

LL.B(3 YEAR.) SEM-2 UNIT-2

LAW OF CRIMES –II

Syllabus-Offences against women – Obscene acts and songs. Outraging the modesty of women, Rape, Cruelty by husband or relatives of husband, Offences relating to marriage.

Q.1- What do you mean by ‘Obscene acts and songs’? Examine the test of obscenity with the help of the relevant cases.

Q.1.(a)- What do you mean by obscene acts and songs?

Ans. Under the Indian Penal Code (IPC), Sections **292, 293 and 294 deal with the offence of obscenity.**

- **Section 292** says that any content shall be deemed to be obscene if it is lascivious or appeals to the prurient interest, or if its effect tends to deprave and corrupt persons likely to read, see or hear the content.
- This section **prohibits the sale or publication** of any obscene pamphlet, book, paper, painting, and other such materials.
- **Section 293 criminalises the sale or distribution of obscene objects** to anyone who is under the age of 20, or an attempt to do so.
- Although it is a bailable offence, the maximum punishment for the first conviction is **three years of imprisonment** and a **fine up to Rs 2,000**, and for the second conviction seven years with a fine up to Rs 5,000.

Q.1.(b)- Name the tests of obscenity.

Ans. There are mainly three tests to check the content or any art or gesture is really obscene or not.

- Miller test(**Miller v. California (1973)**)
- Hicklin Test(**Regina v. Hicklin (1868)**)
- Community standards test(**Aveek Sarkar v. the State of West Bengal (2014)**)

Q.1(c) What do you mean by Hicklin test.

Ans.

- **This test is a legal test for obscenity came from the English case Regina v. Hicklin (1868) .**
- **The case totally based on the interpretation of the word “obscene”.**
- In the case Justice Cockburn stated the **Hicklin test of obscenity** as:
 - Whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such influences, and into whose hands a publication of this sort may fall.
 - In simple words, **a work can be considered as obscene if any part of it is proven to degrade individuals** whose brains are open to such influences.

Q.1(d) In which case Hicklin test was introduced in India?

Ans.

- In the case of **Ranjit D Udeshi v. State of Maharashtra (1965)**, Justice Hidayatullah introduced **three modifications** to the Hicklin test:
- **Sex and nudity in art and literature** alone cannot be evidence of obscenity.
- The work must be **evaluated as a whole**, considering both obscene and non-obscene parts.
- **Publication for the public good can be a defence** against the charge of obscenity.
- While applying the **Contemporary community standards test**, the Supreme Court abandoned the Hicklin test in the case of **Aveek Sarkar v. State of West Bengal (2014)**.
- This test states that the evaluation of obscenity should consider the present community standards reflecting the sensitivities and tolerance levels of an average, rational person.

Q.1(e) Discuss the ‘Miller Test’.

Ans.

- Miller test is a famous test applied by the United States of America, it is named after the U.S Supreme Court decision in *Miller v. California* (1973) .
- This test faced challenges with online obscenity cases.
- In this case, Melvin Miller mailed five distrustful brochures to the manager of the restaurant which contained conspicuous images and drawing of men and women engaged in different sexual activities.
- After the manager read the mail, he filed the case of Obscenity against Mr. Miller and he was prosecuted for violating the California Law.
- There are three parts of the Miller test. They are:
 - The average person, enforcing the contemporary *community standards*, would find that work, taken as a whole, appeals to the prurient interest.
 - Whether the work depicts or describes, in a *patently offensive* way, sexual conduct specially defined by the applicable state law.
 - The work, taken as a whole, short of serious *literary, artistic, political or scientific* value.

The work is considered obscene only if all three conditions are satisfied. The first two points of this test are for the standards of the community, and the last point is held to a person of the United State as a whole.

Q.1.(f)- Write a short note on Community standards test.

Ans.

- The scope of obscenity has been significantly reduced by the judiciary over the years. In the *Aveek Sarkar v. the State of West Bengal* (2014)
- the Supreme Court did not apply the British Hicklin test and used the American Roth test instead. As per this test, obscenity was to be evaluated from an average person’s perspective, applying prevailing community standards.
- The contemporary community standards test takes into account the changing values in society and how something which could be considered obscene ten years back would not be considered obscene today.
- The Hicklin test was toppled in *United State v. One Book Called Ulysses* , in 1933, which was taken from an English case which a district judge permitted to allow James Joyce’s “Ulysses” to be sold in America.
- Judge John M. Woosley focused on the Literary value of the entire work and its effects on a person with average sex instincts.
- At that time, the word obscene defined as tending to stir the sex impulsion or to lead to sexually impure and salacious thoughts.
- The government of the U.S appealed Woosley’s decision, but the U.S Court upheld his finding that Ulysses book did not come under obscene material.

Q.2. Discuss the law relating to ‘rape’ as laid down in the Indian Penal Code.

Q.2. (a) When is it said a man has committed rape.

Ans The offence of rape is a serious offence done against the whole society. Sec. 375 defines rape and Sec. 376 provides for its punishment. According to Section 375.

