

## LECTURE VIII.

## THE CLASSIFICATION AND DESCRIPTION OF OFFENCES.

THE offences contemplated by the Ind. Penal Code are those of a general character, affecting the every-day life of the nation, the safety of the Government, of the public, and also the body and property of the individual. Some matters connected with the currency, with trade and industry, are also regarded as sufficiently general to find a place. But otherwise, all cases of offences and prohibitions which are constituted and declared by law in connection with particular branches of public administration, or in special occupations only, are left to "special" laws. As already stated, the result of this division will often be that an act may constitute an offence both against the General law and the Special law: and thus it is a matter for consideration under which to take action. Either can be selected, but of course not both; for a man cannot be made to suffer twice for one offence (p. 98).

I shall offer only a bare enumeration of the classes of offences under the Code; adding a remark here and there—for which I am often indebted to the admirable introduction prefixed by Dr. Whitley Stokes to his edition of the Ind. Penal Code.

For a full study of Criminal Law, much more detailed comment would be needed. For example, the whole question of murder, and of homicide which though criminal may not amount to murder, is a somewhat difficult one; but in view of our object, it will be almost wholly passed over; and so with many other offences.

## I. Offences against the State, Public Justice, &amp;c.

The first class is that which includes all offences against the Crown, the State, and the Community at large. It will be sufficient to indicate—

(Chap. VI). Against the State, *e.g.*, waging or abetting the

waging of war against the Queen, or a friendly Asiatic State; collecting arms; concealing a design to wage war, &c., &c.

An offence against the State not mentioned in the Code, is that of *revealing official secrets and information*. These offences are now punishable by a special Act, XV. of 1889.

Offences against the Army and Navy are in Chap. VII. Here the offences are mostly of abetting; but these abetments are held to be on a special footing, because the offender is a civilian not subject to the Military Law, while the soldiers, &c., abetted, are subject to it. Under this Chapter come all offences of abetting mutiny, seducing soldiers and sailors from their duty, abetting desertion, and harbouring deserters; wearing the uniform of a soldier, &c.

The offences next dealt with are (Chap. VIII.) those against the public peace and tranquillity. They are mostly connected with what are called "unlawful assemblies," *i.e.*, an assembly of *five or more* persons having the *common object* of—

- (1) Overawing by criminal force (or show of such force) the Government (of India or of a Province), or a public servant in lawful exercise of his power as such public servant.
- (2) Resisting the law or legal process.
- (3) Committing mischief, criminal trespass or other offence. (Here "offence" means an offence under the Code, or under a special law, if punishable with six months' imprisonment.)
- (4) By criminal force, or show of it, taking possession of property; depriving a person of a right of way, use of water, or other such right; or enforcing a real or supposed right.
- (5) By force, or show of force, compelling a person to do what he is not legally bound to do, or to omit what he is entitled to do.

Any person who, being aware of the facts which render the assembly unlawful, joins it, or continues in it, is said to be a "member of an unlawful assembly." Whenever such an assembly or any member of it uses (any kind of) force or violence in prosecution of the common object of the assembly, there is said to be a "riot," and every member of the assembly is chargeable with "rioting." If the rioter is armed with deadly weapons, the punishment is more severe. There are various subsidiary provisions; such as those which protect a public servant engaged

in suppressing a riot; which punish acts tending to incite a riot; those which make land-holders—of the land where the assembly takes place—liable, &c., &c.

The same chapter prohibits “affray,” which means (something less than a “riot,” viz.) a disturbance caused by *two or more* persons *fighting* in a *public place* (secs. 159—160).

The next class of offences is that relating to the Public Service; and naturally is dealt with under two chapters, one relating to offences *by* public servants (or at any rate directly connected with their action as public servants, such as abuses of authority, and unlawful acts which touch the integrity and impartiality of a public servant): the other relating to offences *against* public servants, by way of resistance to their authority, obstruction of them in their duty, neglect to aid them in the proper way, and the like.

