

Chapter V
Major Criminal Laws in India.
Indian Penal Code 1860
(Act XLX of 1860)

Introduction

Historical Background Position of Law in Hindu period:

Indian history reveals that since from ancient times the position of the law of crime was already in existence. The ancient Hindu law as laid down in Smritis, the code of Manu and Yajnavalka the commentaries by Narada, Vyas, Brahaspati and Katyayana gives detailed study on account of law of wrongs, both civil and criminal.

Manu has described the entire scheme of civil and criminal law he also classified offences like an assault, defamation, theft, robbery trespass. In Indian Criminal justice system has no scope for private vengeance or retaliation.

In the authoritative text of Dharma-shastras the administrative of justice in which the king who looked after his subject and maintained Dharma in his kingdom. The only King was empowered to punish the offenders and his duty is to maintain and uphold the law in society.

In the Hindu Dharma Shastra the Hindu law of crime, especially the law of Prayaschitta or punishment is of importance.

The Manu smritis is an important complete code dealing with the laws, custom and usages of the day. At the times of Yagnavalka and Brihaspathi the rigorous punishment was lessened and even the soften fine even for the ordinary offences the ordinary punishment was given. The Hindus had well developed and systematic Criminal law in India.

In the Kautilya's Arthashastra which define different form of criminal law violations during his time.

From above it is clear the Hindu rulers followed the criminal law and procedure for dispensation of Criminal justice.

Muslim Period:

After the **conquest of the Muslims** who invade and conquer a large part of Indian territory and impose these own laws rules and regulation for administrating Criminal justice to regulate the society. Those who popularly known as Moghul who always follows the Mohammedan law of crime which totally based on Quran. These the Quranic criminal law was inadequate. They are supplemented by Sunna. Hence certain modification were made in Sunna i.e. rule of conduct. Here Hidaya which describe principles of Muslim Criminal law for collection of case law the Fatwa-i-alamgiri.

The offences were classified according to the punishments as which are in five major heads namely

- i) Qias – The retaliatory punishment applied to cases of willful killing, maiming or causing severe injury.
- ii) Diya – The term ‘Diya’ signified blood-money payable to the victim by way of compensation.
- iii) Hadd - This is type of fined penalties.
- iv) Tazir – Discretionary in nature.
- v) Siyast – The authority of the ruler this is exemplary in nature.

The notion of crime as reflected in Muslim Law in pre-colonial era.

Introduction:- When the Mughal rule was established over major portions of India, naturally Mohammedan criminal law supplanted the accident Hindu criminal law. It was Mohammedan criminal law, as expounded by the leading doctors of the Suni Mohammedans, Abu, Hanifa and his two disciples Abu Yusuf and Imam Mohammed, which was introduced by the Mughal conquerors whose power reached its zenith under Akbar.

Concept:- Classification of Offences:-

Under the Islamic jurisprudence three kinds of offences, namely (a) Offences against God, (b) Offences against the State, and (c) Offences against the private individuals are recognized.

- (a) **Offences against God:-** Offences against God include apostasy, heresy, and criticizing the religion of Islam or the conduct of Prophet Mohammed. These offences were punishable with death.
- (b) **Offences against the State:-** Offences against the State include rebellion, misrule and moral turpitude on the part of chieftains.
- (c) **Offences against the private individuals:-** Offences against the private individuals include counterfeiting of coins, stealing, gambling and selling of wine etc.

Punishments:-

The following types of punishments were mainly for the various offences committed by the persons.

1. **Qisas (Kisa):-** Qisas literally means retaliation. In principle it meant a hand for a hand, a foot for a foot, a nose for a nose, a tooth for a tooth and a life for a life, an eye for an eye, and so forth. Such punishments were inflicted on an offender who caused a grievous injury short of death. The entire conception had its origin in the theory of ‘blood for blood’.
2. **Diya:-** Diya means blood money. The offender could get exemption from criminal liability by making payment to the injured party or his heir. For example, for murder, death was the penalty if the kin of the murdered or other claimants demanded. It unanimously. But it could be compensated with money if the deceased man’s relatives did not insist on retaliation.

3. Hadd:- Literally Hadd means boundary of limit or barrier. In legal parlance, it means the punishment as has been exactly prescribed by the Quran or the Hadis. It prescribes definite punishments for such crimes as adultery, fornication, false accusation of adultery, apostasy, drinking of wine, theft, highway robbery and robbery with murder. The following are the punishments prescribed for various crimes.

Crimes & Punishments:-

1. Fornication (sexual relations between unmarried persons) = 100 strokes of the whip.
2. False, accusation of a married person with adultery = 80 strokes of the whip.
3. Theft = loss of right hand
4. Robbery = Loss of hands and feet
5. Robbery with murder = Death
6. Drinking wine = 80 strokes of the whip
7. Apostasy = Death

3. Tazir:- Tazir means censuring. It was a corrective doctrine in that the punishment was awarded with a view to reform the culprit. It took cognizance of such offences as the use of abusive language, forger of deeds, or letters, bestiality, sodomy, offences against public peace etc. 'not covered by Hadd.

4. Tashhir:- Tashhir was an un-Islamic but an ancient Indian punishment which was continued in the medieval period. This meant causing disgrace to the offender by parading him on an ass with the face turned towards the tail. Sometimes the culprit's head was shaven and face blackened and then paraded.

The Emperor dealt with such offences as misappropriation, default in the payment of revenue, rebellions and so forth according to his pleasure.

There are many deficiencies and lacunae in Mohammedan criminal law and the rules of evidence were irrational in nature, these rules failed to suppress in society.

After Mogul the Britishers succeeded on these Mogul. The British came to power in Indian Muslim law in force. These British ruler felt that there are many defects and Lacuna's in Mohammadan criminal law. The provisions laid down in these laws were not in conformity with good government.⁹⁰

British Period –

The British ruler has started certain reforms from time to time as per the need and rule for the benefit for their own purpose. The courts were established under Royal charter. The criminal law reform during the year 1828 to 1834 was done.

The Criminal law in Madras Presidency which was similar to that of Bengal and such Mohammedan law of crimes.

The Presidency of Madras was subordinate to Governor general in council at fort William (Calcutta, now Kolkata) by the Regulating Act of 1773. The Elphinstone code of 1827 introduce a uniform scheme of

criminal law after six years in 1833 an Act was passed providing for the enactment of laws and the first law commission was appointed with the law member of the Governor general in council. Lord Macaulay as its President made uniform Penal code applicable in all country.

Draft Penal code –

The draft of the penal code was submitted by the law commission to the Governor general in council on May 2, 1937 but the council did not think in proper to immediate enforce it in form it was presented. ⁹¹

The Indian penal Code which was basically a colonial legislation it was as the main penal law of the country even after Indian Independence in 1947. The territorial coverage of Indian penal code extent to Indian territory, Indian Penal Code applied in India excluding Jammu and Kashmir State. The state of Jammu and Kashmir, in view of the special statute it enjoys on account of Article 370 – It is temporary provisions. ⁹²

Under the article of the Indian Constitution, has separately enacted laws covering its territories.

Thus it has a separate penal code, through substantially of the same nature and character as I.P. code 1860. The I.P. code 1860 is the substantive law of crimes.

Criminal law may further be divided into two classes. Criminal law it is nothing but a branch of public law which deals with definition, trial and punishment of crime.

Criminal law divided into 2 classes –

a) Substantive law – The class of law which defines and punishes offences.

For example : Indian Penal code is substantive law

b) Procedural law – The class of law which prescribes procedure for prevention, investigation and trial.

For example : Criminal Procedure code is procedure law. ⁹³

I.P.C. consist of two parts.

1) General principles and defences.

2) Specific offences.

The code which was passed in year 1860 but it came into force on 1st January 1862, it applies to the whole of India except the state of Jammu and Kashmir. It consist of 23 chapter and containing more than 511 sections. This was applicable to both Hindus and Mohammedian.

In part I of the code deals with the principles while Part II of the code provides for definition of specific offences and prescribes punishment.

Definition of Crime -

According to Bentham, “Offences are whatever the legislature has prohibited for good or for bad reasons. If the question relates to a theoretical research for the discovery of the best possible laws according to the principles of utility we give the name of offences to every act which we think ought to be prohibited by reasons of some evil which it produces or tends to produce”.⁹⁴

Crime is a social phenomenon. It arises first when a state is organized, people set up rules, the breaking of which is an act called crime law regulates the social interest, arbitrates conflicting claims and demands. The very important question of security of persons and property which is essential function for State and the same function achieved through the instrumentality of criminal law.

Sevaka Perumal Vs. State of T.N.⁹⁵

From above the definition of crime is a wrong committed by an individual in a society. In the Indian Penal code the definition of crime has not been attempted or defined but according to section 40 the word ‘Offence which denotes a thing made punishable by the code.

For the criminal attitude or the criminality prescribed under the code is characteristic of punishment. Crime being a relative conception is an act prescribed by state as a crime the concept of crime changes from time to time and as per the society for determination of the crime there is no fixed rule but the base of the crime and punitive provision has laid down in Indian Penal code.

Criminal law and Morality –

The morality is always been at the centre of attention or centre of attraction of the greatest thinker of the society. The moral principles are necessary for any progressive society for a recognized government. By using the instrument of law the society can preserve morality is essential to its existence.

Indian courts be sensitive to the changing perspective and concept of morality to appreciate the effect of obscenity, moral turpitude on today’s society in the light of its present standard as per the changing public opinion. While convicting and prosecuting a person summarily and imposing small amount of fine, the future career of convict must be kept in view. The law and Courts must take cognizance of the changing moral standard.

Pawan Kumar Vs. State⁹⁶

The Fundamental Elements of Crime

The basic function of criminal law is to prevent the bad things or incidence of crime and reprimand the offender. Basically the criminal act must contain the following element.

- 1) Human Being
- 2) Actus reus
- 3) Mens rea
- 4) Injury

1) Human Being –

The first requirement for commission of crime is that the act must be committed by a human being. In ancient time the criminal law largely dominated by the idea of retribution theory.

The element crime is a human being 1) who must be under legal obligation to act in particular manner 2) He should be physically and mentally fit for conviction “Only a human being under legal obligation and capable of being punished can be proper subject of criminal law.”⁹⁶

In the above the punishment which U/sec. 2 of the I.P. code clearly provides person who commits crime shall be liable to be convicted under the Penal Law for the acts which are against the law in force at the time of commission of offence. In Criminal Law man, woman, corporeal body is also subjected to conviction and imposing imprisonment.

2) Actus Reus (act or Omission)

This is also the essential of crime is actus reus. A human being and an evil intent are not enough to constitute a crime for you cannot know the intentions of a man. Actus reus means overt did or unlawful commission must be done carrying out a plan with the guilty intention.

‘Actus non facit reum nisi mens sit rea, is the fundamental principle to be considered before imposing criminal liability.

And Doctrine of ‘Mens rea’. With the exceptions:-

The basic principle of Criminal (penal) liability is embodied in the legal maxim ‘actus non facit reum, nisi mens sit rea’. It means ‘the act alone does not amount to guilt; the act must be accompanied by a guilty mind’. The intention and the act must both concur to constitute the crime. The concept of crime consists of two essential elements viz., (1) Actus Reus (Guilty act) and (2) Mens Rea (Guilty mind).

The Criminal law not only holds the person who committed a crime punishable under section 511 of the Indian Penal code.

Actus reas guilty act is the physical condition of penal liability. Actus Reus is defined asa result of voluntary human conduct which law prohibits. It is the doing of some act by the person to be held liable an ‘act’ is a willed movement of body.

It is a physical result or conduct Actus reus which define if a woman was living with a man and his concurrence, she with held food from the man's child, intending its death. It was held that the man and woman were guilty of murder of the mans child, because they omitted the legal duty of feeding the child.

i) Where there is no physical participation :

A man may be held fully liable although he may have take no physical part at all in the actual commission of the crime for example : 'A man in Delhi will be held liable for having instigated and arranged the commission of crime Mumbai.

ii) Where the participation is indirect:

A person will be held full responsible if he has made use of an innocent agent to commit a crime.

For example : 'X secretly puts poison into a drink which he knows or expect Mrs. Y will offer it to Mr. Y. Here X's act falls under actus reus and is criminally liable.

1. **Mens Rea**:- Mens Rea means guilty mind or an evil malafide or information of illegal act. Mens rea is defined as the mental element necessary to constitute criminal liability. "Mens rea" is the attitude of mind which accompanies and directs the conduct which results in the 'actus reus'. The act is judged not from the mind of the wrong-doer, but the mind of the wrong -doer but the mind of the wrong-doer is judged from the act, 'Mens era' is judged from the external conduct of the wrong-doer by applying an objective standard. Intention, Negligence and recklessness are the important forms of Mens rea.

(i) **Intention**:- Intention is defined as 'the purpose or design with which an act is done'. Intention indicates the indicate as 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 also. For example: A digs a pit in the way through which B passes and conceals it with grass etc. with the intention of killing B. C passes through that way and falls in the pit and is killed. A is liable for killing C although A never intended it.

