



Name: Devansh Sarswat
Date: 31-07-2024
Timing: 9:00 - 12:00

Test - 5
IPC

LAW OPTIONAL TEST PAPER NO: 05
UPSC MAINS 2024

Question one and five contain Five parts of 10 marks each. Other questions consist of three Parts each with 20, 15 and 15 marks Respectively.

Section - A

→ Mohinder Singh

Q.1(a). "Intention and the act both must concur to constitute a crime." Explain (10 Marks, 150 words)

Q.1(b). Distinguish between: Abduction and kidnapping; (10 Marks, 150 words)

Q.1(c). What are various theories of punishment and their Ingredients. (10 Marks, 150 words)

Expiatory

Q.1(d). In all robbery, there is either theft or extortion. Explain. (10 Marks, 150 words)

Q.1(e). "The word 'Voluntary' as used in the Indian Penal Code is very significant and it does not mean willingly but knowingly or intentionally." Explain. (10 Marks, 150 words)

Q.2(a). What is meant by right of private defence? What are the general principles which form the basis of right of private defence? (20 marks)

Q.2(b). How does the IPC differentiate between consensual and non-consensual acts in the context of sexual offences? Explain "consent" under Section 375, and what are its exceptions? (15 marks)

Q.2(c). What are the major provisions to protect SC/ST members from social and economic exploitation under Sc ST(Prevention of Atrocities) Act 1989 ? What are provisions related to the immediate relief and rehabilitation of victims under this Act. (15 marks)

Q.3(a). "To constitute the offence of criminal conspiracy there must be an agreement to do, or cause to be done, an illegal act, or an act which is not illegal by illegal means." Critically examine. (20 marks)

Q.3(b). "Culpable homicide is not murder, if it is committed without premeditation, in a sudden fight in the heat of passion". Critically examine the statement with leading case. (15 marks)

Q.3(c). X sends an e-mail to Y containing defamatory matters against him. The e-mail is received by Y who deletes it after reading. Is X liable for publication? Refer to relevant case law. (15 marks)

Q.4(a). What are the 'Civil Rights' as defined by the Protection of Civil Rights Act, 1955? Enumerate the offences prescribed under the Act. (20 marks)

Q.4(b). "Mere medical insanity is not a valid defence under the Indian Penal Code but legal insanity is". Discuss. (15 marks)

Q.4(c). What is meant by 'extortion' ? Explain its ingredients and distinguish between 'theft' and 'extortion'. (15 marks)

Section - B



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- Q.5(a). "Compensation to the victims of crime in India is the vanishing point of criminal jurisprudence." Comment. (10 Marks, 150 words)
- Q.5(b). . Examine as to whether a person who causes death of a pregnant woman is guilty of committing one homicide or two. (10 Marks, 150 words)
- Q.5(c) Distinguish between Misappropriation of property and Criminal Breach of trust under IPC. (10 Marks, 150 words)
- Q.5(d). The difference between Death by negligence and culpable homicide is fine but overlooking it could cause grave injustice. Comment (10 Marks, 150 words)
- Q.5(e). Can less than five persons be charged, tried and convicted for the offence of unlawful assembly? (10 Marks, 150 words)

→ Bhawad meha Jung → Masalt

- Q.6(a). Distinguish common intention from abetment and criminal conspiracy with help of decided cases (20 marks)
- Q.6(b). While driving car, suddenly became unconscious and fell back in his seat. The car became uncontrolled, it hit and killed Y. Discuss the liability of X (15 marks)
- Q.6(c). What were the significant changes introduced in the Prevention of Corruption (Amendment) Act, 2018? Discuss the challenges in the effective implementation of the Act. (15 marks)

Q.7(a). "Section 124A of the IPC dealing with sedition is ultra-vires of the Constitution insofar as it seeks to punish merely bad feelings against the Government. Discuss in light of decided Cases its constitutional validity. (20 marks)

Q.7(b). "The question as to how is a court to determine as to whether a bodily injury intentionally inflicted by an accused is likely to cause death or not depends on many factors." Discuss. (15 marks)

Q.7(c). Critically examine the concept of 'plea bargaining and evaluate its scope in India. (15 marks)