Chap. IX. (Offences by Public Servants) contains the following:—

- (1) Bribery. (This will be spoken of in detail under the head of the Forest Service, and so is here only mentioned.) The person who *gives* or offers a bribe is guilty of *abetting* the taking.
- (2) Private person taking gift, etc., as a reward for inducing a public servant, *by corrupt or illegal* means, to act or not to act, &c.
- (3) The same; as a reward for using *personal influence* with a public servant. (This does not apply to an advocate who is paid to influence a Court by his eloquent address, nor a person paid to draft a skilful memorial calculated to effect its object: for *personal influence* is not here in question.)
- (4) Public servant taking a gift from a person concerned, or likely to be concerned, in some official proceeding before himself (see illustrations to sec. 165).
- (5) Public servant disobeying the law
- (6) Public servant framing an incorrect document
- (7) Public servant unlawfully engaging in trade.<sup>1</sup> (Various degrees of servants are expressly prohibited by law from trading, e.g., Forest Act, 1878, sec. 74; Police Officers under Act V. of 1861.)
- (8) Public servant unlawfully bidding at an auction.

<sup>1</sup> Trade is “habitually buying and selling with a view to profit.”

[The two remaining sections refer to *pretended* public servants, *i.e.*, to persons so acting as to make it appear that they are public servants.]

- (9) Private person personating a public servant.
- (10) Private person wearing badge, garb or token, in order to make it believed that he is a Public servant.

It will be observed that public servants committing a breach of trust, are liable under the section regarding ordinary breach of trust, only that sec. 409 provides a severer punishment. And in a case of "cheating," *e.g.*, pretending to have disbursed money for public service, and so getting a cheque passed in the public accounts, or producing false vouchers by "forgery;" the ordinary sections relating to these offences are considered sufficient.

The next series of offences (Chapter X.) has still to do with public servants, but consists of acts of *private persons*, against their authority:—

- (1) Absconding to avoid service of summons, order, proclamation, etc.
- (2) Preventing service of summons, order, proclamation, etc.
- (3) Neglect to attend in obedience to summons, etc.
- (4) Omission to produce a document when required.
- (5) Omission to give information which he is legally bound to give (sec. 176).
- (6) Giving false information (177).
- (7) Refusing to take oath or affirmation.
- (8) Refusing to answer.
- (9) Refusing to sign a statement.
- (10) Making a false statement on oath, etc.
- (11) Giving false information, with intent to get a public servant to take action to the injury or annoyance of some one.
- (12) Resisting the taking of property by lawful authority.
- (13) Obstructing (official) sale of property.
- (14) Illegal purchase at such sale.
- (15) Obstructing public servant in exercise of his duty.
- (16) Omission to help public servant when bound to give such help (sec. 187).
- (17) Disobedience to order by public servant lawfully empowered to promulgate it<sup>1</sup> (sec. 188).

<sup>1</sup> The orders here contemplated are those which become necessary in particular places and at particular times, for the sake of preserving public tranquillity, health.

- ▷ (18) Threat of injury to public servant.  
 (19) Threat to any person so as to deter him from applying to a public servant (sec. 190).

From this, the Code naturally passes to the important head of offences against Public Justice. Here again, there may be two classes of offenders: (I.) private persons may offend against the judge himself or the Court, or against the administration of justice; or they may resist the process of the law: (II.) the judge or other officer may himself act wrongfully.

(I.) The offences by<sup>1</sup> private persons against public justice are—

- (1) Giving false evidence.
- (2) Fabricating false evidence. (One consists in making false statements, orally, the other in making written entries, or causing any circumstance to exist, so that it may appear in evidence and mislead), e.g., putting jewels into A.'s box, so as to make it appear that A. had stolen them.<sup>1</sup>

In this case, the nature of the result is looked to; and falsehood tending to produce conviction of a capital offence, &c., is more seriously dealt with.

Then follows a series of sections, 196—229, which it would take too long to enumerate, and which are easily understood from reading them. They cover all offences connected with the issuing of false certificates and declarations;<sup>2</sup> causing the disappearance of evidence to conceal an offence; omission to give information regarding an offence actually committed (sec. 202 differs in this respect from sec. 176); destroying or secreting a document to prevent its production; false personation in a proceeding in Court; fraudulent removal of property

safety or convenience. They could not be provided by law directly, like those injunctions which are required at all times and in all places; hence the public authorities are empowered under the Criminal Procedure Code to issue orders for the occasion or special circumstances, and disobedience to these orders is made penal.

<sup>1</sup> Evidence consists (1) of what witnesses know and state, or what is recorded in books, papers, returns, &c., or (2) of facts which lead to inferences. Hence the offences relate to "false statements" (oral and written), and to "false facts"—if I may use the expression—as explained by the illustration in the text.

