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& GENERAL LAWS**

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### INTRODUCTION

Crime is a social phenomenon. It is a wrong committed by an individual in a society. It arises first when a state is organised, people set up rules, the breaking of which is an act called crime.

Crime is what the law says it is. The difference between a criminal offence and a civil wrong is that while the former is considered a wrong against the society because of their grave nature, a civil wrong is a wrong done to an individual. It is believed that serious crimes threaten the very existence of an orderly society, and therefore, if such a crime is committed, it is committed against the whole society.

In India, the base of the crime and punitive provision has been laid down in Indian Penal Code, 1860. In this Code the definition of crime has not been attempted or defined but according to its section 40 the word 'Offence' denotes a thing made punishable by the Code.

### INDIAN PENAL CODE, 1860

The Indian Penal Code was passed in the year 1860 but it came into force on 1st January 1862, and it applies to the whole of India except the state of Jammu and Kashmir. The State of Jammu and Kashmir, in view of the special status under Article 370 of the India Constitution, has a separate penal code, though substantially of the same nature and character as the IPC.



Indian Penal code

### INTRA TERRITORIAL V/S EXTRA TERRITORIAL JURISDICTION OF INDIAN PENAL CODE, 1860

The geographical area or the subjects to which a law applies is defined as the jurisdiction of that law. Ordinarily, laws made by a country are applicable within its own boundaries because a country cannot have a legal machinery to enforce its laws in other sovereign countries. Thus, for most of the laws, the territorial jurisdiction of a law is the international boundary of that country.



## **INTRA-TERRITORIAL JURISDICTION**

Where a crime under any provision of IPC is committed within the territory of India the IPC applies and the courts can try and punish irrespective of the fact that the person who had committed the crime is an Indian national or foreigner. This is called 'intra-territorial jurisdiction' because the submission to the jurisdiction of the court is by virtue of the crime being committed within the Indian territory.

### **SECTION 2 OF THE CODE DEALS WITH INTRA-TERRITORIAL JURISDICTION OF THE COURTS**

The section declares the jurisdictional scope of operation of the IPC to offences committed within India. The emphasis on 'every person' makes it very clear that in terms of considering the guilt for any act or omission, the law shall be applied equally without any discrimination on the ground caste, creed (Belief), nationality, rank, status or privilege. The Code applies to any offence committed:

- ⦿ Within the territory of India as defined in Article 1 of Constitution of India. or
- ⦿ Within the territorial waters of India or
- ⦿ On any ship or aircraft either owned by India or registered in India.

Note:- It should be noted that it is not defence that the foreigner did not know that he was committing a wrong, the act itself not being an offence in his own country. (Ignorance of Law' is no Excuse)

### **EXEMPTIONS FROM INTRA-TERRITORIAL JURISDICTION OF IPC**

- i. Article 361(2) of the Constitution protects criminal proceedings against the President or Governor of a state in any court, during the time they hold office.
- ii. In accordance with well-recognized principles of international law, foreign sovereigns are exempt from criminal proceedings in India.
- iii. This immunity (protection) is also enjoyed by the ambassadors and diplomats of foreign countries who have official status in India.



iv. This protection is extended to all secretaries and political and military attaches, who are formally part of the missions.

### **EXTRA-TERRITORIAL JURISDICTION**

Countries, however, also make laws that apply to territories outside of their own country, this is called the extra-territorial jurisdiction.

Section 3 and section 4 of the IPC provide for extra-territorial jurisdiction: Where a crime is committed outside the territory of India by an Indian national, such a person may be tried and punished by the Indian courts.

According to section 3 if anyone commits any offence beyond India which is punishable in our country under any Indian law, he is liable to be convicted and punished in the same manner as if the crime was committed in India.

Section 4 expands on section 3, while at the same time clarifying that the provisions of the Code shall apply to first, in case of Indians, for any offence committed outside and beyond India; and second, in case of any person in any place without and beyond India for targeting computer resource located in India. (Computer Hacking)

CASE NAME	PROVISIONS
Mobarik Ali Ahmed v. State of Bombay	In this regard the Supreme Court held that it is obvious that for an Indian law to operate and be effective in the territory where it operates, i.e., the territory of India, it is not necessary that the laws should either be published or be made known outside the country in order to bring foreigners under its ambit. It would be apparent that the test to find out effective publication would be publication in India, not outside India so as to bring it to the notice of everyone who intends to pass through India.

Section 4 also talks about the applicability of IPC to any offence committed by any person on any ship or aircraft registered in India wherever it may be. (Indian Plane Hijacked in Nepal by Pakistani Terrorists)



Section 188 of CrPC deals with Extra Territorial Jurisdiction. 5. Admiralty Jurisdiction

The jurisdiction of a court over offences committed in high seas is based on the precept that a ship in the high seas is considered to be a floating island belonging to the nation whose flag the ship flies. It does not matter where the ship or boat is, whether it is in high seas or on rivers, whether it is moving or stationery, having been anchored for the time being. This jurisdiction called the 'admiralty jurisdiction'.

