



UGC-NET

LAW

NATIONAL TESTING AGENCY (NTA)

PAPER – 2 || VOLUME – 2

**LAW OF CRIMES, LAW OF TORTS, CONSUMER
PROTECTION ACT AND COMMERCIAL LAW**



UGC NET - LAW

S.No.	Chapter Name	Page No.
UNIT- 4 : LAW OF CRIMES		
1.	General Principles of Criminal Liability	1
2.	Stages of Crime and Inchoate Crime	14
3.	General Exceptions	22
4.	Offences Against Human Body	31
5.	Offences Against State and Terrorism	54
6.	Offences Against Property	57
7.	Offences Against Women and Children	62
8.	Drug Trafficking and Counterfeiting	71
9.	Offences Against Public Tranquility	74
10.	Theories and Kinds of Punishments, Compensation to the Victims of Crime	76
11.	Practice Questions	86
UNIT-5 : LAW OF TORTS AND CONSUMER PROTECTION ACT		
1.	Nature And Definition of Torts	94
2.	General Principles of Tortious Liability	97
3.	Liability General Defenses	100
4.	Specific torts – Negligence, nuisance, trespass and defamation	103
5.	Remoteness of Damages	107
6.	Strict and Absolute Liability	109
7.	Tortious Liability of The State	112
8.	Consumer Protection Act, 1986	114

9.	The Competition Act, 2002	129
10.	Practice Questions	139
UNIT-6 :		
COMMERCIAL LAW		
1.	Essential Elements of Contract and E-contract	146
2.	Breach of Contract, Frustration of Contract, Void and Voidable Agreements	153
3.	Specific Contracts	164
4.	Sales of Goods Act, 1930	178
5.	Partnership and Limited Liability Partnership	197
6.	Negotiable Instruments Act, 1881	206
7.	Incorporation of a Company Prospectus, Shares and Debentures	211
8.	Company law – Directors and meetings	225
9.	Corporate social responsibility	237
10.	Practice Question	241

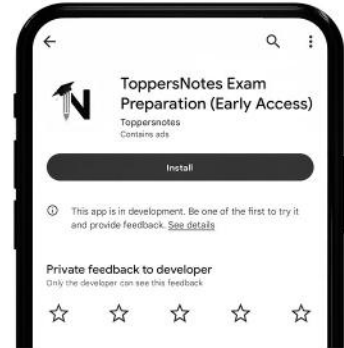
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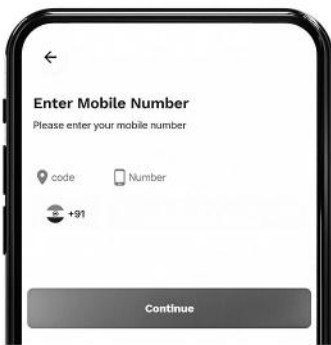
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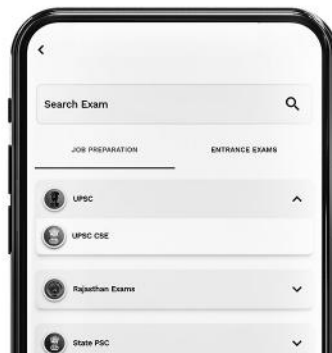
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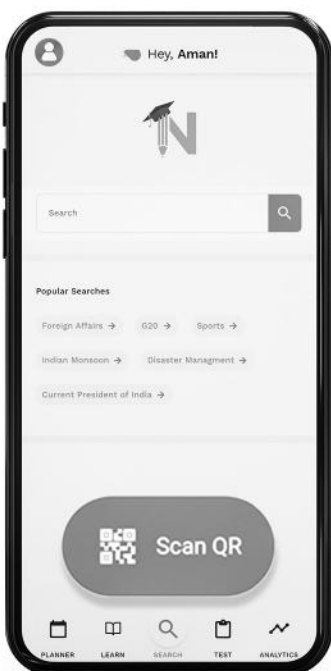
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4 UNIT

Chapter – 1

General principles of criminal liability – Actus reus and mens rea, individual and group liability and constructive liability

Concept and Definition of Crime

- Since the dawn of human civilization, crime has been a baffling problem. There is hardly any society which is without the problem of crime. Violation of norms and rules do occur in a society. Durkheim in his book Crime as a Natural Phenomenon said:
- A society composed of persons with angelic qualities would not be free from violations of the norms of that society.
- The concept of crime is essentially concerned with the social order. A sense of mutual respect and trust for the rights of others regulates the conduct of the members of society inter se.
- Although most people believe in peace and harmony, yet there are a few who deviate from this normal behavioural pattern. This imposes an obligation on the State to maintain normalcy in society, which it performs through the instrumentality of law.
- The Penal Code nowhere defines what a crime is. A crime can be said to be an act of commission or omission, contrary to law, tending to the prejudice of a community, for which punishment can be inflicted as the result of judicial proceedings taken in the name of the State.
- When a person commits a wrong, he is said to be liable for it. Criminal liability arises when a person commits an act which is criminal in nature. A criminal offence is only committed when an act, which is forbidden by law, is done voluntarily. It is only voluntary acts which amount to offences.

