

RMM LAW COLLEGE SAHARSA

INDIAN PENAL CODE

Ist Part

Paper -

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

Topic-

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~~and the name of the accused~~

History of the Indian Penal Code:

During the British Period the Governor General Appointed the “Indian Law Commissioners” in order to judge the condition of the penal laws prevalent in India and suggest a comprehensive Penal Code. In the year 1834 the First Law Commission was constituted headed by Lord Macauley for drafting the Indian Penal Code. The Draft underwent various levels of scrutiny and was finally passed and received the Governor General’s assent on 6th October 1860 and came to force on 1st January 1862.

The IPC is a comprehensive piece of legislation, which initially consisted of 23 Chapters and 511 Sections and as a result of various amendments that it has gone through there are finally 538 sections.

Extent and Operation of the Indian Penal Code:

The Chapter 1(Sections 1-5) of the Indian Penal Code deals with the extent and operation. According to Section 1 of the Code the Name of the Code shall be Indian Penal Code and the same shall be applicable to whole of India except Jammu and Kashmir vide Article 370 of the Constitution of India. **Every**

person shall be liable to punishment under this code for every act or omission contrary to the Act and not otherwise.

Section 2 of the Act deals with the Intra Territorial Jurisdiction, i.e. offence committed in India and punished under the Code. This section asserts liability on the basis of locality and place of commission of offence. In order to invoke the code it must be proven that the offence was committed within the Indian Territory. The term “**Indian Territory**” has been defined to include land, water (inland water including the river, canals etc.) and the portions of sea. “Every Person” includes Citizen, non citizen and even Foreigners visiting India. Although the same excludes judicial person (companies etc.), though the same shall be liable for the actions of their directors because of the principle of Vicarious Liability.

Cases:

In the case of **State of Maharashtra vs. M.H. George (AIR 1965 SC 722)**, it was held that the foreigner who enters India by accepting the allegiance of Indian laws is also liable for punishment in case an offence is committed under the code and that he cannot take a plea of “ignorance of law”.

In the case of **R vs. Esop [(1836) 7 ER 203]**, it was held that no person can take the plea of not being aware of the criminality of the act in the country. In this case the person had contended that unnatural offence was not a criminal act in his land of origin Baghdad and that he was not aware of the fact that the same was a criminal act. Such an argument was negated and the person was convicted.

In the case of **Mobark Ali vs. State of Bombay (AIR 1957 SC 857)**, Pakistani citizen made a false representation while in Karachi to the complainant in Bombay through letters, phone calls and telegrams which induced the complainant to part with an amount of around Rs. 5 lacs to the agent of the accused in Bombay so that rice could be shipped from Karachi to Bombay. NO rice was supplied. The

accused was caught in England and brought to Bombay where he was prosecuted and convicted under Section 420 for cheating. The Supreme Court upheld the conviction even though the person was physically present in Bombay.

The application of the Act depends upon the place where the offence is committed and not on the nationality or place of residence of the offender. So, a person physically present outside India can commit an offence within India and shall be Punishable under the code. Thus, the code shall be Extra Territorially applicable in the following cases:

1. any citizen of India in any place without or beyond India;
2. any person on a ship or aircraft registered in India;
3. any person in any place beyond India wherein the target of the offence being a computer resource located in India.

Section 4 of the IPC extends the application of the code to an offence committed outside India by an Indian citizen and offence committed on a ship or aircraft registered in India. The rationale behind this extension of criminal jurisdiction of the courts is based on the contention that every sovereign state can regulate the conduct of its citizen, where they might be for the time being. Clause 2 of section 4 gives Admiralty jurisdiction to the Indian Courts and the power to try offences committed on any ship or aircraft registered in India. A ship is considered to be a floating island belonging to the country whose flag it is bearing. Thus all the vessels are considered as the part of the territory of the country whose flag they fly.

Exception to applicability of the Act:

The Act is not applicable to soldiers, sailors or airmen ‘in the service of the Government of India’ because there are different laws for punishing such personnel.

