

CHAPTER II – INDIAN PENAL CODE

GENERAL EXPLANATIONS

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INTRODUCTION

Every law when coded comes with certain definitions that are helpful in reading the provisions and in interpreting them. Every codified law has these set of definitions which act just as a dictionary does to any language. Chapter II in the Indian Penal Code serve such purpose. This part extends from sections 6 to 52-A. through this chapter we will understand the meaning of certain words that we come across while reading this code.

- **SECTION 7:** *“Sense of expression once explained- Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.”*¹

According to this section, every word that is defined in chapter II of the IPC, 1860, will have the same meaning as throughout whole of this code. No word unless the context necessarily calls for a different meaning which is to be specified in the provisions of the Statute where the word would occur.

For example- meaning of the word ‘person’ will be same throughout this code and not differ from one provision to another unless or otherwise stated.

- **SECTION 8:** *“GENDER- The pronoun “he” and its derivatives are used of any person, whether male or female.”*

According to this section, the word ‘*derivative*’ here means all the forms of ‘*he*’ that exist in the English grammar such as ‘*him*’ and ‘*himself*’. However throughout this code the word ‘*he*’ does not mean male gender only but it is used as a general abbreviation to both male and female. This was held by the Madhya Pradesh High Court in *STATE v. SHIVDAYAL*². In this case, the meaning of the word used as ‘*he*’ in Section 354³ includes a man as well as a woman and thus both can be convicted for the offence of assault to a woman.

¹ INDIAN PENAL CODE ; https://www.iitk.ac.in/wc/data/IPC_186045.pdf

² 1956 Cri. L.J. 83(M.P.)

³ OFFENCE- Assault or criminal force to woman with intent to outrage her modesty.

- **SECTION 10:** *“MAN”/“WOMAN”- The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.”*

According to this section, the words “man” and “woman” refer to male gender and female gender respectively.

However in *EMP. v. TATIA MAHADEV*⁴, the girl Chandribai, who was assaulted was only about six years old. Under Section 10 of the Indian Penal Code, the word ' woman ' denotes a female human being of any age, so that for the purposes of Section 354 the girl Chandribai is a woman within that section.⁵

- **SECTION 11:** *“PERSON- The word "person" includes any Company or Association or body of persons, whether incorporated or not.”*

According to this section, the word “person” includes not only a natural person but also artificial and judicial person as well. Sometimes it is impossible for a limited company to commit an offence/offences or where *mens rea* is essential to constitute an offence or where the punishment is just imprisonment, there a limited company can't be prosecuted.⁶

This word also includes Government as representing the whole community.

- **SECTION 12:** *“PUBLIC- The word "public" includes any class of the public or any community.”*

This section doesn't stress upon the meaning to the word public but rather on the scope of it. For example- a class or community residing particularly in a locality comes under the term 'public'

- **SECTION 14:** *“SERVANT OF GOVERNMENT- The words "servant of Government" denote any officer or servant continued, appointed or employed in India by or under the authority of Government.”*

This section defines all the persons who are or were appointed by the government for its service as 'servants of government' also to be known as government officials. For example- policeman, soldier, IPS officer, judges, etc.

- **SECTION 17:** *“GOVERNMENT- The word "Government" denotes the Central Government or the Government of a State.”*

⁴ (1912) 14 BOMLR 961

⁵ <https://indiankanoon.org/doc/347944/> para 2

⁶ Anath bandhu samanta v. corp. of Calcutta 1954

- **SECTION 18:** "INDIA -"India" means the territory of India including the State of Jammu and Kashmir.

On 6th day of August, 2019 by the Presidential Order with Declaration under Article 370(3) of the Constitution of India that was special status of J&K has been ended. With this amendment state of J&K became an integral part of India in practical manner. The de-operationalization of article 370 converted the State of J&K into Union Territory of J&K and Union Territory of Ladakh in the mainstream.⁷

- **SECTION 19:** *"Judge- The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person, who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definite, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment."*

According to this section, any person who doesn't have the knowledge of the case in which he can give a definitive judgement, is not a judge.⁸

FOR EXAMPLE-⁹

(a) A Collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

- **SECTION 20: COURT OF JUSTICE**

The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

EXAMPLE-

A Panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.¹⁰

⁷ <http://www.legalserviceindia.com/legal/article-1076-amendment-in-article-370-of-indian-constitution.html>

⁸ Ram Chandra Modak, 1925

⁹ ILLUSTRATIONS TO SECTION 19 OF IPC

¹⁰ ILLUSTRATION TO SECTION 20 OF IPC

SECTION 21: PUBLIC SERVANT

The words "public servant" refers to every person falling under any of the following designations namely:-

- a) Naval or Air Forces of India;
- b) Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory function.
- c) Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;
- d) Every jury man, assessor, or member of a panchayat assisting a Court of Justice or public servant;
- e) Every arbitrator or other person to whom, any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;
- f) Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
- g) Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
- h) Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government], or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of [the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;
- i) Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;
- j) Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- k) Every person in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government or in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)

For example- A Municipal Commissioner is a public servant.

