



CHAPTER

4(A)

Law and Sustainable Development

A. Introduction

What is Sustainable Development?

Sustainable Development is defined as economic development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. (United Nations General Assembly, 1987)

The aim of sustainable development is to achieve long term economic growth by lowering the impact on the environment by reducing air, water and soil pollution, so that a better life is ensured for the future generations.

Few examples of sustainable practices are harnessing solar energy to reduce pollution in the environment and planting different types of crops on the same land on a rotational basis for improving soil fertility.

What is Sustainable development in law?

Sustainable development is **an approach to economic planning that attempts to foster economic growth while preserving the quality of the environment for future generations.**

What are Sustainable Development Goals (SDGs)?

The Sustainable Development Goals (SDGs) are a collection of 17 interlinked goals that provide a shared blueprint for peace and prosperity for people and the planet, now and into the future. SDGs are also known as Global Goals.

The SDG framework was adopted by the United Nations in 2015 as a universal call for action to:

- protect the planet,
- end poverty, and
- ensure that all people enjoy peace and prosperity by 2030.

To achieve SDGs, the creativity, knowhow, technology and financial resources from all of society are necessary.





The 17 sustainable development goals (SDGs) to transform our world are:

GOAL 1: No Poverty	GOAL 2: Zero Hunger	GOAL 3: Good Health and Well-being	GOAL 4: Quality Education	GOAL 5: Gender Equality	GOAL 6: Clean Water and Sanitation
GOAL 7: Affordable and Clean Energy	GOAL 8: Decent Work and Economic Growth	GOAL 9: Industry, Innovation and Infrastructure	GOAL 10: Reduced Inequality	GOAL 11: Sustainable Cities and Communities	GOAL 12: Responsible Consumption and Production
GOAL 13: Climate Action	GOAL 14: Life Below Water	GOAL 15: Life on Land	GOAL 16: Peace and Justice Strong Institutions	GOAL 17: Partnerships to achieve the Goal	

Stockholm Declaration, 1972- The Stockholm Convention is a global treaty that aims to **protect human health and the environment from the effects of persistent organic pollutants (POPs)**. It was the first convention to discuss environmental issues on a global scale. The declaration **proclaims truths relating to man and the environment such as man is the creator and moulder of his surroundings**. The declaration also reiterates the importance of preservation of the environment.

B. Initiatives Under International Scenario

(a) Rio Declaration 1992- Agenda 21

The United Nations Conference on Environment and Development (UNCED), also known as the 'Earth Summit' was held in Rio de Janeiro, Brazil in 1992. The Conference marked the 20th anniversary of the first ever International Human Environment Conference in Stockholm, Sweden, 1972. The Conference was attended by representatives from 179 countries to discuss the impact of human socio-economic activities on the environment.

The objective of Rio 'Earth Summit' was to formulate a blueprint for global action on environment and development issues. It recognised that integrating and balancing the economic, social and environmental concerns in meeting our needs is vital for sustaining human life on the planet Earth. This triggered action on part of governments from across the globe on how to ensure sustainability with development.

The Earth Summit resulted in some major actions by countries from across the globe in the form of conventions and resolutions. To name a few:

- Agenda - 21
- UNFCCC - United Nations Framework Convention on Climate Change
- Convention on Biological Diversity
- The Declaration on the Principles of Forest Management
- Commission on Sustainable Development



(b) Agenda 21

Agenda 21 was one of the most daring programs calling for action strategies. It focussed on new methods of education, new ways of preserving natural resources and new ways of participating in a sustainable economy. The implementation of Agenda -21 was reaffirmed in the World Summit on Sustainable Development held in Johannesburg, in 2002.

Agenda 21 focuses on Community Participation as one of the major prerequisites for sustainable development. Attaining sustainability therefore requires addressing the fundamental issues and challenges pertaining to development at local, regional and global levels simultaneously by all segments of society. Thus the key objective of sustainable development being, to improve human well-being and to sustain these improvements over a period of time, remains the focus of Agenda - 21.

C. Provisions Under Indian Constitution:

(a) Constitution of India:

The Constitution of India under Article 21 enshrine the 'Right to Life'. This article in its wider interpretation encompasses 'Right to clean environment' as an important facet of 'life'.

Further, Article 38 shoulders the State with the responsibility of maintaining social order for ensuring a welfare state. This is only possible with the people living in a pollution free environment.

Article-48A, inserted by the 42nd amendment to the Constitution of India, states "Protection and improvement of environment and safeguarding of forests and wild life- The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country'.

It requires the State to adopt the Protectionist policy as well as Improvinistic Policy. **Protectionist policy** imposes ban on those things which lead to environmental degradation, e.g. ban on use of leaded petrol, ban on use of plastic bags etc. **Improvinistic policy** refers to alternatives that can be used for improvement of environment, e.g. use of CNG or low sulphur fuel, tree plantation in industrial areas etc.

A duty has also been imposed on all citizens to protect our environment. Article-51A(g) of the Indian Constitution says: "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."

(b) Legal Mechanism

The Constitution of India clearly endows a duty on the State to "protect and improve the environment and to safeguard the forests and wildlife of the country". To strengthen environment protection at grassroot level it further imposes fundamental duty on every citizen "to protect and improve the natural environment including forests, lakes, rivers, and wildlife". The State, indispensably has been directed by way of provision under Part III and Part IV to ensure the protection of environment by suitable legislations, regulations and otherwise. The Honorable Supreme Court in *K. M. Chinnappa v. Union of India* defined "**Environmental Law**" as an instrument to protect and improve the environment and control or prevent any act or omission polluting or likely to pollute the environment.

It is with the enactment of Environment Protection Act, 1986 that a concrete step has been taken



for combating modern day challenges in environment protection and improvement. Prior to the enactment of the Act, environment protection regime was more 'regulatory' in nature. At present, environment protection in India comprises of the following legislations and regulatory bodies.

(c) Legal Framework

1. Environment Protection Act, 1986
2. Air (prevention and control of Pollution) Act, 1981
3. Water (prevention and control of Pollution) Act, 1974
4. The Noise Pollution (Regulation and Control) Rules, 2000
5. National Green Tribunal Act, 2010
6. Energy Conservation Act, 2001

D. Environment Protection Act, 1986

In the wake of the Bhopal Tragedy, the Government of India enacted the Environment Protection Act of 1986 under Article 253 of the Constitution. The purpose of the Act is to implement the decisions of the United Nations Conference on the Human Environment, relating to the protection and improvement of the human environment and the prevention of hazards of human activities for economic development to human beings, other living creatures, plants and property. The Act is an "umbrella" legislation designed to provide a framework for the central government to coordinate the activities of various central and state authorities established under previous laws, such as the Water Act and the Air Act. India, like any other developing nation, is facing an alarming concern in environmental degradation due to economic activities. Control mechanisms to guard against slow, insidious build up of hazardous substances, especially new chemicals, in the environment are weak.

E. Pollution Control Board

(a) The Central Pollution Control Board:

The Central Pollution Control Board is a statutory organisation under The Ministry of Environment and Forest Protection. It is constituted under the Water (Prevention and Control of Pollution) Act, 1974.

