

INDIAN PENAL CODE, 1860

By

DR. K. V. K. S A N T H Y
NALSAR UNIVERSITY OF LAW
JUSTICE CITY, HYDERABAD

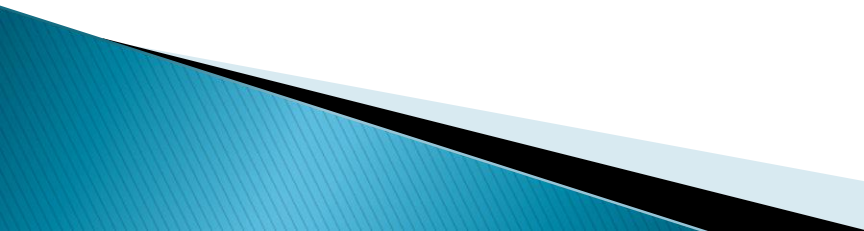
Criminal Law ?

**“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 reaus*)
- ✓ 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

Differences

- ▶ 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

Contd..

- ▶ Guilty Act : *Actus reus*: act / omission.
- ▶ Causation: Intervening Causes.
- ▶ Legal Requirement of an 'Offence'
mensrea + *actus reaus* = offence.

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.**
- 

- ▶ 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.

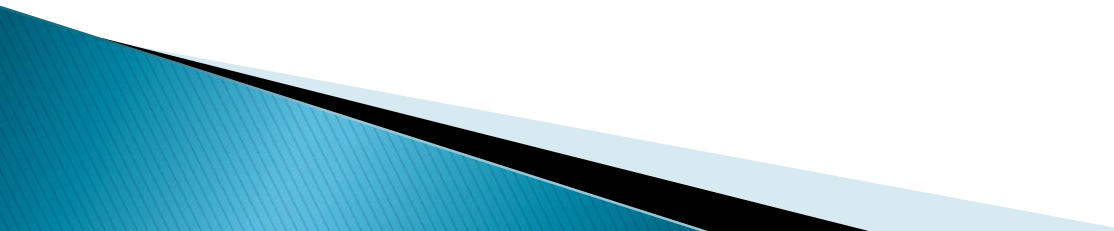
What is the **Scheme of the IPC** ?

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

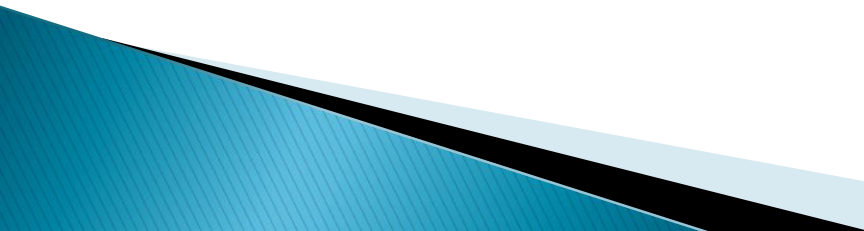
▶ Who is important Crime or Criminal?

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.

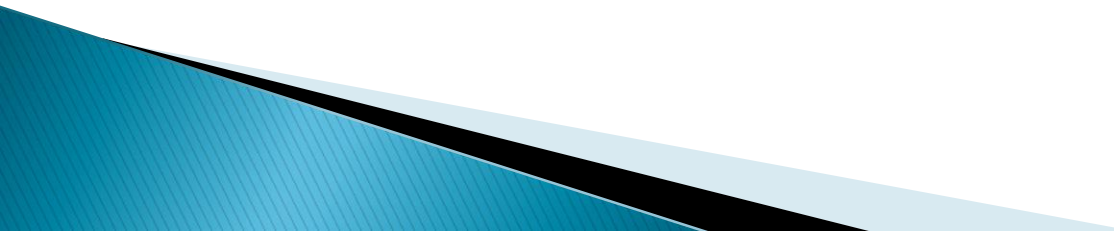
Dishonestly

- ▶ 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*

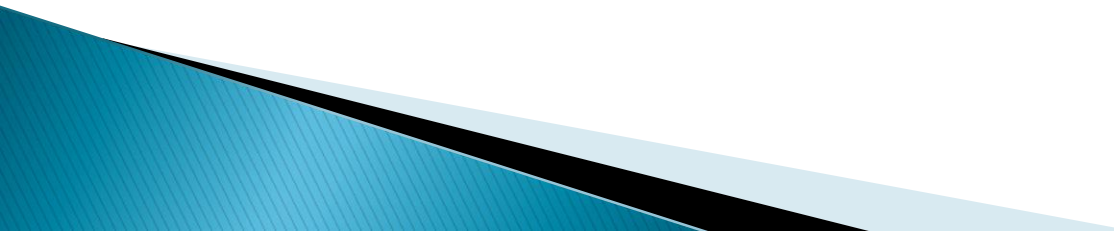
Deception and fraud

- ▶ 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*
- 

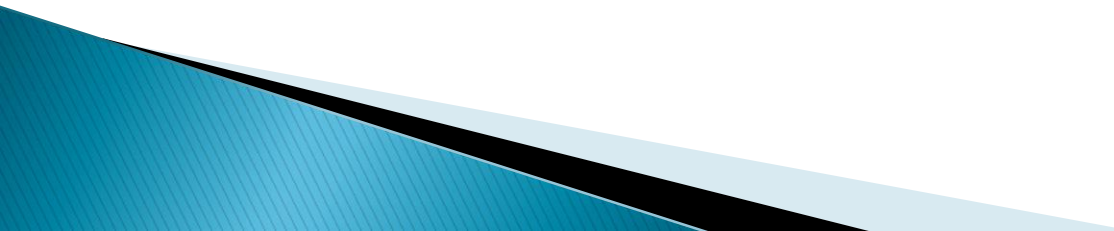
Strict Liability

- ▶ 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.
- 

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 terrormycin, 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:

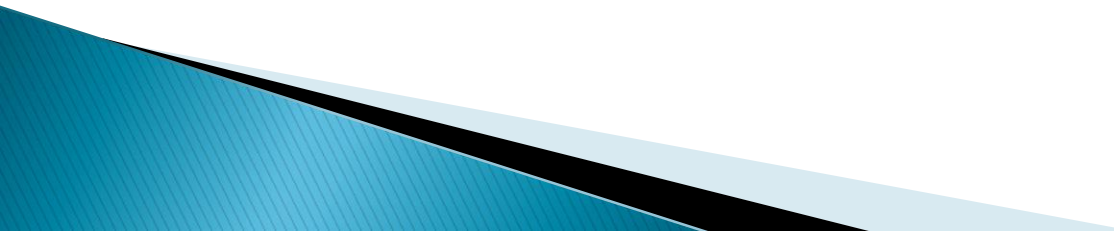
- Intention,
- preparation,
- **Attempt ? ? ? Attempt to commit suicide, murder.**
- accomplishment.

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.

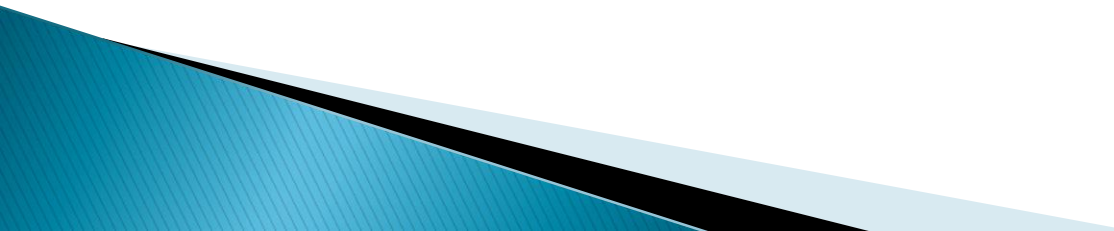
Abhayanand Mishra v/s state of Bihar . AIR 1961 SC 1698

Mohd yakooob v State of Maharashtra

Doctrine of Joint Liability

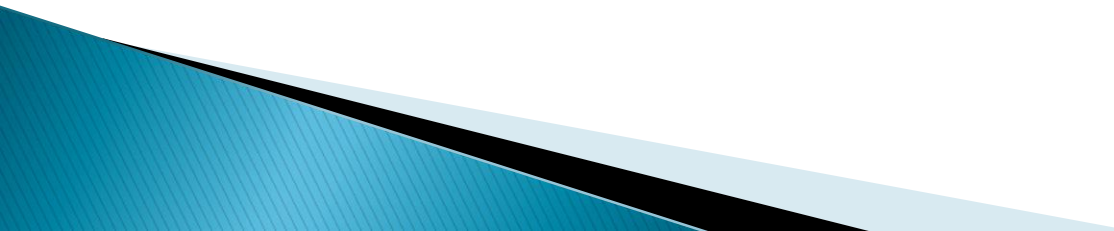
- ▶ Apportions liability for members who commit the crime in a group. When a crime is committed by a group in furtherance of common intention or in prosecution of common object, each member of such group will be liable for that in the same manner as if it was done by him alone.
- 

