

LAW AND CRIME : GENERAL PRINCIPLES

By

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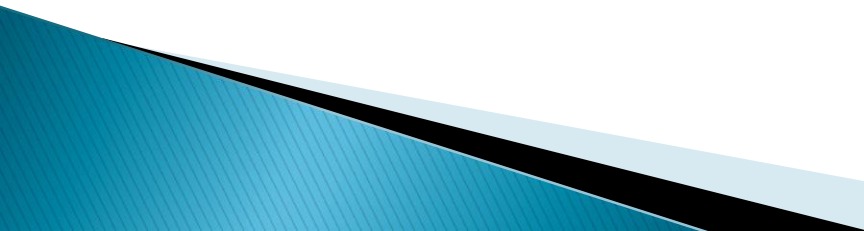
Criminal Law ?

**“In the state of nature the life of man is
solitary, poor, nasty, brutish and short...**

the condition of man ...

**is a condition of war of every one against every
one”**

Hobbes, ‘Leviathan’



UNDERSTANDING THE “OFFENCE”

- ▶ What is a **Crime**?
Defining the Crime.
- ▶ Who can commit a **Offence**?
Human being, Corporation.
- When an act becomes an offence?
 - Guilty Mind (***mensrea***),
 - Wrongful act or omission (***actus rea***)
 - Consequences : Harm or injury to the body, property or reputation.

Civil & Criminal Justice: Differences

- ▶ Criminal Justice
 - ▶ to punish wrongs
 - ▶ purpose– penal–
except warning,
censure
 - ▶ Trial on Charges,
guilt or innocence
 - ▶ public wrongs–More
harmful
 - ▶ State is a party
- ▶ Civil Justice system
 - ▶ to enforce rights
 - ▶ purpose is remedial,
– heavy damage
 - ▶ On issues,
determining rights
and liabilities
 - ▶ Pvt wrongs injury to
private individuals
 - ▶ Pvt individuals

Difference between civil and criminal laws

- ▶ Distinction lies in the legal consequences, it is more in the nature of the form of proceedings rather than in its intrinsic nature of acts.
- ▶ Civil proceedings result in Decree for damages, for payment of debt, injunction, for specific performance, possession of land

Punishment:

- ▶ Why do we punish ?
Theories of punishment.
 - ▶ What is the importance of **Punishment**?
Nullum poena sine lege.
 - ▶ **Kinds of Punishments:** Sec 53 of IPC: Death, Imprisonment-Rigorous and simple, solitary confinement, Fine.
 - ▶ Reforming the penal clauses with New Punishments (Community service, Restitution, restorative justice programs –compensation to the victim).
 - ▶ Customs Act, Excise, **Confiscation**, Income Tax Act, **Forfeiture of Property, Imprisonment, Fine.**
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- ▶ Who has to prove the Offence?

Burden of proof : Prosecution.

Dowry death and Rape cases: Shift of the burden.

- ▶ What is the **Standard of Proof**?

Standard of proof: Proof beyond reasonable doubt.
(Mallimath Committee report) High standard of proof.

- ▶ How the Criminal Law **evolved and developed**?

Primitive stage...Formation of
State.....Prosecution.....*parens patriae* jurisdiction.

- ▶ How the Code came into existence?

Uniform law in the country, applicable to all....First Law
Commission of India...Lord Macaulay.

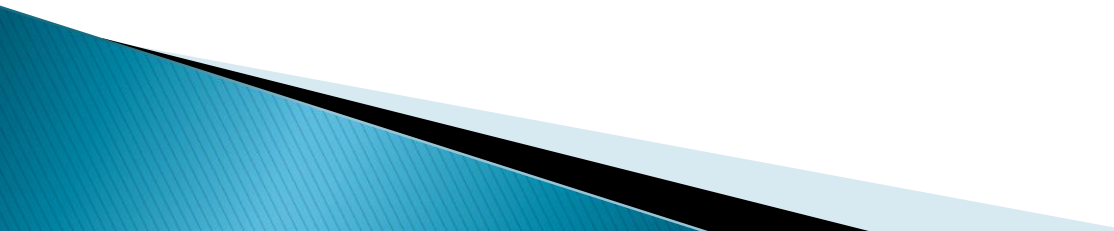
What is the **Scheme of the IPC** ?