Principal Functions of the CPCB have been spelt out in the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981. Its broad functions include promoting cleanliness of streams and wells in different areas of the States by prevention, control and abatement of water pollution, and by improving the quality of air and to prevent, control or abate air pollution in the country. However, if we analyse the functions in detail, they may be summarised as follows:

- Advise the Central Government on any matter concerning prevention and control of water and air pollution and improvement of the quality of air;
- Plan and cause to be executed a nation-wide program for the prevention, control or abatement of water and air pollution;
- Coordinate the activities of the State Board and resolve disputes among them;



- Provide technical assistance and guidance to the State Boards, carry out and sponsor investigation and research relating to problems of water and air pollution, and for their prevention, control or abatement;
- Plan and organise training of persons engaged in programme on the prevention, control or abatement of water and air pollution;
- Organise through mass media, a comprehensive mass awareness programme on the prevention, control or abatement of water and air pollution;
- Collect, compile and publish technical and statistical data relating to water and air pollution and the measures devised for their effective prevention, control or abatement;
- Prepare manuals, codes and guidelines relating to treatment and disposal of sewage and trade effluents as well as for stack gas cleaning devices, stacks and ducts;
- Disseminate information in respect of matters relating to water and air pollution and their prevention and control;
- Lay down, modify or annul, in consultation with the State Governments concerned, the standards for stream or well, and lay down standards for the quality of air; and
- Perform such other functions as may be prescribed by the Government of India.

(b) The State Pollution Control Boards

State Pollution Control Board is a statutory organisation established under the Water (Prevention and Control of Pollution) Act 1974, which works under the supervision of the Central Pollution Control Board to implement the environmental laws and rules within the respective state for the protection of the environment.

It is mandatory for every business, either new or existing, to obtain necessary authorization from the respective State Pollution Control Board in order to carry out the activities of the business in a State.

Objectives:

- Preservation of natural resources
- Promotion of sustainable development for economic growth of the nation along with environmental protection and social equity.
- Effective waste management for the protection of the environment.
- Spreading Awareness about the protection of the environment among the consumers
- Encouraging the general public for the use of environment-friendly products like paper bags, public transport, CFL, etc. to help reduce the environmental pollution

Functions of the Board

The broad functions of the Board are in line with the functions of the Central Board and aimed at the prevention, abatement, and control of air and water pollution. Moreover, the primary motive is to assist the entrepreneurs and industries in the fulfilment of Corporate Environmental Responsibility (CER). The functions of the Board can be detailed as follows for further understanding:

- Issue NOC (No-Objection Certificates) from the perspective of the environmental pollution, including the adequacy of the site from the environmental angle.



UNIT I

- Assessment of quality ambient air.
- Assessment of inland surface waters' quality
- Issuance of the Consent under provisions of Section 21 of the Air (Prevention and Control of Pollution) Act, 1981.

UNIT II

- Issue of Consent under provisions of section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974.
- Collection and assessment of Water Cess, under the provision of Water (Prevention and Control of Pollution) Cess Act, 1977.

UNIT III

- Assessment and Identification of municipal and industrial pollution sources and control.
- Conducting Mass Awareness Programmes.
- Development of Pollution Control technologies.
- Notification of emission and effluent standards.
- Instituting legal action against defaulters.
- Implementing Biomedical Waste Rules, 1998.

UNIT IV

- Issuance of Authorization under the Hazardous Waste Management Rule, 1989.
- Identifying the onsite crisis management plans, isolated storage, etc., under the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.

SDGs can be the most useful weapons to build the economies in such a way that they can provide for the future generations in a sustainable way. All countries must work together to achieve these goals and create a sustainable world. India has put together a legislative framework for the attainment of these goals. What is needed now is a strong implementation of these laws to achieve a better relationship between the society and environment.

UNIT V

Exercises

Based on your understanding, answer the following questions:

1. What is the meaning of sustainable development? What does it aim to achieve?
2. When and why was the SDG Framework adopted? How can these SDGs be achieved?
3. Identify the SDG goals which provide for protection of environment.
4. Describe the legal framework in India for environment protection
5. What are the main functions of
 - a. Central Pollution Control Board
 - b. State Pollution Control Board

UNIT VI

UNIT VII

UNIT VIII

Bibliography

1. <https://cpcb.nic.in>
2. <https://sdgs.un.org>
3. <https://www.un.org>
4. blog.ipleaders.in
5. <https://wedocs.unep.org>
6. <https://sustainabledevelopment.un.org>



CHAPTER

4(B)

Forms of Legal Entities

Learning Outcomes:

Students will be able to:

- Identify different forms of business entities/ organisations
- Explains features, merits and limitations of different forms of business entities/ organisations
- Distinguish between various forms of business entities/ organisations
- Discuss the factors determining choice of an appropriate form of entity/ organisation

I. Introduction

If one is planning to start a business or is interested in expanding an existing one, it is important to understand the different forms of organisations. Choosing the right legal structure is aligned to the goals of the entity and the local and central laws where it desires to establish its base.

In India, there are 3 major types of business frameworks – sole proprietorship, partnership and company (public or private). Over the years, hybrid and newer versions of the same have arisen such as limited liability partnerships. Each form of business has its own pros and cons.

Objective of Law Regulation of Legal Entities

The purpose of law regulation of forms of legal entities is to provide a framework for the creation, management, and dissolution of different types of organizations, such as corporations, partnerships, and sole proprietorships. These regulations aim to protect the rights and interests of stakeholders, including shareholders, employees, customers, and creditors, and to ensure the fair and transparent functioning of these entities within the legal and economic system. Additionally, law regulations of legal entities may also promote competition, prevent fraud and misconduct, and provide a clear understanding of responsibilities and liabilities.

II. Types of legal entities in India**1. Sole Proprietorship**

Sole proprietorship is a popular form of business organisation and is the most suitable form for small businesses, especially in their initial years of operation. Sole proprietorship refers to a form of business organisation which is owned, managed and controlled by an individual who is the recipient of all profits and bearer of all risks.

The word “sole” implies “only”, and “proprietor” refers to “owner”. Hence, a sole proprietor is the one who is the only owner of a business.

It is the easiest type of business to establish or take apart, due to a lack of government regulation.



As such, these types of businesses are very popular among sole owners of businesses, individual self-contractors, and consultants. Most small businesses start as sole proprietorships and either stay that way or expand and transition to a limited liability entity or corporation. This form of business is particularly common in areas of personalised services such as beauty parlours, hair salons and small scale activities like running a retail shop in a locality.

Salient features of a sole proprietorship are as follows:

S.No.	Feature	Details
1.	No separate entity	No difference in the eyes of the law between the owner and business.
2.	Formation	a) No specific law b) Business is owned by single person c) No formal registration
3.	No. of members	Minimum – 1 Maximum - 1
4.	Liability	a) Unlimited liability b) Owner is responsible for all losses, debts and liabilities.
5.	Profit	If the business is successful, the owner enjoys all the profits.
6.	Control & decision making	The right to run the business and make all decisions lies absolutely with the sole proprietor.
7.	Limited life of the business	As the business is owned and controlled by one person, death, insanity, imprisonment, physical / mental incapacity or bankruptcy will have a direct impact on the business and lead to its closure.
8.	Confidentiality	Sole decision making authority enables the proprietor to keep all information related to business operations confidential and maintain secrecy.

