos, social media, etc.)
- Tries to promote **secession (separating from India)**
- Encourages **armed rebellion or violent activities**
- Supports actions that harm India’s unity or sovereignty

So, it is used only when there is a serious threat to the country, not for normal criticism.

3. Punishment

If a person is found guilty under Section 152:

- They can get **life imprisonment or up to 7 years jail**

- They may also have to pay a fine

It is:

- **Cognizable** (police can arrest without warrant)
- **Non-bailable** (bail is not automatic)
- Tried in a **Sessions Court**

4. Important Exception

The law clearly says:

- If someone criticises the government or its policies **to improve things legally and peacefully**, it is NOT a crime
- Only speech that encourages violence or rebellion is punishable

So, **peaceful protest and criticism are allowed.**

5. Court Case Example












In *Tejender Pal Singh v. State of Rajasthan* (2024), the Rajasthan High Court said:

- Section 152 should not be used to punish normal speech
- There must be a real link between the speech and violence or rebellion
- The law should protect the country, not silence people

In this case, the court found:

- No intention to create violence or rebellion
- So the case was cancelled (FIR quashed)

DIFFERENCE FROM OLD SEDITION LAW

Aspect	Old Sedition Law (Section 124A, IPC)	New Law (Section 152, BNS)
 Focus / Main Idea	Punished words that bring or try to bring "hatred, contempt or disaffection" towards the Government.	Punishes acts that excite or try to excite secession, armed rebellion, subversive activities or endanger the sovereignty, unity and integrity of India.
 What is Punishable?	Any words, signs or visible representation that create disaffection towards the Government.	Words, signs, visible representation, electronic communication or financial means that promote secession, rebellion or threaten India's unity and sovereignty.
 Nature of Threat	Included "disaffection" which was broad and could include strong criticism of the Government.	Limited to serious threats like secession, armed rebellion or subversive activities. Not mere criticism of the Government.
 Scope	Broad and vague – even strong criticism of the Government could be treated as sedition.	More specific – focuses on acts that threaten national security, unity and integrity.
 Modes Covered	Words (spoken or written), signs, visible representation or otherwise.	Includes words, signs, visible representation, electronic communication and financial means.
 Punishment	Life imprisonment, or up to 3 years imprisonment, or fine, or both.	Life imprisonment, or up to 7 years imprisonment, and fine.
 Cognizable Offence	Yes (Police could arrest without warrant)	Yes (Police can arrest without warrant)
 Bailable	Non-bailable	Non-bailable
 Court of Trial	Court of Session	Court of Session
 Protection for Free Speech	Explained that comments to obtain change by lawful means are not an offence (but still misused often).	Clearly says disapproval of Government measures or actions for lawful change, without exciting rebellion, is not an offence.
 Why the Change?	Colonial law used to suppress freedom fighters and critics.	To replace the colonial law with a provision focused on national security and sovereignty.

Q. Explain the offences relating to the Army, Navy and Air Force of the Government of India under the Bharatiya Nyaya Sanhita, 2023.

Q. Discuss the provisions relating to abetment of mutiny and attempt to seduce a member of the Armed Forces from his duty.

Q. Explain the offences relating to mutiny and desertion among members of the Army, Navy and Air Force under the BNS, 2023.

Introduction –

Chapter VIII of the Bharatiya Nyaya Sanhita, 2023 deals with offences relating to the Army, Navy, and Air Force of the Government of India. This chapter mainly covers offences committed by civilians or other persons that affect the discipline, loyalty, and functioning of the armed forces. The primary objective of these provisions is to maintain order, obedience, and discipline among defence personnel, as these are essential for national security and protection of the country.

The armed forces of India are governed by special military laws such as the Army Act, 1950, the Air Force Act, 1950, and the Navy Act, 1957. Persons subject to these military laws are generally tried by court-martial for military offences. However, civilians who interfere with military discipline by encouraging mutiny, desertion, insubordination, or by harbouring deserters can be punished under the Bharatiya Nyaya Sanhita.

This chapter includes offences such as abetment of mutiny, abetment of assault on superior officers, desertion, harbouring deserters, insubordination, and impersonating military personnel. These offences are considered serious because they may weaken the discipline and effectiveness of the armed forces and thereby threaten the sovereignty and security of the nation.

Thus, the provisions under this chapter are intended to safeguard military discipline, ensure loyalty towards the Government of India, and maintain the efficiency and integrity of the armed forces.

❖ Section 159 – Abetting Mutiny or Attempting to Seduce Soldier from Duty

Provision

Section 159 of the Bharatiya Nyaya Sanhita, 2023 provides punishment for any person who:

- abets the commission of mutiny by military personnel, or

- attempts to seduce a soldier, sailor, or airman from his duty or allegiance towards the Government of India.

Meaning

Mutiny means rebellion or revolt by members of the armed forces against lawful military authority. This section punishes not only actual participation in mutiny but also encouragement or instigation to commit mutiny.

The section also covers attempts to create disloyalty among defence personnel. Therefore, even if mutiny does not actually occur, the offence is complete once a person intentionally encourages military personnel to disobey or rebel.

Essential Ingredients

1. There must be:
 - abetment of mutiny, or
 - attempt to seduce military personnel from duty.
2. The act must relate to:
 - an officer,
 - soldier,
 - sailor, or
 - airman.
3. The accused must intentionally encourage disobedience or rebellion.

Punishment

- Imprisonment for life, or
- Imprisonment up to 10 years, and
- Fine.

