



**GOA**

**Judicial Services Exam**

**CIVIL JUDGE CADRE**

**High Court of Bombay**

**Volume - 5**



# GOA JUDICIARY EXAM

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# **The Indian Penal Code**

# The Indian Penal Code, 1860

## Definition

- \* AR + MR = Offence (Elements of AR and MR must be clear)
  - AR = Actus Reus (Guilty Act)
  - MR = Mens Rea (Guilty Mind)

## Difference

- \* कानूनी भेद

## Punishment

- \* Act no. 45 of 1860.
- \* Came in force on 1 January, 1860.
- \* Assent of Governor General 6 October, 1860.
- \* Divided into 23 chapters and 511 sections.
- \* Father of IPC - Lord Macaulay
- \* Other contributions by:
  - a. Lord Mc. Lord
  - b. Lord Anderson
  - c. Lord Millet

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Offences relating to Religion  
[295-298]

**Que.** What are the various theories of punishment of crime?

**Ans.** Retributive [Eye for an eye]  
Expiatory [Penance]  
Deterrent [Fear]  
Preventive [Before offence prevent]  
Reformative [Hate the crime not the offender]

All have their own relevance. In my opinion, [any of the above and then give explanation for that].

\* Coke "Actus non facit reum nisi mens sit rea"

[AR + MR = Offence]

This Latin maximum means offence shall only be constituted when along with guilty act there is also guilty mind.

\* Actus rea = Any act prohibited by law

Means rea = Guilty mind

\* Fowler Vs. Padget

C.J. Kenyon said, for offence intention and act both must concur.

This principle is the fundamental principle of criminal liability.

R Vs. Khandu

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### STAGE I

AR = Hit by stick [Not dead]

O = MR = Murder not

AR + MR = O

Murder + Murder = Murder

### STAGE II

MR = Cause disappearance evidence

AR = Murder

**Q. The question was whether seen as a whole or divided in stages?**

\* R Vs Shorty

AR = Grievous hurt

MR = Murder

O = MR = Murder Not

AR = Remove Evidence

**Q. The same question was raised?**

\* In both cases accused got benefit.

\* Mali Vs. R

No benefit was given.

### Conclusion/Inference

- \* It seems in matter of melic, the above cases were not cited.
- \* W/e offences can be divided into stages accused must be given benefit.
- \* Duty of prosecution to prove beyond reasonable doubt.
- \* Judges can be of various nature will not give benefit i.e., where of strict nature will not give benefit but where liberal judge there divide the offence in stages and give benefit.

AR + MR = O [Offence]

AR + MR = O

If MR is O, AR = Offence

AR + MR = O

AR = O

Actus Rea is sufficient

Eg. Sex before 18

Therefore, MR = Offence

Mens Rea is sufficient

Eg. Sec 120 A-B

## Actus Rea

According to Kemy Actus Rea is of six types:

1. No physical participation required
2. Participation is indirect.
3. Interference of another person.
4. Victims own conduct.
5. Contributory negligence.
6. Such participation which was superfluous.

**Q. Whether merely on grounds of Actus Rea, person can be convicted or not? [AR = Offence]**

**Ans.**

- \* W/e there is a strict liability [Sec. 292 of IPC]
- \* Socio economic offence. Eg. Currency note.
- \* W/e offence is Male-in-Se.
- \* W/e matter of public nuisance.
- \* W/e defamation.

## Offence is of two types

1. Male-in-Se - act itself is offence.  
No benefit of mistake of fact.  
Eg. Kidnapping. R Vs. Prince  
[Age of girl below 18, then punishable].
2. Male Prohibita - Act not offence but prohibited by state. There can be mistake of act.

## Mens Rea

In India it is found in 3 manners:

### 1. Positive (+ve)

In IPC, few words are used, i.e., Intention, good faith, negligence, rashness, etc. by which criminal mind is made out negatively.

### 2. Negative (-ve)

In Ch. 4 of IPC, there are general exceptions where no mens rea is considered. Eg. Murder by 4-year infant.

### 3. Strict liability

Act itself is offence, no mens rea is required.

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3. **Attempt:** W/e any person does any act towards offence but expected result don't occur and it becomes unsuccessful then it is called attempt.
- \* This is the last proximate act to commit offence.
  - \* State of Maha. Vs Mohd. Yakub.
  - \* Abhayanand Mishra Vs State of Bihar where false document/false statement then person shall be liable for attempt. Sec. 415, 420/511.
4. **Offence:** When attempt is completed, it becomes offence.

## Attempt

1. Possible attempt:

2. Impossible attempt:

- \* Body person shoot on doll, statue even if hit on statue then also not liable for murder, i.e., W/e matter is offences related to body because it depends on result so person not liable.
- \* Property W/e matter of property there, person shall be liable [pick-pocket-pocket-empty] then also liable because use in matter of property, valuation is not essential.

