



Jammu & Kashmir

Prosecuting Officer

Jammu and Kashmir Public Services Commission (JKPSC)

Paper – 1 || Volume - 2

Bharatiya Nyaya Sanhita (BNS)



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Bharatiya Nyaya Sanhita (BNS)

Corresponding Section Table of Bharatiya Nyaya Sanhita 2023, (BNS)

Bharatiya Nyaya Sanhita, 2023 (BNS)	Indian Penal Code, 1860 (IPC)
CHAPTER I - PRELIMINARY	CHAPTER I - INTRODUCTION
1. Short title, commencement and application. 1(1)	1. Title and extent of operation of the Code.
1(2)	New Sub-Section
1(3)	2. Punishment of offences committed within India.
1(4)	3. Punishment of offences committed beyond, but which by law may be tried within, India.
1(5)	4. Extension of Code to extra-territorial offences.
1(6)	5. Certain laws not to be affected by this Act.
2. Definitions. (Change)	
2(1) 'act'	33. "Act". "Omission"
2(2) 'animal'	47. "Animal".
2(3) 'child'	New Sub-Section
2(4) 'counterfeit'	28. "Counterfeit".
2(5) 'Court'	20. "Court of Justice".
2(6) 'death'	46. "Death".
2(7) 'dishonestly'	24. "Dishonestly".
2(8) 'document' (Change)	29. "Document".
Deleted	29A. "Electronic record".
2(9) 'fraudulently'	25. "Fraudulently"
2(10) 'gender' (Change)	8. Gender.
2(11) 'good faith'	52. "Good faith"
2(12) 'Government'	17. "Government".
Deleted	18. "India".
2(13) 'harbour'	52A. "Harbour".
2(14) 'injury'	44. "Injury".
2(15) 'illegal' and "legally bound to do".	43. "Illegal". "Legally bound to do".
2(16) 'Judge'	19. "Judge".
2(17) 'life'	45. "Life".
2(18) 'local law'	42. "Local law".
2(19) 'man'	10. "Man". "Woman".
2(20) 'month' and 'year'	49. "Year". "Month".
2(21) 'movable property' (Change)	22. "Movable property"

2(22) 'number'	9. Number.
2(23) 'oath'	51. "Oath".
2(24) 'offence'	40. "Offence".
2(25) 'omission'	33. "Act". "Omission"
2(26) 'person'	11. "Person".
2(27) 'public'	12. "Public".
Deleted	14- "Servant of Government".
2(28) 'public servant'	21. "Public servant".
2(29) 'reason to believe'	26. "Reason to believe"
Deleted	50. "Section".
2(30) 'special law'	41. "Special law".
2(31) 'valuable security'	30. "Valuable security".
2(32) 'vessel'	48. "Vessel".
2(33) 'voluntarily'	39. "Voluntarily".
2(34) 'will'	31. "A will".
2(35) 'woman'	10. "Man". "Woman".
2(36) 'wrongful gain'	23. "Wrongful gain".
2(37) 'wrongful loss'	23. "Wrongful loss".
2(38) 'gaining wrongfully' and 'losing wrongfully'	23. "gaining wrongfully" and 'losing wrongfully".
2(39)	New Sub-Section
3. General explanations 3(1)	6. Definitions in the Code to be understood subject to exceptions.
3(2)	7. Sense of expression once explained.
3(3)	27. Property in possession of wife, clerk or servant.
3(4)	32. Words referring to acts include illegal omissions.
3(5)	34. Acts done by several persons in furtherance of common intention.
3(6)	35. When such an act is criminal by reason of its being done with a criminal knowledge or intention.
3(7)	36. Effect caused partly by act and partly by omission.
3(8)	37. Co-operation by doing one of several acts constituting an offence.
3(9)	38. Persons concerned in criminal act may be guilty of different offences.
CHAPTER II - OF PUNISHMENTS	CHAPTER III - OF PUNISHMENTS
4. Punishments. (Change)	53. Punishments.
Deleted	53A. Construction of reference to transportation.
5. Commutation of sentence.	54. Commutation of sentence of death.
5(a)	

5(b)	55. Commutation of sentence of imprisonment for life.
6. Fractions of terms of punishment.	57. Fractions of terms of punishment.
7. Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.	60. Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.
8. Amount of fine, liability in default of payment of fine, etc. (Change)	63. Amount of fine
8(1)	
8(2)	64. Sentence of imprisonment for non-payment of fine.
8(3)	65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.
8(4)	66. Description of imprisonment for non-payment of fine.
8(5)	67. Imprisonment for non-payment of fine, when offence punishable with fine only.
8(6)(a)	68. Imprisonment to terminate on payment of fine.
8(6)(b)	69. Termination of imprisonment on payment of proportional part of fine.
8(7)	70. Fine leviable within six years, of during imprisonment. Death not to discharge property from liability.
9. Limit of punishment of offence made up of several offences.	71. Limit of punishment of offence made up of several offences.
10. Punishment of person guilty of one of several offences, judgment stating that it is doubtful of which.	72. Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.
11. Solitary confinement.	73. Solitary confinement.
12. Limit of solitary confinement.	74. Limit of solitary confinement.
13. Enhanced punishment for certain offences after previous conviction.	75. Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.
CHAPTER III GENERAL EXCEPTIONS	CHAPTER IV GENERAL EXCEPTIONS
14. Act done by a person bound, or by mistake of fact believing himself bound, by law.	76. Act done by a person bound, or by mistake of fact believing himself bound, by law.
15. Act of Judge when acting judicially.	77. Act of Judge when acting judicially.
16. Act done pursuant to judgment or order of Court.	78. Act done pursuant to the judgment or order of Court.