Illustration

A political extremist secretly meets army personnel and persuades them not to obey their commanding officers and to revolt against the Government. Even if the soldiers refuse, the extremist is liable under Section 159.

❖ Section 160 – Abetment of Mutiny if Mutiny is Committed

Section 160 applies when mutiny is actually committed as a result of abetment.

Meaning

This section is an aggravated form of Section 159. Under Section 159, mere abetment is punishable even if mutiny does not occur. But under Section 160, the mutiny is actually committed because of the instigation or encouragement given by the accused.

Since mutiny directly threatens military discipline and national security, the punishment under this section is extremely severe.

Essential Ingredients

1. There must be abetment of mutiny.
2. Mutiny must actually take place.
3. The mutiny must occur because of the abetment.

Punishment

- Death penalty, or
- Imprisonment for life, or
- Imprisonment up to 10 years, and
- Fine.

Illustration

A civilian supplies weapons and encourages soldiers to attack their commanding officers. Influenced by him, the soldiers revolt and seize military control. The civilian is guilty under Section 160.

❖ **Section 161 – Abetment of Assault by Soldier on Superior Officer**

Section 161 punishes any person who abets assault by a soldier, sailor, or airman on a superior officer while the superior officer is acting in execution of official duty.

Meaning

Military discipline depends upon obedience to superior officers. Therefore, any attempt to provoke or encourage military personnel to attack their superior officer is treated as a serious offence.

Under this section, actual assault is not necessary. Mere abetment or instigation is sufficient.

Essential Ingredients

1. There must be abetment of assault.

2. The assault must be against a superior officer.
3. The superior officer must be performing official duties.
4. The assault must involve military personnel.

Punishment

- Imprisonment up to 3 years, and
- Fine.

Illustration

A person provokes a soldier by saying that his commanding officer insulted him and advises him to beat the officer during parade duty. Even if the soldier does not attack, the person is liable under Section 161.

❖ Section 162 – Abetment of Assault if Assault is Committed

Section 162 applies when the assault on the superior officer is actually committed because of the abetment.

Meaning

This section is a more serious form of Section 161. Here, the instigation or encouragement results in actual assault on the superior officer.

Since the offence directly affects military discipline and authority, stricter punishment is prescribed.

Essential Ingredients

1. There must be abetment of assault.
2. The assault must actually be committed.
3. The assault must be against a superior officer acting in official duty.
4. The assault must occur because of the abetment.

Punishment

- Imprisonment up to 7 years, and
- Fine.

Illustration

A civilian encourages a sailor to physically attack his superior officer during inspection duty. The sailor follows the instruction and assaults the officer. The civilian is punishable under Section 162.

❖ **Section 163 – Abetment of Desertion of Soldier, Sailor or Airman**

Section 163 punishes a person who helps, encourages, or supports a soldier, sailor, or airman to desert military service.

Meaning of Desertion

Desertion means leaving military service without permission and with no intention of returning.

Military discipline is very important for national security. Therefore, helping a member of the armed forces to desert is treated as an offence.

Essential Ingredients

1. A person must abet or encourage desertion.
2. The person encouraged must be a soldier, sailor, or airman.
3. There must be intention to help the person leave service unlawfully.

Punishment

- Imprisonment up to 2 years, or
- Fine, or
- Both.

Example

A friend tells an army officer to run away from military service and secretly helps him escape from the camp. The friend is guilty under Section 163.

Section 164 – Harboursing Deserter

Section 164 punishes a person who knowingly gives shelter or protection to a deserter from the Army, Navy, or Air Force.

The law punishes such acts because helping deserters may weaken military discipline.

Essential Ingredients

1. A soldier, sailor, or airman must have deserted.
2. The accused must know or have reason to believe that the person is a deserter.
3. The accused must give shelter or protection to that person.

Punishment

- Imprisonment up to 2 years, or
- Fine, or
- Both.

Exception

The spouse (husband or wife) of the deserter is not punishable for giving shelter.

Example

A person knows that his friend has deserted the Army but still hides him in his house to protect him from authorities. He is guilty under Section 164.

❖ Section 165 – Deserter Concealed on Merchant Vessel Through Negligence of Master

This section applies when a deserter is hidden on a merchant ship because of the negligence or lack of discipline of the ship's master or person in charge.

Even if the master did not know about the deserter, he may still be punished if he could have discovered it by properly performing his duty.

Essential Ingredients

1. A deserter is concealed on a merchant vessel.
2. The master or person in charge failed to exercise proper care or discipline.
3. Because of negligence, the deserter remained hidden.

Punishment

- Fine up to ₹3000.

Example

A deserter secretly stays on a ship. The ship captain ignores proper checking of passengers and crew. Due to his negligence, the deserter remains hidden. The captain may be punished under Section 165.

❖ **Section 166 – Abetment of Act of Insubordination by Soldier, Sailor or Airman**

Section 166 punishes a person who encourages or helps military personnel to disobey lawful orders of superior officers.

Meaning of Insubordination

Insubordination means refusal to obey orders or showing disrespect towards superior officers.

Essential Ingredients

1. There must be abetment or encouragement.
2. The act encouraged must be insubordination.
3. The accused must know that the act is insubordination.
4. The act must actually be committed because of the abetment.

Punishment

- Imprisonment up to 2 years, or
- Fine, or
- Both.

Example

A civilian advises soldiers not to obey the command of their superior officer during military duty. The soldiers follow his advice and refuse to obey orders. The civilian is guilty under Section 166.

❖ **Section 167 – Persons Subject to Certain Acts**

Section 167 states that persons who are already governed under special military laws cannot be punished again under the Bharatiya Nyaya Sanhita for the same offences mentioned in this chapter.