Advantages and disadvantages of Sole Proprietorship

There are several benefits as well as limitations of running a sole proprietorship. Some of those points are discussed below.

Advantages

- Quick decision making
- Confidentiality of information
- Owner receives all the profits
- Owner makes all decisions and is in complete control of the company
- Easiest and least expensive form of ownership to organize
- Easy of formation and closure
- The business does not pay separate taxes. All income passes directly to the owner and is taxed at the owner's personal tax rate.



Disadvantages

- Unlimited liability if anything happens in the business
- Limited in raising funds
- No separate legal status
- Limited funds and resources
- Limited skills and managerial ability of the proprietor

2. Partnership

The Indian Partnership Act, 1932 defines partnership as “the relation between persons who have agreed to share the profit of the business carried on by all or any one of them acting for all.” Persons who have entered into partnership with one another are called individually, “partners” and collectively “a firm” and the name under which their business is carried on is called the “firm-name”.

The inherent disadvantage of the sole proprietorship in financing and managing an expanding business paved the way for partnership as a viable option. Partnership serves as an answer to the needs of greater capital investment, varied skills and sharing of risks.

A successful partnership can help a business thrive by allowing the partners to pool their labor and resources. But there is also an additional risk in joining a partnership. In addition to sharing profits, the partners may also assume responsibility for any losses or debts from the other partners.

Strategic partnerships are formed when two or more businesses or individuals come together to achieve mutual goals and enhance their respective brands. By co-branding and combining resources, strategic partnerships can provide benefits such as increased brand awareness, improved brand trust, and access to new markets and customers. Some well-known examples of successful strategic partnerships include Spotify and Google, Sherwin-Williams and Pottery Barn, and McDonald’s and Coca-Cola. These partnerships have helped both companies to grow and succeed in their respective markets.

In the case of law firms and medical practice often individuals who are experts in their field join together to form partnerships with other experts to enhance knowledge, greater reach, joining of several sub specialisations, more trustworthiness and for all round solutions to their clients.

Salient features of a partnership are as follows:

S.No.	Feature	Details
1.	No separate entity	A partnership firm has no separate legal existence of its own i.e., the partnership firm and the partners are one and the same in the eyes of law.
2.	Formation	a) There are two types of partnership firms – registered and unregistered. It is not compulsory to register a partnership firm. b) Registration by the Registrar of Firms under the Indian Partnership Act, 1932. c) In order to enter into partnership, a clear agreement with respect to the terms, conditions and all aspects concerning the partners is essential so that there is no misunderstanding later among the partners. This written agreement is called a Partnership Deed.



3.	No. of partners	Minimum – 2 Maximum - 50
4.	Liability	a) Unlimited liability b) Partners are jointly and severally liable for the liabilities of the firm
5.	Profit	Partners share profits in a mutually agreed ratio.
6.	Control & decision making	Partners enjoy shared responsibility amongst each other. This may sometimes raise conflicts in decision making.
7.	Dissolution	Partnership firm can be dissolved by way of compulsory dissolution or by way of agreement.
8.	Funds	Capital is contributed by the partners. This makes it possible to use larger amounts of funds.

Partnership Advantages

- Easy to establish (with the exception of developing a partnership agreement)
- Separate legal status to give liability protection
- Partners may have complementary skills
- Start up cost is low
- More capital is available for business

Partnership Disadvantages

- Partners are jointly and individually liable for the actions of the other partners
- Profits must be shared with the partners
- Divided decision making
- Business can suffer if the detailed partnership agreement is not in place

3. Limited Liability Partnership

A limited liability partnership (LLP) is a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008.

A Limited Liability Partnership (LLP) is a type of business that combines the benefits of limited liability with the flexibility of a partnership. It allows members to organize their internal structure based on an agreement. This type of business is suitable for entrepreneurs, professionals, and enterprises that provide services or engage in scientific and technical disciplines. It is also a good option for small enterprises and for investment by venture capital due to its flexible structure and operation.



The salient features of a limited liability partnership are as follows :

S.No.	Feature	Details
1.	Separate entity	a) LLP is a separate legal entity from that of its partners. b) It shall have perpetual succession. c) Any change in the partners shall not affect the existence, rights or liabilities of the LLP.
2.	Formation	A written agreement known as a 'limited liability partnership agreement' is entered into between the partners of the LLP or between the LLP and its partners which determines the mutual rights and obligations.
3.	No. of partners	Minimum – 2 Maximum – no limit
4.	Liability	a) Liability of the partners is limited to their agreed contribution in the LLP. b) No partner is liable on account of the independent or unauthorized actions of other partners.
5.	Capital	An LLP can be started with no minimum amount of capital contribution.
6.	Less registration cost	The cost of registration is lesser as compared to a private limited company or public limited company.

Advantages of an LLP

There are several advantages to operating as a Limited Liability Partnership (LLP).

- The terms and conditions of an LLP are based on a mutually agreed LLP agreement, providing greater flexibility and ease.
- The cost of registering an LLP is lower than incorporating a public or private limited company.
- Partners are only liable up to their agreed contribution, and there is no joint liability created by the actions of another partner.
- The registration process is simpler compared to that of a company.
- Remuneration, voting rights, and other aspects are clear and defined in the LLP agreement, with no restrictions on partner remuneration as long as it is authorized by the agreement.
- The LLP can sue and be sued in its own name, protecting partners from being personally sued for the LLP's debts.
- There is greater flexibility for becoming a partner, leaving the LLP, or transferring interest in the LLP.
- Partners are free to enter into any contract, and the LLP enjoys higher credit-worthiness compared to a partnership, although lower than a company.
- There is no mandatory requirement for auditing accounts, and the LLP can raise funds from private equity investors and financial institutions.



Disadvantages of LLP

There are some disadvantages to operating as an LLP.

- Actions taken by one partner without the consent of others can bind the LLP. In some cases, partners may also be personally liable for the LLP's debts.
- The winding-up process, as outlined in the Limited Liability Partnership (Winding Up and Dissolution) Rules, 2012, can be lengthy and costly.
- LLPs have lower credit-worthiness compared to companies.
- LLPs are required to file annual statements of accounts and solvency, as well as an annual return with the Registrar of Companies, which is not a requirement for partnerships.

4. Private Limited Company

A Private Limited Company is a popular business structure amongst growing businesses and companies.

A Private Limited Company is a separate legal entity registered under the Companies Act, 2013.

It is a type of business entity that is owned by a small group of individuals and registered for specific business objectives. It is a popular choice for startups and businesses with high growth aspirations due to the limited liability protection it offers to shareholders and the flexibility it provides in terms of ownership and management structure.

The salient features of a private limited company are as follows :

S.No.	Feature	Details
1.	Separate entity	A private limited company is said to be a separate legal entity. Therefore, the company can sue and can also be sued under its name.
2.	Formation	a) The private limited company is to be registered under the Companies Act, 2013. b) Incorporated documents such as Memorandum of Association and Articles of Association are required.
3.	No. of members	Minimum – 2 Maximum – 200
4.	Liability	The liability of each member or shareholder is limited. The personal, individual assets of the shareholders are not at risk.
5.	Capital	It must have a minimum paid-up capital of such amount which may be prescribed from time to time.
6.	Borrowing capacity	A private limited company enjoys the privileges of borrowing more funds.
7.	Easy exit	Private limited companies can be sold or transferred, either partially or in full, to another individual or entity without any disruption to the current business.
8.	Perpetual succession	The company keeps on existing in the eyes of law even in the case of death, insolvency, the bankruptcy of any of its members.