Classification of Offenders

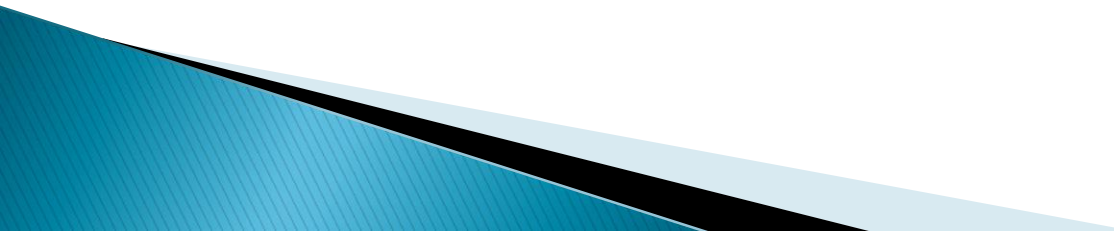
- ▶ English Law: two classes:
 - ▶ Principals = those who participate in actual commission of a crime
 - ▶ Accessories= those who in any way assist the execution
 - ▶ Principals joint liability ss 34–38
 - ▶ Accessories joint liability ss 107–120
- 

Common Intention

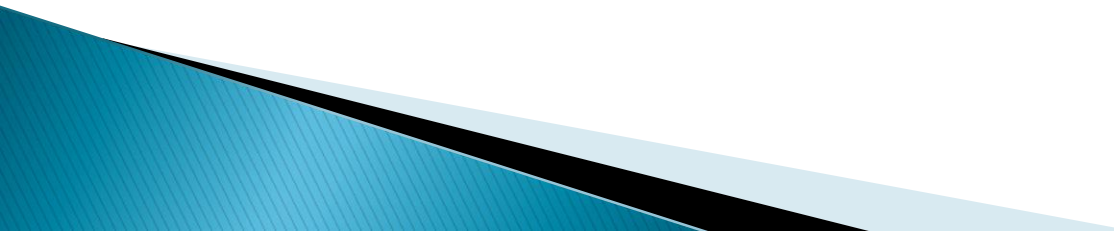
S 34 – Analysis

- ▶ 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.**
- 

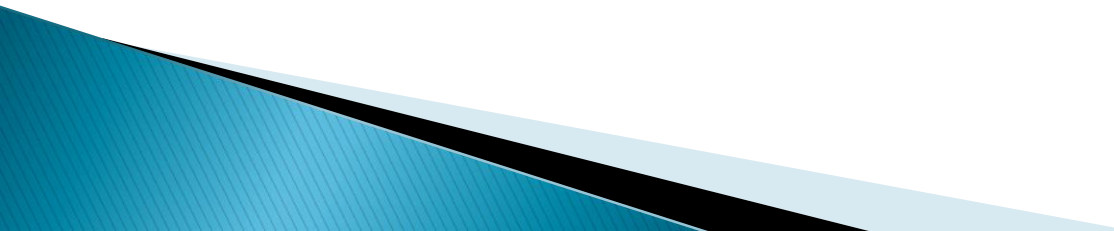
Section 34 Ingredients

- ▶ **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.
- 

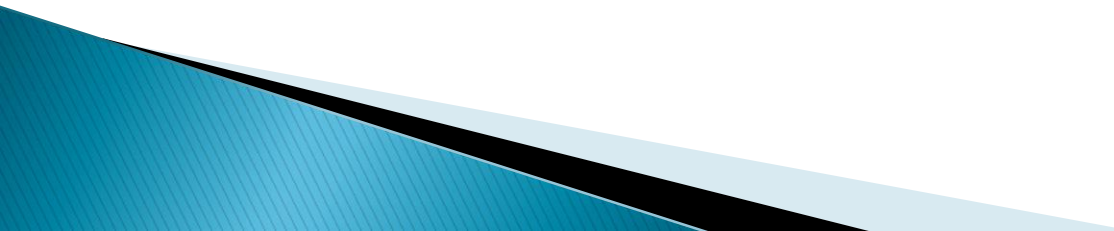
Example

- ▶ 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
- 

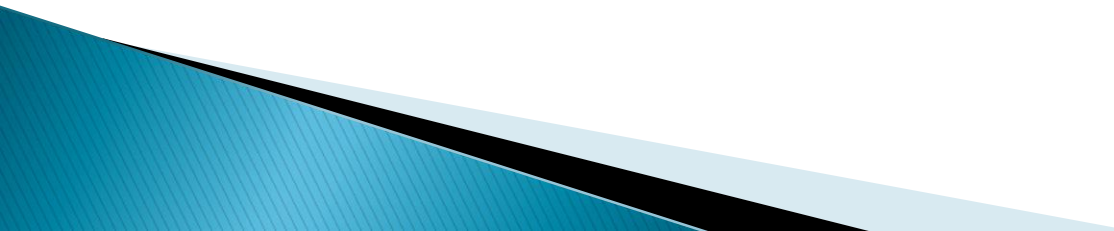
Abetment

- ▶ 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

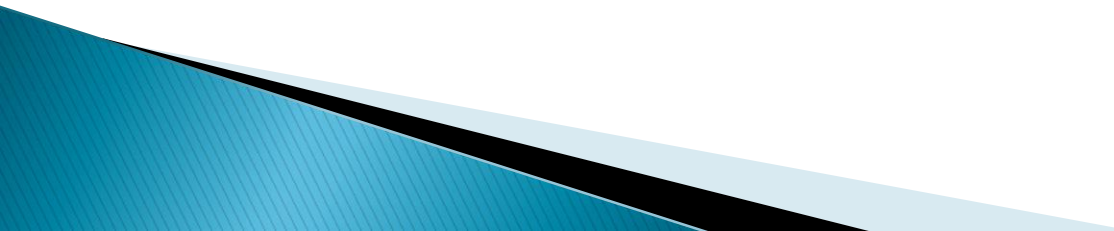
By instigation

- ▶ 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.

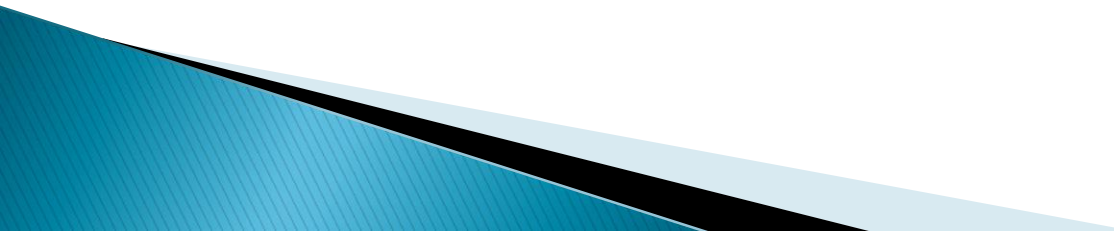
By conspiracy

- ▶ 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.
- 

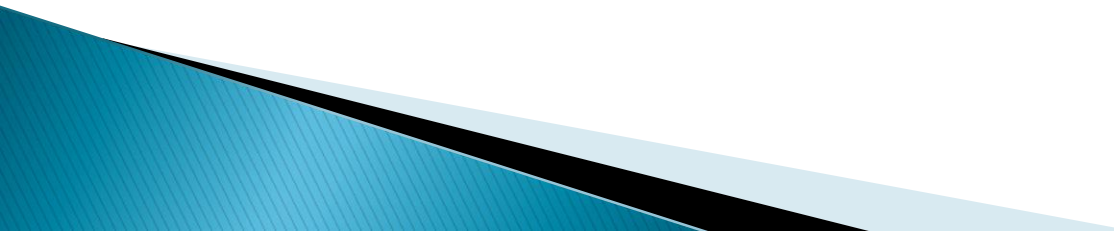
Conspiracy

- ▶ 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.
- 

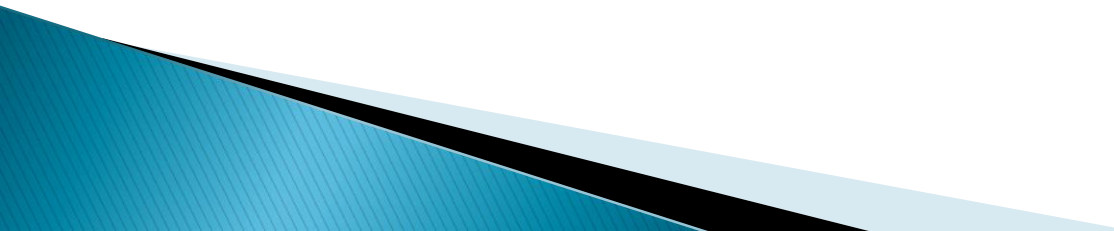
Overt act not necessary

- ▶ 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.
- 

Kehar Singh Case

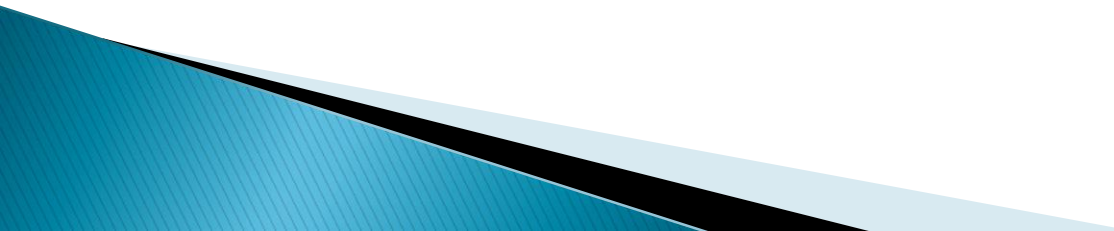
- ▶ Conspiracy under s 107(secondly) requires overt act.
 - ▶ Every Sikh member cannot be a conspirator simply because he is angry against blue star operation. There must be evidence of agreement. No such evidence against Balbir Singh. Confession of Satwant Singh could not be used against B.
- 