The special military laws are:

- Army Act, 1950
- Air Force Act, 1950
- Navy Act, 1957

These persons are usually tried by court-martial under military law.

Purpose

The purpose of this section is:

- to avoid double punishment, and
- to ensure that military personnel are dealt with under their own special laws.

Example

An army officer commits an act of mutiny. He will be punished under the Army Act through court-martial proceedings and not under this chapter of BNS.

Section 168 – Wearing Garb or Carrying Token Used by Soldier, Sailor or Airman

Section 168 punishes any person who falsely wears military uniform or carries military symbols with the intention of making people believe that he is a member of the Army, Navy, or Air Force.

The section aims to prevent impersonation and misuse of military identity.

Essential Ingredients

1. The person must not actually be a soldier, sailor, or airman.
2. He must wear military dress or carry military tokens.
3. He must intend to make others believe that he belongs to the armed forces.

Punishment

- Imprisonment up to 3 months, or
- Fine up to ₹2000, or
- Both.

Example

A civilian wears an army uniform and pretends to be a military officer to gain respect and special treatment from the public. He is guilty under Section 168.

UNIT 5

- 1. Define Theft. Explain its essential ingredients with illustrations and relevant case laws.**
- 2. What is Theft? Discuss the provisions relating to theft under Section 303 of the Bharatiya Nyaya Sanhita, 2023.**
- 3. Explain the offence of Snatching under Section 304 of the BNS, 2023. How is it different from ordinary theft?**
- 4. Discuss the provisions relating to Theft in Dwelling House, Means of Transport, Place of Worship and Government Property under Section 305 of the BNS, 2023.**

Introduction

Sections 303 to 307 of the B N S, 2023 deal with the offence of theft and its aggravated forms. These provisions protect movable property from dishonest taking and punish offences such as snatching, theft in dwelling houses, theft by servants, and theft committed after preparation for violence. The law treats these offences seriously because they affect property rights, public safety, and trust in society.

❖ Theft – Section 303

Theft is one of the most common offences against property under Chapter XVII of the Bharatiya Nyaya Sanhita, 2023. The law protects the possession and ownership of movable property from dishonest interference by others. Theft takes place when a person dishonestly removes movable property from another person's possession without consent. Section 303 defines theft and lays down its essential ingredients along with explanations and illustrations.

Definition of Theft

According to Section 303(1) of the BNS:

“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.”

Thus, theft means the dishonest taking of movable property out of another person's possession without consent.

Essential Ingredients of Theft

To constitute the offence of theft, the following essentials must be present:

1. Dishonest Intention

The accused must have dishonest intention at the time of taking the property. Dishonest intention means intention to cause wrongful gain to one person or wrongful loss to another.

Example

If A secretly takes B's purse from his pocket intending to keep the money for himself, A acts dishonestly and commits theft.

2. The Property Must Be Movable Property

Only movable property can be the subject matter of theft. Immovable property attached to the earth cannot be stolen unless it is separated from the earth.

Example

If A cuts down a tree standing on Z's land intending to take it away dishonestly, the tree becomes movable property after severance and theft is committed.

3. Property Must Be in Possession of Another Person

The property must be in the possession of another person at the time of taking. Possession need not necessarily mean ownership.

Example

If A removes a ring lying on Z's table without permission, the ring is in Z's possession and A commits theft.

4. Taking Must Be Without Consent

The property must be taken without the consent of the person in possession. Consent may be express or implied.

Example

If A takes B's bicycle without asking permission and rides away with it, A commits theft because there is no consent.

5. There Must Be Moving of the Property

The offence of theft is completed as soon as the property is moved for dishonest taking. Even slight movement is sufficient.

Example (Paragraph)

If A lifts a box slightly from its place intending to steal it, theft is complete even if he does not carry it away completely.

Explanations under Section 303

Explanation 1 – Property Attached to Earth

A thing attached to the earth is not movable property, but it becomes capable of theft once it is severed from the earth.

Example

Standing crops or trees cannot be stolen while attached to land, but after cutting them, theft can be committed.

Explanation 2 – Severance and Theft

If the same act both severs and removes the property, theft is committed immediately.

Example (Paragraph)

If A cuts and carries away a tree in one act, the offence amounts to theft.

Explanation 3 – Meaning of Moving

Moving includes:

- Actual movement,

- Removing obstacles, or
- Separating the property from another thing.

Example

If A removes the chain locking a bicycle intending to steal it, he has moved the property for committing theft.

Explanation 4 – Causing Animal to Move

A person who causes an animal to move also moves everything carried by that animal.

Example

If A drives away a bullock carrying treasure intending to steal the treasure, A commits theft.

Explanation 5 – Consent

Consent may be express or implied and may be given by the person in possession or by an authorised person.

Important Illustrations

Illustration (a)

A cuts down a tree on Z's land intending to take it dishonestly. Theft is committed as soon as the tree is severed.

Illustration (b)

A attracts Z's dog with food intending to steal it. Theft is committed when the dog starts following A.

Illustration (c)

A drives away a bullock carrying treasure intending to steal the treasure. Theft is complete once the bullock moves.

Illustration (d)

A servant entrusted with his master's property dishonestly runs away with it. This amounts to theft.

Illustration (e)

A warehouse keeper sells property entrusted to him. Since the property was already in his lawful possession, it is not theft but may amount to criminal breach of trust.

Illustration (f)

A dishonestly removes a ring from Z's table. Since the ring is in Z's possession, A commits theft.