Examples of popular Private limited companies

- Flipkart
- Freecharge
- Café Coffee Day

5. Public Limited Company

As per Section 2(71) of the Companies Act, 2013 a public company means “a company which is not a private company”.

A public limited company is recognised as a separate entity from its owners and has the ability to enter into agreements in its own name. It operates independently from its owners and has its own set of rules, obligations, regulations and legal rights. The owners run the company but have limited liability for its debts and obligations. This legal separation provides a higher level of protection to the owners and makes it easier for the company to raise capital through the sale of shares to the public.

The owners of a public limited company are referred to as shareholders or stakeholders, and the ownership of the company is divided into units known as shares or equity shares. These units of ownership can be held by multiple individuals or corporations, making it easier for the company to raise capital by selling shares to the public. The shareholders have a right to participate in the decision-making process of the company and receive dividends from the company's profits.

The salient features of a public limited company are as follows :

S.No.	Feature	Details
1.	Separate entity	Public Limited Company is a separate legal entity registered under the Companies Act, 2013.
2.	Formation	a) The public limited company is to be registered under the Companies Act, 2013. b) Incorporated documents such as Memorandum of Association and Articles of Association are required. c) Public limited companies could be listed in the stock market or could be unlisted.
3.	No. of members	Minimum – 7 Maximum – no limit
4.	Limited Liability	The liability of the shareholders is limited to their stake only.
5.	Capital	a) A public limited company is required to have a minimum paid-up capital of an amount as prescribed under the act. b) Public Limited Company can relish an increased ability to raise capital through the stock market by issuing debentures and bonds from the public.
6.	Perpetual succession	The life span of the public limited company is not affected by the death of any member or shareholder.
7.	Strict regulation	A Public Limited Company is strictly regulated and is required to publish its true financial health to its shareholders.



8.	Transparency	All information relating to a public limited company is available to the public including detailed financial statements and structure of the management.
9.	Transferability of shares	The shareholders are free to buy or sell/ trade shares to anyone through the stock market if the the company is listed and through dealers and other platforms if the company is unlisted.

Popular public limited companies in India

- Indian Oil Corporation Ltd.
- Bharat Petroleum Corporation Ltd.
- State Bank of India

In comparison to sole proprietorship and partnership forms of organisations, a company has larger financial resources. Further, capital can be attracted from public as well as through loans from banks and financial institutions. Thus, there is larger scope of expansion.

Difference between Public and Private Company

Basis	Public Company	Private Company
Members	Minimum - 7 Maximum - unlimited	Minimum - 2 Maximum - 200
Transfer of shares	No restriction	Restriction on transfer
Invitation to public to subscribe to shares	Can invite the public to subscribe to its shares	Cannot invite the public to subscribe to its securities

6. One Person Company (OPC)

As per Section 2(62) of the Companies Act 2013, “one person company” means a company that has only one person as a member. This is a recent invention to facilitate entrepreneurs to own and manage companies alone.

The salient features of a one person company are as follows :

S.No.	Feature	Details
1.	Separate entity	a) The OPC receives a separate legal entity status from the member. b) The separate legal entity of the OPC gives protection to the single individual who has incorporated it.
2.	Liability	The liability of the member is limited to his/her shares, and he/she is not personally liable for the loss of the company.



3.	Formation	a) Incorporated by a single person. b) Incorporated as a private company under the Companies Act, 2013. c) Compliance requirements are lesser than that of a private company. d) An individual can form a company with one single member and one director. The director and member can be the same person.
4.	No. of members	Minimum – 1 Maximum – 1
5.	Easy to obtain funds	Since OPC is a private company, it is easy to go for fundraising through venture capitals, angel investors, incubators etc.
6.	Perpetual succession	The OPC has the feature of perpetual succession even when there is only one member. While incorporating the OPC, the single-member needs to appoint a nominee. Upon the member's death, the nominee will run the company in the member's place.
7.	No minimum paid-up share capital	Companies Act, 2013 has not prescribed any amount as minimum paid-up capital for OPCs.

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UNIT VIII

A sole proprietorship form of business might seem very similar to one-person companies because they both involve a single person owning the business, but they're actually exist some differences between them.

The main difference between the two is the nature of the liabilities they carry. Since an OPC is a separate legal entity distinguished from its promoter, it has its own assets and liabilities. The promoter is not personally liable to repay the debts of the company.

On the other hand, sole proprietorships and their proprietors are the same persons. So, the law allows attachment and sale of promoter's own assets in case of non-fulfilment of the business' liabilities.

III. Comparative Evaluation of some forms of Business Entities

Basis of comparison	Sole Proprietorship	Partnership	Company
Formation	Minimum legal formalities; easy formation	Registration is optional, easy formation	Registration compulsory; lengthy and expensive formation process
Members	Only one owner	Minimum - 2 Maximum - 50	<u>Minimum</u> Private - 2 Public - 7 <u>Maximum</u> Private - 200 Public - Unlimited



Capital contribution	Limited finance	Funds can be raised / contributed by partners	Large financial resources
Liability	Unlimited	Unlimited and joint	Limited
Control & Management	Owner takes all decisions; quick decision making	Partners take decisions; consent of all partners is needed	Separation between ownership and management
Continuity	Unstable; business and owner regarded as one	More status but affected by status of partners	Stable because of separate legal status

IV. Conclusion

A legal entity refers to any business or organization that has legally recognized rights and obligations, such as the obligation to file taxes. These entities have the capacity to enter into agreements as either a vendor or supplier, and can initiate or be a party to lawsuits in a court of law.

The choice of business structure has a major impact on taxes, funding, required paperwork, and personal responsibility. It's crucial to make this decision before registering a business.

Exercises

Based on your understanding, answer the following questions :

1. State the differences between a private limited company and a public limited company.
2. Ajay and Nilam decide to contribute Rs. 10000 and Rs.20000 respectively in order to start a partnership firm selling saris. Since they are good friends they forgo registering the partnership and have only a verbal agreement to share profit and losses. In the first year itself due to Covid the firm suffered a loss of Rs. 30000. Now Ajay insists that the losses should be borne in the same ratio as the initial contribution i.e. he should bear Rs 10000 of loss and Nilam should bear Rs.20000 of loss. Whereas Nilam wants them to bear the losses equally. In this regard discuss the nature and essential characteristics of partnership firms, types of partnership firms and why it is important to have a written agreement or Partnership deed between partners.
3. The people of a village in India make a special kind of silk dress. Due to social media's influence the dress has become immensely popular in India and abroad and designers are willing to pay crores of rupees for bulk orders. Since it is not possible for the individual weavers to handle such large orders, they sought the help of a benevolent lawyer who belonged to their village. They want to form a legal entity to enter into the supply business formally. They are also aware that if they come together, their bargaining power will increase. They are ready to contribute a fixed amount initially. They also realize that they will require to raise capital from investors in order to fulfill their orders. A few of them have adult educated children who are ready to take up the management of the formal entity. There are about hundred weavers who are willing to come together to form the entity. If you are the lawyer they have approached, suggest which will be the best form of legal entity in this case and why.
4. Raj owns a small provisions store. He has borrowed a sum of Rs 70000 from a moneylender to run his business. Raj dies from Covid before returning the amount. Can the moneylender recover his money? Discuss the liabilities of a sole proprietorship firm and its advantages and



disadvantages.