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

Offences against Property

Cheating: Sec 415

Definition Sec 415:

Whoever by deceiving any person, induces the person so deceived

a) **Fraudulently or dishonestly**

- i) to deliver any property to any person
- ii) to consent that any property shall retain any property

b) **Intentionally**

- i) to do or omit to do something if he were not so deceived.
- ii) such act, or omission causes or is likely to cause damage or harm to that person in body, mind or reputation or property.

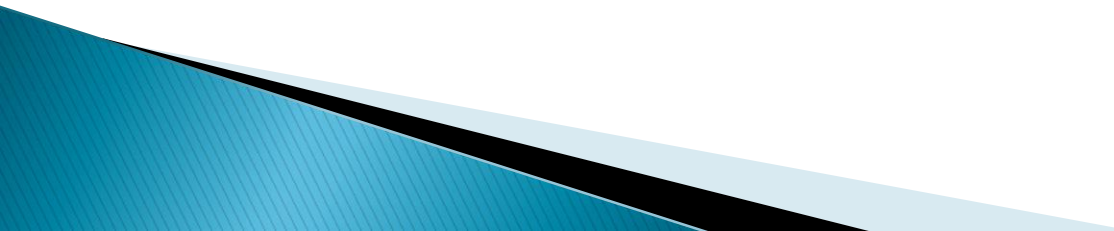
Difference between Cheating and Extortion Sec 383

Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha
Maharaj
Vs.

State of Andhra Pradesh & Ors., AIR1999SC2332

- ▶ A approached a swami who represented to have divine powers to heal the sick for treating his 15 year old dumb daughter. Swami gave the assurance that she will get cured and demanded 1 lakh of rupees.
- ▶ As a first installment 10 ,000 was to be paid after bargaining it was settled to 5000 Rs.
- ▶ Swami gave some time limit which got exceeded but the girl did not show any improvement.
- ▶ Police closed the case a mistake of fact.

Abhyananda Mishra v. State of Bihar

- ▶ Mishra sends an application to Patna University to write MA Examinations.
 - ▶ He in his application stated that he was BA pass and also working as a teacher in some govt school.
 - ▶ He was actually debarred in BA Exams.
 - ▶ The application was issued to him. He filled the form and sent it to the university.
 - ▶ Hall ticket was issued to the address of the headmaster of the govt school.
- 

Judgment

- ▶ Fathers and priests praying in churches and temples: If somebody offers his prayers to God for healing the sick, there cannot normally be any element of fraud. But if he represents to another that he has divine powers and either directly or indirectly makes that another person believe that he has such divine powers, it is inducement referred to Section 415 of the IPC.
- ▶ Anybody who responds to such inducement pursuant to it and gives the inducer money or any other article and does not get the desired result is a victim of the fraudulent representation. Court can in such a situation presume that the offence of cheating falling within the ambit of Section 420 of the IPC has been committed.

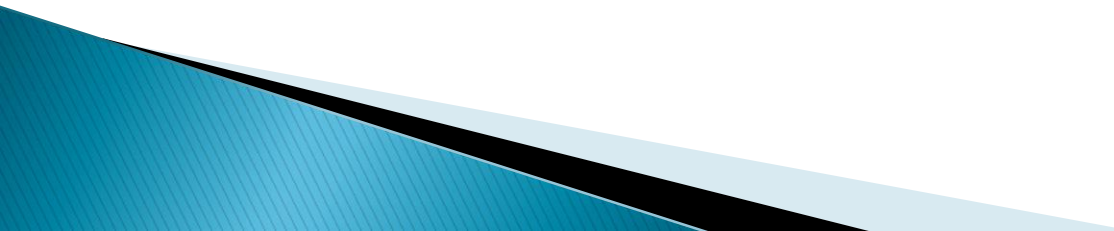
Criminal Appeal Nos. 906 and 910 of 1998,
Decided On: 16.05.2008

S.Mohan v. Central Bureau of Investigation

- ▶ In the year 1992, certain irregularities were detected in various security transactions that had taken place between certain financial institutions.
- ▶ The Reserve Bank of India constituted a Committee known as "**Janakiraman Committee**" to look into the real nature of these transactions and to find out if any fraud or financial irregularities had taken place in these transactions.
- ▶ It appears that in the course of the enquiry by the "**Janakiraman Committee**", it was found that large scale irregularities and malpractices were noticed in transactions both in the Government and other securities, indulged in by some brokers in collusion with the employees of various banks and financial institutions.

- ▶ These irregularities and malpractices had led to the diversion of funds from banks and financial institutions to the individual accounts of certain brokers.
- ▶ The Central Bureau of Investigation(CBI) made enquiries generally regarding all security transactions.
- ▶ The CBI after investigation of the case filed a report against four accused before the Special Court alleging that these accused were responsible for causing loss of Rs. 33 crores to **Canara Bank** and various other allegations were also made against these accused. Accused No. 1 was the **Executive Vice President** and Chief Dealer, Accused No. 2 was the Asst. Vice President and Accused No. 3 was the Asstt. Vice President and Dealer, of Canbank Financial Services Ltd. at the relevant point of time. Accused No. 4 was a Share and Securities Broker.

Corruption the major problem ?

- ▶ Sec 161- 165 repealed by the Prevention of Corruption Act 1988.
 - ▶ How to deal with?
 - ▶ **Prevention of Corruption Act, 1988.**
 - ▶ Special judges to try the case under the Act.
 - ▶ **Taking gratification, criminal misconduct by public servant.**
- 

2(c) "Public Servant" means– Prevention of Corruption Act, 1988

- ▶ (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- ▶ (ii) any person in the service or pay of a local authority ;
- ▶ (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;
- ▶ (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
- ▶ (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;
- ▶ (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;
- ▶ (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- ▶ (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

- ▶ (ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;
- ▶ (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;
- ▶ (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;
- ▶ (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.
- ▶ Explanation 1.—Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.
- ▶ Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

- ▶ 13. Criminal misconduct by a public servant
- ▶ (1) A public servant is said to commit the offence of criminal misconduct,–
- ▶ (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or
- ▶ (b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or
- ▶ (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

- ▶ (d) if he,—
 - ▶ (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
 - ▶ (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
 - ▶ (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
- ▶ (e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.
- ▶ Explanation.—For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.
- ▶ (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

Offences by or relating to Public Servants :

Personating a Public Servant: Sec 170

- ▶ The accused falsely pretended to be or personated to be a Public Servant.
- ▶ He did so knowingly
- ▶ While assuming such a character he did, or attempted to do, something under the colour of such an office.
- ▶ *Practice and Procedure : Cognizable, non-bailable, non compoundable, Triable by any Magistrate.*
- ▶ representing him as a CID Officer writes a letter to 'B' promising that he would be recommended for the post of police constable. *Lakshminarayan Tripathy v. Emperor* (AIR 1943 Patna 378).
Under the colour of the office:
 - ▶ A police constable collects money from a fruit seller.
 - ▶ Mr Sanjay posing as the Income tax commissioner collects money.

Jata shankar v . State of Rajasthan (2000)

- ▶ Accused – ASI– in education department –
forged a letter – issued by director education
– directing the payment of salary of others to
the accused. Conviction under sec 170.

