

RMM LAW COLLEGE SAHARSA

Indian Penal Code

Ist Part

Paper -

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

Topic- PROVISIONS AS TO BAILS AND BONDS

Lecture Notes by- BINOD KUMAR JHA

Date- 24/11/2020

and the name of the accused

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 or 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 of 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).