5. A giant cola company wants to enter the Indian market. They have a huge market in foreign countries. They also want to raise more funds from the public in India. What is the best way for them to enter the markets? What legal entity should they form to be able to do business in India? Discuss the characteristics of such an entity.

Activity Based Question:

1. Two friends Tanmay and Pinaki decide to start a business. They have five thousand rupees each to contribute towards the business. They want to share the profits equally. But in case of a loss Tanmay has agreed to bear 60 per cent of the loss. They have decided to conduct the business using Tanmay's commercial property at 1, Mango Lane, Bangalore - 2, as the registered address. Also if they ever wind up the business, the liabilities and assets existing at that point, will be shared equally between the partners. Draft a partnership agreement between the two partners. Add any other details you think are necessary for the conduct of the business.
2. Identify one partnership firm, one proprietorship firm, one Private limited company and one Limited liability partnership functioning in your city/town/country. Discuss how their products/services are used by you and what is the extent of liabilities of their stakeholders spending on their form of business.

OR

Research/Identify and discuss the legal forms of the following entities

- a. Coca Cola, India
- b. KFC India
- c. An e commerce giant that started as a sole proprietorship firm in India
- d. A law firm that is a partnership
- e. The first Limited Liability Partnership firm of India

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CHAPTER

4(C)

Criminal Laws in India**Learning Outcomes**

Students will be able to:

- Define the term “crime”
- Identify and explain the objectives of criminal law
- Explain the fundamental elements of crime
- Distinguish between intention and motive
- Identify and analyze the various stages of crime
- Distinguish between admission and confession
- Analyze and explain the various forms of confession
- Evaluate the relevance of Dying Declaration

I. What do we understand by Crime?

The term ‘Crime’ denotes an unlawful act and this unlawful act is punishable by a state. Crime as a concept is so broad that there is no single, universally accepted definition to it. But, for the sake of convenience, several countries provide statutory definitions of various kinds of unlawful activities, which can be identified as crimes. A common principle about Criminal Law is that, unless an activity is prohibited by law, it does not qualify as a crime. Incidents of crime hurt not only the individual, but also, the state. Therefore, such acts are forbidden and punishable by law. The body of laws which deal with imposing punishments on crimes is known as Criminal Law.

II. Objectives of Criminal Law

With the change in the social structure, society has witnessed various punishment theories and the radical changes that they have undergone from the traditional to the modern level and the crucial problems relating to them. Kenny wrote: “it cannot be said that the theories of criminal punishment current amongst our judges and legislators have assumed....” either a coherent or even a stable form. Malinowski believes all the legally effective institutions.... are.... means of cutting short an illegal or intolerable state of affairs, of restoring the equilibrium in the social life and of giving the vent to the feelings of oppression and injustice felt by the individuals.

Five objectives are widely accepted for enforcement of the criminal law by punishments: retribution, deterrence, incapacitation, rehabilitation and restoration. These objectives vary across jurisdictions.

Retribution - This theory basically deals with ‘righting of balance’. If a criminal has done a wrong towards a person or property, he needs to be given a penalty in a manner which balances out the wrong done. For example, if a person has committed murder, he can be delivered capital punishment to balance out the suffering caused to the victim and his or her family.

Deterrence - Deterrence serves as a major tool in maintaining the general law and order in the



society, especially from the perspective of Crime. Criminal acts are penalized so as to deter individuals from repeating it or even entering into it in the first place.

Incapacitation - The objective of this theory is to segregate the criminals from the rest of the society. For the crimes committed, they suffer a kind of banishment by staying in prisons and in some cases, they are also subject to capital punishment.

Rehabilitation - Aims at transforming an offender into a valuable member of society. Its primary goal is to prevent further offense by convincing the offender that their conduct was wrong.

Restoration - This is a victim-oriented theory of punishment. The goal is to repair, through state authority, any injury inflicted upon the victim by the offender. For example, one who embezzles will be required to repay the amount improperly acquired. Restoration is commonly combined with other main goals of criminal justice and is closely related to concepts in the civil law, i.e., returning the victim to his or her original position before the injury.

IGNORANTIA JURIS NON EXCUSAT

If a wrongdoer says that he was ignorant of the consequences of the act done by him, he would not be excused. Because everybody is supposed to know the law of the land, which is guided by the maxim 'Ignorantia juris non excusat' means ignorance of law is no excuse. It is a Latin maxim meaning ignorance of law or lack of knowledge or mistake of law about legal requirement is not an excuse and hence liability arises in such cases.

III. Criminal Laws in India are broadly covered by the following legislations:

1. Indian Penal Code, 1860
2. Criminal Procedure Code 1973
3. Indian Evidence Act, 1872

1. Indian Penal Code, 1860

1.1 Fundamental elements of a crime

a. Mens rea or guilty intention

b. Actus reus or illegal act or omission

To be classified as a crime, the act of doing something bad (actus reus) must be usually accompanied by the intention to do something bad (mens rea). A crime is said to exist usually when both these elements are present. The principle of actus reus and mens rea are embedded in a Latin maxim, which is:

“actus non facit reum nisi mens sit rea”

This Latin maxim means that an act does not make one guilty unless the mind is also legally blameworthy.

In other words, for a physical act to be termed a crime, it must be accompanied by the necessary mental element. Unless this mental element is present, no act is usually criminal in nature. So, all crimes have a physical element and a mental element, usually called **actus reus** and **mens rea** respectively.



What is actus reus?

- the word **actus** connotes a 'deed' which is a physical result of human conduct.
- the word **reus** means 'forbidden by law.'

actus reus in common parlance means a 'guilty act'. It is made up of three constituent parts, namely: -

1. An action or a conduct
2. The result of that action or conduct
3. Such act/conduct being prohibited by law

Therefore, one can say that *actus reus* is an act which is bad or prohibited, blameworthy or culpable. Now, there are certain unique situations when the act in itself may appear to be a criminal act, yet it cannot be termed as *actus reus*

Illustrations:

An executioner's job is to hang (no *actus reus*)

An army man kills as a part of his duty (no *actus reus*)

Does an act in actus reus include omissions?

An omission is nothing but inaction or not doing something.

Section 32 in The Indian Penal Code

32. *Words referring to acts include illegal omissions.* —In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

Section 32 of the Indian Penal Code (IPC) clarifies that acts which may be considered as Crime include "illegal omissions". But mere moral omissions of not doing something would not complete the requirement of *actus reus*.

Illustration: A boy is drowning in the swimming pool of a resort. A man who is beside the pool does not make any attempt to save this boy. This is a moral omission of not saving someone's life. The man cannot be held criminally liable for such an omission.