A man is said to commit “rape” if he –

- a. Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- b. Inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- c. Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- d. Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person.

Such Act must be done under any of the following seven circumstances-

1. Against her will.
2. Without her consent
3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or hurt
4. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
5. With her consent when at the time of giving such consent, because of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.
6. With or without her consent, when she is under eighteen years of age.
7. When she is unable to communicate consent.

Q.2. (b) What do you mean by custodial rape.

Ans.

- When any woman is in the custody of any police officer or public servant or in jail and the accused taking the advantage of his official position, commits rape, such sexual intercourse would amount to custodial rape.
- Due to the seriousness of this offence, it provides enhanced punishment.
- The provision of custodial rape is provided in sec. 376(2)(a),(b),(d) and it provides the punishment of rigorous imprisonment up to 10 years which may be for life and also with fine.
- Sec. 376(2)(a) punishes those police officials who commits rape on any woman in their custody in police station or in its premises.
- Sec. 376(2)(b) punishes those public servants who take the advantage of their official position and commits rape on woman in his custody.
- Sec. 376(2)(d) punishes the management or the staff of a jail, remand home or other places of custody, who taking advantage of their official position, commit rape on any inmate of such jail or remand home etc.

Q.2. (c) What is the Punishment for Rape ?

Ans.

- Except in certain aggravated situations, the punishment will be imprisonment of not less than seven years but it may extend to imprisonment for life, and shall also be liable to fine.
- In aggravated situations, punishment will be rigorous imprisonment for a term which shall not be less than 10 years but which may extend to imprisonment for life, and shall also, be liable to fine.

Q.2. (d) Write a short note on Gang Rape.

Ans.. Gang rape(sec 376D)

- Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape
- Such persons shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:
- Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim.

Q.2. (e) Write a note on the case Mukesh & Anr. v State for NCT of Delhi & Ors.

Ans.

- The case is famously known as the Nirbhaya case. In this case, a 23-year-old medical student was returning after a movie with her friend and took a bus.
- On the bus, she was gang-raped by six people and was brutally assaulted. After the rape, she along with her friend were thrown out of the bus naked.
- The girl died while she was being treated in a hospital in Singapore.
- In this case, the Supreme The court awarded death penalty to four of the accused among six.
- One of them being a juvenile was convicted by the Juvenile Justice Board and sent to the correctional home.
- The other one committed suicide before the judgment was delivered.

Q.2. (f) What changes were made in the punishment for rape after the Nirbhaya case.

Ans.

- After this case, the need to amend certain provisions of Section 375 was felt so the Criminal Law (Amendment) Act, 2013 was brought into effect. Under the newly amended section, the punishment of rape is at least seven years which may extend to life imprisonment.
- Any man who is a police officer, medical officer, public officer, or public servant may be imprisoned for at least 10 years if commits rape.
- Where rape leads to the death of the victim or entered into a vegetative state the punishment of life imprisonment extending to death has been prescribed. The punishment for gang rape is at least 10 years.

Q.3. What do you understand by Adultry? Discuss the constitutionality of Sec 497.

Q.3.(a) What do you mean by Adultry?

Ans. When a man does sexual intercourse with a women, whom he has knowledge and reason to believe to be wife of another man , without the consent or connivance of her husband . Such sexual intercourse not amounting to the Rape , is guilty of the offence of adultery .

Essential Element Of Adultery

1. Sexual intercourse must be committed with the wife of another man.
2. The person must have knowledge or has reason to believe that the women is wife of another man.
3. Without the consent or connivance of her husband.
4. Such sexual intercourse must not amount not rap e.
5. Consent or willingness of women is not excuse to the crime of adultery.

Q.3.(b) Discuss important cases on constitutionality of this offence.

Ans. Yusuf Aziz V. State of Bombay 1954 [1]

- This was the first case in which the Adultery law was challenged in 1951.
- It was challenged for being violative of Fundamental Rights under Articles 14 and 15 of the Constitution. The petitioners contended that Section 497 of IPC discriminated against men by not penalising women in an adulterous relationship.
- The court held that Section 497 of IPC is constitutionally valid under Article 15(3) of the Indian Constitution.
- The court asserted that the rationale behind introducing Adultery law was that in most cases, it is the woman who is the victim and hence, cannot be a perpetrator. However, the irony in the case was that although the court considered women as the victims in cases of Adultery, they did not provide them with the right to file a complaint.

Sowmithri Vishnu V. Union of India 1985

- Even after the judgment, in this case, the ambiguity around the validity of Adultery law could not be resolved.
- The Supreme Court held that in order to protect the sanctity of marriage, both the husband and the wife should not be allowed to file a complaint against each other in case of an adulterous relationship. However, the court retained the criminalization of marriage under IPC.
- The court also held that if an unmarried woman indulges in a sexual relationship with a married man, she would not be held liable for Adultery and if an unmarried man enters into a sexual relationship with a married woman, then that man would be held liable for punishment under Section 497 of IPC.

