

Total Time Allotted: 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.

De Facto IAS

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Subject: Law of Crimes
Phone: _____

Teacher's Remark

Section - A

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

The common law maxim "Actus nisi sit mens rea" entails that to commit a crime, the perpetrator's intention (mind/mens rea) must go with the act (actus reus).

Thus, [actus reus + mens rea = offence]

[Actus Reus] - objective element of crime

↳ refers to the entire event / circumstances which are rendered unlawful by law

↳ Illustration : if accused ~~she~~ thinks about shooting a person but shoots a goat - actus reus not complete.

↳ exceptions : in cases where mere act without mens rea is an offence : counterfeit currency,

indecent representation of women, wage
war against state [S. 147 of BNS].

(Mens Rea) - subjective element of crime

↳ refers to state of mind of accused, as
manifested in actions

↳ illustration: shooting at a person point blank -
indicates mind directed towards murder

↳ exceptions: when mens rea itself
punishable if criminal conspiracy (S. 51)
mere agreement is punishable.

Both together needed for crime

① Powder v. Padget - sold assets but not a
crime as mens rea to defraud creditors
not proved

② Palani Goundan v. Empress - beat up
wife to just hurt but thought that she is
dead. Hung her but no intention to kill.
Only liable for grievous hurt.

Thus, mens rea and actus reus must
coincide for a crime.

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

Kidnapping and abduction are both offences against human body. They are punishable under section 137 and 138 of Bharatiya Nyay Sanhita respectively.

Difference between the two

Basis	Kidnapping	Abduction
Actus Reus	to convey a person beyond India OR to take a minor/unsound person out of lawful guardianship	to force or to induce a person to move from a place
Subject person	can only be a minor (< 18 years) or an unsound person	can be major (adult) or a minor

Basis/
rationale

to protect the
interests of minor/
unsound person
and right of guardians
to have their
custody [S Varadraj
v/s State of Madras]

to protect liberty
of any person
against forcible
invasion by
another

Ar

Status
under law

punishable as an
offence independently
~~of~~ as well as an
auxiliary offence
of kidnapping for
begging

punishable as an
auxiliary offence
i.e. when abduction
is with a particular
purpose of to murder
or for ransom

Case
law

State of Haryana
v/s Raja Ram -
persuasion to a
minor girl to leave
parental home is
enough inducement
to constitute kidnapping

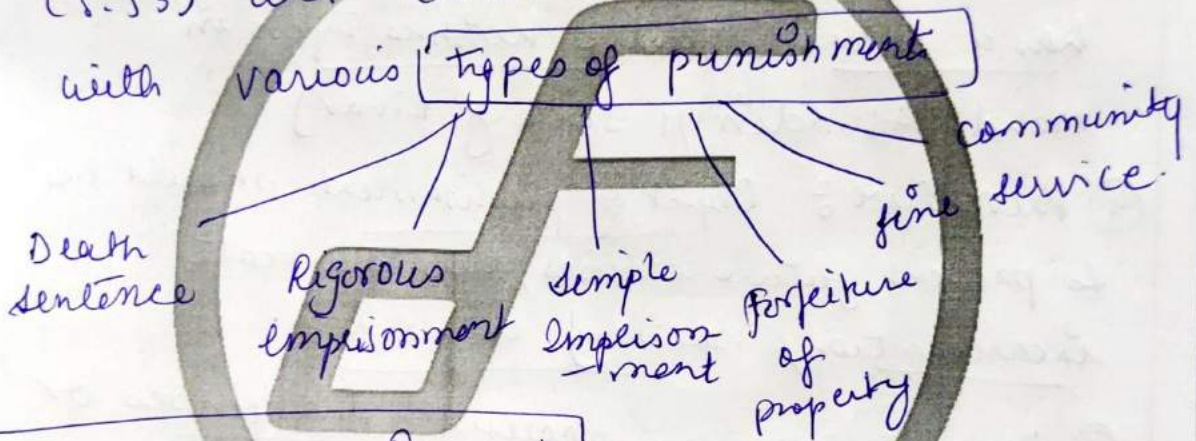
Darshan Singh
v/s State of
Bihar - aggravated
offence of abduction
for murder