Criminal Science

- The study of Criminal Law, Criminology and Penology is called Criminal Science. Criminology studies the causes of crime, Penology, punitive and preventive measures.
- Criminology nourishes penal policy and penal policy shapes criminal law and the entire three combine to constitute criminal science.

CRIME

- Crime is such a breach of the Act that there is a punishment for the act and not more compensation.

FUNDAMENTAL OR BASIC PRINCIPLES OF CRIMINAL LIABILITY

- The doctrine of criminal law and fundamental or basic principles of criminal liability are called General Principles of Criminal Law.
- A large part of criminal law consists of specific rules which define various offences [Sections 121-510 of the IPC) but the enforcement of these specific rules is controlled by certain well-organised doctrines of criminal law which deal with various conditions relating to criminal liability, such as

doctrines relating to mistake, accident, infancy, insanity, intoxication, necessity, compensation, attempt, solicitation etc which are essential parts of every definition

- These doctrines of criminal law have been derived from the fundamental principles relating to Criminology- the principle of legality, mens rea (guilty intention), Actus reus (conduct), harm and punishment.
- These fundamental principles of criminal liability and the doctrine of criminal law constitute Penal Law Theory It is also called General Principles of Criminal Law.
- The combined meaning of the fundamental principles and the doctrine can be stated in a single generation.
- Thus, the harm prescribed by a Penal Law must be imputed to a normal adult who voluntarily commits it with a criminal intention and such a person must be subject to a legally prescribed punishment Criminal Law Theory or Penal Law Theory is largely concerned with the elucidation of this generalisation.

Definition of Crime

- Section 40 of the IPC says that "any act or omission made punishable by the IPC is an offence". Similarly, Section 2(n) of the Criminal Procedure Code says that any act or omission made punishable by the IPC or any other law for the-time-being-enforced is an offences. Both these definitions only specify the consequences of committing a crime i.e., punishment. These definitions do not clarify anything about the nature of criminal law and therefore are not satisfactory.
- **Sir Stephen-History and Principle of English Criminal Law, Vol. III (IPC):** He has said that "crime is an act not only punishable by law but is also revolting to the moral sentiments of the society. This definition is true only with regard to traditional and serious or heinous types of offences such as murder, theft, dacoity etc, but it is not true with regard to all types of offences because at the present time, there is no necessary connection between law and morality
- According to **Kenny**, "crimes are wrongs whose sanction is positive and in no way remissible by any private person, but remissible by state alone, if remissible at all." Kenny's definition means that punishment of wrongful deeds of people by the state is morally good. However, punishment must be inflicted by the state alone and not by a private vigilante or even by the victim to the offender.
- Content of crime changes over the period of time, Once upon a time heresy or blasphemy used to be a crime punishable by burning the blasphemers at the scaffold.
- In some states, people of alternate religious beliefs used to be traumatized by the majoritarian theocratic state. But now even theocratic states do not punish persons of alternate religious beliefs. Polygyny (man having more than one wife) was not an offence among Hindus till 1955.
- However, with the passing of Hindu Marriage Act, 1955 – polygamy in any form was completely outlawed among Hindus. Therefore, the content of crime changes with the evolution of time.

BURDEN OF PROOF IN CRIMES

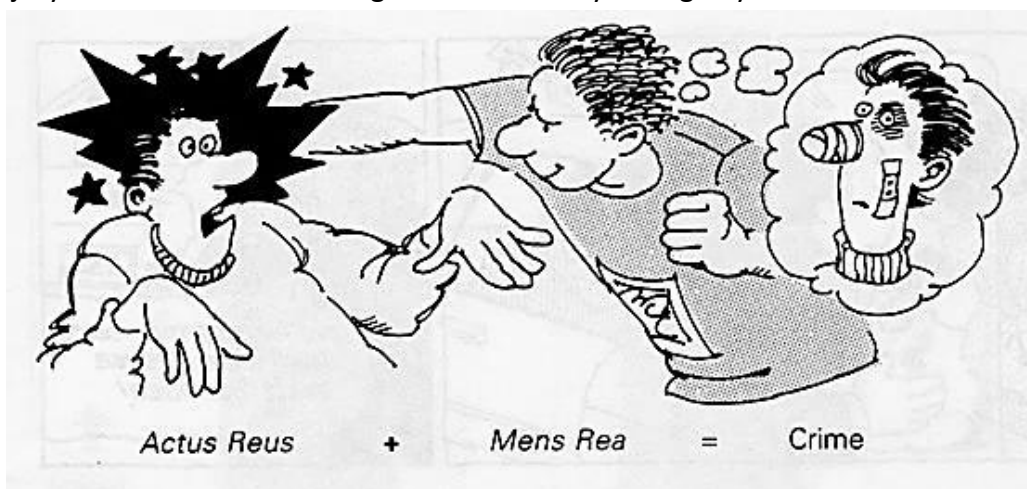
- The burden of proving a crime is on the prosecution. The prosecution must prove the guilt of the accused beyond reasonable doubt. If any doubt is present in the mind of the court, then the court shall have to acquit the accused. In civil litigation however the burden of proof is different than in

criminal litigation. In civil litigation, one must prove the case on preponderance of probabilities. This is an easier burden of proof than in criminal litigation.