V Revathy v. Union of India 1988

- The court in this case held that the rationale behind the non-prosecution of women in cases of Adultery was to protect the sanctity of a marriage and in turn, promoted a social good.
- It was "a shield rather than a sword" and it gave the couples a chance to "make up".
- Therefore, the court held that Adultery law does not infringe on anybody's constitutional rights and hence, it was completely valid.

Q.3.(c) In which case sec 497 was declared unconstitutional? Discuss.

Ans.

- The constitutionality of Section 497 of IPC was challenged in the case of **Joseph Shine v. Union of India, 2018**.
- In this case, the petitioners contended that criminal law should be used only as the last method of social control and it should not be used to check or control private morality or immorality.
- Centre, on the other hand, argued that Adultery is an intentional action which impinges on the sexual fidelity and sanctity of marriage.
- It is an action knowingly and willingly done with the full knowledge that it would hurt the family, the children and the spouse.
- After hearing both the sides, the Supreme Court in a Bench headed by the then Chief Justice of India, Deepak Misra, pronounced that Section 497 of the Indian Penal Code is unconstitutional and hence, struck it down.
- The court held that the provision was based on gender stereotypes and hence violated Article 14 (equal protection of laws) and Article 15 (non-discrimination on grounds of sex) of the Indian Constitution.

Q4. What do you understand by cruelty by husband or relatives of husband? Critically examine the constitutional validity of the provisions of this section.

Q4.(a) What was the Reason for addition of Section 498A?

Ans.

- Due to the increasing incidents of violence against women, a new chapter XX-A was added in IPC through the Criminal Law (Amendment) Act, 1983. By the newly inserted sec. 498-A, the cruelty with a married woman was declared as an offence. According to sec. 498-A.
- Prior to 1983, there was no specific provision in Indian law that specifically addressed domestic abuse or cruelty within the context of marriage. The Amendment to the Indian Penal Code in 1983 brought about a significant change by introducing Section 498A, which aimed to tackle the issue of "matrimonial cruelty" against female spouses.
- The inclusion of Section 498A in the IPC marked a crucial milestone in recognizing the pervasive problem of domestic violence and dowry-related offenses faced by married women in India. It

acknowledged that women within the institution of marriage were particularly vulnerable to abuse and required legal protection.

Q4.(b)What do you understand by cruelty by husband?

Ans. According to sec 498-A-

- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
- For the purposes of this section, “cruelty” means— (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Q4.(c)Write down the essentials of sec 498-A.

Ans. Essentials of Section 498-A

There are certain important essentials of Section 498-A, and fulfillment of these essentials is a mandatory pre-requisite for the application of Section 498-A.

1. Married women

To attract the application of Section 498-A, the women must be married. Section 498-A has been inserted in the Act to protect and safeguard a woman from the cruel and unruly behavior of her husband and/or in-laws.

2.Cruelty or harassment

For the application of Section 498-A, married women must have been treated with cruelty or harassment. Cruelty here includes a wide range of cruelties such as mental, physical, emotional, psychological, financial, etc.

3.Husband or in-laws

To attract the application of Section 498-A, such cruelty or harassment must have been shown to a married woman either by her husband or by the relatives of her husband for any reason.

4. Wilful conduct

Another important essential of Section 498-A is there should be wilful and intentional conduct to cause any sort of harm to a wife or daughter-in-law for any reason.

Q4.(D)Write the important cases of sec 498-A.

Ans.

1.Kans Raj v. the State of Punjab, AIR 2000 SC

- In this case, the Court observed that for the fault of the husband, the in-laws or any other relations cannot, in all cases, be held to be involved in the demand of dowry.
- In cases where such accusations are made, the overt acts attributed to persons other than the husband are required to be proved beyond a reasonable doubt.

2. Sushil Kumar Sharma v. UOI, (2005) 6 SCC

- In this case, it was held by the Supreme Court that:- "Provision of S. 498A of Penal Code is not an unconstitutional and ultra virus.
- The mere possibility of abuse of a provision of law does not per se invalidate legislation. Hence plea that S. 498A has no legal or constitutional foundation is not tenable.
- The object of the provisions is the prevention of the dowry menace.

3.Manju Ram Kalita v. the State of Assam, (2009)

- The court relying on several precedents observed that the meaning of “Cruelty” differs in each statutory provision and hence must be established in the context of Section 498A of IPC.
- The conduct of the man, the seriousness of his acts must be compared with the likeliness of the woman to commit suicide, etc.
- It must be established that the woman has been subjected to cruelty continuously or at least in close proximity of time of lodging the complaint. Petty quarrels would not come under the purview of “cruelty”.

Q.5. Write short answers of the following

(i) Voyeurism

(ii) Stalking

(iii) Bigamy

(i) Voyeurism [Section 354C]

- This offence came into existence after Nirbhaya Rape Case, 2012. It is mentioned under Section 354C, IPC. The word ‘voyeurism’ means appeasement derived from observing the genital or sexual acts of others usually secretly.
- This provision is divided in two different parts. Firstly, when a person watches or captures image of a woman engaging in some private act and secondly, when the person disseminate or spread such image.
- The first offence is punishable with imprisonment of not less than one year which may extend upto three years with fine.
- The second offence is punishable with imprisonment of not less than three years which may extend upto seven years with fine.

