Q-1 Differntiate between private defence and self defence. when due right of Private defence Extends to causing death?

The Law of Private Defence (Secs. 96-106).- The Indian law gives a wider lattitude to the exercise of the right of private defence than the English law upon which it is based. The Law Commissions who framed the Penal Code have justified it with the following observations:

with which they submit to the cruel depredations of gang robbers and to respass and mischief committed in the most outrageous manner by bands of ruffians, is one of the most remarkable, and at the same time one of the most discouraging symptoms which the ate or society in India present to us. Under these circumstances, we are desirous rather to rouse and encourage a manly spirit among the people than to multiply restrictions on the exercise of the right of self-defence."

spirit among the people than to multiply restrictions on the exercise of the right The Code excepts from the operation of its penal clauses large classes of acts done in good faith for the purpose of repelling unlawful aggression. The right of defence is absolutely necessary. The Vigilance of Magistrates can never make up for the vigilance of each individual in his own behalf. The fear of the law can never restrain bad man so effectually as the fear of the sum total of individual resistance. Take away this right and you become in so doing the accomplice of all bad men.-(Bentham). The law does not require a citizen, however, law abiding he may be, to behave like a rank coward on any occasion. The right of self-defence as defined by law, must be fostered in the citizens of every free country, and it is perfectly clear that if a man is attacked, he need not run away, and he would be perfectly justified in the eye of law if he holds his ground and delivers a counter-attack to his assailants provided always, that the injury which he inflicts in self-defence is not out of proportion to the injury with which he was threatened.

Basis of the right of private defence. - According to Mayne the whole law of and in a large majority of cases is able to protect the individual against the unlawful attacks on their person and property; (ii) that where its aid can be obtained, it must always be resorted to by individual; (iii) that where such a protection cannot be obtained, an individual who is threatened can do everything that is necessary to protect himself, but (iv) that the violence

used in the protection must be in proportion to the injury to be averted and must not be used to gratify malice or revenge against the aggressor.

Counter-attack is not private defence. -- The counter-attack could in no sense be an attack in exercise of the right of private defence. The right of private defence is preventive, not punitive. In the exercise of this right an injury to property or body can be averted though it cannot be avenged.

Free fight : No Private Defence - A free fight is one when both sides mean to fight from the start, go out to fight and there is a pitched battle. The question who attacks whom is wholly immaterial and depends upon the tactics adopted by the rival commanders.

"Private defence is the law of nature which has been restricted to a great extent by the law of the State. Self-preservation is a primary instinct. Nature prompts man to resist and law recognises that he is justified in using such a degree of force as will prevent a repetition", thus said Parke, J., The violent self-help of the individual has been replaced by the organised help, the brute force of the State, but it has not been eliminated!' A substration of violent self-help persists under the sanction of law. The law specifies the circumstances in which and the extent to which such help may be resorted to,

Scope of the right of private defence. There is no right of private defence under the Code against an act which is not itself an offence under it. An act done in exercise of the right of private defence is not an offence and does not therefore, give to any right of private defence in return. It is available only and not others.

Right of private defence - Burden of proof.— The law is well settled that when an accused takes the plea of the right of private defence, the burden is on him to establish the defence of the right of private defence, but he need not prove the existence of the right beyond reasonable doubt. Such a right is clearly established where the lathi with which the first blow was given by the deceased on the accused was a solid heavy weapon and dangerous and the incised wound which the accused received from the deceased was grievous.

When a husband noticed another man trying to rape his wife and he gave such man a quick succession of lathi blows resulting in his death and rescued his wife. It was held

that the case was covered by Section 100 under which the right of private defence could extend even to the extent of causing death under such circumstances. The right of private defence could not be said to have been exceeded. It was held that one is not required to prove his plea of private defence beyond reasonable doubt.

Section 96. Right of private defence- What is?- Nothing is an offence which is done in exercise of the right of private defence. Thus, right of a private defence is available against all persons, except against those which are mentioned in Section 99 and Section 97 defines that this right is available, under the restrictions contained in Section 99, to defend.

Section 100. When the right of private defence of the body extends to causing death.- The extent of the injury that can be inflicted in exercising the right of self-defence is limited excepted in cases as referred in Sections 100 and 103 of the Code. Section 100 provides that the right of private defence of the body extends to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right of any of the following descriptions.