17. Act done by a person justified, or by mistake of fact believing himself justified, by law.	79. Act done by a person justified, or by mistake of fact believing himself, justified, by law.
18. Accident in doing a lawful act.	80. Accident in doing a lawful act.
19. Act likely to cause harm, but done without criminal intent, and to prevent other harm.	81. Act likely to cause harm, but done without criminal intent, and to prevent other harm.
20. Act of a child under seven years of age.	82. Act of a child under seven years of age.
21. Act of a child above seven and under twelve years of age of immature understanding.	83. Act of a child above seven and under twelve of immature understanding.
22. Act of a person of unsound mind.	84. Act of a person of unsound mind.
23. Act of a person incapable of judgment by reason of intoxication caused against his will.	85. Act of a person incapable of judgment by reason of intoxication caused against his will.
24. Offence requiring a particular intent or knowledge committed by one who is intoxicated.	86. Offence requiring a particular intent or knowledge committed by one who is intoxicated.
25. Act not intended and not known to be likely to cause death or grievous hurt, done by consent.	87. Act not intended and not known to be likely to cause death or grievous hurt, done by consent.
26. Act not intended to cause death, done by consent in good faith for person's benefit.	88. Act not intended to cause death, done by consent in good faith for person's benefit.
27. Act done in good faith for benefit of child or person of unsound mind, by or by consent of guardian.	89. Act done in good faith for benefit of child or insane person, by or by consent of guardian.
28. Consent known to be given under fear or misconception.	90. Consent known to be given under fear or misconception.
29. Exclusion of acts which are offences independently of harm caused.	91. Exclusion of acts which are offences independently of harm caused.
30. Act done in good faith for benefit of a person without consent.	92. Act done in good faith for benefit of a person without consent.
31. Communication made in good faith.	93. Communication made in good faith.
32. Act to which a person is compelled by threats.	94. Act to which a person is compelled by threats.
33. Act causing slight harm.	95. Act causing slight harm.
Of right of private defence	Of the Right of Private Defence
34. Things done in private defence.	96. Things done in private defence.
35. Right of private defence of body and of property.	97. Right of private defence of the body and of property.
36. Right of private defence against act of a person of unsound mind, etc.	98. Right of private defence against the act of a person of unsound mind, etc.

37. Acts against which there is no right of private defence.	99. Acts against which there is no right of private defence.
38. When right of private defence of body extends to causing death.	100. When the right of private defence of the body extends to causing death.
39. When such right extends to causing any harm other than death.	101. When such right extends to causing any harm other than death.
40. Commencement and continuance of right of private defence of body.	102. Commencement and continuance of the right of private defence of the body.
41. When right of private defence of property extends to causing death.	103. When the right of private defence of property extends to causing death.
42. When such right extends to causing any harm other than death.	104. When such right extends to causing any harm other than death.
43. Commencement and continuance of right of private defence of property.	105. Commencement and continuance of the right of private defence of property.
44. Right of private defence against deadly assault when there is risk of harm to innocent person.	106. Right of private defence against deadly assault when there is risk of harm to innocent person.
CHAPTER IV OF ABETMENT, CRIMINAL CONSPIRACY AND ATTEMPT Of abetment	CHAPTER V OF ABETMENT
45. Abetment of a thing.	107. Abetment of a thing.
46. Abettor.	108. Abettor.
47. Abetment in India of offences outside India.	108A. Abetment in India of offences outside India.
48. Abetment outside India for offence in India.	New Section
49. Punishment of abetment if act abetted is committed in consequence and where no express provision is made for its punishment.	109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.
50. Punishment of abetment if person abetted does act with different intention from that of abettor.	110. Punishment of abetment if person abetted does act with different intention from that of abettor.
51. Liability of abettor when one act abetted and different act done.	111. Liability of abettor when one act abetted and different act done.
52. Abettor when liable to cumulative punishment for act abetted and for act done.	112. Abettor when liable to cumulative punishment for act abetted and for act done.
53. Liability of abettor for an effect caused by act abetted different from that intended by abettor.	113. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

List of Cases [BNS]

General Principles, Mens Rea

- **R. v. Prince (1875)**
 - ✓ UK case but often cited in India
 - ✓ Rule: Even if a person mistakenly believes a girl is overage, he is guilty of abducting a minor. Mistake of age is not a defence for strict liability offences.
- **Queen v. Tolson (1889)**
 - ✓ Rule: Generally, there must be a guilty mind (mens rea) to commit a crime. But sometimes a law can make an act punishable even without a guilty mind.
- **State of Maharashtra v. M.H. George (1965)**
 - ✓ Rule: Even in statutory offences (those defined purely by law), if the law does not exclude mens rea, courts should presume it is required. So, a person should not be punished unless there's a guilty mind.
- **Sherras v. De Rutzen (1895)**
 - ✓ Rule: Normally, crimes require a guilty mind. But this can be changed if the wording of the law clearly shows otherwise.
- **State of West Bengal v. Shew Mangal Singh (1981)**
 - ✓ Rule: Motive is not the same as intention. Intention relates to purpose, while motive relates to reason for the act.

