

## CHAPTER XXI Of Defamation

*Chapter introduction.*—The foundation of civilized society rests upon mutual aid and trust which makes co-operation necessary and possible. Such co-operation must assume the existence of love of fame, reputation and character as the main spring of individual action. Indeed, its operation is co-extensive with the moral law. The right, then, of every person to the character and reputation which his conduct deserves, stands on the same footing with the right to the enjoyment of his life, liberty, health, property, and all the comforts and advantages which appertain to civilized society, inasmuch as security to character and reputation are indispensibly essential to the enjoyment of every other right and privilege incident to such a state. This cannot be denied, and it is a theme upon which the views of all nations are unanimous. The subject they differ upon is the appropriate remedy. It is manifest that the circumstances on which the title to a remedy must depend are: (i) the injurious quality or consequence of the calumny, (ii) the mode or extent of publication, (iii) the motive and intention of the party in publishing it, and (iv) the collateral circumstances connected with the publication. These will have to be presently considered. As it has been elsewhere observed, the three main divisions of the Code comprise offences—(a) against the state, (b) those against the person and (c) those relating to property. This Chapter may be said to refer to offences relating to reputation, and, as such, it should find its logical place in the part relating to personal injuries, where the next Chapter relating to threats of injury should also find a more appropriate place.

While the Code makes no distinction between a spoken and a written defamation, it leaves that distinction to be taken into consideration in apportioning the punishment. In other words, the Code regards the mode of publication as by no means essential to the constitution of the crime, though it regards it material for the purpose of determining its gravity. And so there exist two sections (Secs. 501-502) intended to arrest the dissemination of defamatory matter by means of printed or engraved matter. In the same way it views the question about the offence having a tendency to breach of peace, regarding it as an aggravation rather than an essential element of the crime. And this gives rise to a fresh offence punishable under Sec. 504 namely, the giving of intentional insult with intent to provoke a breach of the peace. This offence may then be said to present a somewhat closer analogy to defamatory libel of English law, though the latter then admits of the exceptions like those enacted under Sec. 499 but which the former takes no account of. Insult may then be regarded as a form of defamation, viewed from a different stand-point and constituting a different offence. Sedition dealt with under Sec. 124-A is another species of the same offence though it has been placed under a different

category and is now regarded as a distinct offence. So is also Sec. 153 which is a defamation of a class as such and has otherwise become a distinct offence.

But they all belong to the same genus, though they are now no longer subject to the same exceptions. These ten exceptions refer to cases in which words *prima facie* libellous are not punishable. This may be classed under two main heads: those in which truth spoken for the public good is no offence and in which case the question of *bona fides* is immaterial, and those in which *bona fides* and not truth are material. In the one case the words must be true and uttered for the public good, whatever may be the speaker's motive or intention, in the other case publication must have been made *bona fide*, though it may not be true.

The Code is, of course, exhaustive of the law of libel as applicable to this country, though its provisions are naturally subject to those of the Constitution which exempts legislators from its authority in respect of speeches made by them in the Parliament. They are also subject to the law of torts under which Judges and counsel enjoy absolute privilege as regards their civil liability, though their criminal liability is now qualified by this enactment.

This section does not extend the immunity to Judges, jurors and counsel, parties and their witnesses since the only privileges that they have are those which are available under Exceptions 7 to 9. (H. S. Gour)

### Section 499

**499. Defamation.**—Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

*Explanation 1.*—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

*Explanation 2.*—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

*Explanation 3.*—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

*Explanation 4.*—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person, in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

### *Illustrations*

(a) A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

*First Exception.*—*Imputation of truth which public good requires to be made or published.*—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

*Second Exception.*—*Public conduct of public servants.*—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

*Third Exception.*—*Conduct of any person touching any public question.*—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

### *Illustration*

*It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.*

*Fourth Exception.*—*Publication of reports of proceedings of Courts.*—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

*Explanation.*—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

*Fifth Exception.*—*Merits of case decided in Court or conduct of witnesses and others concerned.*—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

**Illustrations**

(a) *A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest."* *A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.*

(b) *But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity."* *A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.*

**Sixth Exception.—Merits of public performance.**—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

**Explanation.**—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

**Illustrations**

(a) *A person who publishes a book, submits that book to the judgment of the public.*

(b) *A person who makes a speech in public, submits that speech to the judgment of the public.*

(c) *An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.*

(d) *A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within this exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.*

(e) *But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine."* *A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.*

**Seventh Exception.—Censure passed in good faith by person having lawful authority over another.**—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

**Illustration**

*A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a*

*banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.*

**Eight Exception.**—*Accusation preferred in good faith to authorized person.*—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

#### **Illustration**

*If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.*

**Ninth Exception.**—*Importation made in good faith by person for protection of his or other's interests.*—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

#### **Illustrations**

(a) *A, a shopkeeper says to B, who manages his business—"Sell nothing to Z unless he pays you ready money for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.*

(b) *A, a Magistrate, in making a report to his own superior officer casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.*

**Tenth Exception.**—*Caution intended for good of person to whom conveyed or for public good.*—It is not defamation to convey a caution in good faith to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

### **Cases and Materials**

**1. Scope.**—(1) No court shall take cognizance of this offence except on a complaint made by the person aggrieved. A complaint for defamation by the person aggrieved by it can be entertained by a court notwithstanding that the accused have been prosecuted on the same facts under section 182 of the Penal Code on the complaint of a public servant. The two offences are fundamentally distinct in nature, although they may arise out of one and the same statement of the accused. The defamatory statement does not fall within any of the Exceptions to section 499 by reason merely of the fact that it is punishable as an offence under section 182 or any other section of the Code; nor is this section included in the list of sections contained in section 195(1)(b) of the Criminal Procedure Code. An absolute privilege is attached to the speeches on the floor of the Parliament. The criminal law of this country with regard to defamation depends on the construction of section 499. The defamatory matter must be published, that is, communicated to some person other than the person to whom it is addressed, that is, dictating a letter to a clerk is publication. Communicating defamatory matter only to the person defamed is not publication. The action of a person who sent to a public officer by post, in a closed cover, a notice containing imputations on the character of the recipient, but which was not

communicated by the accused to any third person, was held to be not such a "making" or "publishing" of the matter complained of as to constitute this offence. Defamatory matter written on postcard or printed on papers, distributed broadcast, constitutes publication. So is the filing in a court of a petition containing defamatory matter concerning a person with the intention that it should be read by other persons. Communication to a husband or wife of a charge against the wife or husband is a publication, but uttering of a libel by a husband to his wife is not as they are one in the eye of law. The person who publishes the imputation need not necessarily be the author of the imputation. The person who publishes and the person who makes an imputation are alike guilty. Everything printed or written which reflects on the character of another and is published without lawful justification or excuse is a libel, whatever the intention may have been. The publisher of a newspaper is responsible for defamatory publishing in such paper whether he knows the contents of such paper or not. The editor of a journal is in no better position than an ordinary subject with regard to his liability for libel. He is bound to take due care and caution before he makes a libellous statement. It would be sufficient answer to a charge of defamation against the editor of a newspaper if he proved that the libel was published in his absence and without his knowledge and that he had in good faith entrusted the temporary management of the paper during his absence to a competent person. But he is bound to give evidence as to who the actual printer of the paper in his absence was. In order to come within the exception the imputation must have been made or published by the accused (a) relevantly, (b) for the protection of the interest of the person making it or of any other person, and (c) in good faith (*1966 CrLJ 292*). Interest of the person has to be real and legitimate when communication is made in protection of the interest of the person making it (*AIR 1970 SC 1372*). Editor of Journal claiming protection of 9th Exception must submit to more rigorous test of good faith. In order that comment may be fair the following conditions must be satisfied: (a) it must be based on facts truly stated; (b) it must not contain imputations of corrupt or dishonourable motives on the person whose conduct or work is criticised save in so far as such imputations are warranted by the facts; (c) it must be honest expression of the writer's real opinion. Allegations on the ground of fair comment cannot be justified the moment it is shown that the criticism is based upon a mis-statement of facts. A defamatory statement cannot be justified on the ground that such report had appeared elsewhere or that rumours to that effect were afloat.

(2) Words to be construed in their natural meaning. It is also a canon of construction of words alleged to be defamatory that the intention of the user is immaterial, and where nothing is alleged to give such words an extended meaning, they must be construed in their natural and ordinary meaning, i.e. that meaning in which a reasonable man of ordinary intelligence would be likely to understand them. *S.M. Huq Vs. Judges of Lahore High Court (1953) 5 DLR (FC) 216 (131)*.

(3) Publication in newspaper of facts which can be reasonably believed to be true, or which can be inferred from circumstances, does not amount to any offence under the section. The defendant by a press release made a statement which was published in some newspapers of Dacca. The only question on which the parties joined issue was, as to whether the contents of the publication that Abul Kalam Shamsuddin was dismissed or removed from service or replaced from the post which he was occupying, namely, the post of "the Chief Editor" of the Daily Azad, Dacca, were untrue, and whether, it had been made with either or any of the harmful intents mentioned in s. 499 of the P.C. The main question which the Supreme Court had for decision is: Whether the press release was, in the circumstances, a deliberate and malicious distortion of fact, or as to whether the defendant could have had no reasonable ground for believing it to be true and to have caused the publication to be made with any malicious intent. Held: In a criminal prosecution, for defamation under sec. 499 it is sufficient, if

the accused can show that the imputation was substantially true. The onus upon the accused of proving that his case comes within either of the exceptions may also be discharged, if he can show that he had reasonable grounds for believing it to be true and was not actuated in making such an imputation by any malicious motive. The mere fact, therefore, that the imputation contained in the publication is factually incorrect, will not by itself be sufficient to warrant a conviction. *Khondkar Abu Taleb Vs. The State, (1967) 19 DLR (SC) 198.*

(4) Fourth Exception—Interpretation of the words “the proceeding of a court of justice”. Complaint-petition (which is not on oath) is not a statement of the complainant i.e. is not a part of the proceeding—Evidence that is given in court on oath is a part of the proceeding. *Dr. Jamshed Bakht Vs. A.R. Chowdhury (1981) 33 DLR (AD) 333.*

(5) In section 499 of the Penal Code no such absolute privilege is provided. Whatever privilege there is for such proceedings that must arise out of the exceptions appended to the section itself. The notion of English Common Law cannot be imported as because the Penal Code is codified law. The question is whether the publication was a “substantially true report of the proceedings”—Publication of such complaint petition is not the true report of the proceeding and the protection under the 4th Exception is not available. There is no doubt that the learned single judge set aside the order of conviction and sentence on an erroneous view of the law. *Dr. Jamshed Bakht Vs. A.R. Chowdhury (1981) 33 DLR (AD) 333.*

(6) Any possible divergence between written statement and statement on solemn affirmation does not disentitle the former to be treated as part of the Court's proceeding. Per Fazle Munim, J.—(Differing with the majority view): News as published in Exts. 1 to 3 were based on the allegations made in the petition of complaint. It appears that the initial statement of Azam Ali, which was taken on oath on which the proceeding was formally initiated in the Court, did not contain the statement that the appellant had illicit intercourse with his wife. In those circumstances the question is whether the news as published in Exts. 1 to 3 were substantially true report of a proceeding of a court which may claim exemption under the Fourth Exception under section 499 of Penal Code. I find it difficult to hold that any possible divergence between the written complaint and the statement as solemn affirmation disentitles the former to be treated as a part of such proceedings. ‘The law now is that proceedings of this kind, although preliminary and *ex parte*, held in open court, may be the subject of a fair and accurate report, and that such report is privileged if it be published without malice’. (per Kay, L.J.). *Dr. Jamshed Bakht Vs. A. R. Chowdhury, (1981) 33 DLR (AD) 333.*

(7) Complaint application is the starting point of a criminal proceeding—All that takes place subsequently does not negative its character as the starting part of criminal proceeding. *Dr. Jamshed Bakht Vs. A.R. Chowdhury (1981) 33 DLR (AD) 333.*

(8) Defamation defined in section 499 Penal Code. In our codified law the expression “defamation” has been defined in section 499 of the Penal Code. The exceptions are ten in number. English law of absolute privilege, whether applicable to the statements made by the parties or by the Advocates in Court proceedings in Bangladesh—Immunity having been not extended to judicial proceeding a respondent allegedly defamed would be competent to file a complaint in Court against the maker of defamatory statement—Court not to rely on Common Law of England. *AY Mashiuzzaman Vs. Shah Alam 41 DLR 180.*

(9) For the accusation of defamation a separate action would lie and it will be postponed till the judicial proceeding had ended. *AY Mashiuzzaman Vs. Shah Alam 41 DLR 180.*

(10) The Court of Metropolitan Magistrate had a duty to initiate a proceeding without directing the complainant to ventilate his grievances before the other Court wherein the defamatory statement has been made. *AY Mashiuzzaman Vs. Shah Alam* 41 DLR 180.

(11) Imputation made by lawyer when protected—Imputation made by a lawyer in discharge of professional duty on the character of any person in good faith and for the protection of the interest of the person making it or of any other person or for the public good will not constitute offence of defamation. In the instant case, the imputation allegedly made by the petitioner as an advocate under instruction of her client for protection of her interest cannot constitute the offence in view of exception 9 to section 499 Penal Code. *Sigma Huda Vs. Ishfaq Samad* 45 DLR 129.

(12) Complaint made by the petitioners in good faith to the Hon'ble Chief Justice regarding the conduct of the complainant judicial officer is not defamation as the same is covered by 8th exception of section 499 of the Penal Code. *Md. Abdun Noor and others Vs. The State and another*, 18 BLD (HCD) 624=50 DLR 456.

(13) Bringing anything which is unjust or improper to the notice of the public at large is certainly for the public good. In the instant case, since the alleged offending imputation was made at a press conference by a person who has not been made an accused in the case and the matter was earlier published in other newspapers and the present publication was made in good faith, the offending publication per se satisfies the requirement of Ninth Exception to section 499 of the Penal Code and as such further continuation of the impugned proceeding amounts to an abuse of the process of the Court and the same is quashed. *Syed Mohammad Afzal Hossain Vs. S.M. Selim Idris*, 15 BLD (HCD) 362.

(14) To constitute defamation, the offending words spoken must contain imputation concerning a person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such a person. Explanation 4 of section 499 of Penal Code provides that no imputation harms a person's reputation unless that imputation lowers the moral or intellectual character of that person in the estimation of others. *A.K.M. Enamul Haque Vs. Md. Mizanur Rahman and others*, 14 BLD (HCD) 201.

(15) Imputations, if made by a lawyer in the discharge of his or her professional duty on the character of any person in good faith, whether will constitute any offence of defamation—A lawyer while acting under the instructions of his or her client, whether is entitled to special protection? Imputation, if any, made by a lawyer, in the discharge of his or her professional duty, on the character of any person, in good faith and for protection of the interest of the person making it or of any other person or for the public good will not constitute any offence of defamation. A lawyer, while acting under the instructions of his or her client and proceeding professionally, has a qualified privilege; while acting as such, the lawyer does not, if not otherwise implicated, come within the ambit of defamation unless and until there is an express malice on his or her part; and mere knowledge in such cases cannot be equated with express malice or malice in fact. The privilege enjoyed by the lawyer is only a qualified privilege and he will not come within the bounds of the offence of defamation unless and until there is an "express malice" or malice in fact on his or her part. An Advocate is entitled to special protection, when is called in question in respect of defamatory statements made by him or her in course of his or her duties as an Advocate. The Court ought to presume that he or she acted in good faith upon instructions of the clients and ought to require the party to prove the express malice. *Mrs. Sigma Huda @ Sigma Huda Vs. Ishfaq Samad*. 13 BLD (HCD) 152.



(16) When Mr. Habib Ahmed has received the information about the amount of Taka three lac withdrawn from bank by joint signature he had no reason to file a criminal case against Mr. A. Hamid alleging misappropriation of the said amount and that he had also no reason to be scared and as such the allegation of misappropriation was not made in good faith for the protection of his own interest and it does not attract the ninth exception of section 499 of the Penal Code and hence the conviction under section 500 of the Penal Code calls for no interference. *Abdul Hamid Vs. Habib Ahmed and another* (Criminal) 4 BLC 343

(17) Criminal defamation—Penal Code, 1860 being codified law, notions of English Common law cannot be imported in the matter of Criminal defamation and privilege. *Dr. Jamshed Bakth Vs. Ameenur Rahsid Chowdhury* 4 BCR 489=1 BCR 1981 AD 235=1981 BLD (AD) 314=33 DLR (AD) 333.

(18) Criminal defamation—the expression “the proceedings of a Court of justice” appearing in the exception of the section, interpretation of—Complaint petition containing highly defamatory statements including allegation of wrongful confinement of, and illicit connection with the wife of complainant—statement of complaint u/s 200 Cr.P.C. Omitting the allegation the allegations of wrongful confinement and illicit connection—Magistrate enquiry u/s 200 Cr.P.C.—Publication of complaint petition only omitting the statement u/s 200 Cr.P.C. not a substantially true report of the proceeding of Court—publication of the complaint petition at that stage not covered by fourth exception to sec. 499 as there is no proceedings yet started. *Dr. Jamshed Bakth Vs. Ameenur Rashid Chowdhury* (ibid.)