Q.8(a). "Section 34 is incorporated in the Indian penal Code to deal with the cases where it is very difficult to distinguish precisely the part taken by each individual in criminal act." While examining the rationality of this Section, support the answer with the help of decided cases. (20 marks)

Q.8(b). Explain dowry death under IPC. What are major ingredients in proving dowry death. Cite Relevant Cases. (15 marks)

Q.8(c). Define Theft Under IPC. What are its major ingredients? Explain with the help of case laws. (15 marks)

S. Vombetteku

Q. 1 (a)

Criminal liability is founded upon the maxim of in Common law:

" Actus Reus Facit Nisi mens sit Rea "

meaning: An act in order to constitute an offense must have:



Rationale: Without a ill will, no reasonable ground exist to impose criminal liability (Sir Mathew Hale)

(i) Mens Rea

Intention: Conscious state of mind invoked to achieve a motive.

— e.g. scene in words like 'voluntarily', 'dishonestly' etc. in IPC

(In Re Nariprasad case)



(ii) Actus Reus

i.e. a guilty Act in furtherance to guilty mind.

— can be act / omission (Benaychanda case)

[Concurrence]

In order to incur criminal liability both actus Reus and Mens Rea

must be simultaneous i.e.

Act must be in furtherance to intention.

Good on the Act

However, such concurrence must be with the act and not the outcome (Mehinder Singh v. State of Punjab)

Illustration: A has grudge against B and intends to kill him. To do so, he shoots B with a revolver.

B dies.

A is liable for murder — intent to kill

shot i.e. act

Both factors concurring leads to culpability while ensuring

accidental / beneficial acts are not punished. (Nareish Kumar case - 2024)

Q. 1(b)

Kidnapping and Abduction are offences catering to protection of people's autonomy and liberty which is sought to be harmed by a criminal act.

Differences

Kidnapping

Abduction

1. Provision

IPC : Sec. 359

Sec. 362

BNS : Sec. 138

Sec. 139

2. Definition /
Ingredients

1. Kidnapping : Taking away / enticing a minor to move him/her away from charge / protection of guardian.

2. Abduction : Taking away by threat of force / deceitful means without the consent of person concerned.



3. Rationale

To prevent minors,
unsound mind from being
seduced / exploitation
(Haryana v. Raja Ram)

To protect autonomy
of a person to
be at a place
protected
(Varadraj case)

4. Consent

Is irrelevant
under Sec. 359

Paramount
importance

5. Types

1. From India
(Sec. 359)
2. From lawful
Guardianship
(Sec. 360)

Abduction is further
characterised based
on offence sought to
be committed.

6. Nature of offence

1. Substantive
offence

Finally, every act of
taking is abduction
i.e. a continuing
offence unlike
kidnapping

1. offence only when
intent to :
(i) murder (ii) arbitrary
Hurt
(iii) Force marriage /
Slavery
(iv) wrongful confinement

Q. 1(C)

Punishment is a form of criminal justice which seeks to balance victim's rights and also ensures peace and security in society i.e. utilitarianism (Bentham)

Theories of Punishment

1. Deterrent Theory

Based on Hedonism that punishment for a crime must be swift, severe and certain in greater interest of society. (Beccaria)

- Create fear in like-minded people in offences which shake the collective conscience of society
(State of MP v. Nirnala Devi)

2. Retributive Theory

means punishment in proportional severity of the offence committed.

Principle: Tooth for a tooth, eye for an eye
Some countries in the Middle East follow this.

3. Reformative

To reintegrate the offender back into society by actively ~~reforming~~ him. (Musa Khan v. Maharashtra)

• Especially for young offenders to prevent them from becoming hardened criminals

(Dharambhai v. Haryana)

4. Expiatory Theory

Concept of paying blood money, ~~secret~~ remorse for act committed
— still followed in Kuwait

5. Preventive Theory

It argues for sidelining/eliminating amused from society for protection

e.g. Life Imprisonment,
Death Penalty

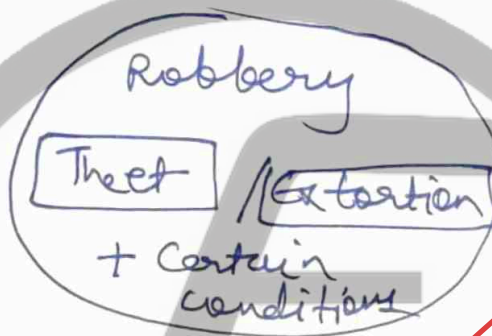
Finally, Born criminal analogy envisages that punishment must serve a collective purpose of justice in its truest spirit.

