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Paper 7th, Paper Name- (Indian Penal Code) Unit -2nd

Q-1 State the ingredient of "Criminal Conspiracy". Distinguish between " Criminal Conspiracy and abotment.

Section 120-A. **Definition of Criminal Conspiracy.**-Where two or more persons agree to do, or cause to be done (i) an illegal act, or (1i) an act which is not illegal by illegal means, such an agreement is called a criminal Conspiracy provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties, to such agreement as a result of such conspiracy. It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object (Section 120-A).

Section 120-B. Punishment of Criminal Conspiracy. (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death. imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months or with fine or with both (Section 120-B).

Thus, Sections 120-A and 120-B are complementary to each other, the one, defining, the other, the punitive counterpart.

Conspiracy, what is-Conspiracy explained. -The literal or dictionary meaning of the word "conspire" is "to plot or scheme together" which means the "joint participation" of several persons in the plot or the scheme, else, the word "together" would be superfluous and have no meaning. If a person were to draw up a plot or a scheme without associating any other person with it, such a person would be plotting alone, not scheming together and consequently would not be said to "conspire in the literal sense of the term. The literal meaning persists in the legal definition of the offence of conspiracy whereby one person alone can never be guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself.

The persons plotting or scheming together and thereby "conspiring" must be two or more in number. These persons cannot plot or scheme together without a common

understanding or a basic agreement between them. It is plain common sense that there should be a meeting of minds between them before they may come together. There must be association and agreement between them. A plot or a scheme is, in its very nature, an advance calculation, a fore thinking of the events that follow or are brought about in materialising it.

It is plain common sense again that there would be no agreement unless there is something agreed upon-a context or subject-matter without which an agreement is unthinkable. It is here that we may travel from common sense into legal technicality, with common sense still as our guide. The agreement would be about doing something. It cannot be a 'blank' or empty agreement that something would be an act it may be a single act or a series of acts. Acts include omissions as contemplated in Section 33 of this Code which explains what an act may be. Two soldiers A and B agree to blow up a powder magazine. A is on sentry duty when B passes him. A does not challenge him. A's failure to challenge B is an illegal omission to facilitate the blowing up of the magazine. An agreement to do that which it is lawful to do would not be an offence. It would not be a conspiracy which even according to popular understanding has a sinister meaning about it. A conspiracy is never an agreement to do legaly permissible acts in a lawful manner, by lawful means. Mens rea (criminal intent) is an essential element of the offence of conspiracy. We may classify acts into two classes as acts which are illegal and acts which are not illegal, exhausting thereby the 'universe of discourse', eliminating the possibility of a third alternative class between these two classes of acts. The agreement, the context of the scheme or the plot, may be about doing an illegal act or causing it to be done or it may be about doing an act which is not illegal but doing it or causing it to be done by means which are illegal. Such an agreement is a criminal conspiracy as defined in Section 120-A.

When two or more persons agree (i) to do or (ii) cause to be done-

(1) an illegal act, or

2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

There can be no conspiracy without an agreement and an agreement implies the concert of at least two persons. The Agreement is the gist of the offence." In Ajay Aggarwal v. Union of India, the Supreme Court upheld that Criminal conspiracy is a continuing offence and it is also not necessary that each conspirator should know all details of conspirated scheme. The fact of the case Was that appellant a non-resident was

running a business in the name of M/s. Sales International at Dubai and four others-resident of India were running Similar business at Chandigarh. All five made a conspiracy at Chandigarh to cheat Punjab National Bank. In pursuance of such planning they succeeded to cheat the Punjab National Bank of an amount of Rs. 40,30,329 on fabricated documents submitted by the appellant to Dubai Bank. The Court upheld the offence of conspiracy. The end does not justify the means in criminal law. If, therefore, one conspires with another to employ illegal means to achieve a legal pose, one may be convicted of conspiracy." Law may prohibit act but may take them punishable; such acts would be illegal but would not be offences. it would be an error to think that all legally prohibited acts are necessarily punishable acts; some acts prohibited by law may give rise to a civil liability, and some, though prohibits irrelevant, vaxatious, indecent questions to a witness under cross-examination, such questions may be disallowed without giving rise to any liability civil or criminal. Illegal acts are thus of three kinds:- (1) offences, (2) civil wrongs, and (3) acts which are illegal in the sense of being prohibited without being offences or civil wrongs.

The definition of a criminal conspiracy as formulated in Section 120-A draws a distinction between an agreement to commit an offence and an agreement of which either the object or the means employed to achieve the object are illegal but no offence is thereby constituted. The section provides that where the agreement is to commit an offence, the bare agreement is a conspiracy without any follow-up action and where the agreement is not an agreement to commit an offence the agreement does not amount to a conspiracy unless it is followed up by an overt act done by one or more persons in pursuance of such an agreement. Two lovers were not allowed by their parents to get married Hence they agreed to commit suicide but, a little later, good sense prevailed upon them and they gave up their intention to commit suicide. While suicide is not punishable as an offence and so it may be said to be an illegal act, an overt act may be necessary to make the agreement an offence of criminal conspiracy, but it would not be possible without an attempt to commit it, which attempt is an offence. The agreement to attempt to commit suicide, implied in the agreement to commit suicide would be an offence of criminal conspiracy.

Classification.-Section 120-A thus classifies conspiracies into two groups (1) conspiracies in which the agreement is to commit an offence, and (2) conspiracies in which the agreement is to do an illegal act or an act which is not illegal by illegal means, the illegality in either case not amounting to an offence. Such an agreement does not

amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to the agreement in pursuance thereof.

In the case of *Saju v. State of Kerala*, it was held that in order to convict an accused for criminal conspiracy under Section 120-A it has to be established that he (the accused) had agreed to pursue a course of conduct which he knew leading to the commission of a crime by one or more persons to the agreement of that offence. Besides the act of agreement, the necessary *mens rea* of the crime is also required to be established.

Explanation. There is an Explanation appended to Section 120-A which says that it is immaterial whether illegal act agreed to be done is the ultimate object of the agreement or is merely incidental to that object. A and B agree to murder C, A goes to purchase a revolver in a false name. A's illegal act is incidental to the main object, the murder of C and it will not be a defence to the charge of conspiracy that the purchase of the revolver in a false name was not the main object of the conspiracy. Conspiracy includes within its orbit both main and auxiliary acts.

Ingredients of Criminal Conspiracy.- Conspiracy under Section 120-A has following essentials :

(1) An agreement between two or more persons, or

(2) to do or cause to be done an illegal act, or

(3) to do an act which is not illegal by illegal means, or

(4) an overt act done in pursuance of the conspiracy in case of (3). Thus, Section 120-A provides for two kinds of conspiracies :

(1) Agreement to do or cause to be done an illegal act.In this case mere agreement is punishable.