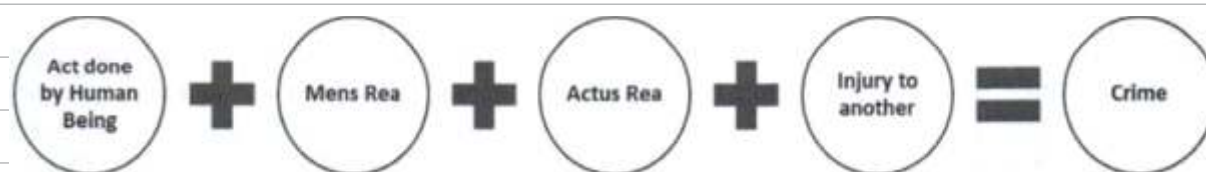
### DIFFERENCE BETWEEN CRIMINAL AND CIVIL WRONG

The difference between a criminal offence and a civil wrong is that while the former is considered a wrong against the society because of their grave nature, a civil wrong is a wrong done to an individual.

### CRIME AND ITS FUNDAMENTAL ELEMENTS

In reference to the Indian Penal Code (Code or IPC) crime means such act or omission which has been forbidden by the Code and if such act or omission is committed by anyone, he or she becomes liable to punishment prescribed under the Code.

### ESSENTIAL INGREDIENTS OF CRIME



#### 1. Human Being

The first requirement for commission of crime is that the act must be committed by a human being. Only a human being is subject of IPC.

Example: If a lion killed a man, the lion will not be punishable under IPC, as the crime is done by lion, who is not a human being.

## 11. Mens Rea (Guilty Mind)

Mens Rea is a Latin word which means a guilty mind. Mens rea is the fundamental principle to constitute a crime. It is based on maxim "Actus non facit ream nisi mens sit rea" which means an act will in itself not be considered as a crime if guilty intention is missing.

The general rule to be stated is "there must be a mind at fault before there can be a crime". In simple words, a bad intention or guilt is an essential ingredient in every crime.

Example: Tara Singh is a lorry driver who ended up hitting and killing a pedestrian. Imagine two situations in this:

Situation 1: Tara Singh never saw the person until it was too late, tried his best to stop the lorry, but could do nothing to stop the accident and in fact ended up killing the pedestrian.

Situation 2: Tara Singh has been looking out for the pedestrian and upon seeing him, steered towards him and slammed into him, killing him on the spot.

In Situation 1 Tara Singh will be liable only in civil court for monetary damages as the intention to kill is missing. Whereas in Situation 2 Tara Singh will be criminally liable because he intended to kill the pedestrian.

Therefore, even though the pedestrian is killed in both situations, the intent of Tara Singh was different and so punishments will also be different.

The act is judged not from the mind of the wrong-doer, but the mind of the wrong-doer is judged from the act. Forms of Mens Rea

1. **Intention:** Intention is defined as 'The purpose with which an act is done'. Intention indicates the position of mind, condition of someone at particular time of commission of offence and also will of the accused to see effects of his unlawful conduct.

Criminal intention does not mean only the specific intention but it includes the generic intention as well.



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

2. **Negligence:** Negligence is the second form of mens rea. Negligence is not taking care, where there is a duty to take care. The standard of care established by law is that of a reasonable man in identical circumstances. Reasonable care may differ from thing to thing depending upon situation of each case. In criminal law, the negligent conduct amounts to mens rea.

For Example: For every medical negligence, a doctor can be tried under IPC.

3. **Recklessness:** Recklessness occurs when the actor does not desire the consequence, but is able to foresee the possibility of risk and still consciously takes the risk. Recklessness is a form of mens rea.

For Example: Drink & Drive is prohibited and once a person does that, he shall be punished for recklessness.

### Exception to Mens Rea

There are many exceptional cases where mens rea is not required in criminal law. Some of them are as follows:-

- (a) **Liabilities imposed by statute:** Where a statute imposes liability, the presence or absence of a guilty mind is irrelevant.
- (b) **Petty Cases:** Where it is difficult to prove mens rea and penalties are petty fines. In such petty cases, speedy disposal of cases is necessary and the proving of mens rea is not easy. An accused may be fined even without any proof of mens rea.
- (c) **Public Interest:** In the interest of public safety, strict liability is imposed and whether a person causes public nuisance with a guilty mind or without guilty mind, he is punished.
- (d) **Ignorance of Law:** If a person violates a law even without the knowledge of the existence of the law, it can still be said that he has committed an act which is prohibited by law. In



*such cases, the fact that he was not aware of the law and hence did not intend to violate it is no defence and he would be liable as if he was aware of the law. This follows from the maxim 'ignorance of the law is no excuse'.*

### III. ACTUS REA

*Actus Rea is a Latin word which means criminal act. It is the actual physical act of committing a crime. There cannot be a crime if an actual wrongful or criminal act has not taken place.*

*A man may be held fully liable even when he has taken no part in the actual commission of the crime. For example, if a number of people conspire to murder a person and only one of them actually shoots the person, every conspirator would be held liable for it.*

### IV. Injury to another person

*An injury should have occurred to another party due to Actus rea.*

## STAGES OF CRIME

*The commission of a crime consists of some significant stages. If a person commits a crime voluntarily, it involves following four important stages:-*

### 1. Criminal Intention

*Criminal intention is the first stage in the commission of offence. Intention is the conscious exercise of mental faculties of a person to do an act for the purpose of accomplishing or satisfying a purpose. Intention means doing any act with one's will, desire, voluntariness, malafides and for some purpose. In the IPC, all these varied expressions find place in the various sections of the Code.*

### 2. Preparation

*Preparation means to arrange necessary measures for commission of intended criminal act. Preparation itself is not punishable as it is difficult to prove that necessary preparations were made for commission of the offence. But in certain exceptional cases mere preparation is also*



punishable.