Wearing a garb or carrying token by Public Servant with fraudulent intent :Sec171

- ▶ The accused wore a garb or carried a token resembling the garb or token used by a certain class of public servants.
- ▶ The accused did not belong to that class of public servants.
- ▶ He wore the garb or carried the token with the intention or knowledge that it was likely to be believed that he was such a public servant.
- ▶ Case: 'A' carries a police jacket under the arms and goes to a fruit market.
- ▶ *Practice and Procedure: cognisable, bailable and non compoundable.*

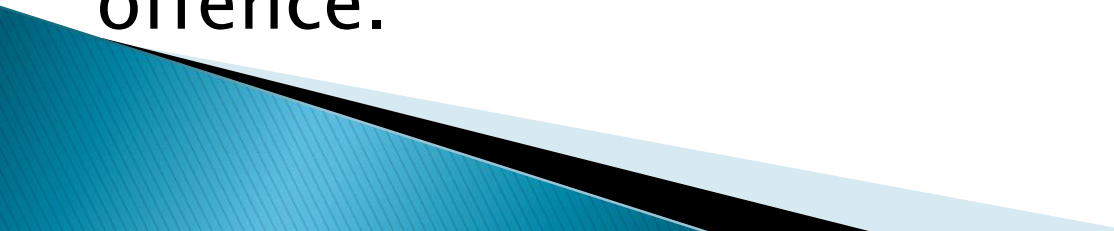
Offences relating to Elections:

Chapter IX-A

- ▶ Sec 171-A to 171 - I (9 Sections).
- ▶ Five offences:
 - Bribery(171 B)
 - Undue Influence(171 C)
 - Personation(171 D)
 - Publication of a false statements of fact (171 G)
 - Failure to keep accounts(171 I)
- ▶ Definitions and punishments are given in separate provisions.
- ▶ Representation of the People Act, 1951, Election Tribunals..Final High Courts and the SC Art 226 or Art 136 of Constitution of India.
- ▶ Suggestion of the 170th Report of the Law Commission of India.

- ▶ In England the present Act applicable is “Representation of peoples Act, 1949”.
- ▶ The first statute was Corrupt Practices Prevention Act 1854 (Parliament elections).
- ▶ Earlier it was a common law offence.
- ▶ Case Study: Allahabad High Court found Mrs Gandhi guilty of corrupt practices in the election and annulled her candidature. Extensive amendments in Representation of Peoples Act, Election Laws, Imposition of Emergency...*Indira Gandhi v. Raj Narain* AIR 1975 SC 2299.

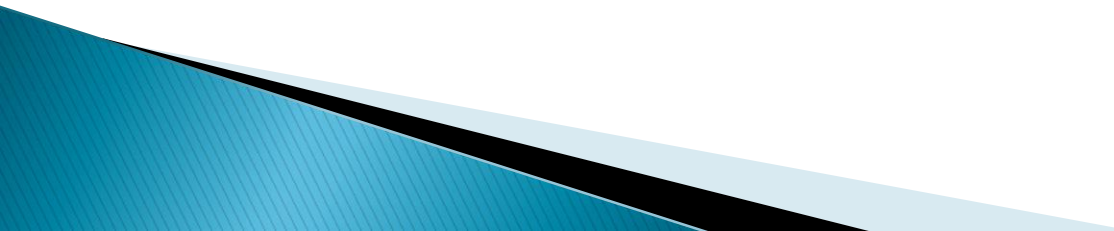
Bribery: Sec 171 B.

- ▶ Any person who ever gives any gratification to any person with the object of inducing him or any other person to cast electoral right or not to vote, to stand or not to stand in the election .
 - ▶ The person who accepts the gratification is also equally guilty.
 - ▶ *Proviso*: declaration of public policy or a promise of public action shall not be an offence.
- 

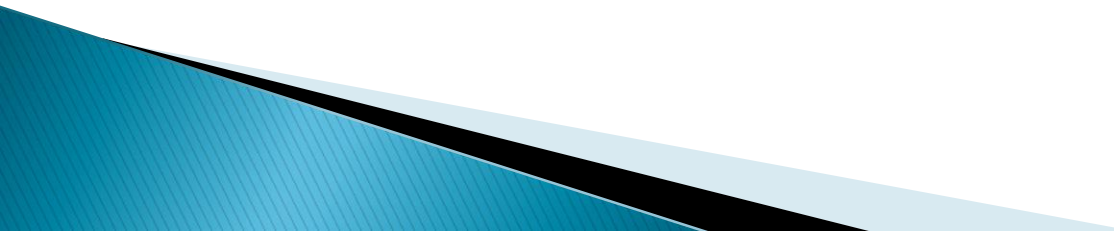
Gratification:

- ▶ any material advantage to the accused.
- ▶ Two tests: first the gratification must be something which is calculated to satisfy a person's aim, object or desire.
- ▶ Such a gratification must be of some value though it need not be something estimable in money.
- ▶ Treatment (Food, Drink, entertainment provision) is a form of Bribery. (Sec 171 E)

Section 123(1) of Representation of peoples Act.

- ▶ Section 123(1) defines the corrupt practice of "bribery" and by clause (B) receipt of, or agreement to receive, any gratification, whether as a motive or a reward –
 - ▶ (a) by a person for standing or not standing as, or for withdrawing from being, a candidate; or
 - ▶ (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw his candidature.
- 

Instances of Bribery:

- ▶ Where the motive is corrupt and the object of giving gratification is to vote in a particular way it is “Bribery”.
 - ▶ Promise of situation or employment.
 - ▶ Offer to vacate an office in favour of the bribe.
 - ▶ Payment of traveling and conveyance expenses.
 - ▶ Payment made to keep away the voters from voting.
- 

What is not a Bribery?

- ▶ Making payment to election agents.
- ▶ Payment of election expenses to the candidate.

Case Study:

A (candidate) wrote a letter to his agent asking him to induce his opponent candidate to withdraw from the contest, the agent wrote a letter to the candidate to withdraw from the contest offering him large sum of money (Moulvi Ahmed Kabir Chowdary v. Emperor AIR 1938 Cal 274).

- ▶ Case study:
- ▶ A leaflet published by the candidate Mohan Singh against Bhanwarilal two hours before the election and distributed. The caption of that leaflet is "The surety (security) of Shri Nahata has to be forfeited because he has defrauded the public and has shown his face after five years to take votes." "dhoka diya"; it means "misled".
- ▶ The caption is followed by a photograph of Mohan Singh together with his election symbol and it is stated that the ballot paper of Mohan Singh is of pink colour and that the election symbol is the picture of a lamp.
- ▶ "Sitamau constituency has awakened. Nahata (Bhanwarilal) has run away. Shinde, Kishen Gupta Patil Patel, you may safeguard the interests of your Bhanwarilal Nahata as much as you like but his surety (security) is sure to be forfeited."
- ▶ Mohan Singh v. Bhanwarilal, AIR1964SC1366

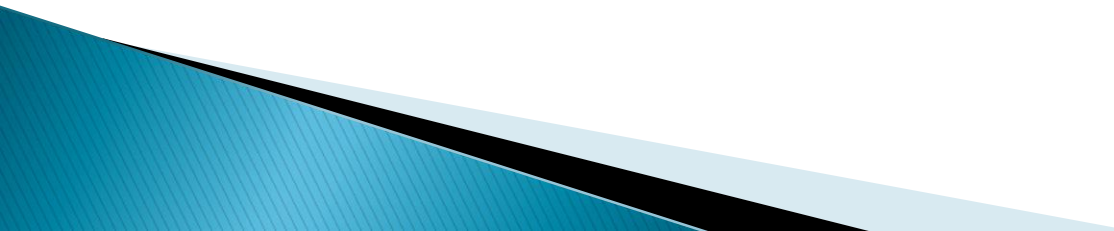
Undue Influence: Sec 171 – C.

- ▶ Essentials:
 - 1) Voluntary Interference.
 - 2) Attempted Interference.
 - 3) with the right of any person to stand, or not to stand, or with draw from being a candidate, or to vote or refrain from voting.
- ▶ Threatening any candidate with any injury or induces or attempts to induce with divine pleasure or spiritual censure.

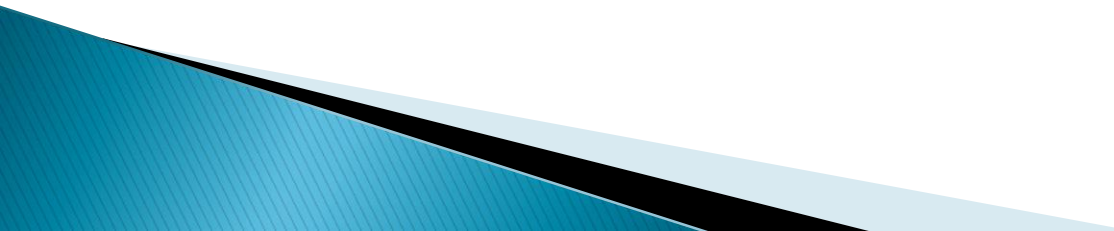
Case Study:

- ▶ Raja of Puri, canvassed that he is the representative of Puri Jagannath and people who doesn't vote him commit a great sin against the God. *Raj Rajdeb v. Gangadhar Mahapatra* (AIR 1964 Ori 1): Offence Under 171f and 171 C.
- ▶ A letter addressed by Mrs. Indira Gandhi, to all the members of parliament to vote for a candidate belonging to her party for the office of the President. *Baburao Patel v. Zakir Hussain*, AIR 1968 SC 904.
- ▶ Agents of VV Giri distributed pamphlets making serious allegations against Sanjeeva Reddy the opponent. Ministers threatened that they would loose the patronage of High Command. Threatening Muslims that as Sanjeeva Reddy belongs to Jansang the fate of the muslim community gets sealed. *Shiv Kirpal Sangh v. VV Giri*. AIR 1970 SC 2093.