- The burden of proving crime is more onerous and difficult to discharge in criminal litigation and all benefit of any doubt present in the mind of the court is reaped by the accused.
- Prosecution and defense. The task of proving the guilt of the accused is performed by the prosecution.
- The task of proving the innocence of the accused is performed by the defense. The state is the prosecutor in the criminal trial. The state fights the case on behalf of the victim and the society at large. Criminal trials are adversarial in nature. Two adversaries show the guilt and innocence of the accused person to the court upon which the court gives a decision.

PRINCIPLES OF CRIMINAL LIABILITY:- 'actus non facit reum, nisi mens sit rea'

- Actus non facit reum nisi mens sit rea' is the famous English maxim of criminal law.
- This maxim means- "The act itself does not constitute guilt unless done with a guilty intent.
- It is a principle of natural justice, "The maxim is sometimes said to be a fundamental principle of the whole criminal law .
- The maxim that, generally, a person cannot be guilty of a crime unless two elements are present: the *actus reus('guilty act') and the *mens rea('guilty mind').
- **Most criminal offences require-**
 - anactus reus (conduct 'external' to the defendant's thoughts and intentions) and
 - amens rea (a specific state of mind on the part of the accused).
- **Thus four element that go to constitute a crime are as follows:-**
 - A human being under legal obligation to act in a particular way and a fit subject for the infliction of appropriate punishment.
 - An evil intend or mensrea on the part of such human being
 - Actusreus i.e. act committed or omitted in furtherance of such an intend and
 - An injury to another human being or to the society at large by such act



ACTUS REUS:

- THE WORD actus CONNOTES A 'deed' A PHYSICAL RESULT OF HUMAN CONDUCT.
- THE WORD reus means 'forbidden by law.

- THE actus reus IS MADE UP OF THREE CONSTITUENT PARTS, NAMELY: -
 - HUMAN ACTION: 'CONDUCT'
 - RESULT OF CONDUCT
 - ACTS PROHIBITED BY LAW

MENS REA

- Mental element in crime. Intention mens rea means a mental state, in which a person deliberately violates a law. Thus mens rea means intention to do the prohibited act. No act per se (itself) is criminal, the act becomes a crime only when it is done with a guilty mind. It signifies the mental element necessary to convict for any crime.
- Mensrea is not the same thing as motive. The mens rea refers to the intent with on which the criminal act happened. On the other hand, the motive refers to the reason of criminal act.
- In Director of Enforcement v. M/s MCTM Corpn. Pvt.Ltd AIR 1996 SC 1100(1103),the Apex Court held: **'Mens rea' is a state of mind. Under the criminal law, mens rea is considered as the 'guilty intention' and unless it is found that the 'accused had the guilty intention to commit the 'crime' he cannot beheld 'guilty' of committing the crime.**
 - INJURY
 - VOLUNTARY
 - HUMAN BEING

Exception of Mens rea:

- Offence against state, police, nuisance, and stick liability etc Mens rea is not require.
- The only exceptions to mens rea in the code, where offences are punishable without requirement of mens rea being established are
- Offences against the state, i.e. waging war-S. 121, Sediton-S. 124-A
- Kidnapping and Abduction (S. 359 and S. 363 resp.)
- Counterfeiting of coins (S. 232).

Degree of Mens Rea

1. Intention
2. Knowledge
3. Negligence
4. Recklessness

1. **Intention:** Is a basic rule. Intention is to bring about a desired act. An intended to commit an illegal act. Intention to sustain injury to other like to Kill (intention to caused death).
 2. **Presumption of Intention-** Natural and probable consequences should be presumed.
 3. **Consent:** Intention to have sexual pleasure from a person without her consent
 4. **Knowledge:** Direct appeal to your senses. Here the probability is very high (against to commit the act against Law). Experience to purchase a stolen good.
 5. **Theft:** To taking possession without the consent of the owner.
 6. **Motives:** Intention and motives is two different things in a crime. Motive may be to get anything, Intention to kill the person. Motive may be good or bad, but intention is bad than it becomes crime.
-

Motive leads to intention, and ulterior intention is motive. In fixing criminal liability motive may be irrelevant, but intention is maintain or main element.

Recklessness (irresponsibility)

- Basic principle of fixing a criminal liability.
- Is the combination of: Foresight and Indifference. Doing something without the knowledge but the foresight.

Mens Rea In the IPC?

- Technically the Doctrine of Mens Rea is not applied to the offences under the Indian Penal Code. Here it is wholly out of place.
- In the Indian Penal Code, 1860, every offence is defined very clearly. The definition not only states what accused might have done, that also states about the state of his mind, with regard to the act when he was doing it.
- Each definition of the offence is complete in itself. The words 'mens rea' are not used any where in the Indian Penal Code. However the framers of the Code used the equivalent words to those of mens rea in the Code very frequently.
- **The general principle of mens rea has defined in IPC in two ways:**
 - Qualifying Words: 'dishonestly', 'fraudulently', 'voluntarily', 'intentionally', 'knowingly' - Wrongful gain and Wrongful Loss-ETC
 - General Exceptions under Chapter IV of IPS like accident, infancy, insanity, intoxication ext.
- **Examples:** A is at work with a hatchet; the head flays of and kill a person accidentally. A is not liable for a murder, because some exception are granted under chapter IV of IPC.
- **Examples:** Infancy- A child below age 7 kill a person. A is not liable for a murder, because some exception are granted under chapter IV of IPC.