**Q. A person open box - found nothing- got emotional - left Rs. 100. Is he liable?**

**Sol.** Yes, for attempt.

## Possible attempt

- \* Attempt + Offence in the same sec. Eg. Sec. 124A
  - \* Attempt + Offence in different section but nearly. Eg. 302, 307
  - \* Only attempt is punishable not Offence. Eg. 309.  
Presently no punishment, Person shall be dealt in Sec. 511. Personal mental health act will be applicable.
  - \* W/e there is no punishment, then sec. 511 will apply.
-

## Chapter - 23

### Attempt to commit offences

#### Section 511

- \* W/e any person attempts or causes commission of offence punishable by life imprisonment or imprisonment [Death/fine not included].
- \* Does any act towards commission of offence.
- \* No expressed provision.
- \* Then following LI/2, I/2
  - Fine always taken full.
  - LI = Whole life
- \* W/e there is commutation of offence there 14 yrs [Sec. 55].
- \* W/e LI is to be calculated in fractions.
- \* Therefore, In Section 511, LI/2 = 10yrs.
- \* Koppula Venkat Rao Vs State of AP. In this case, SC Supreme Court had differentiated prepration from attempt.
- \* Vasudev Balwant Gogte Vs Emperor. In this case Section 307 and 511 been differentiated.
- \* Cassidy Vs Emperor  
(Same as the above)

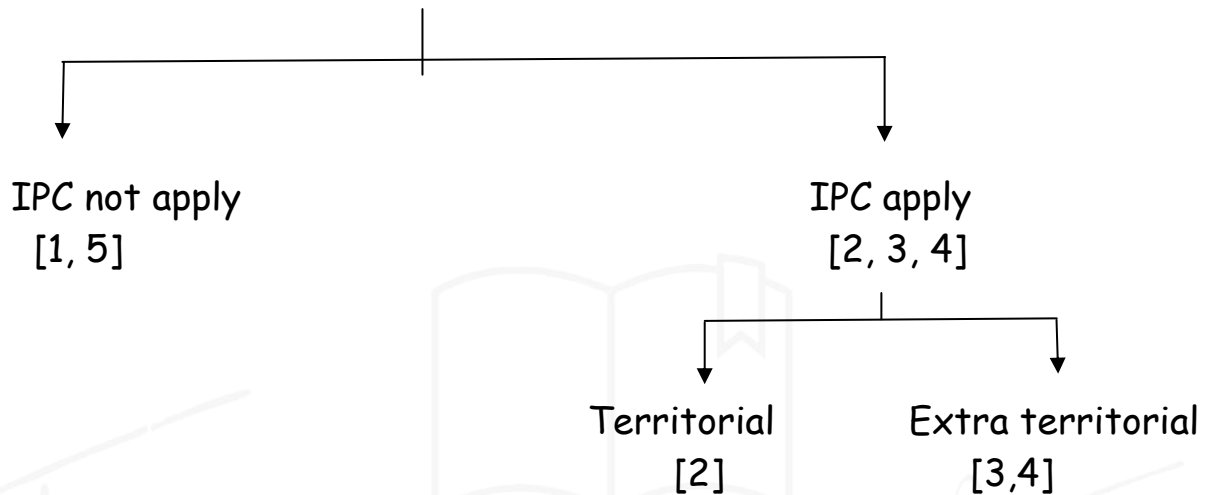
# Chapter - 1

## Preliminary [1-5]

Q. What do you understand by Jurisdiction?

Ans.

Jurisdiction



### Section. 1

Apply to whole India [Previously not applied to J & K but now applicable by J & K reorganization act, 2019].

### Section 5

Not apply on following:

- (a) Not apply on mutiny or desertion of soldiers.
- (b) Any special law or local law.

Chandi Prasad Vs Abdul Rehman. W/e any special law is complete then no jurisdiction of IPC.

### Section. 2

Every person shall be liable for punishment under the code for any act or omission contrary to the provisions shall be guilty within India.

India = Air, land, water

It includes territorial water all rights [12NM] contiguous zone [24NM] Fishing exclusive economic zone [200NM] research.

NM = Notical miles [1.852Km]

Every person: shall be liable for punishment under the act except,

- |                       |                  |
|-----------------------|------------------|
| (a) President         | (e) Alien Enemy  |
| (b) Governor          | (f) Foreign army |
| (c) Foreign Sovereign | (g) Warship      |
| (d) Ambassador        |                  |

**Q. A foreigner comes to India and commit murder in India, Whether liable?**

**Ans. Yes**

\* Mubarik Ali Vs State of Bombay

One person was commissioned agent, he committed cheating by letters and he was held liable for cheating in India.

\* Mayor Hans George Vs State

A plane was going stopped in India, gold was confiscated liable in India.

### **Section 3**

Where any person is liable Under Indian law and offence committed out of India/beyond India.

Then act committed as if done within India.

Eg. Grey Chhappal → Dubai → Cheating

### **Section 4**

W/e offence is committed by citizen of India [without/beyond India]

On any ship or aircraft registered in India.

In any computer resource which is located in India done by an outsider.

Mohd. Sajeed Vs State of Kerala

Offence committed beyond India then can be investigated by an Indian police but with permission of Indian Govt [Refer Sec. 188, 189 of IPC and act 20 of constitution].