Q.1 (d)

Robbery is an offence against property mentioned under Sec. 390 of IPC :

BNS :

Sec. 309



I. When Theft is Robbery

Sec. 390 : when committing theft, victim is put in a fear of injury of death, grievous hurt, wrongful confinement or it is so done.

Illus : - In order to loot cash in bank, watchman was tied and confined in a room. It amounts to robbery. (Narinder Singh case)

- Such injury/hurt must be effected in order to taking (carrying

Illustration :

In a train, a thief asked a passenger to hand over his gold chain and while trying to be stopped hits the victim with a gun and runs away with the chain.

⇒ Robbery (Harischandra v. State of UP)

II. When Extortion is Robbery

Sec. 390 : While in the act of committing extortion, the person/victim is put under the fear of immediate death / grievous hurt seeking to get possession of property/valuable security.

Illustration : A holds child B of C on edge of a bridge and says give me all your belonging otherwise he will throw the child down the bridge. ⇒ A commits Robbery.

Hence, Robbery is a continuation of theft/ extortion.

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Q. 1 (e)

"Voluntarily" is defined under
Sec. 39 of Indian Penal Code
to depict culpability via
'mens rea' i.e. guilty state of
mind.

[Meaning of "Voluntarily"]

IPC: Sec. 39

BNS: Section 3(3)

When act is done with a
wrongful intent with a reasonable
foresight of consequences:

In Naresh v. State of Haryana (2024)
, 'voluntary' as intention was described:
(i) accused foresees the consequences
of his act;
(ii) and actively desires it to
so happen;
Such a state of mind leads
to total culpability.

• Guilty 'Knowledge'

In knowledge mind is a passive receiver of information, however certain offences are punishable based on guilty knowledge itself:

- (i) Culpable homicide
- sec. 300(3), (4)

Knowledge of the act being so imminently dangerous
e.g. furiously driving a vehicle in a rage (Santosh Mane case)

- (ii) Voluntary Restraint (sec. 339)
without consent, dishonestly induces a restraint.

Hence, common law requirement of mens rea is supplemented by 'voluntarily' under IPC which recognises either guilty intention or knowledge to sustain liability. (MH George case)



Q. 4 (a)

Protection of Civil Rights Act, 1955 is a beneficial legislation meant to protect Scheduled Castes and Tribes from discrimination and ensure their welfare in spirit of Right to Equality (Art. 14-18) under the constitution of India.

Civil Rights

Art. 2 of the constitution Civil Rights Act defined civil rights as all such rights arising out of prohibition of untouchability under Art. 17 of the constitution.

Hence, all such rights protecting dignity, equality, liberty, freedom etc. fall under the

preview of civil rights .
(Appa Balu Ingale case)

Offences under the Act

1. Sexual Religious Disabilities (Sec.3)
enforcing religious disabilities like
prohibiting entry to temples ,
places of public worship , taking
water from public well fall
under this .

However, such a place of worship
should be open for all sections
of society . (Phul Singh v. state)

2. Social Disabilities (Sec.5)

- Entering / going into hotels ,
restaurants , public places
of entertainment

— This places must be open for
common public .

- Eating from the same utensils

if forbidden, amounts to
an offence

3- Refusal of services / delivery
of goods (Sec. 6)

Illus: - A person belonging to
SC was refused hair cut by
a barber shop. He was liable
under the act.
(Karnataka v. Appa Balu
Ingale)

4. Use of force, violence,
molestation, abusing in
caste name

- These are miscellaneous offences
under Sec. 7 of the Act.