Ingredients

1. The accused must be a male.
2. He must watch or capture the image.
3. The woman whose images are captured must be engaged in some private act.
4. The circumstances must be such that she has the expectations of not being observed by the perpetrator;
or
5. The accused disseminates that image.

(ii) Stalking [Section 354D]

- Section 354D, IPC talks about The term ‘stalking’ which generally means the act of following or trying to contact despite disinterest of woman.
- This section contains two offences. Firstly, where a man follows or contacts or attempts to contact a woman repeatedly despite her clear indication of disinterest and secondly, where a man monitors the use by a woman of the internet, email, or any other form of electronic communication.
- For the first conviction, the punishment prescribed is imprisonment for a term which may extend to three years with fine. The punishment for second conviction may extend up to five years of imprisonment with fine.

Ingredients:

1. The accused must be a man and victim must be a woman.
2. Follow or contact a woman or attempt to contact; or
3. Monitors the use by the woman of the internet, email or any other electronic communication.
4. Despite disinterest of woman.

What does not amount Stalking?

- Section 354D has a proviso attached to it which carves out an exception to this offence.

- If a part of responsibility is imposed on a person by the State to prevent and detect any crime and such acts must be pursued by any law and in the particular circumstances such conduct of the person must be reasonable and justified then, it will not amount to stalking.

(iii) Bigamy

- The Indian Penal Code, 1860 explains bigamy under Section 494.
- The said provision states that any person who already has a wife or husband living, further proceeds to marry another person while being lawfully wedded to such wife or husband shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Moreover, such marriage shall be considered void in whatsoever case.

Exceptions

1. The said provision does not extend to any individual whose marriage with their partner from the prior marriage has been declared void by a court of competent jurisdiction.
2. The said provision does not extend to any individual who contracts a marriage during the lifetime of their former partner wherein such partner at the time of such individual's second marriage was not heard of for a period of seven years or wherein there is no information of them being alive.

Nature of Offence

The nature of the offence specified under Section 494 of the IPC is non-cognizable, bailable, compoundable, and triable by the magistrate of the first class.

Essential ingredients for constituting the offence of bigamy

1. **Existence of a previous marriage**
2. **Second Marriage has to be valid in itself:** In order to attract the provisions of this section, not only the first marriage but also the second marriage should be a valid one. This means that all the necessary ceremonies required by the personal laws governing the parties to the marriage should have been duly performed
3. **Second marriage to be Void solely by reason of First Husband or Wife Living:**

Important Cases

1. Lily Thomas v. Union of India and Ors. (2000)

- In this case of the Hindu married man had converted to the Muslim religion solely for marrying for the second time, not because he had genuine faith in that religion.
- This was established by providing evidence that the accused did not perform any Muslim religious ceremonies or change his name.
- The court decided upon the merits of the case that the accused is guilty of bigamy, although he converted to Islam religion, under Section 17 of the Hindu Marriage Act, 1955, read with Section 494 of the IPC.
- The Supreme Court finally quoted: "*Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fiber.*"

2. M.M. Malhotra v. Union of India and Ors. (2006),

- The Supreme Court decided that a subsequent marriage by the husband during the subsistence of the first marriage would not make him guilty of the offence of bigamy if the said first marriage is proved to be void.
- In this way, the accused can escape the charges under Section 494 of the IPC by defending himself by proving that one or more of the essential elements of a valid marriage were not fulfilled during the performance of the first marriage.

3. Krishna Gopal Divedi v. Prabha Divedi (2002)

- The Supreme Court held that the performance of a second marriage by the accused after attaining the *ex parte* decree is not an offence under Section 494 of the IPC because, during such a period, the first marriage is not subsisting.

4. Abdul Gani and Ors. v. Azizul Haq (1911),

- A Muslim woman is charged under Section 494 of the IPC for marrying another man during her Iddat.

- She rightly defended herself, saying that her second marriage was considered void because she violated the Muslim doctrine of Iddat, which has no link with the Indian Penal Code.
- The Calcutta High Court approved her defence and held that a re-marriage by a Muslim woman during the period of Iddat is just a civil wrong that results in the nullity of the marriage but not a criminal offence of bigamy under the Indian Penal Code.

5. Sarla Mudgal v. Union Of India and Ors. (1995)

- This is a landmark judgement both in the case of bigamy laws as well as the Uniform Civil Code (UCC).
- The Supreme Court answered the controversial question of whether a Hindu married man can solemnize a second marriage during the persistence of his first marriage after converting to the Muslim religion, which allows bigamous marriage.
- The Court outrightly held the second marriage void and convicted the accused under Section 494 of the IPC due to the presence of all essential elements to constitute the case of bigamy.