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## Chapter - 2

### General Explanations [6-52A]

- |                            |                  |
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| 8- Gender                  | 36- Intention    |
| 9- Number                  | 37-              |
| 10- Men/Women              | 38-              |
| 11- Person                 | 39- Voluntary    |
| 12- Public                 | 40- Offence      |
| 13- XXX                    | 41- Special Law  |
| 14- Govt. Servant          | 42- Local law    |
| 15- XXX                    | 43- Illegal      |
| 16- XXX                    | 44- Injury       |
| 17- Govt.                  | 45- Life         |
| 18- India                  | 46- Death        |
| 19- Judge                  | 47- Animal       |
| 20- Court of justice       | 48- Vessel       |
| 21- Public Servant         | 49- Year [Month] |
| 22- Moveable party         | 50- Section      |
| 23- Gaining wrongfully     | 51- Oath         |
| 24- Dishonesty             | 52- good faith   |
| 25- Fraudelty              | 52A- Harbour     |
| 26- Reason to believe      |                  |
| 27- Possession of propery  |                  |
| 28- Counterfeit            |                  |
| 29- Document               |                  |
| 29A- Election record       |                  |
| 30- Valuable security      |                  |
| 31- Will                   |                  |
| 32- A/O → Act of Ommission |                  |
| 33- A/O                    |                  |



## Section 19

- \* Judge is a person who is officially designated as a Judge (RJS).  
Such person who is empowered by law in criminal or civil proceedings.
  - (a) Give definite Judgement
  - (b) If not appeal then final judgement
  - (c) If confirmed then definitive
- \* It can comprise of one person or body of person [Consumer forum].
- \* Kishan Swaroop Vs Bijender Singh  
Sarpanch is also a Judge.

## Section 20

When a Judge who is empowered by law to act judicially.  
Is acting judicially  
It includes body of person also.

**Q. What do you understand by public servant?**

**Ans.** Section. 21:

- (a) XXXXXX
- (b) Commissioned officer of armed forces
- (c) Judge
- (d) Officers of Court i.e. liquidator, receiver, commissioner.
- (e) Juryman assessor, member of Panchayat
- (f) Arbitrator
- (g) Every man can confine the person [Jailor]
- (h) Every person whose duty to prevent offence, protect health Safety
- (i) Such person whose duty is to survey and assess
- (j) Whose duty to collect tax
- (k) Whose duty to conduct election
- (l) Every person who is in survive or pay of govt. and receive fees or commission. Every person who is with legal authority or account to state or central.
- (m) Rajasthan amendment

Any such person included which conduct exam and supervise exam at public body.

- \* Explanation. 1: Person can be appointed by Govt. or not.
  - \* Explanation. 2: W/e any person is on post then he shall be considered as public servant, although legal effect.
  - \* Explanation. 3: W/e any election although legislature, municipality or any public authority, any manner all are included in election, i.e., the person conducting election is a public servant.
  - \* M. Karuna Hidhi Vs UOI  
CM is a public servant
  - \* P.V. Narsimha Rao Vs State  
PM is a public servant
  - \* R.S. Nayak Vs A.R. Anatulay  
MLA is not a public servant, then how CM can be public servant?  
MLA/MP is responsible for the party whereas CM/PM for the whole nation/Country.
  - \* Is Judge a public servant?  
V. Ramaswami Vs State  
Yes, He is also
  - \* Asha Parikh Vs State of Bihar  
Are various Organization a public servant?  
For this we have to see the functioning.  
Censor board is a public servant.
  - \* Ram Avatar Vs State of Bihar  
Surveyor [Revenue] a public servant
  - \* Bajranglal Vs State of Punjab  
Khalasi is a public servant.
  - \* A.S. Rao Vs CNN Kutty  
MD Govt. Company is PS
  - \* State Vs OP Dogra  
LIC is (Public Servant)
  - \* Balram Singh Vs State  
Superintendent Engineer, State Electricity board is PS
  - \* Sushil Modi Vs Mohan Guru Swamy  
Leader of Opposition of Legislative assembly is not a PS
  - \* PN Nallammal Vs State  
Speaker of Legislative assembly is a PS
-

## **Section. 22: Corporal property of every description except,**

1. Land
2. Things attached to earth
3. Things permanently fastened to things attached to earth [door]
  - \* Also refer TPA and registration act section. 3 for immovable property.
  - \* Corporeal property = such property which has any shape.

## **Section 23**

1. Wrongful gain - W/e any person in property gains by unlawful means for which he was not legally entitled. E.g. Theft
2. Wrongful loss - W/e any person for which he is not legally entitled loses it. E.g. Theft
  - \* The General rule is that one person obtains gain and another loss.
  - \* Is there any offence where there is wrongful loss?  
Yes in case of mischief [425-440].
3. Gaining and losing wrongfully - Whoever retains or acquires wrongfully.
  - \* Whoever keeps out person wrongfully from property or deprives him from the title.

## **Section 24**

Whoever does act with such intention that there is wrongful gain to one and wrongful loss to another.

## **Section. 25**

- \* W/e any person does an act with intention to defraud.
  - \* Dr. Vimla Vs Delhi Administration  
Injury is necessary.
-