(ii) **Negligence**:- Negligence is the second form of means era. Culpable Negligence is a condition for criminal liability. Negligence is not taking care, where there is a duty to take care. Negligence or Carelessness indicates a state of mind, viz. absence of a desire to cause a particular consequence. For example: If I carelessly throw a stone on the public road through the window of my house which falls upon a passerby on that road, I do it negligently. the standard of care established by law is that of a reasonable man in identical circumstances. What amounts to reasonable care differs from thing to too depending situation of each case. In Criminal law, the negligent conduct amounts to means rea.

(iii) **Recklessness** :- Recklessness is another form of mens rea. Recklessness occurs when the actor does not desire the consequence, but foresees the possibility and consciously takes the risk. For example: If I

throw a stone into the midst of a crowd, I am reckless in my conduct-for although I have no intention or desire to cause injury to a particular person.

Mens Rea in I.P.C. 1860:- The word 'mens rea' as such is not used in the Indian Penal Code, 1860, but the idea underlying in it is seen in the entire Penal Code except in certain offences. In the offences such as-

1. Offences against the State i.e. Waging of war Section 121; Sedition - Sec. 124-A;
2. Counterfeiting of Coins (Section 232); and
3. Kidnapping and Abduction (Section 359 and 363);

mens rea is not essential. Generally, in the I.P.C., every offence is defined with precision embodying the necessary mens rea in express words.

The mens rea or evil intent of the wrong-doer is indicated by the use of such words as- 1. Intentionally, 2. Voluntarily, 3. Fraudulently, 4. Dishonestly, 5. Maliciously. 6. Knowingly, etc. For example :- Intentionally joining unlawful assembly Section 142; Intentionally giving false evidence (Section 193) Intentionally omitting to assist a Public Servant (Section 187) etc.

The doctrine of ill intention which is main criteria of any unlawful act has been applied by Courts in India. When ill-intention or malafides are by any Act or Law the accused should not be held guilty for commission of any offence.

Mens rea when not essential :- There are many exceptional cases where mens rea is not required in criminal law.

1. Where a statute imposes liability, the presence or absence of a guilty mind is irrelevant. Many laws passed in the interest of public safety and social welfare impose absolute liability. This is so in matters concerning public health, food, drugs, etc. There is absolute liability in the licensing of shops, hotels, restaurants and chemists; establishments. The same is true of cases under the Motor Vehicles Act and the Arms Act.
2. Another exception is 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.
3. Another exception to the doctrine of mens rea is in cases of public nuisance. In the mens rea is in cases of public nuisance. In the interest of public safety, strict liability must be imposed. Whether a person causes public nuisance with a guilty mind or without guilty mind, he must be punishable.
4. Another exception to the doctrine of mens rea is related to the maxim 'ignorance of the law is no excuse'. If a person violates a law without the knowledge of the law, it cannot 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 rule of law and hence did not intend to violate it, is no defense and he would be liable as if he was aware of the law.

“Mens Rea” says Beg in **Girja Nath Vs State**⁹⁷ mens rea is a loose term of elastic signification and covers a wide range of mental status and conditions the existence of which give rise to criminal hue to actus reus. In this the consequence of the act and other times to act irrespectively this is mental condition of a weaker shade such as indicated by words like knowledge belief, criminal negligence or ever rashness in disregard of consequences.

It indicate a colorless consciousness of the act itself irrespectively of consequence of the act or words and bare capacity to know what one is doing as contrasted.

For example: Insanity or intoxication in which man is unable to know the nature of the act.

According to Lord Kenyon C.J. “That actus non facit reum, nisi mens sit rea” The intent and act must both concur to constitute crime.

The maxim which is rooted in the antiquity of English legal history. The requirement of a guilty condition or state mind. J. Coke define : If one shoot at any wild fowl upon a tree, and the arrow killeth any reasonable creature, as far off, without any evil intent in him, this is per infortunium.”The main ingredients of any offence is wrongfulness of any act, act to be done with full of malafide i.e. ill intention. This ill intention or malafides are presumed to be displaced or tangible by any acts of the accused person. Then only intention.”⁹⁸

In case of Ravula Hariprasad Rao Vs state⁹⁹ and in **State of Maharashtra V.M.S. Georg**¹⁰⁰ and authoritative context by **Krishna Lyer J. in R.S. Joshi V. Ajit Mills Ltd.**¹⁰¹

Even here we may reject the notion that the penalty or punishment cannot be cast in the form of an absolute or no-fault liability but must be preceded by mens rea.

The classical view of that ‘no mens rea, no crime has long ago been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishment even where the offences have been define to exclude mens rea.”

Territorial and extra-territorial applicability of Indian Penal Code. Applicability of IPC to extra territorial offences. Short not on Personal Jurisdiction.

The Criminal Court in India exercise jurisdiction either because a crime is committed by any person national, or foreigner within the Indian Territory or because a crime though committed outside India, is committed by an Indian National. The former is known as Intra-territorial jurisdiction and the latter as known as Extra-territorial jurisdiction.

(1) Territorial Jurisdiction (2) Personal Jurisdiction

(1) **Territorial Jurisdiction**:- Where a crime is committed within the territory of India the Code shall apply 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 “territorial jurisdiction” because submission to the jurisdiction of the court is by virtue of the crime being committed within the Indian territory. Here jurisdiction attaches with the territory. The Code applies to any offence committed.

1. Within the territory of India as defined in Article (1) of constitution.
2. Within the territorial waters of India, and
3. On any ship or aircraft either owned by India or registered in India.

Territorial Jurisdiction is again of two kinds

2. Intra-territorial jurisdiction.
3. Extra-territorial jurisdiction

1. **Intra-territorial jurisdiction (personal Jurisdiction)**:- Intra territorial jurisdiction is one, where a crime is committed within the territory of India by any person. Section 2 of the Code deals with Intra-territorial jurisdiction of the courts.

In view of the provisions of sec. 2 of the I.P. code any one commits any act or omission which is not permitted under the criminal law is guilty of the offence and deserves for conviction within the jurisdiction in our country.

- 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 case, creed, nationality, rank, status or privilege. the important point to be noted is that the Code makes no distinction between an Indian Citizen and a foreigner, for offences committed in India.

Are foreigners liable under the IPC?

- While on the issue of offences committed by foreigners, it should be noted **that it is not defence that the foreigners did not know that he was committing a wrong, the act itself not being an offence in his own country.**
- In this regard the Supreme Court in (Mobarik Ali Ahmed v State of Bombay) held that it is obvious that for an Indian law to operate and be effective in the territory where it operates viz, the territory of India, it is not necessary that it should either be published or be made known outside the country.....**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.....Ignorance of it (the published notification) by the person (accused) who is foreigners is wholly irrelevant.**
- Similarly, the personal presence of the accused in India when the offence is occurred of the offence is not essential to make the person liable for offences committed under the code.

Case law:- In this case **Mobraik** the respondent Mayer Hans George was a foreign national, who left Zurich on 27th November, 1962 for Manila by as plane. the flight passed through Bombay where it stopped in transit. In Bombay, he did not embark and was sitting inside the plane. At that time, based on prior information, custom officials conducted a personal search and found that he was carrying 34 kg of gold in the form of gold slabs, which was kept inside his jacket. According to the bank rules 1962 which was published on 24 November 1962, restrictions were placed on transit of gold carried from a place outside India to another place outside India. The transit passengers were required to make a declaration of carrier. Since George had not made such a declaration, he was arrested and subsequently charged for importing gold into India in violation of the FERA Act. He was sentenced to one years rigorous imprisonment.

- Similarly, if a foreigner, not residing in India, starts the train of his crime out of India, but the crime is completed in India, he will be liable under the IPC.

- **Exemption from Coverage of IPC:-**

- (a) 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.
- (b) In accordance with well-recognized principles of international law, foreign sovereigns are exempt from criminal proceedings in India.
- (c) This immunity is also enjoyed by the ambassadors and diplomats of foreign countries who have official status in India. This protection is extended to all secretaries and political and military attaches, who are formally part of the missions.
- (d) Corporation and companies cannot be made liable for the individual offences that may be committed by its employees in their individual or personal capacities, such as murder, fraud and so on, which essentially require corporal punishment.

2. **Extra –territorial jurisdiction:-** Where a crime is committed outside the territory of India by an India National, such a person may be tried and punished by the India Courts and such jurisdiction is known as Extra –territorial jurisdiction. According to Sec. 3 – If anyone commits any offence which is punishable in our country is liable to be convicted and punishment if he commits the crime in foreign countries. The Indian laws are applicable though any one commits offences or crime beyond the jurisdiction of our territory.

Section 4 expands on Section 3, while at the same time clarifying that the provisions of the Code shall apply;

- (a) in case of Indians, for any offence committed outside and beyond India; and
- (b) In case of ‘any person’ (thereby meaning others), for offences committed by them if the offences are committed by person or persons on traveling on waters or in air by boats, plane etc which are Indian.

About liability of foreigners for offences committed in India.

- An Indian citizen is liable for prosecution for anything done in a foreign land, if the act committed is an offence in India, although the same may not be an offence in the foreign country, where it is committed. Likewise, a foreigner, even if he had not been in India at the time the actual occurrence took place would still be liable if the act was completed in India. These issues came to be considered in the case of *Mobarik Ali Ahmed v. State of Bombay*.

One of the major grounds canvassed before the Supreme Court was that the accused could not be tried for the offences in India, as he was not a citizen of India, that at the time when the offence was allegedly committed, he was not resident in India.

- The Supreme Court, however, held as follows:
 - (a) A foreigner who commits an offence within India is guilty and can be punished as such without any limitation as to his corporeal presence in India at the time.
 - (b) Section 2, IPC applies to a foreigner, who has committed an offence within India.
 - (c) Being a foreign national does not imply that the foreigner will not be liable for criminal acts in the country. In fact, nationality cannot be a limiting principle concerned with security of the state and of the citizens of the state.

Liability of foreigners who obtains Indian citizenship for act committed as foreigner

- The Supreme Court held that the procedure laid down as per sec. 4 of I.P. code and sec. 188 of Cr.P.C. plainly meant that if at the time of commission of the offence the person committing it is an Indian, and then even if the offence is committed outside India, he is subject to the jurisdiction of Indian Courts.
- If accused foreigner and is not an Indian citizen then the provisions of the section have no application whatsoever. The fact of acquisition of citizenship subsequent to the committing of the offence does not confer jurisdiction on courts retrospectively for trying offences committed at a time when that person was neither an Indian citizen or even domiciled in there.

Effect of section 3, 4, IPC and Section 188, Cr.PC :-

It is clear from these sections that courts in India have extra-territorial jurisdiction to try offences committed on land, high seas and air by Indian nationals or other. The procedure with regard to prosecuting cases of offences committed outside India has been provided in section 188 Cr. PC.

Section 188 Cr. PC. provides that the procedure if offences is committed out side the territorial jurisdiction of our country India.

- a) If any offence is committed by Indian subject on high sea's or in air found any place in India.
- b) If subject of any foreign country commits any offence on high sea's or air he be punished in India whenever he is found in India.

Proviso : There is proviso applicable to foreigner is that if foreigner commits crime the investigation and trial be commenced with the permission of our central government.

Jurisdiction for offences committed in Indian ships in the High seas;

The jurisdiction of a court over offences committed in the 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 the high seas or on rivers, whether it is moving or stationary, having been anchored for the time being. This jurisdiction called the 'admiralty jurisdiction'.¹⁰²

SALIENT FEATURES OF I.P.C.

Salient features of Indian Penal Code.

The IPC which was a colonial legislation was retained as the main penal law of the country even after India became independent in 1947. The territorial coverage of the IPC extends to the whole of India, except the territory of the State of Jammu and Kashmir. The State of Jammu and Kashmir, in view of the special status it enjoys on account of Art. 370 of the Indian Constitution, has separately enacted laws covering its territories. Thus, it has a separate penal code, though substantially of the same nature and character as the IPC.

The Indian Penal Code 1860 is the substantive procedural law of crimes. Indian penal code defines various offences. It defines acts which constitute an offence. It lays down certain principles of criminal law. Indian penal Code has defined offences; therefore, it is a branch of criminal substantive law.

It consists of two parts.

1. General Principles and 2. Specific offences. Part 1 of the Code deal with the principles. While Part II of the Code provides for the definitions of various specific offences and prescribes punishments.

1. Mens rea :- Mens rea means guilty intent. This principle is based on maxim 'actus non facit reum, nisi mens sit rea.' The intent and act must both concur to constitute a crime. The doctrine needs a guilty mind to be associated with the act.

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

3. Common object :- The essence of the offence is the common object of the person. It is necessary that the main ingredient of any offence is the common object of the person. It is necessary that this object must be common to him if he becomes member of association of many persons and everyone should be aware of it and commit the offence.

4. Abetment :- An Abetment is committed by

(i) By instigating a person to commit an offence.

(ii) By engaging in a conspiracy to commit it or

(iii) By intentionally aiding a person to commit it.