2. For more cases relevant to this section, see under section 500 infra.

## Section 500

**500. Punishment for defamation.**—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

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|  | 59. <i>Practice.</i>  |

1. **Scope.**—(1) The term defamation is used to embrace both libel and slander. This section provides penalty for defamation. Complaint must be filed by the person aggrieved. The 'aggrieved' has not been defined. It must be taken in its ordinary sense. Parents can be treated to be the persons aggrieved if unmarried daughters who are living with them are defamed (*1972 P CrLJ 1175*). In a case under section 500 a master is not the aggrieved party for defamation of a servant (*11 CrLJ 594*). A complainant in a previous complaint filed by defendant, the complainant is entitled to file a complaint independently. No complaint need be filed by the court (*1971 P CrLJ 1103*). The husband is a person aggrieved within the meaning of section 198 CrPC where the imputation of unchastity is made and published in respect of his wife. In the case of imputation of immorality against married woman who has left protection of her husband and is living separately by herself, complaint by father is not maintainable (*AIR 1953 Punj 82*). In a case where a false imputation of unchastity is made against the daughter-in-law, who is living with her father-in-law, the reputation of the entire family suffers, and if husband of the woman is absent, the father-in-law is an equally aggrieved person within the meaning of the section 198 CrPC. Where an allegation that the woman stole some property, is made, which is also defamatory, the complaint has to be filed by the wife only and not obey the husband (*53 CrLJ 123*). A person who alleges that he has been defamed by a statement made on oath by a witness in proceeding to which he has not been a party, can move a Magistrate to entertain a complaint in respect of defamation without moving the court in which the statement was made to make a complaint under section 195 CrPC in respect of perjury committed before it. Delay in bringing a complaint is not by itself a ground for acquitting the accused (*41 CrLJ 585*). A complaint under section 499, which is made on oath cannot be dismissed on the ground that there is a possibility that the accused might have some defence to the complaint, if true (*AIR 1940 Pat 179*). Where the complainant dies during the course of trial the Magistrate can proceed with the trial (*42 CrLJ 801*). It is contemplated in section 247 CrPC that the general procedure will be to acquit where the complainant is absent. It is not

necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation alleged. It is sufficient to show that the accused intended or knew or had reason to believe, that the imputation made by him would harm the reputation of the complainant irrespective of whether harm was actually caused or not. It is not necessary that there should be an intention to harm the reputation. Conscious violation of law to another's prejudice is sufficient, though there may be no malice in fact. A man's reputation is his property. But a man's opinion of himself cannot be called his reputation. The use of common abuses cannot be regarded as conveying any such imputation as can in any way harm the reputation of the person towards whom it is used and it therefore does not constitute this offence. The court cannot take notice of imputation which is not covered by the complaint made by person defamed. Where the words mentioned in complaint do not make out offence under section 499 proceedings are liable to be quashed. The actual words used or the statements made may be reproduced verbatim by the complainant, if the words are few and the statement is very brief. The purposes will be served if the complaint or evidence in a substantial measure the words of imputation alleged to have been uttered (*AIR 1971 SC 1398*). Mere bad behaviour or lack of manners does not amount to defamation (*27 CrLJ 1390*). It is the allegation in the complaint that would determine the jurisdiction of the court to entertain an application, and the place of publication of the defamatory statement; or the place where a letter containing defamatory matters has been received by the address (*AIR 1943 Sind 196*). In some cases it has been held that the place where the letter containing defamatory statement is circulated also has jurisdiction to entertain a petition. Where a judge was charged for using defamatory language to a witness during the trial of a suit, it was held that the complaint could not be entertained without sanction. A charge under this section should specify the particular occasion on which the offence complained of is alleged to have been committed. In a trial for defamation it is essential that the words alleged to be defamatory in character should be precisely set out and the accused should be individually given notice of what he is charged with. It is the words so set out that will constitute the foundation for defamation. It is also essential that the words in question should be proved (*AIR 1952 Orissa 351*). On the death of the complainant in defamation case his brother can be permitted to prosecute the case.

(2) Defamation—The Court below found that it had been proved that the accused had made false accusations against complainant to the police and also found that the witnesses had established that the complainant was a respectable person who enjoyed a very good reputation. Held: From the findings arrived at by both the Courts below, there can be no manner of doubt that the said statements were false and that they were not made in good faith. *Mohi Basar Vs. Hyder Ali Halder (1960) 12 DLR 318*.

(3) Defamatory statement not to be published unless reasonable satisfaction exists as to its truth. Editor's responsibility for matters published in the newspaper—He can absolve himself of the responsibility for anything defamatory in the paper—If the Editor proves that the libel was published in his absence, and without his knowledge and that he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person. *M Anwar Vs. Saadat Khyalt (1963) 15 DLR (WP) 76*.

(4) When harm done is negligible—Complaint under section 500, on basis of allegations of fraud, misrepresentation, bribery and corruption contained in reply to notice exchanged between Advocates of parties—Harm slight—Proceedings quashed in revision. *1952 PLD Sind 320*.

(5) A letter, a private communication, between two persons when forms the basis of a charge for defamation. The libellous communication made through the letter may not amount to a publication

which is a necessary ingredient of an offence of defamation but the reference to the letter has been found necessary as it is stated that the imputation which formed the basis of the propaganda against the entire family was reiterated in the letter. *Hassan Razaki Vs. Mst. Mehrun Nisa Mehr*, (1971) 23 DLR (Kar.) 15.

(6) A magistrate is not competent to file a complaint for the prosecution of a witness for making a defamatory statement in a proceeding pending before him. *AY Mashuazzaman Vs. Shah Alam* 41 DLR 180.

(7) Had the complainant sent a rejoinder to the petitioner and the same was not published then it could be said that the petitioner did not act in good faith and for public good. *Shahadat Chowdhury Vs. Md. Aatur Rahman* 48 DLR 176.

(8) Further prolongation of the case against the accused, for publishing the alleged report which has not even claimed to be entirely baseless in the petition of complaint will be an abuse of the process of the court. *Shahadat Chowdhury Vs. Md. Aatur Rahman* 48 DLR 176.

(9) Quashment of proceedings under section 500 of the Penal Code—Rejoinder is a prerequisite—Although freedom of press has been guaranteed under article 39 of the Constitution subject to certain restrictions, a journalist cannot take shelter under the cloak of freedom of press after committing offence of defamation. Before lodging complaint under section 500 of the Penal Code, the complainant should send a rejoinder denying the truth of the contents of the publications. If the rejoinder is not published, it can be said that the publication was made without good faith and for public good. *Shahadat Chowdhury Vs. Md. Aatur Rahman—1*, MLR (1996) (HC) 140.

(10) The trial Court awarded the maximum sentence of fine of Taka ten thousand but the Appellate Court reduced the same to Taka one thousand without assigning any reason and such reduction of sentence was not proper and legal and hence the judgment and order of the Appellate Court so far it relates to reduction of sentence is set aside and the sentence imposed by the trial Court shall be the sentence in this case. *Abdul Hamid Vs. Habib Ahmed and another (Criminal)* 4 BLC 343.

(11) Whether the expressions “Khuni” and “Harmad” against an Advocate in the presence of the Advocate’s clients by the appellant and others constitute the offence of defamation—Court refused to make any observation when the case is pending and also refused to quash the proceedings at this stage. *M. Wazid Ali Vs. The State and anr.* BCR 1985 AD 285.

(12) Whether the expressions “Khuni” and “Harmad” against an Advocate in the presence of the Advocate’s clients hurled by the appellant and others constitute the offence of defamation? Court refused to make any observation when the case is pending and also refused to quash the proceedings at this stage. 5 BCR (AD) 285.

(13) Imputation against the High Court Judges in discharge of their duties, amounts to contempt of court. Presumption under criminal law in case of a person charged with a criminal offence is different from libel or slander. Fair and legitimate comment on judgments of a Court would not be actionable, provided the limits of bonafide criticism are not exceeded. Justice is not a cloistered virtue, she must be allowed to suffer the scrutiny and respect, even though outspoken, comments of ordinary men. The power to commit should be sparingly used and any technical or formal contempt should be ignored, as hypersensitiveness on the part of Judges would stifle that spirit of free discussion of matters of public interest, which is hallmark of democratic societies. Judges are to share the common failings of humanity and a claim of infallibility has never been set up on their behalf. To impute to the Judges any unfitness, whether on account of incompetence, lack of integrity or otherwise, amounts to scandalising a court. 16 DLR 535 SC.

(14) An imputation which, by itself, harms the reputation of any person is per se defamatory and if it is made by the accused intending to harm or knowing or having reason to believe that harm to the reputation will be caused to any person, he would be guilty of an offence under this section unless he can show that he comes within any of the exceptions to the section. *AIR 1938 Rang 394*.

(15) Accused complaining to Nattanmai of village requesting him to make enquiry into the accusations—Accusations harming reputation of a married lady—No evidence to infer that the accusations were made in good faith and accused in his statement under S. 313 Cr. P. C. not stating that we had told Nattanmai to make an enquiry—Held accusations were defamatory. *1982 Mad LW (Cri) 10*.

(16) The essence of the offence of defamation consists in the tendency to cause that description of mental pain which is felt by a person who knows himself to be the object of unfavourable sentiments of his fellow creatures and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed. *AIR 1952 Mys 123*.

(17) The test whether the words amount to defamation is “would the words tend to lower the complainant in the estimation of right thinking members of the society generally”. *(1936) 52 TLR 669*.

(18) Where the communication of defamatory character is sent direct to the person defamed, there could be no publication for the purpose of the section, unless it is made at least with the consciousness of its possibility. It is enough if the person making the defamatory communication easily foresees that it is likely to reach a third person. *1982 TLNJ 109 (Mad)*.

(19) The Code makes no distinction between written and spoken words which are defamatory. *AIR 1970 Cal 216*.

(20) The provisions as to defamation in S. 499 of the Code are exhaustive and Courts cannot travel outside such provisions in dealing with the offence of defamation. *(1913) 14 CriLJ 100 (Cal)*.

(21) It is not open to the Courts to add to the exceptions under this section by having recourse to their English Common Law and English decisions. *AIR 1926 Mad 906*.

(22) The essential ingredient of the offence is that the imputation should have been made or published with the intention of harming or with the knowledge or with reasons to believe that the imputation will harm the reputation of such person. *AIR 1970 SC 1876*.

(23) A publication is an essential part of the cause of action, once there is publication the cause of action is complete, and there is no room for the doctrine that the cause of action can be allowed to be inchoate or lie dormant until such time as same fact emerges which would transform an otherwise innocent statement into a defamatory one. *(1981) 1 WLR 822*.

(24) Provisions of S. 499 do not place any unreasonable restriction on the freedom of speech and expression in violation of the Constitution: Defamation is only an abuse of the freedom of speech and expression. *AIR 1961 Andh Pra 190*.

(25) Where a bank manager was suspended for affording huge overdraft facilities to certain firms and also for his acts of gross misconduct and a public notice to this effect was issued by way of abundant caution and precaution by the Bank for the benefit of the general public it was held that no offence was committed by the bank in issuance of the public notice which was for public good and in public interest. *1981 CriLJ 1729 (Bom)*.

(26) Whether a complaint under S. 500 falls under one of the exceptions is premature at the preliminary stage of enquiry under Ss. 202, 263, 264 Cr. P. Code. *1982 CriLJ (NOC) 167*.

(27) Complaint under S. 500 with allegation that on 21-10-72 slogans of 'Murdabad' were raised against complainant and a memorandum against him was given to general manager—News regarding this was appeared in newspaper on 31-10-72—Complaint filed as late as on 8-5-73—Complainant examining himself alone—Despite opportunity being given he could not produce any evidence at the trial—Delay unexplained—Dismissal of complaint, not illegal. *1982 Raj CrC 103.*

(28) Where a complaint for defamation was filed against the accused, a member of the Parliament for having got published a news item in a newspaper involving him (complainant) in smuggling of gold and describing him as a smuggler but no statement referring to the alleged smuggling activity of the complainant was made out but the statement in the news report with regard to the alleged illegal encroachment on Govt. land by the complainant and the inaction of the Collector in this behalf was made out, it was held that no case of defamation was made out against the accused as this part of the news report could not be considered defamatory. *1984 Guj LH 30.*

(29) Where the complainant, a subordinate officer, had allotted a room to his guests in the hostel of the institution without payment of fee and application and when the Director, a superior officer, asked the complainant to comply with the rules on the subject and no hazardous action was taken in haste by the petitioner superior officer, it was mis-conception by the complainant to call this as an offence of defamation. Although the authority to allot rooms was delegated to the complainant, the basic authority vested in the superior officer. *1983 Cri LR (Mah) 225 (Bom).*

**2. Section 499 and S. 171-G—Election cases.**—(1) Section 171-G does not apply to a printed notice containing a series of rhetorical questions whether the candidate used to receive money and withdraw from election contest thus making an innuendo that he did so. The case will fall under this section. *AIR 1958 Mad 240.*

(2) A statement in an objection to the nomination of the complainant that the latter is a drunkard is not relevant to an election. It will be a simple case of defamation. *AIR 1957 All 777.*

**3. "Whoever"—Vicarious liability.**—(1) Where the Editor of a Newspaper was absent from duty for a bona fide purpose at the time of the publication of the libel in the paper and at that time, the publication and the editing of the paper was entrusted to the Sub-Editor, the Editor cannot be held guilty under this section. *AIR 1961 Madh Pra 12.*

(2) Client cannot be prosecuted by proxy for statements made by his counsel in his reply notice to the opposite party. *AIR 1959 Ker 342.*

**4. "Makes".**—(1) The word "make" means "to bring into being" "to cause to exist" "to create". It, therefore, refers to the originator of the imputation. *AIR 1968 Cal 266.*

(2) If a person writes a matter and keeps it himself, the offence is not made out. *AIR 1962 Madh Pra 382.*

(3) Where in the presence of the accused X says to Y "the accused said so and so" and the accused, by his conduct assents to the statement made by X he would be considered to have made the statement. *AIR 1925 Mad 320.*

**5. "Or publishes".**—(1) There must be publication of the imputation. *AIR 1969 All 423.*

(2) A letter enclosed in an envelope and posted does not amount to a publication until it reaches the addressee and is read by him. *AIR 1957 Mad 572.*

(3) Where there is no proof that a letter was read by addressee, it cannot be said that nevertheless, there is publication at the place of posting. *AIR 1969 All 423.*

(4) The following would amount to publication of defamatory matter:

- (a) Filing of a plaint or petition containing defamatory matter. *AIR 1966 Mad 363.*
- (b) Sending a reply containing defamatory matter to the lawyer of the party on whose behalf notice was given by the lawyer. The lawyer cannot be identified with the party in such a case. *(1910) 11 Cri LJ 281.*
- (c) Dictating a letter to a writer. *1 Weir 579.*
- (d) Delivery of a libel by way of sale or otherwise, as by a book-seller or hawkker. *(1880) ILR 3 All 343.*
- (e) Swearing an affidavit and using it in Court. *AIR 1927 Sind 54.*
- (f) Addressing a letter to the community to which the parties belong. *(1898) 3 Mys CCR No. 125. p. 474.*

(5) Every repetition of a libel is a new libel. *AIR 1964 Ker 277.*

(6) Republication of defamatory matter by way of questionnaire, e.g., by setting forth defamatory allegations made against the complainant and asking him to answer them, is publication. *AIR 1950 Cal 343.*

(A) *Communications in the course of legal duty*:—(1) Where accused A in his official capacity as general manager placed a report made by accused B about his subordinates, before the Board of Directors who had appointed him and to whose direction and control he was subject, accused A could not be said to have published the report. *AIR 1960 Raj 213.*

(B) *Communication by one spouse to the other*:—(1) Where the husband has defamed his father-in-law in a letter written by him to his wife and the letter falls into the hands of the father-in-law, the latter cannot get his daughter (the wife) to speak to the letter from the witness box (without the husband's consent), but there is nothing to prevent him from proving the contents of the letter by any other means which may be open to him. *AIR 1970 SC 1876.*

(C) *Communication by a pleader*:—(1) Where a pleader acting on behalf of his client dictates a letter to his typist he cannot be said to publish the matter contained in the letter. *1974 CriLJ 1435 (Bom).*

**6. Imputation.**—(1) In the absence of an imputation, no proceedings under this section can be taken. *1977 CriLJ 21 (Pat).*

(2) Where A makes a report to the police that a theft was committed and that he suspects B and this results in the search of B's house. A must be deemed to have made an "imputation" against B. *AIR 1926 Lah 278.*

(3) Imputation does not, however, necessarily mean an accusation in the sense of making a charge of an offence. To say something of a person which holds him up to contempt will be an imputation and a defamation. *AIR 1950 Cal 339.*

(4) A mere insult is not an imputation. *AIR 1926 All 711.*

(5) A statement in praise of oneself does not imply a reflection on another person and cannot be considered as an imputation against that other. *AIR 1936 All 143*

**7. Concerning any person.**—(1) Whether the defamed person is an individual or a Corporation or a collection of persons makes no difference as to the applicability of this Section where the word 'person' includes any company or association or body of persons whether incorporated or not. *AIR 1965 SC 1451.*

(2) It is necessary that the person or body of persons defamed should be a determinate and identifiable body. *AIR 1972 SC 2609.*

(3) An indeterminate body such as an ashram, is not within the Explanation. *AIR 1970 Cal 248.*

(4) Where the person defamed is not named but the readers of the publication know well who is referred to, the offence would fall under this section. *AIR 1957 Madh Pra 4.*

**8. To impute anything to a deceased person—Explanation 1.**—(1) The explanation enjoins that in order to amount to defamation the imputation must not only harm the reputation of the person concerned, if living but also be intended to be hurtful to the feeling of his family or other relatives. *(1975) 79 Cal WN 531.*

**9. "By words spoken or intended to be read or by signs, etc.—"**(1) Where the words, read with the whole document have a vulgar import the accused must be brought to trial and asked to show that what was meant was something other than the vulgar import. *1972 Ker LT 619.*

**10. "Intending to harm...will harm".**—(1) Mere publication of an imputation concerning any person without the intention to harm the reputation of the person does not of itself constitute defamation. *AIR 1968 Cal 266.*

(2) It is not necessary that harm or injury must have been actually caused to the person against whom the imputation was made or published. *AIR 1966 Orissa 15.*

**11. Harming reputation—Explanation 4.**—(1) The intention must be to harm the reputation of a person. *AIR 1966 SC 1773.*

(2) The mere fact that the complainant's views on religious matters are strongly and violently criticised cannot amount to defamation. *AIR 1924 Mad 898.*

(3) The mere fact that a claim for money is made against the complainant, cannot amount to defamation. *AIR 1924 Mad 898.*

(4) The question whether a charge of ingratitude would amount to defamation will depend upon the facts of the particular case. *AIR 1924 Mad 340.*

**12. "Lowers the moral or intellectual character"—Explanation 4.**—(1) 'Character' is an expression of very wide import which takes in all the traits, special and particular qualities impressed by nature or habit which serve as an index to the essential intrinsic nature of a person; it includes reputation but is not synonymous with it. *1970 CriLJ 83 (Andh Pra).*

(2) The word 'moral' in Explanation 4 should be taken in a wide sense and should be construed with reference to the social group to which the party belongs. *(1908) 13 Mys CCR No. 209 p. 447.*

(3) The following are statements which would lower the moral or intellectual character of a person:

(a) Imputing unchastity to a woman. *(1970) 1 Cut WR 74.*

(b) Calling a person an illegitimate son of so and so. *AIR 1964 Manipur 20.*

(c) Calling a person a swindler. *(1903) 8 Mys CCR 364.*

(d) Calling a person black-marketeer. *AIR 1952 Mys 123.*

(e) Calling a person Kori Chamar. *(1910) 11 CriLJ 413 (All).*

(f) Calling a person a kula bhrashta. *(1911) 12 CriLJ 497 (Mad).*

(g) Calling a person doshi (sinner). *(1892) ILR 15 Mad 214.*

(h) Calling an election candidate a liar. *AIR 1946 Pat 450.*



- (i) Calling a person a dishonest man. *AIR 1935 Rang 509.*
- (j) Stating that a person makes gifts not out of charity but for selfish advantage. *AIR 1918 Low Bur 36.*
- (k) Stating that at the instigation of the complainant, his servants insulted the modesty of the maker of the statement. *AIR 1936 Nag 241.*
- (l) Attributing corruption and nepotism to ministers. *AIR 1959 Ker 100.*

(7) Anonymous letter containing slanderous remarks against Government servant to his superior with object of prejudicing his chances of promotion.—Moral and intellectual character of Govt. servant is lowered. *AIR 1951 Punj 381.*

(8) The following are statements which would not lower a person's moral or intellectual character in the estimation of others:

- (a) Stating that a person is in the habit of changing his opinions to suit circumstances. *1931 Mad WN 714.*
- (b) Saying of a Muhammadan that he killed a cow. *1955 Madh BLJ (HCR) 1187.* (Calling a person a hooligan or goonda.)
- (c) Stating that a person has committed breach of good manners. *1966 BLJR 300.*
- (d) Calling a person rough and disorderly. *(1980) 1 Kant LJ 123.*

**13. "Lowers character in respect of caste".**—(1) What lowers a man's character in respect of his caste is sufficient to constitute defamation. *AIR 1926 All 306.*

(2) Words imputing unworthiness to continue as a member of a particular caste are prima facie defamatory. *AIR 1930 Cal 645.*

(3) Informing people that a person is an outcaste or has been excommunicated from caste will be lowering him in the estimation of his followers. *AIR 1939 Mad 382.*

(4) It is a different matter to dub a person an outcaste and induce other persons to boycott him before there has been a decision of the caste in which he has been given a fair hearing. *AIR 1940 Nag 283.*

**14 "Lowers character in respect of calling".**—(1) In the course of an election campaign the accused issued a poster against his rival candidate, a barrister poster contained the words: "the hollowness of Mr. T's capacity as barrister has been exposed"—Held that this had the effect of lowering the character of the barrister in respect of his calling and was defamatory. *AIR 1936 Lah 294.*

**15. Abuse in quarrel.**—(1) The use of common abuse in the heat of a quarrel does not amount to defamation. *(1899) ILR 26 Cal 653.*

(2) Abuse in the heat of quarrel is not defamation as there is no intention to harm the reputation of the complainant in such a case. *AIR 1952 Orissa 351.*

**16. Exceptions from liability.**—(1) No exemption from liability, apart from the exceptions mentioned in this section, can be claimed by the accused. *AIR 1960 All 623 (624)=1960 CriLJ 1296.*

(2) Defamation—Qualified privilege—Trade Union Leaders—Suit by Managing Director of estate on the basis of matter published by union in journal meant for private circulation—No evidence that journal had been deliberately forwarded to nonmembers—Held union was protected by privilege and was not liable for defamation. *AIR 1982 Ker 95.*

**17. Exception-1.**—(1) In order that this exception may apply it must be for the public good that such imputation should be made or published. *AIR 1970 SC 1372.*

(2) The question whether an imputation made or published is for the public good is a question of fact depending upon the circumstances of the case. *AIR 1970 SC 1372.*

(3) Imputation by member of minority party against Municipal Board of tyranny of majority party and nepotism and also of waste of public money in litigation—Case held covered by Exceptions 1 and 2. *AIR 1952 All 114.*

**18. Exception 2.**—(1) A bare statement that the accused believed that what he said was true is not sufficient to establish good faith. *AIR 1959 Ker 100.*

(2) Imputation by member of minority party against Municipal Board of tyranny and nepotism and waste of public money—Exception 2 applies. *AIR 1952 All 114.*

**19. Exception 3.**—(1) In order that this exception may apply it must be proved that the opinion was expressed in good faith. *AIR 1965 SC 1451.*

**20. Exception 4.**—(1) It is not necessary for the application of exception 4 that the report of judicial proceedings should have been published contemporaneously: all that is necessary is that it must be a substantially-true report; it need not be absolutely true. *AIR 1953 Cal 503.*

**21. Exception 6.**—(1) Where M a medical man and an editor of a medical journal, said in his journal, about an advertisement published by H, another medical man, in which H solicited the public to subscribe to a hospital of which he was the surgeon-in-charge stating the number of successful operations which had been performed, it was held that the advertisement clearly made the prosecutor's eye-hospital a public question and further, that it had the effect of submitting the hospital to judgment of the public, within the meaning of the Explanation to the Exception. *(1880) ILR 3 All 342.*

**22. Exception 7.**—(1) A religious head of a sect to which complainant belongs is within his rights in vindicating the caste usage in issuing temporary interdiction against the complainant for breaking caste rules and usages provided the principles of nature justice are not violated. *AIR 1923 Mad 587.*

**23. Exception 8.**—(1) For the applicability of this exception, the following condition that the lawful authority over such person must be with reference to the subject-matter of the accusation must be satisfied. *AIR 1963 SC 1317.*

(2) A caste Panchayat can only deal with offences relating to caste usages and customs. It has no jurisdiction to decide questions regarding private property or impose a loss of caste on a member of the community who declines to part with property. *AIR 1939 Mad 382.*

(3) A petition to the Local Board President that the complainant was not qualified for election on the ground of leprosy may fall within this exception. *AIR 1931 Mad 487.*

(4) The section does not use the word "malice." If good faith as defined in Section 52 is proved, no question of malice can arise under this section. Accusation in a newspaper is not within this Exception as the public which read the news cannot be considered to be a "lawful authority". *AIR 1959 Ker 100.*

(5) Where the accused believed, in good faith, and the general impression of the public, that the Law Minister was a person in authority over the commissioner of religious endowments and an accusation was made to the Minister, it was not proper under the circumstances to prosecute the accused for defamation. *AIR 1959 Orissa 141.*

**24. Exception 9.**—(1) Exception 9 affords protection to a person who makes a defamatory statement in good faith. *AIR 1923 Cal 470.*

(2) Where the editor punished the news item on basis of enquiry report submitted by high official to the Government relating to certain irregularities committed in jail for the welfare of the society in good faith, the editor was entitled to protection under S. 499, Exception 9. *AIR 1981 SC 1514.*

(3) Failure to prove that a defamatory statement made is in good faith and that it is for the protection of the interest of the person making it or of any other person or for the public good would exclude the application of the exception. *AIR 1966 SC 97.*

(4) The interest of the person making the imputation must be real and legitimate. *AIR 1970 SC 1372.*

(5) Where the interest of the person is actually and really not protected by the statement, belief on his part even in good faith that the statement would protect his interest is not sufficient. *AIR 1949 Mad 524.*

(6) In order to claim good faith the accused must show that, before making the alleged imputation he had made enquiry with due care and attention and that he was satisfied about the truth of the imputation. The emphasis is on enquiry, care and objective (not subjective) satisfaction. *AIR 1971 SC 1567.*

(7) Whether an imputation made is for the public good is a question of fact. *AIR 1970 SC 1372.*

(8) Whether imputation made by a person was for the protection of his interest or of any other person or for the public good is a question of law. *AIR 1949 Mad 524.*

(9) Protection of interest of the person making the imputation will have to be established by showing that the imputation was itself the protection of the interest of the person making it. *AIR 1971 SC 1567.*

(10) Proof of the truth of impugned statement is not an element of the exception, as it is of the first exception. *AIR 1966 SC 97.*

(11) The privilege conferred by this exception is a qualified privilege and not an absolute privilege as under the Common Law of England. *AIR 1926 Mad 906.*

(12) Where a person purchased certain land in public auction against the wishes of his community and on his refusing to part with the land in favour of the community for the price at which he had bought the land, was ex-communicated and the ex-communication was published for the information of the members of the community living in other villages, it was held that such ex-communication and its publication constituted defamation and further that the publication did not come within Exception 9 to the section. *AIR 1939 Mad 382.*

**25. Exception 10.**—(1) This exception did not apply to case where one man says of another that he married a woman who had been married before, and that the statement was defamatory in that it was likely to lead to the ex-communication of that other from his caste. *AIR 1930 Cal 645.*

(2) A person who brings to the notice of a Panchayat of a caste the behaviour of a person of that caste who is guilty of a social offence, will come under exception 9 and 10 of this section and is not guilty of an offence under this section. *AIR 1933 Oudh 377.*

**26. Good faith.**—(1) In order to establish good faith and bona fides it has to be seen: (i) the circumstances under which imputation was made or published; (ii) whether there was any malice; (iii)

whether the appellant made any enquiry before he made the allegations; (iv) whether there are reasons to accept the version that he acted with care and caution; and (v) whether there is preponderance of probability that the appellant acted in good faith. Good faith requires care and caution and prudence in the background of context and circumstances. *AIR 1979 SC 1372*.

(2) There can be no good faith where there is no reasonable ground to believe the truth of the statement made. *AIR 1914 PC 116*.

(3) Accused lodging information against complainant—No specific charge of theft of bicycle—Accused merely stating that two persons told him that complainant had taken away bicycle—Accused held came within Exceptions. *AIR 1950 Cal 77*.

(4) Where an imputation contained in a hand-bill was aimed at protecting the interests of the members of a certain community and cautioning them against giving subscription to a person, who holding a responsible office in the organisation, neither maintained accounts nor cared to supervise them, the imputation was covered by Exception 9. *AIR 1963 Madh Pra 60*.

(5) It is no defence for the accused to say that he acted on the information given to him by another; he must establish that the source of information on which he has acted was a proper source on which he was entitled to act or justified in acting and that he did so with care and circumspection. *AIR 1961 Punj 215*.

(6) The mere fact that the accused has promptly contradicted the incorrect report or tried to undo the wrong is not sufficient to absolve him from liability, though it may be a consideration in awarding sentence. Mere absence of malice does not necessarily prove good faith. *AIR 1957 Madh Pra 162*.

(7) A person will not be justified in making statements on the basis of rumours. *AIR 1964 Ker 277*.

(8) All that the 9th and 10th Exceptions to Section 499, P. C. requires is that there should be good faith, i.e., the imputation must have been made after due care and attention even though on further searching investigation it may not be found to be true. *AIR 1958 Orissa 259*.

(9) As to whether the Supreme court will interfere in such a case. *AIR 1966 SC 97*.

**27. Public good.**—(1) Whether an imputation is made for the public good is a question of fact. *AIR 1970 SC 1372*.

(2) Whether a murder case is under investigation advance publication of news against the complainant with bold headlines cannot be said to be for the public good. *AIR 1957 Madh Pra 162*.

**28. Innuendo.**—The plea of innuendo is necessary only where the secondary meaning of the words is relied on, not where the natural and ordinary meaning is defamatory. *1969 MPLJ 805*.

**29. Privilege of witnesses.**—(1) A statement made by a witness in answer to a question which he is compelled to answer will not subject him to a prosecution under S. 500 even if the answer is defamatory of some person. *1971 MPLJ 284*.

(2) The witness who is giving voluntary statement has only a qualified privilege i.e., subject to the conditions laid down in the exceptions to the section. *AIR 1960 All 623*.

(3) A witness who answers a question put to him by the court must be deemed to be compelled to answer it even though he did not object to the question. *AIR 1934 Oudh 386*.

(4) A witness answering question put to him is entitled to the benefit of an initial presumption of good faith. *AIR 1939 Rang 371*.

(5) As to whether a witness can be sued for damage in a Civil court for statements made in evidence given on oath in a judicial proceeding. (1873) 11 Beng LR 321.

**30. Statements in pleadings, petitions, affidavits, etc. of parties to judicial proceedings.—(1)** Following defamatory statements are offences under this section, unless they fall within the Exceptions:

(a) in pleadings in suits. (1922) 65 Ind Cas 204.

(b) in pleadings in other judicial proceedings. AIR 1921 Cal 1.

(c) in a notice or a reply by a lawyer on behalf of a party. 1974 Cyl LJ 1435.

(d) in a statement by a complainant in a criminal case when asked by the Magistrate to state his grievance. AIR 1922 Bom 381.

(e) in statements given under S. 313 of the Criminal P. C. AIR 1926 Bom 141.

(2) Statements made to the Police in answer to question put by them, in the course of investigation are not absolutely privileged. AIR 1960 all 623.

(3) Where a party gives instruction only to his lawyer making imputation against a witness to be examined and the lawyer put the question but, on objection, did not press and there was no evidence that the instruction were not given in good faith, he was not liable for defamation. AIR 1937 Rang 535.

(4) Where the defendant sets up in defence that the alleged is true to his own knowledge the defence of a qualified privilege becomes illogical and impossible. AIR 1924 All 535.

**31. Privileged of counsel and solicitors.—(1)** Privilege under the Exceptions to this section is only a qualified privilege and not an absolute one. (1979) 1 Cal HC N 305.

(2) A suit for damages against a counsel for words used by him in a argument in a civil case will not lie. AIR 1922 Pat 104.

(3) Lawyer attesting written statement or counter of a client to be filed in Court—not sufficient to make out defamation. AIR 1966 Ker 264.

**32. Defamatory questions by lawyer on instructions—Liability of party.—(1)** Where an advocate for a party in a judicial proceeding puts defamatory question to a witness, on the instructions of a party and the imputation in the question are neither true nor necessary for the protection of the interest of the party, the party would be guilty under this section. AIR 1967 Mad 395.

(2) Where the questions are asked by the advocate without any instructions from his party, the latter would not be liable for defamation, but the advocate may be. AIR 1954 Mad 741.

**33. Social club.—(1)** Where the wife of a member of a social club was herself not a member, but was allowed as a privilege to use the Club and she abused the privilege and violated the rules, and the Committee of the Club complained to the husband member the Committee acted in good faith and was within Exception 9 of the section. AIR 1946 Mad 223.

**34. Statements and remarks by Judges.—(1)** A civil action is not maintainable against a Judicial Officer for words used by him while trying a case even though the words used are false, malicious and without reasonable cause. (1845-1846) 8 QB 255.

(2) Defamatory remark by a Judge is not covered by S. 77 of Criminal P. C., the reason being that a Judge cannot be said to believe in good faith that he has power to make defamatory remarks. AIR 1934 Nag 123.

(3) Some privilege or protection attaches to public acts of a Judge which exempts him in regard to these from free and adverse comment. He is not above-criticism. His conduct and utterances may demand it. Freedom would be seriously impaired if judicial Tribunals were outside the range of such comment. *AIR 1914 PC 166.*

**35. Newspapers.**—(1) The position of newspapers is not any way different from that of the members of the public in general. The responsibility in either case is the same. The degree of care and attention is in no way less in the case of newspaper publication than that required from ordinary men. *1980 Bom CR 567.*

(2) The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever length, the subject in general may go, so also may the journalist, but apart from statute law his privilege is no other and no higher. The responsibilities which attach to his power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful; but the range of his assertions, his criticisms, his comments is as wide as, and no wider than that of any other subject. No privilege attaches to his position. *AIR 1914 PC 166.*

(3) The press has great power in impressing the minds of the people and it is essential that persons responsible for publishing anything in newspapers should take care before publishing anything which tends to harm the reputation of a person: reckless comments are to be avoided. *AIR 1965 SC 1451.*

(4) The Printer and Publisher can invoke Exception 9 only if the allegations are made in good faith and for the public good. *AIR 1966 Punj 93.*

(5) The owner of a journal qua owner is not liable under this section for defamatory matter published in the journal unless he had direct responsibility for the publication and had the intention referred to in the section. *AIR 1968 Cal 296.*

(6) Where defamatory publication in newspaper is based on enquiry report submitted to government by its officer and which was not duly proved and there was nothing to show that publisher had taken due care and caution, the benefit of protection could not given to him. *1981 CriLJ 894.*

(7) As to illustrative cases on question of applicability of Exception 9 to s. 499. *AIR 1965 SC 1451.*

**36. Fair comment.**—(1) Exceptions 2, 3 and 9 of this section embody the defence compendiously known as 'fair' comment. *AIR 1959 Ker 100.*

(2) The tests to be applied in order to see whether the comment is fair or not are:

(a) The facts stated must be substantially true. *(1978) 1 Malayan LJ 75.*

(b) The comment should have been inspired by a genuine desire on the part of the writer to serve the public interest and not by any intention of wreaking private spite. *(1971) 1 Mys LJ 28.*

(c) The criticism even where called for, must not be malicious. *AIR 1961 Madh Pra 205.*

(3) Burden of proof is on the accused to show that the comment is fair but the burden may be discharged by pointing out the circumstances. *AIR 1961 Madh Pra 205.*

(4) Range of the criticisms or comment of the Press is as wide as and no wider than that of any other subject. *AIR 1914 PC 116.*

**37. Criticisms about public men.**—(1) Public position men are not wholly without protection: it is for the person who has words criticising such men to justify them, or under the Penal Code to establish affirmatively that he believed them to be true, and that on reasonable grounds. *AIR 1942 Nag 117.*

(2) Whoever fills a public position renders himself open to criticism and that public men in position may as well think it worth their while to ignore vulgar criticism rather than give an importance to the same by prosecuting the persons reasonable for the same. *AIR 1956 SC 541.*

**38. Privileges of members of Parliament.**—(1) Where a member of a Legislative Assembly gave notice of his intention to ask certain questions in the Assembly, but they were disallowed and he then published the intended question in a journal and the complainant who was affected by such publication filed a complaint against A for defamation the member could not plead absolute privilege under Art. 194 of the Constitution. *AIR 1961 SC 613.*

(2) Privilege of members of the Legislature does not extend to a statement published by a member outside the House even though it may be an exact reproduction of what was said during the debate. *AIR 1961 Punj 215.*

**39. Privilege of caste heads and members.**—(1) If a person really was out-casted, a statement to the members of the brotherhood that he was out-casted was the kind of statement contemplated by the expression for the public good. *AIR 1924 All 299.*

(2) A complaint by a member of the caste to the head of the caste is protected if it is not actuated by ill-will. *AIR 1969 Raj 119.*

(3) A letter by the member of a caste to his castemen charging another member with misconduct and asking that he should be excluded from social intercourse is protected. *AIR 1950 All 619.*

(4) Informing caste people that a member has been excommunicated would not, if the information be true, be an offence. *AIR 1954 All 694.*

(5) The excommunication of a people by a caste panchayat for refusal to pay a fine for past breach of caste rules may in certain circumstances amount to an offence under the Code. *AIR 1961 Orissa 33.*

**40. Publishers and authors of books.**—(1) If publishers and authors of book make assertions of facts as opposed to comments on them and those assertions are defamatory, they must either justify those assertions or, in the limited cases specified in the 9th Exception to S. 499 show that the attack on the character of another was made in good faith and for the public good. *AIR 1942 Nag 117.*

**41. Statements in F.I.R.**—(1) A statement in F. I. R. which is defamatory is not absolutely privileged. Privilege can be claimed only under Exception 8. *1970 BLJR 560.*

**42. Privilege in respect of publishing reports of parliamentary proceedings.**—(1) For this section to apply it should be found: (i) that the impugned publication contains a substantially true account of the Proceedings of the Legislature; (ii) that the publication was not promoted by malice, and (iii) that the publication was for the public good. *1978 All LJ 996.*

**43. Civil liability for defamation.**—(1) A civil suit for damages for defamatory statements made on oath or otherwise by counsel, party or witnesses in a judicial proceeding is governed, not by the principles of this section, but by the principles of justice, equity and good conscience which must be held to be identical with corresponding relevant rules of English Common law. *AIR 1962 Pat 229.*

(2) Questions of civil liability for damages for defamation and questions of liability in criminal prosecution do not, for purposes of adjudication stand on the same footing. The Court cannot in the latter cases, engraft the exceptions recognised by the English law. But in the former case, the English rules of justice, equity and good conscience will be applied. *AIR 1921 Cal 1.*

(3) Harm to the reputation of a person is a common ground in both civil and criminal defamations and truth of the imputation may be a defence in both. But a defence which is available in criminal

defamation that the imputation was made for the public good is not a good defence in a civil suit for damages. A conviction and sentence is an essential feature in criminal liability whereas damages is the proper remedy in civil cases. *AIR 1967 Cal 178*.