Procedure to formulate the code: Codification and Consolidation.

Sec 5: special law and local laws.

General principles.....Common intention, Criminal Conspiracy, Abetment, General Exceptions.

Specific Offences: Offences against Human Body, Offences against Property etc.,



How to read an Act ?

Interpretation of the Criminal Law Statute

- ▶ What to do when there is an ambiguity or confusion in the statute?
- ▶ Rules of Interpretation...
- ▶ Criminal Law or Penal Law Statute...**strict interpretation.**
- ▶ Tax Statutesstrict or grammatical rule.
- ▶ Where to refer if there is any ambiguity in the Statute?
- ▶ Sec 6 : Interpretation Clause otherwise General Clauses Act

Mensrea under IPC

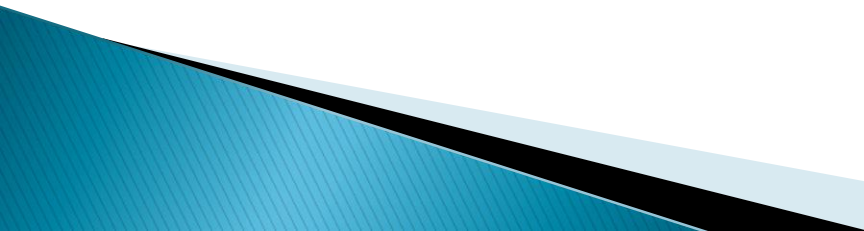
▶ Who is important Crime or Criminal?

Paradigm shift from Crime to the Criminal

- ▶ How to look into the Guilty Mind of a person?
- ▶ Not essential in
- ▶ Waging War s 121, Sedition 124A, kidnapping and abduction 359, 363, counterfeiting of coins 232
- ▶ General exceptions give effect to mens rea
- ▶ Precise definition of offence embody it.
- ▶ Expressions voluntarily, fraudulently, intentionally, dishonestly, malignantly, wantonly, maliciously

- ▶ Intention, Fraudulent Intention, Dishonest Intention.
- ▶ Motives are they relevant ?
- ▶ Knowledge or Knowingly, Voluntarily.
- ▶ Strict Liability : Socio-Economic Offences
- ▶ NDPS ACT, ESSENTIAL COMMODITIES ACT, POTA.

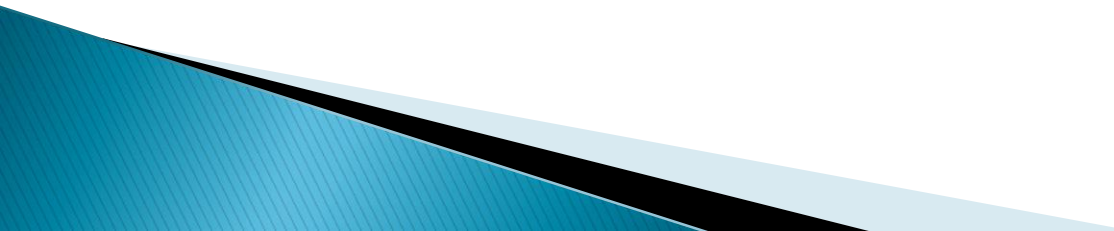
Intentionally and Knowingly

- ▶ How did he do the act? (Intention)
 - ▶ Why did he do it? (Motive)
 - ▶ Joining unlawful assembly 142
 - ▶ Preventing service of summons 173
 - ▶ Omitting to produce document 174
 - ▶ Obstructing sale of property 184
 - ▶ Omitting to assist public servant 187
 - ▶ Giving false evidence 193
 - ▶ Omitting to give information of offence 202
 - ▶ Omitting to apprehend an offender 221, 222
 - ▶ Offering resistance against apprehension 224,225
 - ▶ Offering insult 228,
- 

Voluntarily

- ▶ S 39: a person said cause an effect voluntarily when he causes it by means whereby he
- ▶ Intends to cause it, or
- ▶ By means which at the time of employing those means he knew or had reason believe to be likely to cause it. (it includes intention, knowledge and reasonable ground of belief)
- ▶ If inference is more or less certain it is knowledge, if it is probable, it is belief.