- ⊙ Preparation to wage war against the Government (section 122).
- ⊙ Preparation for counterfeiting of coins or Government Stamps (sections 233 to 235, 255 and 257).
- ⊙ Possessing counterfeit coins, false weights or measurements and forged documents (section 242, 243, 259, 266 and 474).
- ⊙ Making preparation to commit dacoity (section 399),

### 3. Attempt

Attempt, which is the third stage in the commission of a crime, is punishable. Attempt has been called as a preliminary crime. Section 511 of the IPC does not give any definition of 'attempt' but simply provides for punishment for attempting to commit an offence. Attempt means the direct movement towards commission of a crime after necessary preparations have been made. It should be noted that whether an act amounts to an attempt to commit a particular offence is a question of fact depending on the nature of crime and steps necessary to take in order to commit it.

### 4. Commission of Crime or Accomplishment: -

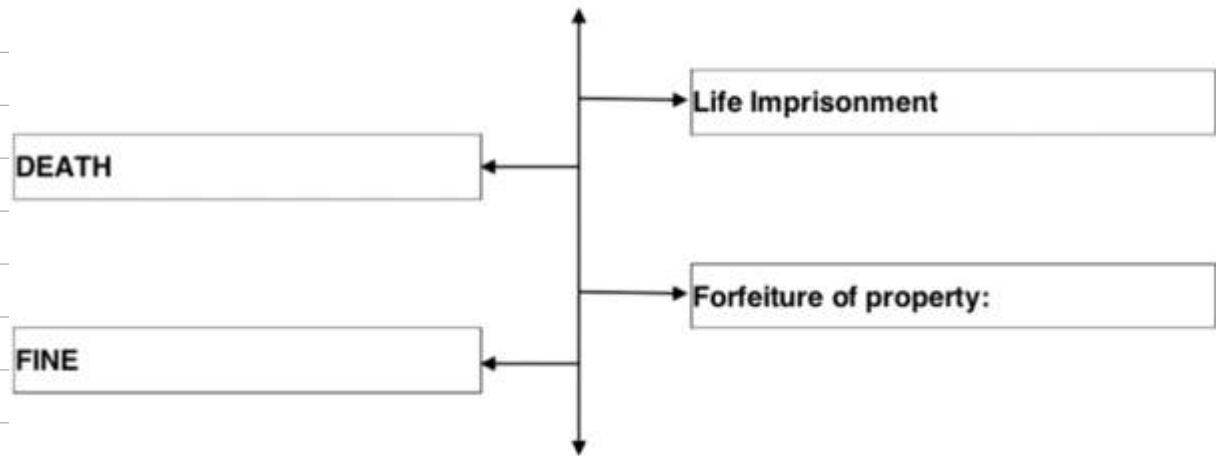
The last stage in the commission of crime is its accomplishment. If the accused succeeds in his attempt, the result is the commission of crime

and he will be guilty of the offence. If his attempt is unsuccessful, he will be guilty for an attempt only. If the offence is complete, the offender will be tried and punished under the specific provisions of the IPC.

### **PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF**

There is a presumption of innocence in favour of any person accused of committing any crime. It means that in the eyes of the law, the accused person is innocent till it is proven otherwise. So strong is this presumption that in order to rebut it, the prosecution must prove it 'beyond reasonable doubts' that the crime was committed by the accused.

### TYPES OF PUNISHMENT



1. **Death:-** A death sentence is the harshest of punishments provided in the IPC, which involves the judicial killing or taking the life of the accused as a form of punishment. The Supreme Court has ruled that death sentence ought to be imposed only in the 'rarest of rare cases'.

The IPC provides for capital punishment for the following offences:

- ⊙ Murder
- ⊙ Dacoity with Murder.
- ⊙ Waging War against the Government of India.
- ⊙ Abetting mutiny actually committed.
- ⊙ Giving or fabricating false evidence upon which an innocent person suffers death or Abetment of a suicide by a minor or insane person;
- ⊙ Attempted murder by a life convict.

### 2. **IMPRISONMENT:- IMPRISONMENT WHICH IS OF TWO DESCRIPTIONS**

**NAMELY -**

- ⊙ Rigorous Imprisonment, that is hard labour;
- ⊙ Simple Imprisonment

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



3. *Forfeiture of property:* - Forfeiture is the divestiture of specific property without compensation in consequence of some default or act forbidden by law. The Courts may order for forfeiture of property of the accused in certain occasions. The courts are empowered to forfeit property of the guilty under section 126 and section 127 of the IPC.