Yi

Thus, kidnapping and abduction both
punishable under BNS with imprisonment and fine

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

Punishment is the ultimate sanction which law provides for an accused who has perpetrated an offence. Under IPC (s. 53) and under BNS (s. 4) deals with various



Theories of Punishment

- ① Deterrence theory - to deter a person from committing the same offence again, punishment must be proportionally serious to the offence [state of Himachal Pradesh v/s Vimala Devi - for heinous offence, deterrent theory used]

- ② Retribution - eye for an eye i.e. based on revenge - obsolete in modern criminal penology
- ③ Rehabilitative : focus should be on reforming the offender and not to be based on maxim "every saint has a past, every sinner has a future" [Justice Krishna Kumar in Mohd. Asuddudin v/s State of Bihar]
- ④ Preventive : Object of punishment should be to prevent future crimes, thus advocates incarceration / solitary confinement.
- ⑤ Expiatory : If the accused recompenses or accepts guilt, willing to compensate, punishment is not needed. Probation of Offenders Act, Juvenile Justice Act based on this

Thus, Indian criminal system currently based on both deterrence and reformation. Addition of community service by BNS is welcome. Other reforms such as abolition of capital sentence, open air prisons should be considered now

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

Robbery is an aggravated form of either theft or extortion.

[Theft or Extortion + imminent use or threat of violence = Robbery]

Thus, Section 302 of BNS describes Robbery as either theft or extortion.

✓
✓
✓

[Robbery is Theft]

- when theft is committed
- in pursuit of theft during or while
- carrying away someone's property
- the accused causes or threatens to cause death, grievous hurt or wrongful restraint.

it is robbery.

Illustration: when accused uses gun shots to effect retreat with property in sikandar vs state - accused gave

knife injuries to gain scooter key from
accused, held robbery

Robbery is Extortion

when the accused

- commits extortion
- by threatening the subject person with
imminent death, grievous hurt or
wrongful restraint

- is in the presence of the victim [i.e.
sufficiently near to the victim]

- thereby induces victim to deliver movable
property or any valuable security

Thus in Jadunandan v/s Emperor, threatened
victim with death to take his thumb
impression forcibly - since victim didn't
deliver but himself put thumb impression,
not guilty of robbery

Thus, robbery can be effected either by
theft or extortion - essence is use or threat of
violence.

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)

IPC (and now BNS) both prescribe specific mens rea for all offences. There are variety of mens rea defined eg good faith, intentionally, voluntarily, unlawful etc

Voluntary in IPC/BNS

Voluntary is defined under S. 2 of BNS as doing an act:

→ either intentionally i.e. awareness of the consequences along with willingness to bring about those consequences OR

→ with knowledge i.e. the subconsciousness about consequences but not actively seeking to bring about those consequences.

Importance of Voluntary under IPC/BNS

① To distinguish between culpable homicide and murder of in Punayya v/s State of Andhra Pradesh, Justice Sarkaria distinguished both.

② To give benefit of unfortunate accidents of under S-18, most accidents are excused (General exceptions) when done without intention or knowledge.

③ To deter useful offences, voluntary ensures punishment of hurt (S-175(1) of BNS) and grievous hurt (S-115(2)), both require "voluntary" causing.

knowing/Int

Thus, voluntary upholds the maxim of actus facit reum, nisi mens sit rea under IPC / BNS.

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)

Right of private defence is a general exception under IPC/BNS (S. 35 to 43).

It is based on the rationale that when faced with threat/ violence, the law doesn't expect a person to be a lamb coward but allows leeway to defend own person or property [Dassharma Singh vs State of Bihar on doctrine of self-preservation].

Principles Meaning of Right of Private Defence

① Right to defend own or another's ^{body} ~~property~~
[S. 35(1) read with Secs. 37 to 40 of BNS]

When there is imminent ~~threat~~ or use of force likely to cause ~~injury~~ to a person or another, the former can use force to repel the same.