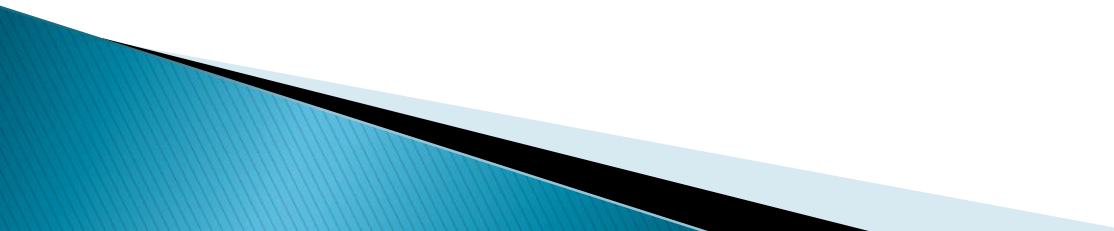
Dishonestly

- ▶ S 24 defines: intention of causing wrongful gain to one person or wrongful loss to another, dishonestly refers to property
 - ▶ S 25 : A person is said to do a thing fraudulently, if he does that thing with intent to defraud but not otherwise
 - ▶ Legal fraud includes intention to injure besides deception.
 - ▶ *K. N. Mehra V. State of Rajasthan*
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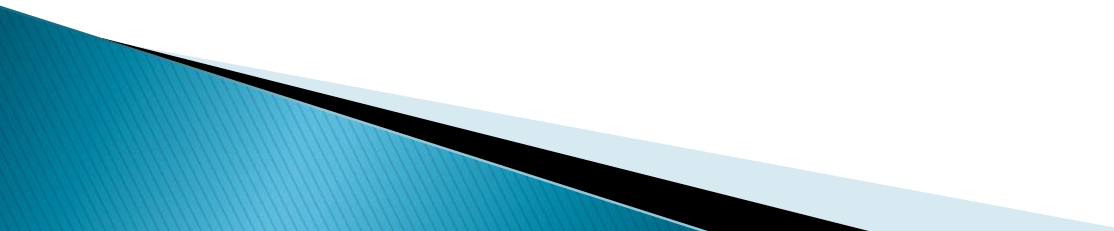
Deception and fraud

- ▶ Deception could be moral wrong, fraud in legal sense is an offence (inclusive of injury), deception may not be fraud, but fraud involves deception
 - ▶ S 206 IPC fraudulent removal or concealment of property from execution is an offence
 - ▶ S 208 to cause a decree for a sum not due or for a larger sum than is due
 - ▶ S 463 making false document with intent to commit fraud is forgery.
- 

Knowingly

- ▶ Personal knowledge
 - ▶ It may also be implied, when he deliberately omits to inquiry, willful blindness
 - ▶ A child brings new bicycle, father does not question. He realised probability of cycle being stolen, guilty.
 - ▶ *R. Govinda Case*
 - ▶ *Hyam Case*
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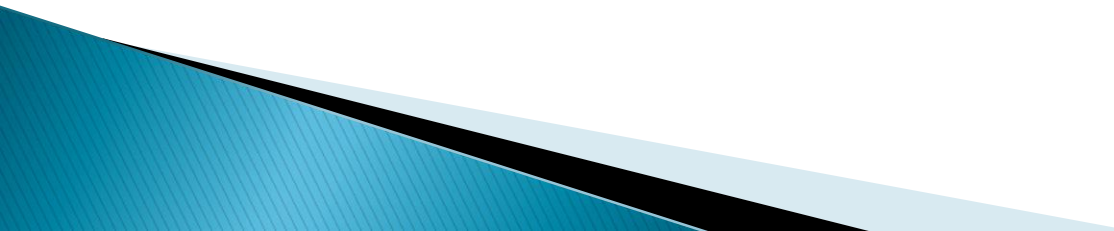
Strict Liability

