

THE INDIAN PENAL CODE, 1860

(Act No. 45 of 1860)

[6th October 1860]3

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CHAPTER 1

INTRODUCTION

Preamble.- Whereas it is expedient to provide a general Penal Code for India; It is enacted as follows:-

1. Title and extent of operation of the Code:- This Act shall be called the Indian Penal Code, and shall extend to the whole of India except the State of Jammu and Kashmir.

COMMENTS

History: The Indian Penal Code is the Product. Of the work of successive Law Commission constituted by the British during the 19th century. The main milestones in the work towards the preparation of the Code are as under:-

- (1) Chapter Act, 1833 under which the first Indian Law Commission was constituted.
- (2) Constitution of the First Indian Law Commission (1834):
President-Macaulay
Members(Commissioner):
McLeod
Anderson
Milletts
- (3) Draft Code submitted to the Governor General in Council (14th October, 1837).
- (4) Constitution of Second Indian Law Commission (26th April 1845).
- (5) Report of the Second Indian Law Commission on the Draft Penal Code (1846 and 1847, i.e. in two parts).
- (6) Draft Code revised and presented to Governor General in Council (1856). Revision was done by Bethune and Peacock (Law Members).
- (7) Passing of the Code (6th October, 1860).

2. Punishment of offences committed within India.- Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which, he shall be guilty within Indian.

COMMENTS

Foreigners: The words 'every person' are believed to have made it clear that a foreigner is subject to Indian Penal Code for an act committed within Esop.- *Jilendranath Gohsoh v. Chief Secretary*, Air 1932 Cal 753 : ILR 60 Cal 364, Cf Esop (1836) 7 C & P 456.

Foreign Sovereigns : Foreign Sovereigns are exempt by International Law which (in this respect) is part of national law.- *The parliament Belge*, (1880) 5 P D 197-207.

Territorial Waters : See Proclamation of 30th September, 1867.- P.M. Bakshi, *Selective Commentary on the Constitution and Rastya Rama*, (1817) 8 B H C Cr CJ 63.

Within India” : Section 2 focuses on operation of the Code “within India” (see the last eight words). This limits its territorial operation. But it is to be read with Section 3, 4, 108A, etc. which (directly or indirectly) provided for its extra territorial preparation.

“Every person”: The words “every person” highlight the universal application of the Code to all persons. The expression “person” is defined in Section 11. Section 2 should, however, be read as subject to provisions to the contrary, which may be found in various enactments or sources. Principal examples are:

- (a) The constitution Articles, e.g Article 361.
- (b) Excepting provisions in the Indian penal Code (e.g. Chapter4).
- (c) Excepting or limiting provisions in the Code of Criminal Procedure, 1973.
- (d) Excepting provisions in special laws in the nature of protective clauses.
- (e) Rules of International Law (see infra).

Rules of public International Law: Certain rules of International Law, are regarded as part of the national law also. One such rule is that foreign states and foreign sovereigns are not subject to the jurisdiction of national courts.- The Parliament Beige, (1889) 5 PD 197- 207 (Court of Appeals per Lord justice Brett).

In the U.S., the rule was first rendered authoritatively by Chief Justice John Marshall in *The Schooner Exchange* v. M.C Fidon, (1812) 11 U.S.(7 Crenel)116, 136, 137,143-146.

The Foreign Sovereign Immunities Act, 1976 (U.S.A, 28 U.S.C. Section 1604) provides that –“ subject to existing international agreements to which the United States is a party at the time of enactment of this Act, a foreign state shall be immune from the jurisdiction of the courts of the United States and of the states except as provided in this Act”. This expression “foreign state” is defined as including an agency or instrumentality of a foreign state. See C. Lewis, State and Diplomatic Immunity, 1980.

In India, this rule continues to apply in regard to criminal proceedings. In regard to civil proceedings, it has been slightly modified by Section 86, Code of Civil Procedure, 1908. That Section, while not totally abrogating the immunity conferred by Public International Law, provides that a foreign sovereign can not be sued except with the consent of the Central Government.

3. Punishment of offences committed beyond but which by law may be tried within India.- Any person liable by any Indian law to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.

COMMENTS

Scope : The section provides for extra- territorial operation of Indian legislation relating to criminal law, but only if the terms of the section are satisfied. A very important ingredient of the Section is contained in the words.” Any person liable by any Indian law....”.

The Section operates only where an Indian Law specifically provides that an act committed outside India may be dealt with under that law in India.

“Indian Law”: As to the expression “Indian Law”, see *Madhavrao v. State of M.P.*, AIR 1916 SC 198. The Code itself, in Section 4, provides for extra territorial operation of the penal provisions of the Code. For extra territorial application of other, i.e. special laws, the “extent” clause(usually contained in the first Section of the special laws) should be consulted. The Child Marriages Restraint Act, 1929 does not contain any provision for its extra territorial application and, therefore, does not apply to marriage outside India.-*Sheikh Haidar v. Sued Issa*, ILR 1939 Nag 241.

