



Total Time Alloted: 3 Hours

Total Marks : 250

Question Paper Specific Instructions

- Please read each of the following instructions carefully before attempting questions.
- There are EIGHT questions divided in two sections.
- A candidate has to attempt FIVE questions in all.
- Questions no 1 and 5 are compulsory and out of the remaining, THREE are to be attempted choosing at least ONE from each section.
- The number of marks carried by a question /part is indicated against it.
- Word limit in questions, wherever specified should be adhered to.
- Attempts of questions shall be counted in chronological order. Unless struck off, attempt of a question shall be counted even if attempted partly. Any page or portion of the page left blank in the answer book must be clearly struck off.

NOTE: Please take a printout of the answer Booklet and give answers in stipulate time. So that actual examination scenario is stipulated.

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Subject: CRIMINAL LAW

Phone: [REDACTED]

Criterion	Average	Good	Best
Presentation			
Content			
Structure			

Teacher's Remark

Q.1(A). Explain and illustrate distinction between 'motive', 'intention and 'knowledge' (10 Marks) [150 words]

Motive, Knowledge and Intention all depict the Mens Rea aspect of criminal law.

Knowledge and Intention are relevant for criminal liability, while motive is irrelevant.

MOTIVE :

- Motive is the purpose behind commissioning of an offence, and has no role in deciding culpability.
- Motive can be used by Prosecution to establish intention and knowledge as held in Ko Chand vs Royastham.
- When a thief steals to feed his hungry kids, his motive is to protect his kids.

KNOWLEDGE:

- Knowledge means awareness about the consequences or implications of one's actions.
- Knowledge is an element of mens rea in various offences @ Section 300(1) → murder by knowledge.
- When A throws a bomb in a market he has knowledge that it is imminently dangerous and can cause death.

INTENTION:

- Intention means knowledge plus desire to commit the act.
- When A wants to kill B to steal his car, the action of killing is intention under criminal law. Intention and knowledge are based on "Actus non-factum nisi mens sit rea": Without guilty mind no liability.

Q.1(B). Justify Sudden fight as a partial defence under s. 300 IPC (10 Marks, 150 words)

culpable homicide is not murder when under sudden provocation without premeditation death is caused
[Section 300 Exception 4]

ESSENTIALS

- ① There shall be sudden provocation via a sudden altercation of a fight.
- ② The action of committing offence should not be pre-determined in nature.

ANALYSIS

The SC in the case of Mahendra

Sing Bhullar v/s State of Punjab held that when one adversary had pre-planned a fight with the other and calls him to his home, he was not given the defence since it was predetermined.

Ans was about "justifying" suddenly

- In Naveet Singh Sidher ~~about the~~ court clarified that such partial defence applies only in case of sudden altercation, and who started the fight becomes immaterial.

$\sqrt{\frac{1}{2}}$

Exception 4 of S. 300 allows individuals partial defence provided such actions were not predetermined.

Q.1(C). Distinguish theft from 'robbery' and 'extortion'. [10 marks, 150 words]

Theft is committed under section 378 of IPC. when a person dishonestly moves a moveable property out of another person's possession without his/her consent is said to have committed theft.

THEFT	ROBBERY
<p>① Theft <u>movement</u> of <u>moveables</u> to <u>dishonestly</u> <u>w/o consent</u>.</p> <p>② Use of force is <u>not a pre-requisite</u>.</p>	<p>① Robbery under S. 390 happens when while commissioning of theft or extortion there is <u>danger</u> to one's <u>body, mind, property or reputation</u>.</p> <p>② <u>Use of force or threat</u> of use of force is a <u>must</u>.</p>



① In theft the property is always stolen

② In case of robbery property can be delivered under threat

Extortion is defined under S. 383:

- when a person under wrongful intention via threat of injury induces,
- other person dishonestly to deliver property or security

THEFT (378)

① Property is stolen

② No threat of injury

③ Theft of only moveables

EXTORTION (383)

① Property is delivered

② Threat of Bodily or Mental injury

③ Both moveable & immovables

without theft or extortion there can be no robbery

Q.1(D). Victim compensation is the vanishing point of criminal jurisprudence. Elucidate [10 marks] [150]

A new jurisprudence known as constitutional tort has emerged in the recent years. The rationale behind victim compensation is to try and reinstatement the victim to the rightful place where she should've been.

