

**Section 2:** determines liability and punishment for the (O) committed w/n India.

**Section 3 & 4:** (O) committed outside India, it deals with the extra-territorial jurisdiction of the IPC.

**Section 3:** Provides that 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. “Any person” means citizen or a non-citizen committing the (O) outside India.

It simply provides that an act constituting an offence in India shall also be an offence when committed outside India.

**Section 4:** Clause (1) deals with (O) committed without (i.e. on any ship, aircraft or vessel whether on territorial waters or otherwise) and (O) committed beyond (i.e. outside India).

Clause (2) deals w/- (O) committed by any person on any ship, aircraft or vessel registered in India.

Clause (3) was added in Sec.4 by the IT (amendment) Act 2008 vide which any person who is targeting the computer resource in India for any (O) will be held liable u/IPC.

Section 4 also provides for a period of limitation which was earlier silent in the crpc1898 the new act of 1973 limitation to the launching of criminal proceedings are applicable acc. to S.468 (2) of CRPC.

### **Mobarak Ali Ahmed v. state of Bombay [AIR 1957 SC857]**

A Pakistani citizen while staying at Karachi made false representation to the complainant at Bombay through telephonic calls, letters, etc and induced him to part payments over 5 lakhs to his agents at India for the delivery of the rice as per agreement. Later he flew to England and the agreement was never honoured.

Thereafter, he was arrested from England under the extradition proceedings.

### **State of Maharashtra v. Mayer Hans George [AIR 1965 SC 722]**

The common law doctrine of mens rea is not applicable to statutory crimes in India.

- **Section 5:** This Section is a saving clause to S.2 IPC and in accordance with the maxim “*generalia specialibus non derogant*” – *general words do not repeal or modify special legislation.*
- This Section excludes the operation of this code, wherever some separate law is prevailing u/ special or local laws to deal with such (O).

## **CHAPTER II GENERAL EXPLANATIONS**

It consists of 47 Sections and runs from S.6 to S.52A

**Section 6:** Definitions of this code to be understood subject to the general exceptions u/chapter 4 and it also extends to any local or special law being operational against the code.

- Section 6 acts as a proviso to Sec.105 IEA.
- BOP is always on proSecution held in *Prabhu v. Emperor* in India this was adopted by *K.M.Nanawati's* case.

**Section7:** This Section is based on the roman maxim *Inclusio unius est exclusio alterius* (the inclusion of one is the exclusion of another) or *expressio unius est exclusio alterius* (the mention of one is the exclusion of another)

- A 'word' which is repeated more than once in the act carries the same meaning throughout the code, unless the legislature intents and uses differently.

**Section 8:** Gender - "he" includes both male and female.

**Section 9:** Number – here the singular includes the plural and plural includes the singular.

**Section 10:** 'Man' 'Woman' relates to the living human being and not to the child in the womb.

- No age is prescribed for ascertaining the term of man and woman.

**National Legal Service Authority v. UOI (SC, 2014)**

The SC has given recognition to the members of transgender community, who are neither male nor female and during the time of birth they are recognised as "Third Gender".

**Section 11:** Person is defined in wider sense and it includes both natural person (a human being whether a man or a woman) and an artificial person.

- Human being
- A company
- An association
- A body of persons
- An idol which is a legal person.
- An unborn child in the mother's womb is a person for the understanding of Sec. 11.

**Section 12:** Public means general body of mankind; it includes any class of people or community.

**Section 13:** Queen (repealed by the A.O. 1950)

**Section 14:** Servant of Government – any employee of any cadre or grade appointed or employed by the central or state government in India.

**Section 15:** British India (repealed by A.O. 1937)

**Section 16:** Government of India (repealed by A.O 1937)

**Section 17:** Government – includes central govt. / state govt. as well as local government of a state. R/w S.55A (Appropriate Govt.)

**Section 18:** India – means the territory of India excluding the state of J&K.

**Section 19:** Judge – includes all the hierarchy of judges (JMJC to district judge, HC, SC) a magistrate, an arbitrator, a sarpanch or a panch of panchayat.  
Revenue proceedings are not included.  
“Legal Proceedings”- legal proceedings are the judicial proceedings.

**Section 20:** Court of justice – The court is addressed as the “court of justice”.  
Here judges are empowered to conduct the judicial proceedings, but when judges are performing administrative work then it is not regarded as court of justice.