Contd...

- ▶ A religious priest gives his views that a particular candidate is more worthy of confidence of voters.
 - ▶ A **Priest issues a direction or Furman** and calls upon voters to vote for only a particular candidate and any disobedience will cause divine pleasure.
- 

Sec 171 –D and F: personation at an election and punishment .

- There was an election to a public body.
 - The accused applied for a voting paper
 - Voted in the name of another voter
 - Having voted once applied again for a voting paper in his own name
 - He procured, **attempted to procure or abetted** the voting by any person in any such way.
- 

▶ Case Study:

- ▶ Accused enters the polling booth and hands over a slip of paper to the polling officer on which the name of a person “Pavithran” was written. He was booked under sec 171F for applying for the ballot paper. Accused was not a voter in that constituency and he is not pavithran.
- ▶ Whether handing over a slip amounts to applying for the ballot paper?
- ▶ E. Anoop v. State of Kerala
2007 Cr.L.J 2968.

False Statement in connection with an election: Sec 171 – G.

- ▶ Essentials:
- ▶ Election Process has commenced.
- ▶ The accused made or published a statement in relation to the personal character or conduct of any candidate.
- ▶ Such statement was false and the accused either knew or believed it to be false or did not believe it to be true.
- ▶ **Purpose:** He made it or published it with the intention to influence the outcome of the election.
- ▶ Mr X has four wives and six concubines in the same constituency.

Case Study:

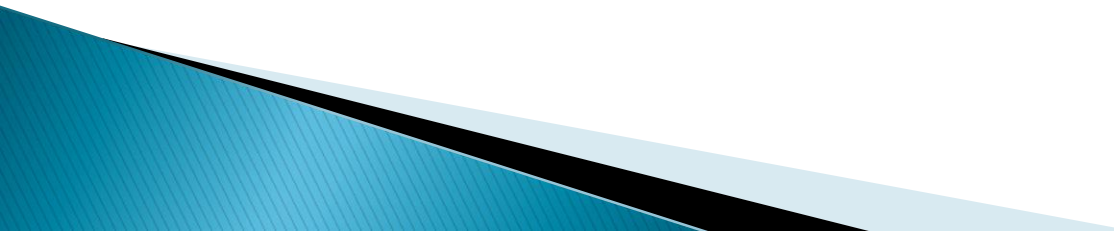
- ▶ **Mr Bhanj Deo was disqualified by Andhra Pradesh High court following a petition questioning his tribal status. The court ruled that Mr Deo could not be considered as a member of the Scheduled Tribe (ST) and disqualified him.(Saluru Constituency TDP MLA).**
- ▶ **Peedika Rajanna Dora v. Rajendra Prathap and Anr. 2006(4)ALD574**

Failure to Keep Accounts:

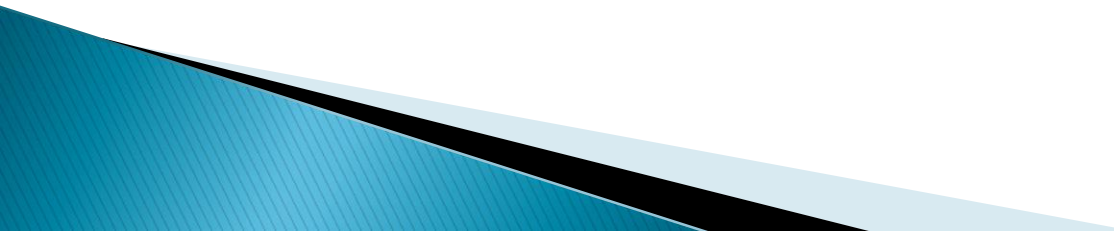
- ▶ Sec 171 – I declares it as an offence.
- ▶ Sec 77 of Representation of peoples Act.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS :

Chapter– X

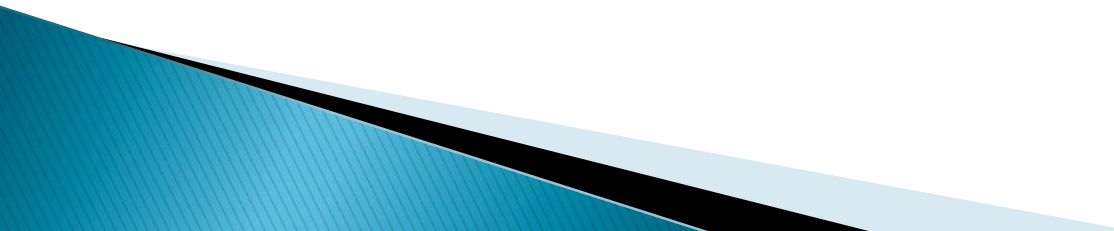
- ▶ 19 sections.
 - ▶ Courts of Justice, **Officers of Revenue** and Police.
 - ▶ Public Officers have certain rights and privileges.
- 

Seven Groups of offences

- ▶ Disobedience to summons (172–175)
 - ▶ Omission to give information and furnishing false information (176–177)
 - ▶ Refusing to take oath (178–180)
 - ▶ False Statement on oath, False statement to injure (181–182)
 - ▶ Obstruction of, and omission to assist a public servant (183–187).
 - ▶ Disobedience to the order of the Public Servant (S 188).
 - ▶ Threat of injury to a public servant (189–190)
- 

Absconding to avoid service of summons of other Proceedings: Sec 172.

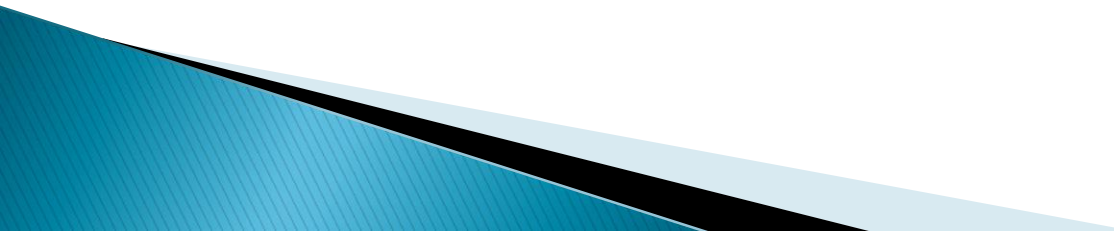
✓ **Summons:**

- ✓ Sec 61 form of summons.
 - ✓ Sec 62: how served?
 - ✓ Sec 64 :Person not found.
 - ✓ Sec 65 : persons not found.
 - ✓ Sec 66: Govt Servants.
- 

Contd.,

- ▶ Section divided into two parts:
 - First Part: Summons, Notice or order had been issued.
 - It was issued by public servant.
 - Who was legally competent to issue it.
 - That it was issued to be served on the accused.
 - that the accused had absconded to avoid being served.

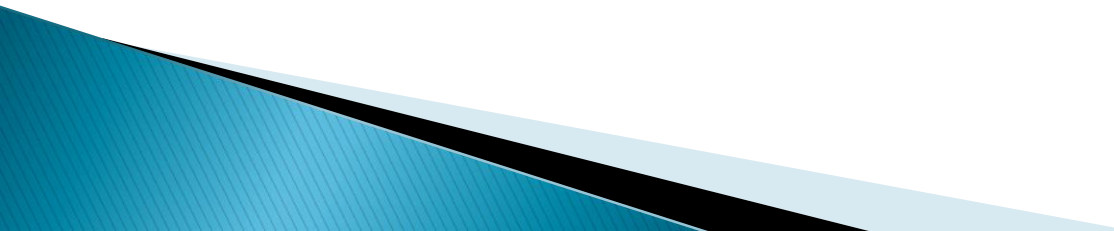
Second Part:

- ▶ the aggravated form of the same offence.
 - ▶ The process required the attendance of the accused either personally or by his agent or required the production of a document by him.
 - ▶ Such attendance or production was to be made in a court of justice.
- 

Case study

- ▶ An officer holding the enquiry into the misconduct of such imputed servants. Held authority is implied. Madapusi Srinivasa Ayyengar (4 ILR Mad 393)
- ▶ Juvenile Justice Board, Human Rights Commission, Women's commission, Nanavathi commission.