Illustration (g)

A finds a ring lying on a public road not in anyone's possession. Taking it is not theft, though it may amount to criminal misappropriation.

Punishment for Theft – Section 303(2)

Whoever commits theft shall be punished with:

- Imprisonment up to three years, or
- Fine, or
- Both.

In case of a second or subsequent conviction, the punishment shall be:

- Rigorous imprisonment not less than one year and up to five years, and
- Fine.

Special Provision

Where:

- The value of stolen property is less than ₹5,000, and
- The offender is a first-time offender,

then upon returning or restoring the property, the offender may be punished with community service.

Important Case Laws on Theft

1. K. N. Mehra vs state of rajasthan (1957)

Facts of the Case

K.N. Mehra was a trainee pilot in the Indian Air Force. One day, he took an aircraft without proper permission and flew it towards Pakistan along with another person. Later, the aircraft landed in Pakistan. The prosecution alleged that he had dishonestly taken the aircraft without consent.

Issue

Whether taking the aircraft without permission amounted to theft even though there was no intention to permanently keep the aircraft.

Judgment

The Supreme Court held that intention to permanently deprive the owner is not necessary for theft. The Court stated that:

- Dishonest intention at the time of taking, and
- Absence of consent of the person in possession

are sufficient to constitute theft.

Therefore, K.N. Mehra was held guilty of theft.

2. Pyare Lal Bhargava vs state of rajasthan (1962)

Facts of the Case

Pyare Lal Bhargava temporarily removed a government file from office without permission and gave it to another person for obtaining certain benefits. Though the file was later returned, the act caused temporary deprivation to the government.

Issue

Whether temporary removal of property without consent amounts to theft.

Judgment

The Supreme Court held that temporary deprivation of property can also amount to theft if it causes wrongful loss to the owner.

The Court observed that:

- Permanent deprivation is not necessary,
- Even temporary taking with dishonest intention is sufficient for theft.

Thus, the accused was held guilty.

3. Durga Burman Roy vs State of Sikkim (2014):

Facts of the Case

The accused was charged with offences including murder and theft. Property belonging to the deceased was found missing after the incident.

Issue

Whether theft is an offence against possession and whether theft can be charged along with murder.

Judgment

The Supreme Court held that theft is an offence against possession and not merely ownership. The Court further observed that theft can exist together with other offences like murder if facts support such charges.

The conviction was upheld based on the evidence.

4. Hiralal Babulal Soni vs The State of Maharashtra (2025)

Facts of the Case

The accused was found in possession of allegedly stolen property. The prosecution argued that possession itself proved involvement in theft.

Issue

Whether mere possession of stolen property is sufficient to convict a person for theft.

Judgment

The Supreme Court held that mere possession of stolen property alone is not enough to prove theft. The prosecution must establish:

- Actual commission of theft, and

- Knowledge or dishonest intention of the accused.

The Court emphasized that criminal conviction must be based on proper evidence and not mere suspicion.

❖ Snatching – Section 304

Snatching is a special form of theft introduced under the Bharatiya Nyaya Sanhita, 2023. It generally involves sudden or forcible taking away of movable property from a person or from his possession. The offence commonly occurs in public places and creates fear and insecurity among people.

Definition of Snatching

According to Section 304(1):

“Theft is snatching if, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any movable property.”

Thus, snatching is theft committed by sudden, quick, or forcible taking away of property.

Essential Ingredients of Snatching

- 1. There Must Be Theft:** Snatching is a form of theft; therefore, all essentials of theft must be present.
- 2. Sudden, Quick, or Forcible Taking:** The offender must suddenly or forcibly grab or seize the property.

Example

If A suddenly grabs B's mobile phone from his hand and runs away, A commits snatching.

- 3. Movable Property:** The property taken must be movable property.

Example

Snatching a gold chain, handbag, purse, or mobile phone amounts to snatching.

4. Property Must Be Taken from a Person or His Possession: The property must be taken directly from the person or from something under his control.

Example

If A forcibly pulls a handbag from B's shoulder and escapes, it is snatching.

Punishment for Snatching – Section 304(2)

Whoever commits snatching shall be punished with:

- Imprisonment up to three years, and
- Fine.

Nature of Offence

- Cognizable
- Non-bailable
- Triable by any Magistrate

❖ **Theft in Dwelling House, Means of Transport or Place of Worship – Section 305**

Section 305 provides enhanced punishment for theft committed in certain important places such as houses, transport vehicles, places of worship, or government property.

Circumstances Covered under Section 305

The section applies when theft is committed:

(a) In a Dwelling House or Place Used for Custody of Property

Theft committed in a building, tent, or vessel used as a human dwelling or for keeping property is punishable under this section.

Example

If A enters B's house and steals jewellery, A commits an offence under Section 305.

(b) Theft of Means of Transport: Theft of buses, cars, trucks, trains, or other transport vehicles used for passengers or goods is covered.

Example

If A steals a passenger bus parked at a station, he is liable under Section 305.

(c) Theft of Goods from Means of Transport: Stealing goods or articles from vehicles carrying passengers or goods also falls under this section.

Example

If A steals luggage from a train compartment, it amounts to theft under Section 305.

(d) Theft of Idol or Icon from Place of Worship

Theft of idols or religious objects from temples, mosques, churches, or other places of worship is punishable.

Example

If A steals an idol from a temple, he commits an offence under Section 305.

(e) Theft of Government or Local Authority Property

Stealing government property or property belonging to local authorities is also covered.

Example

If A steals government office equipment, he is punishable under Section 305.

Punishment under Section 305

The punishment is:

- Imprisonment up to seven years, and
- Fine.