**Section 21:** Public Servant – nowhere defined in IPC; following list of categories are illustrative and not exhaustive in nature:

**Following held to be Public Servant**

- Commissioned officer of military/ judge/ officer of court of justice including a liquidator, receiver or commissioner)/juryman, assessor or member of Panchayat assisting court or public servant/arbitrator or other person etc.
- Municipal Commissioner.
- Member of executive committee or servant of registered society.
- Employee of a national bank.
- CM and Ministers in centre or state [*M.Karunanidhi v. UOI*, AIR 1979, SC][*P.V.Narasimha Rao v. State*, AIR 1998 SC 2120]
  - Chairman of film censor board.
  - Khalasis of railway carriage Section.
  - Village kotwal.
  - Employees of local bodies or corporation or boards etc.

**Persons not to be held as Public servant**

- MLA (*R.S. Nayak v. A.R. Antulay*) 1984 SC.
- Examiner appointed by University.

**Section 22:** Movable Property – includes only Corporeal(tangible) property and not incorporeal.

- Anything which is fastened to the earth is not corporeal for the understanding of this code.
- **Growing crops** and **standing timber** till unsevered from the earth are **immovable property** and once severed becomes movable property.
- But in CPC they are movable property (Sec.2(13))

**Section 23:** Wrongful Gain/ Wrongful loss - This Section lays down the test of unlawfulness which has been laid down in Sec. 43 of IPC as “illegal”.

- To constitute wrongful gain/loss there must be “unlawful acquisition by unlawful means”.

- For example: A takes a house on rent on the pretext of opening a school instead uses the premises for immoral acts.
- If A steals the watch of B from his possession unknowingly or without his consent then he has committed wrongful gain to himself and wrongful loss to B and he is guilty of the (O) of theft u/379.

**Section 24:** Dishonestly- generally understood as ‘having deviated from honesty’.

- This means to conduct an act intentionally to cause the wrongful gain to one and wrongful loss to another.
- This term is used here in relation to property.
- ***Dr. Vimla Kapoor v. Delhi Administration*** – case of Padmini Premier car  
For Section 24 &25 the intention is “must”.

**Section 25:** it states there can be no fraud unless there was an intention to defraud. Defraud involves two elements i.e. deceit and injury (such injury may be to the property (movable/immovable) or to the person bodily, mentally etc.

- Deceit is an essential ingredient of the term fraudulently whereas it is not so required in dishonestly.

**Section 26:** Reason to believe – signifies the facts and circumstances are sufficient in the ordinary course of nature to believe a thing.

- **Abdul Karim Telgi Case:** the accused person was in possession of the stamp printing machine along w/- the stamps; he was not a licensee nor he held any authority to print the same. So, there was a reason to believe that the accused is guilty of the (O) under such facts in question and the BOP lies on the accused.

**Section 27:** Property in Possession of wife, clerk or servant – the property entrusted to wife servant or clerk is considered to be with the owner himself.

- The conjugal relationship between husband and wife has to be in continuation and not otherwise for eg: they should not be separated or divorced.

**Section 28:** Counterfeit –making a thing resemble another thing.

- Ingredients of counterfeit: causing one thing to resemble another thing.
- Intending by the means of that resemblance to practice deception.
- Knowledge of resemblance purports the possibility of such deception to be practiced.

**Section 29:** Document – denotes any matter expressed or described upon any substance by means of letters, figures or marks which can be seen by the naked eyes. For example: cheque, writings on the stones, etc.

**Section 29A:** Electronic document – it is defined u/- Sec. 2(1) clause (t) of IT Act, 2000. Electronic record means – data record/data generated, image or sound stored in an electronic medium which is sent or received electronically.

The term record appearing in IPC also includes the electronic records.

**Section 30:** Valuable Security is a document of some value i.e. a document which creates or extinguishes legal rights.

- Document which create, confer, extend, transfer, restrict, extinguish or release any legal right is a valuable Security.

**Section 31:** will – denotes a testamentary document i.e. it is a legal declaration of person.

**Section 32:** words referring to acts also include illegal omission. Act regards doing something voluntarily as well as acts also involves failure to perform legal obligations.

- *Shaukat Hussain Guru v. State of NCT* (2008)
- *Om Prakash v. State of Punjab* (1961)

**Section 33:** Acts/Omissions: a series of acts as a single act and series of omission to be a single omission.

**Section 34: COMMON INTENTION** (principles of joint liability) - provides that when a criminal act is done by several persons in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if it was done by him alone.