VANISHING POINT

- Under cases like Kastori Hal and P&O company cases the court had held that not only could states not be forced to compensate, they could not be held liable for their sovereign functions.
- The idea behind punishment under

criminal law is that crime is a wrong against the state and prosecution is initiated by state, hence there is no room for compensation

VICTIM COMPENSATION

~~wrong conduct of 4th~~

• In various cases like DK Basu, Bhim Singh, Sebastian Hungary, etc the court has allowed victim compensation to ensure justice is delivered.

3rd • The idea behind it is to make sure that fundamental rights of victims are not violated by the state and other offenders

The court in Sebastian Hungary case stressed upon the need of compensation to ensure actual justice

Q.1(E). Conspiracy is something more than an abetment." Discuss with illustrations | 10 marks, 150 words]

criminal conspiracy is defined under section 120A of The Indian Penal Code, 1872.

ESSENTIALS

- ① Two or more individuals
- ② Agreement to do or cause to be done ∴

2.1 An unlawful act or

2.2 A lawful act by unauthorised means

In an unlawful act a mere agreement leads to liability, while in second case an overt act is needed [Nalini V/s Tamil Nadu].



Southern

Key word

CONSPIRACY MORE THAN ABETMENT

① Under Section 107 mere instigation

amounts to abetment, however such is not case in conspiracy. There is an agreement condition which is mandatory.

② Under 120A when conspiracy is for lawful act via unlawful means an overt action is a MUST. however in ~~conv~~ abetment by investigation or abetment by conspiracy an overt act is not mandatory

Hence, court in Nirmala case held that conspiracy is much more than abetment.

Q.3(A) Establishment of an overt act is not a requirement of law to allow section 34. It gets attracted when a criminal act is done in furtherance of a common intention of all. Explain (20 marks, 300 Words)

Section 34 of IPC, 1860 talks about "offence committed by several persons in furtherance of common intention, each individual is held liable as if they did the act individually"

INGREDIENTS

- ① Several persons i.e. more than 2 or 2,
- ② commit offence in furtherance of common intention,
- ③ Participation of each person is a must
- ④ commission of the act.

The court in BK Ghosh v/s Emperor stressed upon the requirement of prior-

meeting of mind w^ot the offence

OVERT ACT IS NOT A REQUIREMENT

- The court in the case of BK Ghosh postulated that for application of S.34 any person could be held liable if the act committed by others was agreed to by the person.

Sunder v Common Council

- Prior-meeting of minds is an essential and proves common-intention of all.

The court in Krishna v/s Maharashtra stressed that common intention is the keystone of S.34, and overt act is mere consequence.

- Common-intention means consensus-ad-idem and is not to be confused with similar intention as explained by court in Emperor v/s Mehboob Shah.

FURTHERANCE OF COMMON INTENTION

- The court in Mehboob Shah case explained that when there is common and not similar intention it does not matter who causes the final act all are to be held liable.
- The court in Mubarak Ali case stated that when common-intention of two individuals was to kill a third person

the overt act of who caused the death becomes irrelevant and each of the person is liable as if they did the act in individual capacity.

The crux of section 34 is common intention, since a person is held jointly liable for someone else's actions it becomes imperative to establish consensus ad idem for application of the section.

(12) Two people know 'first murder' does not mean any physical act.

Q.3(B). 'The Indian Penal Code gives protection to one who does an act in good faith for the benefit of another.' Discuss. (15 Marks, 250 Words)

Section 92 of the IPC, 1860 allows the defence for individuals who do an act for the benefit of others without their consent.

INGREDIENTS Nothing is an offence caused;

- ① By a person without consent of other person,
- ② done under good faith [S.52 defines good faith]
- ③ without criminal intention
- ④ For the benefit of other person.