(i) Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault; (ii) such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault (iii) an assault with the intention of committingrape; (iv) an assault with the intention of gratifying unnatural lust; (v) an assault with the intention of kidnapping or abducting: (vi) an assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release. If B attempts to horsewhip A in such a manner as to cause grievous hurt to A. A draws a pistol. B persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horse whipped shoots B dead. A is guilty of no offence. A husband noticed another man trying to rape his wife who was trying to get out of his clutches. The husband gave a quick succession of lathi blows resulting in the death of the man and rescued his wife. It was held that the husband acted in exercise of his right of private defence which he did not exceed? Under this section, the person claiming the right of private defence must be under bona fide apprehension or fear that death or grievous hurt would otherwise be the consequence of

the attack on him if he did not defend himself. The accused may not even wait till the causing of the grievous injury. An intruder (the deceased) armed with knife attacked the accused. Accused managed to get hold of the knife held by the deceased and in order to save himself he inflicted injuries on deceased. In these circumstances the accused acted in exercise of right of private defence of person. Whether apprehension was reasonable or not is a question of fact depending on the weapons used, etc. It may be noted here that mere abduction is not an offence and, therefore, cannot give rise to any right of private defence. An attempt by a husband to abduct his wife forcibly is an unlawful act and she is justified in using force to resist the attempt in self-defence under Section 1002 When a woman was being abducted, even though by her husband, and there was an assault on her and she was being compelled by force to go away from her paramour's house, the paramour and his brother would have the right of private defence of the body against an assault by her husband with an intention of abducting her by force and the right would extend even to the causing of death.

Again where it was found that: (1) the land was in possession of the accused persons; (2) paddy crop had been grown by the accused persons and the same was ready for harvesting; (3) the deceased and their people were the aggressors; and (4) when the accused persons tried to resist the attempt of the deceased and their group in the matter of harvesting of the paddy crop, two of the accused persons were badly beaten up and they suffered grievous injuries and there was a further finding that these two accused were first injured by the aggressors, the Supreme Court held that the accused were entitled in the exercise of the right of private defence of the body to cause death. The party of the deceased was armed with sharp cutting instruments by the use of which injuries on the two accused persons had been inflicted. The blows were on a vital parts of these two accused persons. If there was no resistance offered it was very likely that with some further blows death would have occurred so as to give rise the first contingency indicated in Section 100. Grievous hurt had been caused which gave rise to the second contingency.

In *Rampbal v. State of Haryana*,' there was no prior enmity between two groups but the whole incident developed all of a sudden. In this process the accused sustained many injuries on his body and the same were unexplained by the prosecution. The single act of

the accused caused death of deceased. The Apex Court held that such act must be taken to have been caused in exercise of right of private defence of person and benefit of doubt must be given to the accused.

The fact situation involved in ***Buta Singh v. State of Punjab,*** is more instructive in this regard. There the deceased and his companions had gone to the disputed field to have it tilled. But their efforts were frustrated by the son of the accused. They were annoyed and enraged. They, therefore, went to the 'dera' (camp) of the accused and launched an attack. The accused and his wife fought to repel the attack and in the course of the incident both sides sustained injuries and one of the members of the attacking party died. It was held that the accused could not be said to have exceeded the right of private defence for the obvious reason the accused could not have weighed in golden scales in the heat of the moment the number of injuries required to disarm his assailants who were armed with lethal weapons'.

Discussing Section 100 of the Penal Code the Supreme Court, in Suresh v. State of Haryana,' has held if the assault is likely to cause death or grievous hurt the accused person has a right of private defence which can extend even to cause death of the attacking party.

Section 101. Private defence of body when extends to causing any harm other than death. - Section 101 provides that if the offence be not of any of the description enumerated in Section 100; the right of private defence of the body extend to the voluntary causing to the assailant of any harm other than death, Thus, under this section, any harm short of death can be inflicted in the exercise of the right of private defence in any case which does not fall within the provisions of Section 100.

Instances of exceeded right of private defence. - In a case a pistol was said to have been fired from close range in self-defence. But there was no indication of any burning or scorching. The spreading of pellets indicated fire from long distance. Taking into account the spread of pellets and injury to five persons in various parts of the body, the Court was of the view that at least two shots were fired. On this the conclusion was that the accused caused injuries after the firing.As 28 injuries were caused fracturing skull bone resulting in death after the pistol was snatched the court presumed that the right of private defence

was exceeded and injuries were caused when there should be no cause of apprehension of death or grievous hurt.

In another case the common object of an unlawful assembly of the victims was to extort money in attempting to intercept and stop the vehicle of accused and putting him to fear of injury. The accused was going in a closed station wagon. Certainly a right of private defence of body accrued under Section 102, I.P.C., but the accused fired three shots in quick succession over the victims who had no arms. Even if the story as to pelting of stones is taken into account the accused could not reasonably apprehend death or grievous hurt as a result of stone throwing. As such the accused was held to have exceeded his right of private defence.

The Supreme Court has held in ***Dharmindar v. State of Himanchal Pradesh,*** that onus of proof to establish right of private defence is not as onerous as that of prosecution to prove its case. Where the facts and circumstances lead to preponderance of probabilities in favour of the defence case it would be enough to discharge the burden to prove the case of self-defence.

in order to find out whether right of private defence is available or not, the Supreme Court in ***Dhaneshwar Mahakud*** v. State of Orissa, held that the injury received by the accused, the imminence of threat to his safety, the injuries caused by accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered.