Nature of Offence

- Cognizable
- Non-bailable
- Triable by any Magistrate

❖ Theft by Clerk or Servant – Section 306

Section 306 deals with theft committed by clerks or servants against their employer or master. Since servants and employees are entrusted with property, breach of such trust is treated seriously.

Definition

According to Section 306:

Whoever, being a clerk or servant, commits theft of property belonging to or possessed by his master or employer, shall be punished under this section.

Essential Ingredients

1. Accused Must Be a Clerk or Servant

The offender must be employed as a clerk, servant, or employee.

2. Theft Must Be of Employer's Property

The property stolen must belong to or be in possession of the employer.

Example

If a servant steals money from his employer's cupboard, he commits theft under Section 306.

3. Dishonest Intention

There must be dishonest intention to cause wrongful gain or wrongful loss.

Punishment

The punishment is:

- Imprisonment up to seven years, and
- Fine.

❖ Theft after Preparation Made for Causing Death, Hurt or Restraint

Section 307 deals with an aggravated form of theft where the offender makes preparations to cause death, hurt, restraint, or fear in order to commit theft, escape after theft, or retain stolen property. The law treats this offence seriously because the offender is prepared to use violence or intimidation during the commission of theft.

Definition

According to Section 307 of the BNS:

Whoever commits theft after making preparation for causing death, hurt, restraint, or fear of death, hurt, or restraint to any person in order to commit theft, escape after theft, or retain stolen property, commits an offence under this section.

Thus, theft becomes more serious when preparation for violence or intimidation exists.

Essential Ingredients

1. Commission of Theft

There must be commission of theft as defined under Section 303.

Example

If A steals B's wallet dishonestly, the first requirement of theft is satisfied.

2. Preparation for Causing Death, Hurt, or Restraint

The accused must prepare to cause:

- Death,
- Hurt,
- Wrongful restraint, or
- Fear of such acts.

Example

If A carries a knife while committing theft intending to injure anyone who resists, A falls under Section 307.

3. Preparation Must Be Connected with Theft

The preparation must be made:

- To commit theft,
- To escape after theft, or
- To retain stolen property.

Example

If A keeps companions nearby to stop people from catching him after stealing, the section applies.

Illustrations

Illustration (a)

A commits theft from Z while carrying a loaded pistol under his clothes intending to hurt Z if resistance occurs. A commits the offence under Section 307 because he prepared to cause hurt during theft.

Illustration (b)

A picks Z's pocket and keeps his companions nearby to restrain Z if he resists or tries to catch A. This amounts to an offence under Section 307.

Punishment

Whoever commits an offence under Section 307 shall be punished with:

- Rigorous imprisonment up to ten years, and
- Fine.

Nature of the Offence

This offence is considered serious because the offender is prepared to use violence or intimidation while committing theft or escaping after it.

Q. Define Extortion. Explain its Essential Ingredients, Punishment and Distinguish it from Theft.

OR

Q. What is Extortion? Explain the provisions relating to Extortion under Section 308 of the Bharatiya Nyaya Sanhita, 2023.

OR

Q. Define Extortion. Discuss its Essential Ingredients with Suitable Illustrations.

OR

Q. Explain the offence of Extortion under the Bharatiya Nyaya Sanhita, 2023. How does it differ from Theft?

Answer

Introduction

The Bharatiya Nyaya Sanhita, 2023 protects the property of individuals from unlawful interference. Among the offences against property, **Extortion** is a serious offence in which a person obtains property by putting another person in fear of injury. Unlike theft, where property is taken without consent, in extortion the victim delivers the property because of fear created by the offender. The offence of extortion is dealt with under **Section 308 of the Bharatiya Nyaya Sanhita, 2023**.

Definition of Extortion

According to Section 308(1):

“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 any property or valuable security, commits extortion.”

Thus, extortion means obtaining property by creating fear or threat.

Essential Ingredients of Extortion

1. Intentionally Putting a Person in Fear

The accused must intentionally create fear of injury in the mind of another person.

Example

If A threatens to harm Z unless Z pays money, A creates fear in Z's mind.

2. Fear of Injury

The fear may relate to:

- Physical injury,
- Wrongful confinement,
- Harm to reputation,
- Harm to another person, etc.

Example

Threatening to publish defamatory statements unless money is paid amounts to fear of injury.

3. Dishonest Inducement

The fear must dishonestly induce the victim to deliver property or valuable security.

Example

If A threatens Z and forces him to sign a promissory note, extortion is committed.

4. Delivery of Property or Valuable Security

The victim must deliver:

- Property,
- Valuable security, or
- Signed or sealed documents capable of becoming valuable security.

Example

Obtaining money, jewellery, or signed documents through threats amounts to extortion.

Illustrations

(a) A threatens to publish defamatory statements about Z unless Z gives him money. Z gives the money. A commits extortion.

(b) A threatens to keep Z's child in wrongful confinement unless Z signs a promissory note. Z signs it. A commits extortion.

(c) A threatens to destroy Z's field unless Z signs a bond to deliver produce. Z signs the bond. A commits extortion.

(d) A puts Z in fear of grievous hurt and forces him to sign a blank paper. Since the paper may become valuable security, A commits extortion.

(e) A sends a message through an electronic device threatening to kill Z's child unless money is paid. A commits extortion.

Punishment for Extortion – Section 308

Section 308(2) – Punishment for Extortion

Punishment:

- Imprisonment up to seven years, or
- Fine, or
- Both.