4. *Fine:-* Fine is forfeiture of money by way of penalty. It should be imposed individually and not collectively. When court sentences an accused for a punishment, which includes a fine amount, it can specify that in the event the convict does not pay the fine amount, he would have to suffer imprisonment for a further period as indicated by the court, which is generally referred to as default sentence.

### **CRIMINAL CONSPIRACY**

*Criminal conspiracy is covered under section 120A and 120-B of the IPC. Definition of criminal conspiracy (Section 120A)*

*When two or more persons agree to do, or cause to be done,-*

- i. An illegal act, or*
- ii. An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*

<b>CASE NAME</b>	<b>PROVISIONS</b>
<i>R. Venkatkrishnan v. CBI</i>	<i>The ingredients of the offence of criminal conspiracy</i> <ol style="list-style-type: none"><li><i>1. an agreement between two or more persons;</i></li><li><i>2. the agreement must relate to doing or causing to be done either</i><ul style="list-style-type: none"><li><i>⊙ an illegal act;</i></li><li><i>⊙ an act which is not illegal in itself but is done by illegal means.</i></li></ul></li></ol>
<i>NCT of Delhi v. Navjot Sandhu, (SC), (Parliament attack case)</i>	<i>In order to prove a criminal conspiracy which is punishable under section 120B there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence, the accused had never contacted the deceased terrorist on place but had helped one of the conspirators to flee to a safer place after incident was not held guilty as conspirator.</i>



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

*The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or by frustration or however else it may be.■*

### **PUNISHMENT OF CRIMINAL CONSPIRACY (SECTION 120B)**

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

⊙ *Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.*

⊙ *The punishment for conspiracy is the same as if the conspirator had abetted the offence.*

*The punishment for criminal conspiracy is more severe if the agreement is one to commit a serious offence and less severe otherwise.*

### **CRIMINAL MISAPPROPRIATION OF PROPERTY**

*Section 403 and 404 of the Indian Penal Code, 1860 deal with Criminal Misappropriation of Property.*

### **DISHONEST MISAPPROPRIATION OF PROPERTY (SECTION 403)**

*Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*



Dishonestly is an essential ingredient of the offence and the Code provides that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that 'dishonestly'. Misappropriation means the intentional, illegal use of the property or funds of another person for one's own use or other unauthorised purpose.

There are two things necessary before an offence under section 403 can be established.

- 1) Property must be misappropriated or converted to the use of the accused, and,
- 2) Secondly, that he must misappropriate or convert it dishonestly.

S.NO.	CASE NAME	PROVISIONS
2	In Bhagiram Dome v. Abar Dome,	It has been held that under Section 403 criminal misappropriation takes place even when the possession has been innocently come by, but where, by a subsequent change of intention or from the knowledge of some new fact which the party was not previously acquainted, the retaining become wrongful and fraudulent.  Fifteen bundles of electric wire were seized from the appellant but none including electricity department claimed that wires were stolen property. Evidence on records showed that impugned electric wire was purchased by the applicant from scrap seller.
2	In Mohammad Ali v. State,	Merely applicant not having any receipt for purchase of impugned wire cannot be said to be guilty of offence punishable under Section 403 of the Code. Order of framing charge was, therefore, quashed by the Supreme Court and the accused was not held guilty under section 403 of the Indian Penal Code, 1960.
3	In U. Dhar v. State of Jharkhand,	There were two contracts- one between the principal and contractor and another between contractor and sub-contractor. On completion of work sub-contractor demanded money for completion of work and on non-payment filed a criminal complaint alleging that contractor having received the payment from principal had misappropriated the money. The magistrate took cognizance of the case and High Court refused to quash the

		order of magistrate. On appeal to the Supreme Court, it was held that matter was of civil nature and criminal complaint was not maintainable and was liable to be quashed. The Supreme Court also observed that money paid by the principal to the contractor was not money belonging to the complainant, sub- contractor, hence there was no question of misappropriation.
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- 2) A takes property belonging to Z out of Z's possession, in good faith believing at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section
- 2) A finds a rupee on the high road, not knowing to whom the rupee belongs, A picks up the rupee. Here A has not committed the offence defined in this section.
- 3) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.
- 4) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.
- 5) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.
- 6) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.



## **DISHONEST MISAPPROPRIATION OF PROPERTY POSSESSED BY DECEASED PERSON AT THE TIME OF HIS DEATH (SECTION 404)**

*Offence: If a person dishonestly misappropriates or converts for his own benefit any property of a deceased person, knowing that such property was in the possession of a deceased person at the time of that person's death, shall be guilty under section 404.*

*Time of commission of this offence: The offence under this section shall be committed between the time when the possessor of the property dies, and the time when it comes into the possession of some person or officer authorised to take charge of it.*

*Punishment: Imprisonment upto 3 years shall also be liable to fine, and if the offender at the time of such person's death was employed by him as a clerk or servant, the imprisonment may extend to seven years.*