- Offences cannot be committed
by members of SC/ST themselves,
(Dasherath Sahu case)
2024

- Abuse in caste name must
be with intention to downgrade

Character of the other person
i.e. intentionally abusing violating
dignity (Phul Singh case).

5. other offences like

- forcing scavenging
- tanswing of head

Also various offences have
been added in Protection of
SC and ST Act, 1989 to
prevent exploitation of members
of these castes.

Finally, state has the duty
to prescribe (i) collective fines
(ii) special courts to try offences.

These must be substantiated by
positive efforts towards transformative
equality to further constitutionalism
(Justice S. Ramendra Bhatt)

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Q. 4 (b)

General Exceptions in Chapter-IV of IPC make an offence a non-offence owing to absence of requisite criminal intention (mens rea). One of these exceptions is that offence of Insanity.

[Ingredients of Defense of Insanity]

Provision : → Section 84 of IPC
→ Section 22 of BNC

Rationale : "Furiosus Nulla Voluntas Est"

i.e. mad person has no will.

• Requisites :

(i) when a person owing to defect of mind is unawareness of consequences of his act; or

(ii) incapable of knowing that what he is doing is wrong and contrary to law (Babbar. state of Pepsu)

medical v. legal Insanity

medical: The fact of undergoing treatment of any cognitive defect, psychiatric issue

: Not enough: Santosh Mane v. Maharashtra
mere fact that the accused was undergoing medical treatment from a Psychiatrist is not enough.

Legal Insanity

: Based on defective cognitive defect, accused could not understand the consequences of his act i.e. complete cognitive defect (Dahyabhai v. State of Gujarat)

- As per NCBI, insanity is when there is loss of reasoning power.

at not line

- mere abnormality / slight delusion

The fact that accused more readily gave to the rage of his mind is no ground of defence.

(Bablu v. State of Rajasthan)

- Based on subsequent conduct

If conduct is not delusional and accused is in senses

Illus: - Accused after committing crime hides the weapon & tries to protect him from arrest. Based on this conduct, court inferred that no insanity in legal terms could be made out.

Hence, mere loss of cool, temper or sudden acts of rage are not legal insanity. (Sundera Nath Mishra case)

Q. 4 (c)

'Extortion' is an offence against property under Sec. 383 of IPC.

meaning : Extortion is a crime in which an accused puts another person in fear of injury in order to get the delivery of property or valuable security to another person.

Ingredients

1. Inducing threat or fear of injury to person himself or any other person (relative)
2. inducing to deliver property or valuable security
3. dishonest intention;

Illustration : A puts a knife on neck of B and asks him to

give his phone. A & B
give the phone. A commits
extortion.

• BNS : Sec. 308 :

one addition made is sending
of message on electronic means
saying he/she will be harmed
if such property is not delivered.

— This is also extortion.

Theft v. Extortion

1. Provision

IPC : Sec. 378

BNS : Sec 303

Sec. 383

Sec-308

2. Ingredients

1. Movable property
2. Dishonest Intention
3. Taken out of possession
4. without consent;

1. Threat / Fear of injury;
2. to deliver property / valuable security

3. Taking

Property's possession is taken without consent.

Forced by threat to deliver property

4. Nature of Property

only movable property is a subject matter of theft;

• movable property and also valuable security
• e.g. Signing and transfer deed on gunpoint

5. Offence complete

→ slight movement of property out of possession
(Vishwanath case)

→ Delivery of property
i.e. handing over to the accused.

Hence, Both are offences against possession of property, wherein the former involves deceitful transfer and latter involves coercive transfer.

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Q. 5
(A)

Compensation to victim is a contentious subject of criminal jurisprudence since crimes are said to be committed against state and hence state is the prosecutor. Sometimes, this can lead to injustice for victim.

Victim Compensation

1. Fine under Relevant provisions
— However, such fine is not sufficient enough for victim.
• Hence, it is referred to as vanishing point.

2. Victim Compensation scheme

Amendment to CrPc added Sec- 257A which directs courts while giving judgment



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order compensation for the victim
from a fund maintained by
state government.