Nature of Offence

- Cognizable
- Non-bailable
- Triable by Magistrate of First Class

Section 308(3) – Putting a Person in Fear for Extortion

If a person merely puts or attempts to put another in fear for committing extortion, punishment may extend to:

- Two years imprisonment, or
- Fine, or
- Both.

Nature of Offence

- Cognizable
- Bailable
- Any Magistrate

Section 308(4) – Fear of Death or Grievous Hurt

If extortion involves fear of death or grievous hurt:

- Imprisonment up to seven years, and
- Fine.

Section 308(5) – Extortion by Fear of Death or Grievous Hurt

Where extortion is actually committed through fear of death or grievous hurt:

- Imprisonment up to ten years, and
- Fine.

Section 308(6) – Fear of Accusation of Serious Offence

If a person threatens another with accusation of an offence punishable with death, life imprisonment, or imprisonment up to ten years in order to commit extortion:

- Imprisonment up to ten years, and
- Fine.

Section 308(7) – Extortion by Fear of Serious Accusation

If extortion is actually committed through such accusation:

- Imprisonment up to ten years, and
- Fine.

Difference Between Theft and Extortion

1. Consent

In **theft**, property is taken without the consent of the owner.

In **extortion**, the owner apparently consents to deliver the property, but such consent is obtained by fear or threat.

2. Delivery of Property

In **theft**, the offender himself takes away the property.

In **extortion**, the victim delivers the property because of fear created by the offender.

3. Use of Fear

In **theft**, fear is not an essential element.

In **extortion**, fear of injury is the most essential ingredient.

4. Nature of Taking

In **theft**, there is direct taking of property.

In **extortion**, there is induced delivery of property.

Conclusion

Extortion is a serious offence against property under **Section 308 of the Bharatiya Nyaya Sanhita, 2023**. It consists of intentionally putting a person in fear of injury and thereby dishonestly inducing that person to deliver property or valuable security. Since extortion is committed through threats, coercion, or intimidation, the law provides stringent punishment depending upon the gravity of the threat. Thus, extortion protects individuals from being compelled to part with their property through fear and unlawful pressure.

Q. What is Dacoity? Explain its Essential Ingredients and Punishment under the Bharatiya Nyaya Sanhita, 2023.

Answer

Introduction

Dacoity is an aggravated and more serious form of robbery. When robbery is committed by a group of five or more persons acting together, the offence becomes dacoity. Because it involves organized criminal activity and greater danger to society, the law provides severe punishment for dacoity.

Meaning of Dacoity – Section 310(1)

Section 310(1) states that when:

- five or more persons conjointly commit or attempt to commit robbery, or
- persons present and aiding such commission or attempt make the total number five or more,

every such person is said to commit dacoity.

Thus, the essential feature of dacoity is the participation of five or more persons in committing or attempting robbery.

Essentials of Dacoity

The following essentials are necessary to constitute dacoity:

- 1. There must be robbery or attempted robbery.**
- 2. The act must be committed conjointly.**
- 3. There must be five or more persons involved.**
- 4. Persons aiding the offence are also counted.**

If the number falls below five, the offence may amount to robbery but not dacoity.

Meaning of “Conjointly”

The word “conjointly” means acting together with a common intention or common purpose. All persons need not actively commit violence; even aiding or assisting is sufficient.

Example of Dacoity

Six persons enter a house at night with weapons and forcibly take money and jewellery from the occupants.

- There is robbery,
- more than five persons are involved,
- therefore, the offence is dacoity.

Punishment for Dacoity – Section 310(2)

Whoever commits dacoity shall be punished with:

- imprisonment for life, or
- rigorous imprisonment up to 10 years,
- and fine.

Dacoity with Murder – Section 310(3)

If any one of the persons committing dacoity commits murder during the commission of dacoity, every member of the group becomes liable.

Punishment

- Death, or
- Imprisonment for life, or
- Rigorous imprisonment of not less than 10 years,
- and fine.

Important Principle

Even if only one member commits murder, all members participating in the dacoity are held responsible because they acted conjointly.

Example

Five persons commit dacoity in a house. One member kills the owner while escaping.

All five persons are liable for dacoity with murder.

Preparation for Dacoity – Section 310(4)

Preparation itself is punishable under this section.

Ordinarily, mere preparation is not punishable in criminal law. However, because dacoity is a grave offence, even preparation is treated as criminal.

Punishment

- Rigorous imprisonment up to 10 years,
- and fine.

Example

A group gathers weapons, masks, and vehicles with a plan to commit dacoity in a bank.

Even before the actual offence begins, they may be punished for preparation.

Assembling for Purpose of Dacoity – Section 310(5)

When five or more persons assemble for the purpose of committing dacoity, the offence is complete even if no robbery actually occurs.

Essentials

1. Assembly of five or more persons,
2. Common object is to commit dacoity.

Punishment

- Rigorous imprisonment up to 7 years,
- and fine.

Belonging to a Gang of Dacoits – Section 310(6)

Any person who belongs to a gang habitually associated for committing dacoity is punishable under this section.

The law punishes membership in organized criminal gangs because such associations threaten public safety.

Punishment

- Imprisonment for life, or
- Rigorous imprisonment up to 10 years,
- and fine.

❖ Robbery or Dacoity with Attempt to Cause Death or Grievous Hurt – Section 311

If, while committing robbery or dacoity, the offender:

- uses a deadly weapon (A deadly weapon is any weapon capable of causing death or serious injury -pistol, revolver, knife etc) or
- causes grievous hurt, or
- attempts to cause death or grievous hurt,

the punishment shall be imprisonment of not less than 7 years.