Punishments

- **Bachan Singh v. State of Punjab (1980) SC**
 - ✓ Rule: Death penalty should only be given in “rarest of rare” cases.
- **Gopal Vinayak Godse v. State (1961) SC**
 - ✓ Rule: Life imprisonment means jail for the entire life of the person, not just 14 or 20 years.
- **Shiva Kumar vs State of Karnataka (2023) SC**
 - ✓ Rule: Even if a case is not “rarest of rare,” courts can give a fixed jail term without early release, to ensure the punishment fits the crime's seriousness.
- **T.V. Vatheeswaran v. State of Tamil Nadu (1983) SC**
 - ✓ Rule: Delay in executing death sentence can be a ground for commutation to life imprisonment.

General Exceptions

- **K.M. Nanavati v. State of Maharashtra (1962) SC**
 - ✓ Rule: If an accused claims a legal exception (like self-defence, insanity), the burden of proof is on him to prove it.
- **McNaughten's Case**
 - ✓ Rule: For insanity defence:
 - Everyone is presumed sane.
 - The accused must prove that due to mental illness, he could not understand what he was doing or that it was wrong.

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- **Queen Empress v. K.N. Shah (1896)**
 - ✓ Rule: Not every mental problem frees you from punishment. Only such mental disorders that seriously impair understanding of right or wrong can exempt someone.
 - **Dayabhai Thakkar v. State of Gujarat (1964) SC**
 - ✓ Rule: In insanity cases, the key question is: Was the accused insane at the exact time of the offence?
 - **Director of Public Prosecutions v. Beard (1920)**
 - ✓ Rule on drunkenness:
 - If drunkenness causes insanity, it is a defence.
 - If drunkenness prevents forming specific intent, it can help avoid conviction.
 - Mere drunkenness without loss of understanding is not enough.
 - **Basudev v. State of Pepsu (1956) SC**
 - ✓ Rule: A drunk man is still expected to know things as if he was sober, but the court will check his intent depending on how drunk he was.
 - **Puran Singh v. State of Punjab (1975) SC**
 - ✓ Rule: Even trespassers may claim self-defence if they have settled possession (long enough, known to the owner, crops grown, etc.).
 - **Deo Narain v. State of U.P. (1973) SC**
 - ✓ Rule: Right to self-defence begins as soon as there's a real fear of immediate danger. It doesn't wait for the crime to actually happen.
 - **Mahavir Chowdhary v. State of Bihar (1996) SC**
 - ✓ Rule: Indian law does not expect a person to run away in danger; you are allowed to fight back if needed.
 - **Sukumaran v. State (2019) SC**
 - ✓ Rule: Actual attack is not needed for self-defence. Mere reasonable fear is enough.
 - **Mohd. Anwar v. State (2020) SC**
 - ✓ Rule: To prove insanity, the accused must show:
 - Serious mental disease.
 - Mental illness existed when the crime happened.
 - **Prem Singh v. State of NCT of Delhi (2023) SC**
 - ✓ Rule: Burden of proving insanity lies on the accused. Law presumes people are sane unless proved otherwise.
 - **Paul v. State of Kerala (2020) SC**
 - ✓ Rule: A drunk person is presumed to have knowledge like a sober person. Intent depends on the facts of the case.
 - **Ranganayaki v. State (2004) SC**
 - ✓ Rule: Right of private defence does not allow causing more harm than necessary. Force used must be proportionate.

Criminal Conspiracy

- **Bimbadhar Pradhan v. State of Orissa (1954) SC**
 - ✓ Rule: It is enough that there was a conspiracy between people. Even if only one person is punished, the offence can exist.

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- **State of Tamil Nadu v. Nalini (1999) SC**
 - ✓ Rule: Just being associated or knowing about a conspiracy does not make someone guilty. There must be an agreement to commit the crime.
 - **Rajender v. State (2019) SC**
 - ✓ Rule: To prove conspiracy:
 - Illegal purpose.
 - A plan or method.
 - Agreement between two or more people.
 - **State v. Shiv Charan Bansal (2020) SC**
 - ✓ Rule: Conspiracies are usually proved by circumstantial evidence, not direct proof.
 - **Manoj Kumar Soni v. State of Andhra Pradesh (2023) SC**
 - ✓ Rule: One person cannot conspire alone. Conspiracy needs at least two people agreeing.