(2) Agreement to do or cause to be done an act which is not illegal by illegal means. In this case some overt act besides the agreement should be done by one or more parties to such agreement in pursuance thereof.

It will be useful to discuss them separately.

(1) Agreement to do an illegal act.

In this case conspiracy consists only in agreement to do or cause to be done an illegal act.

The offence of criminal conspiracy under Section 120-A is a distinct offence introduced for the first time in 1913 in chapter V-A of the Penal Code Agreement is the gist of the offence. There must be agreement. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There need not be proof of direct meeting or combinations of the parties being brought into each other's presence. The agreement may be inferred from circumstances raising a presumption of a common plan to carry out the unlawful design. Possessing and selling of explosive substances without a valid licence for a long time has been considered to be the proof of agreement.)

(2) Agreement to do an act by illegal means.

In that case conspiracy consists in agreeing to do or cause to be done an act which is not illegal by illegal means. The term "illegal" has been defined in Section 43 of the Penal Code as follows :-

"The word 'illegal is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action and a person is said to be 'legally bound to do whatever it is illegal in him to omit."

Thus, an agreement to do or cause to be done something which in itself may be indifferent or even lawful by unlawful means amounts to conspiracy in this case.

The end does not justify the means in criminal law. Therefore, to conspire to employ illegal means to achieve a legal purpose is conspiracy.

When conspiracy consists in doing an act which is not illegal by illegal means some overt act on the part of the person or persons, who are party to the agreement, is necessary to constitute conspiracy. The doing of an overt act independent of the agreement, is a step further in persecution of object of the conspiracy and stamps it as

criminal within the meaning of this section. This overt act must be something distinct from that which tends to prove merely the agreement.

Criminal conspiracy involves

(i) an agreement do,
(ii) an illegal act, or
(iii) by illegal means,
(iv) the agreement being followed by an overt act.

The offence consists in the very agreement between two or more persons to commit a criminal offence irrespective of the further consideration whether or not those offences have actually been committed. The very fact of the conspiracy constitutes the offence and it is immaterial whether any thing has been done in pursuance of the unlawful agreement. Privacy and secrecy are more characteristics of conspiracy than a loud discussion in an elevated place open to public view. To amount to the offence of criminal conspiracy an agreement must be to do that which is contrary to or forbidden by law.

Section 107 (Abetment)	**Section 120-A (Conspiracy)**
1. Abetment consists in instigating a person to commit an offence, or engaging in a conspiracy to commit it, or intentionally aiding a person to commit it.	1. Conspiracy consists in an agreement between two or more persons to do an illegal act or to do an act which is not illegal by illegal means and an overt act has been done in pursuance of the conspiracy in the latter case.
2. Abetment may consist of conspiracy as conspiracy is a species of amount to abetment. Abetment.	2. A conspiracy would not amount to abetment.
3. Abetment per se is not a substantive offence.	3.conspiracy per se is a substantive offence.

The Supreme Court in its significant decision in Kehar Singh- has observed that 'there is vital difference between (i) abetment in any conspiracy, (ii) criminal conspiracy. The former is defined under the second clause of Section 107 and the latter is under Section 120-A. The gist of the offence of criminal conspiracy created under Section 120-

A is bare agreement to commit an offence. It has been made punishable under Section 120-B. The offence of abetment created under the second clause of Section 107 requires that there must be something more than a mere conspiracy. There must be some act or illegal omission in pursuance of that conspiracy. That would be evident by the wording of Section 107 (Secondly) : "engages in any conspiracy... for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy." The punishment for these two categories of crimes are also quite different. Section 109, I.P.C. is concerned only with the punishment of abetments for which no express provision is made under the Penal Code.

II. Punishment of criminal conspiracy.-If the offence conspired to is punishable with death, imprisonment for life or rigorous imprisonment for two years or upwards, the conspirator is punishable as an abettor; but in any other case, he shall be liable for punishment not exceeding six months rigorous imprisonment or with fine or with both (Section 120-B).

This has been very well explained in the leading case *of Amrit Lal Hazra v. Empero*r -The facts of the case are; *Amrit Lal Hazra* and three others were charged under Section 4, Explosive Substances Act, 1909, for having in their possession and under their control, in a room, materials for making bombs with intent thereby to endanger human life. They were further charged along with two others for conspiring between March, 1911 and 21st November, 1913 with five named and five unnamed persons to keep explosive substances with intent, by means thereof, to endanger life or make other persons endanger life, thereby committing an offence of conspiracy under Section 120-B, LP.C. 7

Defence Arguments.-The charge under Section 120-B, Indian Penal Code was bad as it did not specify the explosive substances which it was alleged the accused had conspired with one another and with others to make and keep. The other points taken by the accused related to Section 4, Explosive Substances Act which is not within the purview of our study here. It was argued that the same individual could not be simultaneously charged with an offence as also with a conspiracy to commit the offence and he could not be jointly tried with persons alleged to be his co-conspirators. Other points relating to criminal procedure and evidence were raised.

Question:- Define 'abetment' With illustrations. What offence has been committed by "A" in the following case.

"A" instigate a child to put poison into the foods of z ande gives him poison for that purpose .The child in consequence of instigation, by the mistake puts the poison into the food of Y who was eating by side of Z.

Ans:- Introduction.-A person may do an illegal act alone or in conjunction with other person. When several persons take part in doing an act, each one of such persons may act in a manner and degree, different from others. The act may be done by one person and another may stand merely encouraging it and ready to give any help or one person may design the act and while remaining away from the scene of action have it executed by another. Then again such other person executing the act may be a willing agent or he may be a person under legal disability, such as, an infant or an insane person and the principles of liability accordingly vary with differences of situation between collaborations. Crime in concert may take any of the following shapes :-

(1) One person may persuade another to do an illegal act, give him incitement, advice or aid and the latter may act in pursuance of such advice and be sustained in his design by such aid.

(2) Two or more persons may agree to do an illegal act or acts.

(3) Two or more persons may directly participate in the commission an act.

The first form of criminal collaboration is known as abetment, the second as conspiracy and the third has no specific name; we may call it the *joint commission of an offence*. We have studied the principles of joint and several liability in Sections 33 to 38 in Chapter II which apply to principal offenders.

According to English law, criminals are divided into four classes -

(1*) Principal in the first degree*. --One who actually commits the crime.

(2) *Principal in the second degree.* - One who aids and abets the persons who commit the crime at the very time of its commission.

(3) *Accessory before the fact* - One who being absent at the time of commission of the offence procures, counsels, commands or abets another to commit it.

(4) *Accessory after the fact*. - One who knows that an offence has been committed and receives, relieves, comforts or assists the offender.