Strict Liability

- It is possible there is no Mens Rea, but you are liable under IPC, because a crime without Mans Rea is a Strict Liability, or When the definition does not include mens rea, it means that the liability is strict.
- Example: Section 292-Selling an obstinate literature is a crime

Cases on Mens Rea

- **R v. Prince**, L.R. 2 C.C.R. 154 (1875): Henry Prince was accused of abducting a 14-year-old girl, Annie Phillips, having believed her to be 18 years old. Such an act was at that time in violation of Article 55. Prince argued that he had made a reasonable mistake in regards to Phillips' age. Despite his excuse for the crime, he was ultimately convicted. It was held that the mens rea necessary for criminal liability should be required for the elements central to the wrongfulness of the act, and that strict liability should apply to the other elements of the statute.
- **Kartar Singh vs. State of Punjab, 1994 (3) SCC 569:** The element of mens rea must be read into a statutory penal provision unless a statute either expressly or by necessary implication rules it out
- **Relation between Degree of Mens Rea and Punishment of Crime:** Mens rea is a culpable state of mind characterized by intention or purpose, as well as knowledge of the consequences. The degree

of mens rea refers to the level of mental presence in the crime and is directly related to the level of responsibility.

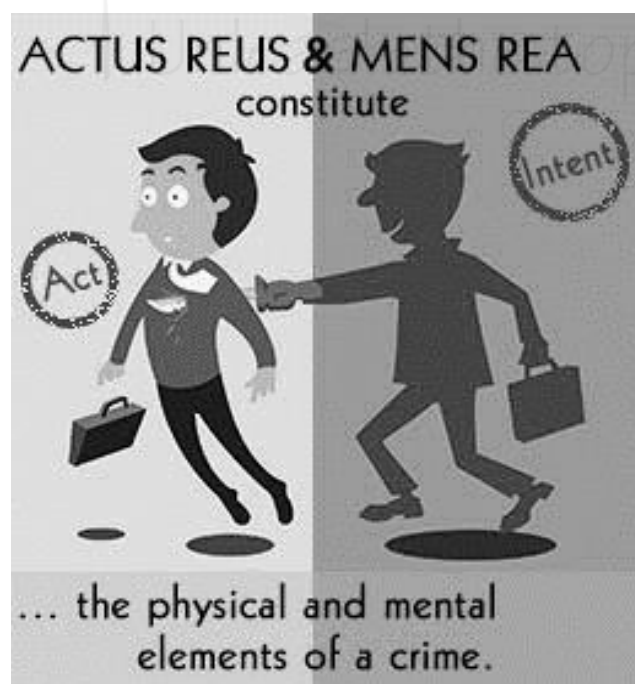
- The greater the degree of mens rea in a crime, the harsher the punishment. For example, intentionally killing a human being, which would constitute the crime of murder, would result in the most severe punishment under the law due to the highest degree of mens rea associated with it; on the other hand, if a person accidentally hits someone and that person dies, he would not be liable for any crime in the absence of mens rea.

