

RMM LAW COLLEGE SAHARSA

Indian Penal Code

Ist Part

Paper -

**TOPIC- PROVISIONS AS TO
ACCUSED PERSONS OF**

Topic- PROVISIONS AS TO BAILS AND BONDS

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Article 20(3) of the Constitution

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 30 th 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. Chapter 4). (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 Indian 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 dies 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.