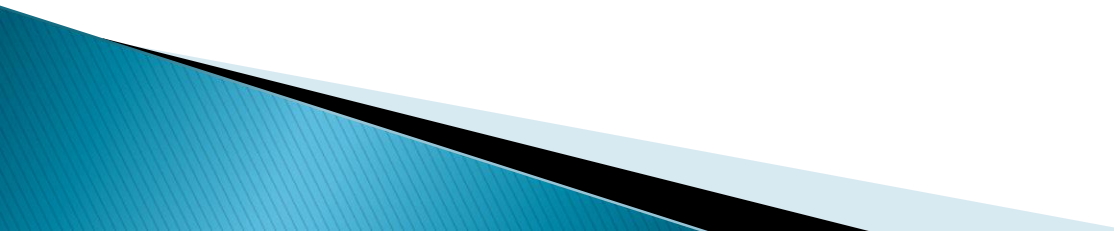
Preventing the service of Summons: Sec 173.

- ▶ **Mode of Service:**Sec 62 Cr.P.C. served personally, sign and receipt shall be given.
 - ▶ The process in question was a summons, notice or order or a proclamation by a public servant.
 - ▶ Four offences:
 - ▶ 1. **Prevention of service of summons.**
 - ▶ 2. **Prevention of lawful affixing of summons.**
 - ▶ 3. **Removing of such summons after affixation.**
 - ▶ 4. **prevention of the lawful making of any proclamation.**
- 

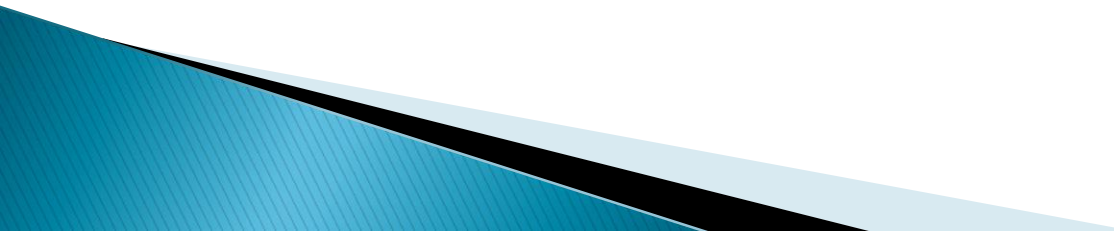
Non attendance in Obedience to an order from Public Servant:Sec 174.

- ▶ In civil cases the case is decided *exparte*. In a criminal case it is almost mandatory. But depends on the nature of the statute according to which summons are issued.
- ▶ Summons issued by a competent public servant.
- ▶ The person bound must be legally bound to attend at a certain place and time in answer.
- ▶ Two offences 1) intentionally omitted to attend at that place and time 2) departed from the place before the time at which it was lawful for him to depart.

Contd.,

- ▶ Complaint by the Public Servant or Court is necessary.
 - ▶ Applicable to both accused and witness.
 - ▶ Omission to produce electronic record. Sec 175
- 

Case Study:

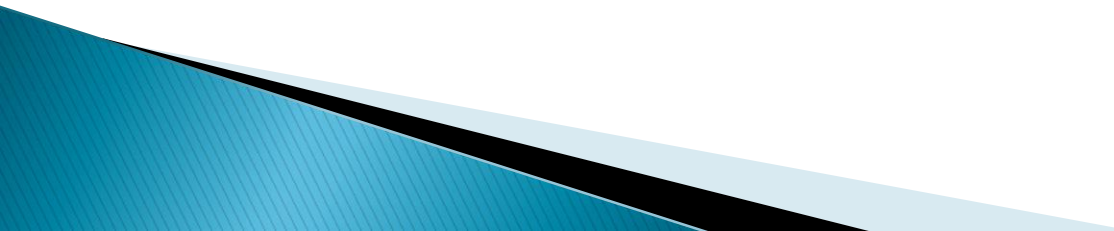
- ▶ Courts summons in civil and criminal cases.
 - ▶ An advocate summoned to appear before a magistrate on a charge under the Motor Vehicles Act was unable to obey summons as he was engaged in arguing a case in the High Court sent another advocate to ask for an adjournment. *J.R. Dass v. King Emperor*, AIR 1924 Rang 35.
- 

Omission to give information to Public Servant: Sec 176.

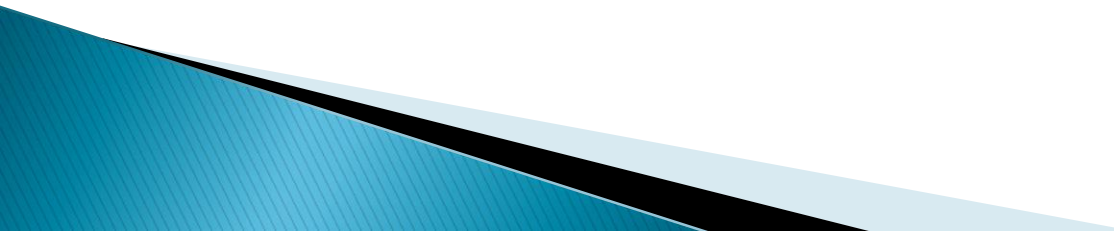
Essentials:

1. There is a legal obligation
2. Intentional omission to give notice or information.
 - ▶ A village headman did not report the police about the suicide of a young man according to sec 40 of Cr.P.C Sridhar v. State AIR 1954 HP 67.
 - ▶ Essentials of Sec 176: the accused was under legal obligation to furnish information to the Public Servant.
 - ▶ He intentionally omitted it.
 - ▶ Aggravated form: the notice of information was regarding the commission of offence, was required to prevent the commission of offence, for the apprehension of an offender.
 - ▶ Indian Income Tax Act (1961) S 94(6) 133.

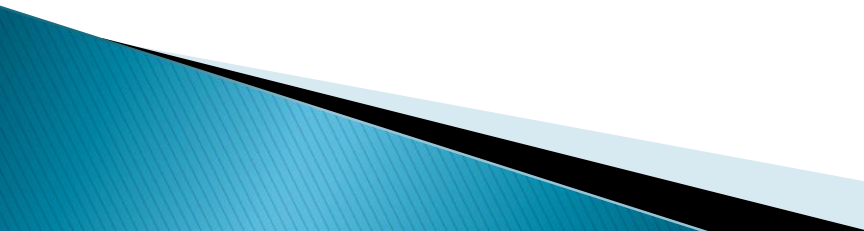
Furnishing False Information: Sec -177.

- ▶ The accused who was legally bound to furnish the information, gave false information **knowingly or having reason to believe that it was false.**
 - ▶ Aggravated form if such information was with respect to the commission of the offence.
- 

Cases:

- ▶ A not being bound to furnish information of an offence, falsely informs the police that an offence has been committed.
 - ▶ A makes an entry in his official diary to the effect that he was on duty in a particular place on a particular day which was untrue.
 - ▶ A purchases a stamped paper and gives the vendor there of a false name.
- 

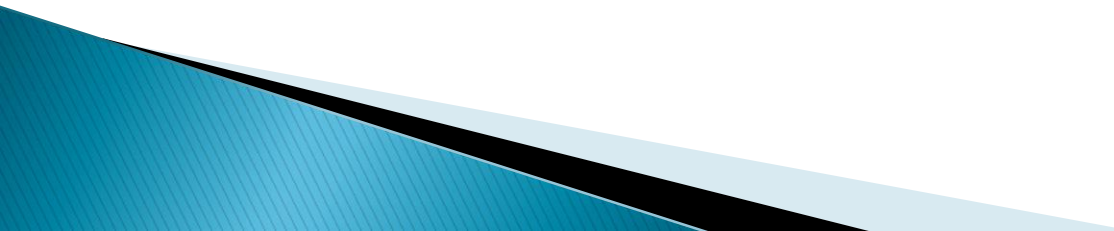
- ▶ (a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

 - ▶ (b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause, 5, section VII, 96 [Regulation III, 1821], of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the later part of this section.
- 

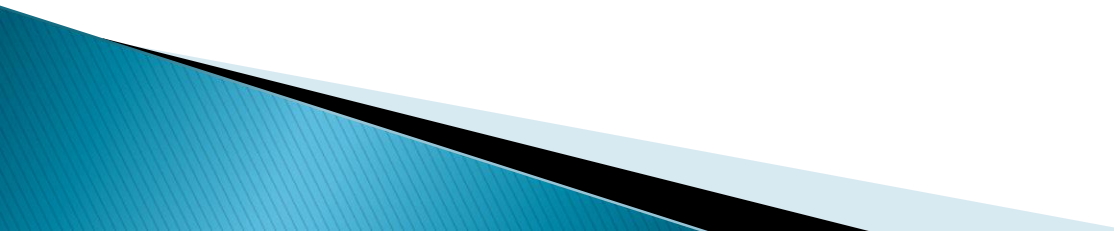
Refusing OATH or affirmation when duly required by public servants to make it.– Sec 177

- Sec 4 of Indian Oaths Act, 1969 makes it compulsory to all witnesses, interpreters and jurors.
- Perjury.(Giving false information before the court).
- Refusal to take an oath is made an offence.
- The public servant shall have the competency to administer the truth.
- Refusal to take oath in a court : an offence: : contempt of court: procedure summarily tried: u /sec 345 of cr.p.c.