5. Criminal Conspiracy :- The ingredients of this offence are

(i) There must be an agreement between two or more persons.

The agreement should be for doing of an illegal act or legal act by illegal means.¹⁰³

General Defence / Exception :- The following Acts are exempted from criminal liability.

- 1) Act of a person bound by law to do a certain thing (Section 76)
- 2) When judge performs his duty in his official capacity (Sec.77)
- 3) Act done in pursuance to an order or a judgment of a court (Under Section 78)
- 4) Act of a person justified or believing himself justified by law (Section 79)
- 5) Act caused by Accident (Section 80)
- 6) When any act or deed is committed without any malafides and to save the harm to any one (Sec.81.)
- 7) When minor below the age of his seven years commits an offence (Sec.82)
- 8) If any one above the age of seven years and below twelve years but incapable of understanding the Nature and Consequences of Act (U/Sec.83)
- 9) An act done by unsound mind (Under Section 85)
- 10) An act done by intoxicated person (Under Section 85)
- 11) When any act is committed without intention and knowledge resulting in to cause death or grievous hurt on consent of the sufferer (Sec. 87)
- 12) Any act is committed with consent of the sufferer without intention to cause death. (Sec. 88)
- 13) The act done on consent of guardian for benefit of the child or mentally ill person (Sec.89)
- 14) Communication when made in good faith (sec.93)
- 15) Act done in private defence.
- 16) Act causing slighting harm. (Trifling Act)

The above exceptions strictly speaking came within the following seven categories.

(1) Judicial acts (2) Mistake of fact (3) Accident (4) Trifling Act (5) Consent (6)Trifling Act (7) Absence of Criminal Intention.

Part II of the code provides for the definitions of various specific offences and prescribes punishments.

1. Offences against the State :-

- (i) Waging or attempting or conspiring to wage or collecting men and ammunition to wage war against Government of India.
- (ii) Assaulting president or Governor of a State with Intent to compel or restrain the exercise of any lawful power.

(iii) War against Government of India.

(iv) Sedition of offences relating to the Army, Navy and Air force.

Abetting, Mutiny or attempting to seduce a soldier, sailor, or airman from his duty.

(v) Of offences against public tranquility

a) Unlawful assembly (b) Rioting (c) Affray.

(vi) **Offences affecting human body :-**

(a) Culpable Homicide (b) Murder (c) Homicide by Rash or Negligent act (d) Suicide (e) Being a thug (f) Causing Miscarriage (g) Causing simple Hurt & Grievous Hurt (h) Wrongful Restraint and wrongful confinement (i) Assault (j) Criminal force (k) Kidnapping, abduction, slavery, selling or buying minor for prostitution, unlawful compulsory labour. Rape, unlawful sexual intercourse unnatural offence.

Of offences against property :-

i) Theft (ii) Extortion (iii) Robbery (iv) Dacoity (v) Criminal Misappropriation of property (vi) Criminal breach of trust (Section 405) (vii) Receiving stolen property (viii) Cheating (ix) Criminal Trespass, House trespass, House breaking.

Of offences relating to Marriage :-

i) Adultery (ii) Enticing or taking away or detaining with criminal intent a married woman (iii) Co-habitation caused by a man deceitfully inducing a belief of lawful marriage. (iv) Marrying again during life time of Husband or Wife.¹⁰⁴

Offences against Reputation :-

i) Defamation (Section 499)

Punishment :-

Punishments (Sec.53) :- The punishments to which offenders are liable under the provisions of this code are

—

1. Death; 2. Imprisonment for life; 3. Repealed; 4. Imprisonment, which is of two description, namely:- (a) Rigorous, that is, with hard labour; (b) Simple; 5. Forfeiture of property; 6. Fine.

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's ruling that death sentence ought to be imposed only in the 'rarest of rate cases' was expanded in **Machhi Singh vs. State of Punjab.**

The IPC provides for capital punishment for the following offences:

(a) Murder (b) Dacoity with Murder. (c) Waging War against the Government of India. (d) Abetting Mutiny actually committed. (e) Giving or fabricating false evidence upon which an innocent person suffers death (f) Abetment of a suicide by a minor or insane person; (g) Attempted murder by a life convict.

The capital punishment is awarded only in two categories of offences, namely treason and murder. In either of the cases, when the court decides that death penalty is the appropriate sentence to be imposed in the light of the gravity of the matter and consequences of the offence committed and the absence of mitigating factors, then the court under the provisions of Section 354(3), Cr. P.C. has to give special reasons as to why the court came to this conclusion.

2. Life Imprisonment :- It was held in **K.M. Nanavati vs. State of Maharashtra**, and also in **Naib Singh vs. State of Punjab**, in which it was stated that imprisonment for life meant rigorous imprisonment, that is, till the last breath of the convict.

In every case in which sentence of imprisonment for life shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

3. Imprisonment :- Imprisonment which is of two descriptions namely -

1. Rigorous Imprisonment, that is hard labour;
2. Simple Imprisonment

3. Fine :- Fine is forfeiture of money by way of penalty. It should be imposed individually and not collectively. The amount of fine imposed should not also be unduly harsh or severe.

When the 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.¹⁰⁵

GROUP LIABILITY

The various circumstances under which group liability arises under criminal law.

Introduction:- The law relating to group liability has been elaborately dealt with and covered by sections 34, 149, 120A and 120 B of the Code. The doctrine of combination in crime is that when two or more persons unite to accomplish a criminal object, whether through the physical violation of one, or proceeding severally or collectively, each individual whose is contributed to the wrong doing is in law responsible for the whole, the same as though performed by himself alone.

Group Liability under section 34, IPC

1. Acts done by several persons in furtherance of common intention:-

When offence is committed by many persons sharing commission under principle of vicarious liability each one is liable for punishment as if it were committed by him only.

Introduction:- Section 34 of I.P.C. lays down the principle of joint liability in the doing of criminal act is intended to meet the case in which it may be difficult to distinguish between the acts of the individual members of a party who act in furtherance of a common intention of all. Since it is difficult to distinguish the part taken by each member of a group, all persons are made equally liable for the criminal acts done. (Positive + Active)

In Section 34 common intention presupposes a prior concert or a prearranged plan. It indicates prior meeting of minds. Common intention means common design or common purposes or common plan.

Ingredients of Common Intention:- The essential ingredients of common intention (Sec. 34) are as follows:-

- a. Criminal Act
- b. Done by several persons (i.e. two or more persons)
- c. In furtherance of common intention of all
- d. Pre-arranged plan

a. Criminal Act:- Section 34 will not apply for lawful acts. Under Section 34 a criminal act has to be committed in furtherance of common intention of several persons. **A criminal act means the entire series of acts committed by several persons resulting in something which is punishable under I.P.C. or any other law.** Criminal act refer to the whole of criminal transaction in which several persons are engaged by doing of separate or similar acts.

b. Done by several persons:- Under Section 34, a criminal act must have been done by several persons (i.e. 2 or more persons). Section 34 will not apply to a criminal act done by one person even if there is series of acts. The acts may be different e.g. where out of several burglars some kept out a watch and one of those who enters the house shoot and kills an inmate. Under 34, actual participation of the accused person is necessary though the participation may be passive.

c. Common intention of everyone:- For application of Section 34 a criminal act has to be committed by by many persons according to their common intention. The word 'furtherance' means 'advancement or promotion'. If 4 persons have a common intention to kill 'A' they will have to do many acts in promotion of that intention in order to acts in promotion of that intention in order to fulfill it. For example- Four persons intended to kill 'A' who is expected to be found in a house. | All of them participate in different ways. One of them attempts to enter the house but is stopped by the sentry and he shoots the sentry. Though the common intention was to kill A, the shooting of sentry is in furtherance of the said common intention. In this case Sec. 34 is applies.

In the common intention is for doing one criminal act, but another criminal act has been done which has no connection with the common intention, it shall not be in furtherance and consequently Section 34 shall not apply. For example- A, B, C had common intention to kill Z. While killing Z, 'A' committed a theft also. Section 34, shall not apply in respect of the theft committed by 'A' because it is a separate act of 'A' which is not connected with the common intention of all. 'B' and 'C' shall not be liable for the theft committed by 'A'.

d. Pre-arranged plan:- In section 34. common intention implies pre-arranged plan. to constitute common intention it is necessary that the intention of each of one of several persons be known to the rest of them and ordered by them. Under Section 34 of the accused must be present physically at the actual commission of the offence. He need not be present in the same room or on the very spot where crime is committed but must be present some where nearby.

Group Liability under section 149 I.P.C. Section 149 :- “ If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that objet, every person who at the time of the committing of that offence, is a member of the same assembly is guilty of that offence’.

Essential Ingredients:-

1. There must be an unlawful assembly, as postuted in Sec. 141 of I.P.code
2. Criminal act (i.e. Offence) must be done by any member of such assembly.
3. The offence must be committed in prosecution of the common object of the assembly; or such which was likely to be committed in prosecution of the common object.
4. The accused must be a member of the unlawful assembly and knew the common object of that assembly at the time the offence was committed.

Group Liability under section 120A and 120-B.

Introduction:- Criminal conspiracy is a distinct and substantive offence added to the Penal Code in 1913. To conspire means ‘to plot or scheme together’. Etymologically the work ‘conspiracy’ means ‘breathing together’ and people cannot breathe together unless they put their heads together. Hence, conspiracy is an act for which at least two persons are essential. One person alone cannot conspire. The law of criminal conspiracy has been provided in Sections 120 A and 120B of the I.P.C.

Definition of Criminal Conspiracy (Section 120-A):-

‘When two or more persons agree to do, or cause to be done-an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy’.

If more than two persons comes together and agree to commits any offence punishable by any law which is in force at the time of commission of offence.Criminal act of all the persons to the agreement. In view explanation 2 of sec. 120 it does not any difference whether the offence or illegal act is final goalor it is occurring as result of something else.

Section 120-A :- The essential ingredients of criminal conspiracy are:-

- (a) Two or more persons;
- (b) Agreement between such persons; and
- (c) The commission of unlawful act by unlawful means.

The basic thing is that there is an agreement which requires at least two natural person. A criminal conspiracy is not itself an offence. A criminal conspiracy with intent to commit an offence (Murder, Rape) is an offence.

Illegal act or Legal act by Illegal means In Criminal conspiracy, the agreement entered into between 2 or more persons must be to do an illegal act or a legal act by illegal means. If two persons by unlawful means of fraudulent representations obtain an export license from the Government, it is an example of a conspiracy by unlawful means (i.e., illegal means) to achieve a lawful object. There must be meeting of minds of 2 or more persons in doing of the illegal act or the doing of a legal act by illegal means.

In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose.

Punishment for Criminal conspiracy (Section 120 B):- according to Section 120-B of the I.P.C., if the offence conspired to is punishable with death, imprisonment for life or rigorous imprisonment for 2 years or upwards. (Where no express provision is made in the Code for the punishment of such conspiracy) the conspirator is punishable as an abettor. In all other cases the conspirator shall be liable for punishment not exceeding 6 months imprisonment or with fine or with both.

Common Object & what is the difference between Common Intention and Common Object:-

Sec. 149 creates a specific offence in which the emphasis is on the common object of the members of an unlawful assembly. Under Sec. 149, the criminal liability is determined not by the intention of the various individual members constituting it; but by the common object of the assembly as a whole.

Section 149:- “If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly is guilty of that offence’.

Essential Ingredients:-

1. There must be an unlawful assembly, as defined in Sec. 141 of the I.P.C.
2. Criminal act (i.e. Offence) must be done by any member of such assembly.

3. The offence must be committed in prosecution of the common object of the assembly; or such which was likely to be committed in prosecution of the common object.
4. The accused must be a member of the unlawful assembly and knew the common object of that assembly at the time the offence was committed.¹⁰²

Difference between common intention and common object:

Common Intention (Sec. 34)	Common Object (Sec. 149)
1. Several persons(i.e. 2 or more)	1. 5 or more person
2. common intention may be any intention (to commit any criminal act)	2. Common object must be one as specified in Sec. 141.
3. Sec. 34 requires some act however small to be done.	3. Mere membership of the unlawful assembly is sufficient.
4. Under sec. 34 the act must be a criminal act in furtherance of common intention of all.	4. The act need not be a criminal act in actual furtherance of the common object. ¹⁰⁶

STAGES OF CRIME

The Stages of Crime.

The analysis of commission of a crime consists of some significant stages. If a person commits a crime voluntarily, it involves four important stages, viz.

- (1) Intention of Contemplation
- (2) Preparation;
- (3) Attempt; and
- (4) Commission of Crime or accomplishment.

(1) Criminal Intention:-

- Criminal intention is the first stage in the commission of the offence.
- Law does not as a rule punish individuals for their evil thoughts or criminal intentions. The criminal court does not punish a man for mere guilty intention because it is very difficult for the prosecution to prove the guilty intention of a man.
- Intention is the conscious exercise of the mental faculties of a person to do an act, for the purpose of accomplishing or satisfying a purpose.