- ▶ Criminal liability independent of wrongful state of mind or culpable negligence
 - ▶ Strict or absolute liability principles
 - ▶ Three kinds of crimes which do not require legal fault on accused:
 - ▶ Public welfare offences: quasi criminal in nature, drugs, foods, weights & Measures, licensing, traffic, revenue offences etc.
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Causation & Intervention

- ▶ A wounded B, B refused to get his finger amputated, which might have saved him. Is A guilty of Murder? Whether intervention is strong to break the chain of causation? (R. v. Holland, 1981 Kenny 25 held guilty)
- ▶ R v Jordan, 1956 40 Cr App Rep 153 J stabbed D, who was stitched, healed and treated. Not tolerant to terramycin, caused pneumonia and died. Is the injury caused by J immediate cause of death? no

R v. Smith, 1959

- ▶ A, soldier accused of killing B, another soldier. B suffered bayonet injuries, bled & suffered hemorrhage. While C took him to hospital he was dropped twice. There was no blood transfusion at hospital. Soldier died within 2 hrs of injury. Is A guilty?
 - ▶ Death should be natural and sole cause of injury. If chain of causation is established, A is guilty.
- 

Stages of commission of crime:

- Intention,
- preparation,
- **Attempt ? ? ? Attempt to commit suicide, murder.**
- accomplishment.

Supreme court held that “An attempt to commit an offence is a direct movement towards a commission after preparation are made”. In order to convict a person under attempt to crime, it must be shown first that he had an intention to commit an offence then secondly preparation is complete.

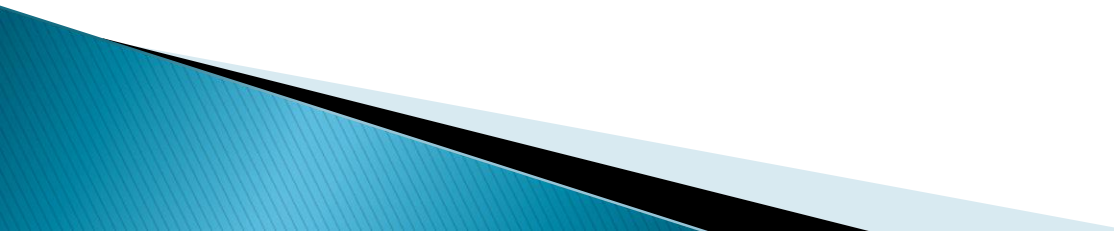
Abhayanand Mishra v/s state of Bihar . AIR 1961 SC 1698

Mohd yakooob v State of Maharashtra

Doctrine of Joint Liability

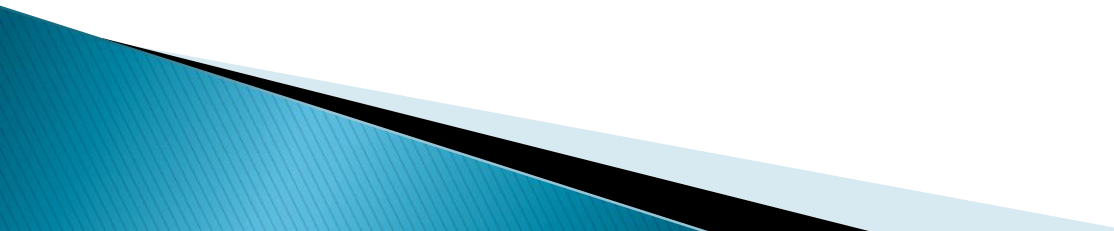
- ▶ Apportions liability for members who commit the crime in a group. When a crime is committed by a group in furtherance of common intention or in prosecution of common object, each member of such group will be liable for that in the same manner as if it was done by him alone.