But in the same scenario, if there is a lifeguard on duty at this resort, and if he does not make any attempt to save the boy drowning in the pool, then he can be held criminally liable for such omission.

What is Mens Rea?

Mens rea generally means 'ill intention', guilty mind/ intent. The constituents of ***mens rea*** are:

1. There must be a mind at fault/intention to constitute a crime.
2. The act becomes criminal when the actor does it with a guilty mind.

Note: causing injury to an assailant in self-defence is not a crime, but the moment injury is caused with intent to take revenge, the act becomes criminal.

Therefore, for any crime to exist, the physical element of crime needs to be complemented by the mental element. The concept of *mens rea* evolved in England during the 17 Century. During this



period, the judges began to hold that an act alone could not create criminal liability unless it was accompanied by a guilty state of mind.

In India, the word *mens rea*, as such, is not defined in the IPC, but its essence is reflected in almost all the provisions of the Code. For framing a charge for an offence under the IPC, the traditional rule of existence of *mens rea* is to be followed.

This rule has been reiterated by the Supreme Court of India in ***State of Maharashtra v. Mayer Hans George, AIR 1965 SC 722***.

Facts of the case

The respondent, Mayer Hans George, a German smuggler, left Zurich by plane on 27th November 1962 with 34 kilos of gold concealed on his person to be delivered in Manila. The plane arrived at Bombay on 28th of November. The Customs Authorities, as a part of their duties, inspected to check if any gold was dispatched by any traveller and looked through George, seized his gold and accused him of the offence under sec 8(10) and 23(1-A) of the Foreign Exchange Regulation Act. This section is read with a notification dated November 8, 1962, of the RBI which was published in the Gazette of India on 24th of November. George was initially acquitted by the High Court, but the further appeal was made by the state in the court of law.

Issues presented before the court

Whether the respondent is guilty of bringing gold in India under sec 8(1) and 23(1-A) of the FERA which was published in the Gazette of India on 24th November 1962?

The State of Maharashtra contended that the act was passed keeping in mind the pirating of gold since it has become the major financial concern of the nation. Moreover, looking at the importance of the act it can be inferred that the *mens rea* is an irrelevant element in assuming the culpability of the offender. The strict adherence of the act refutes such assumptions and demonstrates that *mens rea* is not a fundamental element of the offence.

However, *the respondents* were of the view that *mens rea* is a fundamental element of any criminal offence and George was not aware of the notification published by the Reserve Bank. It was contended that a person who was not aware of the Indian Provision and has no intention to bring gold in India cannot be said to possess the intent to break the law and hence should not be prosecuted under the act.

Decision- It was held in this case that, “*Mens rea* by necessary implication can be excluded from a statute only where it is absolutely clear that the implementation of the object of a statute would otherwise be defeated and its exclusion enables those put under strict liability by their act or omission to assist the promotion of the law.”

The court said that even though *mens rea* is an essential requirement to commit a crime but regardless of that the statutory provision can exclude the mental element. The express words of the statute can exclude the *mens rea* as an essential ingredient of the crime. This may be done for various reasons, for instance, to promote public welfare and activities or to eradicate social evils. The statute which complies strict liability helps the offender to assist the state in the enforcement of the law.

1.2 Distinction between Intention and Motive

As we have seen, intention or mental element is one of the foremost requirements in order to make someone liable for a crime. But a common misconception is that motive and intention are the same concepts when it comes to Crime. Thus, it is important to understand the fine distinction between these two terms.



In *Re Sreerangayee* case (1973) 1 MLJ 231, the woman in sheer destitution and impoverishment attempted to kill herself after failing in all the ways to arrange for food for her starving children, but since she knowingly (*mens rea*) did a prohibitive act of attempting suicide (*actus reus*), she was held guilty by the court.

The meaning of doing an act intentionally in criminal law means something that is done wilfully and not accidentally or mistakenly. The person doing the act is well aware of the consequences or the outcomes of his action or omission. That is all what is required for affixing criminal liability. It does not matter, as we say in ordinary language, whether an act was done with good intent or bad intent. If the act which is prohibited (*actus reus*) is done wilfully, knowingly or with awareness of the resulting consequences then the same will cause liability in criminal law.

Motive, on the other hand, is the ulterior objective behind doing an act. It is the driving force behind intention or commission of an act. The criminal law does not take into account motive in affixing criminal liability or in determining criminal culpability. This is the reason why the criminal law does not care whether one has stolen a loaf of bread to feed a starving person or stolen medicine to save someone's life, as long as it is a prohibited act, done knowingly.

In *Nathuni Yadav and Ors vs State of Bihar and another* 1997 SC (34) ACC 576, the Court held that "Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murder have been committed without any known or prominent motive". The Court further stated that Motive is a psychological phenomenon. Merely because failing to translate the mental state of the accused does not mean that no such mental condition existed in the mind of the assailant. The motive for an offence need not be necessarily proportionately grave to commit the grave offence. Therefore, establishing a sufficient motive for committing the offence is not a prerequisite for conviction.

1.3 Stages of Crime

Any Crime has a few key stages to it, as indicated in the box alongside. Ordinarily, the first two stages (intention and preparation) do not give rise to any form of criminal liability. This implies that merely having an intention to commit a criminal act is not punishable, nor is making preparation for the same. Liability in criminal law arises when one goes beyond the stage of preparation and attempts to do the forbidden act. The stages can be explained as under-

- **Intention** - The first stage in committing a crime is to have criminal intent and this is known as mental stage. The law does not take notice of an intention, mere intention to commit an offence not followed by any act, cannot constitute an offence. The obvious reason for not prosecuting the accused at this stage is that it is very difficult for the prosecution to prove the guilty mind of a person.
- **Preparation** - The second stage refers to arranging all the essential steps to carry out the intended criminal act. Preparation is not unlawful in itself since it is difficult to prove that the essential preparations were made for the commission of the crime. However, in some exceptional circumstances, mere preparation is also punished.

- Intention – First stage of crime
- Preparation- Second stage of crime
- Attempt- Third Stage of crime
- Commission- Final stage of crime



Preparation When Punishable

When the offence is regarded as a serious offence, preparation to commit offences is penalised under the Indian Penal Code. A few of them are mentioned below:

- Collecting arms etc., with intention of waging war against the Government of India (Section 122 of IPC).
- Preparing Indian coins or Government stamps for counterfeiting (Sections 233 to 235, 255, and 257 of IPC).
- Possession of counterfeit coin, Counterfeit Government stamp or false weight or measure (Sections 242, 243, 259, 266 of IPC).
- Making preparations to commit dacoity (Section 399 of IPC).
- **Attempt** - The third stage in the conduct of a crime is “attempt”, and it is punishable. The criminal liability arises only when the crime has reached the stage which is gone beyond preparation and has entered into the domain of attempt. Section 511 of the IPC does not define the term “attempt”, although it does impose a penalty for attempting to commit an offence. After making necessary preparations, an attempt is defined as a direct step towards the commission of a crime.
- **Commission of Crime** – Committing the crime is the final step in the process. If the accused succeeds in his attempt, he commits a crime and will be found guilty of it. If he fails, he will only be charged with attempting. If the crime is complete, the offender will be tried and punished as per the specific provisions provided in the Indian Penal Code.

