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PART V
THE UNION

CHAPTER I - THE EXECUTIVE

The President and Vice-President

52. The President of India.

There shall be a President of India.

53. Executive power of the Union.

(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall-

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(b) prevent Parliament from conferring by

Chapter XVI (375-377) - Sexual Offences

375. RAPE.

A man is said to commit "**rape**" if he-

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions-

Exception 1-

When culpable homicide is not murder-

Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos-

First- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation-

Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

CHAPTER XI (191-211) - OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

191. Giving false evidence.

Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1-

A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2-

A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations-

(a) A, in support of a just claim which B has

Bilal Ahmed Kaloo v. State of Andhra Pradesh, (1997) 7 Supreme Today 127.

(ii) Publication of the words or representation is not necessary under section 153A of the Indian Penal Code; *Bilal Ahmed Kaloo v. State of Andhra Pradesh*, (1997) Supreme Today 127.

153AA. Punishment for knowingly carrying arms in any procession or organising, or holding or taking part in any mass drill or mass training with arms.

Whoever knowingly carries arms in any procession or organizes or holds or takes part in any mass drill or mass training with arms in any public place in contravention of any public notice or order issued or made under [section 144A](#) of the [Code of Criminal Procedure, 1973](#) shall be punished with imprisonment for a term which may extend to six months and with fine which may extend to two thousand rupees.

Explanation-

"Arms" means articles of any description designed or adapted as weapons for offence or defence and includes fire-arms, sharp edged weapons, lathis, dandas and sticks.

146. Rioting.

Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

147. Punishment for rioting.

Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable— Triable by any Magistrate—Non-compoundable.

COMMENTS

The Sub-Inspector was pursuing investigation which is his duty and therefore it could not be said that while he was pursuing the investigation, it was in pursuance of an unlawful object and therefore no conviction could be passed under section 147;

Maiku v. State of Uttar Pradesh, (1989) Cr LJ 860 : AIR 1989 SC 67.

94. Act to which a person is compelled by threats.

Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: **Provided** the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1-

A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2-

A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for

example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

95. Act causing slight harm.

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Of the Right of Private Defence.

96. Things done in private defence.

Nothing is an offence which is done in the exercise of the right of private defence.

COMMENTS

(i) In judging whether accused has exceeded his right to private defence or not the court has to take into account the weapons used; Madan Mohan Pandey v. State of Uttar Pradesh, (1991) Cr LJ 467 (SC)

(ii) The accused is not required to prove the plea of private defence of person beyond reasonable manner of doubt. The onus on the accused is only to show that the defence

86. Offence requiring a particular intent or knowledge committed by one who is intoxicated.

In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

COMMENTS

(i) The prosecution has to prove that in spite of drunkenness the accused had intention to commit the act forbidden by law;

Mirza Ghani Baig v. State of Andhra Pradesh, (1997) 2 Crimes 19 (AP)

(ii) Sometimes intention on the part of the person who is drunk can also be assessed from the nature of weapon used in the commission of the offence. If a person uses a weapon which is not dangerous and the attack results in death, a malicious intention cannot be drawn against him even though drunkenness is no excuse;

either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

Comments:

Under trial prisoners are not released on bail and remained in jail for 6 months Release of undertrial due to delay in trial is proper;

RD Upadhyaya v State of Andhra Pradesh, 1999

108. Security for good behaviour from persons disseminating seditious matters.

(1) When an Executive Magistrate receives information that there is within his local jurisdiction any person who, within or without such jurisdiction,-

(i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of,-

(a) any matter the publication of which is punishable under [section 124A](#) or [section 153A](#) or [section 153B](#) or [section 295A](#) of the

Comments:

(i) Power of Court to recall any witness or witnesses already examined or to summon any witness can be invoked even if the evidence in both sides is closed so long as the Court retains seisin of the criminal proceedings:

Mohanlal Shamji Soni v. Union of India, (1981)

(ii) Any person can be summoned as witness or recalled or re-examined at any stage of proceeding where essential;

Mohanlal Shamji Soni v. Union of India, (1991)

(iii) It is crystal clear that the Court has been empowered to summon any person as a witness at any stage of inquiry, trial or other proceeding. The power is not confined to any particular class of person;

Heeralal v. State of Madhya Pradesh, (1997)

(iv) It is settled in law if the conditions under this section are satisfied the Court can call a witness not only on the motion of either the prosecution or the defence but also it can do so on its even motion;

Heeralal v. State of Madhya Pradesh, (1997)

68. Proof of execution of document required by law to be attested.

If a document is required by law to be attested it shall not be sued as evidence until one attesting witness at least has been called for the purpose of proving its execution if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian [Registration Act, 1908](#) (16 of 1908), unless its execution by the person by whom it purports to have been executed is specially denied.

***Endorsement by sub registrar-**

Endorsement by sub registrar that executant had acknowledged execution before him amounts to attestation.

Related Case- Pentakota Satyanarayana v. Pentakota Seetharatnam, 2005

One of the requirements of due execution of Will is its attestation by two or more witnesses which is mandatory. Section 68 speaks of as to how a document required by law to be attested

Related Case- Life Insurance Corporation of India v. Narmada Agarwalla, 1993

62. Primary evidence.

Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1-

Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterparts, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2-

Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration-

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other,

desires) re-examined.

The examination and cross-examination must relate to relevant facts but the cross-examination need not to be confined to the facts which the witness testified on his examination-in-chief.

Direction of re-examination-

The re-examination shall be directed to the explanation of matters referred to in cross-examination, and if new matter by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

**Cross-Examination- Cross examination of plaintiff without conducting examination in chief of plaintiff is not permissible. Under section 138 cross-examination follows chief-examination but not without chief-examination. Related Case- Smt. Shardamma v. Kenchamma 2007*

139. Cross-examination of person called to produce a document.

A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examination, unless and until he is called as a witness.

or from giving rational answer to those questions, by tender years, extreme old age, disease, whether of body and mind, or any other cause of the same kind.

Explanation-

A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

COMMENTS:

Evidence of child witness-

(i) The deposition of a child witness may require corroboration, but in case his desposition inspires the confidence of the court and there is not embellishment or improvement therein the court may rely upon his evidence. Only in case there is evidence on record to show that a child has been turtored, the court can reject statement partly or fully.

Related Case- Ramesh v. State of Madhya Pradesh, 2011

(ii) Evidence of child witness is not required to be rejected per se; but Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality and reliability can record conviction based thereon.

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