Classification of Offenders

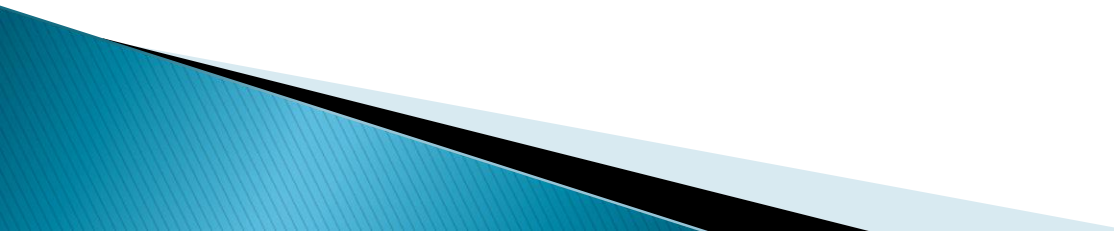
- ▶ English Law: two classes:
 - ▶ Principals = those who participate in actual commission of a crime
 - ▶ Accessories= those who in any way assist the execution
 - ▶ Principals joint liability ss 34–38
 - ▶ Accessories joint liability ss 107–120
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Common Intention

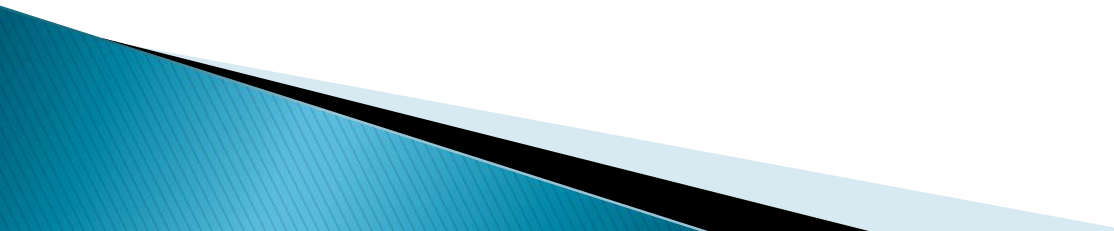
S 34 – Analysis

- ▶ When a criminal act is **done by several persons**
 - ▶ **in furtherance of the common intention**
 - ▶ **of all,**
 - ▶ **each of such persons is liable for that act**
 - ▶ **in the same manner as if it were done by him alone.**
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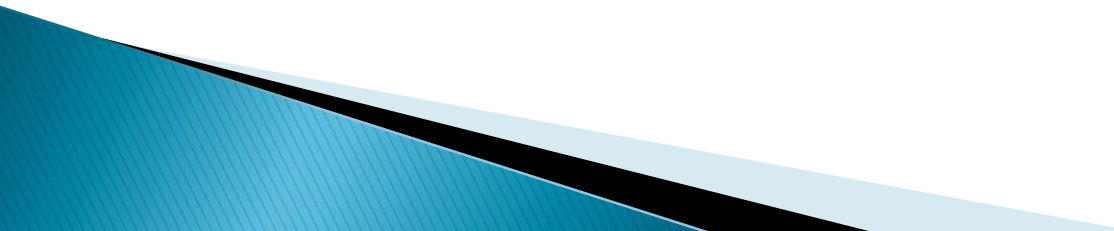
Section 34 Ingredients

- ▶ **Ingredients:**
 - ▶ 1. Crime **by several** persons
 - ▶ 2. *Common intention* of all to commit crime
 - ▶ 3. **Participation** of all in crime in furtherance of common intention.
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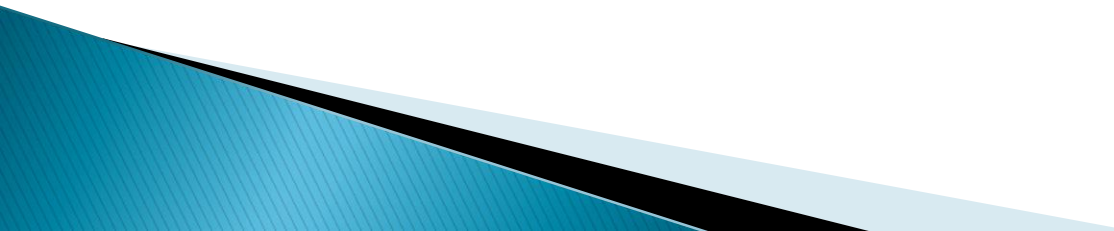
Example