At the same time, if the “Indian Law” clearly provides for its own extra territorial application then it is immaterial that the act or omission was not punishment in the foreign country.- *Pheroze v. State*,(1964) 2 Cr LJ 533 (Bom).

Application : Section 3, IPC applies only to a person liable by any Indian Law to be tried for an offence committed beyond India. If the Indian Law does not have extraterritorial operation then Section 3 does not

apply.- Sheikh Haidar v. Sued Issa, ILR 1939 Nag 241.

At the same time if there is in force such law, it is not necessary that the act must be punishable where it was committed.- Pheroze v. Syed Issa , ILR 1939 Neg 241.

4. Extension of Code to extra territorial offences.- The provisions if this Code apply also to any offence committed by-

- (1) any citizen of India in any place without and beyond India;
- (2) any person on any ship or aircraft registered in India wherever it may be.

Explanation.- In this Section the word “offence” includes every act committed outside India which, if committed in India, would be punishable under this Code.

Illustration

A, who is a citizen of India, commits a murder in Uganda. He can be tried and convicted of murder in any place in India at which he may be found.

CHARGE

I, (name is and office of the Magistrate) hereby charge you(name of the accused) as following:-
If in the place without of beyond India:-

That you being the citizen of India on or about theday of.....at with the intention of or with the intention of or with the knowledge that you will hereby commit the offence in(name of place) without or beyond India (specify the place thereby committed the offence(name of the offence) punishable under Section 4,I.P.C and within my cognizance.

And I hereby direct that you be tried on the said charge by the said court.

COMMENTS

Scope: Section 4, IPC defines the extra territorial application of the Code. Procedure for securing surrender is governed by the Extradition Act,1962.- Jugal Kishore More (1969)
3 SCR 320.

Section 4 does not apply where the offender is not a citizen of India.- Central Bank of India Ltd. V. Ram Narain,(1955)1 SCR 697.

Section 4 provides for the extra territorial operation of the Penal Code. Such operation is conditioned by the nationality of the offender- clause(1), or by the place of commission – clause(2). Under clause (1), the place of commission is immaterial provided the offender is an Indian citizen.

Citizenship is governed by the Citizenship Act, 1955.

Under clause(2) what is required is that the ship or aircraft, must be registered in India. Registration of ships is governed by the Merchant Shipping Act, 1958.

Registration of aircraft is governed by the Indian Aircraft Act, 1934.

Illegal arrest: Even if a person is arrested outside India illegally for trial in India , the trial is not vitiated by the illegality of the arrest.-Vinayak D. Saarkar,1920 ILR 35 Bom 225(arrest alleged to be in violation of rules

of Public International Law).

Basis of extra territorial jurisdiction: the most fundamental principle of extra- territorial jurisdiction is nationality . As early as the first authoritative commentator on jurisdiction, the Italian jurist Bartolus, himself a confirmed territoriality, it has been admitted that a state's laws may be applied extraterritorially to its citizens, Individuals or corporations, wherever they may be found. See Bartolus on the conflict of Laws 51 (Beale trans. 1914).

. A much more controversial form of extraterritorial jurisdiction is the so called effects principle. Extraterritorial though it may be in practice, in theory the effects principle is grounded on the principle of territorial jurisdiction. The premise is that a state has jurisdiction over extraterritorial conduct when the conduct has an effect within its territory.

The effects principle received its most notable enunciation in the Lotus case, where the permanent Court of International Justice was asked to decide whether Turkey had violated” the principles of international law” by asserting criminal jurisdiction over a French officer who had been navigating a private French vessel, when it collided with, and sank, a Turkish ship on the high seas.

Lotus case: The issue was one of extra territoriality because the Frenchman had at all times during the collision been on French territory, i.e. aboard the French ship, although damage had been inflicted upon Turkish territory, i.e. on the Turkish ship. The Lotus court adopted a strictly positivist view of international law, seeing it as a law entirely generated by the positive acts of states and emanating “from their own free will as expressed in conventions or by usages generally accepted s expressing principles of law”.

Lotus case at 18: The permanent Court searched for “ a rule of international law limiting the freedom of States to extend the criminal jurisdiction of their courts to a situation uniting the circumstances of the present case” and, finding none, ruled that Turkey had not acted improperly either in seizing the French Officer or in trying him for violation Turkey had not acted improperly either in seizing the French Officer or in trying him for violation Turkish law while outside Turkish territory.