6. Dr. Surajmani Stella Kujur v. Durga Charan Hansdah and Anr. (2001),

- The Supreme Court ruled that the fifth marriage of a Muslim man would be deemed void because Muslim personal laws allow a Muslim man to have only four wives at a time, not more than four.
- Further, the Court held that the Muslim man who married for the fifth time would be punished under Section 494 of the IPC.

LL.B(3 YEAR.) SEM-2 UNIT-1

LAW OF CRIMES –II

Syllabus-Offences affecting the Human Body –Offences affecting life, causing of miscarriage or injuries to unborn children. Offences of hurt, of wrongful restraint and wrongful confinement. Offences of Criminal Force and Assault, Offences of kidnapping and abduction.

Q.1-Define Culpable Homicide .Discuss the circumstances in which culpable homicide is murder.

Distinguish between murder and culpable homicide.

Q.1.(a)-What do you understand by term Homicide?

- Homicide is derived from the Latin phrases *homi* (man) and *cido* (cut).
- Homicide literally means “the killing of a human being by another human being.”
- The term ‘homicide’ refers to the act of causing or hastening the death of a human being by another human being.
- However, not all homicides are illegal or criminal.
- There are two sorts of homicides:
 - Lawful homicides and,
 - Unlawful homicides.
- Lawful homicides are ones that fall under the IPC’s Chapter on General Exceptions and are hence not penalised.
- The homicides that are penalised under the Code clearly fall within the category of unlawful homicides.

Q.1.(b)- What is Culpable Homicide?

Ans.Culpable Homicide-

- Sec.299 and 300 of the IPC,1860 deals with culpable homicide and murder, respectively.
- Section 299 of the Indian Penal Code defines culpable homicide, whereas Section 300 deals with the concept of murder.
- Section 299 defines Culpable Homicide as follows-
“Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”

EXPLANATIONS –

1. A person who causes bodily injury to the other person who is suffering from a disease or disorder and thereby accelerates the death of the person shall be deemed to have caused his death.
2. Where death is caused by such bodily harm, the person shall be deemed to have caused death, although proper remedies and treatments are provided.
3. If the death of the child is caused in mother’s womb then it will not amount to culpable homicide, until and unless any body part of the baby is out of the womb and only then death will amount to culpable homicide.

Q.1(c) Write down essentials of culpable homicide.

Essential ingredients of culpable homicide-

The following are the essential elements of culpable homicide:

- a person must be dead;
- the death must have been caused by the act of another person; and
- the act causing death must have been done with:
 - (a) the intention of causing death; or
 - (b) the intention of causing bodily injury likely to cause death; or
 - (c) with the knowledge that such an act is likely to cause death.

Q.1(d) Write three Important Cases Related To Culpable Homicide .

Ans.

1. **Narasingh Challan v. State of Orissa, (1997) 2 Crimes 78 (Ori).** “Culpable homicide” is the genus, and “murder” is the species. All “murder” are culpable homicide but not vice-versa;
2. **Virsa Singh vs State of Punjab (AIR 1958 SC 465):** In this case, the Supreme Court held that there must be a direct consequence of the injuries inflicted on the deceased. Therefore, intervening causes must not be independent or unconnected with the injury sustained by the deceased.
3. **Joginder Singh vs State of Punjab (AIR 1979 SC 1876):** The Supreme Court held that there has to be a proximate causal link between the two, i.e. death and the act. The death must be a direct consequence of such an act.

Q.1.(d)- What is murder?

Under Section 300 of IPC, Subject to certain exceptions, culpable homicide is murder,

1. if the act by which the death is caused is done with the intention of causing death, or-
2. Secondly– If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-
3. Thirdly– If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-
4. Fourthly– If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid

Q.2 When does culpable homicide does not amount to murder?What is the punishment for it.Distinguish between murder and culpable homicide.

Q.2.(a)- When does culpable homicide does not amount to murder?

Ans.Section 300 states Following 5 exceptions when **culpable homicide does not amount to murder.**

- 1.Culpable homicide is not murder if the offender causes the death in grave and sudden provocation of the person who delivered the provocation.
2. Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence.
3. Culpable homicide is not murder if the offender, while acting as a public servant or assisting a public servant acting for the benefit of public justice, exceeds the powers granted to him by law and causes death by doing an act.
4. Culpable homicide is not murder if it is committed in the heat of emotion during a sudden conflict and without the offenders taking undue advantage or acting in a cruel or unusual manner.
5. Culpable homicide is not murdered if the dead individual is beyond the age of eighteen years and suffers or risks death with his consent.

Q.2.(b) What is the punishment under IPC for Culpable Homicide not amounting to murder and Murder ?

Ans.**Punishment for Culpable Homicide not amounting to murder**

- According to section 304 if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; then the punishment is imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine,
- And , if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death,the punishment is imprisonment of either description for a term which may extend to ten years, or with fine, or with both,

Q.2(c) What is the Punishment for murder.

Ans.