In **private defence**, the force used by the accused must be reasonable and necessary for the protection of the person or property. If the accused does not plead **self-defence**, the court can consider the chances of the existence of such **defence** depending upon the material on record.

The right of private defence of people is recognised in all free, civilised and democratic societies within certain reasonable limits. Those limits are dictated in two considerations [5]:

- Every member of the society can claim this right
- That the state takes responsibility for the maintenance of law and order

This right of private defence is preventive and not punitive.

Supreme Court said that the right of private defence is a defensive right surrounded by the law and is available only when the person is able to justify his circumstances. This right is available against an offence and therefore, where an act is done in exercise of the right of private defence, such an act cannot go in favour of the aggressor.

In the case of ***Darshan Singh v. State of Punjab,*** the Supreme Court gave the following principles to govern the 'right to private defence':

1. All the civilized countries recognise the right of private defence but of-course with reasonable limits. Self-preservation is duly recognized by the criminal jurisprudence of all civilized countries.
2. The right of private defence is available only when the person is under necessity to tackle the danger and not of self-creation.
3. Only a reasonable apprehension is enough to exercise the right of self-defence. It is not necessary that there should be an actual commission of the offence to give rise to the right of private defence. It is enough if the accused apprehended that an offence is likely to be committed if the right of private defence is not exercised.
4. The right of private defence commences as soon as a reasonable apprehension arises and continues till the time such apprehension exists.
5. We cannot expect a person under assault to use his defence in a step by step manner.
6. In private defence, the force used by the accused must be reasonable and necessary for the protection of the person or property.
7. If the accused does not plead self-defence, the court can consider the chances of the existence of such defence depending upon the material on record.
8. There is no need for the accused to prove beyond reasonable doubt that the right of private defence existed.
9. Under **The Indian Penal Code** [10] the right of private defence exists only against an offence.
10. If a person is in imminent and reasonable danger of losing his life or limb; he may exercise the right of self-defence to inflict any harm which can extend to death on his assailant.
11. Difference between private and self Defence

"A distinction must be drawn **between** the right of **self defence** or **private defence** and use of excessive force or retaliation. Very simply put, the right of **self defence** or **private defence** is a right that can be exercised to defend oneself but not to retaliate," the bench said.

Q-2 What do you understand by common Intention. How it may be Proved? Disscuss.

The Law Relating to Joint Offenders

(Sections 34, 35, 37 and 38, see also Sections, 32, 33 and 36)

General. -- When an offence is committed by one person only there is no difficulty in determining his guilt, but when it is committed by two or more persons the question arises "How far is each liable?" The question is more difficult to answer where the offence does not consist of a single act or omission but consists, as is generally the case, of a series of acts or omissions, and only some part of such series is executed by a person acting in concert with others For instance, A, B, C and D plan the abduction of E's wife for an immoral purpose. D goes to E's house in E's absence to detain E's wife at the house to see that she does not go out anywhere. While D is thus busy talking to E's wife, C comes round and says that he has heard that E has met an accident and while C and D are thus present, B comes round with a car saying that E has been taken to the hospital where they should all including E's wife, immediately rush up. Thus, deceiving E's wife, they take E's wife in the car to A's house where she is detained. Here each one of the confederates does a different act. D's role is apparently the most innocent, but the behaviour of each of them is criminal which gives a criminal character to the whole series of acts. A, B, C and D share a common intention. The plan which they hatch up and in pursuance of which they do the different acts gives to the whole series of acts the unity of a single transaction. The question requiring solution under such circumstances is whether such persons shall be liable for the whole series of acts as if such acts had been done by him alone or, to put it in other words, whether he would be liable for the acts not done by him, but done by his companions. Persons who join together to commit a crime are known as joint offenders. Suppose two men hold a third for cutting his throat and one of them cuts it. There can be no doubt that both of them are equally guilty.

Principle of Joint Liability. --Section 34 embodies a principle of joint liability. Where two or more persons intentionally do an act jointly, it is just the same as if each of them had done it individually. Once it is found that a criminal act was done in furtherance of the common intention of all, each of such person is liable for the criminal act as if it had been done by him alone. Section 34 is intended to meet a case in which it may be difficult to

distinguish between the acts of the individual members of a party who act in furtherance of a common intention of all or to prove exactly what part was taken by each of them. The principle which the section embodies is participation in some participation is established Section 34 is at once action with the common intention of committing a crime. Once such tracted. Section 34 embodies the same principle that has been laid down very clearly in the English case-R v. Cruse. In that case a police party went to arrest A in his house, where several other persons were also present. These persons in order to evade A's apprehension came out to drive the policemen. In the joint attack one of the members of the police party was killed, and it could not to be found out as to who was the real offender. The court held that each of the attackers would be responsible in an equal measure for the criminal act, whether he actually committed it or not.