*Illustration:*

*Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.*

## **CRIMINAL BREACH OF TRUST**

*The criminal breach of trust as laid down under section 405 of the IPC is 'dishonest misappropriation' or 'conversion to own use' another's property, which is similar to the offence of criminal misappropriation defined under section 403. The only difference between the two is that in respect of criminal breach of trust, the accused is entrusted with property or with dominion or control over the property.*

### *Essential Ingredients of Breach of Trust*

*Accused entrusted  
with property*

*Accused dishonestly:  
Misappropriate Use  
Dispose the property*

*The act is in violation of:  
Any direction of law  
Any legal contract*



The essential ingredients of the offence of criminal breach of trust are as under:-

1. The accused must be entrusted with the property.
2. The person so entrusted (i.e., the accused) must
  - ⊙ dishonestly misappropriate, or convert to his own use, that property, or
  - ⊙ dishonestly use or dispose of that property.
3. The act was done in violation of
  - ⊙ any direction of law, or
  - ⊙ any legal contract. Illustrations:
  - (a) A is an executor to the will of a deceased person and he is directed by the law to divide the property according to the will. He dishonestly disobeys the law and appropriates them to his own use. A has committed criminal breach of trust.
  - (b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.
  - (c) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

S.NO.	CASE NAME	PROVISIONS
2	V.R. Dalai v. Yugendra Naranji Thakkar	The Supreme Court of India has held that the first ingredient of criminal breach of trust is entrustment and where it is missing, the same would not constitute a criminal breach of trust.
		Breach of trust may be held to be a civil wrong but when mens- rea is involved it gives rise to criminal liability also.
		The expression 'direction of law' in the context of Section 404 would include not only legislations pure and simple but also directions, instruments and circulars issued by authority entitled therefor.



2	<i>Onkar Nath Mishra v. State (NCT of Delhi),</i>	<i>The Supreme Court has held that in the commission of offence of criminal breach of trust, two distinct parts are involved. The first consists of the creation an obligation in relation to property over which dominion or control is acquired by accused. The second is a misappropriation or dealing with property dishonestly and contraiy to the terms of the obligation created.</i>
3	<i>S.K. Alagh v. State of U.P.</i>	<i>Where demand drafts were drawn in the name of company for supply of goods and neither the goods were sent by the company nor the money was returned, the Managing Director of the company cannot be said to have committed the offence under Section 404 of Indian Penal Code. It was pointed out that in absence of any provision laid down under statute, a director of a company or an employer cannot be held vicariously liable for any offence committed by company itself.</i>
	<i>Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd</i>	<i>it was held that a cheque is property and if the said property has been misappropriated or has been used for a purpose for which the same had not been handed over, a case under Section 404 of the Code may be found to have been made out.</i>

*To conclude that for an offence to fall under this section all the four requirements are essential to be fulfilled.*

- i. The person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them or to put him in position of trustee.*
- ii. The accused must be in such a position where he could exercise his control over the property i.e; dominion over the property.*



iii. The term property includes both movable as well as immovable property within its ambit.

iv. It has to be established that the accused has dishonestly put the property to his own use or to some unauthorised use. Dishonest intention to misappropriate is a crucial fact to be proved to bring home the charge of criminal breach of trust.

**PUNISHMENT FOR CRIMINAL BREACH OF TRUST (SECTION 406)**

Case	Section	Punishment
Punishment for cases other than the following cases	४०६	Imprisonment upto ३ years OR with Fine OR both
When breach of trust is done by a carrier, wharfinger, or warehouse keeper	४०७	Imprisonment upto ७ years AND Fine
When breach of trust is done by clerk or servant	४०८	Imprisonment upto ७ years AND Fine
When breach of trust is done by a public servant or banker, merchant, factor, broker, attorney or agent	४०९	Imprisonment for life OR Imprisonment upto २० years AND Fine

**CHEATING**

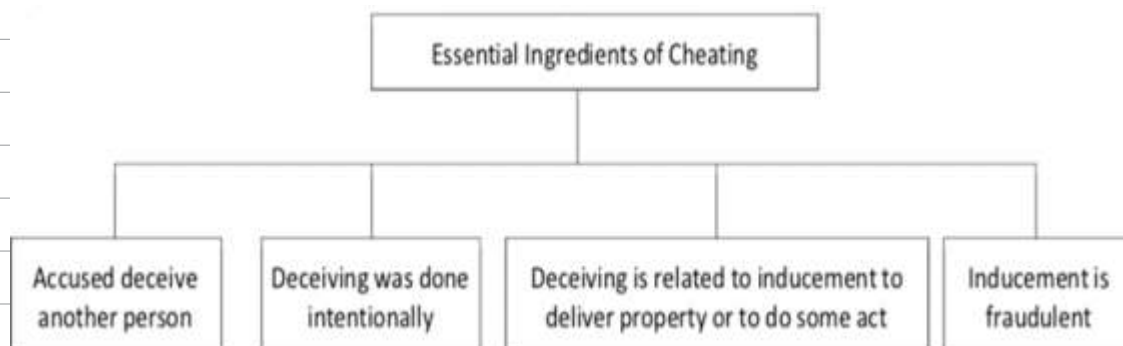
Sections 415 to 420 of Indian Penal Code, 1860 deal with the offence of cheating. Cheating can be described as a dishonest or unfair act done to gain advantage over the other.