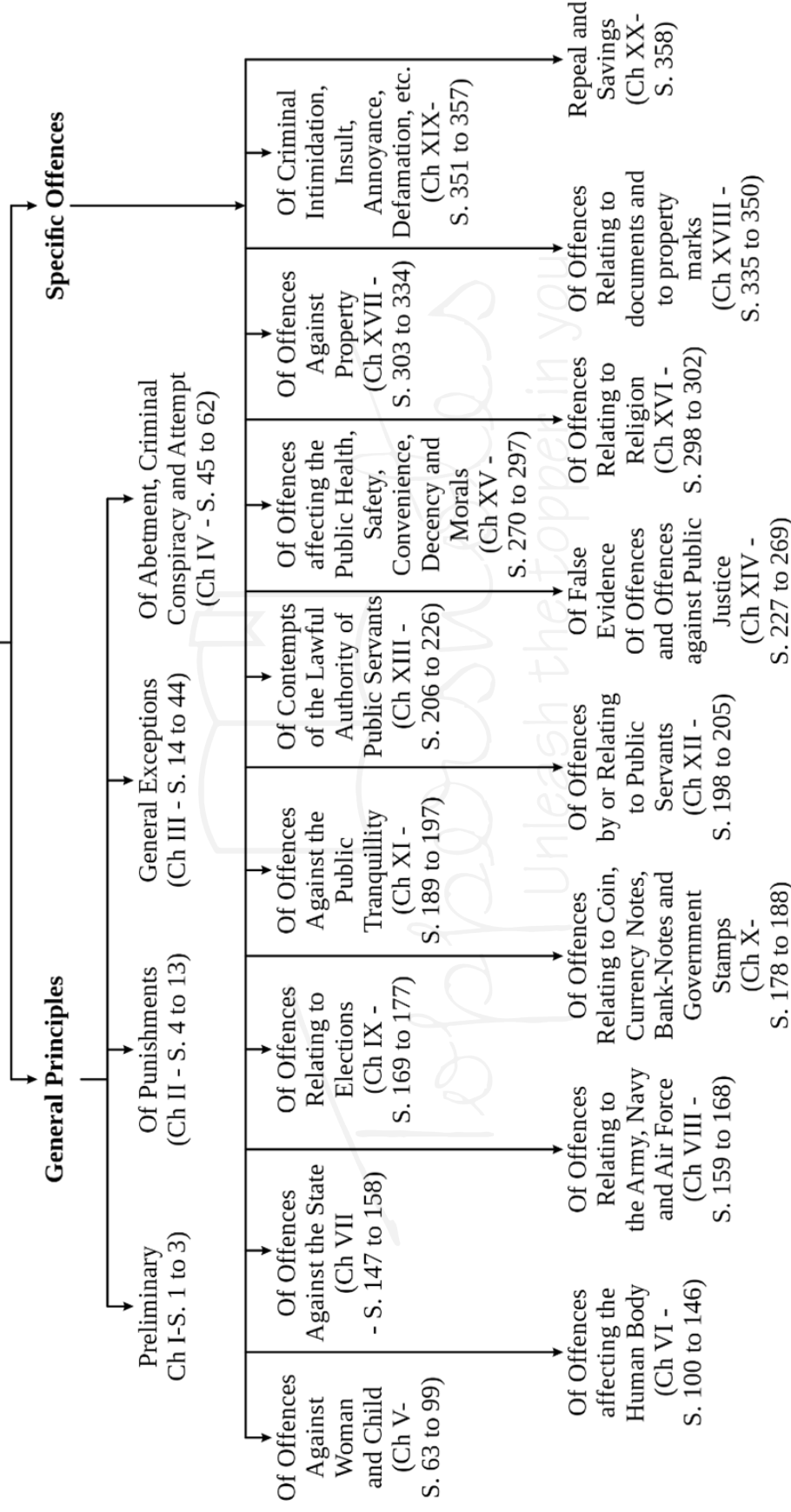
Offences Against the State

- **State v. Navjot Sandhu (2005) SC**
 - ✓ Rule: To prove waging war against the government, the accused must have intended to fight against the government.
- **Kedar Nath v. State (1962) SC**
 - ✓ Rule: Sedition law (Section 124A IPC/ 152 BNS) is valid and does not violate freedom of speech, if it is used reasonably.
- **SG Vombatkere v. Union of India (2023) SC**
 - ✓ Rule: Sedition law (Section 124A IPC/ 152 BNS) is still in force unless repealed. Ongoing cases under it continue unless the law is changed.