3. Special funds for particular offences

a. Nisbhaya Fund

(mukesh and others v. NCT)

supreme court directed state to
formulate fund for rehabilitation
of victims of sexual assault.

b. Acid Attack (Shakti v. Union
of India)

A fund is maintained for
victims of acid attack.

However, such schemes on victim
compensation needs refinement
and streamlining so that timely
disposal of funds are ensured
in the truest spirit of Criminal
Justice.

3



(b)

Provisions on causing death
are enshrined as culpable Homicide
and Murder under sec: 299
and sec- 300 of Indian Penal Code.

[Causing Death of a Pregnant
women]

Such intentional death
i.e. intent to cause death
(Moti Singh case)

+

Knowledge that such an act
is likely to cause death
(William Stanley case)

or

act is so imminently dangerous
that in all likelihood would
cause death

(Ram Prasad case)

If the aforesaid ingredients are

met then causing such death of a pregnant woman falls under murder.

murder of one or Two

It depends on circumstances as envisaged by Section 299 :

(i) If no part of fetus/child is out of the body of woman, then such an act would only be murder of one

(ii) Explanation to Sec. 299 :

if any part of fetus is outside the body of mother then causing abortion of such child is culpable homicide.

Hence, in such a case culpable homicide of woman and child both will be accounted for ~~to~~ by the criminal justice system.

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(c)

Misappropriation of Property
and Criminal Breach of Trust
(CBT) are offences against
property under the IPC.

Criminal
Misappropriation

CBT

1. Provisions

→ Sec. 403 of IPC

→ Sec. 405 of IPC

→ Sec. 314 of BRS

→ Sec. 316 of BNS

2. Constituents

1. Possession of property
of a person
2. Converted to one's
own use
3. Dis honestly

1. entrustment
of property to
a person
2. dishonestly
appropriates that
property to his
own use

3. Possession

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- Innocent possession
- involuntary
e.g. finding of a good lying on road

- Proper entrustment
is made by the victim himself.

4. Change of Intention

- Due to a subsequent change
- can be based on a discovery of a new fact

- Dishonest intention
formed after before
entrustment

Illustration: A comes across a ring lying on a road, later finds out that it was a gold ring, he keeps it for himself.

⇒ S. 403 is made out

Hence, in misappropriation, dishonest intention can precede taking, whereas in CBT it only succeeds taking.
(Shankarlal Vishwakarma case)

5. (d)

The Distinction between Culpable Homicide and Murder is fine and is the most controversial aspect of IPC (Stephen).

Fine Distinction

IPC: Sec. 299

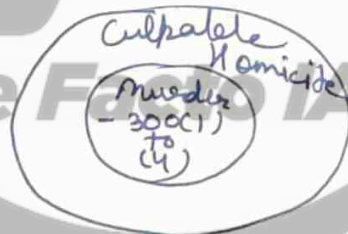
BNS: Sec. 100

• Grenus

Sec. 300

Sec. 101

• Species



→ Rajwant Singh case

• Act likely to cause (299(2)) death

• Knowledge (200(3))

• Knowledge of death

300(2)

• Certainty of knowledge

- S. 300(3), 300(4)

The distinction boils down to:

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(i) nature of weapons used
: if lethal

(ii) nature of injury caused
- i.e on sensitive organs
⇒ murder (moti singh case)

lastly in S. 299(3) and 300(3), (4)
intention doesn't matter, the
very nature of offense is enough.
(Ram Prasad case)

• Grave Injustice

If difference is overlooked:
murder → Punishment under Sec. 302

Culpable Homicide → Punishment under
Sec. 304 (Pt. I, Pt. II)

Hence, matter can be of life and
death - huge burden on Judge to ensure justice.

Finally, if death is likely result
than Sec. 299 otherwise
if most probable result,
it is Sec. 300.

Q. 5(e)

Unlawful Assembly is a Group offence
given under Sec 149 of IPC
punishing illegal acts of
an unlawful assembly.