(4) Printer will not be liable for damages for printing defamatory matter, if it is not proved that there was publication thereof. *AIR 1973 Raj 240*.

**44. Complaint.**—(1) A complaint by the Court is necessary for a prosecution for an offence under S. 193 of the Code and this cannot be evaded by the parties by filing a complaint under S. 500. *AIR 1940 Mad 67*.

(2) Sanction under S. 197 of the Criminal P. C. is necessary for prosecuting a Judge under S. 500 for using defamatory language to witness during trial of a suit. *AIR 1931 Oudh 392*.

(3) No complaint by the Court u/s. 195, Cr. P. C., is necessary for a prosecution by a person not party to a proceeding in Court, against a witness in such proceeding. *1980 CriLJ (NOC) 123 (Gauhati)*.

(4) A complaint by a Public Prosecutor in writing under S. 199, Criminal P. C. need not be signed by the public servant defamed. *AIR 1960 Him Pra 19*.

(5) In a complaint against several accused for defamation, it is sufficient if the complaint furnishes the words of imputation in a substantial manner. If, the case of the complainant is that each of the accused made different statements or spoke different words, then it is absolutely necessary that the complaint should specify the words spoken or the statements made by each of them. *AIR 1971 SC 1389*.

(A) "Aggrieved person."—It is only the aggrieved person that can make a complaint of an offence under Section 500. *AIR 1970 Cal 216*.

(2) In defamation case of a bank its manager is the person aggrieved. *AIR 1950 Pat 545*.

(3) A person cannot be said to be an aggrieved person where his sister or mother or daughter is defamed. *AIR 1953 Punj 82*.

(4) Where defamation is committed in a proceeding in Court no action under Section 340, Criminal P. C. is necessary for a prosecution of the offender under Section 500. *AIR 1938 Cal 527*.

**45. Death of complainant.**—(1) The Court has a discretion under S. 249, Criminal P. C. whether or not to proceed with the complaint where the complainant dies. *1970 Ker LT 545*.

**46. Sanction.**—(1) Where the accused is one of the classes of persons specified in S. 197 or 199 of the Criminal P. C. and the offence is committed in his capacity as such public servant or Judge, sanction as required by those sections is necessary for prosecution. *1977 Cri LJ (NOC) 7 (Cal)*.

(2) Where the accused is not one of the classes of persons specified in S. 197 or 199 of the Criminal P. C. and the offence is not committed in his capacity as such public servant or Judge, sanction is not necessary for his prosecution under S. 500. *AIR 1953 SC 293*.

(3) The ordinary remedy of a person against whom a false suit has been brought is to apply to the Court to prosecute the plaintiff under Section 209 of the Penal Code though it cannot be said that in no case should a prosecution be made for defamation because it is quite possible that the plaint may not only be untrue, but might contain grossly defamatory matter which was not necessary for the purpose of the litigation. *AIR 1925 Sind 263*.

**47. Defence.**—(1) In a charge of defamation the accused should disclose his defence. He can take alternative pleas that the material facts on which his statement is based is true and is in public interest



although he may suggest in the first instance, that the defamatory matter does not refer to the complainant. The former plea would not be one of justification but of "fair comment" which the accused has to establish. *1967 MPLJ 59.*

(2) It is open to the accused to raise alternative and even inconsistent pleas e.g., that the writing was not defamatory or that, if the matter was considered defamatory, it was an expression of opinion in good faith and for the public good falling within one of the exceptions. *AIR 1946 All 146.*

(3) In a charge of defamation want of ill-will or malice cannot serve as a valid defence though it may be an element in establishment of good faith which is an ingredient in several of the exceptions. *AIR 1961 Punj 215.*

(4) The mere fact that an imputation is true is no defence. *AIR 1951 Pepsu 59.*

**48. Evidence and proof.**—(1) The burden is on the accused to show that his case comes under any of the exceptions to this section and that he is not liable for defamation. *1974 CriLJ 1358.*

(2) Exact words and context are not material in cases where there is a sufficiently clear account of the purport of the defamatory remarks. *AIR 1958 Madh Pra 83.*

(3) The conduct of an accused person subsequent to the publication of a libel, before and during trial, may also be taken into consideration by the court. It is within the power of the accused to mitigate his offence or aggravate his guilt by his conduct. *AIR 1961 Punj 215.*

(4) It is not necessary that the identical and precise words used by the accused should in all cases be reproduced by witnesses. Slight variations in the versions of witnesses are not material. Substantial agreement of witnesses is sufficient. *AIR 1966 Orissa 15.*

(5) A newspaper report is not admissible in proof of the facts stated therein; the evidence of the maker of the statement reported in the newspaper is essential. *AIR 1971 Cal 53.*

**49. Burden of proof.**—(1) The burden of proving the exceptions is on the accused. *1980 CriLJ (NOC) 123 (Gauhati).*

(2) The conduct of the accused may affect his credibility but cannot affect his right to compel the prosecution to prove the case against him. *AIR 1924 All 299.*

(3) The prosecution must prove the fact of publication. *AIR 1950 Pat 545.*

(4) In a defamation case based on the allegation that a woman has had illicit pregnancy, she cannot be compelled to submit to a medical examination and her refusal to do so is not evidence against her. *AIR 1930 Lah 159.*

(5) An important duty rests upon the trial Court to see on the one hand, that the accused is not prejudiced in any manner in shutting out evidence, which he is entitled to produce, or disallowing questions, which he is entitled to put; and on the other hand that the complainant, who complains of defamation is not unnecessarily harassed. *AIR 1950 All 455.*

**50. Procedure.**—(1) Under S. 499 cognizance starts from the complaint and if the complaint does not disclose facts which could constitute an offence under S. 500, no action can be taken on such complaint. *1982 All Cri R 351.*

(2) A Magistrate before whom a complaint is made under S. 500, cannot take it no file as one under S. 182 of the Code. *AIR 1941 Mad 805.*

(3) Where certain passages in a book are found to be defamatory, an order directing the destruction of all copies of the book is bad. Only the pages containing the objectionable matter should be destroyed. *AIR 1940 Mad 953.*

(4) A prosecution under S. 171G is not necessary where the offence committed is also one under S. 500. *AIR 1970 Mad 509.*

(5) A dismissal of a complaint under S. 211, Penal Code and S. 203, Criminal P. C. does not bar a subsequent complaint under S. 500 on the same facts. *AIR 1934 Rang 40.*

(6) No complaint for defamation against a witness should be permitted until the Court before which the evidence was given, has expressed its opinion on such evidence. *AIR 1934 Sind 114.*

(7) In a complaint under S. 500 the Magistrate must give opportunity to the complainant to prove his case and not simply dismiss it without giving reasons. *AIR 1953 Cal 689.*

(8) Separate proceedings under S. 500 against the same accused in respect of the same publication is against the Constitution. *AIR 1970 Cal 248.*

(9) Not cognizable—Summons—Bailable—Compoundable—Triable by any Magistrate.

**51. Limitation.**—(1) Where a defamation article was sent to a newspaper before 28-4-1956 but published on 28-4-1956 and the complaint was made on 27-10-1956 the complaint was within time, as the sender of the article must be deemed to have committed the offence on 28-4-1956, the date on which the article was published. *1962 (2) CriLJ 520 (All).*

(2) The period of limitation for filing a complaint for offence of defamation is three years as prescribed in Clause (c) of sub-section (2) of S. 468 of the present Code of Criminal Procedure. *AIR 1978 SC 986.*

**52. Place of trial.**—(1) It is the Court within whose territorial limits the publication is made that has jurisdiction to try the offence. *AIR 1968 Cal 266.*

(2) Where two offences of defamation are committed one in a village where the accused published defamatory matter, and the other by posting letters to person in other places they cannot be tried together at one place. *AIR 1957 Mad 572.*

(3) When a case instituted at one place is sought to be transferred to a different place, the court should bear in mind that the accused cannot dictate in which forum he is to be tried but at the same time the process of justice should not cause harassment to the parties. *AIR 1979 SC 468.*

**53. Jurisdiction.**—(1) It is not desirable that Honorary Magistrates should try complicated questions of defamation involving difficult points of law. *1931 Mad WN 407.*

(2) Where a Magistrate could not take cognizance of an offence under a section which requires a sanction, he cannot give himself jurisdiction by trying the case as for an offence under S. 500. *AIR 1953 SC 293.*

(3) Where the complaint is under S. 500 it cannot be dismissed even if some of the facts alleged constitute also an offence under S. 182 or S. 193 or S. 211 of the Code, a prosecution for which requires sanction. *AIR 1938 Rang 232.*

(4) There is nothing in the Code to prevent a Court from taking cognizance of an offence of defamation where it has been committed by a party to a legal proceeding. *AIR 1954 Sau 50.*

**54. Contempt of Court.**—(1) In a complaint by A against B, C was examined as a witness for A, and he made a defamatory statement against B. It was held that B could after the examination was over, complain against C for defamation and his act would not be a contempt of Court. *AIR 1939 Oudh 225.*

(2) A libellous reflection upon the conduct of a Judge in respect of his judicial duties comes under S. 499. It may also be a contempt of Court under the Contempt of Courts Act. *AIR 1968 Punj 217.*

(3) A contempt of Court is something more than defamation. *AIR 1952 SC 149.*

(4) A notice by a solicitor on behalf of a party defamed demanding apology during the proceeding of a criminal case for defamation is not a contempt of Court. *AIR 1967 Cal 178.*

**55. Duty of Court.**—(1) Where a complaint is made on oath before a Magistrate, he cannot dismiss it merely on the ground that there is a possibility that the accused might have some defence if the allegations are true. The Magistrate must direct his attention to see if there is any reason for disbelieving the complaint. *AIR 1940 Pat 179.*

(2) Where a prima facie case is made out the accused must be found guilty unless he is able to bring himself within any of the exception. *AIR 1943 Cal 478.*

(3) It is the duty of the Court to see that accused is not prejudiced and the complainant not harassed. *AIR 1950 All 455.*

(4) The Court, whether original or appellate, must discuss the evidence. An acquittal without such discussion is liable to be set aside. *AIR 1957 All 777.*

**56. Charge.**—(1) The charge should set out the precise words alleged to have been uttered by each of the accused. *AIR 1952 Orissa 351.*

(2) A plea that though there was publication of the statement, there was no publication to person mentioned in the charge is highly technical plea and the defect in the charge is curable under S. 537, Criminal P.C. *AIR 1929 All 1.*

(3) The charge should run as follows :

I (name and office of the Magistrate, etc.) hereby charge you (name of the accused) as follows :

That you, on or about the—day of—, at—, defamed X, by making or publishing to Y a certain imputation concerning said X, to wit—(state the defamatory matter), by means of spoken words (or writhing or signs or visible representations) intending to harm, or knowing or having reason to believe that such imputation would harm the reputation of the said X: and you thereby committed an offence punishable under S. 500 of the Penal Code and within my cognizance.

And I hereby direct that you be tried by this Court on the said charge.

**57. Conviction and sentence.**—(1) A journalist is required to attach more care and caution in publishing items which are likely to harm the reputation and good name of others. The conduct of the accused subsequent to the publication of libel, before and during the trial may also have to be taken into consideration. *1974 CriLJ 1358.*

(2) Where the accused was not actuated by malice or ill-will and did not act in wanton carelessness in allowing a mischievous statement to be at large without contradiction, but promptly published the contradiction the very next day, a fine of Rs. 50 would meet the ends of justice. *AIR 1958 Madh Pra 216.*

(3) When the accused tenders an apology and expresses regret it will be a ground of mitigating the sentence. *AIR 1952 Pepsu 165.*

(4) Where the defamation is an extremely malicious one and the means of publication employed are chosen with great cunning, a sentence of fine of Rs. 400 was not excessive. *AIR 1935 Rang 484.*

(5) The President of a Municipal Committee made an allegation against a helpless widow that she was unchaste—Allegation was baseless—President was a man of power and wealth and he acted in a totally irresponsible and reckless manner inconsistent with his position which called for prudence, dignity and decorum in his acts—Held, sentence of imprisonment for 3 months cannot be reduced to

one of 2 month's imprisonment even if such reduction would save him from disqualification. *AIR 1970 SC 1372*.

**58. Revision.**—(1) The High Court will not ordinarily interfere in revision with an acquittal in a trial for an offence under S. 500. *AIR 1953 Sau 87*.

(2) High Court may interfere in revision in proper cases. *AIR 1923 Cal 11*.

(3) Where there are concurrent findings that the accused defamed the complainant, a revision petition is liable to be rejected in limine. *AIR 1969 Goa 52*.

(4) Defamation—Prosecution of newspaper editor—Plea that news item was based on Govt. Report—Application for production of Report before accused was examined, rejected—Revision against—High Court cannot quash entire proceedings—Availability of protection under Exception 9, held, could not be examined at such stage. *AIR 1981 SC 1514*.

**59. Practice.**—Evidence—Prove: (1) That the imputation in question consisted of words, spoken or intended to be read or of sign, etc.

(2) That the imputation concerned the complainant.

(3) That such imputation emanated from the accused.

(4) That he made or published the same.

(5) That he intended thereby to harm the reputation of the complainant or that he knew or had reason to believe that it would do so.

## Section 501

**501. Printing or engraving matter known to be defamatory.**—Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

### Cases and Materials

**1. Scope.**—(1) This is a distinct offence from the one under section 500. The printer is liable for defamatory matter printed by him. The publisher is also liable (*PLD 1938 Lahore 747*). Under this section the printer or engraver of any particular matter must be proved to know or have good reason to believe that such matter is defamatory of some person under section 521 CrPC. The Court can direct destruction of libellous matter on conviction of accused.

(2) This section prescribes the punishment which may be imposed upon a person who prints or engraves any matter knowing or having good reason to believe that such matter is defamatory of any person. *AIR 1928 All 400*.

(3) Where a person is both the publisher and printer of a newspaper in which a defamatory statement appears he is liable both under Section 500 (as publisher) and under this section (as printer). *AIR 1966 Punj 93*.

(4) In order that a printer or engraver of a defamatory matter may be liable, it is essential that he should have the mens rea defined in this section, namely, knowledge or good reason to believe that the matter printed or engraved is defamatory of some person. Hence, the mere fact of a person being the printer or engraver of a defamatory matter is not sufficient to hold him criminally, responsible in connection with the defamation. *AIR 1973 Raj 240*.

(5) Where a printer charged under this section for printing defamatory matter seeks to avoid his liability on the ground that he was absent when the matter was printed he must prove that his absence was bona fide, in the sense that he knew nothing of the article in question and did not know that it would be printed during his absence. *AIR 1928 All 400*.

(6) Where a person who was in fact "removed" from service was described in a news item as "dismissed", there could be no offence under S. 501 as both words have same meaning in common parlance. *(1977) 43 Cut LT 469*.

(7) Newspaper report—Publication of—to be considered as a whole—Editor is in no better position than ordinary subject regarding liability for libel. *1968 Cri LJ 398 (Andh Pra)*.

(8) Conviction of accused, Editor, and Printer/Publisher of a weekly for publishing news item against A. Controller of Weights and Measures regarding his checking of petrol pumps—Accused printing news item in good faith and in public interest—Accused bearing no malice against A—Nothing on record to show that checking made by A was in accordance with law—Held, case would fall within Ninth Exception to S. 499. *(1984) 1 Crimes 664 (P & H)*.

(9) A sanction granted under S. 199(2) of the Criminal P.C. to prosecute an accused on the ground that he has defamed a public servant is not valid, if there is no evidence to show that the attention of the sanctioning authority was brought to bear upon the facts of the case and that he applied his mind to them and then came to the conclusion that sanction should or should not be granted. *1969 CriLJ 1318 (Punj)*.

(10) It is not necessary that the sanction should contain a recital to the effect that the Public Prosecutor has been authorised to file a complaint. It would be sufficient if, in the body of the complaint, the Public Prosecutor mentioned that he had been instructed by the Government concerned to file the complaint. *AIR 1960 Him Pra 19*.

(11) If the contents of various defamatory items of news published in a newspaper are more or less similar and relate to the same person, they may, separately and collectively, form the subject of one charge; on the other hand, if the said publications deal with different allegations or aspersions in respect of the same person, each of them should form the subject of a separate charge. *AIR 1965 All 439*.

(12) Accused, Editor and Publisher of daily were convicted under S. 501 for publishing defamatory passage against a respectable person (complainant) and were sentenced to fine of Rs. 100 and Rs. 200 and in default to simple imprisonment for 8 and 4 weeks by trial court. Publication published before 5 years—Immediately accused tried to make amends by publishing correction in their paper—Held, sentence at this stage cannot be interfered with nor it can be enhanced by the High Court. *1983 Mad LW (Cri) 99*.