Section 415 defines cheating as follows:-

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat."



*Explanation: A dishonest concealment of facts is a deception within the meaning of this section.*



- ⊙ *The accused must deceive another person.*
- ⊙ *The act of deceiving was done intentionally.*
- ⊙ *The person who is deceived should be induced to deliver any property, or to do an act.*
- ⊙ *Such inducement should be fraudulent or dishonest.*

*Illustrations:*

- (a) *A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.*
- (b) *A, by exhibiting to Z a false sample of an article intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.*
- (c) *A, by pledging as diamond articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.*
- (d) *A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.*
- (e) *A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.*

S.No.	CASE NAME	PROVISIONS
1	<i>Iridium India Telecom Ltd. v. Motorola Incorporated</i>	<i>The Supreme Court in has held that deception is necessary ingredient under both parts of section. Complainant must prove that inducement has been caused by deception exercised by the accused. It was held that non-disclosure of relevant information would also be treated a misrepresentation of facts leading to deception.</i>
2	<i>M.N. Ojha and others v. Alok Kumar Srivastav</i>	<i>The Supreme Court in has held that where the intention on the part of the accused is to retain wrongfully the excise duty which the State is empowered under law to recover from another person who has removed non-duty paid tobacco from one bonded warehouse to another, they are held guilty of cheating.</i>
3	<i>R. Arya v. State of Punjab</i>	<i>In T, it was held that negligence in duty without any dishonest intention cannot amount to cheating. A bank employee when on comparison of signature of drawer passes a cheque there may be negligence resulting in loss to bank, but it cannot be held to be cheating.</i>

### **CHEATING BY PERSONATION**

*As per section 416 a person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.*

*Explanation: The offence is committed whether the individual personated is a real or imaginary person. Illustrations:*

- (a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.*
- (b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.*





S.No.	CASE NAME	PROVISIONS
1	<i>Kuriachan Chacko v. State of Kerala</i>	<i>The money circulation scheme was allegedly mathematical impossibility and promoters knew fully well that scheme was unworkable and false representations were being made to induce persons to part with their money. The Supreme Court held that it could be assumed and presumed that the accused had committed offence of cheating under section 420 of the IPC.</i>
2	<i>Mohd. Ibrahim and others v. State of Bihar and another</i>	<i>The accused was alleged to have executed false sale deeds and a complaint was filed by real owner of property. The accused had a bonafide belief that the property belonged to him and purchaser also believed that suit property belongs to the accused. It was held that accused was not guilty of cheating as ingredients of cheating were not present.</i>
3	<i>Shruti Enterprises v. State of Bihar</i>	<i>It was held that mere breach of contract cannot give rise to criminal prosecution under section 420 unless fraudulent or dishonest intention is shown right at the beginning of transaction when the offence is said to have been committed. If it is established that the intention of the accused was dishonest at the time of entering into the agreement then liability will be criminal and the accused will be guilty of offence of cheating. On the other hand, if all that is established is that a representation made by the accused has subsequently not been kept, criminal liability cannot be fastened on the accused and the only right which complainant acquires is to a decree of damages for breach of contract</i>

### **PUNISHMENT FOR CHEATING**

Case	Section	Punishment
Punishment for cases other than the following cases	४१७	Imprisonment upto १ year OR with Fine OR both
If a person who is bound to protect another person's interest cheats that person with the knowledge that the act will cause wrongful loss to that party	४१८	Imprisonment upto ३ years OR with Fine OR both
Punishment for cheating by personation	४१९	Imprisonment upto ३ years OR with Fine OR both
Where cheating leads to dishonestly inducing delivery of property	४२०	Imprisonment upto ७ years AND Fine

### **FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY**

Fraudulent Deeds and Dispositions of Property are covered under section 421 to 424 of the Indian Penal Code, 1860. These sections deal with fraudulent conveyances referred to in section 53 of the Transfer of Property Act and the Presidency-towns and Provincial Insolvency Acts.

#### **Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors (Section 421)**

Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Guwahati High Court in *Ramautar Chaukhany v Hari Ram Todi*, held that an offence under this section has following essential ingredients:



- (i) That the accused removed, concealed or delivered the property or that he transferred, it caused it to be transferred to someone;
- (ii) That such a transfer was without adequate consideration;
- (iii) That the accused thereby intended to prevent or knew that he was thereby likely to prevent the distribution of that property according to law among his creditors or creditors of another person;
- (iv) That he acted dishonestly and fraudulently.

This section specifically refers to frauds connected with insolvency. The offence under it consists in a dishonest disposition of property with intent to cause wrongful loss to the creditors. It applies to movable as well as immovable properties. In view of this section, the property of a debtor cannot be distributed according to law except after the provisions of the relevant enactments have been complied with.