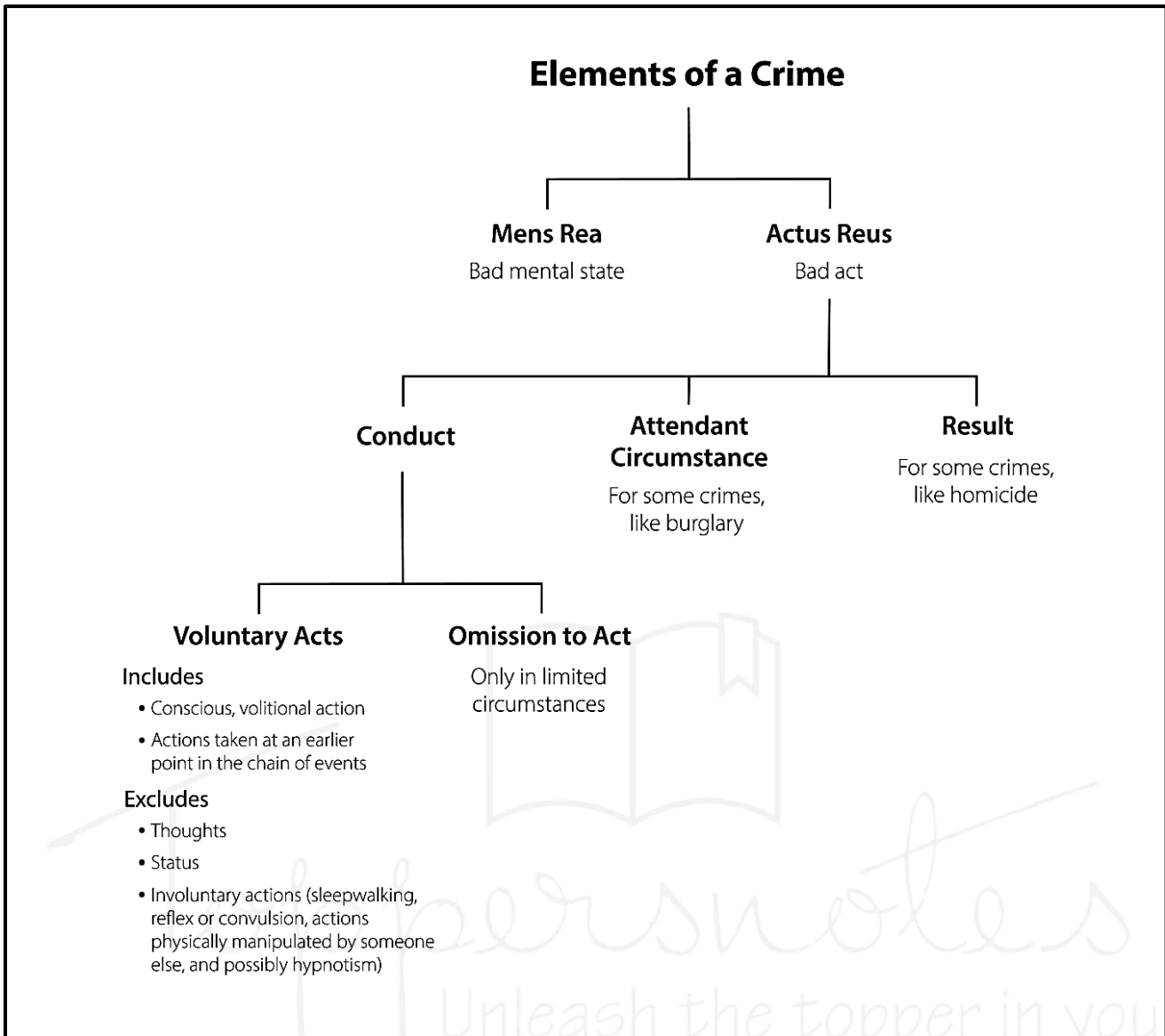
Mens rea vs Actus reus

- There is not much difference between the mens rea and actus reus as these both are the essential factors of establishing a crime. The only difference between the two is that mens rea is a mental element and actus reus is a physical element.
- In most criminal offenses, the mens rea occurs before actus reus as the person should have an intention or knowledge of what will result from his actions.

Mens Rea and Actus reus combination

- An act by itself does not constitute a crime; rather, the person's intent and the act itself, if it is forbidden, combine to produce the crime.
- On some occasions, the case's circumstances are also taken into account. For example, if person 'A' is angry with person 'B' and in a moment of weakness wishes to kill person 'B' but later does not act on it, mere intention to kill someone does not amount to a crime. Similarly, suppose a person by mistake enters the property of another person without any intention to cause injury or damage to the latter person. In that case, that person can not be held liable as he had no intention to commit the crime.





Join and Constructive liability

1. Introduction

Group Liability

- Sections 34 and 149 are the relevant provisions of group liability in the Indian Penal Code. **Section 34** defines **common intention**, whereas **Section 149** defines the **liability of group acting in the prosecution of a common object**.
- The concept of criminal liability generally states that if any criminal act is done by a person then he is solely responsible for such activities and only he can be held guilty for the same. However, there are few provisions laid down under Indian Penal Code 1860 (hereinafter referred as IPC) embodying the principle of group liability (also termed as Joint liability, Constructive liability or vicarious liability) to determine the liability of each member of the group for the crime committed by the entire group or by any member thereof.
- A person may be constructively and jointly liable for an offence which he did not actually commit. These persons, despite actively participating in the occurrence of the offence, do not actually participate positively in the commission of the offence;

- By sharing Common Intention as defined under Section 34 of IPC; or
- By way of Common Object as per Section 149 of IPC
- By way of Criminal Conspiracy as mentioned under section 120- A IPC

Section 149 Common Object: -

- It runs as under: “If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the assembly, is guilty of that offence.”
- **Elements Of Section 149:-** The essence of offence under Section 149 is assembly of several (five or more) persons having one or more of the common objects mentioned in Section 141 and it could be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence.
- Section 149 creates joint liability of all members of an unlawful assembly for criminal act done by any member in prosecution of the common object of the said assembly. So the essential ingredients of Section 149 are:
 1. There must be an unlawful assembly, as defined in Section 141;
 2. Criminal act must be done by any member of such assembly;
 3. Act done is for prosecution of the common object of the assembly or such which was likely to be committed in prosecution of the common object;
 4. Members have voluntarily joined the unlawful assembly and knew the common object of the assembly.
 5. Mere presence and sharing of common object of the assembly makes a person liable for the offence committed even if he had no intention to commit that offence.
- **Scope of Section 149:** The Section is divided into two parts-
 - In Prosecution of The Common Object:** The words “in prosecution of the common object” show that the offence committed was immediately connected with the common object of the unlawful assembly of which accused were members. The act must have been done with a view to accomplish the common object of the unlawful assembly. In **Queen v. Sabid Ali**, 11 BLR 347 the words “in prosecution of the common object” were construed as meaning “with a view to achievement of the common object”.
 - Members Knew to Be Likely:** The second part relates to a situation where the members of the assembly knew that the offence is likely to be committed in prosecution of the common object. A thing is likely to happen only when the situation is like “it will probably happen” or “may very well happen”. The word ‘knew’ indicates a state of mind at the time of commission of an offence, knowledge in this regard must be proved. The word ‘likely’ means some clear evidence that the unlawful assembly had such a knowledge.