Illustration : When A a doctor finds D a unconscious victim, he operates him under good faith for the benefit of D.

In such treatment A can act in good faith and he will not be liable for consequences.

PROVIDED the act committed is not conducted with intention to cause:

- ① Hurt
- ② Death
- ③ Euthanasia
- ④ Abetment to crime

GOOD-FAITH WITH CONSENT:

- Under section 88 and 89 a person who does an act under good faith with consent is granted protection.
- Under S. 88 an individual who

commits an offence without criminal intention (b) with consent of other person (c) under good faith (d) for benefit of other person is not held liable.

Q: Surgeon ~~do an operation after~~ consent.

- Under S. 89 an individual can operate or do an act for the benefit of minor or unsound individuals after receiving consent from their parents, or guardians.

Q: Unconscious minor being operated by doctor on guardian's consent.

Under IPC these sections allow actions under good faith and provide defence.

Simple & easy to remember

Q.3(C). 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. Comment with case law (15 Marks, 250 Words)

Section 124A of Indian Penal Code, 1860 deals with the law of sedition.

The law was introduced via the 1892 amendment to curb free speech, and was targetted towards nationalists

ESSENTIALS

- ① whoever brings or attempts to bring,
- ② Hatred, ~~Res-jection~~ and contempt
- ③ Towards government by words or other expressions,
- ④ by Publication is said to have committed sedition

CONSTITUTIONALITY

- The SC in Kedarnath Singh v Union of India upheld constitutionality of S. 124A on the basis of Article 19(2) of constitution (Public-order)
- The court held that sedition can be applied only if:
 - ① Words / Expressions are published
 - ② Lead to disaffection against govt
 - ③ Promote or incite violence

RE-LOOK SEDITION

The Vth Law Commission realised that the law of sedition was being

misused by government to curb free-speech and to punish mere bad feelings against the government.

- In 2018 the Law Commission came with a Constitutional Paper to curb sedition on following grounds :
- ① Archaic / colonial law which has outlived utility.
- ② Detriment to freedom of speech & expression via chilling effect.
- ③ Hindrance to deliberation and dissent which is a must in democracy.
- ④ Subjective tool with ruling dispensation

The SC in Pucl case stressed upon the need to relook sedition law



Q.5(A). Can Less than five person be charged, tried and convicted for the offence of unlawful assembly? [10 Marks, 150 Words]

under Section 149 there is joint liability for members of an unlawful assembly which is constructive in nature.

ESSENTIALS

- ① offence committed,
- ② by any member of an unlawful assembly,
- ③ in prosecution of common knowledge leads to liability of all.

UNLAWFUL ASSEMBLY

- Section 141 of IPC, 1860 defines unlawful assembly as an assembly of 5 members or more for any one of the five

objectives laid down in the section.

• In Chandriah vs State seven accused were being tried of Section 149 read with Section 383 (Extension). When three of the seven accused were able to show alibi and were acquitted the court dropped case of unlawful assembly.

• Court in Chandriah case has held that without five members there can be no offence of unlawful assembly.

Since Section 149 is an offence in itself it becomes mandatory to prove that five members were present.

Q.5(B). Act by child is a defense. Explain the Scope [10 marks, 150 Words]

Defence of children's action is based upon the maxim "Doli - Incapax" which stresses upon the limited understanding and maturity.

SECTION 82

- Nothing is an offence which is committed by a child under the age of seven years.
- Section 82 is an absolute defence for children below 7.

SECTION 83

- Nothing is an offence done by a



child of age 7-12 who lacks maturity to understand the nature of his act.

- Under S.83 if a child commits an act the court presumes maturity and understanding, the burden is on the defence to show child lacked maturity.
- In Ulla Mahapatra case when a child threatened to kill, and later cut the person into pieces it was accepted that the child was mature enough.