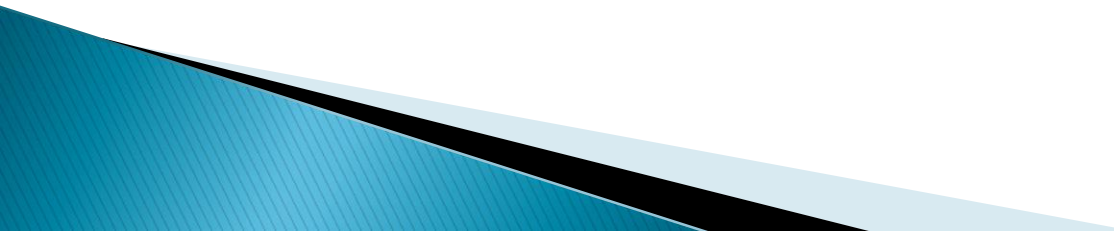
Case study

- ▶ Mr.Laddu was called as a witness to the court after chief examination he was again called for cross examination. He refuses to take oath in cross examination. *Jibichhah Shah v. State of Bihar AIR 1965 Patna 331.*
 - ▶ Mrs. Savithri, refuses to take oath because her husband refused her to do so.
- 

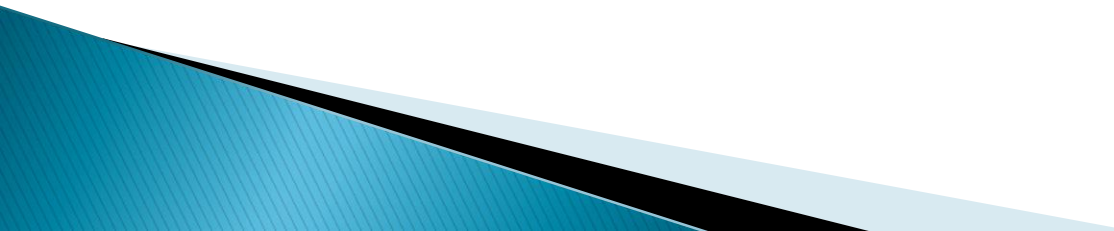
Refusing to answer public servant authorised to question: Sec 179

- Essentials: 1) the demanding authority must be a public servant.
 - 2) the demand must be to state the truth on a subject on the exercise of legal powers.
 - 3) The accused was legally bound to state the truth and wilfully refused to do so.
 - Nandini Satapathy v. PL Dhani, AIR 1978 SC 1025.
 - Self Incriminatory question Art 20 (3)
 - Mensrea : wilful refusal.
- 

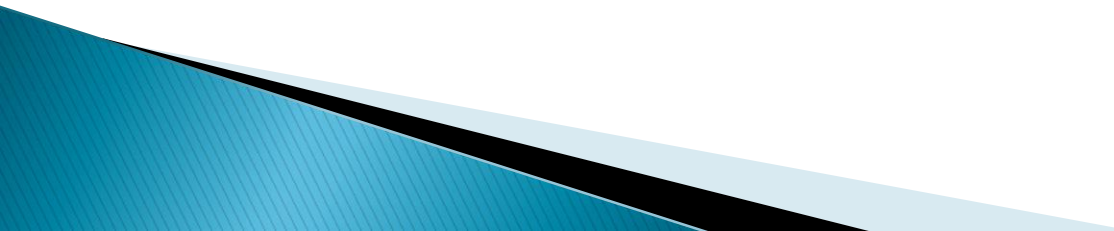
Exceptions to the general rule of stating the truth: Privileged Communications: Indian Evidence Act 1872.

- Communications during the subsistence of marriage.
 - Affairs of State.
 - Official Communications.
 - Confidential communications with legal advisors.
 - A was asked to give his grand father's name. he says he did not remember. Kallu v. Emperor. AIR 1926 Lah 240.
- 

Refusing to sign Statement: Sec 180.

- After the statement is given in writing or after reduced to writing refusal to sign the statement is an offence.
 - Witnesses and accused persons were required to sign their statements.
 - Civil Case : O18 r5 CPC, after deposition judge will have to sign not the witness.
 - Criminal Case : 162 statements made to police officers should not be signed.
- 

Contd...

- ▶ Sec 154 : statement shall be signed.
 - ▶ Sec 164: Confession made to a Magistrate shall be signed.
 - ▶ Sec 200: Complaint shall be signed.
- 

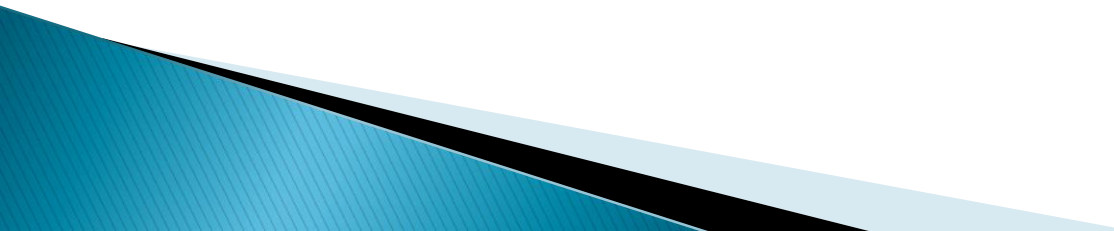
Making False Statements to the Public servants on oath : Sec: 181 .

- The accused took an oath.
 - He is legally bound to state the truth.
 - PS authorised to administer the oath.
 - The statement made by the accused touching the subject was false. (Zaheer Sheikh, Jessical Lal, Nitish Katara, Priyadarshini Mattoo).
 - Problem of Hostile Witnesses.
 - Court shall not take cognizance unless complaint filed by the P.S.
- 

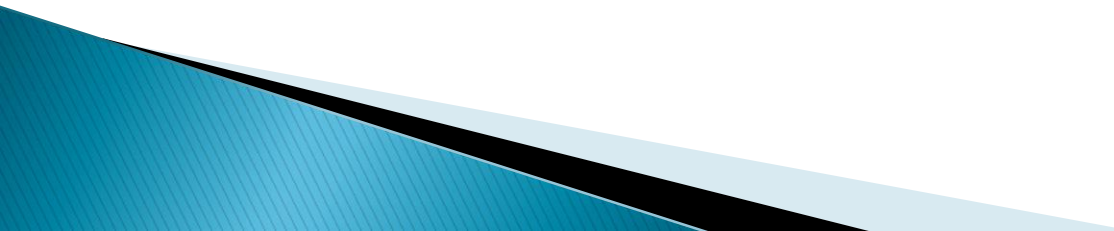
False information with intent to cause public servant to use his lawful power to the injury of another person: Sec 182.

- The giving of false information.
 - To a Public Servant.
 - Which the informant knew or believed to be false.
 - Which he gave to influence the PS (a) to act otherwise than he would have acted (b) to use his lawful power to the injury or annoyance of any person.
 - The offence is complete when the false information has been knowingly given whether the Ps was misled by it or not.
- 

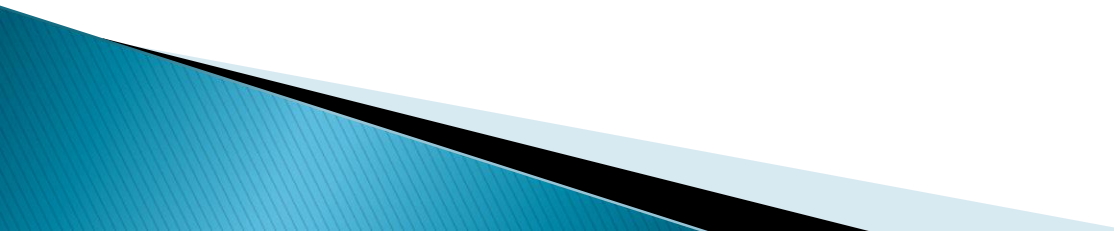
Contd....

- **False insurance claims:** Fake complaints to police about robbery or arson.
 - Injury Sec 44 : injury denotes any harm whatever illegally caused to any person in body, mind, reputation or property.
- 

Resistance to the taking of property by the lawful authority of P.S. Sec 183.