Lotus case at 33 : besides nationality and effects, there have been suggested and accepted from time to time a variety of other foundations for a state's exercise of extraterritorial jurisdiction. Three points should be mentioned here: the protective principle, the universality principle, and the passive personality principle. The protective principle provides that a state has jurisdiction to prescribe law with respect to “certain conduct outside its territory by persons not its nationals which is directed against the security of the state or a limited class of other state interests”. Restatement(revised) supra note 8,402 (3).

5. **Certain laws not to be affected by this Act.-** Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airman in the service of the Government of India or the provisions of any special or local law.

COMMENTS

Scope: Section 5 marks it clear that the Indian Penal Code is not exhaustive of the entire criminal law of the country.- Motilal Shah, 1930 ILR 55 Bom 89.

But Section 26 of General Clauses Act, 1897 and article 20 of the Constitution prohibit double

punishment for the same offence.

Section 5 saves the operation of two categories of laws, namely:-

- (i) enactments relating to armed forces, and
- (ii) special and local laws.

Armed forces : As to the category (i) mentioned above see the Army Act, 1950, the Air Force Act, 1950 and the Navy Act, 1957.

Special and local laws: As to the category (ii) mentioned above see the expressions “Special law and Local law : as defined in sections 41-42 of the Indian Penal Code.

Double Jeopardy: Although the operation of certain other laws is saved by Section 5 of the Penal Code, it is to be remembered that a person cannot be punished twice for the same offence. See-

- (i) Section 71, second Para, Indian Penal Code.
- (ii) Section 26, General Clauses Act, 1897.
- (iii) Article 20, Constitution of India.

CHAPTER-II

GENERAL EXPLANATIONS

6. Definitions in the code to be understood subject to exceptions.-

Throughout this Code every definition of an offence, every penal provisions, and every illustration or every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled “General Exceptions “, though those exceptions are not respected in such definition, penal provision, or illustration.

Illustrations

- (a) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences, but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.
- (b) A, a police officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement for he was bound by law to apprehend Z and therefore the case falls within the general exception which provides that “nothing is an offence which is done by a person who is bound by law to do it”

COMMENTS

Scope: Section 6, in effect, provides that if the case of the accused falls within a general exception (Chapter 4) he is immune from criminal liability. It is not necessary to repeat in every section defining or punishing an

offence that it is subject to Chapter 4.- About *Latif v. State of Assam*, 1918 Cr LJ 1205 (Gau.); *Khageswar Pujari v. State of Orissa*, 1948 CR LJ 1984 Cr LJ 1108 (Orissa).

Effect : The effect of Section 6 (in broad terms) is that every penal provision of the Code is to be read as subject to the general exceptions continued in Chapter 4 (sections 76-106) of the Code.- *Khageswar Pujari v. State of Orissa*, 1984 Cr LJ 1108 (Orissa)

7. Sense of expression once explained.- Every expression which is explained in any part of this Code in conformity with the explanation.

8. Gender.- The pronoun “ he” and its derivatives are used of any person, whether male or female.

9. Number.- Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

COMMENTS

Compare Section 13. General Clauses Act, 1897.

10. “Man”, “Woman”.- The word “man”, denotes a male human being of any age; the word “woman” denotes a female human being of any age.

COMMENTS

The principal significance of Section 10 lies in the words “if any age.” Thus “Woman” includes infant females as also mentioned in Section 354 of the Code.- *State v. Major Singh*, AIR 1967 SC 63 : 1967 Cr LJ.

11. “Person”.- The word “person includes any company or association or body of persons, whether incorporated or not.

COMMENTS

Scope : Section 11 has the effect of including within the expression :

- (a) any company, whether incorporated or not;
- (b) any association of persons, whether incorporated or not; and
- (c) any body of persons, whether incorporated or not.

Criminal liability of corporations : Corporations are either :

- (a) Corporations sole (one person or entity constituted by law as an artificial juridical person), or
- (b) Corporations in aggregate (e.g. companies).

Corporations and their officers : The general proposition that corporations may be criminally liable gets some support from Section 11, which has also the effect of giving them the benefit of criminal law if they happen to become the victim of specific offences sentenced to imprisonment.- *Syndicate Transport Co.*, (1963) 66 Bom LR 197. Conversely, if the offence is punishable with fine only, the corporation (e.g. a local authority) can be punished.- *Girdharilal v. Lalchand*, 1970 Cr LJ 987 (Raj).

More important is the question of liability of Directors and responsible officers of corporations. Where, technically, the offender is a corporation, the Directors, etc. may still be liable (in addition to the criminal liability of the corporation) if their own participation in the offence amounts to abetting the offence within the meaning of Sections 107 and 108 of the Indian Penal Code. Besides this, most special Acts enacted during the recent years contain provisions under which Directors and other Officers, who are in charge of the affairs of the corporation and responsible to the corporation for the conduct of the affairs of the corporation, are also declared criminally liable for an offence against that special Act, unless they can prove that the

offence was committed without their knowledge, or that they exercised all due diligence to prevent the commission of that offence.