However, the exercise of the right must be proportional to the threat present.

→ Right of private defence of body may extend to causing death when threat of:

- death of own or another
- grievous hurt
- rape is imminent
- forcibly taking / abduction

Thus in Vishwanathan v State of UP, when accused's sister was being dragged to her marital home by violent husband, he shot the husband - allowed right of private defence.

② Right of private defence of property belonging to own or another [Secs 41 to 43 of BNS]

Nothing is an offence which is done to safeguard own or another's property from theft, mischief, trespass or extortion or robbery.

eg in Deo Narain v State of UP - force used to safeguard forcible dispossession of land

↳ can extend to causing death when:

- in committing robbery, arson by fire, house breaking, imminent threat to life
- in committing theft, extortion, death or grievous hurt imminent

Thus in James Mathai v/s state of Kerala, accused shot mobsters who set fire to his house, allowed defence of property.

Principles of Right of private defence

In State of UP v/s Karam Singh, Supreme Court laid following principles

- ① Right of private defence (R.P.D) is right of defence, not offence. Thus, if an aggressor attacks and kills, will not be allowed exception
- ② Proportionality of force to the ~~me~~ threat faced is important. One cannot meet needle with a sword.

③ There must be necessity to use force i.e. imminent and immediate threat required, not remote or fanciful.

④ One will, however, not be required to weigh ROPD necessity or proportionality in a golden scale.

In this light, the Supreme Court has interpreted right of private defence as of immense significance [Narshan Singh v/s State of UP - to respond effectively]

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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)

Under IPC [S.375] and BNS [S.63], sexual offence of rape is defined. It is essentially non-consensual penetrative or non-penetrative assault on a woman by a man.

CONSENT UNDER IPC and BNS

Under Explanation 1 of Section 63, consent (BNS) is defined as unequivocal agreement by direct indication expressed by a woman.

However, consent, if obtained by fraud/ deceipt and the accused knows that woman consents because:

- she thinks accused is her husband
- is under intoxication
- is of unsound mind or
- otherwise unable to consent (minor girl)

Then, such acts of consensual intercourse are not consent legally speaking.

In Dilip v/s State of MP, Supreme Court opined that to constitute consent under S. 375, it must be shown that the woman had intelligent knowledge of nature and moral quality of the act.

DIFFERENT FROM NON-CONSENSUAL ACT

If the woman is:
↳ under misconception of facts (as above)
↳ under such compulsion that she submits / surrenders herself without resistance [State of Himachal Pradesh v/s Ram Kumar - where under constable's custody, who committed rape]

then irrespective of nature of injuries on body or no resistance, the act is non-consensual.

→ further, if the woman is minor, the consensual act is immaterial i.e. if intercourse with minor < 18 years, amount to rape, irrespective of her willingness.

Exceptions to consent

- ① when necessary medical procedure or surgery being undertaken
- ② Marital rape i.e. by a husband with his wife even if without her consent does not amount to rape

The Malimath Committee recommended abolition of marital rape exception, however continues even under BNS. Like the Delhi High court ruled in RIT Foundation's Union of India (2023), "the cris of woma married woman have not been heard till date"

②

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)

In furtherance of abolition of untouchability (Art 17) by the Constitution, the Legislature has enacted Protection of Civil Rights Act, 1955 and then to close loopholes, SC and ST (Prevention of Atrocities) Act 1989 was enacted.

Major provisions under the Act

- ① Wide definition of 'Atrocities' (Section 3) -
- includes acts of blackening face, forcing to live in designated areas, dumping excreta near house of SC/ST person, forcing them to clean excreta, refusing to their use of public property, enabling their frivolous arrest maliciously etc
 - aforesaid acts are deemed to be done on ground of their belonging to SC/ST.