- ▶ Common intention and participation are essential for s 34
 - ▶ A hits a bullet to X– killed – Guilty Murder
 - ▶ B hits a bullet to X– missed– Attempt
 - ▶ A+B plan to kill by firing from both sides
 - ▶ A's bullet hits, kills, B's bullet didn't.
 - ▶ Both are liable for murder, 302 r/w34
- 

S 34 and s 33

- ▶ Act in S 34 includes series acts and omission includes series of omissions, s 33
 - ▶ Common intention implies prior concert, it could be spontaneous, plan need not be elaborate.
 - ▶ Barendra Kumar Ghosh v King Emperor AIR 1925 PC 1. Murder of sub-postmaster.
- 

Barendra Kumar Ghosh

- ▶ Postmaster murder case
 - ▶ Narendra Kumar stood outside the post office his aids went inside and committed burglary and murder
 - ▶ People who wait and watch are also responsible
- 

Abetment

- ▶ Instigating, conspiring, aiding– 3 methods of committing crime without participating
- ▶ S 107 defines abetment as instigating a person, engaging with others in any conspiracy or intentionally aiding any act or illegal omission.
- ▶ Abetment could be by willful misrepresentation, or willful concealment of material fact, voluntarily procuring or causing or procure a thing to be done

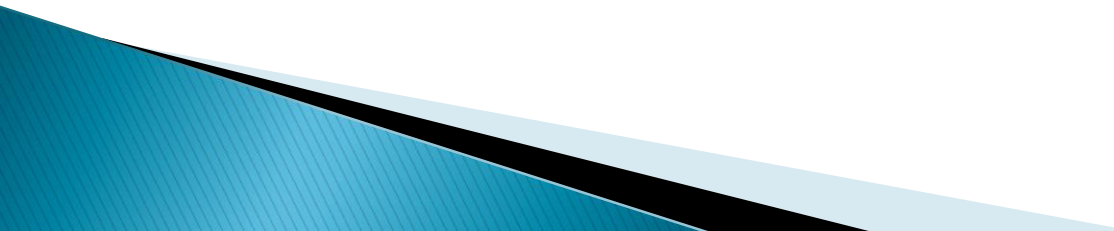
By instigation

- ▶ To instigate means to incite, counsel, command, advise the commission of crime
- ▶ Incitement is incomplete criminal conduct
- ▶ Words may not have any effect on person solicited, it is enough if they reached his mind
- ▶ A by instigation: Queen v Mohit 3 NWP 316, funeral march of Sati, chanting 'rama rama' is held to be abetment of suicide in name of sati.

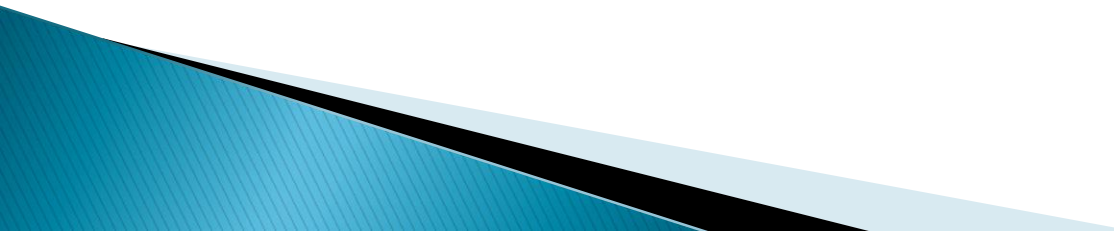
By conspiracy

- ▶ If A enters into agreement with one or more to do an illegal act, and the act is done in pursuance thereof.
- ▶ By aid: intentional assistance in crime. A says maro maro and B puts a knife in hand of person fighting with other. A instigates and B aids killing.