In loco parentis

Reli Incapax is an absolute defence for under 7, while partial for 7-12 year olds

Q.5(C). A cheque is issued by 'X' on his bank having the knowledge about insufficient funds in his account. What offence, if any he commits? [10 marks, 150 Words]

If X issues a cheque knowing that he has limited funds, and the cheque is likely to fail he has committed offences under S.138 of NI Act and Section 420 of IPC, 1860 [cheating]

OFFENCE

- The Supreme court in Tindal steel case deliberated in which cases S.138 can be applied with S.420.
- The court held that S.138 of NI Act was a holistic code itself and fraud proceedings shall be avoided

- But in circumstances where a person deliberately commits a cheque bounce Fraud can be induced.

S.420 MIS?

- ① Person cheats the other person dishonest-ly,
- ② Induces the other person to deliver valuable;

is liable under S.420. Since cheque is issued for some consideration such actions of issuing cheques (fake) is an act of cheating punished by S.420 read with S.138.

MIS

Q.5(D). "Nothing is an offence which is done by a person who is bound by law to do it." Discuss. [10 Marks, 150 Words]

Section 76 of IPC, 1860 deals with Mistake of Fact by person who is bound by law.

ESSENTIALS Nothing is an offence done by a person who is :

- ① Bound by law or believes to be bound by law,
- ② Under Mistake of Fact, not mistake of law
- ③ Under good faith.

ANALYSIS

- The court in R v Prince held that "ignorantia juris non excusat" i.e. ignorance of law no excuse.

- ② Person needs to be bound by law. In Chandra Nanain v/s State a constable fired on an unarmed crowd due to serious order, court held he was not bound to follow illegal acts.
- ③ In R v/s Tolson court held that when there is no doubt in persons mind of facts it can be seen that such person is protected by defence of Mistake of Fact.

~~judicial~~??

The defence of s. 76 is only available for mistake of fact, and not rational acts which can be binding.

Q.5(E). Distinguish Between Criminal Breach Of Trust And Cheating. [10 Marks, 150 Words]

Criminal Breach of Trust is defined under
Section 403 of IPC, 1860.

ESSENTIALS :

- ① Entrustment of Property,
- ② Misappropriation of property
- ③ Misappropriation against law or contract,
- ④ Misappropriation by person himself or allows someone else.
- ⑤ Misappropriation by : ~ (a) utilising property (b) Misappropriating it (c) discharging it.

cheating is defined under section 420:

- ① whoever dishonestly induces,
- ② deceived to deliver property is
said to have committed cheating

CBT (405)	CHEATING (420)
① Property delivered under <u>entrustment</u>	① Property delivered via <u>guard</u> .
② At time of <u>delivering</u> property <u>malice</u> <u>absent</u>	② Malice is the basis for <u>inducing the</u> party to <u>deliver</u> .
③ <u>Subsequent malice</u> after property delivered	③ Malice <u>precedes</u> delivery

CBT & Cheating are offences of malicious use or conversion of property

Q.7(A). In State of Maharashtra v. M.H. George, AIR 1965 SC 722 the majority did not hold mens rea to be an essential ingredient of an offence under section 23(1-A) of the Foreign Exchange Regulation Act, 1947. Whereas Justice Subba Rao in his dissenting opinion held so. Discuss and state the reasons for their difference of opinion. Which opinion do you agree with and why? [300 words, 20 Marks]

" Actus Non Facit reum, nisi mens sit rea"
without guilty mind there can be no criminal offence. ---

◦ In State of Maharashtra v MH George an individual was booked for carrying gold on a flight which was beyond prescribed limit. At the time of boarding the flight he was not aware about the new law being published.

MAJORITY'S OPINION:

① "Ignorantia juris non excusat": Ignorance of law is no excuse for liability, hence mens-rea was not essential.

- ② Mens-Rea was not an essential requirement of S-23 of FEMA as by reading IN of Mens-Rea the purpose of the act would be defeated.
- ③ The majority opined that in certain instances proving mens-rea is not needed because by reading it the objective of legislation is defeated.
- ④ The court relied on case of Sayoo Prasad where mens-rea was not read in to protect the purpose of the Adulteration Act.

meaning Court by the Court
implications can deduce
it



SUBBA RAO - J DISSENT

- According to J. Subba Rao there can be no liability without mens-rea.
- For the commissioning of crime apart from actus reus, mens rea is a must which cannot be denied.