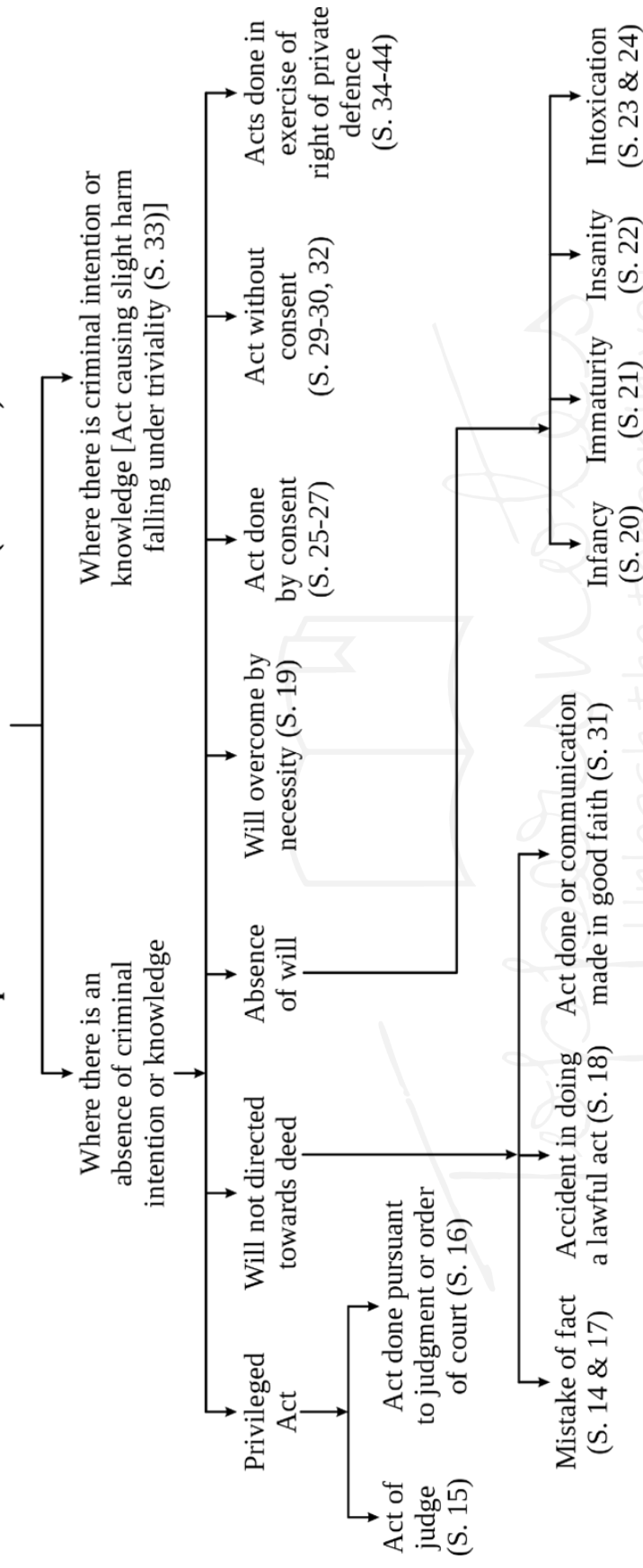
Common Intention and Common Object

- **Mahboob Shah v. Emperor (1945) PC**
 - ✓ Rule: Common intention means prior planning or meeting of minds. It is not enough that several people happen to attack at the same time.
- **Barendra Kumar Ghosh v. Emperor 1925 PC**
 - ✓ Rule: Even if a person does nothing, he is guilty if he shares common intention with others.
- **Pandurang v. State of Hyderabad (1955) SC**
 - ✓ Rule: Same intention ≠ common intention. People may attack at once with similar intent but without a prior plan.
- **Mala Singh v. State of Haryana (2019) SC**
 - ✓ Rule: For Section 34 IPC/ 3(5) IPC to apply, common intention must be proved.
- **Rajesh Govind v. State of Maharashtra (2000) SC**
 - ✓ Rule: Common intention can develop suddenly on the spot.
- **Tukaram Ganpat v. State of Maharashtra (1974) SC**
 - ✓ Rule: All accused do not have to do separate acts. Acting together in furtherance of common intention is enough.
- **Madan Singh v. State of Bihar (2004) SC**
 - ✓ Rule: Mere presence in an unlawful assembly is not enough for guilt unless you share the common object.

OVERVIEW OF THE BHARATIYA NYAYA SANHITA, 2023



Chapter-III-GENERAL EXCEPTIONS (Secs. 14-44)



List of Important Doctrines and Principles

1. Crimen trahit personam (Sec. 1(3)) – Crime follows the person; jurisdiction can follow an accused even outside the territory.
2. Doctrine of Combination (Sec. 3(5)) – Joint acts done with common intent are treated as one offence for all.
3. Principle of Joint Liability (Sec. 3(5)) – All who act together with a common intention are equally liable for the act.
4. Principle of Eo instanti (Sec. 3(5)) – Common intention can arise at the same moment the act is done.
5. Life imprisonment is the rule and death penalty an exception (Sec. 4) – Courts must prefer life imprisonment unless the case is rarest of rare.
6. Quasi solitary confinement (Sec. 12) – Life convicts may be kept in limited segregation subject to legal safeguards.
7. Ignorantia facti excusat, ignorantia juris non excusat (Sec. 14) – Ignorance of fact is excusable, but ignorance of law is not.
8. Necessitas non habet legem (Sec. 19) – Necessity knows no law; an act of necessity may excuse criminality.
9. Doctrine of Necessity (Sec. 19) – A crime may be excused if committed to prevent greater harm.
10. Doli incapax (Sec. 20) – Children below 7 years cannot form criminal intent.
11. Doli capax (Sec. 21) – Children between 7 and 12 can be held liable if capable of understanding their act.
12. Legal vs. Medical Insanity (Sec. 22) – Legal insanity relates to the accused's incapacity to understand the act's nature, not just medical illness.
13. M'Naughten Rule (Sec. 22) – The accused must be incapable of knowing the nature or wrongfulness of the act due to unsoundness of mind.
14. Wild Beast Test (Sec. 22) – A test of total mental incapacity, as if the person had no more reason than a wild beast.
15. Durham Rule (Sec. 22) – An act is excused if it was the product of a mental disease or defect (not followed in India).
16. Non compos mentis (Sec. 22) – A person of unsound mind lacks mental capacity to commit a crime.
17. Volenti non fit injuria (Secs. 25–31) – One who consents to harm cannot claim injury.
18. Actus me invito factus non est mens actus (Sec. 32) – An act done without one's will is not criminal.
19. De minimis non curat lex (Sec. 33) – Law does not concern itself with trivial matters.
20. Doctrine of Retreat (Sec. 34) – The accused must retreat, if possible, before using force in self-defence.
21. Locus regit actum (Sec. 61) – The place governs the act; procedural acts are governed by the law of the place where done.
22. Locus Poenitentiae (Sec. 62) – A person can withdraw from a criminal act before it is completed.