Under the Indian law, accessories after the fact are known as "harbourers" of offender, and punished as such. The term "harbour" is defined under Section 52-A, as

Section 52-A.- "Except in Section 157 and in Section 130, in the case in which the harbour is given by the wife or husband of the person harboured, the word 'harbour includes supplying a person with shelter, food, drinks, money, clothes, arms, ammunition or means of conveyance, or the assisting of a person by any means, whether of the same kind as those enumerated in the section or not, to evade apprehension".

The law relating to accessories after the fact is scattered in different sections of the Code. They are for instances, Section 201 (screening the offender from legal punishment); Section 212 (harbouring an offender with the intention of screening him from legal punishment); Section 216 (harbouring an offender who has escaped from custody or whose apprehension has been ordered Section 216-A (harbouring robbers or dacoits); Section 130 (harbouring of a St prisoner); Section 136 (harbouring a deserter from the Army, Navy or Air Force and Section 157 (harbouring persons hired for an unlawful assembly). Similarly a receiver or retainer of property, the possession of which has been obtained by theft or by any other offence of similar kind has been made punishable under Sections 411 and 412 of the Indian Penal Code.

This Chapter lays the law for accessories before the fact. Section 114 of this Chapter lays the law for principal in the second degree. It treats them on the same footing as principals of the first degree, so that abetment strictly speaking under the Indian law is confined to accessories before the fact, though a principal in the second degree may be guilty of abetment as defined in the Code he is classed with the principal of the first degree for purposes of liability.

English and Indian Law.-Under English law criminals are divided in four classes, as, criminal of first degree and second degree, accessories before or after the act. Such classification is not in Indian system. In Indian law abetment is constituted in

following way as by instigating a person or by conspiracy or intentionally aiding a person to commit an offence. Abetment is an offence only if the act abetted is an offence.

This Chapter penalizes abetment as the latter leads to crime and the commission of many offences would be impossible but for the support and encouragement received from others who though do not actively participate but prepare the ground of crime and facilitate the work of criminal. This Chapter aims at punishing those who have lent their assistance to the commission of a crime. Bentham remarked : The more these preparatory acts are distinguished for the purpose of prohibiting them, the greater the chance of preventing the execution of the principal crime itself. If the criminal be not stopped at the first step of his career, he may be at the second or the third. It is thus that a prudent legislator, like a skilful general, reconnoitres all the external posts of the enemy with the intention of stopping his enterprises. He places, in all the defiles, in all the windings of his route, a chain of works, diversified according to circumstances but connected among themselves, in such manner that the enemy finds in each, new dangers and new obstacles.

Section 107. Abetment of a thing. --A person abets the doing of a thing who :-

(1) instigates any person to do that thing, or

(2) engages with one or more other person or persons, in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or

(3) intentionally aids by any act or illegal omission, the doing of that thing.

Explanation 1.-A person who by wilful misrepresentation or by wie concealment of a material fact is bound to disclose, voluntarily causes procures or attempts to cause or procure a thing to be done, is said to instiga the doing of that thing.

A, a public officer, is authorised to arrest 2. B, knowing that fact, and also that is not Z, wilfully represents to A that C is Z, and thereby wilfully causes A to arrest C. Here B causes by instigation the arrest of C.

Explanation II-Whoever does anything either before or at the time of commission of that act, in order to facilitate the commission of that act (Section 107)

Ingredients. -- For abetment any of the three ingredients given below is necessary.

(a) Instigation to do a thing; or

(b) Engaging in conspiracy to do a thing; or

(c) Intentionally providing aid in doing of a thing.

The definition of 'abetment as given in this section is general. It is not even the definition of the abetment of an offence but of a thing which may or may not be said an offence. The encouragement of a virtuous act is not the abetment of a thing. Abetment in the Code is constituted by:

(i*) Abetment by instigation [Sec. 107(1)]*.-by instigating a person to commit an offence; or

(ii) Abetment by conspiracy [Sec. 107(2)). -- by engaging in a conspiracy to commit, or

(iii) Abetment by aid [Sec. 107(3).-by intentionally aiding a person to commit it.

There are thus three kinds of abetment as stated above.

An act done after an offence is complete, is not abetment under the Indian Penal Code though it may help the offender - Hazarilal v. Emperor. There must be some participation of an abettor so as to help or move the offender in any way towards the commission of the offence. Mere concurrence of a person in the criminal act of another without some active part in that direction is not punishable under this Code.

In order that there may be abetment, there must be either instigation or intentional aiding or engaging in a criminal conspiracy. General advice is far too vague an expression to prove abetment under the Code.?

Abetment, intentional aiding and active complicity.-In order to constitute abetment, the abettor must be shown to have "intentionally aided" the commission of the crime. A person may invite another by the way or for a friendly purpose and that may facilitate the murder of the invitee, but unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and active complicity is the gist of abetment under the third paragraph of Section 107. For a person to be guilty of

abelment of an offence, it is not necessary that the offence should have been committed. It may take place in any one, of the three ways : (1) instigation, (2) conspiracy, or (3) intentional aid.

Acquittal of the doer of the offence does not mean that there was no abetment thereof. It cannot be held in law that a person cannot evn convicted of abetting a certain offence when the person alleged to ha committed that offence in consequence of the abetment has been acquitted. The question of the abettor guilty depends on the nature of the act abetted and manner in which the abetment was made. The offence of abetment is comale when the alleged abettor has instigated another or engaged with another in conspiracy to commit the offence. It is not necessary for the offence of abetment that the act abetted must be committed. It is only in the case of a person abetting an offence by intentionally aiding another to commit that offence that the cha of abetment against him would be expected to fail when the person alleged in have committed the offence is acquitted of that offence.

In an important case *Haradhan Chakravarti v. Union of India*, the Supreme Court upheld that where all the abettors except one are acquitted by the Court it will be justified to acquit the remaining abettor also by the Court.

(i) Abetment by instigation. -A person abets the doing of a thing who instigates any person to do that thing. When is a person said to instigate the doing of a thing ? A person instigates the doing of a thing who, by

(i) wilful misrepresentation, or

(ii) wilful concealment of a material fact (which he is bound to disclose) voluntarily (i) causes or procures, or (ii) attempts to cause or procure the doing of a thing.

The illustration to Explanation (I) elucidates the meaning. The Explanation (1) does not define instigation. It only explains that wilful misrepresentation or wilful concealment may in certain circumstances amount to instigation but it neither defines nor limits the forms which instigation may take.