**2. Practice.**—Evidence—Prove: (1) That the matter in question is defamatory.

(2) That the accused printed or engraved it.

(3) That when he did so he knew or had reason to believe that such matter was defamatory.

**3. Procedure.**—Not cognizable—Warrant—Bailable—Compoundable—Triable by any Magistrate.

**4. Charge.**—The charge should run as follows :

I (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, printed or engraved some matter, namely knowing or having good reason to believe that the same was defamatory and that you thereby committed an offence punishable under section 501 of the Penal Code and within my cognizance.

And I hereby direct that you be tried by this court on the said charge.

### Section 502

**502. Sale of printed or engraved substance containing defamatory matter.—**Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

#### Cases and Materials

**1. Scope.—**(1) This section deals with the sale of printed or engraved matter containing defamatory statement under section 521 CrPC; the court may direct destruction of libellous matter on conviction of accused.

(2) In order to sustain a charge under this section, it is necessary only to prove that the seller of a printed substance knew that it contained the matter which is charged as defamatory but it is not necessary further to prove that he knew the matter to be defamatory. *1891 Pun Re (Cri) No. 8 P. 19.*

(3) When there is no intention to defame no case under S. 502 can be made out. *(1977) 43 Cut LT 469.*

**2. Practice.—Evidence—Prove :** (1) That the matter is defamatory (vide section 494).

(2) That it is printed or engraved on the substance in question.

(3) That the accused sold, or offered for sale, that substance.

(4) That he then knew that it contained such defamatory matter.

**3. Procedure.—**Not cognizable—Warrant—Bailable—Compoundable—Triable by any Magistrate.

**4. Charge.—**The charge should run as follows:

I (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, sold or offered for sale any printed (or engraved substance) to wit—, containing defamatory matter knowing that it contained such matter, and that you thereby committed an offence punishable under section 502 of the Penal Code and within my cognizance.

And I hereby direct that you be tried by this Court on the said charge.

## CHAPTER XXII

### Of Criminal Intimidation, Insult <sup>1</sup>[, Prejudicial Act And Annoyance]

*Chapter Introduction.*—This Chapter deals with criminal intimidation, insult, public mischief and annoyance. Section 503 defines criminal intimidation and section 506 prescribes punishment therefor and sections 507 and 508 are of aggravated forms. Section 504 deals with intentional insult to provoke breach of peace while section 505 deals with public mischief. Section 509 deals with insult to the modesty of a woman and section 510 deals with misconduct in public by a drunken person.

#### Section 503

**503. Criminal intimidation.**—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

*Explanation.*—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

#### *Illustration*

*A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.*

#### Cases : Synopsis

1. *Scope.*
2. *"Threatens another".*
3. *Injury to person, reputation or property.*
4. *"Any one in whom that person is interested".*
5. *Intent.*

**1. Scope.**—(1) This section has been amended vide Ordinance No. 21 of 1991 dated 25/2/91 by inserting the words "Prejudicial Act and Annoyance". This section defines criminal intimidation and section 506 prescribes punishment therefor. This section may be read along with section 43 and 44 of the Penal Code. Criminal intimidation is closely analogous to extortion. In extortion, the immediate purpose is obtaining money or money's worth. In criminal intimidation, the immediate purpose is to induce the person threatened to do, or abstain from doing, something which he was not legally bound to do or omit. The gist of the offence is the effect which the threat is intended to have upon his mind. It must be either made to him by the person threatening or communicated to him in some way. The

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1. Substituted by Act XV of 1991, for "And Annoyance" (w.e.f. 26-2-91).

threat must be communicated to him in any way. If threat is not communicated or intended to be communicated, no question of intimidation will ever arise. The threat is not necessary to be made in the presence of the person threatened. Threat of picketing will fall under this section (32 CrLJ 465). The threat complained of must be an illegal act (34 CrLJ 884). This section says nothing about the capacity of the person making the threat to carry it into execution. A firm cannot commit this offence. (41 CWN 831).

(2) Provisions of the Control of Goondas Ordinance not an encroachment on the P.C. Contention of the appellant was that section 13 of the Ordinance having specifically referred to criminal intimidation as defined in section 503 of the P. Code there has been an encroachment on that Code which is an existing law with respect to "Criminal Law" under entry 1 of the Concurrent List. Held: Section 13 empowers the Tribunal only to declare a person to be a goonda, but no offence has been created thereunder. The mere reference to the definition of 'criminal intimidation' in section 503 of the Penal Code is not an enactment creating an offence. *Syed Ghulam Ali Shah Vs. The State*, (1970) 22 DLR (SC) 247.

(3) A call for hartal without any threat expressed or implied would be an expression of protest which is guaranteed by Article 39(2)(a) of our Constitution. But as soon as the call for hartal becomes more than a call which by use of language of threat or show of force or warning of consequence for violating the call is expressed or implied which is likely to create fear and apprehension in the mind of ordinary citizens it would cease to be an expression protected by the Constitution. Such expression accompanied with implied warning or threat, would amount to intimidation. It would be an offence under section 503 of the Penal Code as it would interfere with the act of a person legally entitled to do such as go to work, pursue his business and move about freely and thus the call for hartal per se is not illegal but where any call for hartal is accompanied by threat it would amount to intimidation and the caller for hartal or strike would be liable under ordinary law of the land. (*Per Mainur Reza Choudhury, J. Khondaker Modarresh Elahi Vs. Government of the People's Republic of Bangladesh (Spl. Original)*) 6 BLC 726.

(4) This section is in two parts: the first part refers to the act of threatening another with injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested; the second part refers to the intent with which the threatening is done and it is of two categories: one is intent to cause alarm to the person threatened, and the second is to cause that person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat. AIR 1960 SC 154.

(5) A mere threat does not constitute an offence under this section unless the threat is to cause injury to person threatened or to any one in whom he is interested. The manner of the threat is an essential ingredient of the offence. Intent specified in the section is also an essential ingredient of the offence and it must be established by evidence and must be found as a fact. (1969) 35 Cut LT 691.

2. "Threatens another".—(1) In order to constitute the offence of criminal intimidation, it is not necessary that the threat should be addressed directly to the person intimidated, it is sufficient if it is intended to be and is communicated to such person. 1964(2) Cri LJ 85 (Cal).

(2) Where an accused told a person that God had ordered him to pay money to the accused and that if he did not, God would punish him, and thereby dishonestly induced him to pay rupees three hundred. It was held that the accused was not guilty under this section. AIR 1925 Mad 480.



(3) The President of a self constituted Arbitration Court caused a notice to be served under his signature to certain person requesting the letter to be present on a given date and arrange for amicable settlement of a certain claim. The notice further stated that if the defendant did not attend and answer the claim on that date, the suit would be decree exparte. It was held that the threat of a decree was a threat of injury and that the fact that the tribunal was incompetent to execute the decree was immaterial. *AIR 1923 Cal 590.*

(4) The threat, in order to amount to criminal intimidation, must be in respect of a particular person or an ascertained group of persons and should not be general. *AIR 1949 Mad 233.*

(5) The threat under this section may be by word of mouth or by an act causing or calculated to cause fear of harm. *AIR 1953 Pat 188.*

**3. Injury to person, reputation or property.**—(1) The word 'injury' denotes any harm whatsoever, illegally caused to any person in body, mind, reputation or property. In order to constitute the offence of criminal intimidation, the injury or harm threatened must be illegal. (1954) 20 *Cut LT 180.*

(2) A threat of social boycott is not criminal intimidation. *AIR 1949 Mad 546.*

(3) A threat to take legal proceedings in a Court in a justifiable case is not a threat of injury; though it may cause harm. It is not caused illegally. *AIR 1937 Cal 367.*

**4. "Any one in whom that person is interested".**—(1) A threat addressed to A to cause injury to B will fall under this section only if A should be interested in B. Thus, where the accused sent a petition to the Revenue Commissioner containing a threat that if a certain Forest Officer was not removed elsewhere, he would be killed, it was held that since the Revenue Commissioner had neither official nor personal interest in the Forest Officer, the threat did not amount to criminal intimidation. (1887) *ILR 11 Bom 376.*

**5. Intent.**—(1) The intention referred to in this section is an essential ingredient of the offence under this section. In order, therefore, to constitute an offence under this section, the threat of injury to the person, in body, mind, reputation or property must be with the intent mentioned in the section namely, to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do; or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat. *AIR 1964 Andh Pra 382.*

(2) This section does not say anything about the effect of the threat upon the person threatened. Whether as a matter of fact, any one was actually frightened or not, cannot affect the liability under this section of the person threatening. It is the intention of the person threatening that has to be considered in deciding as to whether what he stated comes within the mischief of this section. *AIR 1949 Mad 233.*

(3) An intention other than that referred to in the section is not relevant in a charge under this section. where the charge is that B entered on the land in possession of A and intimidated A into giving up possession to him, the intention with which B made the entry on the land is not a relevant factor. *AIR 1970 Manipur 23.*

(A) *Illustrations.*—(1) The accused threatened X and his daughter with injury to their reputation by publishing indecent photographs of his daughter with intent to alarm them so as to force X to pay hush money. It was held that the accused was guilty of criminal intimidation. *AIR 1960 SC 154.*

(2) The complainant and the accused purchased a house from an owner and thereafter, the accused, thinking himself to be a major co-sharer, had closed the door through which the complainant

used to pass previously with the owner's permission. On the complainant protesting, the accused threatened to kill him if he interfered with his possession. It was held that the threat of the accused was to deter the complainant from interfering with his property and was not made with intent to cause alarm. *AIR 1964 J and K 4.*

(3) A Sales Tax Inspector entered a shop and wanted to inspect the account books. The accused, the shopkeeper, in order to deter and prevent him from inspecting the account-books, pulled the Inspector with a jerk, caught him with both hands and threatened that if he touched the account books, it would be at the risk of danger to him, it was held that the accused was guilty of criminal intimidation. *(1970) 2 SCJ 227.*

(4) A Municipal Commissioner threatened a butcher that if he bought a cow, he would have him sent to jail and would make it impossible for him to continue to live in the town: it was held that the Municipal Commissioner was guilty of an offence falling under this section. *AIR 1927 All 783.*

## Section 504

**504. Intentional insult with intent to provoke breach of the peace.**—Whoever intentionally insults, and thereby gives provocation to, any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### Cases and Materials : Synopsis

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|--|---|
| 1. <i>Scope.</i>   | 6. <i>Proof.</i>                          |
| 2. <i>Intentional insult.</i>  | 7. <i>Compounding</i>                     |
| 3. <i>"Intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence".</i> | 8. <i>Conviction and sentence.</i>        |
| 4. <i>Procedure.</i>   | 9. <i>Security for keeping the peace.</i> |
| 5. <i>Sanction to prosecute.</i>   | 10. <i>Charge.</i>                        |
|  | 11. <i>Revision.</i>                      |
|  | 12. <i>Practice.</i>                      |

**1. Scope.**—(1) The object of the section is to prevent the intentional use of abusive language giving rise to provocation causing the person rebuked to commit breach of peace. No actual breach of peace need be committed (*AIR 1953 Mad 413*). Mere abuse unaccompanied by an intention to cause a breach of the peace or knowledge that a breach of the peace is likely does not come within this section. The meaning of the word "insult" is to treat with offensive disrespect and to offer indignity to a person. It is sufficient if the insult offered is such as is ordinarily sufficient to arouse passions and provoke retaliation by words or deeds. Calling a man "beiman" and "badmash" would fall under section 504 and not under section 500 of the Penal Code. The difference between offence under this section and defamation lies in the fact that in defamation publication to the prosecution alone is not sufficient, as such an imputation could not be said to harm the reputation of the person but under this section this would complete the offence. Where the words which constitute the insult are not found or disclosed a conviction under this section cannot be sustained. Where no allegation has been made in complaint that the intentional insult was such as would give provocation for any breach of the peace, section 504 Penal Code has no application at all.

(2) The offence contemplated by this section is a serious one. It is obviously intended to deal with persons who are as responsible for breaches of peace or the commission of offences, as those who openly abet or incite them. *AIR 1942 Mad 672.*

(3) The essential ingredients of an offence under this section are:

- (i) The accused must intentionally insult another person;
- (ii) The accused must thereby give provocation to such person;
- (iii) The accused must intend or know that such provocation will cause the persons provoked to break the public peace or to commit any other offence. *1976 CriLJ 654.*

(4) The provision clearly visualises that the intentional insult will further have in its background, the intention or the knowledge that such intentional insult would, either provoke the person to whom it is offered, to break the peace or to commit any other offence. *1972 CriLJ 371 (Delhi).*

(5) The provision in this section corresponds precisely to the English Law, under which defamatory statements made to the prosecutor alone would be indictable as libellous. *(1885) ILR 7 All 205.*

(6) Words which may not be defamatory may amount to insult within the meaning of this section. *AIR 1945 Pat 450.*

**2. Intentional insult.**—(1) Insult means to treat with offensive disrespect or to offer indignity to a person. *(1973) 39 Cut LT 1186.*

(2) Insult may be by words or conduct. *AIR 1932 Bom 193.*

(3) At a meeting of a limited Company, the accused got angry at a proposal to expel him and others and proceeded to leave the room where the meeting was held. As he was leaving the room, he uttered the words 'You damn bloody bastards and cads'. The words were not addressed to the meeting in general, but were overheard by some members. It was held that the words did not amount to intentional insult, as it was impossible to suppose that the accused meant literally that they were all persons not born of wedlock. *AIR 1932 Bom 193.*

(4) There is nothing in this section which confines the insult to spoken words. Words written in a letter may also amount to intentional insult. *AIR 1930 Bom 120.*

(5) Discourtesy and bad manners do not amount to an offence under this section. *AIR 1960 Ker 236.*

(6) Where a complaint, in substance, was that the complainant, a Police Sergeant, went to a shop and then became engaged in a dispute with the owner, as a result of which, he was asked to leave the shop, a conviction under this section is not justified. *AIR 1935 Sind 107.*

(7) Even if the abusive insults amount to a technical offence, the provisions of S. 95 based on the principle of *de minimis non curat lex* can be invoked in proper cases. *AIR 1954 Cal 288.*

**3. "Intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence".**—(1) Mere abuse or insult and causing provocation thereby would not constitute an offence under this section. It is necessary that the intentional insult by which provocation is caused should either be intended or known to be likely to lead to a breach of the public peace or the commission of some other offence by the person insulted. *(1973) 14 Guj LR 522.*

(2) Where in the course of an election comparing at a meeting the Zamindar complainant stood up to address the audience and the accused stood upon a chair and said that the Zamindar was a liar,

ungentlemanly, barbarous and tyrannical, it was held that the words amounted to an intentional insult, spoken knowing that it was likely to cause a breach of the peace, which was avoided by the commendable behaviour of the complainant and that the accused was guilty of an offence under this section. *AIR 1945 Pat 450.*

(3) In order to constitute an offence under this section, the insult and the likelihood of the breach of the public peace must be immediately after the provocation or so soon afterwards that it must form part of the *res gestae*. *AIR 1949 Mad 760.*

(4) The insult should be uttered in the presence of the victim or should be conveyed to him at the instance of the offender. *AIR 1939 Pat 27.*

(5) If a person insulted comes to know of the insult from a third person without the offender asking it to be conveyed, the insult would not amount to an offence. *AIR 1950 Mad 273.*

**4. Procedure.**—(1) Where an accused prosecuted under Section 186 ante and this section for offences alleged to have been committed in the course of the same transaction and the Magistrate is barred from taking cognizance of the offence under Section 186 for want of a complaint under S. 195, Criminal P. C. it was held that the Magistrate could proceed with the case under this section, as the two sections relate to distinct offences. *1969 CriLJ 1459 (Mys).*

(2) Not cognizable—Warrant—Bailable—Compoundable—Triable by any Magistrate and also triable by Village Court.

**5. Sanction to prosecute.**—(1) Where a Magistrate or Judge is alleged to have used insulting words to a witness while giving evidence in a trial before him, a Court cannot take cognizance of an offence under this section unless sanction to prosecute under S. 197, Criminal P.C., is obtained. *1971 CriLJ 300 (J & K).*

**6. Proof.**—(1) The question whether the language complained of amounts to an offence under this section is a matter which has to be decided with reference to the class of society to which the parties belong, after considering the character of the complainant and the relations existing between the parties. *(1973) 39 Cut LT 1263.*

(2) A right of private defence can have no application to a charge, brought against an accused under this section. *AIR 1959 Orissa 155.*

**7. Compounding.**—(1) An offence under this section is compoundable by the person insulted and accepting an apology. Once the offence is compounded, it ousts the jurisdiction of the Court to try the offence. *AIR 1923 All 474.*

**8. Conviction and sentence.**—(1) An accused was tried on charges under S. 352 and this section and at the time of pronouncing judgment, the Magistrate on discovering that the occurrences were different and hence could not be tried jointly, struck out the charge under S. 352, framed a new charge under this section and on ascertaining that the accused did not want to recall any witness, convicted him. It was held that the conviction was illegal, as S. 216, Criminal P.C. did not permit a joint trial of distinct offences. *AIR 1925 Mad 1065.*

(2) Where an accused was tried and convicted under S. 297 and the High Court found that the offence fell under this section, the High Court held that it could alter the sentence into one under this section, as the offences under the two sections are cognate offences. *AIR 1924 Rang 106.*

**9. Security for keeping the peace.**—(1) An accused person convicted under this section cannot be bound over to keep the peace under S. 106, Criminal P.C. unless a breach of the peace has actually

occurred. The words 'offences involving a breach of the peace' in S. 106, Criminal P.C. mean offences in which breach of the peace is an ingredient and not offences provoking or likely to lead to breaches of the peace. *AIR 1932 Oudh 33*.

**10. Charge.**—(1) Although the charge need not be worded with accuracy of a plea but it must contain the ingredients of the offence as it is formulation of specific accusation which the accused has to meet. *1984 All Cri Rul 170*.

(2) The charge should run as follows :

I (name and office of the Magistrate, etc.) hereby charge you (name of the accused) as follows :

That you, on or about the—day of—, at—, intentionally insulted and thereby gave provocation to—intending (or knowing to be likely) that such provocation will cause the said person to break the public peace (or to commit the offence of—), and thereby committed an offence punishable under 504 of the Penal Code and within my cognizance.

And I hereby direct that you be tried by this Court on the said charge.

**11. Revision.**—(1) Where there is no evidence as to the actual words used by the accused and a charge is framed not specifying the actual words alleged to have been used by the accused, the High Court will interfere in revision and quash the charge. *1962 (2) Cri LJ 543 (Him Pra)*.