- The word intention is nowhere define or illustrated. It means one's will desire, voluntariness, malafides with some known purpose doing any act. In the I.P.C., all these varied expressions find place in the various sections of the Code. Section 39 of the Code defines 'voluntarily'
- When any one causes any effect by any means known to him with will to cause the same by employing his known means with full of malafides knowingly or believing that it is like to be caused.
- For example, if a man drives in a rash and reckless manner resulting in an accident causing the death of a person, the reckless driver cannot plead innocence by stating that he never intended to cause the death of the person. It may be true in the strict sense of the term. But a reckless driver should know that reckless driving is likely to result in harm and can even cause death of the persons on the road, So, by virtue of the definition of the word 'voluntarily' in the Code, a reckless driver who causes the death of a person can be presumed or deemed to have intended to cause the death of the person.

(2) Preparation:-

- Preparation means to arrange necessary measures for the commission of the intended criminal act.
- The intention or the intention after preparation is not sufficient to attract crime.
- Preparation itself is not punishable as it is difficult to prove that necessary preparations were made for commission of the offence.
- Generally, preparation is not punishable. But in certain exceptional cases mere preparation is also punishable.

Under the I.P.C. 1860, mere preparation to commit the following offences is punishable as they are considered to be grave offences:-

1. Preparation to wage war against the Government (Section 122)
2. Any one commits damages to the property and destruction of property within the territories of our country and the country which is with peace with our government (Sec. 126)
3. Preparation for counterfeiting of coins or Government Stamps (Sections 233 to 235), 255 and 257.
4. Possessing counterfeit coins, false weights or measurements and forged documents (Section 242, 243, 259, 266 and 474)
5. 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.
- The term 'attempt' has not been defined in the I.P.C. Section 511 of the I.P.C, does not give any definition of 'attempt' but simply provides for punishment for attempting to commit an offence. Attempt means the direct movement towards the commission of a crime after necessary preparations have been made.

- When a person wants to commit a crime, he firstly forms an intention, then makes some preparation and finally does something for achieving the object; if he succeeds in his object he is guilty of completed offence otherwise only for making an attempt.

Essential of the 'Attempt':- There are three essentials of the attempt:-

1. Malafide intention to commit any illegal act
 2. Any act is committed for committing any offence and
 3. Such act must be 'proximate, to the intended result'.
- In R. vs. White, the accused put two grains of potassium cyanide in his mother's drink with an intention to kill her. The Court held the accused guilty of attempt to commit murder.
 - 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.

Attempt under the I.P.C.:- Under the I.P.C, the sections on attempt can be divided into three broad divisions.

1. Those sections in which the commission of an offence and the attempt to commit are dealt within the same section, the extent of the punishment being the same for both the offence as also the attempt. the examples of this category are those offences against the state such as waging or attempting to wage war against the Government of India, assaulting or attempting to assault the President or Governor with intent to counsel or restrain the exercise of lawful power, sedition a public servant accepting or attempting to accept gratification, using or attempting to use evidence knowing it to be false, dacoity and so on.
 2. Those offences in which the attempt to commit specific offences are dealt side by side with the offences themselves, but separately, and separate punishments have been provided for the attempt other than that provided for the offences which have been completed. The examples of this category are attempt to commit an offence punishable with death or imprisonment for life including robbery, murder etc.
 3. Attempt to commit suicide specifically provided under section 309 IPC.
 4. The fourth category relates to the attempt to commit offences, for which no specific punishment has been provided in the IPC punishment has been provided in the IPC (C. 511). This section 511 I.P. code provides that anyone makes an attempt for commission of offence punishable with life imprisonment or imprisonment or causes such an offence to be committed and in committing such an attempt towards commission of offence for that there is no any provision for its punishment, then such attempt be punished to the extent of one half of the imprisonment for life or one half of the longest term of imprisonment of main offence.
- (4) **Commission of Crime or Accomplishment:-** The last stage in the commission of crime is its accomplishment. If the accused succeeds its accomplishment. If the accused succeeds in his attempt to commit the crime, 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 I.P.C. 1860.¹⁰⁷

General exceptions (from Section 76-106):

Introduction: General defences or exceptions, which can be pleaded by the accused against his conviction, are contained in Sections 76 to 106 of the I.P.C. In general exceptions (to criminal liability) there will be absence of mens rea (guilty mind) on the part of the wrong-doer. If there is any general defense of the accused in a criminal case the burden of proving lies on him sec. 105 I.Evi. Act.

1. Mistake of fact:- Mistake of fact (Section 76 and 79 I.P.C.) a general defence, is based on the Common Law maxim -Ignorantia Facit Excusat; Ignorantia Juris Non Excusat- (Ignorance of fact excuses; Ignorance of law does not excuse) as per Sec. 76 & 79 I.P. Code. In criminal law mistake or ignorances of fact is a good defence. But, mistake of law is not a valid defence under the I.P.C. In mistake of fact the accused does not possess mens rea of guilty mind.

(i) Mistake of Fact-Bound by law:- According to Sec. 76, If any one commits any act attracting who by reason of mistake of fact or by Law in good faith believes himself to be bound by Law to do it.

Ingredients:-

1. The mistake or ignorance must be of fact, but not of law.
2. The mistake of fact must have been arrived at in good faith.
3. The mistake must be a reasonable one;
4. If the mistaken facts were true, the act would not be an offence.

Illustration:- A fire a bullet into a bush, where unknown to him B is lying hid and bullet kills B. A is not guilty of murder of B because A had not fired intentionally at B.

Good Illustration:- Sir Michael Foster has cited a good illustration. A man before going to the church, fired off his gun, and leaves it empty. But during his absence somebody else went out shooting with the gun and while keeping it backs, left it loaded. The owner, late in the same day, took up the gun and touched the trigger. The gun went off and killed his wife who was in the room. The man had reasonable grounds to believe that the weapon was not loaded. He has rightly acquitted.

(ii) Mistake of Fact-Justified by Law:- According to Sec. 79 of the IPC, if any one commits any act which 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. (Sec.79)

Case Laws:-

In State of AP vs. Venugopal, the accused were all policemen, Of the three, one was a sub-inspector, another, had constable and the third, a constable. they arrested a person on the suspicious that he had received some stolen property and was involved in house-breaking. Three days with a number of injuries.

The accused was charged with offences under Section 348, 331 and 201. the prosecution case was that the deceased was arrested, wrongfully confined and tortured for the purpose of extracting a statement from him. When the accused policemen realized that the injuries were serious, they removed the person from the police station and threw the body in the place. Where it was ultimately found. The trial High Court observed that there was no doubt or dispute about the fact that these officers were investigate the case of house-breaking and theft officially and hence set aside the orders of conviction passed by the trial court and acquitted the accused. As the State preferred an appeal to the Supreme Court against the H.C. order.

The Supreme Court held that the act of beating or confining or sending away an injured person had no relation to the process of investigation. The Supreme Court reserved the judgment of the High Court and convicted all the accused.

2. Act of Judge when acting judicially (Sec. 77):-If any judge in his authority in good faith believing authorized by Law commits any act no any 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 enforce is no offence. If this judgment or order of the Court is without any jurisdiction still then the person who executes the judgment and order believing that Court is having jurisdiction.

Object:- the object of protection given under these provisions to judges and their ministerial staff, who are executing orders of the judges, is ensure the independence of judges and to enable them to discharge their duties without any fear of the consequences.

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. Accident in doing a lawful act (Sec/ 80):- According to Sec. 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 does not mean here a mere 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.

5. Act likely to cause harm, but done without criminal intent, and to prevent other harm (Section 81):- In view of the provisions of sec. 81 of I.P. code any act done by any one without any criminal intent for saving or preventing harm to third person or property in good faith is no offence.

Explanation:- The harm which is to be prevented is a question of fact. Its nature is imminent to pardon the consequences of doing act having knowledge that such act is likely to cause injury.

1. The act must be done without any criminal intention;
2. The act must be done in good faith
3. The purpose behind the act should be to prevent a greater harm to person or property.

Illustration:-When there is great fire in the village and many houses are gutted in the fire at that time anyone pulls down adjacent houses in good faith for saving life of residents or their property then he is not guilty of offence.

6. Act of a child under seven years of age (Section 82):-If any child who is below seven years age old commits any offence is no offence (sec. 82)

7. Act of a child above seven and under twelve of immature understanding (Sec. 83):-Sec. 83 – In view the provision of this section as to general exception if any minor child is in between above seven and below 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.

Section 82 and 83, I.P.C. Confer immunity from criminal liability on child offenders. This immunity is based on the principle of juvenile justice. The constitutional basis for juvenile justice can be derived from arts 15 Cl-3, 39 (e) (f) of Constitution.

Article 15(3) provides that article 15 (3) The State is empowered for making provision for the welfare of women and children. Article 39 forms part of the directive principles of the state policy. Clause (e) of art 39 provides inter alia, that the tender ages of children are not abused. Clause (f) provides for the provision that children be given an opportunity and facilities to promote their development in good condition maintaining their freedom and dignity. They should not be exploited. The children's childhood and youth be protected and promoted moral material things, exploitation. They should be developed in healthy manner. They are treated in dignity with freedom. All the opportunities and facilities to provided to them.

8. Act of a person of unsound mind (Section 84):-In view of the provisions of section 84 of the code if any person of unsound mind or mentally ill person commits any offence due to his unsoundness of mind not capable of knowing the nature of the act having no knowledge of wrong or right or Law is no offence.

Ingredients:-

- 1) the accused must have been suffering from unsoundness of mind at When offence is committed.
- 2) When he is unable to know the act which he is doing due to his mental illness.
- 3) If the accused knows the nature of his act, then he must not know that what he is doing is either wrong or contrary to law. (Legal Insanity)

The foundation of law of insanity was laid down by the House of Lords in the sensational Mc. Naughten's case in England.

9. Act of a person incapable of judgment by reason of intoxication caused against his will (Section 85):-Sec. 85 of I.P.Code when any person is intoxicated by any thing which was administered to him without his knowledge and against his will and due to intoxication he is unable to know nature of the act is either wrong or illegal and in that condition if any offence is committed he is not liable for commission of any offence.

10. Offence requiring a particular intent or knowledge committed by one who is intoxicated (Section 86):-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 unless the thing which intoxicated him was administered by anyone to him against his will and without his knowledge.

Ingredients:-

- 1) The accused must be under the influence of intoxicated substance when the offence is committed by him.
- 2) The accused is unable to know the nature of his act under intoxication.
- 3) His having no knowledge as to whether as he is doing any wrong or any act against the Law.
- 4) When the intoxication is the result of administration of intoxicated thing to the accused without his knowledge and his will.

11. 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 to death or grievous hurt which is not within the knowledge of that person which is likely to cause death or grievous hurt to any person who is more than eighteen years age old and he gives consent oral or written then it is not an 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) principle is that everyone is the best judge of his own interest and no one consent to that which he considers injurious to his own interest.

For example:- If A, a grown up man sells his teeth to a dentist for Rs. 60/- and permits the doctor to pull them out, the dentist is not liable for causing injury to A's person. A permitted the doctor for removal. But if the doctor's act intentionally to cause death or grievous hurt then doctor will be liable.

12. Act 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 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.

13. On consent of guardian if any act is done in good faith to it (Sec. 89) :- This section gives power to the guardian of an infant under 12 years of age or an insane person to consent to the infliction of harm to that infant or insane person provided that it is done in good faith and for his benefit. 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 insane person.

Person above 12 years of age capable of giving their consent.

For example:- If a parents killed his daughter aged 10 years from the fear of killing into the hands of dacoits the parents is not protected from Criminal liability even the act is done in good faith.

14. Consent (Section 90):-The consent is not valid if it is obtained by putting any man by giving threat or hiding real facts and if it is obtained when man was intoxicated or mentally ill or minor incapable of understanding the consequences of consent which he has given.

For example:- A girl of 16 years of age, goes to B, a doctor to consult him with respect to an illness from which she was suffering. B advised her for surgical operation and under the pretext of performing it had sexual connection with A. There was a misconception regarding the nature of the Act and the consent was given by her was for the purposes of surgical operation and not for sexual connection and this fact was known to the Doctor. So the Doctor was liable for the offence of rape.

16. Exclusion of acts which are offences independently of harm caused (Section 91):- When any person gives consent or it is given on behalf of third person per causing harm of may cause harming the exception falling under sections 87,88 and 89 are not attracted.

For example:- In case of miscarriage not only an injury to the woman alone but an offence against the life of the child also. Therefore, the mothers consent will be of no avail (no use) for the child's consent and the person causing miscarriage could not be protected.

17. Act done in good faith for benefit of a person without consent (Section 92):- It extends protection to those persons who cause harm to another during the course of performing an act without consent provided that the act in bonafide and resulting relief to that person. This provision has been enacted to cover those class of cases where because of extreme situation when it is not possible to grant permission agent being not competent to give it any things there is not other person to signify his consent on his behalf.