The word "instigate" means to goad or urge forward or to provoke, incite urge or encourage to do an act, person is said to instigate another, to an act when he actively suggests or estimates him to the act by any means or language direct or indirect, whether

it takes the form of express solicitation or of hints insinuation or encouragements. Thus, where a person gives to an unlawful assembly a general order to beat it is a case of a direct instigation. The instigation would be indirect when instead of such an order a person raises a slogan "Allah O Akbar" or "Jai Bajrang Bali" or says, "Cowards die many times before their death, the valiant die but once" will intend to provoke. A instigates B to commit a crime not by saying so but by harping upon the wrongs he has suffered; it is indirect instigation

Investigation implies knowledge of the criminality of an act. Illustration to Explanation is an example of instigation by wilful misrepresentation. Instigation by wilful concealment takes place where there is some duty cast obliging person to disclose fact. The mere omission to bring to the notice of the higher authorities, offences committed by other persons does not amount to abetmen of those offences. It may form the foundation for disciplinary action against him in a departmental way. Mere failure to prevent the commission of an offence not by itself an abetment. The law does not require that instigation should be in a particular form or that it should be only in words and may be by conduct: for instance a mere gesture indicating beat or a mere offering of money by an arrested person to the constable who arrests him may be regarded as instigation, in one case to beat and in the other to take a bribe. An advice can become an testigation only if it is found that it was an advice which was meant actively to est or stimulate commission of an offence. To ask a person as a mere threat to really fire a gun without intending that he should really fire it, is not to instigate him to fire the gun. The threat would become instigation only if it is found that in the event of the threat having no effect the gun should in fact be fired. Mere presence is not instigation.

In a case of abetment by instigation it is immaterial whether the person instigated commits the offence or not. Considering the definition of abetment, as given in Section 109 of the Code the instigation must have reference to the thing that was done and to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. ')

Illustrative Cases

(i) *Andy Chetty* - The accused asked a witness to suppress certain facts in giving his evidence. It was held that this was an abetment of giving false evidence

(ii) *Ghanshyam Singh*-Several persons constituted themselves in an unlawful assembly. Some of them were armed with sticks and R, one of them, was not so armed. He also picked up a stick. S, the master of R gave a general order to beat. S was held guilty of abetting the assault by R

(iii) *R. v. Taylor* - X and Y agreed to settle quarrel by a duel, fighting with bare hands. Each of them deposited £ 1 with the total of £ 2 to be paid over by Z to the winner. Except that Z held the stakes, he had no other part in this duel nor had he any reason to believe that it was likely to end fatally for one of the contestants. The Court held that in the circumstances Z was not guilty of abetment of murder. In this case Cockburn, C.J,observed, "There must be active proceeding on his part. He must incite, or procure, or encourage the ach.... I do not think that mere consent to hold the stakes can be said to amount to such a participation as is necessary to support the conviction

(ii) Abetment by conspiracy.-An abettor may engage with one or on or persons in any conspiracy for the doing of something in which case he not only instigates but conspires to commit a crime, an act punishable under Section 120-B. Conspiracy consists in combination and agreement by persons to do some illegal act or to effect a legal purpose by illegal means. In order to constitute the offence of abetment by conspiracy there must be a combining together of two or more persons in the conspiracy and an act or illegal omission must take place in pursuance of that conspiracy and in order to the doing of that thing. It is not necessary that the act abetted should be committed or of the effect requisite to constitute the offence should be caused. It is alke insta necessary that the abettor should concert the offence with the person commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.' A mere conspiracy does not amount to abetment. If conspirators are detected before they do more than their discussed plans, with a general intention to commit an offence they are not liable as abettors. In a case of abetment by conspiracy it is immaterial that the persons conspiring together actually carry out the object of conspiracy.

Distinction between abetment and conspiracy.-The distinction between the offence of abetment under the second clause of Section 107 and that of criminal conspiracy under Section 120-A is this. In the former offence a mere combination of persons or agreement between them is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for,

in the latter offence, the mere agreement is enough, if the agreement is to commit an offence.

Proof. It is very difficult to obtain direct evidence of conspiracy which is generally inferred from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them. In order to constitute the offence of abetment by conspiracy there must be a combining together of two or more persons in the conspiracy and an act or illegal omission must take place in pursuance of that conspiracy and in order to the doing of that thing. It has been held by the Supreme Court in Haradhan Chakraborty w Union of India," that where a person is charged with the offence of abetment of conspiracy of commission of the offence of theft by his officer and the substantive offence against the principal offender is not established the alleged abettor has also to be acquitted.

Illustrative Cases

(i)R. v. Mohit. - A woman prepared herself to be satti. Those who followed her to the cremation ground stood by the funeral pyre shouting "Ram Ram" thereby actively conniving at the act of the woman in killing herself by being burnt in the pyre. Held, that the accused had engaged with her in a conspiracy for the commission of the satti.

(ii) White Church.-A woman who believing herself to be but not actually being with child, conspires with others to administer drugs to herself or to use instruments for herself with an intention to procure abortion, is liable to b punished for conspiracy to procure abortion.

(iii) *Ram Jiwan.* -Two persons, A and B lodged a false report with the police A stated the story and B corroborated him. But if A alone had told story and B had said nothing, both the men were held guilty on the facts; A under Section 182 and B for abetment having engaged with A in a conspiracy to make false report and false report having been made in pursuance of the conspiracy. 7

(iii) Abetment by aid and illegal omission. - A person abets by aiding when he by any act done either prior to or at the time of its commission intends to facilitate and does in fact facilitate its commission. A is the printer and publisher of a newspaper in which he

allows an advertisement for the sale of obscene books. A knows that the advertisement would encourage the sale of obscene books. A, as such abets the sale of obscene literature by intentional aid. The intention should be to aid an offence or to facilitate the commission of an offence. A mere giving of an aid will not make the act an abetment of an offence, if the person who gave the aid did not know that an offence was being committed, or contemplated, the supplying of food to a person about to commit a crime, is not necessarily an abetment of the crime, eg. the supplying of necessary food to a person known to be engaged in crime is not, per se criminal, but if foods were supplied in order that the criminal might go on a journey to the intended scene of the crime or conceal himself while waiting for an opportunity to commit the crime, the supplying of food would be in order to facilitate the commission of the crime and might facilitate it.

Abetment and attempt-Distinction.-An attempt is the last but one stage in the completion of a crime. It is a crime "almost" but not altogether complete. It is a stage at which crime fails to materialise as a result of factors outside the will and beyond the control of the offender. Abetment of an offence is done by a person other than the actual offender. Attempt is the act of the principal in the first degree, abetment of the act of the principal in the second degree and accessory before the fact. There are four stages in the commission of a crime-intention in suggestions or encouragement and its scope may be confined to the formation of an intention in the mind of an offender who may, independently of the abettor, prepare, attempt and even commit the crime. Abetment is not actual participation in the acts constituting a crime, it is, auxiliary or ancillary to a crime while an attempt is the crime itself minus the last act necessary to complete it.