(2) Where in revision against conviction under Ss. 504 and 323, conclusions of Magistrate were found to have been based on evidence and conviction was found neither illegal, nor improper, it was held that the case was not a fit one for interference in exercise of revisional jurisdiction. *AIR 1969 Goa 47*.

**12. Practice.**—Evidence—Prove: (1) That the accused insulted some person.

(2) That he did so intentionally.

(3) That he thereby gave provocation to that person.

(4) That he intended, or knew that it was likely, that such provocation would cause that person to break the public peace, or to commit any other offence.

## Section 505

**<sup>2</sup>[505. Statements conducing to public mischief.**—Whoever makes, publishes or circulates any statement, rumour or report—

(a) with intent to cause, or which is likely to cause, any officer, soldier, <sup>3</sup>[sailor or airman] in the Army, <sup>4</sup>[Navy or Air Force] of <sup>5</sup>[Bangladesh] to mutiny or otherwise disregard or fail in his duty as such ; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity ; or

2. Subs. by the Indian Penal code Amendment act, 1898 (V of 1898), s. 6, for the original section.

3. Subs by the Repealing and Amending Act, 1927 (X of 1927), s. 2 and Sch. I, for "or sailor".

4. Subs. *ibid.*, for "or Navy".

5. Substituted by Act VIII of 1973, s. 3 and 2nd Sch., w.e.f. 26-3-71, for "Pakistan".

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community <sup>6</sup>[ ; or].

<sup>6</sup>[(d) with intent to create or promote, or which is likely to create or promote, feelings of enmity, hatred or ill will between different communities, classes or sections of people,]

shall be punished with imprisonment which may extend to <sup>7</sup>[seven years], or with fine, or with both.

*Explanation.*—It does not amount to an offence within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.]

### Cases and Materials

1. *Scope.*—(1) The object of this section is to check the circulation of false and mischievous news which are spread to excite commotion and create disturbance among the public. Unless the contents of the pamphlet circulated amount to an incitement of an offence the persons who have published and circulated the same cannot be held guilty under this section (*AIR 1960 Orissa 65*). The mere causing of fear or alarm to the public or to a section of the public does not constitute an offence under this section, but it is necessary, that the fear or alarm should be caused in such circumstances as to render it likely that a person may be induced to commit an offence against the State or against public tranquillity (*3 CWN 1*). Previous sanction of Government is necessary for prosecution under section 198 CrPC.

(2) Each one of the constituent elements of the offence under S. 505 has reference to, and a direct effect on, the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. Thus, the Constitution clearly saves the section from the vice of unconstitutionality. *AIR 1962 SC 955*.

(3) As this section is a restriction on the right of freedom of speech and expression, it must be strictly construed in favour of the defence. *AIR 1960 Orissa 65*.

(4) Mere causing of fear or alarm to the public is not sufficient to constitute an offence under this section. Where the accused, a daffadar of a tea estate, who had returned from Nepal, circulated a report among garden coolies that a war was impending between the British Government and Nepal that Nepalese soldiers were stationed on the frontier and that the coolies would be killed by the British, with the result that 150 coolies ran away, it was held that the accused could not be taken to have intended more than the probable result of the report he circulated and hence was not guilty under this section. (*1899*) *3 Cal WN 1*.

(5) The ventilation of grievances of a section of the public against officers or other communities by means of articles and pamphlets would not fall within the mischief of this clause, unless the language of the publications amounts to an incitement to violence or stirs up feelings of hatred and enmity against the officers or communities. *AIR 1960 Orissa 65*.

6. The semi-colon and the word “; or” were substituted for the comma at the end of clause (c) and thereafter new clause (d) inserted by Act XV of 1991, s. 7(a) (w.e.f. 26-2-91).

7. Subs. *ibid.* s. 7(b), for “two years” (w.e.f. 26-2-91).

(6) Clauses (a), (b) and (c) of the section are subject to an exception covering all that precedes it. Even where the case is concerned with the second part of clause (c) if it becomes visible that the publication had the justification which could be founded on the exception, then no case would be made out. *ILR (1972) 1 Delhi 393.*

(7) Any definite or a certain group of citizens would come within the term "class" in this clause. *1963 Jab LJ 915.*

(8) Where the accused, a Hindu Mahasabhaite shouted slogans in praise of the assassin of Magatma Ghandhi, it was held that it was likely to incite innumerable persons who hold the Mahatma in great reverence—at least the Congressites—to commit some offence against the Hindu Mahasabhaite and hence, was an offence under this clause. *1963 Jab LJ 915.*

(9) Clause (c) is intended to deal with existing classes or communities and not with those which may arise in future. Thus, where a speech, delivered before a strike took place, suggested violent treatment of blacklegs in the event of a strike, this clause was held not to apply. *(1936) 40 CWN 1218.*

(10) Sanction under S. 196, Criminal P.C., is necessary for a prosecution under this section. Where prosecution is sanctioned by the proper authority and this information, on being conveyed to the Magistrate by means of a letter, the magistrate tried the case, it was held that the want of a formal complaint was an irregularity which could be cured under S. 465, Criminal P.C. *(1908) 7 Cri LJ 353.*

(11) The fact that the statements inciting to violence were made at a political rally is not a mitigating circumstance for award of lesser sentence. *(1973) 1 Malayan LJ 227.*

**2. Practice.**—Evidence—Prove: (1) That the accused made, published or circulated the statement, rumour, or report, in question.

(2) That he did so with intent to cause, or which was likely to cause, some officer, soldier, sailor, or airman, to mutiny or otherwise disregard or fail in his duty as such:

(3) That such officer, soldier, sailor, or airman belonged to the Army, Navy or Air Force of Bangladesh.

**3. Procedure.**—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Sessions Court.

**4. Charge.**—The charge should run as follows:

I, (name and office of the Magistrate, etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, made (or published or circulated) a statement (or rumour or report) namely with intent to cause or which was likely to cause, any officer (or soldier or sailor or airman) in the Army or Navy or Air Force of Bangladesh to mutiny (or disregard or fail in his duty) and thereby committed an offence punishable under S. 505 of the Penal Code and within my cognizance.

And I hereby direct that you be tried by this Court on the said charge.

## Section 505A

**8[505A. Prejudicial act by words, etc.—Whoever—**

(a) by words, either spoken or written, or by signs or by visible representation or otherwise does anything, or

(b) makes, publishes or circulates any statement, rumour or report,

which is, or which is likely to be, prejudicial to the interests of the security of Bangladesh or public order, or to the maintenance of friendly relations of Bangladesh with foreign states or to the maintenance of supplies and services essential to the community, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.]

### Materials

**1. Scope.**—(1) This section is new. In this section many different kinds of prejudicial acts have been mentioned without being sure with which exact kind of prejudicial act the accused is sought to be fastened with. In a democratic society nobody is immune from getting criticised in his public acts and deeds. The feeling of wounding vanity of an unusually touching post cannot be a ground for convicting a person. The words or actions of the accused should be such as to be actually prejudicial as contemplated in this section. The wordings of this section are vague and indefinite. A general allegation as mentioned in this section in the absence of any further particulars is very difficult to meet. Mere disturbance of law and order leading to disorder is not necessarily against the interest of the security of Bangladesh or public order or to the maintenance of friendly relations of Bangladesh with Foreign State. Contravention of law always affect the order but before it can be said to affect a public order it must affect the community or public at large. The provisions of law as mentioned in this section should be strictly construed.

### Section 506

**506. Punishment for criminal intimidation.**—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

**If threat be to cause death or grievous hurt, etc.**—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or <sup>9</sup>[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

### Cases and Materials : Synopsis

- |                      |                                    |
|----------------------|------------------------------------|
| 1. <i>Scope.</i>     | 6. <i>Compounding.</i>             |
| 2. <i>Threat.</i>    | 7. <i>Delay.</i>                   |
| 3. <i>Sanction.</i>  | 8. <i>Conviction and sentence.</i> |
| 4. <i>Procedure.</i> | 9. <i>Revision.</i>                |
| 5. <i>Charge.</i>    | 10. <i>Practice.</i>               |

**1. Scope.**—(1) This section prescribes the punishment for the offence of criminal intimidation defined in section 503 of the Penal Code. To constitute an offence under section 506 the person charged must be shown to have actually threatened another with injury to his person or property with intent to cause alarm. A threat of social boycott is not an offence punishable under this section *50 CrLJ 797.*



**2. Threat.**—(1) A threat hedged by a condition may not fall within the mischief of this section. Thus, a threat by P to Q that if Q entered P's factory, Q could lose his life is not punishable under this section. (1974) 76 Pun LR 421.

**3. Sanction.**—(1) An offence of criminal intimidation committed by a Judicial Officer while purporting to act in his official capacity, is not cognisable without the previous sanction obtained under S. 197, Criminal P.C., and a proceeding started without such sanction is liable to be quashed. (1905) 2 CriLJ 119.

**4. Procedure.**—(1) An offence under this section is not triable by a Magistrate of the second class where the threat is to cause death; a trial in such a case by a Bench of Magistrates invested with second class powers is without jurisdiction, even though no objection is raised during the trial inasmuch as consent cannot give jurisdiction. AIR 1932 Oudh 251.

(2) Where in a joint trial for offences under Ss. 323, 504 and 506 paragraph 2 of this Code, the Magistrate followed the procedure for summons cases and while acquitting the accused under S. 504 and this section, convicted him under S. 323, it was held that it was a mere irregularity curable under S. 465, Criminal P.C. AIR 1962 Guj 231.

(3) Joint trial for offences under Ss. 143, 447 and 506 Penal Code before Magistrate—Offence under S. 143 not cognizable by Panchayati Adalat—Therefore trial of all offences before Magistrate was not illegal. AIR 1952 431.

(4) Not cognizable—Warrant—Bailable—Compoundable—Triable by any Magistrate, Village Court. If threat be to cause death or grievous hurt, etc. it is not compoundable—Triable by Metropolitan Magistrate or Magistrate of the first class.

**5. Charge.**—(1) Where a charge is made setting out one category of intent mentioned in S. 503 it is not illegal for the Court, in the absence of prejudice to the accused, to convict him on the same charge where the intent proved is of the other category mentioned in S. 503. AIR 1960 SC 154.

**6. Compounding.**—(1) Where the threat is to cause death or grievous hurt punishable under the latter part of this section, the offence is not compoundable. (1899) 4 Mys CCR 683.

**7. Delay.**—(1) Where the complainant files the complaint after a year without explaining the delay the conclusion may be drawn that the case is not truthful. 1980 CriLR (Mah) 79.

**8. Conviction and sentence.**—(1) In a case of criminal intimidation, if the threat be to cause death, the offence would fall under the latter part of this section, which offence is less grave than the offence under S. 307. In such a case, the accused should be convicted under this section and not under S. 307. 1931 Mad WN 861.

(2) The accused, though found guilty under this section, was released on probation. AIR 1974 SC 35.

(3) Deterrent punishment should be given only in exceptional circumstances. AIR 1922 Pat 267.

(4) Delay in filing complaint—Complaint embellishing charges—Names of witnesses not mentioned—Accused given benefit of doubt. AIR 1968 Manipur 26.

(5) Criminal trespass—Dominant intention to intimidate owner—Trespasser guilty of offence under S. 447—Conviction under S. 506 not necessary. AIR 1967 Manipur 30.

**9. Revision.**—(1) Where it was found that the complainant was intimidated by the accused with language that fell within S. 503 ante and the complainant was alarmed by the threat and the accused was convicted, the High Court held that it would not interfere in revision. AIR 1933 Lah 497.

**10. Practice.**—Evidence—Prove: (1) That the accused attempted to cause some person to do something that he was not legally bound to do.

(2) That he did so voluntarily.

(3) That he so caused or attempted to cause such person to do as above by inducing or attempted to induce him to believe that he or someone whom he has an interest in would become or be rendered an object of Divine displeasure if he failed to do, etc.

(4) That he induced such person to believe that such Divine displeasure would arise from some act of the accused.

(5) That the object of accused was thereby to cause such person to do so, or omit to do so, such thing.

## Section 507

**507. Criminal intimidation by an anonymous communication.**—Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

### Cases and Materials

**1. Scope.**—(1) The offence punishable under this section is an aggravated form of offence under section 506 of the Penal Code. If the criminal intimidation is by an anonymous letter or by a letter signed with a false name, the offence will be subject to higher punishment under this section as it causes great alarm to the recipient of the letter.

(2) This is an aggravated form of the offence of criminal intimidation, the aggravation consisting of the threat being communicated anonymously or after having taken precautions to conceal the name or abode of the offender. The punishment provided in this section cannot be awarded unless there has been a conviction under S. 506, that is to say, unless the threat amounted to an offence of criminal intimidation. *AIR 1925 Mad 480.*

(2) Unless corroborated, conviction should not be based only on expert's evidence. *AIR 1936 All 165.*

**2. Practice.**—Evidence—Prove: (1) That the accused threatened some person.

(2) That the threatening was communicated to him anonymously.

(3) That it relates to causing injury to his person, reputation or property of another person in whom he is interested.

(4) That the accused did so with intent—(a) to cause harm to that person; (b) to cause that person to do any act which he was not legally bound to do or to omit to do any act which he was legally bound to do.

**3. Procedure.**—Not cognizable—Warrant—Bailable—Not Compoundable—Triable by any Magistrate.

**4. Charge.**—The charge should run as follows :

I (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of—, at—, committed criminal intimidation by sending an anonymous communication threatening X with injury to his person, reputation or property (specify which) or with injury to the person, reputation or property of Y in which X is interested (state how interested) with intent to cause harm to X or to cause him to do an act which he is not legally bound to do or to cause him to omit to do an act which he is legally bound to do (specify the act) and thereby committed an offence punishable under 507 of the Penal Code and within my cognizance.

And I hereby direct that you be tried by this Court on the said charge.

### Section 508

**508. Act caused by inducing person to believe that he will be rendered an object of the divine displeasure.**—Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine; or with both.

#### Illustrations

(a) *A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of divine displeasure. A has committed the offence defined in this section.*

(b) *A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of divine displeasure. A has committed the offence defined in this section.*

#### Cases and Materials

**1. Scope.**—(1) This section may be read with sections 39 and 43 to this Code. A person who is ex-communicated does not become an object of divine displeasure by the act of the priest who pronounces the sentence. The section contemplates the voluntarily causing of any person to do a thing which he is not legally bound to do or omitting to do thing which he is legally entitled to do by inducing that person to believe that he or any person in whom he is interested will become an object of divine displeasure if he does not do the thing in the manner dictated by him.

(2) Where the accused voluntarily attempts to cause a person to omit to do what he is legally entitled to do or to do anything which he is not legally bound to do, by attempting to induce the latter to believe that he would otherwise be rendered by an act of the accused, an object to divine displeasure the accused commits an offence under this section. *AIR 1964 Orissa 1.*

(3) A mere threat that if a debt is not paid, then by operation of divine laws, divine displeasure will fall upon the debtor is not sufficient to attract the operation of this section. *AIR 1944 Sind 203.*

(4) A Christian who is excommunicated by a priest or a Hindu who is declared an outcaste by his Guuru cannot be said to become an object of divine displeasure by the act of the priest or the Guru and hence such an act does not fall within this section. *(1885) ILR 8 Mad 140*

(5) Where a woman gave birth to an illegitimate child and she placed it in the house of the putative father in his absence, her intent was held to be to subject the father to human and not divine displeasure. *1886 All WN 63.*

**2. Practice.—Evidence—Prove:** (1) That the accused caused, or attempted to cause, some person (a) to do something that he was not legally bound to do, or (b) to omit to do something that he was legally entitled to do.

(2) That he did so voluntarily.

(3) That he so caused, or attempted to cause, such person to do as above by inducing or attempting to induce him to believe that he or someone whom he has an interest in, would become or be rendered, an object of divine displeasure, if he failed to do, etc.

(4) That he induced such person to believe that such divine displeasure would arise from some act of the accused.

(5) That the object of the accused thereby to cause such person to so do or to so omit to do such thing.

**3. Procedure.—Not cognizable—Warrant—Bailable—compoundable—Triable by any Magistrate/Village Court.**

**4. Charge.—**The charge should run as follows:

I, (name and office of the Magistrate) hereby charge you (name of the accused) as follows:

That you, on or about the—, day of—, at—, voluntarily caused (or attempted to cause) X, to do something which the said X was not legally bound to do, to wit—, by including (or attempting to induce) the said X to believe that he would become by your act, to wit—, an object of Divine displeasure if the said X did not do the said thing which it was your object to cause him to do, and that you thereby committed an offence punishable under section 508 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried by this Court on the said charge.

## Section 509

**<sup>10</sup>[509. Word, gesture or act intended to insult the modesty of a woman.—** Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

### Cases and Materials

**1. Scope.—**(1) This section provides for simple imprisonment only and therefore awarding rigorous imprisonment in default of payment of fine is not legal (*PLD 1959 Lahore 851*). The word "Modesty" does not lead only to the contemplation of sexual relationship of an indecent character. The section includes indecency. The word "exhibit" ordinarily expresses the idea of actually showing a

10. See also the Criminal Law (Amendment) Ordinance, 1958 (VIII of 1958), section 4.

thing to a person. "Exhibit" was practically equivalent to the word "expose." Intruding upon privacy of lady and making indecent gestures and removing her clothes amounts to an offence under this section and not an offence under section 376 read with section 511 (*AIR 1961 All 131*). The object of the section is to protect the modesty and chastity of a woman. Where a person insults the modesty of a woman in a public place section 294 Penal Code will be attracted. The essential requirement under the section is the intention to insult the modesty of a woman. Where an accused entered into a woman's room and tried to catch hold of her and persuaded her by removing garments, an offence under this section is committed.