- ▶ Offering resistance to the taking of any property.
 - ▶ Resistance means “physical obstruction” mere passive refusal not resistance.
 - ▶ To a public servant.
 - ▶ Knowingly or has reason to believe that he is a public servant.
- 

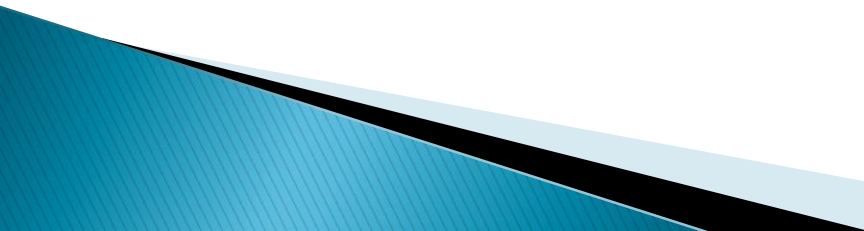
Contd...,

- ▶ Seizure of property by police.
 - ▶ Seizure of property by revenue officers, Banks etc.,
 - ▶ Right to Private Defence (Sec 96 to 106) x Sec 183.
- 

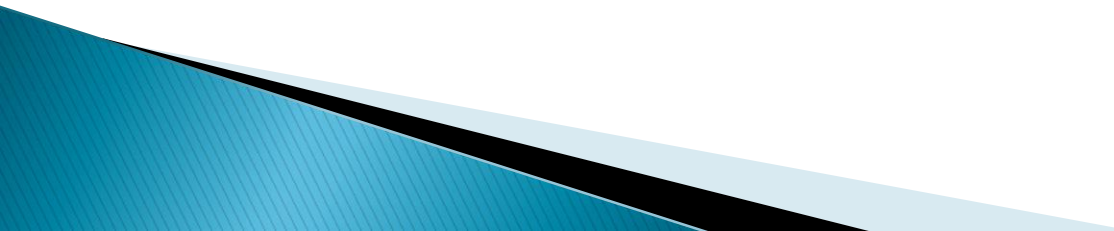
Obstructing sale of property offered for sale by authority of Public Servant: Sec 184

- Attachment of property:
- Insolvency
- Winding up of company
- Receiver appointed, conducts auction to sell the property.
- Any obstruction to sell the property .
- Mere threats not an obstruction unless accompanied by physical force.
- A public sale was being conducted , the owner of the property posted placards in the way protesting the *sale*.
- *King Emperor v. Gopal Rai, 1905.*

Illegal purchase or bid for property offered for sale by authority of public servant: Sec 185.

- Collector was conducting a public auction. A person participated in the bidding with false name. (intention of the accused was not to perform the obligation).
 - Any Sale of property conducted by PS.
 - ANY PERSON PURCHASES OR BIDS FOR THE PROPERTY for himself or on behalf of any other person who is legally incompetent .
 - Benami transactions.
 - With the intention to not to perform the legal obligations.
- 

Obstructing the Public Servant in discharge of public functions: Sec 186.

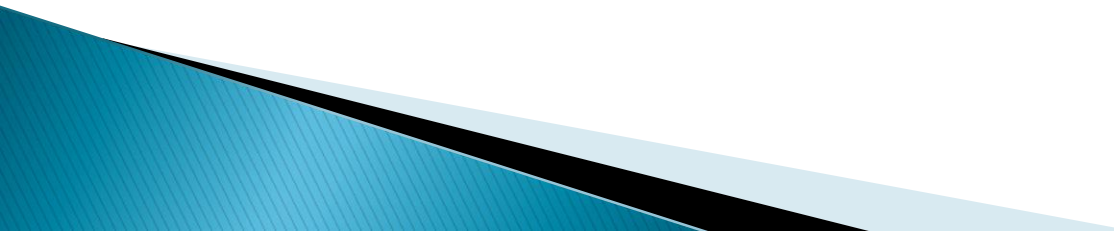
- ▶ **Essentials:**
 - ▶ There must be an obstruction.
 - ▶ The obstruction must be by the accused.
 - ▶ It must be voluntary.
 - ▶ It must be to a public servant.
 - ▶ The obstruction must be in the discharge of his public functions.
- 

- Running away to evade arrest.
- A traffic constable was clearing the congested traffic. Mr. Singh became angry, showed him red eye and asked him to give his number persistently. He placed his hand on the uniform of the police and pushed him back.

State of West Bengal v. Harjit Singh, 1858 / Cal LJ.

- ▶ A in order to avoid payment of toll drove a motor bus by a side track and did not stop the bus when signaled to do so.
- ▶ obstruction must be voluntary. Sec 39.

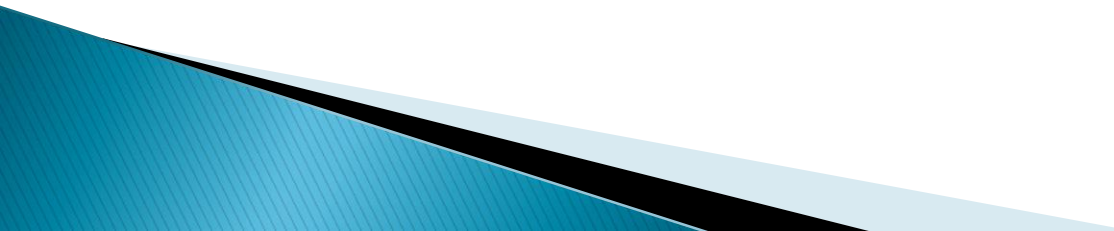
Omission to assist public servant when bound by law to give assistance. Sec 187.

- ▶ Essentials: Clause 1:
 - ▶ the accused was bound by law to assist the public servant.
 - ▶ The person to be assisted was a ps.
 - ▶ He was then in the execution of his public duty
 - ▶ The accused omitted to give such assistance.
 - ▶ He did so intentionally.
- 

Clause (2)

- ▶ The assistance required was demanded
 - A) for the purpose of executing a legal process of a court of justice.
 - B) for the purpose of preventing the commission of offence.
 - C) for the purpose of apprehending an offender.
- * **on being arrested a man lay down on the ground and refused to move. The constables demanded the assistance of mukhia and patwari of the village they refused to help them and showed sympathy with the accused.**

Disobedience to the order duly promulgated by public servants: Sec 188.

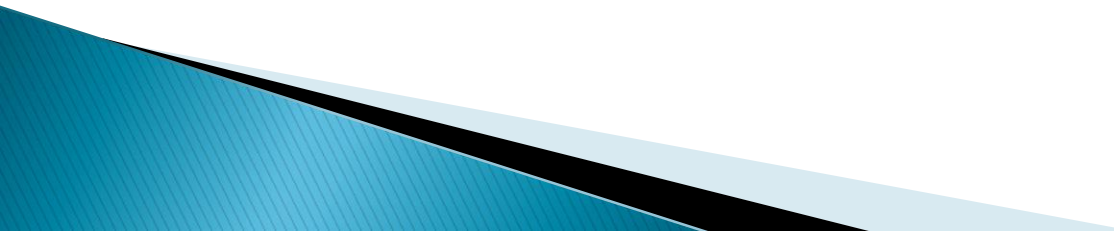
- ▶ An order given by the collector to not to lead a particular religious procession in a particular lane. If the order is not obeyed the accused has committed an offence under this section.
 - ▶ Aggravated form of offence: if that disobedience causes injury, annoyance or obstruction.
 - ▶ Uma Bharathi Violation sec 144 in Bangalore leading to the death of four people.
 - ▶ Praveen Bhai togadia: trishul procession-banned.
- 

Threat of injury to the PS. Sec 189

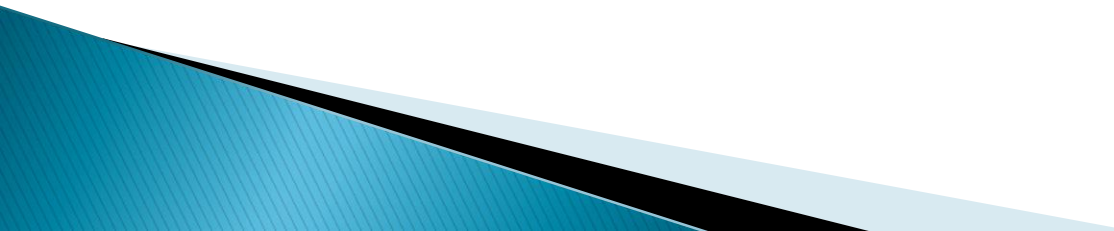
- ▶ The accused held out a threat.
- ▶ The threat was directed against a PS or a person in whom the accused believed the PS to be interested.
- ▶ The threat was of injury.
- ▶ The object of the threat was to induce the ps to do or forbear, delay in doing an act connected with the exercise of his public functions.
- ▶ Tamilnadu: Jailor was burned alive inside the jail

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE :

Chapter IV

- ▶ Evidence: oral or documentary.
 - ▶ Perjury Sec 191 : Giving False Evidence:
 - ▶ A person who is legally bound by law or by oath makes a false statement knowingly.
 - ▶ Illustrations:
 - ▶ Sec 164 : statements or confessions : retracted.
- 

Issuing or Signing False Certificates: Sec 197.

- ▶ PUBLIC SERVANT
 - ▶ Knowing or believing that the material point of the certificate is false.
 - ▶ Either issues the certificate or signs it.
- 

THANK YOU
AND
GOOD LUCK