### **Dishonestly or fraudulently preventing debt being available for creditors (Section 422)**

Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

S.No.	CASE NAME	PROVISIONS
1	Commissioner of Wealth Tax v G.D. Naidu	It was held that the essential requisites of debt are- (१) ascertained or ascertainable, (२) an absolute liability, in present or future, and (३) an obligation which has already accrued and is subsisting. All debts are liabilities but all liabilities are not debt.
2	Mangoo Singh v. Election Tribunal,	The Supreme Court has laid down that the word 'demand' ordinarily means something more than what is due; it means something which has been demanded, called for or asked for, but the meaning of the word must take colour from the context and so 'demand' may also mean arrears or dues.

*This section, like the preceding section 421, is intended to prevent the defrauding of creditors by masking property.*

### **DISHONEST OR FRAUDULENT EXECUTION OF DEED OF TRANSFER CONTAINING FALSE STATEMENT OF CONSIDERATION (SECTION 423)**

*Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge on property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

*This section deals with fraudulent and fictitious conveyances and transfers. The essential ingredient of an offence under section 423 is that the sale deed or a deed subjecting an immovable property to a charge must contain a false statement relating to the consideration or relating to the person for whose use or benefit it is intended to operate.*

*Though dishonest execution of a benami deed is covered under this section, the section stands superseded by The Prohibition of Benami Properties Transactions Act, 2016 because the latter covers a wider field, encompassing the field covered by this section.*

### **DISHONEST OR FRAUDULENT REMOVAL OR CONCEALMENT OF PROPERTY (SECTION 424)**

*Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

*The essential ingredients to bring an offence under section 424 are as follows:*

- ⊙ *There is a property;*
- ⊙ *That the accused concealed or removed the said property or assisted in concealing or removing the said property;*
- ⊙ *That the said concealment or removal or assisting in removal or concealment was done dishonestly or fraudulently.*



### **FORGERY (SECTION 463)**

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

### **PUNISHMENT FOR FORGERY (SECTION 465)**

Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The making of a false document or false electronic record is defined under section 464 of the Indian Penal Code, 1860

S.No.	CASE NAME	PROVISIONS
1	Ramchandran v. State	The Supreme Court, has held that to constitute an offence of forgery document must be made with dishonest or fraudulent intention. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.
2	Parminder Kaur v. State of UP	The Supreme Court in has held that mere alteration of document does not make it a forged document. Alteration must be made for some gain or for some objective.
3	Balbir Kaur v. State of Punjab,	The allegation against the accused was that she furnished a certificate to get employment as ETT teacher which was found to be bogus and forged in as much as school was not recognized for period given in certificate. However the certificate did not anywhere say that school was recognized. It was held that merely indicating teaching experience of the accused, per-se, cannot be said to indicate wrong facts. So the direction which was issued for prosecution is liable to be quashed.



## **DEFAMATION**

Section 499 provides that whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. The definition can be understood by going through the essentials of defamation.

### *Essential Ingredient of Defamation*

1. An imputation or accusation is made by
  - ⊙ Words, either spoke or written, or
  - ⊙ Signs, or
  - ⊙ Visible Representations.
2. Such imputation should be published to a third party, i.e. a party other than against whom the imputation is made.
3. The intention behind such imputation is to harm the reputation of the person against whom it is made.

### *Note:*

1. If the reputation of a deceased person is harmed by any imputation which also hurts the feeling of his family and friends will also be covered under defamation.
2. Imputation concerning a company or an association of persons will be treated as defamation.

### **Exceptions**

1. Imputation of truth in public good - If imputation of truth is made in the public good, it will not be treated as defamation.
2. Public conduct of public servants - An opinion given in good faith about public conduct of public servant respecting his character will not be treated as defamation.



3. *Conduct of any person touching any public question - An opinion given in good faith about any person touching public question respecting his character will not be treated as defamation.*
4. *Publication of reports of proceedings of courts - It is not defamation to publish substantially true report of the proceedings of a Court of justice.*
5. *Merits of case decided in Court or conduct of witnesses and others concerned - An opinion given in good faith respecting the merits of any case will not be treated as defamation.*  
*Further any opinion in good faith respecting the conduct of any person as a party, witness or agent, in any such case.*
6. *Merits of public performance - It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public.*
7. *Censure passed in good faith by person having lawful authority over another - It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.*
8. *Accusation preferred in good faith to authorised person - It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.*
9. *Imputation made in good faith by person for protection of his or other's interests - It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.*
10. *Caution intended for good of person to whom conveyed or for public good - It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.*

## **PUNISHMENT FOR DEFAMATION**

According to section 500 whoever defames another shall be punished with simple imprisonment for a term which may extend to 2 years, or with fine, or with both.

### **Kinds of Defamation**

#### **Libel**

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

#### **Slander**

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

## **MISCELLANEOUS**

### **PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF**

There is a presumption of innocence in favour of any person accused of committing any crime. It means that in the eyes of the law, the accused person is innocent till it is proven otherwise by the prosecution.