❖ Section 312 – Attempt to Commit Robbery or Dacoity when Armed with Deadly Weapon

If a person attempts to commit robbery or dacoity while carrying a deadly weapon, he shall be punished with imprisonment of not less than 7 years.

❖ Section 313 – Punishment for Belonging to Gang of Robbers

Whoever belongs to a gang habitually engaged in committing theft or robbery (other than a gang of dacoits) shall be punished with rigorous imprisonment up to 7 years and fine.

Conclusion

Dacoity is an aggravated form of robbery committed by **five or more persons acting conjointly** and is punishable under **Section 310 of the Bharatiya Nyaya Sanhita, 2023**. Due to its organized and violent nature, the law prescribes severe punishments, including life imprisonment and even death in cases involving murder. The BNS also punishes preparation for dacoity, assembling for dacoity, and membership in dacoit gangs in order to effectively prevent organized crimes against property and maintain public order.

1. Define Defamation. Explain its essential ingredients, exceptions and punishment under the Bharatiya Nyaya Sanhita, 2023.
2. What is Defamation? Discuss the ten exceptions to the offence of defamation.
3. Explain the law relating to Defamation under the Bharatiya Nyaya Sanhita, 2023 with suitable illustrations.
4. Discuss the offence of Defamation and the circumstances under which a statement does not amount to defamation.

Introduction

The law not only protects the life, liberty, and property of individuals but also safeguards their reputation. Reputation is considered a valuable asset of every person, and any unlawful attack on it may seriously affect an individual's social standing, dignity, and respect in society. The offence of **Defamation** is provided under the **Bharatiya Nyaya Sanhita, 2023**, to protect individuals, companies, associations, and other identifiable groups from false and harmful imputations.

Defamation occurs when a person makes or publishes any false statement concerning another person with the intention of harming, or with the knowledge or reason to believe that it will harm, that person's reputation. Such statements may be made through spoken words, written words, signs, gestures, pictures, social media posts, or any other visible representation. The object of the law is to strike a balance between the **right to freedom of speech and expression** and the **right to reputation**, ensuring that freedom of expression is not misused to injure the reputation of others.

Meaning of Defamation

Defamation means making or publishing a false statement about another person with the intention of harming his reputation, or with the knowledge or reason to believe that such statement will harm his reputation.

The statement may be made:

- By spoken words,
- Written words,
- Signs,
- Gestures,
- Pictures, or
- Any visible representation.

The essence of defamation is injury to the reputation of a person in the eyes of society.

Definition

Whoever, by words either spoken or intended to be read, or by signs or 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 to defame that person.

Essential Ingredients of Defamation

To constitute defamation, the following essentials must be present:

1. Making or Publishing an Imputation

There must be an allegation or statement against a person.

2. Imputation Must Concern a Person

The statement must relate to:

- A living person,
- A deceased person,

- A company,
- An association, or
- A collection of persons.

3. Intention or Knowledge

The accused must:

- Intend to harm reputation, or
- Know or have reason to believe that reputation will be harmed.

4. Harm to Reputation

The statement must lower the moral, intellectual, social, or professional reputation of the person in the eyes of others.

Explanations

Explanation 1 – Defamation of Deceased Person

A statement against a dead person may amount to defamation if it would have harmed the person's reputation if living and is intended to hurt the feelings of family members or relatives.

Explanation 2 – Defamation of Company or Association

Defamation may also be committed against:

- A company,
- An association,
- A community, or
- A collection of persons.

Explanation 3 – Ironical or Alternative Imputation

Even indirect, sarcastic, or ironical statements may amount to defamation.

Explanation 4 – When Reputation is Harmed

A person's reputation is harmed if the statement:

- Lowers his moral character,
- Lowers his intellectual character,
- Lowers his professional reputation,
- Affects his caste or calling,
- Lowers his creditworthiness,
- Makes others believe his body is in a disgraceful condition.

Modes of Defamation

Defamation may be committed by:

- Spoken words,
- Written statements,
- Signs,
- Gestures,
- Pictures,
- Cartoons,
- Social media posts,
- Electronic communication.

Illustrations

Illustration (a)

A says, “Z is an honest man; he never stole B’s watch,” intending people to believe that Z actually stole the watch. This amounts to defamation.

Illustration (b)

When asked who stole B’s watch, A points towards Z intending others to believe Z stole it. This is defamation.

Illustration (c)

A draws a picture showing Z running away with B’s watch intending to suggest theft by Z. This also amounts to defamation

Exceptions to Defamation

The law recognises certain situations where making statements does not amount to defamation.

Exception 1 – Truth for Public Good

A true statement made for public good is not defamation.

Example:

Publishing true facts about corruption by a public official for public welfare.

Exception 2 – Opinion on Public Servant

Fair opinion expressed in good faith regarding the conduct of a public servant in discharge of public duties is not defamation.

Exception 3 – Opinion on Public Question

Good faith opinion regarding conduct of a person on matters of public interest is protected.

Exception 4 – Court Proceedings

Publication of substantially true reports of Court proceedings is not defamation.

Exception 5 – Opinion on Court Cases

Fair comments made in good faith regarding:

- Conduct of parties,
- Witnesses,
- Lawyers, or
- Court proceedings
are protected.

Exception 6 – Criticism of Public Performance

Fair criticism in good faith regarding books, speeches, films, acting, singing, or other public performances is not defamation.

Exception 7 – Censure by Authority

A person having lawful authority over another may pass criticism in good faith.

Examples:

- Teacher correcting student,
- Employer criticising employee,
- Judge censuring witness.