In order that this section may apply, it is not necessary that the prosecution must prove that the act was done by a particular or a specified person. The language of the section does not bear out this contention. In fact, the section is intended to cover a case where a number of persons act together and, on the facts of the case, it is not possible for the prosecution to prove as to which of the persons who acted together actually committed the crime.' Once the irrelevant. common intention is established the question as to who gave fatal blow is irrelevant.

The Supreme Court in ***Girija Shankar v. State of U.P***., has observed : "Section 34 of the Indian Penal Code has been enacted on the Principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of this Section is the element of participation in action."

The Court further said that the true concept of Section 34 is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. The existence of a common intention amongst the participants in a crime is the essential element for application of this section.

The common intention must be to commit the particular crime, although the actual crime may be committed by anyone sharing intention. Then only others can be held guilty. If there is common intention to commit murder although the actual fatal blow is given only by one of the confederates, the others who shared that intention would also be liable

even though their acts did not result in death. In a case with a premeditated intention two accused persons assaulted the deceased with spears at the most vital part of the body. Supreme Court justified the application of Section 34, I.P.C.

Scope of the Section.-Section 34 does not create a new offence. It simply gives recognition to the common sense principle that if two or more persons intentionally do a thing jointly, it is just the same as if each of them had done it individually. The liability is for the criminal act actually done and not for the common intent. In other words, as the Supreme Court has put it in a recent decision, is not by itself an offence. But, it creates a joint and constructive liability for the crime committed in furtherance of such common intention. The section deals with the doing of separate acts, similar or diverse, by several persons if all are done in furtherance of the common intention of all. Each person is liable for the result of them all, as if he had done them himself. In B.N. ***Srikantiah v. State of Mysore***, the Supreme Court held : "Section 34 is only a rule of evidence and does not create a substantive offence. It means that if two or more persons intentionally do a thing jointly it is just the same as if each of them prior concert and arrangement can and indeed often must be determined from subsequent conduct. But the inference of the common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case. The mere circumstance of a person being present on an unlawful occurrence does not raise a presumption of that person's complicity in an offence then committed so as to make Section 34 applicable.

in Kacheru Singh v. State of U.P.,' eleven persons were charged under Sections 148, 323 and 326 read with Section 149, 1.P.C. It was proved that out of them three accused had attacked the complainant in the first incident. The complainant ran away followed by the three accused; the complainant and his companions were again attacked by these three accused. The Sessions Judge acquitted eight accused and convicted three. The High Court in revision held that as a result of the Trial Court's judgment the three accused could not be convicted under Sections 148, 323 and 326 read with Section 149 as the ingredients to establish the existence of an unlawful assembly were absent. The High Court, however, convicted these three accused under Sections 323 and 326 read with Section 34.

In appeal the Supreme Court held that provisions of Section 34 were applicable. These accused assaulted the complainant in the first incident. They pursued the

complainant and they persisted in assaulting him and deterring those who had come to his help. The clear implication of this was that the assault in the second incident was the result of previous concert. The evidence to prove the common intention was the same which would have proved the common object of it had it been established that there had been an unlawful assembly.

The Supreme Court held in, ***Parasa Raja Manikyala Rao v.*** State of P., that Section 34 really means that if two or more persons intentionally do a common thing jointly, it is just the same as if each of them had done it individually. The Supreme Court in case, Nagarathimam v. State of Tamil Nadu, observed that once it was held that appellants were liable to be convicted for their individual acts Section 34, I.P.C. cannot be invoked.

Section 34. Acts done by several persons in furtherance of common intention. - When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Ingredients of Section 34. -- For the applicability of Section 34 following elements are necessary :-

(i) criminal act;

(ii) done by several persons;

(iii) in furtherance of common intention of all.

In ***Surendra Chauhan*** v. State of M.P.," it was held that to apply this section, apart from the fact that there should be two or more accused, two facts must be established: (1) Common Intention (2) participation of the accused in the commission of an offence.

(i) Criminal Act. - The section speaks of a "criminal act" being done by several persons. If the act in question is a lawful act, this section will not apply. Where four persons were exercising their right of private defence, they were engaged in a lawful act in the course of which one of them unlawfully caused death. The other accused could not be held responsible with the help of section 34 for the reason that act jointly done by them was a

lawful and not a criminal act. Holding the same view the Supreme Court pointed out that the question of common intention could not arise in the circumstances and constructive liability of individual accused had to be ruled out. It means that if the act is a lawful and not a criminal act, and if in the course of such act any one of the persons jointly doing that act, commits an offence, then only such person shall be liable for it and not others; Section 34 shall not apply.