*No Causation
Can not be attributed by law*

MY VIEW:

- I am in favor of the Majority judgment due to following reasons:

① In certain statutes reading in mens rea can lead to the defeat of statute @ Motor Vehicle Act.

- ② Proving mens-rea can be a cumbersome task in certain offences as one could argue they never knew about the act being illegal.
- ③ Justice Strachey in his famous essay argued that mens-rea is not needed in statutes which are incorporated for welfare of the public

gave Justice Su Rao opinion not promulgated

Hence, the majority opinion of Justice George prevails which has established that where statute is silent on mens-rea it should be read-in, but if by reading it in the purpose gets defeated, mens-rea can be read-out.

Q.7(B). Discuss the act of an intoxicated person as General Defence with case law. [250 words, 15 Marks]

Intoxication defence can be availed under Section 84 and Section 85 of IPC, 1860

INVOLUNTARY INTOXICATION

Section 85 deals with defence of involuntary intoxication. The essentials:

① Nothing is an offence done by a person who is incapable of knowing the nature of his act,

② Due to intoxication,

③ Provided such intoxication was involuntary and without his knowledge.

The court in DPP V Beard discussed the defence of intoxication and held

that the idea behind the defence is :

- ① The person who is under alcohol influence has lost the senses to make decisions
- ② Defence available only in "Delirium Tremens" → loss of cognitive ability to take decisions.

The court in Basudev V/S Pepsu discussed that defence of S. 85 can only be made available if :

- ① Drunkenness was involuntary
- ② caused ^{destruction of} ↑ mental cognition ability

VOLUNTARY DRUNK

- Under Section 86 the court assumes the person's knowledge about the act s/he committed if they had voluntarily consumed alcohol.
- In Mirza Gani Baig v AP The court held that a person who loses cognitive ability to make decisions by voluntary alcohol consumption can claim defence under S. 84 [unsoundness of mind].

Hence law of intoxication as a defence is settled in case of voluntary under S. 84 & involuntary S. 85 provided there is "Reverium Tremens".

you can relate it to the [Post] Act done by a person

Q.7(C). Killing by state to wrong and self contradictory in criminal jurisprudence. Comment in light of increase in awarding death sentence by courts in India. [250 words, 15 Marks]

India is among the very few countries in the world which has capital punishment. The proponents of capital sentence believe it acts as a deterrent against crime.

CONSTITUTIONALITY

- The Supreme Court in Bachan Singh case held the capital punishment as constitutional and formulated the Rarest of the Rarest Doctrine.
- The court held its constitutionality on three grounds :
 - ① Serves deterrence

- ② Repeat offenders it is imperative
- ③ Gruesome offences against public sentiment
[Mukesh v State : Nivbhaya]

KILLING BY STATE IS WRONG.

- The Project 39A at NLU Delhi has laid the fallacies in death penalty.
 - ① State decisions are arbitrary as to when to give death or life-imprisonment → line is thin and subjective
 - ② Article 21 which deals with Right to life includes right against capital punishment.
 - ③ State's actions have been biased and targets the vulnerable [SC, ST, etc]

SELF CONTRADICTION IN CRIMINAL JURISPRUDENCE

- Under reformatory justice there is never a situation where an individual cannot be reformed.
- By killing an individual the society loses hope upon the individual and his capability. *most of them are illiterate / poor*
- The SC in its 2012 judgment in Mamaji Pratap v Rajasthan, has held that while capital punishment award mitigating factors have to be given equal weightage compared to crime.

According to J. UU Lalit capital punishment is arbitrary and subjective and needs reconsideration.

Q.8(A). Prevention of corruption Act, 1988 is an important legislation in safeguarding democracy and justice in India. Comment [300 words, 20 Marks]

The Prevention of corruption Act, 1988 aims to curb corruption which according to Santranam committee is abuse of power and resources by the powerful.

IMPORTANCE IN SAFEGUARDING DEMOCRACY

- The Supreme court in State of MP vs Ram Singh stated that "corruption is like AIDS, which needs to be curbed at budding stage to stop infection".
- The court in Ram Singh stated that constitutionalism [limited government]

is under threat when individuals engage in corruption.