② Special courts for trial

- ↳ with right of SC/ST for legal representation
- ↳ special public prosecutors to ~~try~~ prosecute the offence

③ Strictest provision of bail [Section 18, 18A]

- ↳ no anticipatory bail allowed [upheld in Prithviraj Chaurhan v. Union of India]
- ↳ no probation permitted

④ Obligation of states to :

- ↳ ensure enforcement of the Act
- ↳ impose collective fines on habitation
- ↳ constitute special courts

Provisions related to victim relief

Under S.15A (added by 2018 Amendment Act), the state government is obliged to :

- ↳ constitute fund for interim compensation to SC/ST victims

- ↳ grant them protection against future atrocities
- ↳ rehabilitate or resettle them in new areas, if needed
- ↳ police officers to register FIR without need of prima facie investigation and to handover a copy to SC/ST victim
- ↳ fine imposed on the accused to be granted to SC/ST member if court so directs.
- ↳ no hospital can refuse to treat the SC/ST victims

Thus, SC/ST Ad is a salutary law intended to legally deter the religious and social disabilities imposed on this marginalized community.

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)

Civil rights refer to those rights which accrue to the individual belonging to Scheduled caste by virtue of the abolition of untouchability under Art. 17 of the Constitution [Sec. 2(a) of the Protection of Civil Rights Act, 1955].

Rationale of Civil Rights Act

- ↳ To prevent social and religious disabilities imposed on SCs.
- ↳ To punish the offenders, abettors or even attempt at violation of civil rights.
- ↳ protective / positive discrimination in favour of SCs to enable their life of dignity (under Art 21) and equality (under Art 14).

Offences Prescribed under the Act

① Imposition of religious disabilities [S. 3]

↳ by prohibiting use of ^{private} place of worship
open for public use

↳ by prohibiting use of any public place of worship

The government can cancel aid / grant to any such religious institution imposing religious disabilities.

② Imposition of social disabilities [S. 4]

↳ preventing use of public wells, tanks by the victim

↳ prohibiting use of public restaurant, gardens or any other place of public congregation / entertainment

③ Refusal to deal / sell to the victim [S. 5]

→ any vendor refusing to sell to victim belonging to SC community on same terms as he does with other member of the public commit an offence

④ Other offences include:

→ intentionally insulting in a public place

→ inciting commission of untouchability

→ boycott of SC members

→ forcing compulsory labour upon them is deemed to be offence

⑤ offence by public servant who:

→ refuses to register FIR (deemed abettor)

→ engages in aforesaid offences

is said to himself commit the offences.

PUNISHMENTS PRESCRIBED

- ↳ for offences by ordinary members of the public, 3 months imprisonment or fine or both
- ↳ for offences by public servant, aggravated punishment of 1 year
- ↳ any abettor deemed to be commisary and punishable just like principal offenders.
- ↳ collective fines may be imposed by state government on villages where residents engage in, promote, incite or harbour offenders.

Thus, Protection of Civil Rights Act is aimed at welfare of SCs and to ensure constitutional protections to them are effectively realized.

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

Insanity, under IPC and now S. 22 of BNS refers to inability to know the nature of offence or that what is being done is contrary to law. This is unsoundness of mind or legal sanity. 157

Defence of insanity

- ① General exception which excuses liability for offences under BNS
- ② The accused not punished but sent to mental asylum / rehabilitation home

Different from Medical insanity

In common law, the test of insanity was inability to understand the nature

of the crime or quality of the act
[McNaughten's case].

further, it was held that medical
insanity will not afford a defence -
Disease of mind is not the same as
legal insanity. For medical insanity,
report of doctor is sufficient - it includes
delusions, delirium, schizophrenia,
Alzheimer's etc.

However, legal insanity requires
cognitive inability i.e. disease of mind
should be such that it impairs the
formation of mens rea. [Emgcor v/s

Angar Ali laid down right and wrong test].

In Prakash Naygi v/s State of
Goa (2023), the Supreme Court again
affirmed distinction between medical

insanity and legal insanity. To put it succinctly " ~~as~~ insanity required under IPC is such that accused is unable to tell what is right from wrong ".