<sup>2</sup> Suitors in Court are often required by law to "verify" their complaints, pleadings, &c., by attaching to the petition a signed form declaring that what is set forth is true to the best of the petitioner's knowledge and belief; such declarations, if knowingly and intentionally false, are punishable under this Chapter.

to prevent seizure; fraudulent claims, &c.; instituting false criminal proceedings with intent to injure (sec. 211); harbouring offenders; taking gift to screen offender, &c.

(II.) *Public servants* may also themselves commit offences against justice; such are, framing incorrect record, or disobeying the law, with intent to save a person from punishment or property from seizure; corruptly making an illegal judicial order; illegal commitment for trial; illegal confinement; intentional omission to apprehend (and this becomes a still graver offence if the person to be apprehended is already under sentence); negligently suffering escape of a prisoner.

Lastly, come sections dealing with resistance to lawful arrest, escape and rescue; unlawful return from transportation; breach of condition of remission of punishment; insult to a public servant in a judicial proceeding; personating a juror or assessor.

Another class of offences against the public, relates to *coin and Government stamps* (Chap. XII.) and to *weights and measures* (Chap. XIII.). These we may pass by. So, too, we will only mention without any remark, the class (Chap. XIV.) which defines offences affecting *public health* (nuisances; <sup>1</sup> adulteration of food, spreading infection, disobeying quarantine, &c.); *public safety* (rash driving or navigation, showing false lights or buoys, overloading vessels, obstructing public ways, negligence with poison, fire and explosives, machinery, insecure buildings, animals, &c.); *public morals* (obscene books or songs, lottery offices, &c.).<sup>2</sup>

The last class (Chap. XV.) of public offences includes those *relating to religion* (injuring or defiling places of worship, &c.; disturbing religious assemblies; insult to religious feelings).

## II. Offences against the Human Body.

The Code then proceeds to the Offences affecting the Human Body (Chap. XVI.).

### (A) Affecting life, *i.e.*, murder and culpable homicide.

No length of time can justify a nuisance. These matters may be also the subject of a civil suit as well as of criminal prosecution.

Public gambling is prohibited in a Special law. There are no sections about cruelty to animals in Chap. XIV.; the subject was ultimately provided for by a Special law, Act XI. of 1890.

As offences of this class do not come within the scope of a Forest Officer's duty, it will be sufficient briefly to indicate the main idea of the law. Homicide, or causing death, in itself, may be culpable or not culpable. Cases which come under the latter description are only dealt with in the Chapter on general exceptions. Homicide may be purely accidental or by misfortune, there being no evil intention and no want of proper care or caution. It may be caused by a child or a lunatic, &c., who is incapable of committing a legal offence. It may also be justifiable, as where a sentence of death has been passed by a judge acting in his office, and the executioner, under a proper warrant, carries out the sentence; or it may be caused, in good faith, in the endeavour to act for the benefit of the person killed (p. 102); or in the exercise of the right of self-defence (p. 105).

Again, death may be caused (sec. 304A) by negligence (*i.e.* by a rash or negligent act), and so may be a crime, but not on the graver footing of "culpable homicide" as defined by the Code.

Homicide is legally "culpable" when the act causing death is done—

- (1) With the *intention* of causing death.
- (2) With the *intention* of causing such bodily injury as is likely to cause death.
- (3) With the *knowledge* that such act is *likely* to cause death.

And under the I. P. Code, culpable homicide *becomes murder*, if the following intention or knowledge exists (this being something additional to, or more extensive than, that previously stated):—

- (1) The intention of causing death.
- (2) { The intention of causing such injury as the offender knows to be likely to cause the death of the person injured.
- (3) { The like intention to injure when the injury is (in itself) *sufficient*, in the ordinary course of nature, to cause death.
- (4) By an act known to be so imminently dangerous that it will in all probability cause death (or injury likely to result in death), and there is *no excuse* (a question of fact) for incurring the risk.<sup>1</sup>

<sup>1</sup> The Code is open to the objection that the four cases where homicide becomes

But *also*, to make culpable homicide murder, it is necessary that there should be an *absence* of certain special or exceptional conditions. Thus—

- (1) It is not murder, if the offender is deprived of self-control by *grave and sudden provocation* (not being voluntarily sought, nor caused by something done in obedience to the law or in the lawful exercise of power by a public servant, nor by anything done in the exercise of a right of self-defence).
- (2) If the death was caused in self-defence, and yet the act of defence exceeded the legal limits of the right—there being no premeditation nor intention to do more harm than necessary.<sup>1</sup>
- (3) If done by a public servant (or a person aiding a public servant), acting for the advancement of public justice, although the limits of the law are exceeded; provided the act is believed in good faith to be lawful and necessary, and there is no ill will towards the person whose death is caused.
- (4) If done without premeditation *in a sudden fight in the heat of passion* on a sudden quarrel, no undue advantage being taken, and no action in a cruel and unusual manner.
- (5) When the person whose death is caused being over eighteen years of age, suffers death, or takes the risk of death, with his own consent. (So that under the Code, a duel agreed upon between adults, might give rise to culpable homicide, not to murder, as it would be in English law.)