2. Concept of Joint Liability

- Section 34 of IPC embodies the common sense principle of joint liability laid down in the case of Reg v. Cruse as per which if two or more persons intend to commit a crime jointly, it is the same as if each of them had done the act individually. Thus, each of them will be liable for the act in the same manner as if it were done by him alone.

- The present section does not create any specific offence except laying down the principle or a rule of evidence to apply in a situation wherein it may be difficult to distinguish between the acts of individual members of a group who commits a crime in furtherance of the common intention of all or to prove the liability of each individual in the group as if the act was done by each of them individually. The said section runs as follows:
- “When a criminal act is done by several persons in furtherance of the common intention of all, each of such accused persons is liable for that act in the same manner as if it were done by him alone”
- Illustration- A along with B & C proceeded to D’s house in order to avenge an insult by the brother of D. They opened fire on the members of D’s family.
- It was found that the shots of A did not hit anyone, but the shots of B and C succeeded in killing D. Since the act of firing was done in furtherance of the common intention of the group to take revenge. A is as much liable for the offence of murder as are B and C.

3. Essential Ingredients under Section 34 along with Case Laws

Following three conditions must exist to attract the principle embodied under section 34-

- (i) A criminal act done by several persons – In **Nazir v. Emperor** The court observed that Section 34 if read with Section 33 of IPC makes it clear that a criminal act means unity of criminal behaviour, which results in something for which an individual would be punishable if it were all done by himself alone, that is, is a criminal offence. Thus, whatever acts are done by several individuals in furtherance of common intention would constitute a whole particular criminal act for which each individual shall be liable. The acts committed by individuals in the criminal act may be different, but all of them must contribute towards the commission of the act. For e.g. if one person is guarding the door to prevent someone coming to the relief of the victim or providing the equipment to commit the offence in furtherance of common intention shall be equally liable. Such a person should be physically present at the actual scene to facilitate the commission of the crime.
- (ii) Such act was done in furtherance of the common intention of all to commit that criminal act- ‘Common Intention’ is the essence of constituting joint liability under section 34 of IPC wherein it implies a ‘pre-arranged plan and prior meeting of minds’. The acts done by each member could be different but must be done in furtherance of the meeting of minds to commit a particular act. In **Joginder Singh v. the State of Haryana**, the Hon’ble Supreme Court observed that common intention can be inferred from the manner in which the accused arrived at the scene and attacked the victim along with the way of beating/ injuries caused by either of the accused and acts done by others to assist those causing the injuries. In this present case, the accused brought the weapons from the house by which other accused attacked. Thus, the common intention to commit murder was held as established.
- (iii) Must participation of all by doing some act in the commission of the offence in furtherance of that common intention - In **Tukaram Ganpat Panadare v. State of Maharashtra**, the Hon’ble Supreme Court stated that the physical presence of the accused is not necessary at the place of crime, he might remain in the vicinity to alert his fellow criminals about the danger or assist them in any other way. However, the participation of each member of a group in the commission of a criminal act is a condition precedent in order to fix the joint liability.
- (iv) Each such person is liable for that act in the same manner as if it were done by him alone

4. Whether there should be a common intention or similar intention to constitute Liability

- Section 34 can be invoked only when the accused shares a common intention and not when they share a similar intention. The Hon'ble Supreme Court explained the distinction between common and similar intentions in **Dukhmochan Pandey v. the State of Bihar**.
- In this case, the complainant had sent some labourers to work on his field. At noon, the accused party numbering about 200 people assembled at the field with deadly weapons and asked the labourers to stop the work. When the complainant objected, two accused directed the mob to kill the labourers and thus shots were fired which resulted in the mass assault of labourers by the mob.
- The court while deciding the question as to whether the mob which had the common object to prevent the labourers from working in the field, had developed, on the spot, the common intention to commit murder, observed that intention could be formed previously or on the spot during the progress of crime.
- Thus, there should be a prearranged plan before constituting the offence under section 34, the plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly. But there must be a pre-arrangement and premeditated concert.

5. Leading Cases on Joint Liability

- The classic case of **Barendra Kumar Ghosh v. King Emperor** has been followed by a number of High Courts and the Supreme Court, the court dealt with the scope of Section 34 for which Lord Sumner stated that Section 34 when it speaks of a criminal act done by several persons in furtherance of the common intention of all, has regard not to the offence as a whole, but to the criminal act, that is to say, the totality of the series of acts which result in the offence. In the present case, the appellant who was charged and convicted under Section 302 read with Section 34 with the murder of a Sub-Postmaster contented that he was not liable for murder as he was standing outside the room and did not fire the fatal shot. The court while rejecting the contention stated that the criminal act is the offence which finally results irrespective of the action of several persons. Thereby, even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things, 'they also serve who only stand and wait'.
- In another prominent case **Mahbub Shah v. King-Emperor**, the court held that 'Section 34 lays down a principle of Joint Liability in the doing of a criminal act'. Under the Section, the essence of that liability found to be existing in the common intention leading to commit a criminal act in furtherance of such intention which is emanating from the accused. Sir Madhavan Nair, while delivering the judgement of the Privy Council also stated that to invoke the aid of Section 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown then the liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone.
- In **Pandurang Tukia and Bhilla v. State of Hyderabad**, a three-judge Bench of Supreme Court while upholding the above-mentioned landmark judgments held that the essence of joint liability under Section 34 lies in the existence of common intention to do a criminal act, which would mean pre-arranged plan, that is, a prior concert or prior meeting of minds and participation of all the members of the group to execute the plan. Therefore, to jointly convict a man for the criminal act of another, the act must have been done in furtherance of common intention.