- Punishment for murder is given in sec 302.
- According to sec 302 Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine.
- Death penalty provided under this section is only given under rarest of rare cases.(Bachan Singh v. State of Punjab,1980)
- In the case of Machhi Singh And Others v. State Of Punjab, the Indian Judiciary stated the grounds on which death penalties were, they are as follows:
 1. When the murder committed is extremely brutal, ridiculous, diabolical, revolting, or reprehensible manner.
 2. The magnitude of the crime is at a large scale which means causing multiple deaths;
 3. When death is caused because of the caste and creed of the person;
 4. When the motives of the accused were cruelty or total depravity; and
 5. When the murder victim is an innocent child, a helpless woman or person (due to old age or infirmity), a public figure, etc.

Q.2(d) Distinguish between murder and culpable homicide.

- The court made distinction between culpable homicide andmurder for the first time in R v. Govinda.
- In the landmark judgment of *State of AP. v. Rayavarappu Punnaya (1977)*, the Apex Court created a comparison table to grasp the key differences between them.

| Culpable homicide | Murder |
|--|--|
| A person commits culpable homicide if the act by which the death is caused is done - | Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done – |

| | |
|---|---|
| | |
| Intention With the intent to cause death; or with the intention to cause physical damage that is likely to result in death; or | Intention With the intention of causing death; or with the intention of inflicting physical injury that the offender knows will result in the death of the person to whom the harm is inflicted; or with the intention to inflict bodily damage on any person and the physical injury intended to be inflicted is sufficient to cause death in the ordinary course of nature, or |
| Knowledge Knowing that the conduct is likely to result in death. | Knowledge With the knowledge that the conduct is so immediately harmful that it must almost certainly result in death or bodily injury that is likely to result in death and without any justification or risk of causing death or injury as described above. |

Q.3 What are the essentials of Dowry death according to section 304-B of IPC.Explain Dowry Death with the help of decided cases.

Q.3.(a)-What do you understand by the term dowry death?

Ans. DOWRY DEATH

- Dowry death is defined in Sec 304B.
- According to Sec 304B,
“Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.”

Q.3(b) Define Dowry.

- The term ‘dowry’ has not been defined in **Indian Penal Code,1860 (IPC)** but in ‘**Dowry Prohibition Act, 1961**’.
- According to the act, it has been defined as **any property or valuable security** given or agreed to be given **directly or indirectly**:
 - By **one party** to a marriage to the **other party** to a marriage or
 - By the **parents of either party** to a marriage or by **any other person** to **either party to the marriage** or **any other person** at or before or any time after (on three occasions) the marriage in connection with the marriage of the said parties.

Q.3(c) Write down the Essentials of Section 304B.

- The **death of a woman** must be caused within by **burns or bodily injury** or otherwise than under normal circumstances.
- The **death must** occur within **7 years of marriage**.
- **Woman** must have been subjected to **cruelty or harassment** by her **husband or his relatives**.
- **Cruelty or harassment** should be in connection with the **demand of dowry** and soon before death.
- Such **cruelty or harassment** is shown to have been meted out to the woman soon before her death.

Punishment

- Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Q.3(d) Discuss the Important Cases on Dowry death

Ans.(1.)Kamesh Panjiyar @ Kamlesh v. State of Bihar (2005)

In this case, the Supreme Court stated the key ingredients of dowry death (Section 304B, IPC) as follows:

1. A woman’s death should be caused by burns, physical harm, or some other unusual event.
2. She should have died during the first seven years of her marriage.
3. Her husband or a relative of her husband must have treated her cruelly or harassed her.
4. Such cruelty or harassment should be in response to or in conjunction with a dowry demand.
5. It must be proven that the woman was subjected to such brutality or harassment shortly before her death.

(2.) Satbir Singh vs The State of Haryana (2021),

In this case it was held by the Apex Court that if the prosecution can establish the ingredients of Section 304-B of IPC the burden of proof of innocence completely lies on the defence.

(3.) Mustafa Shahadal Shaikh v. the State of Maharashtra (2012),

- The ratio decidendi of the court was states that the language used under Section 304-B, “soon before death” does not prescribe any definite time frame as such under both the Indian Penal Code as well as under Section 113-B of Indian Evidence Act.
- Accordingly, the term “Soon before death” could be determined by Courts depending upon the facts & circumstances of the case

(4.) State Of Punjab vs Gurmit Singh

- The accused was presecuted under Section 304B for causing the death of Gurjit Kaur, Paramjit Singh’s wife.
- The respondent claimed he could not be prosecuted since he was not a relative of the deceased.

- The court ruled that because he did not meet the description of a relative, he could not be prosecuted under Section 304B, but he might be tried under other provisions for any offence committed.
- The case examined the term 'relative' and decided that only individuals connected by blood, adoption, or marriage may be held responsible under Section 304B, while others can be held guilty under other provisions.

(5.) Reema Aggarwal v. Anupam (2004)

- The language used in this Section can be interpreted to mean not just people who are legally married, but also those who have experienced some sort of marriage and hence appears to be the husband.

Q.4-What do you mean by term “Hurt”. Distinguish it from grievous hurt.