18. Communication made in good faith (Section 93):- It extends protection to a man from criminal prosecution for making a communication with bonafide benefit sufferer to whom it is made. A surgeon is not liable for committing any offence though he knew that the communication of his opinion might cause the patient's death. The doctor might have thought it is necessary to give patient timely warning of his approaching end so that he might settle his worldly affairs but subject of good faith.

19. Act to which a person is compelled by threats (Section 94):- If any person under threat of his immediate and instant death commits any offence which except the offence against State punishable with death is entitled to such private defense.

Ingredients:-

1. That the person did not voluntarily expose himself to the constraint;
2. That the fear which prompts his action was the fear of instant death.
3. That the act itself was done at a time when he was left with no option but to do it or die.

20. Act causing slight harm (Section 95):- When someone causes slight harm intended to cause or known to be likely to cause such harm which is so slight thereby a person of ordinary sense and temper is not going to complain about it.¹⁰⁸

Indian Evidence Act 1872

Law is the instrument through which society plays a very vital and significant role. To ascertain real things a sound decision in any case is not possible without knowledge of true facts involved in a dispute. The facts alleged by one party, and denied by the other require the court to ascertain whose contentions are for that purpose, the judge has to weigh the evidence available in support of or contradiction to those contentions. To ascertain and ascertaining of truth fullness is governed by the law of evidence. Rules which are laid in this law which are as guidelines to the courts upon the question reaching to truth and getting facts proved before it,

To reach conclusion this law of evidence is important to deciding issues or disputed issues

Historical background of the Indian Evidence Act

Since from ancient times in Indian history which we find the discussion on the rule of Evidence in Sanskrit books. But during the Muslim period not much material is available on the Indian Evidence Act. In 1726 the rules of evidence were prevailing in England under common law and at the same time statute law which were introduced in India.

Near about eleven enactments were in force during the period 1835 to 1855 in Indian Evidence. Thereafter Sir Henry Maine in 1868 who prepared a draft for our country it was found unsuitable. The bill of present

Act of Indian Evidence Act 1872 prepared by Sir Stephen who was law member. This 1872 Act still continue and applicable today.¹⁰⁹

The law of evidence is purely an adjective law or Procedural Law. Evidence Act is most important branch of adjective law. The law of evidence dealt with all statements, which facts can be proved in a court of law, when there is a particular dispute before it? Now the question arise whether this particular fact is in existing or non existence which adduced as evidence. Even the law of evidence means all statements, which the Court permits or require to be made before it by witnesses in relation to matters of fact under enquiry. All such statements are known as oral evidence and those which are in documents including electronic records produced for inspections of courts, are called documentary evidence.

The term evidence or the word evidence is derived from the latin word evidences or *evidere*, which means “to show clearly; to make clear to sight; to discover clearly; to make plainly certain; to ascertain to prove”¹¹⁰

Indian evidence Act which vital role in courts proceeding and this law of evidence is capable of leading in litigation. Evidence law which bear capacity to judicial investigation to ascertain logical reasoning. This law popularly known as unique piece of legislation this Act since from the year 1872 very few amendments were took place. The object of this Act is to establishment of relevant facts by proper legal means to satisfaction of the court and include disproof.

This law which determines first and important part existing facts which defines as substantive law as conclusive. The second important part is what sort of proof is to be given of those facts; Thirdly who is to be give it and further and lastly how is it to be given.

Cardinal Rule of Evidence

- i) Evidence must be confined to the matters in issue that is only relevant facts are to be admitted in evidence,
- ii) Hearsay evidence is not to be admitted and
- iii) In all cases the best evidence must be given¹¹¹. In all cases **Janki Narayan Bhoir v. Narayan kadam**¹¹²

The law of evidence is *lex fori* for which governs the courts the term *lex fori* means “the law of the place of the action this indicate whether a witness is competent or not, whether a certain matter requires to be proved by writing or not whether certain evidence proves a certain facts or not, that is to be determine by the law of the country determine by the law of the country where the question arises, where the remedy is sought to be enforced, and where the court sit to enforce it. **In Bain V. Wheite Raven and Furness Junction Ry.**¹¹³(1850) 3 H.L.C. 1 at p. 19

Scope of Evidence Act

The Indian evidence act which deals with the subject of evidence including admissibility or evidence and a special law. The rule of relevancy is not found in evidence Act which affected by any provision of the code of Criminal procedure code or in any other enactment unless and until specifically stated in code, or repealed or annulled by another statute.

“Evidence exclude by the Evidence Act which is inadmissible in position and should not be admitted because it may be important for ascertaining truth.” **Srichandra Nandy V. Rakhala Nandy.**¹¹⁴

Not a single party is entitle to enter into a contract out of the provisions of the Act. If any evidence is tendered the court is to see whether it is admissible under the Indian Evidence act or not. **In Sago Rai V. Ramji Singh.**¹¹⁵

Basic scheme of the Act : The Indian Evidence Act is divided into three parts.

1. Chapter II of Indian evidence act include Part I under this part section 1 to 55 which deals with relevancy of facts in this the answer of the question what facts may and may not be proved? Has been defined in act.
2. Chapter III to VI of Indian Evidence act which is part II under this part section 56 to 117 which defines rules of evidence as how relevant facts to be proved and what kind of evidence must be given of a fact which may be prove?
3. Chapter VII to XI of The Indian Evidence Act 1872 section 101 to 167 deals with adducing of evidence and consequence of evidence when relevant fact is proved.

The Indian Evidence Act which deals these types of questions answers are given this Act. The Indian Evidence Act and rules given under this act as rule of evidence are in general in nature and are the same in civil and criminal proceeding and it bind alike State and its citizen. Its proceeding and rules are same for prosecutor, plaintiff, defendant, counsel and client even for the accused.

The Indian Evidence Act 1872 under section 3 which is about interpretation clause under this the term evidence has been define;

“Evidence” - “Evidence” means and includes –

- 1) The evidence is explain and includes the Statements made by the witnesses before the Court when the Court records it without any objections as to the facts before it when it inquiries in the case. It is called as oral evidence.
- 2) When the Court permits the admission of documents as part of evidence it is called as documentary evidence. The documentary evidence also includes electronic records.^{116.}

Thus evidence means oral Statements and also the documents which are admissible by the Court pertaining to the matters and facts before the Court when it is making an inquiry.

Object:-The object of rules of evidence is to help the courts to ascertain the truth and to avoid the confusion in the minds of judges, which may result from the admission of evidence in excess.

The main principle which underlie the law of Evidence are:

- (i) evidence must be confined to the matter in issue.
- (ii) hearsay evidence must not be admitted.
- (iii) best evidence must be given in all cases.

1. Based on the English Common Law:- The modern law of evidence owes its inception to English Common Law of latter stage. Till the beginning of the 19th century most of the rules remained contained in rulings and dicta scattered throughout the reports. A sort of uncertainty was prevailing in the field of law of evidence.

The first book of evidence was written by chief Baron gibert, which was published in 1756 after 30 years of his death. Along with the reforms in English law, in India too, after 1833 various reforms were introduced. Between 1835 and 1853, a series of Acts were passed by the Indian Legislature, which introduced some stray reforms in Indian law of evidence.

The Third Law Commission, which was appointed in 1861 prepare a draft Indian Evidence Act. The Commission's draft, however, found no favour in India. Then, in 1870, the task of codification of the rules of Law of Evidence was entrusted to Sir James Fitz James Stephen. He prepared a draft and after eliciting the opinion of Selection Commission, High Courts and Members of the Bar, it was placed before the legislature 1871 and it was duly enacted in 1872 which is the present Indian Evidence Act.

The main object of this Act was to prevent indiscipline in the admission of evidence by enacting a correct and uniform rule of practice.

2. Not exhaustive of the rules of Evidence:-

* The law of evidence is the lex fori which govern the courts; whether a witness is competent or not; whether a certain fact requires to be proved by writing or not; whether a certain evidence proves a fact or not; that is to be determined by the law of the country where the question arises, where the remedy is sought to be enforced and where the court sits to enforce it.

* Lex fori means the law of the place of action or the law of the forum of the nation.

* The object of the preamble of an Act is to indicate what, in general terms, was the object of the Legislature in passing the Act.

The preamble here shows that the Indian Evidence Act is not merely a fragmentary enactment, but a consolidatory one.

- The Indian Evidence Act is not exhaustive of the rules of evidence. For the interpretation of the sections of the Act the Court can look to the relevant English common law, but the law of evidence which is a complete Code does not permit the importation of any principle of English Common Law relating to evidence in criminal to the contrary.

3. Consolidating Act:- The Indian Evidence Act is not merely fragmentary enactment, but a consolidated one.

4. Procedural Law:- The Law of Evidence is a procedural law and it would not effect substantive rights. The Indian Evidence Act contains all such rules which answers the questions such as of what matters witnesses can speak, who are competent witnesses, on whom does the burden of proving the case lie, is it on the person asserting the existence of facts or on the person denying their existence, how is the knowledge of the witness to be placed before the Court, how is his story tested by the adverse party, how is the genuineness of documents established can copies of documents be relied upon etc.

The Indian Evidence Act which is the adjective law steps in for the enforcement of the substantive law.

5. Territorial extensions:-In Law of evidence extends to the territory of India and not applicable to the territory of India. The State of Jammu & Kashmir is having its Law and Acts. Jammu and Kashmir is governed by a separate Evidence Act [(13 of 1977) Samrat] on the same lines as this Act.

6. Applies to the judicial proceedings:- As per Section 1 of the Indian Evidence Act, 1872, it applies to all judicial proceedings in or before any Court, including Court material, other than Courts-material convened under the Army Act, the Naval discipline Act or the Indian Navy (Discipline) Act, 1934, or the Air Force Act.

The provisions of the Act are applicable in proceedings under Foreign Exchange Regulation Act as per the judgment given in the case of Shanti Prasad Jain v. Director of Enforcement.

the Act also applies in respect to the trial of an election petition, as provided under Section 87(2) of the Representation of the People Act (kailash v. Nanhku)

the term 'Judicial Proceedings' is not defined in this Act, but under Section 2 (1) of the Criminal Procedure Code, 1973, it includes any proceedings in the course of which evidence is or may be legally taken on oath. An inquiry about matters of fact, where there is no discretion to be exercised and no judgment to be formed but something is to be done in a certain event as a duty, is not a judicial but an administrative inquiry.

However, this Act does not apply to affidavits presented to any Court or officer, nor to proceedings before an arbitrator. the Evidence Act has no application to enquiries by Tribunals, even though they may be judicial in character.

7. Discretion of the Court:- The entire judicial system is run and based on the evidence. Though the Indian Evidence Act is a complete Code, its sections are framed in concise. Hence, there is more freedom and

discretion to the Courts in admitting and recording evidence. It does not mean that entire procedure is left to the discretion of the Courts. It means that the Courts can exercise their discretionary power within the boundaries of the provisions of this Act.

8. Allows both oral and documentary evidence:- Though there are several kinds of evidence, the Act allows mainly two kinds of evidence i.e. the oral and documentary evidence, which are most important and reliable evidences.

9. No place for hearsay evidence:- except in a few cases, hearsay evidence is not admissible under the Indian Evidence act, 1872. the Act gives importance to the direct and circumstantial evidence only.

10. Protection and privileges to the witnesses:- The Indian Evidence Act, 1872 provides protection and privileges to certain categories of the witnesses. One of such protections is that no person is bound to incriminate himself.

11. the object is to find out truth:- The sole object and end of the Indian Evidence Act, 1872 is to obtain evidence by which the truth of the several disputed facts of points in issue should come out. It is the duty of the party claiming to prove the substance of the issue to the satisfaction of the Court.

Conclusion: Thus, there are two fundamental axis can be said to be the basis on which the rules of evidence are framed:-

- 1) No facts other than those having some connection with the matter in controversy should be looked into by the court however interesting it may be and
- 2) All facts having rational probative value i.e. which help the court to come to a conclusion upon the existence or non-existence of the matter in controversy, are admissible in evidence, unless excluded by some rule of paramount importance.¹¹⁷

Difference between evidence in civil & criminal proceedings.

The rules of evidence are in general the same in civil and criminal proceedings, and bind alike State and citizen, prosecutor and accused, plaintiff and defendant, counsel and client. there are, however, some exceptions, e.g. the doctrine of estoppels applies to civil proceedings only; the provisions relating to confessions (ss 24-30), character of persons appearing before Courts (ss. 53,54) and incompetence of parties as witnesses (s. 120), are peculiar to criminal proceedings.

In a civil case, a Judge of fact must find for the party in whose favour there is a preponderance of proof, though the evidence is not entirely free from doubt.

In a criminal case no weight of preponderant evidence is sufficient, short of that which excludes all reasonable doubt.

In a criminal trial the degree of probability of guilt has got to be very much higher almost amounting to a certainty than in a civil proceeding, and, if there is the slightest reasonable or probable chance of innocence of an accused, the benefit of it must be given to him.

The onus of proof in criminal cases never shifts to the accused and they are under no obligation to prove their innocence or adduce evidence in their defence or make any statement.

In civil case, it is the duty of the parties to place their case before the Court as they think best. Whereas, in a criminal cases it is the duty of the Court to bring all relevant evidence on the record and to see that justice is done.