(ii) "Done by several persons."- It is necessary that the act must have been done by several persons. Criminal act is done by one person, even if there is series of acts, Section 34 will not apply. More than one person should be involved in the criminal act. The offenders must be shown to be engaged in a criminal enterprise, that is to say, though they may not be engaged in doing the same act, each one of them must be a participant in some act connected with their common intention. In a case two persons being the partners of a business had taken a room on rent for their business purposes. One of them alone defrauded third party in that room. Supreme Court held that the other partner having no knowledge of the fraud, was not liable to be punished with the aid of Section 34, I.P.C

(iii) "In furtherance of common intention." --- What is the meaning of the expression "in furtherance of the common intention"? The dictionary meaning of the word "furtherance" is "advancement or promotion". If four persons have a common intention to kill A, they will have to do many acts in promotion of that intention in order to fulfil it. Some illustrations will clarify the point. Four persons intend to kill A, who is expected to be found in a house. All of them participate in different ways. One of them attempts to enter the house but is stopped by the sentry and he shoots the sentry. Though the common intention was to kill A, the shooting of the sentry is in furtherance of the said common intention. Section 34 applies. In a case" father, and son were accused. Along with co-accused they attacked deceased and his family members. Accused brought out deadly weapons from house by which accused and co-accused attacked deceased.

Common intention may develop on the spot.-In certain circumstances common intention may suddenly develop on the spot, which may be inferred by the conduct of the accused. This opinion was expressed by the Supreme Court in the case of Krishna Gobind Patil v. State of Maharashtra. The similar opinion was also approved by the Supreme Court in Hari Om v. State of U.P.4 The Supreme Court, in Pratap Singh v. State of M.P.,

held that the common intention in criminal jurisprudence is the premeditated meeting of minds. No doubt the common intention can also be formed on the spot.

Common intention". - "Common intention" is not "same" or "similar" intention. Several persons can simultaneously attack a man. Each can have the same intention; that is the intention to kill. Each can individually inflict a separate fatal blow. Yet none would have the common intention if there was no meeting of minds to force a pre-arranged plan. Where the evidence regarding pre-concert of mind of all accused to commit murder is absent conviction of two accused under Section 302 read with Section 34 is not proper. They will be guilty of the wrong done by them. It is necessary that the intention of each one of them be known to the rest of them and be shared by them before such intention may be recognised as their common intention. In order to impute common intention it is not sufficient that A was a partner of B and both of them had hired a room for their business purposes. This by itself is not sufficient to show that A had any knowledge of the offence committed by B. care must be taken not to confuse "same" or "similar" intention with "common intention". It is not enough to have the "same intention" independently of each other.

In State of M.P. v. Man singh and other, the Supreme Court held that, Section 34 has no requirement that all the accused must come together. It is their common intention which is material and not how they converge on the place of occurrence. Hence, supposing the accused persons come out from a narrow lane, and only one person can come out at a time and others follow one after the other, in such a case it cannot certainly be said that because they did not come together, Section 34 will have no application.

the crucial test as to the applicability of constructive liability under Section 34 is to be found in the phrase "in furtherance of the common intention of all" It is therefore clear that a particular criminal act done by an individual in order to constitute a constructive liability against others must be one which is done in pursuance of a common intention as a step-in-aid to attain it or as a means to the end underlying that or must be one which is a link in the chain of acts all originating out of the common intention and culminating in its attainment.

Reading the section, as it stands, the act done in furtherance of the common intention of includes in it types of facts: first, the act which is directly intended in between

all the confederates, secondly, the act which the circumstances of the case have no doubt to conclude that the act was not directly intended in between them but was taken by all of them as included in the common intention and thirdly, the act, which any of the confederates commits in order to avoid or remove any obstruction or resistance put up in the way of the proper execution of the common intention. In doing the third type of the act, the individual doer may cause a result not intended by any other of the confederates.

Once the criminal act becomes independent of the common intention, though done in pursuance to an intention same or similar to that common intention or giving rise to a consequence same or similar in nature as contemplated in the common intention, the rule of the constructive liability as laid down in Section 34 ceases to operate and others, who are a party to the original common intention, will not be held liable constructively for that criminal act.

Proof.- The Supreme Court has emphasised that in order to attract Section 34 it is not sufficient to prove that each of the participating culprits had the same intention to commit a certain act, what is the requisite ingredient of Section 34 is that each must share the intention of the other. The prosecution must establish "Common intention" and "same intention" or "similar intention", though the dividing line between them is often very thin. Common intention should never be inferred unless it necessarily follows from the circumstances of the case. The mere fact that suddenly both the accused persons procured their weapons from somewhere would not necessarily lead to the conclusion that both the accused persons had entered into pre-arranged plan to murder the accused. The common intention pre-supposes a prior concept, a pre-arranged plan, i.e., a prior meeting of minds. This does not mean that there must be a long interval of time between the formation of the common intention and the doing of the act. It is not necessary to adduce direct evidence of the common intention. Indeed in many cases it may be inferred from the surrounding circumstances and the conduct of the parties. In a case the two accused persons had common grudge against the deceased. The time of attack was dead of night and the two accused came with ***lathi and phrasa*** and made a determined concerted attack causing not less than 14-15 injuries. Supreme Court held that these circumstances unerringly lead to the conclusion that both had a common intention to cause the death and in pursuance of such intention both belaboured the deceased to death the spot.