- The expression “**in furtherance of common intention of all**” was added by the amendment of 1870 and was not a part of the initial draft.
- S.34 elaborates the **Joint liability, Constructive liability** or **Vicarious liability**. These Sections can be classified under Section 34 to 38, 120A, 121A, 149, 396 or 460 of the code.
  - where the criminal act is done with the common intention of the group(**S.34 to 38**)
  - where the offence is committed with the common object of an unlawful assembly (**S.149**)
  - where the persons are charged of a criminal conspiracy (**S.120A, 121A**)
  - where are five or more persons conjointly in the commission of dacoity commit Murder (**S.396**)
  - where persons are jointly concerned in committing the offence of lurking house-trespass or house-breaking by night (**S.460**)
- All are guilty of the principal (O) and not of abatement, only.
- For attracting this Section two elements are essential:
  - There was common intention in the sense of a pre-arranged plan between the two; (CI may develop on the spot also).
  - The persons sought to be so held liable had participated in some manner in the act constituting the offence.
- This Section Lays down a rule of evidence that if two or more persons commit a crime in furtherance of a common intention, each of them will be liable jointly on the principal of group (or joint) liability.
- Sec. 34 incorporates the principle of joint liability which was laid down in the case of Reg v. Cruse.
- Applicability of this Section depends upon the facts and circumstances of the case.

**Ingredients of Section 34:**

1. Criminal act must be done by several persons.
2. There must be a common intention of all to commit that criminal act.
3. By more than one person.
4. There must be participation of all in the commission of the offence in furtherance of that common intention and each will be liable as if that act was done by him alone.

Act done in furtherance of common intention makes all persons liable equally.

1. **Barendra Kumar Ghosh v. Emperor** [AIR 1925 PC 1] (Post-office case): The court held that even if a person who does not do anything but if he has common intention he will be liable. The court said they also serve who only stand and wait.
2. **Mahboob Shah v. Emperor**[AIR1943 PC118]: the court laid down the following principles:
  - a. Essence of liability under Section 34 is found in common intention.
  - b. To invoke Section 34 it must be shown that act was done in furtherance of common intention.
  - c. Common intention implies pre-arranged plan and it must be proved that criminal Act was done in concert First went to pre-arranged plant.
  - d. For intention to be common it must be known to all members and must also be shared by them.
3. **State of Uttar Pradesh vs Sahrunnisa** [AIR 2009 SC 3182]:it was held by the apex court that mere presence does not indicate the common intention of the person.
4. **Kirpal Singh vs. state of Uttar Pradesh** [AIR1954 SC 706]: Supreme Court held that the common intention may develop on the spot after the offenders are gathered there. A previous plan is not necessary. Common intention can be inferred by the conduct of the accused and the circumstances.
5. **Rishi Deo Pandey vs State of UP** [AIR 1955 SC 331]: Supreme Court held that common intention can develop on the spot also during the course of Commission of the offence.
6. **Shree kantia vs State of Bombay** SC held that physical presence and active participation in crime is necessary but in **J.N. Desai vs State of Bombay** Supreme Court observed that the physical presence and active participation is not necessary in all cases.
7. **Pandurang v. State of Hyderabad**: Supreme Court differentiated between similar intention and common intention. The court held that several persons can simultaneously attack a man and each can have the same intention, namely, the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the specific Section because there was no prior meeting of Minds to form a pre-arranged plan.

### **Joint Liability**

Where two or more persons are liable in respect of the same liability

### **Vicarious Liability**

A situation which one party is held partly responsible for the unlawful action of a third party

### **Constructive Liability**

When the person /persons may not be directly involved in the commission of the actual act constituting the offence, but are persons who have committed the offence.

<b><u>COMMON INTENTION</u></b>	<b><u>COMMON OBJECT</u></b>
Section 34 does not create offence in itself only was down principle of Joint Liability	Section 149 creates an offence in itself Being a number of the unlawful assembly which is punishable under Section 143
Common intention under Section 34 not defined anywhere in IPC	Common Object must be one of the five ingredients defined under Section 141
Prior meeting of minds necessary for Common intention	Common Object may be formed without prior meeting of mind.
Applicable when two or more persons are involved	Applicable when 5 an more persons are involved
Participation is a crucial aspect	No need fun active participation in Section 149

**Section 35:** Provides that several persons do an act jointly but different intention or knowledge from another, everyone is liable according to one's own criminal intention knowledge and not beyond that.

**Section 36:** The words referring to acts include illegal omission also depression makes it clear that an (O) can be committed partly by an act and partly by an illegal omission.

**Section 37:** when an offence is committed by means of several acts, whoever intentionally cooperates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

**Section 38:** Person concerned in criminal act may be guilty of different offences. – provides that the liability of the offenders according to their own acts, where a crime has been committed. This Section provides for different punishment for different offences, whether such persons are actuated by one intention or the other.

Section 34 talks about common intention and on the other hand Section 37 provides international cooperation, which must include action that contributes to the offence and is done with the consciousness, though without showing the intention to commit that offence.