Ingredients

: 5 objects under Sec 141 :

- (i) to overawe by criminal force
acts of public servant;
- (ii) to resist execution of a law;
- (iii) to commit mischief;
- (iv) to take over possession
of a property;
- (v) to take over right of public
to a community resource;

Prerequisite : There must be
Five (5) or more persons
required for liability
under Sec 149 (Masalti v. UP)

• less than five persons

Although, minimum five persons are required, however in case of:

- (i) 5 ~~quest~~ persons unquestionably present;
- (ii) certain unidentified individuals
- (iii) mentioned in FIR / challan

Then in such a case Sec 179 can be invoked ~~if~~ identity of others is established.

(Bharwad Mehta Dana case)

Recently, this requirement was emphasised in the case of Shiv Prasad Semwal and others in 2024 by Supreme Court.

5

Q. 7

(17)

Section 124A of IPC which contains the offence of sedition is one of darkest legacy of British Rule which was meant to suppress the activities of freedom fighters, like mahatma Gandhi, Mr Tilak.

Constituents of sedition

1. whoever attempts or brings into hated;
 2. excites ill will / contempt / disaffection;
 3. against government established by law;
 4. by words; gestures; or visible representations
- shall be liable for sedition and punishable for minimum three years of imprisonment.

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Here, Sec. 124-A is an offense against state.

Constitutional validity of
Sec. 124-A

The said provision was challenged multiple times in the court of law, however, it was upheld as a reasonable restriction under Art. 19(2) of Constitution.

• Kedarnath v. State of Bihar

In this case, the Supreme Court read down Sec. 124A in so far as acts of criticism against government was concerned.

→ Test of inviting actual disorder/violence
Only if there is an immediate threat to law and order / violence, then only Sec. 124-A can be invoked.

- Criticism against Government

In the above case it was also held that mere disapproval / criticism of governmental policies is not enough to constitute an offence.

- Merely Bad feelings against government

→ chanting of slogans
• secessionist slogans in itself
would not constitute an offence
— empty sloganeering without
actual threat to law and order.
(Balwant Singh case)

- Press Freedom

In Vineet Dua case, the Supreme Court came down heavily on government for misuse of sec. 124A against journalists as violation of Art. 142 19(1)(a).

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• Sedition in Akeeyame

In SA Vombettan case, Supreme Court directed states to not register Sec 124A offence and asked government to take a relook and repeal this provision. ✓

• Sedition under BNS, 2023

Although BNS doesn't contain 'sedition' directly but under [Sec 150] it provides for

: "Acts Jeopardizing Sovereignty and Integrity of India"

Looking ahead, there must be a balance between Fundamental Rights and unity, integrity of India (Law Commission, 27th Report)

Q. 7(b)

Article 299 and 300 which contains
definition of Culpable Homicide
and murder is one of the
most complicated provision in
IPC as per Stephen, KD Law.

Constituents of Sec. 299
and 300

Sec. 299

- (i) intention to
cause death
- (ii) likely to cause
death
- (iii) Knowledge

Sec. 300

- (i) intention
- (ii) -likely
- (iii) Knowledge
- (iv) so imminently
dangerous

This bifurcation was done by
Justice Melville in
R v. Criminda to
ascertain liability whether
under Sec-299 or Sec-300.

Bodily injury likely to cause Death or Not

This determination defines whether an act falls under Sec. 299 (2) or Sec. 300 (3).

This is based on following factors:

- (i) peculiar knowledge about death of acc an injury / condition

Illustration: A knowing that B has an enlarged spleen, hit him hard knowing that it can lead to murder, hit him.

Hence such injury is held to be likely to cause death.

Lit.) Intention must be to cause death

Illus.: shooting in abdomen of deceased twice. (Moti Singh case)

(iii) knowledge that act is
likely to cause death

As held in Rampal Singh case,
it boils down to nature of
weapon used

✓ - if a deadly weapon is used
+ part of body targeted
e.g. shooting in head point blank
⇒ Based on injury and body part
liability under Sec-300 is
determined. (Rajwant Singh case)

(iv) Act being so imminently
dangerous that it most
certainly would result in
death