In a criminal trial, it is for the Court to determine the question of the guilt of the accused and it must do this upon the evidence before it, independently of decisions in a civil litigation between the same parties.

Appreciation of Evidence

- The term appreciation means recognition of the value, estimation made justly.
- In courts, petitioner/plaintiff/ prosecution submits the pleadings by way of petition/ charge-sheet. The defendant / accused files the written statement.
- Both the parties produce the oral and documentary evidence.
- The Court is duty bound to decide the violation of right of accused as per the evidence recorded by it and adduced by the prosecution. Whether the guilt of the accused is made out beyond a reasonable doubt and whether, in a civil case, on a balance of probabilities the plaintiff has made out a case for relief.
- For a proof to be beyond reasonable doubt, the standard of reasonable man must be adopted. this is a very delicate task. The higher courts have often to reject or remand cases because the evidence was not properly appreciated.
- Where all the witnesses gave a consistent account of the happening which was sufficient in itself to convict, it was immaterial that there were slight discrepancies (variances) in examination-in-chief and cross-examination or that there was one more witness who was not produced, or that the articles connected with the crime were not seized. Witness showed slight discrepancies as to the number of blows and whether the victim was at the time in a standing or lying posture.
- The Supreme Court observed: Such discrepancies in matters of detail may occur even in the evidence of truthful witnesses. Such variations creep in because there are always natural differences in the faculties of different individuals in the matter of observation, perception and memorization of details. That is hardly a ground for rejecting their evidence when there is consensus as to the substratum of the case.
- A person who witnessed a murder was so upset and shocked that he could not speak anything on reaching home until he recovered his breath. This did not destroy the value of his testimony.

Improvements made by a witness in his testimony and variations in earlier and later statements does not by itself make his testimony infirm.

- This maxim i.e. false in one thing, false in everything, is neither a sound rule of law, nor a rule of practice. It has been held that this maxim does not apply to criminal trials because the court has to discover the truth from falsehood.
- It is well-settled law that evidence may be accepted partially or in the whole. Where the case rested entirely on documentary evidence, oral evidence, though only partially acceptable, can be used to the limited extent of filling in the gaps in prosecution evidence. Where a part of the evidence was not separable from the rest of the unbelievable part, entire statement was liable to be rejected.

Problem of applicability of Evidence Act Introduction:- The Indian Evidence act, 1872 extends to the whole of India except the State of Jammu and Kashmir and applies to all judicial proceedings in or before any Court, including – Administrative Tribunals, Industrial tribunals, Commissions of Inquiry, Court Material, Disciplinary authorities in educational institutions, etc.

1. Non-Applicability of the Indian Evidence Act, 1872 to the Administrative tribunals:- Tribunals are the bodies with judicial or quasi –judicial functions set up by statute and existing outside the usual judicial hierarchy of the Supreme Court and High Courts e.g. the Administrative Tribunals, Industrial tribunals, Sales Tax Tribunals, Income Tax Tribunals etc.

the Swaran Singh Committee appointed by the parliament recommended for the establishment of the Administrative Tribunals. The Administrative Tribunals Act was passed by the Parliament in 1985 in pursuance of the power given by Article 323A of the Constitution of India.

The Central Administrative Tribunal:- It has been established from 1st November 1985 with a principal Bench at Delhi and additional Benches at Delhi, Mumabi, Kolkata, Chennai, Hyderabad etc. these Central Administrative tribunals deal with the matters and particulars relating to the Central Government employees viz. Railways, postal, telecom, insurance etc. who are under the service of the union. The matters in relation to recruitment and all service matters in respect of officers belonging to All India Services or of members of the civil service of the union or holding a civil post under the union or a civil post connected with defence or in the defence service shall vest with the Tribunal.

The State Administrative tribunals:-

A separate administrative tribunal has been established for each state. For small states a Joint Administrative tribunal has been established for ex:- Punjab and Haryana. the matters in relation to recruitment and all state service matters of offices belonging to state services or members of the civil services of the states or holding a civil post under the state shall vest with the State Administrative Tribunal.

Evidence Act- Not Applicable:-

In enquiries before tribunals strict rules of evidence may not apply because usually the enquiring officers consist of persons not having acquaintance with the rules of evidence. Even though the Evidence Act is not applicable in certain cases, the principles of natural justice should be observed. Natural justice means that a result of process should just, itself in deed and truth.

In *Union of India v. D.R. Verma*, the Supreme Court has held that the Indian evidence Act is not applicable to inquiries conducted by tribunals. The tribunals are required by law to observe rules of natural justice, such as, that the party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by the party.

2. Industrial tribunals:- To prevent the labour unrest and to solve the disputes between the employees and employer, the then British Government enacted the Trade Disputes Act, 1929. Later the British government enacted the Industrial Disputes Act, 1947 on the basis of recommendations of the Royal Commission on Labour.

Where an industrial dispute is referred, by the appropriate government, to an industrial tribunal constituted under Industrial Disputes Act, the tribunal inquires into dispute, which may involve issues bearing on concessions relating to hours and other conditions of work, on wages and bonus, and other matters pertaining to the employer-employee relationship.

Under Section 11, clause 3 of the Industrial Disputes Act, 1947 every Board, Court, Labour Court, Tribunal and National tribunal has the same powers as are conferred on a civil court under the Code of Civil Procedure.

Section 11, clause (a) of the Industrial disputes Act, 1947 also further provides that every Labour Court, Tribunal or National Tribunal shall be deemed as a Civil Court.

Different views:-

As per Section 3 of the Indian Evidence Act, 'Court includes all Judges and Magistrates, and all persons, except arbitrators legally authorized to take evidence'.

Some consider that the industrial tribunal satisfies the definition of a court in the Indian Evidence Act and so the tribunal should follow the rules of that Act.

In cases such as *Electro Mechanical Industries Ltd. v. Industrial Tribunal*, *Western India Match Co. v. Industrial tribunal*, and *Harchura Tea Estates v. Labour Appellate Tribunal*, the courts in Indian have held that the Labour Courts and Industrial Tribunals are not courts within the meaning of the Indian Evidence Act, 1872.

The Indian Courts already held that the provisions of law of evidence of eighteen hundred nineteen seventy two are not applicable for investigation of the matter related to industrial tribunals

- (i) The procedures before the Industrial tribunals and Labour Courts are quasi-judicial.
- (ii) An Industrial Tribunal or Labour Court is entitled to proceed on the basis of oral and documentary evidence, which may not be strictly admissible under the Indian Evidence Act, 1872.
- (iii) The rule enabling a court to take judicial notice of certain facts is not wide enough to enable a tribunal to take such notice of important and useful material.
- (iv) The ordinary rules of evidence do not permit a free use of affidavits and briefs prepared by parties.

Even though the Indian Evidence Act, 1872 does not apply to the Industrial Tribunals and Labour courts, they have to follow the principles of Natural Justice and the rules of law of land.

Even though the trial under the Industrial tribunal is not covered under the Indian Evidence Act, 1872, every party to the dispute should be given opportunity of adducing all relevant evidence on which they rely. The evidence of a party shall be taken in the presence of the opposite party. The party should be given an opportunity to cross-examine the opposite party and his witnesses. No matter should be relied upon against him without giving him an opportunity of explaining them.

3. Commissions of Inquiry:- A commission of Inquiry is appointed for the purpose of finding out the facts in respect of a definite matter of public importance and it is open to the government (Central or State) to declare by notification that the commission will cease to exist from such date as it may specify in the notification. It functions during a limited period.

The object of the inquiry is to take appropriate legislative and administrative measures to maintain the purity and integrity of political administration in the State.

It has no power to give judgment. It has no judicial powers. It submits report to the government with its recommendations.

The Government appoints Commission of Inquiry in the cases of police firing, Lock-up deaths, bus or train or aero plane accidents, atrocities on Harijans, food adulteration, deaths in consuming liquors, corruption, political or scams etc.

The Entry No. 45 of List III of the Constitution of India empowers the Union and State Governments to make the laws an appointment of commissions. Accordingly the Central Government enacted the Commissions of Inquiries Act, 1952 under which the Central and State Governments can appoint Commissions of Inquiry on any definite matter of public importance.

As per section 4 of the Commission of Inquiry Act, 1952, the Commission shall have the power of a civil Court, while trying a suit under the C.P.C. in respect of the following matters. namely:

- (a) summoning and enforcing the attendance of any person from any part of India and examining on oath;

- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commission for the examination of Witness or documents;
- (f) any other matter which may be prescribed.

According to Section 5 of the Commissions of Inquiry Act, 1952 the commission is deemed to be a Civil Court. The proceedings before it has the character of judicial proceeding. It receives evidence on oath. It summons and enforces the attendance of any person from any part of India.

The commission of inquiry is a fiction created by law. It functions like a civil court, but is not a court. Any proceeding before the commission shall be deemed to be judicial proceedings within the meaning of Sections 193 of 228 of I.P.C. Principles of natural justice are strictly applicable.

Fact:-Law of evidence revolves round the facts of the case. Therefore, a definition of the term facts was felt to be necessary and is included in section 3 of the Act. The term fact is thus defined under section 3 of the Indian Evidence Act.

Concept:-U/sec. 3 of I.Evi.Act :

1. The idea of concept of fact includes material things perceived by senses. It includes thing, material objects, State of such objects or its relations capable of being understood by our senses.
2. Secondly mental condition of any one is also known as 'Fact' but that man must be in knowledge of his own mental condition.

Illustrations:-

These material and mental facts are explain by way of illustrations (a) to (e). These are as follows;

- (a) If some certain and definite objects are arranged in orderly manner at definite place is one of the fact.
- (b) Any one heard or saw anything or substance or condition is a 'fact'
- (c) A man utter or spoke certain words is a fact.
- (d) A man at a specified time is conscious of particular sensation as to is definite opinion with intention acting in good faith or fraudulently or usages any particular words particular sense is a 'fact'
- (e) The reputation of man is a fact

Important Points:-

1. Material objects/things or its relations which can be perceived by our senses :

It also called as physical fact. The physical fact includes any object State of object and relation of objects or articles which can be understood by our sense organs.

For eg.: -

(a) Hearing of man or seeing any object is one of the fact.

(b) A man uttered something is a fact are the examples of Physical facts.

A person saw something is a physical fact, in the same manner a person heard something, a person smelt something, a person tasted something and a person felt by skin something are physical facts.

A man, donkeys are physical facts. A person is riding on a horse is a physical fact. The physical facts are capable of rendering a direct proof.

2. Any mental conditions of which any person is conscious:- It is also called as psychological fact. Psychological facts means and include anything of which a person is conscious. Psychological facts are not subject to perception by bodily senses but they are subject of consciousness. The intention or animus of a particular act is the psychological fact.

In simple words, they are those facts, which exist in the minds of the people. A particular person has a reputation. A has a good opinion about B. A fraudulently sold his car to B. B had a fraudulent design in his mind to sell his barren land to C. Such feelings, opinions etc, which cannot be perceived by the senses but felt by the mind are psychological facts.

Illustrations:

- (a) A man at a specified time is conscious of particular sensation as to is definite opinion with intention acting in good faith or fraudulently or usages any particular words particular sense is a 'fact'.
- (b) That, a man has certain reputation, is a fact.
- (c) A misrepresentation as to the intention of a person is a mis representation of a fact.

Conclusion:-

According to this definition as it is also clear from examples the statements, feelings, opinion and state of mind are as much fact as any other fact which are tangible and visible or any other circumstances of which, through the medium of senses we become aware.¹¹⁸

Facts in Issue:

Introduction : Fact in issue in the plain sense means facts, which are in issue and form the subject matter of Court's decision.

Fact in issue in criminal proceedings are alleged by the prosecution and denied by the defense, by plea of not guilty.

Facts in issue are also asserted by the plaintiff in civil proceedings and denied by the defendant.

Concept:- Section 3 of the Evidence Act states that the expression 'facts in issue' means and includes-

1. Any fact from which either by itself or in connection with other facts

(i) the existence

(ii) non-existence,

(iii) nature, or

(iv) extent-of any

(a) right, (b) liability or (c) disability

Asserted or denied in any suit or proceedings necessarily follows:

Fact in issue is nothing but the facts, which are in dispute. Evidence becomes necessary only in reference to facts, which are in controversy or dispute between the parties.

2. Any fact alleged or not accepted in answer to the facts pleaded in any civil or criminal proceedings.

Essential Elements:

The requirement that a fact in dispute will be regarded as a fact in issue only if the fact is such that by itself or in connection with other facts is disputed.

Therefore, it can have be in dispute between the parties;

(i) The fact should be in dispute between the parties;

(ii) The fact should touch the question of rights or liabilities

Illustration:

In a murder case one commits the murder of another. In trial so many facts comes to be decided. Whether there is death, any grave and sudden provocation from the deceased and the accused caused death by means of his acts at the time of occurrence of the incidents.

Conclusion:

Therefore, facts in issue are those facts, which a plaintiff must prove in order to get an adjudication in his favour on which a defendant may prove to defeat the suit.¹¹⁹

Relevant Fact.