In judging, therefore, in any particular case, whether it comes under the head of *murder* or not, attention has to be paid *both* to the nature of the intention or knowledge (sec. 300 as distinguished from 299), *and* to the absence of one or other of the five exceptions.

Murder is punishable with death (or transportation for life). Culpable homicide is only punishable with transportation for life, or imprisonment for ten years and fine, in the worst cases, and imprisonment in the less serious (see sec. 304). So that

*murder*, are in practice, difficult to distinguish from the three cases where homicide is culpable, but not murder. See the whole matter clearly explained in Anglo-Ind. Codes, Vol. I., p. 39 ff.

<sup>1</sup> People obliged to defend themselves will, it is hoped, keep themselves cool or under due self-command; but still it is so natural that the legal limits should be (unintentionally) exceeded in the hurry and excitement of the moment, that an excessive act, resulting in death, though necessarily criminal, should not be regarded as a positive "murder."



every degree of criminality or of excuse can be allowed for, in estimating the culpability of the homicide with reference to its punishment.

I may pass over the several modified or special cases of murder, etc., in the Code, only noting that sec. 309 punishes an attempt to commit suicide.

(B) The next class, which consists of offences connected with birth, *i.e.*, causing miscarriage, injury to unborn children, exposure of infants, concealment of birth, &c., does not call for our attention.

(C) A large class of offences comes under the category of "hurt."

Hurt is either "simple" or "grievous." It is the latter only when one or other of eight specified kinds (sec. 320): these include any hurt which endangers life, or causes the sufferer to be, during twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

There are also special forms of these offences, or circumstances under which causing hurt or grievous hurt constitutes a new offence:—

- (1) The law takes into consideration whether hurt is caused by dangerous weapons or means, or by noxious drugs.<sup>1</sup>
- (2) Or done with intent to extort property or compel to an illegal act, or extort a confession.
- (3) Or done to a public servant to deter him from his duty.

A distinction is also drawn (in mitigation of the offence) where there is grave and sudden provocation (secs. 334, 335). Three sections are also added, which deal with hurt caused involuntarily and yet culpably—that is, there is a want of due care not to cause hurt.

(D) Next come sections on *wrongful restraint* and *wrongful confinement*, which I need not remark on; and then follows the subject—

(E) Of "*criminal force*" and "*assault*."

<sup>1</sup> It is true that as great and lasting an injury may be done with a blow of the fist as with a knife or a hot iron; but, remarks Dr. W. Stokes, "in the vast majority of cases, the offender who has used a knife or a hot iron for the purpose of wreaking his hatred, is a far worse and more dangerous member of society than he who has only used his fist."

I shall only explain that "assault" is committed where there is only the gesture or preparation causing apprehension of force; but *mere* words (however abusive) do not amount to an assault. The "assault" passes into "use of force" when some *act* is done on the body, or something put in motion (as defined in sec. 349). And the "force" is "criminal force" (sec. 350) when it is used without consent, with intent to commit any offence, or cause injury, fear, or annoyance to the person.

There are specially grave kinds of assault, when directed to outrage a woman's modesty, to dishonour a person (sec. 355), in attempting theft, wrongful confinement, &c.

(F) The offences of kidnapping, abduction, slavery, and forced labour, are naturally connected with (D) and (E), but do not call for our special notice.

(G) The last class of offences in this part of the Code are rape and unnatural offences. They are offences against the body, and so necessarily find a place in the criminal law regarding the human body. They often give rise to difficult questions of evidence; but it will not be necessary to deal with the subject.

We may pass on, in the next Lecture, to consider a group of offences *against Property*, with which Forest Officers may have a great deal to do in the course of their work.

It will be noticed that offences against property, are in two divisions: in one, an owner is *deprived* of property; in the other property is *injured* (by some form of mischief) without any (necessary) direct deprivation of the object.

Criminal trespass may be connected with some attack on either person or property, and so naturally follows.