In ***Pardeep Kumar v. Union Administration, Chandigarh,"*** the Supreme Court held that the common intention or the intention of the individual concerned in furtherance of the common intention could be proved either from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances, Again Supreme Court in Parasjeet Singh v. State of Punjab, held that each and every accused need not be shown to have committed the overt act. It is enough to show that one a more of the accused persons acted in furtherance of the common intention.

Q-3 What are the Principles Relatings to criminal Liability of following under the Indian Penal Code 1860.

(i) offence committed by a person of unsound mind.

Section 84. Insanity.-The law relating to insanity is laid down under Section 84, I.P.C., which runs as "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of his act, or that he is doing what is either wrong or contrary to law".

Basis. — Insanity means and includes both mental derangement and imbecility. Insanity is a defence to criminal responsibility. The basis therefore is that such a person is not of sound mind is non compos mentis. That is to say, he does not know the nature of the act he is doing or what is either wrong or contrary to law.

This section deals with a deficiency of will due to weak intellect, and lays down the legal taste of responsibility in cases of alleged unsoundness of mind. Insanity can be defence only when an accused is in such a State of mind arising from the disease as to be incapable of deciding between the right and wrong.

Test of Insanity in Law. --Unsoundness of mind non-compos mentis covers a wide range and is synonymous with insanity, lunacy, madness, mental derangement, mental disorder and mental aberration or alienation. The insane persons may be divided into four kinds :-) a lunatic (ii) an idiot; (iii) one non compos mentis by sickness, or (iv) by drink. A lunatic and an idiot, may be permanently so, or they may be subject to only temporary and occasional fits of malady. A person suffering from a total alienation of the mind is called 'insane or 'mad', the term 'lunatic' being reserved for one whose disorder is intermittent with lucid intervals. An idiot is one who is of non-sane memory from his birth of perpetual infirmity, without lucid intervals. A person made non compos mentis by illness is excused in criminal cases for such acts as are committed while under the influence of his disorder.

‘Unsoundness of mind' naturally impairs the cognitive faculties of the mind and exempts a person from criminal responsibility. Whether a person, who, under an insane delusion as to the existing facts, commits an offence in consequence thereof is, therefore, to be

excused, depends upon the nature of the delusion. If he is labouring under a partial delusion, and it is not in other respects insane he must be considered in the same situation as to the responsibility as if the facts, with respect to which the delusion exists, were real. If a person afflicted with insane delusion, in respect of one or more particular subjects or persons, commits a crime, knowing that he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed.

Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind, and it is by that test, as distinguished from medical test, that the criminality of an act is to be determined.

The mere fact that on former occasions he had been occasionally subject to insane delusions or had suffered from derangement of mind and subsequently he had behaved like a mentally deficient person is per se insignificant to bring his case within the exemption. The antecedent and subsequent conduct of the man is relevant only to show what the state of his mind was at the time when the act was committed. In other words, so far as Section 84 is concerned, the Court is only concerned with the state of mind of the accused at the time of the act.

It is clear that it is only that unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground for exemption from criminal responsibility. The nature and the extent of the unsoundness of mind required must reach that stage as would make the offender incapable of knowing the nature of his act or that he is doing what is either wrong or contrary to law.

In Madhukar G. Nigade v. State of Maharashtra, the High Court of Bombay held that in order to get the benefit of Section 84 of the Indian Penal Code, it has to be brought on record that at the time when the said offence was committed, the accused was mentally not fit to understand the consequences of his action and was of unsound mind at that time.

Legal and Medical Insanity. --- The difficulty in dealing wih the subject of insanity has been felt by the jurists for want of medical knowledge and the controversy between the medical and the legal profession of the subject. Medical men say that the insane should be

free from legal punishment as the nature of the disease is most obscure and the symptoms vary. They thought of law as a rule of barbarism and crime as a disease. They also misunderstood of authority of the judge-made law on which the law relating to insanity is based. The legal insanity is different from the medical insanity. In a case of legal insanity it is to be proved that the insanity is of a degree that, because of it, the man is incapable of knowing the nature of the act or what he is doing is either wrong or contrary to law. In other words, his cognitive faculties are such that he does not know what he has done or what will follow from his act. Therefore, there can be no legal insanity unless the cognitive faculty of the mind is destroyed as result of unsoundness of mind to such an extent as to render the accused incapable of knowing the nature of the act that what he was doing was wrong or contrary to law. The capacity to know a thing is quite different from what a person knows. The former is potentiality while the latter is a result of it. If a person possesses the former, he cannot be protected in law, whatever might be the result of his potentiality. In other words, what is protected is an inherent or organic incapacity, and not a wrong or erroneous belief which might be the result of a perverted potentiality.