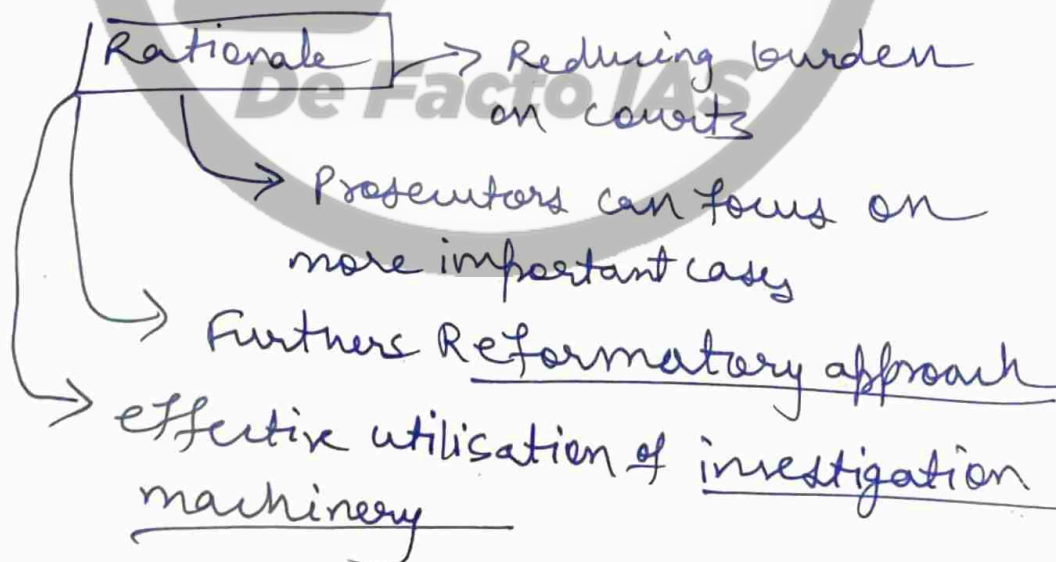
Illus: Setti Pouring kerosene over
wife and setting her on fire
(State of HP v. Nirmala Devi)

Hence, when death is likely result
- it is Sec-299 but when it is
the "most probable result", it is
murder. [KD Lawr]

Q. 7(c)

'Plea Bargaining' is a concept based on principle of 'Nolo contendere' i.e. I plead guilty originated in legal system of USA.

meaning: It is an agreement between the accused and the prosecutor wherein the accused pleads guilty in lieu of reduced punishment.



Plea Bargaining in India

In an amendment to CrPc in 2006,

Chapter 23 was added to CrPC containing Plea Bargaining.

Scope and Application

Provision: Sec. 265 of CrPC

~~BNX~~: Section 28
Bharatiya Nagarik
Suraksha Samhita (New CrPC)

1. Eligibility: Offences whose punishment is less than 7 years, except: socio-economic offences, offences against women, children
2. Judge while framing charges can direct the application of this section if requested by the accused ()
3. Notice to Public Prosecutor and other parties. ()
4. Disposal: Punishment upto a maximum of 1/4th of actual

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Answer Questions in NOT MORE THAN the Word Limit specified for each in the Parenthesis.
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punishment can be given.
(Sec. 290 of BNSS)

5. Such decision is final and without appeal.

[Relevance and Significance]

Law Commission in its 142, 154th Report observed:

- Eventually, this must be extended to all offences.
- Judges must be specialised trained — even special Judges can be appointed.
- It will help in reducing the burden on lower courts.

[Response of Judiciary]

In Kasambhai case and Muralidhar case, Supreme Court referred it as "Negotiated Settlement". It can't be effective unless proper training and streamlining of procedures is undertaken.



Q. 8 (A)

Section 34 of Indian Penal Code incorporates the principle of common Intention. In offences where two or more people are involved, then it is very difficult to ascertain individual liability and hence Sec. 34 provides for constructive liability of one and all for the entire act. (R v. Cruise)

[Difficulty to Distinguish Individual Acts]

Ingredients of Sec. 34
and under BNS [Sec. 3(5) to 3(7)]

1. Criminal Act by two or more persons

- when contributions are made by multiple members:

Illustration: A group of people start beating a police constable, blows are hit by some of them. Each is liable for the whole criminal

act jointly and severally
(Mabboosh Shah v. Emperor)

2. Common Intention and a
Premeditated state of mind

— Such common intention to commit
the offense must be shared and
known by all.