Question:- Distingush between the following-

(i)Riot and Affray:-

Riot - Definition and liability.- Riot is an unlawful assembly in a particular state of activity. An unlawful assembly in a state of violence becomes a riot. It is an aggravated form of being a member of an unlawful assembly. It is punishable with imprisonment of either description upto 2 years or fine or both (Section 147). When (6) force violence is used, (ii) by (a) an unlawful assembly, or (b) any member thereof, (i) in prosecution of the common object of such assembly, every member of such assembly is guilty of rioting (Section 146). Whoever is guilty of rioting when armed with deadly weapons shall, on account of the aggravation caused by being so armed, be punishable with imprisonment of either description upto three years or fine or both (Section 148). Other cognate offences are wanton and malignant provocation by doing anything illegal with intent to cause riot, punishable with imprisonment of either description upto 6 months or fine or both if riot is not committed, and with imprisonment of either description upto one year or fine or both if riot is committed (Section 153) and promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. (Section 153-A) imputations, assertions prejudicial to national integration Section 153-B), and assaulting or obstructing a public servant in the suppression of riot Section 152)

What is riot ?-The basis of the law as to rioting is the definition of an unlawful assembly, a riot being simply an unlawful assembly in a particular state of activity, that activity being accompanied by the use of force or violence. It is only the use of force that distinguishes rioting from an unlawful assembly

Ingredients. - The offence of rioting involves (a) the use of force or violence; (b) by an unlawful assembly, or by any member thereof; (c) in prosecution of the common object of such assembly.

Section 148. Rioting, armed with deadly weapon. - Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both

For conviction under Section 148, LPC, the prosecution must prove that the assembly was unlawful and that the common object of such assembly was one of the objects enumerated in Section 141, IPC. and one or more or all of the members of the assembly used violence or force in the prosecution of the common object of such assembly

(a) Force or violence.- The word "force has been defined in Section 349. The violence has not been defined in the Code. It is a word of wider importance than "force and includes force used against inanimate objects also The word "violence in Section 146 is not restricted to force used against persons only, but extends also to force against inanimate object. While "force" refers to a person being restricted by Section 350, violence is comprehensive and is used to include violence to property and other inanimate objects.

(b) Unlawful assembly or any member thereof. - The offence of rioting may be committed by the unlawful assembly or by any member thereof. Section 141 defines an unlawful assembly, where there is no satisfactory evidence to prove formation of unlawful assembly conviction under this section cannot be upheld. Rioting may be committed by any member of the unlawful assembly. Whether only one or more than one of the persons assembled used force, the penal consequences apply equally to all.

(c) Common object. --The common object of the assembly must be illegal Section 141 indicates what objects are deemed unlawful. If the common object of an assembly is not illegal, it is not rioting if force is used by any member of that assembly. Resistance to a search without search warrant does not amount to rioting. The essence of the offence lies in the use of force to achieve a common purpose. This implies some degree of previous concert and deliberation. If a number of persons assembled for any lawful purpose suddenly quarrel without any previous intention or design, they do not commit a riot in the legal sense of the word.)

For example, if a number of persons having met together at a fair market for any lawful purpose happen, on a sudden quarrel, to fight with each other they are not guilty of a riot but only a sudden affray and those are guilty who actually took part in it because their meeting was lawful and innocent and breach of peace happened unexpected without any previous intention."

So also the Supreme Court in a case has had an occasion to observe thal *..... .we must say even at the outset that the accused cannot be convicted for the offence of rioting because the attack on the victims had taken place in the course a sudden quarrel. The accused had not formed themselves into an unlawful assembly in order to commit the offence of rioting. Hence, none of the accused can be convicted under Section 147 or 148, I.P.C." So also where police resorted to violence while pursuing an investigation and the suspect was given beating when he tried to escape, and as a result he died, it was held that police was not pursuing an unlawful object and therefore Section 147 or 149 could not be attracted.

In Vikram and others v. State of Maharashtra, the question arose, as to whether in a given case common object has been made out or not, will depend upon the facts and circumstances thereof Conduct of the parties and the manner in which the occurrence has taken place, will have some bearing on the question In Sheo Prasad Bhor v. State of Assam, Court held each person of the assembly not necessary should be assigned independent part in the commission of crime. If it is found that one of the member of an unlawful assembly assaulted the deceased which ultimately caused the death of the deceased, then all who were members of the unlawful assembly can be held liable under Section 302/149 of I.P.C.

But where a large scale rioting took place in a village in the course of which two persons died and several witnesses belonging to the deceased party received injuries, the Court would first scrutinise the evidence of injured witness and if the same is corroborated by the medical evidence that can be accepted as against those accused who caused injuries and they can be held to be members of unlawful assembly and therefore liable to be convicted. This is on the ground that the witnesses at least, would be in a position to identify their own assailants.

In an important decision of the Supreme Court, it is clear that in case of riot only those accused could be convicted who were present from beginning to end of the riot. Such things will be proved by the prosecution on the basis of evidence.

In the case of State of Karnataka v. Bhimappa, the Supreme Court has observed that a single accused cannot be convicted on the basis of eye-witness in riot if it is not proved that there was an unlawful assembly 2

Disturbance of public peace.-Acts likely to disturb public peace may not necessarily be offences. It is not offence to pass with music in front of mosque but such music may, in some circumstances provoke tension feelings, produce an explosive situation and it may be expedient to ban it in the interests of public peace. To act contrary to such a ban would be to act contrary to law and doing a punitive act. The ban is regulated by the principle that the restraint imposed must be the minimum restraint necessary for the purpose. Imminent likelihood may be resolved by no further restriction of freedom than by making the persons present disperse. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description upto six months or fine or both (Section 151).

Ingredients. – Following are the essential ingredients :- –

(i) There is an assembly of five or more persons; and

(ii)The assembly is likely to cause disturbance of the public peace,

(ii) Such assembly has been lawfully commanded to disperse, and (iv) The accused knowing this fact either joins or continues in such assembly.

Section 159, Affray,-When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray

Section 160. Punishment for committing affray,-Whoever commits an affray, shall be punished with imprisonment of either description for a tem which may extend to one month or with fine which may extend to one hundred rupees, or with both Affray,-Public peace may also be disturbed by fighting in public place When (1) two or more persons (2) by fighting in a public place. (3) disturb the public peace, they commit an affray (Section 159) punishable with simple et rigorous imprisonment upto one month, or fine upto Rs. 100 or both Section 160).