(2) Insulting the modesty of woman—A group of young men following a group of young girls with indecent gestures and words—Constitutes the offence. *Md. Sharif Vs. State (1957) 9 DLR (SC) 127.*

(3) Sentence of rigorous imprisonment—Illegal. Sentence of rigorous imprisonment under the section is illegal but that cannot be a ground for special leave to appeal. *Md. Sharif Vs. State (1957) 9 DLR (SC) 127.*

(4) Obscene—What it means—The ordinary meaning of the words 'obscene', as used in the P. C. is what is offensive to modesty or decency, or expressing or suggesting unchaste or lustful ideas or being impure, indecent or lewd. Words charged should themselves be looked into. Persons addressed on a particular time or place will not make them obscene if they were not such in themselves. Words "I love you, my love", addressed to a girl on a public road when she had come out of her college, were held not to be obscene. *1955 PLD (Sind) 261.*

(5) In order to constitute an offence under this section, the act complained of must have been intended to insult the modesty of some particular woman and not merely any class or section of women, however small. *AIR 1925 Sind 271.*

(6) The intention to insult the modesty of any woman is an essential ingredient of an offence under this section. *(1903) 5 Bom LR 502.*

(7) If a person enters another person's house with the intention of insulting the modesty of the latter's wife, it would be an offence under this section. *(1905) 2 CriLJ 279.*

(8) Where the accused entered in the middle of the night, the room of the complainant with whom he had previous acquaintance and who used to speak to strangers and give pan supari or visitors, it was held that the requisite intention was wanting. *(1903) 5 Bom LR 502.*

(9) The presence of the accused on the complainant premises with intent to peep into apartment occupied by house-hold ladies did not amount to an offence under this section. *(1892) Pun Re (Cr) No. 6. p. 12.*

(10) Words or gestures intended to insult the modesty of a woman fall within the ambit of this section. *(1895) 18 Mys LR 985.*

(11) If the Court arrives at a finding that the accused had such an intention and for that purpose he uttered certain words, it can punish the accused under this section even though the exact words could not be placed on record. *(1973) 39 Cut LT 1037.*

(12) For defamation under S. 500, the exact words uttered by the accused must be set out and proved while for an offence under S. 509 it is sufficient if the intention can be gathered from the evidence. Exact words need not be proved. *(1973) 39 Cut LT 1037.*

(13) To abuse a woman in obscene terms near a water-tap would obviously amount to an offence under this section *(1961) 2 Guj LR 196.*

(14) Where the accused sent by post a letter containing indecent overtures to an unmarried woman having no previous acquaintance with accused, it was held that the accused intended to insult the modesty of the woman by exhibiting an object and the fact that the letter was in a closed envelope before it reached her immaterial. It is not necessary that the offender should himself, in person, exhibit the object. He may employ an agent such as the Post Office for his purpose. *AIR 1926 Bom 159.*

(15) The accused, a stranger though a neighbour, entered at night into the room where four women were sleeping and on an alarm being given an attempt made to capture him, the accused escaped. It was held that the intrusion upon the privacy was sufficient to bring it within the scope of the section. (1895) *ILR 22 Cal 994.*

(16) Although the act of exposing one's person with intent to insult the modesty of a woman and doing an obscene act in a public place causing nuisance to others falls under this section and S. 294, there is only one act and only one conviction and sentence should be passed. (1900-1902) *1 Low Bur Rul 52.*

(17) A conviction under Section 376 read with Section 511 of this Code can be converted under Section 222, Criminal P. C., into one for an offence under this section, where there are common ingredients. *AIR 1961 All 131.*

**2. Practice.—Evidence.—**Prove: (1) That the accused uttered the words or made the sound, gestures, etc. in question.

(2) That such word, sound or gesture was intended by the accused to be heard or seen by some woman.

(3) That he thereby intended to insult the modesty of that woman.

**3. Procedure.—**(1) Not cognizable—Warrant—Bailable—Compoundable—Triable by any Magistrate/Village Court.

**4. Charge.—**(1) The charge should run as follows:

I, (name and office of Magistrate etc.) hereby charge you (name of accused) as follows:

That you, on or about the—, day of—, at—, intending to insult the modesty of X uttered the words namely—(or made some sound or gesture to X—or exhibited some object namely—intending the same shall be heard or seen by the said X and that you thereby committed an offence punishable under section 509 of the Penal Code and within my cognizance.

And I hereby direct that you be tried by this court on the said charge.

## Section 510

**510. Misconduct in public by a drunken person.—**Whoever, in a state of intoxication, appears in any public place, or in any place, which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten <sup>11</sup>[taka], or with both.

### Cases and Materials

**1. Scope.—**(1) This section does not punish drunkenness but drunkenness followed by disorderly behaviour either in a public place or a private place where it will be trespass for him to enter. Offence

11. Substituted by Act VIII of 1973, s. 3 and 2nd Sch w,e,f, 26-3-71, for "rupees".

under section 510 is not an offence involving a breach of the peace. The order of security under section 106 CrPC in such a case is, therefore, unsustainable *AIR 1940 Mad, 755*.

(2) Misconduct by itself is not an offence under S. 510. The misconduct must be such as to cause annoyance to any person. *ILR (1977) 2 Cut 293*.

(3) Where the accused were prosecuted under S. 160 and this section for committing affray in a state of intoxication, and the Magistrate convicted and sentenced them on both the counts, it was held that in the circumstances of the case, it would have been sufficient to convict them under one section and not both. *(1899) 12 Mys LR 393*.

(4) An offence under this section is not one involving a breach of the peace, and therefore, an order for security for keeping the peace under S. 106 of the Criminal P. C., cannot be passed on conviction for such an offence. *AIR 1940 Mad 755*.

**2. Practice.—Evidence:—**Prove: (1) That the accused appeared in some public place, or some place which it was a trespass in him to enter.

(2) That he was then in a state of intoxication.

(3) That he conducted himself in such a manner as to cause annoyance to some person.

**3. Procedure.—**(1) Not cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate/Village Court.

**4. Charge.—**(1) The charge should run as follows:

I, (name and office of Magistrate etc.) hereby charge you (name of accused) as follows:

That you, on or about the—, day of—, at—, appeared in a state of intoxication in a public place (or a place where you have no right to enter) (Specify the place) and conducted yourself in such a manner as to cause annoyance to X (or any other person or persons) and thereby committed an offence punishable under section 510 of the Penal Code and within my cognizance.

And I hereby direct that you be tried by this court on the said charge.

CHAPTER XXIII  
Of Attempts to Commit Offences

Section 511

**511. Punishment for attempting to commit offences punishable with <sup>1</sup>[imprisonment for life] or imprisonment.**—Whoever attempts to commit an offence punishable by this Code with <sup>1</sup>[imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with <sup>2</sup>[imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.

*Illustrations*

(a) *A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft and, therefore, is guilty under this section.*

(b) *A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.*

**Cases and Materials : Synopsis**

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|---|--|
| 1. Construction of the section.   | 9. To cause such an offence to be committed.                                 |
| 2. Scope and applicability.   | 10. Doctrine of charge of mind.  |
| 3. "Where no express provision is made by this Code.....attempt."                 | 11. "Does any act towards the commission of the offence."                    |
| 4. Attempt to commit offence is the third stage in the commission of the offence. | 12. Illustrative cases of attempt to commit various offences under the Code. |
| 5. Intention.   | 13. Evidence.  |
| 6. Preparation and attempt—Distinction.   | 14. Procedure.   |
| 7. Preparation not an offence.  | 15. Charge.  |
| 8. Attempt, if can be committed, of offence not possible to be committed.         | 16. Punishment.  |
|   | 17. Practice.  |

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1. Substituted by Ord. No. XLI of 1985.

2. Ibid.



**1. Construction of the section.**—(1) A person commits the offence of 'attempt to commit a particular offence' when (i) he intends to commit that particular offence; (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence. *AIR 1961 SC 1698*.

**2. Scope and applicability.**—(1) There has been no comprehensive definition of the word "attempt". Attempt actually is a part execution of a criminal design, amounting to more than preparation and short of actual commission. It is the direct movement towards the commission of an offence after preparation had been made (*PLD 1972 Lah 37*). This section applies to offences punishable under the Penal Code itself and does not apply to an attempt to commit an offence under any other act (*AIR 1962 Cal 370*). Since this section is not mentioned in section 40 of this Code unless an attempt to commit an offence under a special or local law has been expressly made punishable under the special or local law it cannot be punished under this section. Attempts to commit the following offences are not covered by this section:

- (a) Where the offences are punishable with death.
- (b) Where the offences are punishable by fine.
- (c) Offences which do not constitute an offence under this Code.
- (d) Where express provision has been made by the Code.

There are decided cases which recognise the existence of three stages in the commission of a crime: (1) intention to commit, (2) preparation to commit, (3) attempt to commit. If the attempt results in the actual commission of the offence, the crime is complete. The Penal Code makes the attempt also an offence if the accused does any act towards the commission of the offence. This section has no application to an attempt to commit an offence under Food Adulteration Act (*41 CWN 1213*). There is a clear difference between the definition of attempt in section 511 and that given in section 307 of the Penal Code. Under section 511, it is only necessary to prove an act done in the attempt towards the commission of the offence. An attempt to commit a crime should not be confused with an act which merely indicates an intention to commit the same or with mere preparation for its commission.

The attempt is not complete until the act has passed beyond the stage of preparation. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence which is a step towards the commission of the offence (*AIR 1961 SC 1698*). There is a wide difference between a preparation and an attempt to commit an offence. Preparation consists in devising or arranging necessary step for the commission of an offence, an attempt is the direct movement towards its commission after the preparations are made (*AIR 1923 Pat 307, PLR 1948 Lah 154*). This section does not apply to cases of attempts made punishable by expressed provisions of the Code. The attempts specially proved for are sections 121, 124, 125, 130, 161, 162, 163, 196, 198, 200, 213, 239, 240, 241, 307, 308, 309, 385, 387, 389, 391, 393, 394, 398, 460. The offences which fall under this section must be punished entirely irrespective of section 75 of this Code.

(2) Attempt to commit a crime must be something more than mere preparation. Acts remotely leading towards the commission of the offence are not to be considered as attempt to commit it. *Enayetullah Vs. Crown (1955) 7 DLR 87*.

(3) Conviction under sections 376/511—Appellate Court altered it to one under section 376 and enhanced the sentence. Accused charged and conviction under section 376/511 P. C.—Finding may be

altered in appeal to one of conviction under section 376, P. C., and sentence may be enhanced under section 439, Cr P. C. *Fazal Karim Vs. crown (1955) 7 DLR (WPC) 110.*

(4) Preparation for cheating does not amount to attempt to cheat. Accused filed 2 insured covers insured for Rs. 1200-0-0 with blank sheets and attempted to despatch them through the Post Office—Attempt failed—Contents discovered by the Post Office—Offence under sections 417/511 not made out. *Jogesh Chandra Guha Vs. Crown (1954) 6 DLR 483.*

(5) Difference between sections 511 and 307 explained. There is a clear difference between the definition of attempt in section 511 and that given in section 307 of the Penal Code. To convict a person of an attempt to murder, under section 307, it must be shown that the accused has done some act which was capable of causing death and that act must also be the last proximate act necessary to constitute the completed offence, while under section 511 the act may be any act done in the course of the attempt towards the commission of the offence. There must, however, be some act done towards the commission of the offence. *Ashaq Hossain Vs. Crown 1 PCR 121.*

(6) Attempt or preparation—Question of fact—Four stages of crime—Accused with blood-stained dagger rushing into Court room after complaint—Tried to stab—Prevented by Sub-Inspector of Police aiming revolver and by Magistrate shouting—Accused attempting offence under sec. 324, P. C. 1950 *PLD (Lah) 147.*

(7) What amounts to an attempt to commit an offence, explained. To constitute an attempt to commit an offence it must be connected with the actual commission of the offence. To constitute an attempt there must be evidence of some overt act. The attempt to commit an offence is complete if the person with a view to committing an offence does something which is a step towards commission of the specific crime which is immediately and not remotely connected with the commission of it, and the doing of which cannot reasonably be regarded as having any other purpose than the commission of the specific crime. *Ali Muhammad Vs. The State, (1970) 22 DLR (WP) 155.*

(8) This section is a general section making punishable all attempts to commit offences punishable with imprisonment for life (before amendment 'transportation for life') or imprisonment and not those punishable with death or with fine only. *AIR 1945 Lah 334.*

(9) This section does not apply to offences under special or local laws. *AIR 1951 Assam 17.*

(10) The special or local law may itself make an attempt to commit an offence under such law an offence. *AIR 1919 Bom 156.*

(11) While attempts to commit certain specified offences have themselves been made specified offences (e.g. 307, 308, P. C. etc.) an attempt to commit an offence punishable under the Penal Code, generally, is dealt with under this section. But the expression "attempt" has not been defined anywhere. *AIR 1980 SC 1111.*

(12) This section and the illustrations thereunder can be relied on by way of analogy in determining what would constitute an attempt to commit an offence under a special law where such attempt is an offence under such law, though this section may not in terms apply to such cases. *AIR 1917 Mad 937.*

(13) There is now no difference between the law under this section and the English law. *AIR 1917 Mad 937.*

3. "Where no express provision is made by this code.....attempt."—(1) Conjoint attempt of five or more persons to commit a dacoity is punishable under S. 391. (1867) 7 *Suth WR (Cri) 48.*

(2) Section 75. does not apply to offences punishable under this section. (1895) *ILR 17 All 123.*

**4. Attempt to commit offence is the third stage in the commission of the offence.**—(1) The commission of an offence comprises four stages:

- (i) forming an intention to commit the crime,
- (ii) making preparation for the commission,
- (iii) attempting to commit the crime, and
- (iv) the actual commission of the crime. *AIR 1961 SC 1698.*

(2) The stage of attempt is reached when the culprit takes deliberate overt steps to commit the offence. Such overt act need not be the penultimate act towards the commission of the offence. *AIR 1980 SC 1111.*

(3) Attempt is the direct movement towards the commission of the offence after the preparations are made. *AIR 1961 SC 1698.*

(4) When a person intends to commit a particular offence and then conducts himself in such a manner, as clearly indicates his desire to translate that intention into action, and if, in pursuance of such an intention, he does something, which may help him to accomplish that desire, then it can safely be held that he committed an offence of attempt to commit a particular offence. *AIR 1969 Raj 65.*

**5. Intention.**—(1) Attempt implies intention. *(1909) 9 CriLJ 456.*

(2) In order to constitute “an attempt”, that the act must reveal with reasonable certainty, in conjunction with order facts and circumstances and not necessarily in isolation, an intention as distinguished from a mere desire or object to commit a particular offence. *AIR 1980 SC 1111.*

(3) Intention is a necessary ingredient of the offence under this section. But intention by itself is not an offence. *AIR 1953 J and K 19.*

(4) Law does not take notice of a mere intention without an act. *(1904) 1 CriLJ 124.*

(5) Intention is a matter of inference from the acts committed and the facts and circumstances of the case. *(1912) 13 CriLJ 864.*

**6. Preparation and attempt—Distinction.**—(1) There is a thin line between preparation for, and an attempt to commit, an offence. Attempt to commit an offence, therefore, can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention he commences his attempt to commit the offence. *AIR 1961 SC 1698.*

(2) The test for determining whether the act of the appellants constituted an attempt or preparation is whether the over acts already done are such that if the offender charges his mind and does not proceed further in its progress the acts already done would be completely harmless. *AIR 1970 SC 713.*

(3) Preparation consists in devising or arranging the means necessary for the commission of the offence. *AIR 1962 All 22.*

(4) An act done towards the commission of an offence which does not lead inevitably to the commission of the offence unless it is followed or perhaps preceded by other acts is merely a preparation. *AIR 1949 Pat 326.*

(5) The question whether there has been an attempt to commit a crime or only a preparation to commit it, depends, subject to the principles stated above, on the facts and circumstances of the particular case. *AIR 1961 SC 1698.*

(A) *Procuring stamp paper.*—(1) Endorsement of name and address of the person purchasing a stamp paper does not constitute a part of the document which the accused intended to forge. Hence, purchasing the stamp paper, and causing a person to represent himself to the stamp vendor as being another person and procuring the endorsement does not go beyond the stage of preparation and does not constitute an attempt to commit forgery. (1872) 4 NWP HCR 46.

(B) *Theft.*—(1) Where the accused was found on the roof of a bazar with an open clasp knife in his hands and two gunny bags and it was found that he had come there with the intention of committing theft, it was held that the matter had not proceeded beyond the stage of preparation. AIR 1919 Low Bur 38.

(2) Where an accused was caught at night time in the vicinity of some cattle which had been tethered in the complainant's square, and near which the complainant and his brother were sleeping, it was held that the accused could not properly be held guilty of an attempt to commit theft but might be liable for the offence of criminal trespass. AIR 1924 Lah 223.

(C) *Administering poison.*—(1) A woman mixed some substance with the food for her husband believing it to be poisonous. The substance was harmless. Held that as her act could not have resulted in the commission of an offence, she could not be convicted of an offence under this section read with Section 328 of the Code. (1896) 9 CPLR Cr 14.

(D) *Adultery.*—(1) An accused wanted a woman to pass the night with him. The woman was procured but before he could have sexual intercourse with her, her husband intervened and took her away. It was held that the accused had not passed beyond the stage of preparation and could not be convicted of attempt to commit adultery. 1879 Pun Re Cr No. 13 p. 36.

(E) *Slaughter.*—(1) Making an animal ready for slaughter by tying it with a rope and throwing it on the ground is mere preparation. Attempt to slaughter must imply some act proximate to the actual killing. The stage of attempt would be reached when the knife is raised with the intention of inflicting the fatal blow. AIR 1962 All 22.

(F) *Murder.*—(1) A young widow was confined of a child. The child was found alive wrapped in a cloth and concealed under a cooking pot with a piece of rag in its mouth. Its naval string was not trimmed. It was held that the evidence was not sufficient to convict the widow of an attempt to commit murder of the child. (1871) 8 Bom HCR 164.

(G) *Hurt.*—(1) Raising the knife in a threatening manner manifesting an intention to stab but not trying to stab, falls short of an attempt to stab. For constituting an offence of attempt to cause hurt, there must be some action towards the commission of the offence causing hurt, which act if successful would have amounted to causing hurt. (1900-1902) 1 Low Bur Rul 264.

(H) *Adulteration.*—(1) A contractor for the supply of milk to a regimental Hospital, was found in the Hospital compound with stale milk in his possession going towards a shed where the cows were to be milked. It was held that the acts found did not amount to more than preparation. 1885 Pun Re No. 40. p. 86 (DB).

(2) Where S invited P to come next day to purchase diesel from his pump which did not contain sufficient quantity required by P and the other accused persons mixed kerosene with the diesel to deliver that admixture to P it was held there was an attempt to commit an offence. AIR 1969 Raj 65.

(I) *Cheating.*—(1) Where the accused made a false representation that two of three kuppas (skin vessels) contained ghee, when in fact they contained oil, in order to get a higher refund of octroi on the

vessels passing out of the town, and the representation was found to be false before the issue of the certificate of refund the accused was held not to have completed an attempt to cheat but to have made preparation to cheat. (1886) ILR 8 All 304.