A person might believe so many things. His beliefs can never protect him once it is found that he possessed the capacity to distinguish between right and wrong. If his potentialities lead him to a wrong conclusion, he takes the risk and the law will hold him responsible for the deed which emanated from him. What the law protects is the case of a man in whom the guiding light that enables a man to distinguish between right and wrong and between legality and illegality is completely extinguished. Where such right is found to be still flickering, a man cannot be heard to plead that he should be protected because he was misled by his own misguided intention or by any fancied delusion which had primarily the offspring of the faculty of institution. On the other hand, the faculties of cognition and reason.

Persons of unsound mind.- These persons may be said as persons of unsound mind:

(i) Idiot- Idiot is such a person who cannot count upto twenty or cannot tell the name of days of week or his parents.

(ii) *Lunatic.- If a person who* is permanently mad without any interval is said as natural insanity.

(iii) *Non Compos mentis* If a person has become non compost mentis due to regular illness he is exempted from criminal liability.

(iv) *Disease of mind.*- If the accused is suffering from disease of mind at the time of commission of offence, he is entitled to get the exemption of Section 84.

It is not enough to prove mere mental derangement or what is termed as medical insanity. The accused must show that his cognitive faculties were so impaired that he was deprived of the power of understanding the nature of the act or distinguishing right from wrong. Conversely if his cognitive faculties are not so impaired as to make it impossible for him to know the nature of his act or that what he was doing was either wrong or contrary to law, he is not exempt from criminal liability.

(iii) Offence Committed by a person under intoxication-

Drunkenness or Intoxication.-(Sections 85, 86).-Sections 85 and 86 of the Code taken together give a comprehensive statement of the law on the subject of intoxication as a ground of defence to a criminal prosecution.

Section 85 lays down that nothing is an offence which is done by a person who at the time of doing it is, by reason of intoxication incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his Will. Section 86 provides that in cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will. It may be seen that the latter section is but an implication of the former. In Bablu v. State of Rajasthan, held that Section 85 of IPC deals with act of a person incapable of judgment by reason of intoxication caused against his will.

Voluntary drunkenness is no defence to a criminal charge. In a case the plea of the accused was that liquor was administered to him against his will by A and B as a result of which he was incapable of knowing the nature of the act that he might have committed. But the accused did not examine A or B. Supreme Court held that the accused failed to establish his defence. But in voluntary drunkenness and the persistent drunkenness leading to insanity usually described as delirium tremens stand on the same footing and will be defence to a charge if they satisfy the terms of Section 84 of the Code. Where, of course, an offence requires a particular knowledge or intent, a drunken person will be presumed to have that knowledge as if he was not drunk. such a presumption is not drawn with reference to the formation of the intent. But it would be noticed that if a person knew the natural Consequences of what he did, he would be presumed also to have had the intention of causing such consequences. But knowledge and intention need not always necessarily trespass under Section 441 of the Code it is the intention of the accused that is material. if an accused is charged with such an offence for the reason that it was found in the house of

the complainant, without the consent of the complainant then the accused will be guilty even if he was drunk for the presumption of knowledge of the consequences of his act in spite of the protest or unwillingness of the complainant leads necessarily to the intention requisite for offence. it cannot be otherWise when once presumption as to knowledge is drawn. other hand if the accused is charged with criminal trespass with the intention or committing theft and if he was drunk at the material time, different considerations will arise. Even if it be that the intent to commit the offence or trespass may be inferred on account of presumption of knowledge on his part, the further intent to steal or commit the offence of theft is not so inferable. there is no scope in the section to draw as it were a double inference of intention, intention to commit trespass and intention to steal, the one being distinct from the other. To charge the accused, therefore, of an offence of trespass with intent to commit theft, apart from proving the offence of trespass the prosecution must lead evidence t prove his intention to commit theft as otherwise the charge is bound to fail.

Voluntary drunkenness is no defence for the commission of the crime. About voluntary intoxication the Supreme Court has explained in the case of Ranm Shankar v. State of MP., that such intoxication is no defence against criminal liability but it is a considerable fact to reduce the punishment. But when drunkenness is involuutary as intoxicant is administered through fraud, or against his Will or without his knowledge, his criminal act would be judged with reference to his mental condition at the time the act was committed. In other words, such act will be judged on the same footing as the act of person of unsound mind. Because words used in Sections 84 and 85 are identical and all the considerations that arise in the case of insanity (1.e., Section 84) also arise in case of involuntary drunkenness.

Discussing drunkenness as a defence from criminal liability the Supreme Court in case, Bablu v. State of Rajasthan, has held that the defence of drunkenness can be availed of only where intoxication produces such a Condition as the accused loses the requisite intention for the offence. The Supreme Court further observed.

taken into account with the other facts proved in order to determine whether or not he had this intent; and

(iii) the evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind is affected by drink so that he mobre readily give to some violent passion, does not rebut the presumption that a man intends the natural consequences of his act."