23. Equivocality Test (Sec. 62) – There must be a clear and unambiguous act towards the commission of a crime to constitute attempt.
24. Proximity Rule (Sec. 62) – Attempt begins when the act is proximate to the commission of the offence.
25. Two-finger Test (Sec. 64) – Discredited test; violates privacy and dignity of sexual assault survivors.
26. Test of Proximity (Sec. 80) – For dowry death, proximity in time between cruelty and death is key.
27. Medical Termination of Pregnancy Act, 2021 (Sec. 88) – Protects registered medical practitioners conducting legal abortions.
28. Direct Causal Connection (Sec. 100) – There must be a direct link between the act and the consequence.
29. Transfer of Malice (Sec. 102) – Intent against one person can be transferred to the actual victim.
30. Constitutionality of Death Penalty (Sec. 103) – Death penalty valid but to be used sparingly.
31. Rarest of Rare Test (Sec. 103) – Death penalty only in cases where life imprisonment is insufficient.
32. Nuremberg Defence (Sec. 120) – "I was just following orders" is not a valid defence for crimes.
33. SC Guidelines on Acid Attack Victims (Sec. 124) – Victims entitled to compensation, treatment, and rehabilitation.
34. Common Intention vs. Common Object (Sec. 190) – Common intention under Section 3(5); common object under Section 190—former needs prior meeting of minds, latter does not.
35. Respondeat Superior (Sec. 193) – A superior may be liable for acts committed by their subordinates. Let the principal answer.
36. Hicklin Test (Sec. 294) – Test of obscenity based on tendency to deprave minds (outdated; replaced by "community standards")
37. Res Nullius (Sec. 303) – A thing belonging to no one may be acquired by the first possessor.
38. Vicarious Liability (Sec. 356) – Liability for the act of another person under certain legal relationships.
39. Civil and Criminal Defamation (Sec. 356) – Defamation can lead to both civil remedy and criminal punishment

Newly Added Provisions

Section	Description
2(3)	"Child" is defined.
4(f)	In addition to the five previously specified punishments, clause (f) now includes an additional form of punishment—community service.
48	The definition of abetment outside India for an offence in India is provided.
69	Sexual intercourse through deceptive means (not amounting to the offence of rape) is being introduced as an addition.
95	The act of hiring, employing, or engaging a child to commit an offence is now considered punishable and is defined within this section.

Highlights of the BNS, 2023

1. **Grouped Definitions (Section 2):** All major definitions have been systematically arranged in alphabetical order under Section 2 for clarity (e.g., 'Act' now in clause 1, previously Section 32 IPC).
2. **Definition of Transgender:** BNS aligns with the Transgender Persons Act, 2019, ensuring inclusive legal interpretation.
3. **Cross-referencing Expressions [Section 2(39)]:** Undefined terms in BNS are to be understood via related laws like the IT Act, BNSS, etc.
4. **Community Service (Section 53):** Introduced as a reformatory punishment for minor offences, to reduce prison burden; further explained under Section 23 of BNSS.
5. **Abetment Beyond India (Section 48):** Extends BNS jurisdiction to offences abetted outside India, aligning with global legal trends.
6. **Age of Consent in Marriage (Exception 2 to Section 63):** Raised from 15 to 18 years, ensuring consistency with child protection laws.
7. **Sexual Intercourse by Deceit (Section 69):** Covers intercourse by false promise or inducement, extending protection to both married and unmarried women.
8. **Death for Gang Rape of Minor (Section 70(2)):** Mandates death penalty or life imprisonment for gang rape of girl under 18 years.
9. **Hiring Child for Crime (Section 95):** Prohibits using minors in crimes, including pornography and exploitation.
10. **Mob Lynching as Murder (Section 103(2)):** Targets murder based on caste, religion, gender, etc., popularly referred to as mob lynching.
11. **Hit-and-Run Liability (Section 106(2)):** Penalizes fleeing drivers who fail to report fatal accidents, addressing rising hit-and-run cases.
12. **Organised Crime (Section 111):** Broadly defines and penalizes criminal syndicates involved in economic, cyber, and violent crimes.
13. **Petty Organised Crime & Terrorism (Sections 112 & 113):** Provides graded punishment for petty gang crimes, and defines terrorist acts, with strict penalties for threats to national security.
14. **Mob Lynching Emphasis (Section 117(3)):** Further reinforces penal action against mob violence, promoting accountability and justice

Theories of Punishment

1. **Deterrent Theory:** This theory aims to deter (discourage) both the offender and the society from committing crimes by instilling fear of punishment. It is based on the idea that "crime never pays." Harsh punishments are used as examples to warn others. However, it is criticized for focusing more on the crime than the criminal, and often fails to reform offenders, sometimes making them hardened criminals.
2. **Preventive Theory:** This theory focuses on preventing the offender from repeating the crime by disabling him. For example, death penalty, imprisonment, or cancellation of driving license. It is not about fear but about incapacitating the criminal. Criticism includes its assumption that offenders will reoffend and its failure to consider motives or psychological factors, which may lead to injustice or ineffective results.