Q4.(a)-What do you understand by term “hurt”?

Section 319 of the Indian Penal Code, 1860 (hereinafter “IPC”) defines hurt as: “whoever reasons bodily pain, disorder or disease to any man or woman is said to have caused harm.”

To constitute any one or more of essentials of simple hurt must be present:

- Bodily Pain
- Infirmity to another
- Disease

Bodily Pain

According to Section 319 of the Indian Penal Code, whoever causes bodily ache, disorder or disease to any individual is said to cause hurt. The expression ‘physical pain’ means that the pain must be physical instead of any mental pain. So mentally or emotionally hurting anyone will no longer be ‘harm’ inside the meaning of Section 319.

Infirmity to another

Infirmity denotes the bad state of frame of mind and a state of transient intellectual impairment or hysteria or terror would constitute disease inside the meaning of this expression inside the section. It is an incapability of an organ to carry out its everyday function, whether temporarily or completely. It may be delivered through the administration of a toxic or poisonous substance or by means of taking alcohol administered by way of any other person.

Disease

A communication of ailment or disease from one individual to another through the way of touch would constitute hurt. But, the idea is unclear with respect to the transmission of sexual sicknesses from one individual to every other.

In *Raka vs. Emperor*, the accused was a prostitute and she inflicted syphilis to her customers. It was held that accused, the prostitute was liable under Section 269 of IPC- negligent act likely to spread infection of any disease dangerous to the life of another person.

Q.4.(b)- What is Greivous hurt?

Ans. Section 320 defines greivous hurt.

The following kinds of hurt only are termed as “grievous”:

1. Emasculation,
2. Permanent injury to eyesight or either of the eye,
3. Permanent deafness or injury to either of the eye,
4. Privation of any member or joint (loss of limb),
5. Impairing of Limb,
6. Permanent disfiguration of the head or face,
7. Fracture or dislocation of a bone or tooth,
8. Any hurt which risks life or which causes the victim to be during the time of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

If any person causes injury enumerated in section 320 of the Indian penal code, he is said to cause grievous hurt. The person shall be punished with imprisonment up to seven years and fine.(Sec 325)

Q.5-Write short notes on the following.

- (a) Wrongful Restraint (b) Wrongful Confinement
(c) Criminal Force (d) ASSAULT

Q.5.(a)- What do you mean by Wrongful restraint?

Ans. Wrongful Restraint

According to Section 339 of the Indian Penal Code;

To establish the offence of wrongful restraint the complainant must prove all the following essential:

1. That there was an obstruction;
2. That the obstruction prevented the complainant from proceeding in any direction;
3. That the person/complainant so proceeding must have a right to proceed in the direction concerned.

Section 341 of the Indian Penal Code imposes punishment against the wrongdoer under Section 339 with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees, or with both.

Q.5(b) What do you mean by Wrongful Confinement?

According to Section 340 of the Indian Penal Code;

The essential ingredients of the offence of wrongful confinement are:

1. The accused should have wrongfully restrained the complainant (i.e. all ingredients of wrongful restraint must be present)
2. Such wrongful restraint was to prevent the complainant from proceeding beyond certain circumscribing limits beyond which he or she has the right to proceed.
 - Section 342 of the Indian Penal Code states that whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both .
 - The classification of this offence is that it is cognizable, bailable and Triable by any Magistrate. Further, it is Compoundable by the person confined with the permission of the court

Q.5.(c) Explain criminal force and assault.

Ans. Criminal Force(Sec.350)

Essentials Of Criminal Force

Criminal force constitutes the following essentials:

1. There must be use of force.
2. The force should be used intentionally.
3. The force must have been used;

a. For committing of an offence; or

b. With the intention to cause fear, injury or annoyance to the other with knowledge.

From this, we understood that the use of force is mandatory but mere force is not punishable under law.

Section 349 defines force but it is not treated as an offence. That can be used in a positive sense also;

Q.5(d) Explain Assault.

Ans. Assault(Section351)

Essentials Of Assault

1. Gestures or preparation:- that the accused should make a gesture or preparation to use criminal force.
2. Such gestures or preparation should be made in the presence of the person in respect of whom it is made.
3. The act was with an intention to cause an apprehension of harm or injury;
4. The act caused apprehension in the eyes of the victim that he would be harmed by another person's action.

Q.6- What do mean by Kidnapping. What are the types of Kidnapping? Distinguish between kidnapping and Abduction?

Q.6.(a) What do you mean by kidnapping?

- Kidnapping means taking away a person against his/her will by force, threat or deceit. Usually, the purpose of kidnapping is to get a ransom, or for some political or other purposes etc.
- Kidnapping is classified into two categories in Section 359 of the Indian Penal Code and defined in Section 360 and 361 of the Indian Penal Code.

Q.6(b) How many kinds of kidnapping are there?

As per Section 359 of the Indian Penal Code, Kidnapping is of two types:

1. Kidnapping from India,
2. Kidnapping from lawful guardianship.

Q.6. (c) What do you understand by kidnapping from India?