Conspiracy

- ▶ Breathing together
 - ▶ Two essentials of Section 120A
 - ▶ Two or more persons
 - ▶ Agreeing to do a prima facie unlawful act or a lawful act by unlawful means.
 - ▶ Overt act is necessary when abetment by conspiracy s 107(secondly), to do illegal acts which are not offences, to resort to illegal means for doing lawful acts.
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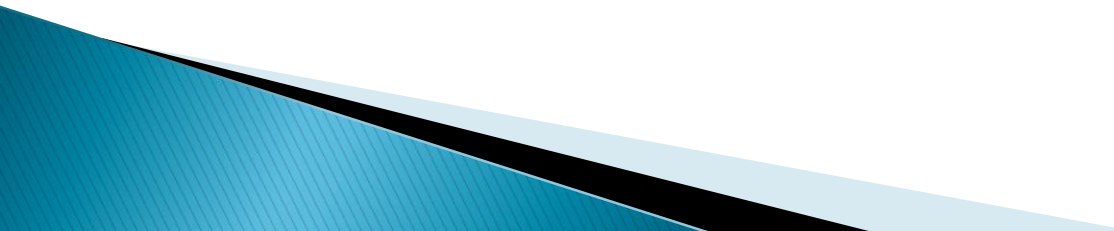
Overt act not necessary

- ▶ In Criminal conspiracy to commit offences 120A
 - ▶ To wage war against government 121A
 - ▶ Intention plus agreement to commit crime makes conspiracy an offence s 120B
 - ▶ Bare intention is no agreement
 - ▶ S 34 extends guilt to all who take part in crime with common intention.
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Kehar Singh Case

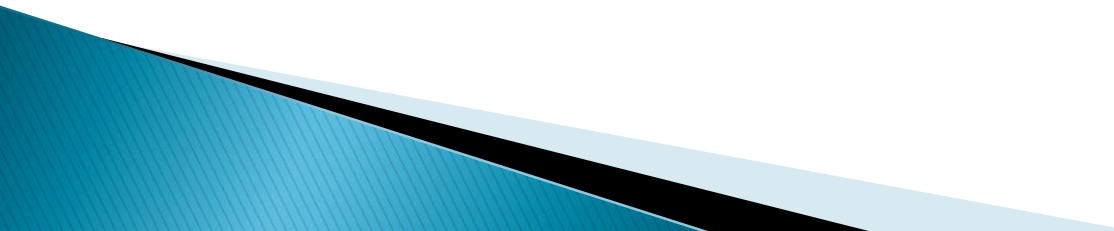
- ▶ Conspiracy under s 107(secondly) requires overt act.
- ▶ Every Sikh member cannot be a conspirator simply because he is angry against blue star operation. There must be evidence of agreement. No such evidence against Balbir Singh. Confession of Satwant Singh could not be used against B.

Rajiv Assassination

- ▶ State v Nalini 1999(5) SCC 253
 - ▶ Four categories of conspirators: Hardcore nucleus: Prabhakara, Pottu Amman, Akila, Sivarasan, Santhan
 - ▶ Inducement: Santhan, Murugan Arivu
 - ▶ Joining conspiracy: indoctrination, – Payas, Jayakumar, Ravichandran
 - ▶ Conspirators & participants: Nalini, Dhanu, Suba
- 

Exemptions from the Criminal Liability

General Exceptions

- ▶ Accident
 - ▶ Necessity
 - ▶ Infancy
 - ▶ Insanity
 - ▶ Mistake of Fact
 - ▶ Duress or compulsion
 - ▶ Right to Private Defence.
- 

Specific Offences

- ▶ Offences by Public Servants:
Chapter IX.
- ▶ **Public Servant : Sec 21.**
- ▶ Cheating Sec 420

THANK YOU
AND
GOOD LUCK