Criminal liability of partners: The Supreme Court, in *Sham Sundar v. State of Haryana*, (Judgment dated 21 August, 1989), JT 1989(3) SC 523, has held that with reference to Section 10 of the Essential Commodities Act, 1955, the true position is that only a partner responsible for conduction the business of the firm could be convicted. The case related to breach of the Haryana Rice Procurement (Levy) Order, 1979. The offender was said to have failed to supply the necessary quantity of rice as per levy rules. Such short supply in contravention of Rice Procurement Order is punishable under Section 7 of the Essential Commodities Act. All the partners were convicted of the offence. It was urged by the appellants before the Supreme Court that there was no evidence that the appellants were in charge of the business of the firm, and for want of evidence, the conviction could not be sustained. The Supreme Court upheld the contention and allowed the appeal. It may be mentioned that Section 10 (1) of the Essential Commodities Act provides that if the person contravening an Order made under the Act is a company (which is defined to include a firm), every person who, at the time of contravention, was in charge of, and was responsible to, the company for the conduct of the business of the company (as well as the company), shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. However, this provision does not render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

The Supreme Court held that Section 10 of Essential Commodities Act was penal provision with a criminal liability, and must be construed strictly. Section 10 does not provide for vicarious liability and does not make all partners liable for an offence, whether they do business or not. The Court observed as under, in this context:-

“It is, therefore, necessary to add an emphatic note of caution in his regard. More often it is common that some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners, who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefit of partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners and ask them to prove under the proviso to sub-section (1) that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence, arises only when the prosecution establishes that the requisite condition mentioned in sub section (1) is established. The requisite condition is that the partner was responsible for carrying on the business and was, during the relevant time, in charge of the business. In the absence of any such proof, no partner could be convicted. We, therefore, reject the contention urged by counsel for the State”.

12. “Public”.- The word public includes any class of the public, or any community, any company, whether incorporated or not;

13. [Definition of Queen].- Repealed by the A.O.1950.

14. “Servant Government”.- The words “servant of Government” denote any officer or servant continued, appointed or employed in India by or under the authority of Government.

15. [Definition of “British India”].- Repealed by the A.O.1937.

16. [Definition of “Government of India].- Repealed.

17. “Government”.- The word “Government “ denotes the Central Government or the Government or the Government of a State.

18. “India”.- “India” means the territory of India excluding the State of Jammu and Kashmir.

COMMENT

This definition does not conflict with the Constitution.- K.P.K. Vara Prasad v. Union of India, AIR 1980 AP 243.

It is only a verbal definition, confined to interpretation for the expression “India” as occurring in the code in various sections- such as Sections 108A, 121A, 359,360,etc. The focus in Section 18 is not on India as a political entity, but on the geographical aspect of the territory intended to be connoted by the expression “India” as occurring in those sections of the Code where the territorial aspect is the crucial element. The definition would have been more expressive (and would have created less controversy) if it began something like this-“India” in relation to the territory....”

19. “Judge”.- The word “judge” denotes not only every person who is officially designated as judge but also every person- who is empowered by law to give, in any legal proceeding, civil or criminal, definitive judgment by law to give, in any legal proceeding , civil or criminal, definitive judgment or a judgment which, if confirmed by some other authority, would be definitive or who is one of a body of persons if empowered by law to give such a judgment.

Illustrations

- (a) A Collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.
- (b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a judge.
- (c) A member of a panchayat which has power, under Regulation VII, 1810, of the Madras Code to try and determine suits, is a judge.
- (d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

20. “Court of Justice”.- The words “Court of Justice” denote a Judge who is empowered by law to act judicially alone, or a body of judges who is empowered by law to act judicially as a body, when such judge or body of judges is acting judicially.

Illustrations

A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

21. “Public servant”.- The words “public servant” denote a person falling under any of the descriptions hereinafter following, namely:-

First.-¹[***]

Second.- Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third.- Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth.- Every; officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is as such officer, to investigate or report on any matter of law or fact, or to make,

authenticate, or keep any document, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth.- Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth.- Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent

1. Clause first omitted by the A.O.1950.

Seventh.- Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.- Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.- Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the government, or to make or authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infringement of any law for the protection of the pecuniary interests of the Government;

Tenth.- Every person whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the right of the people of any village, town or district;

Eleventh.- Every Person-

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- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the government;
 - (b) in the service or pay of a local authority, a corporation establishment by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).

Illustration

A Municipal Commissioner is a public servant.

Explanation: 1- Person falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation: 2- Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to

hold that situation.

Explanation :3 – The word “election” denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by; or under, any law prescribed as by election.

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