(2) Where a clerk, whose duty was to weigh the sugarcanes which were bought to the sugar company for sale, entered in the register higher weights of the sugarcanes but the register had not left his hands, it was held that this action had not passed from the stage of preparation into that of an attempt to cheat. AIR 1923 Pat 307.

(J) *Export of grain without permit.*—(1) Where the accused carrying a cart-load of jwar and wheat without permit towards the border of the State was stopped by the authorities on the road leading towards a border village within the State, and the intention to export without permit was not proved it was held that no offence of attempting to export without permit was committed. 1954 Madh BLJ HCR 1400.

(K) *Crossing the border of State.*—(1) Where a woman was going towards the border with intent to cross over to Pakistan but was arrested when she was 160 yards away from the border, it was held that she could not be convicted of an attempt to cross the border. AIR 1952 J and K 55.

(L) *Smuggling.*—(1) Where the accused was found travelling in a bus to Tranquebar carrying 165 tolas of opium which N had given to him with instructions to give it to him in French Territory, it was held that there was no attempt to commit an offence but merely preparation for its commission. AIR 1932 Mad 507.

(2) The expression "attempt" within the meaning of the penal provisions (enacted to suppress the evil of smuggling) is wide enough to take in its fold any one or series of acts committed beyond the stage of preparation in moving the contraband goods deliberately to the place of embarkation such act or acts being reasonably proximate to the completion of the unlawful export. AIR 1980 SC 1111.

(M) *Lurking house-trespass or house-breaking by night.*—(1) Mere presence on roof top with weapons does not amount to an attempt to commit an offence under S. 457 of the Code. (1907) 6 CriLJ 444 (445) = 1907 Pun Re 15 (DB).

(N) *Personation: S. 171 of the Code.*—(1) Where the accused was found carrying a police jacket under his arm with intent that it should be believed that he was a Police Constable, it was held that he was not guilty under Section 171 of the Code as his act amounted only to a preparation to commit the offence. (1904) 1 CriLJ 554 (PC).

(O) *Miscellaneous.*—(1) The accused caused a publication of the banns of marriage between himself and the woman concerned; held that there was only a preparation to marry, inasmuch as he might, before the ceremony, have willed not to carry out his criminal intention. (1970) 72 Bom LR 575.

(2) In order to constitute an attempt to commit an offence, there must first of all be an intention to commit the crime, a commencement of the commission and an act done towards the commission. AIR 1950 Mad 44.

(3) In order to constitute 'attempt' under Section 511, the actual transaction must have begun and an act to bear upon the mind of the victim must have been done before a preparation can be said to be an attempt. AIR 1933 Cal 893.

**7. Preparation not an offence.**—(1) Mere intention without any act is not an offence. A preparation also is not, as such, made an offence under the Code. (1904) 1 CriLJ 554.

**8. Attempt if can be committed of offence not possible to be committed.**—(1) An attempt to commit an offence is possible even when the offence cannot be committed, as when a person, intending to pick another's pocket, thrusts his hand into the pocket, but finds it empty. That such an act would amount to a criminal attempt, appears from the illustrations to this section. The English law on this point is the same. *AIR 1922 Nag 40*.

**9. To cause such an offence to be committed.**—(1) The offence punishable under this section is not only an attempt to commit an offence but also an attempt "to cause an offence to be committed." In other words, the section includes an attempt to abet an offence. Abetment of an offence being itself an offence, and attempt to commit the offence of abetment is provided for in this section. There is no legal obstacle to the punishment of an offence of attempting to abet an offence. *1887 Pun Re Cr. No. 49*.

(2) A mere assistance is the preparation to commit an offence which ultimately was not committed cannot amount to an abetment either under Section 109 or under this section. *AIR 1925 Oudh 158*.

**10. Doctrine of charge of mind.**—(1) The test for determining whether the act of the accused constituted an attempt or preparation is whether the overt acts already done are such that if the offender charges his mind and does not proceed further in its progress the acts already done would be completely harmless. *AIR 1970 SC 713*.

**11. "Does any act towards the commission of the offence."**—(1) "Does any act towards the commission of the offence" are the vital words in this section. Intention alone or even intention followed by preparation is not sufficient to constitute an attempt. But intention followed by preparation followed by any "act done towards the commission of the offence" is sufficient. *AIR 1933 Cal 893*.

(2) It is sufficient if act or acts towards the commission of the offence are deliberately done, and manifest a clear intention to commit the offence aimed, being reasonably proximate to the consummation of the offence. *AIR 1980 SC 1111*.

(3) When commission of an offence requires the performance of a series of acts and the person commences this series with a view to carry it out to its completion, he has, in the language of this section, done an act towards the commission of the offence in the attempt to commit the offence. *AIR 1922 Nag 40*.

(4) Under this section it is not necessary that the accused should have completed every stage in the actual offence except the final stage. *AIR 1941 Oudh 3*.

(5) The term "any act" excludes the notion that the final act short of actual commission of an offence is alone punishable. *AIR 1973 SC 2655*.

(6) It cannot be said that the act towards the commission of such offence must be an act which leads immediately to the commission of the offence. The purpose of the illustration is not to indicate such a construction of this section, but to point out that the culprit has done all that be necessary for the commission of the offence even though he may not actually succeed in his object and commit the offence. *AIR 1961 SC 1698*.

(7) An attempt to commit an offence is punishable under this section though the final act short of actual commission of that offence has not been accomplished. *AIR 1928 Lah 551*.

**12. Illustrative cases of attempt to various offences under the Code.**—(A) *Attempt to cheat.*—

(1) For an attempt to cheat by a false representation of facts the person charged should have taken some

step towards the communication of the representation to the person whom it was his intention to deceive. (1904) 1 CriLJ 124.

(2) Even where the complainant feigns belief in the false representation and delivers property in order to trap the accused, the Supreme Court has held that the fact of the complainant not having been deceived is immaterial and that the offence is one of attempt to cheat. *AIR 1960 SC 979*.

(3) Chalan prepared—Initials of complainant obtained—Fixing stamps and signature of accused only remaining for receipt of money—Attempt to cheat held proved. *AIR 1973 SC 2655*.

(4) An offence under S. 420 read with S. 511 would be committed by a person who attempts to cheat another person and thereby attempts to induce him to do one or the other of the acts mentioned in S. 420 P.C.. *AIR 1955 Bom 82*.

(5) Where a person pawns bangles described as “good bangles” he is not supposed to have meant “pure gold” bangles. The pawner cannot be said to have attempted to cheat the pawnee in such a case. *AIR 1935 Rang 426 (426, 427)*.

(6) Where the accused told the complainant that he could duplicate currency notes and the complainant, knowing of the falsehood, gave the currency notes to the accused, to entrap him, it was held that the making of the false pretence was an attempt to cheat. *AIR 1951 Madh B 100*.

(B) *Attempt to murder or to commit culpable homicide.*—(1) An attempt to commit culpable homicide would have fallen under this section but for its being expressly made an offence under S. 308 of the Code. It should follow that the ingredients of an offence of attempt to commit culpable homicide not amounting to murder under S. 308 should be the same as the ingredients of an offence of attempt to commit that offence under this section. *AIR 1961 SC 1782*.

(2) Where an accused was found carrying a dead body of a murdered man and when confronted, disappeared leaving the dead body near a public path, the offence committed was held to be only an attempt to cause the disappearance of the evidence of murder. *AIR 1949 Mad 270*.

(C) *Attempt to rape.*—(1) Forcibly undressing a girl and repeatedly trying to force the male organ into her private parts despite her resistance amounts to an attempt to commit rape and not merely indecent assault. *AIR 1967 Raj 149*.

(2) Accused being found not guilty under S. 376 of the Code is not tantamount to an acquittal under S. 376 read with this section. *AIR 1932 Cal 723*.

(D) *Attempt at theft.*—(1) Where a man does an act intentionally with a view to attain a certain end and fails in his object through circumstances independent of his own will then the man has attempted to effect the object at which he aimed. Where the accused entered a thorned enclosure of the complainant and was about to enter a smaller enclosure in which cattle were tethered, when he was interrupted, he was held guilty of attempt to steal. *AIR 1926 Lah 147*.

(2) An accused was caught while, attempting to steal the purse of P from his pocket. P however seized the purse from outside of his pocket and also the accused's hand. It was held that although the accused did move the purse for the purpose of committing theft, he did not commit the offence of theft because he was unable to move the purse from the possession of P. The offence was, therefore, one punishable under this section and not under Section 379 of the Code. *AIR 1942 Mad 521*.

(E) *Attempt to commit forgery.*—(1) An accused filed a forged receipt in the Court to support his plea of payment of the sum claimed as arrears but the receipt was not used in evidence. It was held

that this amounted to an attempt to use the document and that the prosecution under S. 471 of the Code and this section was proper. (1912) 13 Cri LJ 6.

(F) *False statement.*—(1) The appellant had insured his stock of paddy which was burnt by fire; he made a claim on the basis that 75040 baskets of paddy were stored. It was found that the mill godowns could not accommodate more than 15000 baskets. It was held that the claim was not a mere exaggeration but was a false statement as to the quantity stored; that the first appellant having sent the notice of the fire and also the claim papers must be regarded as having gone beyond the mere stage of preparation to the stage of attempt. AIR 1924 Rang 241.

(G) *Attempt to fabricate false evidence.*—(1) Where the accused dug a hole intending to place salt therein in order that the discovery of the salt so placed might be used as evidence against his enemy in a judicial proceeding it was held that he was guilty of an attempt to fabricate false evidence. (1872) 4 NWP HCR 133.

(H) *Attempt to commit house-trespass and house breaking.*—(1) Entry on a varandah may not amount to house-trespass but such entry coupled with an attempt to push open the door does amount to attempt to commit the offence. AIR 1915 Low Bur 102.

(2) Where the accused were disturbed as soon as they had opened the door and nothing was stolen, the offence committed was held to be an attempt to commit house breaking by night with intention to commit theft, punishable under S. 457 of the Code and this section. AIR 1933 Lah 433.

(I) *Attempt to commit an offence under S. 215 of the Code.*—(1) An offer by the accused to the owner of lost property that he would recover it on payment of a certain amount to him and on the condition that the thieves should not be prosecuted will amount to an attempt to commit the offence under S. 215 of the Code. AIR 1941 Rang 295.

(J) *Attempt to commit extortion.*—(1) A charge under S. 384 read with this section is not bad inasmuch as the limitation in this section relates only to such offences as attempts to commit murder or suicide or to obtain illegal gratification which are expressly punishable under other sections of the Code and there is no such express provision in the Code for punishing an attempt at extortion. AIR 1927 Pat 89.

(K) *Attempt to obtain bribe.*—(1) To ask for a bribe whether expressly or impliedly is an attempt to obtain one. As soon as the accused caused A to understand that he was willing to render him service for a bribe, the offence of attempting to obtain a bribe was consummated. (1905) 2 Cri LJ 204.

(L) *Attempt to cause hurt or grievous hurt.*—(1) Where a prisoner threw bricks at a jailor injuring him on the shoulder, the offence was held to be an attempt to cause grievous hurt and not an attempt to commit murder. 1881 All WN 172.

(M) *Attempt to commit suicide.*—(1) Where a woman attempted to commit suicide while in an advanced stage of pregnancy and the child was born dead, it was held that the offence committed was attempt to commit suicide and not voluntarily causing miscarriage. AIR 1919 All 376.

(N) *Attempt to commit criminal breach of trust under S. 409 of the Code.*—(1) A cattle pound-keeper levied Rs. 5/- for 5 buffaloes in the pound but gave a receipt for Rs. 4/- to the owner of the buffaloes and entered Rs. 4/- in the accounts. On coming to know that a complaint was made against him he altered the figures in the receipt counterfoil and account book and remitted the full amount to the Treasury. It was held that the offence committed by the accused fell under S. 409 of the Code and this section. Rat Un Cr C 632.



(O) *Attempt to cause death.*—(1) The accused sent to X some sweetmeats containing arsenic. The sweetmeat was shared by some others also but none of them died. The accused was held guilty of attempting to cause death as his intention was to cause death although the quantity of arsenic was insufficient to cause death. *AIR 1921 Lah 108.*

(P) *Attempt to incite boy to commit unnatural offence.*—(1) The accused sent a letter to a boy of 14 with intent to induce him to commit an unnatural offence. The letter was not read by the boy but it was handed over to the school authorities. The accused was rightly convicted for attempt to incite the boy feloniously and wickedly to commit an unnatural offence. (1874) *13 Cox Cr C 9.*

(Q) *Attempt to kidnap.*—(1) Where the act of restraint or confinement proved in the attempt to kidnap constituted an integral part of the offence of kidnapping, it should not form the subject of a separate conviction and sentence. (1874) *6 NWLHCR 293.*

(R) *Attempt to abduct.*—(1) Where the accused lifted a woman from her bed with intent to abduct her and on an alarm being given dropped her down and made good their escape it was held that the accused were guilty of an attempt to abduct her. *AIR 1925 Lah 512.*

(S) *Helping desertion of sepoy.*—(1) Where the accused helped a regimental sepoy, a Head Constable and a ghariwala believing the latter two also to be regimental sepoys, to desert their regiment, it was held that they were guilty of attempting and abetting the desertion of sepoys in the army under Section 135 read with Section 108 and this section and that it made no difference that the regimental sepoy never intended to desert and had offered to do so only to entrap the accused. *AIR 1917 Sind 28.*

(T) *Carrying foodgrain without permit.*—(1) Where the accused transported rice in a lorry from Orissa to Madras in contravention of Food Grains Control Order and the lorry was caught near Madras border by the police and the grain seized, it was held that the accused was guilty of attempting to transport rice without permit. *AIR 1952 Orissa 164.*

(U) *Attempt to commit an offence regarding election.*—(1) It is the application for a voting paper by a wrong person that has been made punishable under S. 171-D of the Code. An application for a "signature slip" which would entitle the voter to obtain a voting paper would not amount to an attempt to obtain a voting paper within the meaning of S. 171-D of the Code. *AIR 1925 All 226.*

(V) *Attempt to commit the offence of melting sovereigns (which was prohibited under Rules).*—(1) A furnace ready heated with a crucible containing molten silver was found in the shop of the accused. Near it was a dish containing sovereigns so placed as to be ready for transfer to the crucible. It was held that the accused was guilty of an attempt to melt sovereigns, for the only act that remained unperformed to complete the offence of melting sovereigns was the final act of putting the sovereigns into the crucible. *AIR 1919 Bom 156.*

(W) *Attempt to commit an offence under S. 163 of the Code.*—(1) Whether the accused posted circular letters under his signature to clerks of Quarter Master General offering reward of commission for securing orders for the firm of the accused, and one such letter did not reach the addressee whose officer received the same, it was held that the accused was guilty of the offence under Section 163 of the Code read with Section 116 and this section. *AIR 1918 Lah 152.*

**13. Evidence.**—(1) The conception of an attempt to commit an offence is a technical one. It is for the Court on a consideration of facts proved, to come to a conclusion whether there was an attempt to commit an offence. *AIR 1953 Pat 338.*

(2) The conviction by a Court for an attempt to commit an offence cannot be justified simply on surmises and the probability of the object of an act. *AIR 1916 All 141*.

**14. Procedure.**—(1) Under S. 222(3), Criminal P. C., when a person is charged with an offence he may be convicted of an attempt to commit such offence although the attempt is not separately charged. But in a charge for attempt to commit an offence the accused cannot be convicted of the main offence. (1967) 8 *Guj LR 637*.

(2) The offence is cognizable or non-cognizable according to offence in respect of which the attempt is alleged to have been made, bailable or nonbailable, according to the offence attempted to be committed, non-compoundable and triable by the court which the offence attempted is triable.

**15. Charge.**—(1) The charge should make mention of this section and the section declaring punishment for the offence attempted to be committed. (1864) 10 *Suth WR (Cri) 10*.

(2) The charge should run as follows:

I, (name and office of the Magistrate/Judge etc.) hereby charge you (name of the accused) as follows:

That you, on or about the—day of— at—, attempted to commit (specify the offence attempted), and in such attempt did a certain act towards the commission of the said offence, to wit—, (specify the act done); and that you thereby committed an offence punishable under section (specify the section punishing the offence attempted) and section 511 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried by this court on the said charge.

**16. Punishment.**—(1) Where half the punishment awarded for the offence exceeds the maximum punishment which the Magistrate has the power to inflict (for any offence), the Magistrate can award the maximum punishment which is within his power and need not limit the punishment to half the punishment which is within his power. Thus, the term of imprisonment awardable under this section for an attempt to commit theft is 18 months. (1895) *ILR 17 All 123 (DB)*.

(2) Where the Magistrate has power to award punishment only up to 6 months, he can award 6 months imprisonment i.e., the maximum within his power and need not limit the sentence to half this punishment. In other words, it is not necessary in such a case that the Magistrate should limit his sentence to three months (half the maximum punishment within his power for any offence). The sentence cannot extend beyond one-half of the longest term provided for the substantive offence. *AIR 1928 Nag 113*.

(3) Attempt to commit rape—Sentence—Accused losing his job in view of conviction for rape—Incident occurring 7 years back—Accused suffering humiliation in society—Taking into account cumulative effect of circumstances sentence reduced from 2.5 years R.I. to 15 months R.I. *AIR 1983 SC 753*.

(4) Where the accused had done all that was necessary to induce another to part with valuable security but that other, though he did hand over valuable security to the accused was not solely induced by the deception of the accused, it was held that he was guilty of an attempt to cheat and that a sentence of three months was sufficient in the case. *AIR 1935 Rang 456*.

(5) Where the accused set fire to an insured car and gave false information to the Insurance Company, he was held guilty of an attempt to cheat and the Court observed that a deterrent punishment for such offences was necessary. *AIR 1934 Pesh 67*.

(6) Although this section is not governed by Section 75 of the Code, the fact that the accused had six previous convictions can be taken into account and a much higher sentence than would be proper in the case of a first offence can be imposed. *AIR 1942 Mad 521.*

(7) Where the accused was convicted under S. 330 (voluntarily causing hurt to extort confession or to compel restoration of property) read with this section a sentence of imprisonment till the rising of Court was held to be grossly disproportionate to the gravity of the case and was increased to one year's rigorous imprisonment. *AIR 1955 Mad 424.*

(8) In the case of a railway officer convicted under S. 420 read with this section, a sentence of one year was not too severe. *AIR 1950 All 639 (644).*

**17. Practice.—Evidence—Prove:** (1) That the accused attempted to commit some offence punishable with imprisonment for life or imprisonment under the Penal Code or that he attempted to cause such offence to be committed.

(2) That in such attempt he did some act towards the commission of that offence.