• They also serve who only stand
and wait — Rationale of liability
given in BK Chose v. Emperor

3. Common Intention $\neq$ Same Intention

This means that the premeditated
state of mind must be known and
shared by all of them.

Illus.: A group of persons having
a fight/enmity can individually
attack a person but since intention
is not shared by all, hence

liability under sec. 34 does not arise.

(Pandurang v. State of Maharashtra)

4. Only a rule of evidence, and not substantive liability

- In a case where the accused were acquitted of substantive offence under S. 153 A, hence charge under sec. 34 becomes non est

(Shiv Kumar Senwal case, 2024)

5. Acquittal of few persons

As long as two or more people are involved in the commission of an offence, then acquittal of a few doesn't absolve them of liability.

(Dalip Singh v. State of Punjab)

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Summing up Rationality of common liability

Based on the above illustrations it is evident that Sec. 34 ensures constructive liability as :

- (i) It helps in prosecution as individual liability is difficult to ascertain.
- (ii) Actual contributions doesn't matter, since mere presence can also act as assistance in the commission of an offence
(Tukaram v. State of Maharashtra)

Hence, Sec. 34 acts as a provision of Vicarious liability in group offences.

Q. 8 (b)

'Dowry Death' i.e. causing of death associated with demands of dowry from a married woman is a serious menace for society.

IPC under its Sec. 304 B prescribes liability and punishment for such an act of dowry death.

[Constituents of Dowry Death]

IPC : Section 304 B

- (i) Death of a married woman;
- (ii) owing to cruelty of husband, near relatives;
- (iii) death caused due to burns or any other unnatural causes;

(iv) in association with demands of dowry or any other property sought from wife and her family; and

(v) soon before her death was subject to cruelty

(vi) within 7 years of marriage;

Interpretation of 'Dowry Death'
by Courts

1. Proximate link

There must be proximate link between death and acts of cruelty which $\neq$ led to death of the victim.

(Rajendra Amar Singh v. Haryana)

2. Cruelty

All forms of physical, mental injury which are unnatural besides burns injury are

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part of 'cruelty' as also under
Sec. 498-A of IPC.

(Gurmeet Singh v. NCT)

3. presumption under Sec. 113-B
of Indian Evidence Act

If unnatural death is caused
by burns in 7-years of marriage,
it is presumed that death
is caused for dowry demands.

4. Beneficial construction

Since it is a beneficial provision
hence benefits are extended
to :

(i) live - in partners (Reema
Agarwal case)

(ii) Even second marriage cases
(Sunita Tha case)

Finally, the courts have also held
that if due to lack of evidence,
304-B can't be proved then
498-A can be invoked -

Q. 8(c)

Theft is an offence against Property
under the Indian Penal Code
which prescribes liability for
invasion of possession of property
with a person (KD Craur)

Theft : Definition

Theft is defined as dishonestly
taking possession of a property from
another person without his/her
consent.

Ingredients

IPC : Sec. 378

BNS, 2023 : Sec. 303

1- Movable Property

All corporeal property except
for things attached to earth
(Defined under IPC, BNS)

2. / Dishonest Intention

Such dishonest intention is proved when it is meant to:

- (i) cause wrongful loss to the person in possession of property.
- (ii) and causes wrongful gain to person who takes that property (maharashtra v. Vishwanath)

3. / Takes out of Possession

So the moment the property is moved from the possession - it constitutes taking.

- Even slight movement out of possession is theft

(Dhananjay v. State of Bihar)

- ①. Possession can be constructive
i.e. the owner might not be in the immediate possession of

property ; still if taken out of charge legally amounts to theft ;

(Shankarlal Vishwakarma case)

4. Without consent of the owner

• Illustration :

A is in possession of a car which he purchased recently.

B, a neighbour is jealous and desires to get that car.

In one night, he enters A's house, uses duplicate keys

takes away the car which is

Found in his possession by the Police.

Hence, the moment car moved out of A's house, an offence of theft under Sec- 378 / S. 303 (BNS) was complete.