Affray - What is ?-Affray has been defined in Section 159, LP.C. The various elements are that there must be fighting by two or more persons, the fighting must be in a public place and that fighting must disturb the public peace. Where the fight was neither

in a public place nor did it disturb the publi peace, two of the essential elements of the offence of affray are lacking and the accused cannot be convicted under Section 160, IP.C.' Affrays are the fighting of two or more persons in some public place, to the terror of His Majesty's subject, for, if the fighting be in private, it is not affray, but an assault (Blackstone). The offence of affray as defined in Section 159 postulates the commission of a definite assault or a breach of the peace; mere quarrelling or abusing in a street without exchange of blows is not sufficient to attract the application of Section 159 2

Fighting-What is ? - The expression 'fighting' is used in its ordinary sense. It means a combat or quarrel involving exchange of some force or violence if not blows. Mere verbal quarrel or vulgarly abusing without violence cannot be construed as fighting which contemplates bilateral use of violence by two competing parties. Even if there is no exchange of blows, there should be exchange of some violence between the two contending parties before it can be said that they were fighting. If one person uses violence against another and the other person merely remains passive, it cannot be said that there is a fighting between the two persons. So also, if neither person uses violence against the other but both the persons merely indulge in verbal abuses it does not amount to fighting. The gist of the offence consists in the terror it causes to the public There can be no affray in a private place. An affray is an offence against the public peace because it is committed in a public place and is likely to cause general alarm and disturbance.

Ingredients.-(i) Two or more persons should fight, (i) in a public place (iii) disturbing the public peace.

(i)To constitute an affray there must be a fight, and it is not a fight when one side is aggressive and the other side is passive Fighting connotes necessarily a contest or struggle for mastery between two contestants against each other. A struggle or a contest necessarily implies that there are two sides, ach of which is trying to obtain the mastery over the other. Where members of one party beat members of another party and the latter do not retaliate or make any attempt to retaliate, but remain passive, the offence of affray cannot be said have been committed because there is no fight in such a case though there 1o be an assault.' It may be noted that a fight is bilateral in which both the parties should participate.

(ii) A public place is a place where the public go, no matter whether they have a right to go or not. The place where the public are actually in the habit of going must be deemed to be public place for the purpose of the offence of affray. Instances are railway

platforms, theatre halls and open spaces resorted to by the public for purposes of recreation, amusement, etc. An open field with no compound wall is a public place. A private chabutra adjoining a public thoroughfare, a railway station and platform at a time when no train is due except a goods train and a private garden are not public places.

(iii) To constitute an affray, there must be not only fighting, but the fighting must cause a disturbance of the public peace. There should be a terror to the public. The presence of a large number of the people at the time of the disturbance show that the members of the public must have been alarmed by reason of the disturbance and that there is sufficient breaking of the public peace. A drunken brawl in a public street where two or more persons shout at and pull about one another constitutes an affray. Mere causing public inconvenience is not sufficient.

CASES

(i) Two persons met and after abuse came to blows and each struck the other down while others had also joined the fight and one of them died of the injuries received, but there was no evidence as to who was the assailant. The Court held that the offence was committed.

(ii) A quarrel arose between four persons stationed at the entrance of a temple for the purpose of collecting fees and three other persons, who wanted to enter the temple without making previous payment of the fee demanded. The Court held that the offence of affray was committed.

In case of Gangadhar Guru v. State of Orissa, the High Court upheld that the offence of affray is an offence against public peace. So if it is not proved that public peace is disturbed by the affray, the conviction of accused under affray is invalid.

Distinction between "waging war", "riot" and "affray".-"Waging war" is an offence against the State, "Riot" and "Affray" are offences against the public peace. Waging war is the most serious of these three offences and is most avily punishable (death or imprisonment for life). Riot is more heavily table (6 months or fine or both) than affray (1 month or fine upto Rs. 100 or both). A riot is always for a private purpose whereas the object of waging war is of a general nature. The minimum number of persons in a riot must be five, in an affray two and there is no maximum limit on the number of persons in either. In affray only those who are actually engaged are punishable, in a riot

everyone of the unlawful assembly, though he may or may not have personally used force or violence is punishable. In a riot even persons other than the members of the unlawful assembly incur liability to punishment under certain circumstances. A riot may be committed in any place public or private but an affray can be committed only in a public place.

Distinction between affray and assault.-An assault may take place anywhere while affray must be committed in a public place. Affray is regarded an offence against public peace while an assault is an offence against the person of an individual, 'An affray is nothing more than an assault committed in a public place and in a conspicuous manner, and is so called because it affrighteth and maketh men afraid'.

Distinction between riot and affray. - Though both the offences fall under the same Chapter, but there are material differences between the two namely:

(1) Five or more persons are required in order to constitute rioting whereas only two or more persons are sufficient for affray.

(2) The common object of five or more persons in a case of riot must be any one of those five objects which are laid down under Section 141 of the Code, whereas it is not necessary in a case of affray.

(3) Exercise of force or violence is necessary in a case of rioting. It is not necessary for affray.

(4) Riot may be committed in any place-public or private. Affray is only committed in a public place.

(5) Fighting amongst themselves is not an essential ingredient of rioting. Fighting is necessary for affray.

(6) In rioting every member of the unlawful assembly is made constructively liable, whereas in case of affray only those who are actually engaged are punished.

(7) The offence of rioting can never be said to have been committed unless the basic ingredients of Section 141 are present. That is to say that Section 141 controls Section 146 while Section 159, dealing with affray, is an independent section.

(8) Disturbance of the public peace is not an essential of rioting, whereas it is all for affray.

(9) Rioting is more serious than affray.

Liability of persons other than Rioteers. The following persons other than rioteers are punishable

(i) Persons for whose benefit riot is committed (Section 155).
(ii) The agent or manager of person for whose benefit riot is committed (Section 156)
(iii) Owner or occupier of land on which an unlawful assembly is held (Section 154)

(iv) Person who knowingly harbours or assembles in premises in his occupation, members of an unlawful assembly, persons about to behired or engaged as such members (Section 157).

(v)Persons who hire or connive at hiring persons to be members of an unlawful assembly (Section 150).

(vi) Persons engaged or hired or offer attempt to be hired or engaged (Section 158).

(vii) Persons wantonly giving provocation with intent to cause riot (Section 153).

Where a riot is committed on behalf of a person who

(1) is the owner or occupier of land respecting which riot takes place, or

(2) who claims any interest –

(a) in such land, or

(b) in the subject of any dispute which causes the riot, or I

(3) who has accepted or derived any benefit therefrom, such person is liable to fine, if (i) he, (ii) his agent, or (iii) his manager, having reason to believe that such riot was likely to be committed or the unlawful assembly which committed the riot was likely to be held, does not use all lawful means for preventing the riot, or for suppressing and dispersing the same (Section 155).

Under similar circumstances, the agent or manager is punishable likewise (Section 156). The owner or occupier of the land upon which such unlawful assembly is held or such riot is committed (such land not being the cause of the riot) and any person having or claiming an interest in such land shall under similar circumstances, be punishable with fine not exceeding one thousand rupees if he fails to give notice thereof to the principal officer at the nearest police station and does not use all lawful means to prevent or suppress or disperse (Section 154).)