Then, when accused pled after murder and hid in the jungle, he was clear headed during the trial, the Supreme Court in Lakenmi v/s State did not allow the defence of legal insanity (or unsoundness) even though he had a history of mental illness.

Therefore, under BNS, excusable insanity is much different from medical meaning of insanity.

7 1/2

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

Extortion is equivalent to common law
offence of blackmail. It involves
putting the victim under threat and
inducing delivery of valuable security

Ingredients of Extortion [S-308 of BNS]

- ① Whoever, intentionally puts another
in fear of death, grievous hurt
or wrongful restraint
- ② Thereby dishonestly induces the
person to deliver any valuable
security or anything capable of
conversion into valuable security
is said to commit extortion.

The person put under threat may be the person induced himself or even another person in whose safety the victim is interested.

It is immaterial if the threat is actually carried out or not - if reasonable apprehension in ~~accused~~ victim's mind is created, it amounts to extortion.

[Cases] -

- ① Radumandan v. Emperor - If thumb impression forcibly taken by accused, not extortion as induced person must himself deliver property. go
- ② Holding a person on the ground and forcing him to give wallet is extortion [Illustration to S. 308].

DIFFERENCE BETWEEN THEFT AND EXTORTION

Basis	Theft (S. 303 and 304)	Extortion (S. 308)
Mens rea	Dishonestly taking ie. accused himself taking	Dishonest inducement ie victim forced to deliver
Subject matter	Movable property - can be immovable property if severed from the ground	Any valuable security or anything capable of being converted to valuable security
Offence	Theft is offence against possession ie. any person or warehouse keeper - can sue	offence is more against <u>blackmail</u> or mental distress created
Illustration	Moving a ring from respectable to carport to take it later	Threatening to kill a child to demand ransom

Thus, theft and extortion both are offences against property carried out using different means.

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)

S. 124A of IPC incorporated the offence of sedition couched in vague terms. like relating ill will, hatred, disaffection against the government established by law.

Constitutionality of Section 124A
Impediments

① Impediments of Sec 124A

whenever by:

↳ words, oral or written, signs or visible representations

↳ incites or attempts to incite

↳ feeling of hatred, disaffection, contempt against government established by law is guilty of sedition.

② However, explanation nālis hat mere disapprobation of government policies (desapproval) shall not amount to contempt.

Constitutionality of Section 124A

First case : challenged in Kedar Nath v/s

State of Bihar
Union of India

on following grounds:
→ violates freedom of speech and expression under Art 19(1)(a) but court held s. 124A based on reasonable ~~restriction~~ restriction under Art 19(2) of the Constitution including security of state, public disorder

→ violative of Art. 21 as provides for 3 year imprisonment without just, fair and reasonable procedure

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Shroo Committee

→ Art 14 violated due to vague terms like disaffection, hatred - overbroad leading to arbitrariness. However, court upheld these arguments. Upheld constitutionality of Section 124A.

Second case: S G Vombatkere vs Union of India (2023) again saw challenge to arbitrary detentions and low conviction rates under section 124A. The Supreme Court suspended applications / prosecution under S-124A recognizing its rampant abuse.

However, before the court could pronounce on constitutionality, IPC was repealed by BNS.

Sedition under BNS

Section 152 is said to be old provision in the new law. Sedition itself as

an offence has been repeated.

Ingredients of Art. 152

whoever says

words, written or spoken, visible representation
electronic communication, or using financial
means or otherwise

↳ incites or attempts to incite

↳ armed resurrection, feelings of separatism,
acts subversive activities against
sovereignty, unity & integrity of India
shall be punishable by 7 years imprisonment
or fine

or just
Thus, repeal of ~~Art 124A~~ ^{Section} 124A itself evinces that
It was probably unconstitutional in a
democratic polity. However, some concerns
regarding vagueness of S. 152 terms like
"subversive activities" have been raised.
Only its actual application will tell the
Fate of this new provision.