- **SECTION 22:** *“MOVABLE PROPERTY- The words "moveable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.”*

According to the section, things that can be displaced from one place to another are known to be as movable property but exclude those things which are attached to the earth however among these things, those which can be severed will become movable after getting severed from the earth.

For example- trees, sand, stones, minerals, etc.

- **SECTION 23:** **“WRONGFUL GAIN-**

“Wrongful gain” is the gain by unlawful means of property which the person gaining is not legally entitled.

For example in *MAHALINGAYYA PUJARI CASE*¹¹, a postman signed the postal receipts of V.P. Parcel himself with a view to make it appear that they were received by the addressee and retained the parcel himself.

*“Wrongful loss”- “Wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled. Gaining wrongfully or Losing wrongfully. - A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.”*¹²

- **SECTION 24:** **“DISHONESTLY”:**

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

Here the meaning of the words wrongful gain and loss is same as in Section 23 of IPC.

Case- *KRISHNA RAO RAOJIRAO AND ORS. VS THE STATE*¹³

¹¹ 1959

¹² Narashimhulu v. Nagur Sahib 1933

¹³ 1953 CriLJ 979

- **SECTION 28:** *“COUNTERFEIT- A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practices deception, or knowing it to be likely that deception will thereby be practised.”*

According to this section, it is not necessary that the thing that is counterfeited is exact same of the original. The mere fact that the thing made is done to deceive another with its originality.

- **SECTION 32:** the word ‘act’ includes all the illegal omission. Illegal omission is regarded in the sense of intentional non-doing. Only those omissions are punishable under this code which is likely to yield any harm or evil effect.
- **SECTION 33:** *"ACT"/"OMISSION"- The word "act" denotes as well a series of acts as a single act; the word "omission" denotes as well a series of omissions as a single omission.*
- **SECTION 34:** *ACTS DONE BY SEVERAL PERSONS IN FURTHERANCE OF COMMON INTENTION*

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

For example- In offences of conspiracy, Dacoity, robbery, etc.

- **SECTION 35:** **WHEN SUCH AN ACT IS CRIMINAL BY REASON OF ITS BEING DONE WITH A CRIMINAL KNOWLEDGE OR INTENTION:**

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

CASE- ADAM ALI TALUQDAR¹⁴

In this case, A and B beat C who died. A intended to murder C however B just wanted to cause grievous hurt. A was held guilty of murder and B of causing grievous hurt.

¹⁴ A.I.R. 1927 Cal. 324

- **SECTION 38: PERSONS CONCERNED IN CRIMINAL ACT MAY BE GUILTY OF DIFFERENT OFFENCES:**

Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

For example-

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.¹⁵

- **SECTION 40:** *"OFFENCE"-Except in the Chapters and sections mentioned in clauses 2 and 3 of this section, the word "offence"denotes a thing made punishable by this Code.*
- **SECTION 43:** *"Illegal"/"Legally bound to do"-The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground f or a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.*

For example- trafficking, drug dealing, murder, kidnapping, etc.

- **SECTION 44:** *"INJURY"-The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.*

For example-

- a) A removed B's chair from under him thereby hurting his back. Here the injury is hurting B's back.
- b) Z, plays a prank on X by scaring him with a fake snake. Here there is no physical harm done but still the mental trauma is included in injury.

- **SECTION 45: "ANIMAL"**

The word "animal" denotes any living creature, other than a human being.

¹⁵ Illustration to section 38 of IPC

- **SECTION 51:"OATH"**

The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

- **SECTION 52: "GOOD FAITH":**

Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

For example- A doctor acts in good faith of his patient.

- **SECTION 52-A. "HARBOUR":**

Except in Section 157, and in Section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.

CASE- *STATE OF TAMIL NADU V. NALINI AND OTHERS*¹⁶

The Supreme Court held that a wife could not be charged for harbouring her husband merely because she was living in the house with her husband.

¹⁶ 2012