Promoting enmity between classes (Section 153-A).- A person is said to promote enmity between classes when he, by words, either spoken or intended to be read or by sign or by visible representations or otherwise promotes or attempts to promote feelings of enmity or hatred between different classes of the citizens of India. It does not amount to an offence as here defined to point out, without malicious intention and with an honest view to their removal, matters likely to promote such enmity. (Explanation). The offence of promoting such enmity is punishable with imprisonment of either description upto two years or with fine or with both.

Principle and scope. The section supplements the law of sedition. The section means that no subject of the Government is entitled to write or say or do anything whereby the feelings of one class of citizens of India will be inflamed against another class of his subject. It is not confined to the promotion of feelings of enmity, etc. on the grounds of religion only but takes in promotion of such feelings on the other grounds as well, such as race, place of birth, residence, language, caste or community. The word

"spoken" or "written" must be such as to promote hatred, feelings of enmity etc. Intention is not a necessary ingredient of Section 153-A, and if the words are likely to have the effect contemplated by the section, it is not necessary further to establish that the writer had the intention to promote such hatred. Where the language employed S patently scurrilous and offensive, the requisite intention under Section 153-A and Section 259-A must be presumed.

Validity of the section. -- The Punjab High Court following the ruling of the Supreme Court in *Ramesh Thappar's* case held Section 153-A to be void as it is in restriction of the fundamental rights set out in Article 19 of the Constitution and is not saved by the restriction made by Clause (2) of Article 19. But in view of the Constitution (First Amendment) Act, 1951, which brought about a change in the provisions of Clause (2) of Article 19, the decision of Punjab High Court became a doubtful authority. Further, in view of the decision of the Supreme Court *in Kedar Nath* v. State of Bihar," the provisions of Section 153-A of the Code are not unconstitutional. The language used in Section 153-A is not of an all pervading nature and does not suffer from being all embracing with the result that because of language no one who does not either promote or attempt to promote class hatred or enmity can be convicted. The section is not too widely worded nor is indefinite

The Allahabad High Court, following *Kedar Nath's* case, held that the section is not ultra vires Article 19(1)(a) of the Constitution. The addition of the words "in the interest of public order" in Article 19(2) by the Constitution (First Amendment) Act, 1951, makes the ambit of the protection very wide and any provision which has been enacted in the interest of public order would be valid. Therefore, if the State has, in the I.P.C. provided a provision which makes either the attempt or the actual commission of an act promoting feelings of enmity and hatred between different classes of the citizens of India punishable, it must be held that the provision is in the interest of public order, it is not necessary that the law may have been designed directly to maintain public order. It would be valid even if it has been enacted in the interest of public order.

(ii)Giving False evidence And fabricating false evidence.

False Evidence and Cognate Offences (Sections 191-200). There are four offences under this head, *viz*., -

(1) Giving False Evidence (Section 191).

(2) Fabricating False Evidence (Section 192).

(3) User of False Evidence (Section 196).

(4)Miscellaneous allied offences(section 197-200)

` **Giving False Evidence (Perjury).-**Section 191 makes the giving of false evidence an offence. Such offence is known as perjury in English law. A person is said to give false evidence, if he

(i) being legally bound by an oath or by an express provision of the law to start the truth, or to make a declaration, upon any subject;

(ii) makes a false statement;

(iii) which he either

(a) knows or believes to be false, or

(b) does not believe to be true (Section 191).

A statement within the meaning of this section may be verbal or written A false statement as to the belief of the person attesting is a false statement. If a person states that he believes what really he does not believe or that he knows a thing which in fact he does not know, such person may be guilty of giving false evidence. [Explanations (i) and (ii), Section 191].

Illustrations

(a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim A has given false evidence. E

(b) A, being bound by an oath to state the truth, states that he believes i certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here, A states that which he knows to be false, and therefore gives false evidence.

(c) A, knowing the general character of Z's handwriting states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here, A's statement is merely as to his belief, and is true as to his believe and therefore although the signature may not be the handwriting of Z,A has not given false evidence.

(d) A, being bound by an oath to state the truth, states, that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether I was at that place on the day name or not.

Ingredients.-Following are the ingredients:

(1) The accused should be legally bound

(a) by an oath; or (b) by any law to state the truth; or (c) to make declaration; and

(2) The accused makes a false statement; and

(3)The accused knows or believes the statement to be false.

Perjury. - The offence of giving false evidence is called 'perjury' under the leech Jaw. The very essence of the offence of perjury consists in an attempt to Band and deceive the Court. The giving of false evidence is the practice to lay fraud upon the Court by making it believe as true that which the deponent play at believe to be true. The offence is this a contempt of the Court, and the Criminal Procedure Code, therefore, requires that it must sanction a prosecution of the accused.

Under this section an accused must be legally bound by an oath or by an express provision of law to state the truth before a competent authority. But an oath or solemn affirmation is not a sine qua non to the offence of giving false evidence. The offence may be committed although the person giving evidence has neither been sworn nor affirmed.

The opening words of Section 191, "whoever being legally bound by an oath or by an express provision of law to state the truth. do not support the proposition that a man, who is not bound under the law to make an affidavit, can, if he does make one deliberately refrain from stating truthfully the facts which are within his knowledge. The meaning of these words is that whenever in a Court of law a person binds himself on oath to state the truth, he is bound to state the truth, and he cannot be heard to say that he should not have gone into the witness-box or should not have made an affidavit and

therefore the proposition that any false statement which he had made after taking the oath is not covered by the words of Section 191, is not sustainable. Whenever a man makes a statement in Court on oath, he is bound to state the truth, and, if he does not, he makes himself liable under the provisions of Section 193. It is no defence to say that he was not bound to enter the witness-box. A defendant or even a plaintiff is not bound to go into the witness-box, but if either of them choose to do so he cannot, after he has taken the oath to make a truthful statement, state anything which is false. Indeed the Very sanctity of oath requires that a person put on oath must state the truth.

If a Court administering the oath is acting beyond its jurisdiction, a conviction will not be sustained.

"Makes any statement which is false". - The words "makes any statement which is false" include anything stated in declaration though it may have nothing whatever to do with it. In other words, a false statement whether it amounts to a declaration or not, would be penal if made by a person bound as in the three opening clauses of the section, its material to being immaterial Falsehood of a statement must be established by direct proof. When any assertion in any affidavit appended to the petition is proved to be false it amounts to perjury, under Section 191 and is punishable under Section 195 Such a statement when satisfactorily proved, is quite a good evidence in proof of the charge as the incriminatory statement of a person charged with any other offence and on precisely the same ground that it is admission of the accused person inconsistent with his innocence."