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)

Under IPC (S.302) and under BNS (sections 100 and 101) deal with gravest offence against human body i.e. murder and culpable homicide.

The difference between culpable homicide and murder is fine but errors in distinction can cause grave injustice [Sarkaria J in Punayya v/s State of Andhra Pradesh].

Difference between Murder and Culpable Homicide lies in

- ① intention with which bodily injury is inflicted i.e. with intention to cause death or such bodily injury as likely to cause death

OK

② knowledge that the bodily injury inflicted will in all probability cause death.

Thus, to determine whether bodily injury is likely to cause death becomes important.

Factors to determine

In Budhilal v/s State of Uttar Pradesh, the Supreme Court listed following factors to determine if bodily injury likely to cause death:

↳ nature of injuries if it is on a body part which vital to human function [e.g. on the head in Mithu v/s State of Punjab]

↳ weapon used by the accused if lathi or spear or a knife [Deo Narain]

vs State of UP - accused used sword showing his ~~intention~~ intention was to cause bodily injury likely to cause death]

↳ Doctors' opinion whether injury is fatal - the court ~~is~~ called for medical opinion in AR Punnayya case

Thus, whether injury caused by accused are likely to cause death or not is a question of evidence, to be determined in light of facts and circumstances of the case

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

Plea bargaining refers to an agreement between the accused and the prosecution whereby accused gives up some facts (admission on his part) and prosecution in exchange drops some charges.

Scope of Plea bargaining in India

Chapter XXIII [Sections 289 to 300] of BNSS deal with plea bargaining.

① Applicable only for less serious offences i.e. those with:

- imprisonment less than 7 years
- accused not habitual offenders

Excludes heinous offences [S. 289] like:

- those > 7 years imprisonment
- offences against women or children < 14 years.

• offences affecting social and economic conditions of India notified by central government (eg. inducement representation of women, downy etc)

② Only allowed for ~~sentence~~^{fact} and charge bargaining - sentence bargaining not permitted in India i.e. the Judge is empowered to pass a sentence after considering the plea bargained, not parties.

Critical Evaluation of plea bargaining,

Pros of plea bargaining :

↳ speedy disposal of cases

↳ save public resources wasted on long trials and use them for more heinous offences

↳ vindication for the victims as conviction is assured

- ↳ ease burden on overcrowded jails
- ↳ opportunity for accused to repent by admission of guilt.

however, some concerns flagged by Court:

[Kasambhai vs State of Gujarat]

- ↳ Encourages collusion and corruption
- ↳ against fair trial and right against self incrimination under Art 22(2)
- ↳ Prosecutor will be motivated to add frivolous charges to force accused to bargain
- ↳ deterrence effect of punishment compromised.

~~That, plea bargaining in India involves active role of the judge who supervises the entire process to ensure fairness for all parties. Even has power to reject the plea bargained.~~ The Supreme Court in Re Plea Bargained, issued guidelines provisions on bail (2022), issued guidelines for judges training to ensure plea bargaining promoted with fairness.

Q.5(a). "Compensation to the victims of crime in India is the vanishing point of criminal jurisprudence." Comment. (10 Marks, 150 words)

In India, victims join only as a mere third party to the trial. Prosecution is in the hands of the state. Thus, responsibility to protect victim's rights to compensation also rests with the state. Provisions for compensation of victims!

① Section 357A of Code of Criminal Procedure 1973 (now Bharatiya Nyaya Saraksha Sankhita) mandates the states to empower the magistrate to grant compensation to the victim out of the fine imposed on the accused.

② Section 357A further enjoins upon the state to frame a victim Compensation scheme to ensure compensation where fine inadequate.

or accused acquitted.

③ Even BNS provides for compensation to acid attack victims, rape survivors etc.

Vanishing point of jurisprudence?

Despite provisions aforesaid, victims are languishing without compensation as:

- ↳ District legal services authority (authorised to grant compensation) dysfunctional
- ↳ lack of awareness amongst victims
- ↳ lack of conviction rates leading to no fine imposition - thus victims left without compensation
- ↳ several states unable to devolve money for Victim Compensation Scheme.