As mentioned above, the Indian Penal Code (IPC) covers the substantial part of criminal law in India. It defines various common criminal offences. For example, it defines murder, theft, assault and a number of other offences and also stipulates appropriate punishments for each offence. For instance, the offence of “theft” is defined in the following language in **Section 378 of the IPC**:

Whoever, dishonestly [intends to take] any movable property out of the possession of any person without that person’s consent, [and with that intention] moves that property in order to [commit] such taking, is said to commit theft.

In other words, a crime of theft is committed if someone intends to take someone else’s property and indeed takes that property without the other person’s consent. Merely intending to take somebody’s property, without actually going ahead with the act, does not amount to theft. The Punishment for theft is stipulated in the following **Section 379** which states:

Whoever commits theft shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Different crimes carry different punishments according to the severity of the offence. For instance, the punishment for murder is either death or life imprisonment.

This is the way that most of the IPC is organized: first, a definition of an offence is provided, and next the punishment for that offence is stipulated.

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Crimes under the Special and Local Laws

Certain acts are to be considered criminal acts even when they are not to be found in IPC. This is because they have been identified as crimes in Special and Local Laws. An illustrative list of such statutes is in the table below.

- I. Arms Act, 1959;
- II. Narcotic Drugs & Psychotropic Substances Act, 1985;
- III. Gambling Act, 1867;
- IV. Excise Act, 1944;
- V. Prohibition Act;
- VI. Explosives & Explosive substances Act, 1884 & 1908.
- VII. Immoral Traffic (Prevention) Act, 1956;
- VIII. Railways Act, 1989;
- IX. Registration of Foreigners Act, 1930;
- X. Protection of Civil Rights Act, 1955;
- XI. Indian Passport Act, 1967;
- XII. Essential Commodities Act, 1955;
- XIII. Terrorist & Disruptive Activities Act;
- XIV. Antiquities & Art Treasures Act, 1972;
- XV. Dowry Prohibition Act, 1961;
- XVI. Child Marriage Restraint Act, 1929;
- XVII. Indecent Representation of women (Prohibition Act, 1986;
- XVIII. Copyright Act, 1957;
- XIX. Sati Prevention Act, 1987;
- XX. SC/ST (Prevention of Atrocities) Act, 1989;
- XXI. Forest Act, 1927;
- XXII. Other crimes (not specified above) under Special and Local Laws including Cyber Laws under Information Technology Act (IT), 2000.

2. Criminal Procedure Code, 1973 (CrPC)

The object of the Criminal Procedure Code is to provide a mechanism for the investigation and trial of offenders.

It lays down the rules for conduct of investigation into offences by the police proceedings in court against any person who has committed an offence under any Criminal law, whether it is IPC or a Crime classified under any other law. (See Part I, Legal Studies Class 11)

Types of Offences Covered:

All such offences are covered by CrPC which are mentioned in Indian Penal Code. As already seen, the legal meaning and whether an act will constitute a criminal offence or not is provided in the IPC. The procedure of initiating proceeding/prosecution for a criminal offence is provided in Criminal Procedure Code (CrPC). CrPC provides the manner and place, where investigation, inquiry and trial of an offence shall take place.



Most accused persons do not lead defence evidence in India. One of the major reasons for this is that in India, the burden is cast on the prosecution to prove the offence and the degree of proof required in a criminal trial is “proof beyond reasonable doubt”. This is quite a high standard that the prosecution must meet. It is not enough for the prosecution to assert that the accused has committed the offence. The judge must be convinced beyond reasonable doubt that it was in fact the accused who committed the offence. This was known as the “golden thread principle of criminal law.” This idea is currently recognized in the criminal law of several common law nations, including the United Kingdom, Canada, South Africa, the United States of America, and India. Reverse onus clauses shift the burden of proof from the prosecution to the defendant when the prosecution has shown certain essential facts.

While the presumption of the accused’s innocence is a long-standing principle enshrined in common law and upheld by Indian law as well, jurists have developed a rebuttal to the presumption of innocence under which an accused may be presumed guilty at first instance and the burden of proof is on the defence to establish the accused’s innocence or raise a reasonable doubt as to his guilt. The definition of a reverse onus provision is “one that shifts the burden of proof from the prosecution to the accused once the prosecution establishes a fundamental truth that justifies the shift in burden.” Although it isn’t expressly stated in any laws, the presumption of innocence is an accepted concept in Indian criminal law.

There are certain categories of infractions as well to the existence of the golden rule. In certain situations, the burden of proof is placed on the accused to present evidence supporting his innocence or to raise a plausible doubt about his guilt. The accused is prima facie considered guilty. In India, the presumption of innocence is overturned in two situations: first, when a specific statute explicitly reverses the burden of proof, and second, when the accused files an appeal against a lower court’s decision in which his assumption is guilt rather than innocent. Dowry Death is the most well-known instance of a reversal onus provision in our nation. In dowry death cases, the accused is believed to be in a guilty mental state, establishing a presumption of guilt rather than the ordinary presumption of innocence.

3. The Indian Evidence Act, 1872

The Indian Evidence Act stipulates how facts can be proved through evidence. The function of the law of evidence is to lay down rules according to which the facts of a case can be proved or disproved before a court of law. The Evidence Act lays down the rules of evidence for the purposes of the guidance of the courts.

The Evidence Act helps the judges to separate the ‘wheat from the chaff’ and plays a crucial role in the establishment of facts during the court proceedings. What evidence can be admitted, how it can admit, how the burden of proof has to be discharged, etc, are matters governed by the Evidence Act.

The main principles which form the foundation of Law of Evidence are

- evidence must be confined to the matter at hand
- hearsay evidence must not be admitted
- best evidence must be given in all cases

One of the main objectives of the Evidence Act is to prevent the inaccuracy in the admissibility of evidence and to introduce a more correct and uniform rule of practice.

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The Act is divided into three parts:

Part I - Relevancy of facts or what facts may or may not be proved. These are dealt with in detail in **(Sections 5 to 55)**.

Part II - How the relevant facts are to be proved? The part deals with matters, which need not be prove under law and also how facts-in-issue or relevant facts are proved through oral and documentary evidence **(Sections 56 to 100)**

Part III - By whom and in what manner must the evidence be produced. It deals with the procedure for production of evidence and the effects of evidence **(Sections 101 to 167)**.

3.1. Admission and confession

Sections 17 to 31 deal with admission generally and includes Sections 24 to 30 which deal with confession as distinguished from admission. Section 17 Of The Indian Evidence Act defines that an admission is a statement either oral or documentary or contained in electronic form which suggests an inference as to: -

- (a) any fact in issue or
- (b) relevant fact

Confession: The word “confession” appears for the first time in Section 24 of the Indian Evidence Act. This section comes under the heading of Admission so it is clear that the confessions are merely one species of admission. The term “Confession” is not defined in the Evidence Act. -Justice Stephen in his Digest of the Law of Evidence states, “a confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.”