The false evidence must be intentionally false to the knowledge or belief of the person giving it. Intention is an essential ingredient. A man who swears that he believes or thinks a fact to be true when it is not so, is guilty of the offence. The making of false statement, without having any knowledge as to whether the subject matter of a statement is false or not, is legally a giving of false evidence. B swears to a particular fact without having knowledge at the time as to whether the fact be true or false, it is as such a perjury as if he knew the fact to be false, and equally indictable. In the case of Baban Singh v. Jagdish Singh, the Supreme Court upheld that where a false affidavit is sworn by a witness in a proceeding before a Court, the offence would fall under Sections 191 and 192. Such witness could be punished under Sections 191 and 192 of I.P.C.

Proof.- It is very unsafe to convict an accused of perjury simply because is some oral evidence to show that the statement was false. If this principle is acted upon, no

witness appearing in a Court of law will be safe, and it would sometimes be very difficult, if not impossible, to find any evidence in a judicial because the witnesses would be afraid that if one or two witnesses come to case court to depose against them they might be hauled up for perjury. The evidence to prove perjury should be as strong, if not stronger, as in any other criminal case. The Court should have no reasonable doubt about the statement being perjured before it can convict an accused of perjury. Even if there are two contradictory statements, the accused should be convicted of perjury only when they are found to be altogether irreconcilable.

Section 192. Fabricating False Evidence.- Whoever, causes any circumstance to exist or 4[makes any false entry in any book or record or electronic record or makes any document or electronic record containing a false statement], intending that such circumstances, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is, said "to fabricate false evidence".]

Illustrations

(a)A puts jewels into a box belonging to Z, with the intention that the same may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes letter in imitation of Z's handwriting purporting to be addressed to an accomplice in such criminal conspiracy, and put the letter in a likely to search. A ha place which he knows that the officers of the police are fabricated false evidence.

Ingredients.-(i) Causing any circumstance to existor making any false entry in any book or record, or making any document containing a false statement, (ii) with an

intention that such circumstances, false entry or false taken by law before a public servant or an arbitrator, and (iii) may cause any statement, may appear in evidence in a judicial proceeding; or in person who in such proceeding is to form an opinion upön the evidence to entertain an erroneous opinion touching any point material to the result of such proceeding. For prosecution under this section it should be alleged that forgery has been committed in or in relation to any proceeding in any Court. If the forged document is not produced in any Court, Section 195(1)(b) of Criminal Procedure Code is not attracted and no Court can take cognizance of the offence.

Judicial proceeding.– Judicial proceeding is defined in Section 2(i) of the Criminal Procedure Code, 1973 as "judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath'. The definition is inclusive in nature. This includes any proceeding where evidence can be legally taken on oath for the purpose of deciding a dispute. The section 192 is applicable where judicial proceeding is pending at the time of fabrication or there is reasonable possibility of judicial proceeding in future where the fabricated document will be presented in future.

Public servant or arbitrator.- As the section is not confined to judicial proceeding, it applies equally to a proceeding conducted by law before a public servant. There are many public servants who may not enjoy legal protection of conducting proceeding. If a public servant is protected by law, the proceeding before such public servant will be treated as judicial proceeding for the purpose of this section as forest officer is a public servant and is empowered to hold enquiry. The proceeding before arbitrator is also a judicial proceeding for the purpose of this section.

Illustrations

(i) Inquiry by a Magistrate under Section 144, Cr. P.C.; (ii) proceedings by a Magistrate to decide fitness of sureties; (iii) proceedings by an Income-tax Officer in pursuance of a notice under the Income tax Act; (iv) Inquiry under Legal Practitioners Act.

Punishment for intentionally giving false evidence or fabricating such evidence is imprisonment of either kind upto 7 years and also fine if such offence has been committed in any stage of judicial proceeding and imprisonment of either kind upto 3 years and fine in other cases (Section 193).

Actual use of such evidence is not necessary. User is not punishable under Section 193 but under Section 196. Intention is the gist of the offence of fabricating false evidence, and the making of a false document without intention will not amount to fabrication of false evidence. The fabricated evidence must be admissible evidence and it must be material to the issue: if it

"Any stage of Judicial proceeding". -By this phrase is meant any step taken by the Court in course of administration of justice in connection with a case pending. An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of judicial proceeding, though that investigation may not take place before a Court of Justice (Explanation 2). An investigation directed by a Court of Justice, according to law, and conducted under the authority of a Court of Justice, is a stage of judicial proceeding that investigation may not take place before a Court of Justice (*Explanation* 3). A trial before a Court Martial is a judicial proceeding *(Explanation* 1).

Illustration

A, in an inquiry by a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence. A, in an inquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this inquiry is a state of a judicial proceeding, A has given false evidence.

"**Any other case".-** Under this section a conviction may be had even though the evidence is entered in matters not judicial, but the false statement must be made under sanction of law. Any statement made during the course of a public investigation under Section 164 Cr. P.C., comes within the words "any other case")

Cases. — (i) The deponent made certain allegations (in an affidavit), based on information communicated to him by other persons. The Court held that even if such information was wrong he could not be convicted unless at the time he swore to the affidavit he had a knowledge that he was wrong and in spite of that knowledge he swore the affidavit. (ii) A prosecution witness in a murder trial made contradictory statements, the Court held that it would be expedient in the interest of justice that he should be prosecuted under Section 193. Delay in filing the application under Section 340, Cr. P.C., 1973 would not be material in such a circumstance.

Distinction between "giving false evidence" and "fabricating false evidence".- The offence of giving false evidence is committed by a person who is bound by an oath or an express provision of the law to tell the truth but it is not so in the case of fabricating false evidence, (ii) in the case of giving false evidence, the false statement need not be made on a material point but in the case of fabricating the false evidence the evidence fabricated must be on a material point. (iii) The question of the effect of the evidence on the officer before whom the evidence is given is of no consequence in the case of giving false evidence but this effect is the important point in fabricating false evidence. (iv) It is essential that there should be a proceeding, judicial or non-judicial, being conducted at the time of fabricating false evidence which only contemplates a reasonable prospect of such a proceeding having regard to the circumstances of the case and that the evidence fabricated is intended to be used in such a proceeding. (v) Last but not the least, it is the intentional giving of false evidence or the intentional fabrication of false evidence that is punishable. Intention is the essence of both the offences but there is a difference in the kinds of intention. In the case of giving false evidence only general intention is sufficient, i.e., it must be intentionally given, i.e., given knowing it to be false and with the intention of deceiving the person conducting the proceeding to believe the statement to be true but in the fabrication of false evidence there is a particular intention to use the fabricated evidence in a proceeding and to procure the formation of a wrong view on a material point.

A false entry in his special diary by a Police Investigating Officer inadmissible in evidence and it cannot as such form the basis of a conviction for fabricating false evidence.