3. **Reformative Theory:** This theory focuses on changing the mindset and behavior of the offender. It treats the criminal as a human who can be reformed, not just punished. The idea is to provide education, moral guidance, and support so the person becomes a law-abiding citizen again.

It is suitable for juveniles, first-time offenders, and those led to crime due to circumstances. Criticism: It may not work for hardened or habitual criminals, and giving jail comforts might encourage repeat offences.

4. **Retributive Theory:** Based on the principle of “an eye for an eye”, this theory believes that punishment should match the harm done. The goal is to give the offender the same pain or loss he caused to others, thus restoring social balance and satisfying society’s sense of justice. Criticism: It can lead to revenge, not justice. It does not try to understand or prevent future crime, and may worsen the criminal’s behavior instead of improving it.

5. **Expiatory Theory:** This theory views **punishment as a way to cleanse guilt**. The idea is: **Guilt + Punishment = Innocence**.

Once the offender suffers the punishment, he is seen as having **paid his debt to society**. It’s similar to the retributive theory but adds a **moral or spiritual dimension**, as if the criminal’s soul is purified through suffering.

Criticism: Like retribution, it may promote **vengeance**, and treats **punishment as the final goal**, ignoring prevention or reform. It does bring in the idea of **proportionality**, but lacks forward-looking purpose.

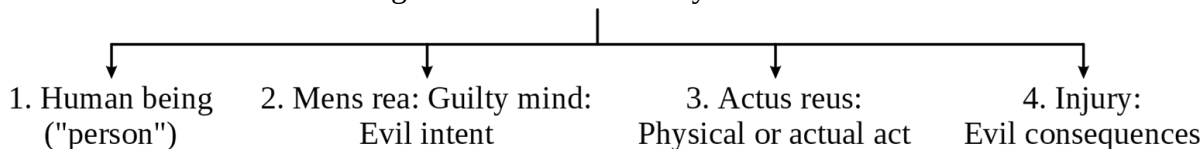
Conclusion

Each theory—**deterrent, preventive, reformative, retributive, and expiatory**—has its **own strengths and weaknesses**. The **ideal punishment** is a **balanced mix** of all these, depending on the **crime’s nature, the criminal’s background, and societal needs**.

- For **serious or repeated crimes**, deterrent or preventive theories may be needed.
- For **juveniles or first-time offenders**, reformative approach is better.
- The **goal of punishment** should not only be to penalize but also to **reform and reintegrate** the offender into society.

Elements of Crime

The following elements are necessary to constitute a crime:



1. Human being ("person");

A "person" includes both natural persons (human beings) and legal or juristic persons (like companies or corporations). For someone to be held criminally liable, they must commit an act or omission that is against the law. In ancient times, even animals were punished, but modern law recognizes that a crime requires mens rea (a guilty mind), which animals cannot have. Therefore, only humans or legal entities capable of intent can be punished for crimes.

2. Mens rea [MR]: Guilty mind: Evil intent;

Mens rea means guilty mind or evil intent. It is a fundamental element of most crimes—there can be no crime without a guilty mind.

This concept is based on the maxim: “*Actus non facit reum nisi mens sit rea*” — an act alone does not make a person guilty unless it is done with a guilty mind.

Though BNS does not use the term *mens rea* directly, it incorporates the concept in its sections. For example:

- ✓ Murder requires intention or knowledge (Section 101)
- ✓ Theft requires dishonesty (Section 303)
- ✓ Cheating requires fraudulent intent (Section 318)
- ✓ Thus, intention or guilty knowledge is embedded in the definitions of offences.

No Mens Rea Required – Exceptions: Chapter III (Sections 14–44 BNS) lists general exceptions where criminal intent is absent, such as:

- ✓ Acts done under mistake of fact
- ✓ Acts done in good faith or under compulsion

Intention vs Motive:

- ✓ Intention = Immediate mental decision to commit an act (e.g., to kill)
- ✓ Motive = Underlying reason behind that intention (e.g., revenge)
- ✓ Motive is *not* essential to prove guilt; *intention* is.

Intention vs Knowledge:

- ✓ Intention = Purposeful action to achieve a specific result
- ✓ Knowledge = Awareness that a certain result *will probably* occur due to the act
- ✓ Example: Throwing a child in a well — the doer knows death is probable = *knowledge*, hence murder (Section 300 IPC)/101 BNS.

Intention vs Negligence:

- ✓ Negligence = Failure to take reasonable care (what a prudent person would do or avoid)
- ✓ No evil intention, but still punishable in certain offences (e.g., causing death by negligence).

Conclusion:

In Indian criminal law, proving *mens rea* (intention or knowledge) is essential for most offences, but not motive. Absence of *mens rea* can be a defense under certain exceptions.