6. Concept of Constructive Liability

- Section 149 of IPC finds its basis on Constructive Liability which is the sine qua non for its operation. It states that the mere membership of the unlawful assembly having a common object to commit an offence is enough to hold the co-members liable for the act done by the other members of the assembly even if some of the members did not do any of the act to commit the offence.
- The person who did the offensive act renders immaterial. The knowledge of the members of an unlawful assembly that a particular offence or nature or probable consequences were to be committed or achieved by the objects of the assembly will make all the persons liable for the unlawful act of other members.
- In the case of **Mohammad Arif v. State of Gujarat**, the agreement was only to give a thrashing to the victim specifically, but one of them pulled out a knife and stabbed the victim, the Court held that the object to cause a fatal injury was not known to other members at the initial stage nor at the execution stage which could make all others liable for the death.
- Therefore, it can be construed that the other members of the unlawful assembly were not constructively liable for the offence committed by another member as the main ingredient, that is, the common object was not present.

7. The distinction between Section 34 and Section 149

These sections deal with cases of constructive criminal liability imposed on a person for an act not actually done by him but by his associates. However, there is a clear distinction between the provisions of sections 34 and 149 IPC as states below.

(i) Section 34 is a substantive law while section 149 creates a specific offence

Section 34	Section 149
Explanatory clause falling in Chapter II of Code dealing with 'General Exceptions' and creates no offence. That is to say, the section only explains the liability of each person in the criminal act when the same has been done by several persons jointly in order to fulfil the common intention shared by all. The liability of each person for the act will be as such as if the whole has been done by a single person alone. Active participation, especially in a crime involving physical violence, is necessary.	Creates a specific offence in the membership of an unlawful assembly itself, for which the participants may be liable for punishment. The section falls in Chapter VII: 'Offences against Public Tranquillity. While Section 149 creates constructive criminal liability for an act done entirely by another person provided the conditions of that section are fulfilled. Once a case fulfils the requirements of section 149 then the fact that he did nothing with his own hands would be immaterial.

(ii) The distinction between 'Common Intention and Common Object'

Section 34 (Common Intention)	Section 149 (Common Object)
The principle element is the common intention of several persons to commit a crime.	The essence of the offence of an unlawful assembly is a common object of the persons forming the assembly

<p>For 'common intention', a prior concert or meeting of minds between the several persons who decide to commit a criminal act is necessary. Each of the members of the group must share the same intention with regard to the execution of the criminal act.</p>	<p>For 'Common Object' it is not necessary that there should be a prior meeting of minds of the members of the unlawful assembly. It may form in a spur of the moment, but what is more important for it to be adopted by all the members and shared by all of them. Object differs from intention as an object may be common among the members of the assembly while having a different intention. The common intention need not necessarily be to do a criminal act. For example- the common object to recover possession of the property from a trespasser is not unlawful itself but it will become unlawful the moment object becomes to obtain possession 'by means of criminal force '</p>
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(iii) The distinction between 'participation' and 'membership'

Section 34	Section 149
<p>The court should be satisfied that the accused has taken some part in the execution of the criminal act, that is, actively participated, to make the person jointly liable for the act done by several persons to commit a criminal act in furtherance of common intention.</p>	<p>Section 149 requires no participation in the commission of an offence, the basis of constructive guilt under the section is by being a mere member of the unlawful assembly at the time of the commission of the offence even if the act has been done by any other member of the assembly.</p>

(iv) Number of Participants

Section 34	Section 149
<p>The section can be invoked even if the crime is committed by two persons or only two persons are involved in the crime.</p>	<p>It requires that for an unlawful assembly to subsist at least 5 or more individuals must be a member of the group.</p>

(v) Operation

Section 34	Section 149
<p>An overt act on the part of each individual acting jointly to commit a criminal act is necessary.</p>	<p>Mere membership to the unlawful assembly is enough to fix criminal liability.</p>

(vi) In the leading case of **Shiv Ram v. State of Uttar Pradesh**, the accused persons committed murders of the family members of the deceased under a belief that they were giving shelter to suspects who alleged to have killed brother of the main accused, in a most brutal manner by severing three heads and roasting alive an innocent boy of 10 years in the fire. The Apex Court held that an unlawful assembly could develop a common object in a spur of the moment when five-person were put to death in a brutal manner. It provides that even if anyone member of the unlawful assembly commits an offence, then all the other members will be liable for it, even though there was no common

intention between him and them to commit it, provided that the conditions of that section are fulfilled namely-

- (a) An offence committed in furtherance of the common object of the unlawful assembly
- (b) The offence committed was of such nature that the other members knew it to be likely to be committed in furtherance of the common object.