Introduction:

Sometimes in order to prove the presence or absence of the facts in dispute, certain evidence may be given in evidence called relevant facts.

Relevancy refers to facts which are logically probative i.e. which afford material for the conclusion that a particular fact in issue exist or does not exist. The word is original word of relevance itself shows link or chain of one fact to another completing the chain of any fact which is before the Court for its decision.

Concept:

Section 3 of the Indian Evidence Act defines the relevant in the following words: When one thing is concerned with another in any manner which are shown in the Law of evidence then it is said that it is a relevant fact.

In relevancy of Facts one fact is said to be connected to another fact when they are related or connected to each other by any of the ways which are shown in the law of evidence.

According to Stephen, relevancy means connection of events as cause and effect.

In his digest Evidence he explains that the word 'relevant' means that any two facts to which it is applied are so related to each other that according to the ordinary course of events one, either taken by itself or in connection with other facts, proves or render possible the past, present or future existence or non-existence of the other. Relevant facts are not themselves in issue that are foundations of inferences regarding them.

Relevancy of fact means connection in such away, that belief in one fact help the Court for deciding the matter just and proper upon existence of another fact.

Evidence of relevant facts is called circumstantial. When there is no direct evidence of the fact in issue, the relevant facts help to find the truth.

Oral and Documentary evidence.

Introduction :- The word evidence is originated from Latin language, it means which shows facts clearly to discover the truth certainly on recording evidence.

Section of the Indian Evidence Act, lays down the definition or evidence in the following words:

What is evidence :-

1. Evidence is of two types. One is oral evidence and another is documentary evidence. When witnesses on oath States before the Court as to any issue before the Court and Court permits the same. It is known oral evidence.
2. When any party to litigation submits his documents in proof of his case and Court inspects the same in the course of recording evidence, then such verified documents are called documentary evidence.

Facts which need to be proved, may be proved by the following methods:

- (i) Oral evidence; and

(ii) Documentary evidence.

This means that there are two methods of proving a fact. One is by producing witnesses of fact, which is called oral evidence, and the other, by producing a document which records the fact in question and this is called documentary evidence.¹²⁰

ORAL EVIDENCE

Concept:-

The Law of Evidence expressly explained as to what is oral evidence in the provision of section 3 of the Act.

'In a process of recording evidence in any criminal case or civil suit, when Court under its permission record Statements of witness forming part of record which is to be considered for coming to just conclusion. Is called oral evidence.'

Important points:-

* The term 'oral' signifies by 'word of mouth' But in Section 119 of the Evidence Act, a witness who is unable to speak is permitted and considered as competent to give evidence in any manner in which he can make it intelligible.

Rule of Oral evidence:- Oral evidence consists of two rules namely (i) All facts other than the contents of a document be proved by examination of witness (Sec. 59):- It be remembered that where written documents exists, they shall be oproduced as being the best evidence of their own contents and no oral evidence can be adduced to prove as to what is wrong in the document.

For ex: X and Y enter into a contract that Y shall be supplying 20 mounds of wool to X every month. This contract was reduced in writing. If controversy arises between the parties about the terms of the contract it can be proved only by the document. Oral evidence will not be allowed. The document must be produced before the court.

(ii) Oral evidence be direct and not hearsay (Sec. 60):- Section 60 (Sixty) of Evi. Act Lays down that if there is oral evidence it be direct only for example. (a) If it is evidence is that some one eye-witnessed any fact, he to come and depose the same before the Court with its permission.

(b) If some one says he personally heard as to any fact he to depose before the Court under its permission.

(c) If any fact percieved by any person that person should come before the competent Court and depose before it Under its permission as to his perception of any fact.

(d) When it is related to opinion or grounds of opinion evidence of the person who holds an opinion based on the grounds.

Proviso : If any opinion is based on material thing excluding documents then such object or material or thing be produced before the Court for its inspection.

Examples:- (a) A kills B. C was present there and saw the incidence and deposed the same in the court orally. This is the oral evidence and also direct evidence.¹²¹

Documentary Evidence:-

Documentary evidence means the evidence in form document including electronic device or record adduced before the Court with its permission. (Section 3)

Before explaining the documentary evidence, we should know the meaning of document. The word document is defined and explain as follows: It is a writing or giving detain account of any material or thing by any mode including letters, figures, marks, or by any of these modes one or more with an intention and object that matter in it is made clear.

Primary & Secondary Evidence:-

The information indicating whether true or valid be ascertained by production of the document which is called primary evidence or by copies or oral accounts of the contents, which are called secondary evidence.

Where there is documentary evidence, oral evidence is not entitled to any weight.

It is based upon the principle that the best evidence in the possession of power of the party must be produced.

Primary Evidence:- Primary evidence is the best evidence. It is a kind of proof, which efforts the greatest certainty of fact in question.

Section 62 explains the primary evidence. Primary evidence means the object on which there is writing hand written or printed or electronic matter which provides information before the Court with its permission.

Secondary evidence:-

Introduction :- Secondary evidence is the evidence that may be given under certain circumstances in the absence of the better evidence i.e. primary evidence, which the law requires to be given first. The general rule is that the secondary evidence is not allowed to be given until the non-production of the primary evidence is satisfactorily accounted for. Section 63 provides for five categories of secondary evidence.¹²²

Presumption of innocence :

- 1) It is one of the principle of Criminal Law justice that no one should be presumed that he committed guilt and offence. It is always presumed that every one is innocent including accused some are is held guilty of any offence if beyond reasonable doubt proved by the prosecution before the

competent authority or the Court. If there is reasonable doubt the accused deserves to be acquitted as found not guilty.

The aforesaid principle of presumption is laid down by the Hon'ble **Supreme Court in (1995) 3 SCC 603 in Lal Mandi V. State of Bengal**¹²³ that in an appeal on conviction. On the appraisal of evidence if two views one favourable to accused and one against the accused, then benefit of doubt be given to the accused. Thus the presumption of innocence gets strengthened on acquittal giving benefit of doubt.

2) **In Kali Ram V. State of H.P. reported in (1973)2 SCC 808**¹²⁴. In this case law it is laid down by the Honourable Supreme Court four principles as to presumption. These are as under :-

1) The accused is presumed to be innocent unless the presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which accused is charged.

2) On the evidence adduced in the case when two views are possible, one pointing to the guilt of the accused and the other to the innocence of the accused, the view which is favourable to the accused should be adopted.

In view provisions of 114 of the Indian Evidence Act the Court may presume the existence of any fact which things likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the Acts of the particular case.

4) In criminal that it is concerned only as to whether he is guilty of the offence for which the accused is charged. It coming to conclusion about the guilt of the accused, the Court has to judge the evidence by the yard stick of preponderance of probabilities.

The Code of Criminal Procedure 1973.

Introduction:

This law is third major important law which is enacted by parliament in the twenty fourth year of Republic of India. It shall come into force on the 1st day of April, 1974. This Act is known as the code of Criminal Procedure, 1973. It extends to the whole of India except the state of Jammu and Kashmir but this code other than those relating to chapter VII, X and XI shall not apply to the state of Nagaland and to the tribal area.

The code of criminal procedure 1973 contains total thirty seven chapter near about four hundred eighty four sections and two schedule. This code provides the procedure for Criminal laws where as the code

is the adjective law or procedural law to put into force the provision of the substantive Criminal law. This code which always plays a role to balance between the right of accused person enshrined and protected under the Constitution of India the primary duty of the state is to protect the society from crime and its perpetrators.

History of the Code of Criminal procedure 1973:

In olden days it was found that there was no uniform law relating to the procedure of criminal for whole India separate acts were found. Prior to the independence of India the whole India was under the dominion of East India company popularly known as British dominion. At that time Mohammedan criminal law was used for administration of justice by the courts.

The policy of British rule was to maintain status quo means maintain as it is position and no change was found in administration of justice but it was found that in Mohammedan Criminal law there was clear defect in these law this was the reason to take efforts for made to do to change these defects. By the regulation these changes were brought in criminal law which was apply to courts within and outside the Presidency town.

The Acts in force in Presidency town were first, consolidated by the criminal Procedure Supreme Courts Act, 1852 this Act was replaced by High Courts criminal procedure Act, 1865. For provinces there was separate Act known as Criminal Procedure Act 1865 again this Act was replaced by 1973.

Some recommendation were made by law commission which these recommendation changes this Criminal Procedure code. These recommendations which were examined by the Government while drafting the code three essentials have been kept in mind they are as:

- a) That an accused person should get a fair trial in accordance with accepted principle of natural justice.
- b) Every effort should be made to avoid delay in investigation or trial which is harmful, not only to the individuals involved, but also to the society.
- c) The procedure should not be complicated and should, to the at most extent possible, ensure fair deals to the poorer sections of community. ¹²⁵

In the State Vs. Sohan Lal it was decided by the court that in the interest of justice court shall follow any appropriate procedure that the rule was any procedure not expressly prohibited by the code may be followed.

The State Vs. Sohal Lal ¹²⁶

This criminal law is a very important branch of the law which is related to social sciences. This code which was replaced by the Act of 1898. It has brought vital changes these changes ensure to accused a fair trial along certain well established principles.

As this code which is supplement to the Indian Penal code by rules of procedure with view to preventing offences and bringing offenders to justice thus the sole aim is to ensure fair trial and fair trial has naturally two objects that it must be fair to the accused and it must be fair to the prosecution. This code also includes various branches of criminal law administration, their powers and functions which regulates and control working such agencies.

The important changes brought about by the new code divided into mainly three categories.

1) Changes for speedy trials which reflects in summons procedure it is less time consuming than warrant procedure has been extended to offences punishable with two years imprisonment before the Amendment only offences attracting upon one years imprisonment were covered.

Even summary trial which are conducive to speedy disposal of cases, these prescribed for offences punishable with one year imprisonment (instead of for offences punishable with six month's imprisonment as was formerly the case)

2) An accused is given opportunity to make a representation against the punishment before it imposed in sessions and warrant trials.

3) For proper administration of state the state has been categorized into three category the three important organs of State legislative it means to make law executive means to execute the law and judiciary it means to interpret the law. The code also put into effect the Constitutional mandate of the separation of power these three organs. The judiciary is wholly separated form the executive on an all India basis by a new set up of criminal courts and also appointed trained and qualified Judicial Magistrates, under supervision and control of the High Court. This code which ensure that the principle of separation of power is not breached in **king Emperor V. Nazir Ahmed**¹²⁷ the privy council held that the function of the judiciary and of the police are complementary, not overlapping.

Though the code was passed by Parliament the subject criminal law comes under list III concurrent list of the seventh schedule. Hence it is clear that the State legislature, in accordance with the Constitution, to modify the code to suit its own requirements.

n the list III concurrent list of the Constitution of India. The provision relating to criminal law, criminal procedure and preventive detention even it include removal from one State to another state of prisoners, accused persons and persons subjected to preventive detention, for reason specified in entry 3 of this list.¹²⁸

This criminal procedure code does not apply to contempt proceeding taken by the High Court under the contempt of Courts Act, because whatever proceeding taken by High Courts under the contempt of courts Acts in exercise of 'Special Jurisdiction' within the meaning of section 1 of the code, "Contempt is not an offence under any other law" within the meaning of section 5(2) of the code in **Sukhdev Singh V. Honble CJ & Judges Pepsu High Court**¹²⁹

Salient Feature:

For the prevention of crime and procedure for fair trial and disposal of Criminal cases several changes were brought in criminal procedure 1973 for this purpose establish Constitution of criminal courts.

These changes which reflects in the provision have been made for the creation of post of special judicial Magistrate by appointing persons in Government service or retired government servant for such post.

High court is empowered to prescribe the qualifications and experience in relation to legal affairs for the appointment of such special Magistrate.

Another important feature of code is that the person must have to execute a bond for good behavior in this the person who habitually commit anti-social offences such as offences of corruption, adulteration of goods and drugs hoarding he have to execute bond for good behavior.

Provision relating to order for payment of maintenance under section 125 Cr.P.C. have been drastically changed.

For speedy disposal of criminal case the following changes have been made in new code:

- 1) The magistrate is empowered to make an order stopping the investigation if the investigation case related to summons is not completed within six month.
- 2) Limitation period has been fixed for launching prosecution earlier this period was six month and fine were impose from the date of offence but now one year one year to three years.
- 3) Offences which punishable with imprisonment up to 2 years are triable as summons cases.
- 4) Summary trails scope which widened by this change it including offences punishable with imprisonment up to one year.
- 5) Provision has been also added for service of summons to witness can be serve by register post in certain cases.
- 6) The committal proceedings in session's case have been abolished the sessions judge himself at the first hearing decides whether there is a prima facie case or not sessions judge his discretion he may make over the case to magistrate or discharge the accused.
- 7) Proceedings related to preliminary enquiry preceding the trial by a court of sessions has been abolished as it has been the cause of considerable delay in the trial of offences.
- 8) The power of revision against interlocutory order has been taken away as it has been founded to be one of the contribution factors for the delay in disposal of criminal cases.
- 9) Court also empowers to order the payment of costs by the party obtaining adjournment.