- Section 360 explains kidnapping from India. According to section 360, if any person takes a person beyond the limits of India against the consent of that person or against the consent of someone who is legally entitled to give consent on that person's behalf, then the offence of kidnapping from India is committed.
- **Illustration:** 'A' is a woman living in New Delhi. 'B takes 'A' to Bangladesh without her consent. 'B' committed the offence of kidnapping 'A' from India.

Q.6(d) What do you understand from kidnapping from lawful guardian?

Ans. Section 361 of the code deals with the **Kidnapping from lawful guardian. According to this section-** "Whoever takes or entices any minor under 16 years of age if a male, or under 18 years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."

Explanation.—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose

The following are the ingredients of Section 361:

1. Taking away or enticing of a minor or a person of unsound mind

2.Such minor must be under 16 years of age if a male and under 18 years of age if a female.

3.The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.

4.The taking or enticing must also be without the consent of the guardian.

The act of taking is not a continuous act and as such when once the boy or girl has been actually taken out of the keeping, the act is complete.

Impotent Case law-

State of Haryana v Raja Ram (1973)

- In this case, the accused induced the prosecutor who was of 14 years of age away from her lawful guardianship.
- The Supreme Court in this case held that the persuasion by the accused created a will on the part of the minor who kept her away from her lawful guardianship and therefore it resulted in 'kidnapping'.

Vardaragan v. State of Madras,

- In this case, the court, highlighted the dichotomy between 'taking' and 'allowing a minor to accompany a person'.
- Stating that the two are not synonymously held that where the minor having capacity to understand the consequences of her actions voluntarily joins the accused of her free will, the accused cannot be held liable for taking her away from the keeping of a lawful guardian.

Pradeep Kumar v. State of Bihar and Anr. In this case, Supreme Court held that the consent obtained by lying to the father of the girl regarding the purpose of taking his minor daughter away cannot be termed as consent under the purview of this section and such taking away would amount to kidnapping.

Thakorlal D. Vadgama v. State of Gujarat (1973),

- In this case accused, Thakori Lal was held liable for kidnapping under Section 363.
- He kidnapped a minor girl, Mohini from the lawful guardianship of her father by inducing her to leave her father's place and by encouraging her that he would give her shelter.
- The Supreme Court in this case held that mere circumstances that his action does not cause her to immediately leave her parental home would not be a defence for the accused to absolve him from the offence of kidnapping.

Q.6(e) Define Abduction.

Ans. Abduction has been defined under Section 362 of the Indian Penal Code which states that if a person either by force compels a person or induces another person to go from any place is said to abduct such person.

Ingredients

This section requires two things:

1. Forceful compulsion or inducement by deceitful means.
2. The object of such compulsion or inducement must be the going of a person from any place.

Case law- Bahadur Ali v King Emperor

- In this case, the accused misrepresented himself as a police constable and kept a girl in his house for a certain time regarding money. The court in this case held that his act amounted to abduction.

Vishwanath v. State of Uttar Pradesh AIR 1960 SC 67. In this case, It was held that mere abduction is no offence at all. The guilty and wrongful intention must be present for the offence to be punishable.

Q.6 (f) Distinguish between kidnapping and Abduction?

Ans.

| S.no. | Kidnapping | Abduction |
|-------|--|---|
| 1. | Section 359 defines the offence of kidnapping. | Section 362 defines the offence of abduction. |
| 2. | Kidnapping refers to taking away a minor or person of unsound mind from its legal guardianship or taking away any person beyond the limits of India. | Abduction refers to compelling or inducing any person by using force or through any deceitful means, to take him/her from one place to another. |
| 3. | It is not a continuing offence. It is completed soon at the moment a person is separated from lawful guardianship. | It is a continuing offence. It continues till the person is removed from one place to another. |
| 4. | Section 359 defines two types of kidnapping: 1. Kidnapping from India (Section 360) 2. Kidnapping from lawful guardianship (Section 361) | Section 362 defines only one type of abduction. |
| 5. | It involves minors, i.e., girls upto the age of 18 years or boys upto the age of 16 years, or persons of unsound mind | It can take place in reference to a person of any age. |
| 6. | Means used are immaterial. | Force, compulsion or deceitful means should be involved. |
| 7. | In the case of "kidnapping from lawful guardianship", the consent of a lawful guardian is relevant to decide the commission of the offence. But in the case of "kidnapping | The consent of the person is induced by force or compulsion or means of deceit. |

| | | |
|-----------|--|--|
| | from India”, it must be shown that it was done without the consent of the person or the person legally authorised to give consent on that person’s behalf. | |
| 8. | It is a substantive offence. It means merely the act of taking away constitutes kidnapping. | It is not a substantive offence. It constitutes an offence when it was done with the intention to commit other offences. |
| 9. | Sec 363 prescribes punishment for kidnapping which is imprisonment that may extend to 7 years and a fine. | Mere abduction is not punishable unless done with intent to commit other offences as provided in Sections 364 to 369. |