### **GENERAL EXCEPTIONS**

1. **Mistake of Fact- bound by law:-** According to section 76, if any one commits any act which he is bound to do or mistakenly believes in good faith that he is bound by law to do it, he is not guilty. The mistake or ignorance must be of fact, but not of law. If the mistaken facts were true, the act would not be an offence. Mistake of fact, is a general defence based on the Common Law maxim - *ignorantia facit excusat; ignorantia juris non excusat*- (Ignorance of fact excuses; Ignorance of law does not excuse). In mistake of fact the accused does not possess mens rea or guilty mind.
2. **Act of Judge when acting judicially (section 77):-** If any judge in his authority in good faith believing authorised by law commits any act, no offence is attracted.



3. *Act done pursuant to the judgment or order of Court (section 78):-* When any act is committed on judgment or order of the Court of Justice which is in force, it is no offence even if the judgment or order of the Court is without any jurisdiction, though the person who executes the judgment and order must believe that the Court has the jurisdiction. Section 77 protects judges from any criminal liability for their judicial acts. Section 78 extends this protection to ministerial and other staff, who may be required to execute orders of the court. If such immunity was not extended, then executing or implementing court orders would become impossible.

4. *Mistake of Fact-justified by law:-* According to section 79 of the IPC, if any one commits any act which is justified by law or by reason of mistake of fact and not by reason of mistake of law believes himself to be justified by Law.

5. *Accident in doing a lawful act:-* According to section 80, if any one commits any offence by accident or misfortune without malafide or without knowledge in performance of his legal duty in legal manner with proper care and caution is no offence.

*The protection under this section will apply only if the act is a result of an accident or a misfortune.*

*The word 'accident' is derived from the Latin word 'accidere' signifying 'fall upon, befall, happen, chance. It rather means an unintentional, an unexpected act. Thus, injuries caused due to accidents in games and sports are all covered by this section.*

6. *Act likely to cause harm, but done without criminal intent, and to prevent other harm (section 81):-* Any act done by anyone without any criminal intent for saving or preventing harm to third person or property in good faith is no offence. According to the 'explanation' to this section, it is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

7. *Act of a child under seven years of age (section 82):-* If any child who is below seven years of age commits any offence, he is not guilty because it is the presumption of law that that a child below 7 years of age is incapable to having a criminal intention (mens rea) necessary to commit a crime.

8. *Act of a child above seven and under twelve of immature understanding (section 83):- If any minor child is in between seven and twelve years of age and not attained the maturity of what is wrong and contrary to law at the time of commission of offence is not liable to be convicted and punished.*

9. *Act of a person of unsound mind (section 84):- Nothing done by any person of unsound mind is an offence if at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.*

10. *Act of a person incapable of judgment by reason of intoxication caused against his will (section 85):-*

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

11. *Offence requiring a particular intent or knowledge committed by one who is intoxicated (section 86):- In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will. If the accused himself takes and consumes intoxicated thing or material with knowledge or intention and under intoxication he commits any offence he is liable for punishment.*

12. *Act not intended and not known to be likely to cause death or grievous hurt, done by consent (section 87):- When anyone commits any act without any intention to cause death or grievous hurt and which is not within the knowledge of that person to likely to cause death or grievous hurt to any person who is more than eighteen years of age and has consented to take the risk of that harm, the person doing the act has committed no offence.*

*This section is based on the principle of 'volenti-non-fit injuria' which means he who consents suffers no injury. The policy behind this section is that everyone is the best*





*judge of his own interest and no one consents to that which he considers injurious to his own interest*

13. *Act not intended to cause death, done by consent in good faith for person's benefit (section 88):-Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm. Section 88 extends the operation of consent to all acts except that of causing death intentionally provided that the act is done in good faith for the benefit of the consenting party.*

*For example:- A, a surgeon, knowing that a particular operation is likely to cause the death of Z who suffers under the painful complaint but not intending to cause Z's death and intending in good faith Z's benefit, performs that operation on Z with Z's consent. A has committed no offence. But if surgeon while performing the operation leaves a needle inside the abdomen of the patient who die due to septic- He would be liable criminally for causing death by negligence because he did not perform the operation with due care and caution.*

14. *On consent of guardian if any act is done in good faith to it (section 89):- This section gives power to the guardian of a child under 12 years of age or a person of unsound mind to consent to do an act done by a third person for the benefit of the child or a person of unsound mind. Anything done by the third person will not be an offence provided that it is done in good faith and for the benefit of the child or a person of unsound mind. This section gives protection to the guardians as well as other person acting with the consent of a guardian of a person under 12 years of age or a person of unsound mind.*

15. *Consent (section 90):-The consent is not valid if it is obtained from a person who is under fear of injury, or under a misconception of fact and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception. The consent is also not valid if it's given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent. The consent is given by a person who is under twelve years of age is also not valid unless the contrary appears from the context.*

16. *Exclusion of acts which are offences independently of harm caused (section 91):- The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.*
17. *Act done in good faith for benefit of a person without consent (section 92):- Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit. This defence is subject to certain exceptions.*
18. *Communication made in good faith (section 93):- No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person. For example: A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.*
19. *Act to which a person is compelled by threats (section 94):- Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence. For this defence to be valid the person acting under threat should not have himself put under such a situation.*
20. *Act causing slight harm (section 95):- Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that nonperson of ordinary sense and temper would complain of such harm.*

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