- corruption promotes biasness which is against "Equality Before the law" an important component of AV Dicey's Rule of Law. Rule of Law is the basis for democracy.
- corruption has the ability to reduce accountability and transparency among the executive. As a result the collective responsibility of Executive towards Parliament is compromised and democracy is affected.

POCA IN SAFE GUARDING JUSTICE

- Under Section 7 of POCA Bribery is prohibited this promotes justice for common man who is forced to pay.
- The 2018 amendment makes bribery an offence. Person who is forced to pay bribes have 7-days to report.
- The Act ensures that organisations or institutions are not engaged in Red-Tapism or corporate frauds [s.9 of 2018 Amendment]

- POCA, 2018 has also focused upon criminal misconduct under section 13 : (a) ban valleables (b) misapprop-
-riation

Though POCA has played major role in drive against corruption the following lacunae need to be adressed :

- ① Prior Sanction under so 17A & 19 present proceeding.
- ② The limited power of special investig-
-ation teams and special courts.
- ③ Threat among masses to approach Special
court!

According to ARC-2 corruption is a turnite which could hamper Indian democracy

Q.8(B). the object of protection of civil right act, 1955 is to abolish untouchability. Discuss its effectiveness.
[250 words, 15 Marks]

The Protection of Civil Rights Act, 1955 was introduced under A-17 read along with A-38 by the Parliament.

FEATURES AND OBJECT

- ① Section 2 : Promotion of civil rights
[Rights which accrue from abolition of untouchability]
- ② Section 3 : Abolish and punish religious disability @ Temple entry ban.
- ③ Section 4 : Abolishes and punishes social disability @ Shops/Restaurants

④ Section 10 : Officers who act against interest can be charged for abatement.

⑤ Section 10A : The aspect of collective fines.

you can club it
① social disab
② economic

EFFECTIVENESS

• The SC in Puranchand v State analysed the effectiveness of the act and found

the following drawbacks :

- ① Lack of effective implementation of the law.
- ② Though wants to abolish untouchability, it has not been DEFINED.
- ③ The hostility among officials to register

complaints under the act.

- Recently NCRB came out with its report "Crimes in India" and it observed that every 15 minutes an offence of untouchability is committed in India.

EFFECTIVE DEALING:

① Implement guidelines laid in Prithvi Raj Chauhan case 2020.

② Synergise SC/ST Act 1989 with civil rights act.

③ Refine untouchability

*Part of Chandra
Chudhary
Sent on 12/12/2021*

According to BR Ambedkar untouchability is a "crime against humanity" and effective implementation of POCA, 1955 is must.

Q.8(C). Najam represented to Kardam that he was a big estate-holder owning innumerable properties which representations were not true. Kardam, believing the representation of Najam to be true, agreed to purchase an estate from Najam of which Najam was not the owner, for a consideration which eventually he paid after documents were executed between him and Najam. Later on, Kardam came to know that Najam had no title in the said property. Kardam wants to proceed against Najam under the IPC and seeks your advice as to what offence, if any, has been committed by Najam.

You are required to advise Kardam on the issue of criminal liability of Najam, if any, under IPC [250 words, 15 Marks]

In the given circumstances Najam has falsely represented to Kardam about his business and has committed fraud and cheating against Kardam.

Proceedings against Najam

- Fraud under Section 420 of Indian Penal Code, 1860.

- ESSENTIALS

① whoever cheats and dishonestly induces,



② induces deceived person to deliver property or any valuable

③ shall be punished with fraud.

◦ Nayam can be booked under fraud since all ingredients are met :

① Nayam cheated Kharam by depicting himself as a big retail owner. Such misrepresentation induced the transaction.

② Kharam provided Nayam with security and paid him money. Hence second requirement is fulfilled.

Since all essentials of cheating are met
Nayam can be prosecuted under
Section 420 of Indian Penal Code

① Go into detail
of law → explain
with case

② Then apply law on
fact → conclude