However, several states such as

Tamil Nadu, Gujarat have been successful in ensuring victim rehab and compensation.

Thus, it cannot be said that compensation is vanishing point of jurisprudence in India.

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)

Under BNS, offences against human body includes offences against both adult human as well as against infants, unborn child and foetus.

Death of pregnant woman - offences

① May amount to two murders

murder of
woman herself
(under S. 101)

murder of ~~infant~~
unborn child

However, the condition precedent is that the pregnant woman is quick with child (i.e. nearing the delivery of child) .

② murder of woman along with infant

if some part of the child has been brought forth (even if not fully born)

- ② When pregnant woman not quick with child, then only one murder homicide is committed. Further, the offence involved may be "causing miscarriage of child" along with murder of woman.

Thus, a person committing homicide of pregnant woman can be held liable for homicide of two (in case ① and ② above) and of only 1 (in case ③), depending upon facts of the case.

Q.5(c) Distinguish between Misappropriation of property and Criminal Breach of trust under IPC. (10 Marks, 150 words)

Misappropriation of property (defined under section 314) and criminal breach of trust defined under section 31B of BNS.

Difference between the two

Basis	Criminal misappropriation	Criminal breach of Trust
Actus Reus	putting conversion of property for own use or misappropriation	misappropriation or conversion or disposing of property in breach of direction of law or contract
Essence	offence against beneficial ownership of another	offence against entrustment of another

Types	only one kind of misappropriation simpliciter	can be aggravated CBT of by <u>brokers</u> , <u>servant</u> , <u>clerk</u> or <u>attorney</u> where higher punishment
Illustrative	finder of goods who irrespective of means available to find the owner, sells the goods	warehouse keeper sells the goods without consent and in breach of contractual obligations
Relation between offender and victim	may or may not be any relation	relationship of fiduciary nature or contractual nature important

4

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)

Death by negligence (under S. 106 of ~~IPC~~ ^{BNS/S.304A} _{gIPC}) and death by culpable homicide (Sec. 100/101 of BNS and 299/300 of IPC) are different from each other in degree of culpability, if not in the outcome.

Thus, ignoring the difference between the two can cause grave injustice.

Difference between the two

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① Death by culpable homicide [S. 100/101]
whoever causes death by an act done:

- with intention to cause death
- with intention to cause such bodily injury as likely to cause death
- with knowledge of likely death

commits culpable homicide
eg in AK Punayya v/s State of AP; Budhital
v/s State of Uttarakhand etc.

② Death by rash or negligent Act: (S. 106)
when without intention or knowledge,
death is caused by negligent act, it is
not culpable homicide.

- medical practitioners during surgery
- death by negligent driving

Significant difference between the two

→ ~~degree of culpability~~ in CH is much higher
i.e. intention / knowledge while mere
recklessness (rashness) or irresponsibly
indifference (negligence) in S. 106.

→ punishment for two also differs i.e. upto
death for life imprisonment for CH while upto
7 years in negligent death.

Thus, differentiation between the two
important to further ends of justice

Q.5(e). Can less than five persons be charged, tried and convicted for the offence of unlawful assembly? (10 Marks, 150 words)

Unlawful Assembly is offence against public tranquility in IPC (now S. 190 of BNSS).

Ingredients of Unlawful Assembly (S. 189 of BNSS)

- ↳ 5 or more persons
- ↳ assemble with intention to:
 - obstruct public duty by a public servant
 - prevent execution of law
 - forcible dispossession of property of another
 - forcing another to do or omit to do an act not bound to do
- ↳ commit an offence in prosecution of aforesaid common object,

Assembly with 5 persons minimum is important [as law is fearful of numbers, says Glanville Williams]

Conviction when less than 5 persons

An accused can be convicted if no. of convicted persons is less than 5, provided there were some unidentified persons, not named in FIR (who^{up} made the unlawful assembly) - held in Mohammed Anif v/s NCT of Delhi

De Facto IAS