8. Leading Case Laws

- (a) In **Willie (William) Slaney v. the State of M.P.**, the legality of conviction by applying S. 34 and S. 149 under IPC was examined and it was held that S. 34 and S. 149 provided for criminal liability which is viewed from different angles with regard to actual participants and men actuated by a 'common object or a 'common intention' and charge is imposed on one involving the direct liability and the constructive liability without specifying who is directly or sought to be constructively liable. In such cases, the evidence as to who was primarily responsible for the act which brought about the offence is relevant.
- (b) The facts in **Krishnan v. State of Karnataka** were such that four persons attacked the deceased as she was alleged to have been in an illicit relationship with a man. One of the accused inflicted an injury on the backside near the shoulder, the other accused hit the deceased on the head and the other two accused caused cut on her neck. After causing the fatal injury all the accused ran away. The Apex court while dismissing the appeal by the two accused as contended that they did not cause fatal injury held that the acts in the present case may have been different in character but they were actuated by one and the same intention fulfilling the requirement of joint liability which requires proof of common intention and doing of separate acts by the several individuals to hold each of them liable for the result of them all.

4 UNIT

Chapter - 2

Stages of crime and inchoate crimes - Abetment, criminal conspiracy and attempt

Stages of Crime

- Committing a crime is a full-fledged process consisting of several stages, though there are some exceptions to it, when some criminal activities take place immediately on a spot. In premeditated crimes, there are four distinct stages which are as follows:

Intention

- It is the first stage in the commission of a crime; it is also referred as the mental and psycho stage. In this stage, person (offender) decides that he has to do some criminal act.
- Moreover, offender decides the motive and chalks out plan for committing a crime. Many intellectuals name this stage as contemplation stage.
- No law in world, contain any provision for punishing a person who has generated intention for doing some criminal act, as it is mental concept, which cannot be proved in court.

Preparation

- After intention, stage of preparation comes, which plays an instrumental role in the commission of a crime. In this stage, an offender arranges the necessary resources for the execution of the intentional criminal act.
- For example, if a person wants to kill another person, because of any reason, in preparatory stage, that person can make arrangement for weapon, hire people or any other thing depending on his capacity.
- Usually, a preparation to commit a crime is not punishable, however in certain cases, it can be punishable, such as
 - Sec 122 - Collecting arms with an intention of waging war against the Govt. of India.
 - Sec 126 - Preparing to commit depredation on territories of any power in alliance or at peace with the Govt. of India.
 - Sec 235 - Counterfeiting operations for currency.
 - Sec 399 - Preparation to commit dacoity.

Attempt

- Attempt is the third stage in the commission of crime. It is first explicit stage for committing crime. It can be defined as a direct movement towards the execution of a crime after the stage of intention and preparation.

- According to Sir Stephen, an attempt to commit a crime is an act termed with intention to commit it and forming part of a series of acts which could constitute the offence, if it were not interrupted.
- An attempt to crime has been covered in the IPC, in three different ways:
 - In some cases, punishment for completed offence and their attempt is same, has been provided under Section 121, 124, 124(A), 125, 130, 131, 152, 153(A), 161, 162, 163, 165, 196, 198, 200, 213, 239, 240, 241, 251, 335, 337, 391, 398 and 460.
 - In many cases, different punishments have been provided for the completed offence and its attempt. Such cases are under Section 302, 304, 307, 308, 392, 393 and 309.
 - Rest of the cases is covered under Section 511.

Accomplishment

- It is the last stage in the commission of crime. This stage is considered to be taken place, when an offender is successful in committing his/her intention.
- Depending on the situation, if offence is completed, then person will become guilty and if unsuccessful, he will be guilty of his attempt.

Inchoate Crime

- Crimes are of different types, one among them is inchoate crime. These are also called by names such as preliminary crime, inchoate offence and incomplete crimes.
- It can be defined as an act or omission taken towards committing a crime or acts that constitute indirect participation in a crime.
- Earlier inchoate crime was considered as a minor crime, but now it is considered as a serious crime. There are actions which may not be a crime in and off itself, however actions may act as a purpose of furthering or advancing a crime.

Types of Inchoate Crime

Inchoate crime is categorized into three types viz. abetment, criminal conspiracy and attempt, which are discussed below:

Abetment

- In simple words, abet means to encourage or assist to do something wrong, especially in the context of committing a crime. Abetment includes help, co-activity and support within its ambit. Many times, a person does not want to do certain criminal acts, however under the influence or abetment by another person, that person can commit crime.
 - In the case of Sanju v. State of Madhya Pradesh, the honorable Supreme Court defined abet as meaning to aid, to assist or to give aid, to command, to procure, or to Counsel, to countenance, to encourage or to set another one to commit.
 - Generally, a person who has committed it is liable for it, but principle of abetment emphasizes that one who helped criminal or provided him assistance, can also be held liable. Provisions Related to Abetment in the IPC, 1860
 - **Following sections of the IPC are related with the abetment. Abetment of a Thing (Section 107)**
A person abets the doing of a thing, who:
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