In this case the accused killed his wife, three daughters and son. The Supreme Court held that the plea of drunkenness can never be an excuse for the brutal diabolic acts of the accused.

llustrative Cases

An Basdev v. State of Pepsu, the Supreme Court held : So far as knowledge the Court must attribute to the intoxicated man the same is concerned Knowledge as if he was quite sober, but so far as ntent or intention is Concerned, the Court must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. The Court observed further : That rule of law is well settled-

(1) that insanity, whether produced by drunkenness or otherwise, is a defence to the crime charged;

(2) that evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had this intent;

(3) the evidence of drunkenness falling short of proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was affected by the drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts. The facts of the case were that the appellant was a retired military Jamadar. He was charged with murder of a young boy M about 15 or 16 years of age. Both of them attended a wedding and went to the house of the bride to take the lunch.

Director of Public Prosecution v. Beard.- Once Beard proceeded to have carnal passage of the girl and when she struggled to escape, he shut her mouth with one of his hands and pressed the thumb of the hand on her throat, thereby causing the death of the girl by suffocation. He was prosecuted for the murder of the girl. Held, that drunkenness was no defence unless it would be established that beard at the time of committing the rape was so drunk that he was incapable of forming the intent to commit it, which was not in fact, and manifestly having regard to the evidence could not be contended.

(iii) offence committed by child where Age of the child is .

(A) Under 7 years (b) Above 7 years but below 12 year.

Acts of Infant (Sections 82,83).- A child can commit no wrong (i) if he is below 7 years of age as he is at such age presumed to be not endowed with a sufficient maturity of understanding to be able to distinguish right from wrong, or (ii) if he is above 7 and below 12 but too weak in intellect to judge what is right or wrong. The principle of the law may be expressed in tabular from as follows:

Section 82 says nothing is an offence which is done by a child under seven years of age and Section 83 says nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. Law of exemption from criminal liability in the case of minors These two sections lay down a rule which owing to its origin in the civil law, had long since become established in the criminal systems of all civilized countries. In English Common Law, a child below seven years of age cannot be guilty of any criminal offence whatever may be evidence as to its possessing a guilty state of mind in the ordinary course of nature. A person of such age is absolutely incapable of distinguishing between right and wrong. He is absolutely *doli incapax.* Indian law on this point is the same. If a child is accused of an offence under the Code, proof of the fact that he was at the time below 7 years of age is ipso facto an answer to the prosecution.

The circumstances of a case may disclose such a degree of malice as to justify the maxim miltia supplet actatem (Malice supplied defect of years).

The privilege of a child aged between 10 to 14, is absolute under English law, while it is qualified in India. According to the English law an infant between the age of ten and fourteen years is presumed to be doli incapax. But under this Code, if the accused is above seven years of age and under twelve, the incapacity to commit an offence only arises when the child has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct and such non-attainment would have apparently, to be specially pleaded and pursued, like the incapacity of a person who at the time of doing an

act charged as an offence, was alleged to have been of unsound mind child in question possesses sufficient maturity of the really whether understanding is a matter to be inferred by the Court from the facts and Circumstances of the case. In England it is a presumption of law regarding the Sexual offences that a boy below fourteen years cannot be guilty of rape. In India, however, the presumption of English law has no application and therefore Doy of twelve years may be convicted of attempt to commit rape.

A minor girl aged more than 12 years can be guilty of an offence so long as her case is not covered by Sections 82 and 83 of the Code. Any offence Punishable under the Code including an offence punishable under Section 408, can be committed by a person more than 12 years of age. Criminal liability is quite distinct from civil liability. A person may be criminally liable even though he may not be civilly liable.

(i) A child of 9 years of age took a necklace valued at Rs.2/8/- from another boy and immediately sold it to another for five annas, the child was discharged under this section, but the accused was convicted of receiving stolen property for the court considered convict displaying sufficient intelligence to hold him guilty.

(ii) The accused, a girl of 10 years of age, a servant of the complainant, picked up his button worth eight annas and gave it to her mother. she was convicted and sentenced to a month's imprisonment. But the High Court quashed the conviction holding that there was no finding by the Magistrate that the accused had attained maturity of understanding sufficient to judge the nature of her act.

In ***Marsh v. Loader*** the defendant caught a child while stealing a piece of wood from his premises and gave into custody. Since the child was under the age of 7 years, he was discharged.

In case of ***Krishna Bhagwan*** v. State of Bihar, Patna High Court upheld that if a child who is accused of an offence during the trial, has attained the age of 7 years or at the time of decision the child has attained the age of 7 years can be convicted if he is able to understand the nature of the offence.

Burden of Proof. - The non-attainment of sufficient maturity of understanding would have to be specially pleaded and proved. The onus is on the person who claims and the benefit of the general exception to prove the circumstances which entitle him to exception.

In other words under Section 83 maturity of understanding is to be presumed in case of such children, unless the negative be proved by the defence; while under English law in the case of a child between ten to fourteen years, incapacity to commit the crime is to be presumed unless the contrary be proved by prosecution