10) Through post accuse is given facility to plead guilty in petty cases to remit fine amount specified in summons.

11) On the ground of limitation criminal proceedings in subordinate court will not be stopped from a party of his intention to move a higher court for transfer of the case. The court hearing transfer application shall not stay proceeding unless it is necessary to do so in the interest of justice.

12) Where the appellate or revision court discovers that any error, omission or irregularity etc. in respect of a charge has occasioned failure of justice such court need not necessarily order retrial.¹³⁰

From above it is clear these change which brought under the code of criminal procedure in *Dulal Nishad Vs Jharkhand* 2002 Cri.L.J. It was decided by court security for good behavior from habitual offender it is acquittal in one case and on bail in other case is no ground to say that offence is of periodic nature.

In India Criminal justice system in country is designed to protect the citizen from onslaught of criminal activities of sections of the criminal activities of section of the community which indulges in such acts. The outcome of only Criminal justice system must be inspire confidence and create an attitude in respect for the rule of law.¹³¹

Criminal Procedure Code

Pre-trial process: Arrest

The offense under the Code are classified into two categories – (1) Cognizable and (2) Non-cognizable.

Cognizable offence:- Cognizable offence is one in which a Police may, in accordance with the First Schedule or under any other law for the time being in force, arrest a person without a warrant.

Non-Cognizable offence: Non-cognizable offence is one in which, a Police Officer has no authority to arrest a person without a warrant or an order of the Court.

The basis of distinction between cognizable and non-cognizable offences, by and large, depends on the nature of the offence. Generally speaking, all serious offences are cognizable. All offences punishable with imprisonment not less than three year are generally considered serious and are therefore, made cognizable.

Exceptions:- But there are certain exceptions to this rule as regards the cognizable and non-cognizable offences and hence the First Schedule of the Code is the ultimate source to find out whether an offence is cognizable or non-cognizable.

Certain special enactments may make a specific provision in law declaring particular offence as cognizable or non-cognizable. For instance, the Protection of Civil Rights Act, 1955 provides that the offences committed under that Act are cognizable, though they are punishable with imprisonment upto 6 months /or/and fine only.³

Various stages of criminal case:

The three terms investigation, inquiry and trial ordinarily denote three different stages of criminal trial.

(A) Investigation:- An investigation is made by a police officer or by some person authorized by the Magistrate other than the Magistrate. In simple words, investigation is the first stage of a criminal proceeding. In this stage, the police officer either by himself or under orders of a Magistrate investigates into a case under section 202 of the code. Investigation includes all the proceedings under the code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

If a police officer comes to the conclusion that no offence has been committed, he reports this fact to a Magistrate who drops the proceedings and the case comes to an end.

The provisions relating to investigation by Police Officers are contained in sections 155,156,1457 and 174 of the code.

Whereas the provisions as to investigation by officers under 'orders of a Magistrate are contained in Sections 155 (2) and (3) , 159 and 202 of code.

In short, investigation starts on registration of crime by police station officer under section 154 and it concludes with laying of charge-sheet.

Inquiry:-

Inquiry is a second stage of criminal cases. An inquiry is conducted by a Magistrate or a Court for ascertaining or verifying the facts for taking further proceeding against accused.

- 1) In security proceeding under Chapter VIII of the code.
- 2) In case of dispute as to immovable property under section 145 (4)

Trial:

Trial is the last stage of criminal cases. It begins with the framing of the charge after inquiry and ends with the pronouncing of the judgment whether it is a judgment of conviction or acquittal.

In case of offences, which are triable by summons procedure, there will not be any inquiry and trial starts with the ends with the disposal of the case.¹³²

Cr. P.C. contemplates different types of arrest:

1. Arrest with warrant,
2. Arrest without warrant

1. Arrest with warrant:- A warrant for arrest may be issued by a Magistrate after taking cognizance of any offence. This offence may be a cognizable or non-cognizable offence. Generally if the case is warrant case, a

warrant for the arrest of the accused is issued. If the case in which the Magistrate has taken cognizance is a summons case, a summons shall be issued to the accused person. But the Magistrate has got the discretion to deviate from this general role if the circumstances so demand in any particular case. If the circumstances so demand in any particular case. If the Magistrate has reason to believe that the accused has absconded or would not obey the summons, he may issue an arrest warrant.

On Arrest (Criminal Procedure Code)

- 1) The Honourable Allahabad High Court in **Vikram Vs State of U.P. reported in 1995 Cri.L.J. Allahabad High Court page 1536**,¹³³ that if any police officer arrest any accused particularly in this case for the offences punishable under sections 307, 324 and 302 of the Indian Penal Code was not maintained the record of arrest of accused and its information to him and to his relatives In view of the provisions of Section 50(1) of the Criminal Procedure Code and also in view of the provisions of Article 22(1) of the Constitution Of India it is mandatory on the part of arresting officer to maintain record of arrestee. If it is not complied the accused deserves for discharge. Even it is laid down that if the arrest alleges to the contrary, it is to be accepted.
- 2) **In Madhu Limaye's case the Hon'ble Supreme Court which is reported in AIR 1969 SC 1014**,¹³⁴ it is laid down that whenever the police arrest it is bound to inform the grounds of arrest to the arrestee. In this case the petitioner was a member of Lok Sabha. And his other persons were arrested but the police failed to communicate grounds of arrest. The police orally inform as to arrest. Madhu Limaye posted a letter in this regard to Hon'ble Supreme Court. The Hon'ble Supreme Court in view of the provisions of Article 22(1) of the Constitution Of India and Section 56, 57 of the Criminal Procedure Code issued writ of Habeas Corpus for restoring liberty of the arrested person as arrest and detention were illegal under Article 32 of the Indian Constitution.
- 5) **In Biredra Kumar Rai Vs. Union of India 1992 Cri.L.J. All 3866**¹³⁵

It is laid down that arrest means it be complete by spoken words and not by handwritings. If a person submits to custody of arresting authority. It is stated that arrest is a legal confinement and therefore the movement the arrested person submits to the authority of the person who had come to arrest him after his spoken words. It would amount to an arrest. Therefore in this case the arrest was held legal.

- 6) **Manoj Vs State of M.P. (1999) 3 SCC 715**¹³⁶

In this case the accused was arrested under section 15 of the NDPS Act on 22.06.1998 by the police of Kota in Rajasthan and was taken in custody, in the meantime it was revealed that the accused is also involve in another case under NDPS Act in Madhya Pradesh, he was recorded as arrested in connection with M.P. case on 07.08.1998. The accused file bail application in Rajasthan case for bail and came to released on bail on executing a personal bond. The accused was in arrest of M.P. case therefore it was not possible for him to execute his personal bond. Therefore he applied

for bail to the M.P. High Court. The M.P. High Court rejected his bail. Therefore he applied for bail to the special judge in Kota in Rajasthan. His bail was rejected by Special Judge then he moved to the High Court it was also rejected. Therefore he moved the Hon'ble Supreme Court. It is held by the Hon'ble Supreme Court that in connection with M.P. case on 07.08.1998. The police admitted that after arrest the accused was not produce before nearest Magistrate within 24 hours. Therefore it was held that the arrest was useless and unlawful, after the period of twenty four hours.

Therefore, the accused is released on bail.

Naga People Human Rights Movement v Union of India (1988) 2 SCC 109¹³⁷

In this case the validity of Armed Forces (Special Powers Act) And the Assam disturbed Act 1955 were raised before the Hon'ble Supreme Court Under Section 4 of Armed Forces Act. A commissioned officer, warrant officer, non-commissioned officer or any person of equivalent rank in the Armed Forces has been confirmed special powers in the disturbed areas in respect of matters specified in clause (a) to (d) of this section. The allegation involving infringement of rights by personnel of armed forces have been inquired into and action has been taken against the persons found to be responsible for such infringements. The only question that survived for consideration in the writ petitions is about the validity of the Central Act and State Act.

Arrest without warrant (Section 41):- Introduction:- This section confers very wide powers on the police in order that they may act speedily without any delay for the prevention or detection of cognizable offences without the formality and delay of having to go to a Magistrate for the order of arrest. The power is discretionary and must not be used in simple bailable offences unless there is reasonable ground of absconding.

Other Minor Criminal Laws

Prevention of Corruption Act:

Under section 5 of this Act prescribes the procedure as follows:

- 1) A special Judge may take cognizance of offence without the accused being committed to him for trial and in trying the accused persons shall follow the procedure prescribed by the code of criminal procedure, 1973. For the trial of warrant cases by magistrates.
- 2) A special judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission there of and any

pardon so tendered shall, for the purposes of sub-section (1) to (5) of section 308 of the code of criminal procedure, 1973 be deemed to have been tendered under section 307 of that code.

Narcotic Drugs & Psychotropic substances Act 1985

Under section 36 – A prescribed the procedure to deal with the cases comes under the Narcotic Drugs and Psychotropic substances Act.

Offences triable by special courts section 36 –A.

- 1) Notwithstanding anything contained in the code of criminal procedure, 1973.
 - a) All offences under this act shall be triable only by special court constituted for the area in which the offences has been committed or where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the government;
 - b) Where a person accused of or suspected of the commission of an offence under this act is forwarded by a magistrate under sub-section (2) or sub-section (2-A) of section 167 under section 167 Procedure when investigation cannot be completed in twenty- four hours as sub section 2.¹³⁸

This clause substituted by Act 45 of 1978, S. 13 for paragraph (a) with effect from 18-12-1978.

In Juvenile Justice Act 1988.

The act has been enacted with a view to introducing a uniform law relating to juvenile justice for due protection and care of children and juvenile adolescents who commit an offence. It sets out standard norms for the investigation and trial of juvenile offenders and to establish institutions associated with the welfare of juveniles like the earlier juvenile justice Act 1986 the present Act i.e. the Juvenile Justice (Protection and care of children) Act, 2000 is enacted in accordance with the standard rules laid down by the United Nations for juveniles in conflict with law.¹³⁹

Probation of Offenders Act 1958

The probation of offenders Act, 1958 was enacted in the year 1958. The reasons for enacting central legislation to the release of offenders on probation was stated in the statement of object and reasons as reported in the Gazette of India dated Nov. 11, 1957.

Under criminal procedure code 1973 there was provision in section 360 of Cr. P.c. in 1973 which permitted release of offenders on probation. But the scope of provision in Cr. P.C. was very limited.¹⁴⁰

The Immoral Traffic (Prevention Act), 1956

Indian parliament in pursuance of the international convention signed at New York on 9-5-1950 and this act was enacted for prevention of immoral traffic. Under section 25 in this act defines Brothel, Prostitution and prohibits such offences.

The Schedule Caste And Schedule Tribes (Prevention of Atrocities) Act, 1989 ¹⁴¹

The SC/ST Act was enacted with purpose to prevent the commission of offences of atrocities against the member of SC and ST's to provide for special court for the trial of such offences and for the relief and rehabilitation of the victim of such offences. After the commencement of Constitution as under article 17 of Untouchability was also exist in India for prevent this offence this Act was enacted.

The Probation of offenders Act 1958 In India which has secular states but no separate probation law where the central Laws on the subject which should be uniformly applicable to all the states. The purpose of the Act is to release offender on probation or after due admonition and for matters connected with. Instead of Sentencing them this probation of good conduct for release the offender will apply. This is sort of rehabilitation purpose. ¹⁴²

Conclusion:

To study the “Concept of Human Right- A study with special Reference to Amendments made into Indian Criminal Law”

It is very important to study the major criminal Laws in India and also give focus on the minor criminal Laws. These major criminal laws which are of substantive and procedure law which defines procedure of the law in India to be followed by the court and the police to maintained peace and security in the society.

Since from ancient time the laws are in every society. If we talk about the Indian Society from different religious aspect such as Hindu Dharma the Manu, Kautilya Yajnavalka, Narad, Vyas, Brahaspati and Katyayana who gave detailed information and study on law of wrongs both in civil and criminal side. In Muslim period punishments which were classified according to five major heads such Qias, Diya, Hadd, Tazir, Siyasat.

In British Period the Lord Macauly, Stephen who also give participation to make Indian Penal Code and Indian Evidence Act and the draft were also prepared for the code.

The position of Criminal Law and morality concept of morality to appreciate the effect of obscenity moral turpitude on today's society. The law and Courts must take cognizance of the changing moral standards.

In this chapter the elements of crime also define by the researcher such as human being act must be committed by human being , Actus Reus it means act or omission it also means overt act or illegal commission must take in pursuance of the guilty intention. The Indian Evidence Act also define its historical background of the Act and the cardinal rule of Evidence and the code of criminal procedure its history. This chapter which also gives the information related to minor Criminal Laws such as NDPS Act, SC/ST Atrocities Act protection of Civil Right Act, Prevention of Corruption Act, Juvenile Justice Act. The immoral Traffic (Prevention Act) Prenatal Dignosis Act which also studied by the researcher in this topic.