3. Actus reus [AR]: Physical or actual act

The third element of crime is actus reus or physical or actual act. As it is said: *actus non facit nisi mens sit rea* (the act alone does not amount to an offence unless accompanied by a guilty mind). Actus reus may be said to be a human conduct which the law prevents or prohibits. If there is no actus reus, i.e. if the act has not been committed, there is no crime. The law does not punish a person only based on mens rea or guilty mind unless he does some overt act. Thus, if A intends to kill B, he cannot be punished for his intention (mens rea). Even if in furtherance of that intention, A purchases a pistol (preparation), he does not commit any offence (if he possesses a license as required by law). But once A does an overt act, i.e. fires at B, he commits an offence. If A is successful in his attempt and kills B (act), he commits an offence of murder punishable under Section 103 BNS. But even if A is unsuccessful in killing B (attempt), he can be convicted for an attempt to commit murder punishable under Section 109 BNS.

Individual liability

The general principle of criminal law is that a person is liable for what he has done which he should not have done or what he failed to do which he ought to have done. Thus, a person is liable for his own acts or omissions. The maxim generally applied to the law of tort *qui facit per alium facit per se* (he who acts through other acts by himself) does not apply to criminal law.

Vicarious liability

As a general rule, every person is liable for his own acts and omissions. This is particularly true to penal or criminal liability. A person cannot be held liable for an act (or omission) of others. But the said rule is not absolute. In certain cases, BNS/IPC makes a person vicariously liable for acts committed by others. Thus, where an offence is committed in furtherance of common intention, with common object, in criminal conspiracy, etc. or where there is abetment, the person, not directly involved in the commission of crime may also be held vicariously liable.

Strict liability

Normally, before holding a person liable in the administration of criminal justice, it must be shown that he had a guilty mind or evil intention (MR). If the prosecution is unable to prove guilty mind on the part of the doer of the act, the act itself (*actus reus*) is not sufficient to hold him guilty. But there are certain exceptions to this rule. One of them is strict or absolute liability. Where any statute imposes liability on a person doing a particular act irrespective of intention, the person concerned can be held liable even if there was no MR or guilty mind in committing that act. For instance, public nuisance. If a person causes public nuisance, he must be held liable. He cannot contend that he had no intention to cause such nuisance or that there was no MR on his part. The liability is absolute and absence of guilty mind is irrelevant.

Right to Defend

It is the right of every accused in our system of administration of criminal justice to defend himself. The first and fundamental principle of criminal justice is that every accused is presumed to be innocent unless he is proved guilty. It is for the prosecution to prove beyond reasonable doubt that it is the accused who has committed the offence with which he has been charged. The Constitution of India allows every accused before a criminal court to engage a pleader of his choice under Article 22. If the accused is unable to engage an advocate, it is the duty of the State to provide him a lawyer at the expense of the State. Thus, free legal aid is provided to the accused. Even in respect of arrest of accused, the law takes care of rights of the accused. During investigation, inquiry and trial, several rights have been conferred on the accused.

The Bharatiya Nyaya Sanhita, 2023 Act

- Act No. 45 OF 2023
- Date of enactment: 25th December, 2023
- Date of enforcement: 1st July, 2024

CHAPTER I

Section 1-3 [Short Title, Commencement, and Application]

Section 1: Short Title, Commencement, and Application

Clause (1): Short Title

“This Act may be called the Bharatiya Nyaya Sanhita, 2023.”

It replaces the Indian Penal Code, 1860 (IPC).

Provides the new statutory title of the penal law in India.

Clause (2): Commencement [1st July 2024]

“It shall come into force on such date as the Central Government may notify...”

- Different provisions of the Act can commence on different dates, as notified in the Official Gazette.
- Example: Section 103 (Murder) may be enforced earlier than cybercrime-related provisions.

Clause (3): Applicability within India

“Every person shall be liable to punishment under this Sanhita...for acts done within India.”

- This applies to all persons (citizens or foreigners) within the territory of India.

Case Law: State of Maharashtra v. M.H. George, AIR 1965 SC 722

- The case involved a foreign national carrying gold into India without declaration, challenging his conviction under the Sea Customs Act.
- The accused claimed ignorance of the prohibition as he had no notice of it.
- The Court ruled that **ignorance of law is no excuse** (maxim: *ignorantia juris non excusat*).
- In statutory offences, mens rea is not always required unless expressly or impliedly provided by law.
- Conviction was upheld as the act was prohibited by law, regardless of the accused's knowledge.

Clause (4): Extra-territorial Application (based on general law)

“Any person liable...for an offence committed beyond India shall be dealt with under this Sanhita...as if committed in India.”

- This clause supports India's jurisdiction over certain offences committed abroad, if the person is liable under any law in force in India.
- Hypothetical Example:
- If a foreigner commits a terrorist act against Indian interests in another country and is arrested in India, he can be prosecuted under this Sanhita.

Clause (5): Specific Extra-territorial Jurisdiction

(a) Indian Citizen outside India:

Any Indian citizen committing an offence abroad is liable under this Sanhita.

Case Law: *Mobarik Ali Ahmed v. State of Bombay*, AIR 1957 SC 857

Held: An Indian citizen who commits fraud in another country but is later found in India can be tried under Indian law.