Difference between Confession and Admission

CONFESSION	ADMISSION
1. Sections 24 to 30 of Indian Evidence Act deal with confession. A confession is only a species of admission.	1. Sections 17 to 31 of Indian Evidence Act deal with admission. Since the provisions relating to confessions occur under the heading “admission”, it follows that the word “admission” is more comprehensive and includes a confession also.
2. If a statement is made by a party charged with crime, in criminal proceeding it will be called confession.	2. If a statement is made by a party in civil proceeding it will be called admission.
3. The expression ‘Confession’ means a statement made by an accused admitting his guilt. Confession is a statement made by an accused person which is sought to be proved against him in criminal proceeding to establish the commission of an offence by him.	3. The expression ‘Admission’ means “voluntary acknowledgment of the existence or truth of a particular fact”.
4. If the Confession made is free and voluntary then it may be accepted as conclusive proof of the matters confessed.	4. Admissions are not conclusive proof as to the matters admitted.



5. Confessions always go against the person making it.	5. Admissions may be used on behalf of the person making it.
6. By virtue of the provision in Section 30 the confession of an accused person is relevant against all his co-accused who are being tried with him for the same offence.	6. In admission, statements of a co-plaintiff or those of a co-defendant are no evidence against the others.

3.2 Forms of confession

A confession may occur in many forms. When it is made to the court itself then it will be called judicial confession, and when it is made to anybody outside the court, it will be called extra-judicial confession. It may even consist of conversation to oneself, which may be produced in evidence if overheard by another. For example, in *Sahoo v. State of U.P. A.I.R 1996 SC 40* the accused who was charged with the murder of his daughter-in-law with whom he was always quarrelling was seen on the day of the murder going out of the house, saying words to the effect, "I have finished her and with her the daily quarrels." The statement was held to be a confession relevant in evidence, for it is not necessary for the relevancy of a confession that it should be communicated to some other person.

Judicial confessions are made before a magistrate or in court in the due course of legal proceedings. A judicial confession has been defined to mean "plea of guilty on arrangement (made before a court) if made freely by a person in a fit state of mind."

Extra-judicial confessions are made by the accused elsewhere than before a magistrate or in court. It is not necessary that the statements should have been addressed to any definite individual. It may have taken place in the form of a prayer. It may be a confession to a private person. An extra-judicial confession has been defined to mean "a free and voluntary confession of guilt by a person in a fit state of mind, accused of a crime in the course of conversation with persons other than judge or magistrate seized of the charge against himself".

For example, a man after the commission of a crime may write a letter to his relative or friend expressing his grief over the matter. This may amount to confession.

Extra-judicial confession can be accepted and can be the basis of a conviction only if it passes the tests of credibility as laid down in the procedural laws.

3.3. Dying declaration – Statements by Persons who cannot be called as Witnesses

Dying Declaration is a legal concept that refers to the statement which is made by a dying person explaining the circumstances of his death. It is a statement by a person who is conscious and knows that death is imminent concerning what he believes to be the cause or circumstances of his death. It is also considered credible and trustworthy evidence based upon the general belief that most people who know that they are about to die "do not lie".

Section 32 of the Indian Evidence Act deals with the admissibility of dying declaration. It deals with cases in which statements of relevant fact by person who is dead or cannot be found etc. is relevant.

- (1) **When it relates to cause of death:** - When the statement made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases, in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made,



under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

In *K.R. Reddy v. The Public Prosecutor* SC 1976 AIR 1994 the evidentiary value of dying declaration was observed as under: -

The dying declaration is undoubtedly admissible under Section 32 of the Evidence Act and not being a statement on oath so that its truth could be tested by cross-examination, the Courts have to apply the strictest scrutiny before acting upon it. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination.

1. The Court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence.
2. Once the Court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration.

The Court laid down the following general propositions:

1. If the dying declaration is coherent, consistent and trustworthy and appears to have been made voluntarily, conviction can be based on it even if there's no corroboration (*R. Mani v. State of T.N.* 2006 SC).
2. Each case must go by its own facts.
3. A dying declaration is not a weaker kind of evidence than any other piece of evidence.
4. A dying declaration which has been properly recorded by a competent magistrate, in the form of questions and answers, and as far as practicable in the words of the maker of the declaration is reliable.

Exercises

Based on your understanding, answer the following questions:

1. A, an alleged offender of rape, while in police remand felt pain in his chest. He was admitted in a hospital, where a police constable was kept on the gate to keep a watch on him. A, confessed his guilt before another patient X, who was also in the same room. The statement was overheard by police man also. Prosecution wants to make this statement of A as "confession".
2. Vijay is accused of murder of his friend, Ajay. Vijay, who was missing since the death of Ajay is alleged to have phoned the police, in a repentant mood after consuming some liquor from a hotel nearby city, confessing his crime. Prosecution wants to prove the alleged murder on the basis of this statement. Can the prosecution do so? Discuss.
3. State the correct proposition of law together with precautions that courts should take in dealing with Dying declarations.
4. X was convicted under section 302 of IPC for having committed murder of his wife Y. The judgement of trial court is based on the dying declarations made by Y to the police officer and Metropolitan Magistrate who visited the hospital later on. Can the accused be convicted solely on the basis of the dying declaration given by Y? Explain with the help of relevant case.
5. "Crime is a revolt against whole society and an attack on the civilisation of the day" Elucidate and discuss the essential elements of crime.
6. Explain mens rea as an element of criminal liability. Is mens rea relevant in crimes of strict liability? Discuss with the help of decided case law.



Activity

Make a brief study on the following questions by gathering opinions of at least five of your classmates, friends or family members:

1. Do you think imposition of capital punishment in the rarest of the rare cases justified?
2. Is death penalty an effective crime deterrent?

Mention their responses in the given table below and draw conclusions on the basis of those responses. What is your opinion regarding these issues?

Questions			Responses of Persons		
	Respondent1	Respondent2	Respondent3	Respondent4	Respondent5
Question 1					
Question 2					

Bibliography

- Kenny's Outlines of Criminal Law – J.W. Cecil Turner
- Prof. S.N.Mishra; Indian Penal Code; Central Law Publications, Allahabad, Tenth Edition (September) 2001.
- K.D. Gaur; A Text Book of The Indian Penal Code, Universal Law Publishing Company Pvt. Limited, New Delhi, Third Edition 2004
- O.P. Srivastava; Principles of Criminal Law, Eastern Book Company, Lucknow, Fifth Edition, 2010
- Gaur Dr. K.D. (2013) Commentary on the Indian Penal Code, 2nd Edn., Universal Law Publishing co. Pvt. Ltd.
- Monica Sakhrani (2009), Citizens' Guide to Criminal Law, (Reprint), Universal Law Publishing co. Pvt. Ltd.
- Bharti, Dalbir (2005). The Constitution and criminal justice administration. APH Publishing
- Menon, N. R. Madhava; Banerjea, D; West Bengal National University of Juridical Sciences (2005). Criminal Justice India Series: pts. 1-2. Chandigarh. Allied Publishers

Web:

- <http://www.article2.org/mainfile.php/0702/313/>
- <http://www.livelaw.in/in-criminal-cases-period-of-limitation-starts-from-the-date-of-complaint-not-from-date-of-cognizance-constitution-bench/>
- <http://www.tipritv.com/blog/macaulay-vs-manu-the-making-of-modern-india/>
- <http://www.legalservicesindia.com/article/article/confession-under-indian-evidence-act-1547-1.html>