Exception 8 – Accusation to Competent Authority

Making accusation in good faith before lawful authority is not defamation.

Example:

Filing a complaint before police or Magistrate honestly and in good faith.

Exception 9 – Protection of Interest

Statements made in good faith for protection of one's own interest, another's interest, or public good are protected.

Exception 10 – Caution in Good Faith

Giving warning or caution in good faith for protection of another person is not defamation.

Example:

Warning a friend against a dishonest person.

Punishment for Defamation

Whoever defames another shall be punished with:

- Simple imprisonment up to two years, or
- Fine, or
- Both, or
- Community service.

Printing or Engraving Defamatory Matter

Whoever prints or engraves defamatory matter knowing it to be defamatory shall be punished with:

- Imprisonment up to two years, or
- Fine.

Sale of Defamatory Matter

Whoever sells or offers for sale defamatory material knowing it to contain defamatory matter shall be punished with:

- Imprisonment up to two years, or
- Fine, or
- Both.

Object of the Law of Defamation

The law of defamation aims:

- To protect individual reputation,
- To maintain dignity and social respect,
- To balance freedom of speech with protection of reputation,
- To prevent false and malicious attacks on character.

1. D.P. Choudhary v. Kumari Manjulata (1997)

Facts of the Case

Kumari Manjulata was a young unmarried girl belonging to a respected and educated family. A local newspaper published a false news report stating that she had eloped with a boy after leaving her house at night.

In reality, Manjulata had not eloped with anyone. She had only gone to attend her night classes. After publication of the news, people in society started ridiculing and insulting her. Her reputation and the reputation of her family were seriously affected because of the false publication.

Feeling humiliated, Manjulata filed a suit for damages against the newspaper and its editor for publishing defamatory material.

Issue

Whether publication of a false statement in a newspaper, which harms the reputation of a woman and lowers her image in society, amounts to defamation.

Judgment

The Court held that the publication was completely false and defamatory. The newspaper had acted negligently without verifying the truth of the report before publishing it.

The Court observed that the false statement injured the reputation and dignity of Manjulata in the eyes of society. Since reputation is an important aspect of an individual's personality, the newspaper was liable for defamation.

The Court awarded Manjulata damages of **Rs. 10,000** as compensation for the harm caused to her reputation and mental suffering.

- The case highlights that publication of false news affecting a person's reputation amounts to defamation.
- It recognises the importance of protecting the dignity and reputation of women.
- It establishes that newspapers and media must verify facts before publication.

2. Ram Jethmalani v. Subramanian Swamy (2006)

Facts of the Case

Dr. Subramanian Swamy made a public statement alleging that Ram Jethmalani had received money from a banned organisation in order to defend the then Chief Minister of Tamil Nadu in connection with the Rajiv Gandhi assassination case.

Ram Jethmalani, a well-known senior advocate and public figure, claimed that the allegation was false and had seriously harmed his professional reputation and public image. He therefore filed a defamation suit against Dr. Swamy.

Issue

Whether making false public allegations against a person, without proof, which damage his reputation, amounts to defamation.

Judgment

The Delhi High Court held that the allegations made by Dr. Subramanian Swamy were defamatory in nature because they directly harmed the reputation and integrity of Ram Jethmalani.

The Court observed that reputation is a valuable right of every individual and false accusations made without evidence cannot be protected.

Accordingly, the Court held Dr. Swamy liable for defamation.

- The case emphasises that even public figures and advocates have a right to protection of reputation.
- False allegations without proof can give rise to liability for defamation.
- Freedom of speech does not permit making reckless and defamatory statements against others.



Rahul Gandhi v. State of U.P. through Additional Chief Secretary, Home Department, Lucknow

Facts of the Case

Rahul Gandhi made certain statements relating to the Indian Army during a political context. Complaints were filed alleging that the statements were defamatory and hurt the reputation of the Indian Army.

The matter came before the Court, where the issue involved balancing the constitutional right to freedom of speech and expression with protection against defamatory statements.

Issue

Whether freedom of speech and expression under Article 19(1)(a) of the Constitution includes the right to make defamatory statements against any person or institution such as the Indian Army.

Judgment

Justice Subhash Vidyarthi observed that although Article 19(1)(a) guarantees freedom of speech and expression, this right is not absolute.

The Court stated that freedom of speech is subject to reasonable restrictions and does not permit a person to make statements that are defamatory in nature.

The Court further observed:

“No doubt, Article 19(1)(a) of the Constitution of India guarantees freedom of speech and expression, this freedom is subject to reasonable restrictions and it does not include the freedom to make statements which are defamatory to any person or defamatory to the Indian Army.”

Thus, the Court recognised that reputation is an important legal right and defamatory statements are not protected under freedom of speech.

Importance of the Case

- The case highlights the balance between:
 - Freedom of speech, and
 - Protection of reputation.
- It clarifies that defamatory speech is not protected under Article 19(1)(a).
- The judgment emphasises respect for public institutions such as the Indian Army.
- It reaffirms that constitutional freedoms are subject to reasonable restrictions.

Conclusion

Defamation is an offence that protects the reputation and dignity of individuals against false and malicious attacks. A person commits defamation when he makes or publishes an imputation concerning another person with the intention or knowledge that it is likely to harm that person's reputation. The Bharatiya Nyaya Sanhita, 2023 not only punishes defamatory statements but also recognises certain exceptions made in good faith and for public interest. Thus, the law of defamation seeks to maintain a balance between **freedom of speech and expression** and the **right to reputation**, ensuring that every individual enjoys respect and dignity in society.