

PRINCIPLES OF ILLEGALITY UNDER THE LAW OF CRIMES IN INDIA

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ABSTRACT

Concept of the legality of an action traverses through various popular and interchangeable words, yet adheres to specific meaning in every different legal circumstance. Illegal, unlawful, offence, irregular are seeming the same but the treatment given to these words in criminal jurisprudence worth exploration for learners of law. Every illegality is unlawful whereas every unlawful is not illegality. Immoral act not necessarily becomes illegal and irregular act without prejudice is curable. The author here analyses the concept of illegality for the beginners of law.

Keywords: Illegality, Irregularity, Unlawful, Offence, Immorality

Findings:

Every illegality is unlawful whereas every unlawful is not illegality.

Immoral act not necessarily becomes illegal and irregular act without prejudice is curable.

1. INTRODUCTION

Legal discipline has various words which even for a lawyer in the practising in the court of law tend to overlook. Even sometimes the judges grope for the meaning. One such popular word is the law and its violation represented as illegal. It is popularly interchangeably used with unlawful. While at some general sense both are same, however, without splitting words, the criminal jurisprudence attaches different meaning to these terms, every illegality is unlawful whereas every unlawful is not illegality. Commenting upon a case Justice Vivian Bose states, "It is unfortunate that we have no definition of the terms 'illegality', 'irregularity' and 'in- validity' because they can be used in differing senses¹". To elucidate the point, we have to venture the meaning of illegality.

2. MEANING OF ILLEGALITY

The lexical meaning of Illegality is "n: the quality of being against the law"[2], "an action that is illegal"[3], and "an illegal action"[4]. And unlawful means, "not morally right or conventional"[5]. Unlawful means something that is "not allowed by law"[6]. Unlawful also is "adj: not conforming to, permitted by, or recognized by law or rules"[7]. In Collins' lexicon unlawful means, "against moral or ethical standards; immoral"[8]. „Illegal“ or „illegality“ connotes violation of penal statute incurring punishment. It infringes the substantive penal duty or liability attached by penal legislation of a country. Generally, penal duties are imposed by an Act passed by the legislative body of a country. A legislature legislates civil legislation as well and also empowers the executive to make delegated legislation in the form of rules, regulations, order, notification and by-laws. So an act or omission becomes legal unless it is specifically prohibited making it an „offence“ with precise „definition“ and „punishment“ thereto by a penal statute by the legislative body. Eg. a human being causes an act or omission which leads to the death of another human being. If the act or omission falls within the definition of Sec 299 or Sec 300 of the Indian Penal Code, 1861 (I.P.C), it is culpable homicide or murder and correspondingly punishment is defined u/s 302 or 304 of the I.P.C. So the act or omission becomes an illegal act or omission and the person commits an „illegality“. The illegality is also appropriately called an offence. Another distinct characteristic of illegality is that the legislature pre-defines it. A legislature cannot state action or omission after the person has done or omitted to do it. It means the legislature cannot make an *ex-post-facto*⁹ offence. Depending upon the nature of the state, constitutional or otherwise, such ex-post-facto laws are constitutionally or legally prohibited.

3. ILLEGALITY AND IMMORALITY

As we find earlier, there must be a penal law declaring some action and omission as illegal. Otherwise, it cannot be illegal. And if, there is no civil law even enjoining some act or omission to do, then, it is a sphere of liberty.

The consolidated sphere of liberty given by law to any person is called freedom. So, in the sphere of liberty, a man can do whatever pleases to him even if it may be immoral. He cannot be punished for his immoral action. Ex. In a medical emergency, a person declines to donate blood to ailing patient. This can be immoral. But it cannot be illegal to incur punishment. Immoral means "a set of personal or social standards for good or bad behaviour and character"¹⁰. Morality means, "Morality can be a body of standards or principles derived from a code of conduct from a particular philosophy, religion or culture, or it can derive from a standard that a person believes should be universal..Morality may also be specifically synonymous with "goodness" or rightness"^[11]. It is also "a doctrine or system of moral conduct"^[12]. Ramanatha Aiyar, states, "Contrary to the public welfare; against public morals; morally wrong or evil; dissolute"^[13].

Law is not the conscience keeper of morality, which primarily every major religion of the world claim to undertake. So, an immoral act, however hard it may sting the conscience is non-punishable. The person is left to himself to pursue morality as per his religious belief. There is no such positive definition of morality, but generally, the man tends to state the definition of morality in a negative connotation. Means, a man is stated that if he does this action, then it shall be immoral. There is no such consolidated sphere of morality for a person carved out of his liberty. However, ethics attempts to consolidate the sphere of morality"^[14]. However, the law can impose civil duties under certain circumstances some as act immoral. However, those acts must be clearly defined. Say for example in the civil service rules. The courts, however, are very circumspective to sustain the removal of an employee due to immorality. Considering disciplinary proceeding against an employee the Hon'ble High Court of Madras held, " a stray incident of drinking or quarrelling does not amount to immoral activities or moral turpitude.. Drinking in a public place or during office hours is morally wrong and evil. If a person drinks at his residence and causes no nuisance to neighbours or public, it cannot be said that he involves in immoral activities"^[15].

4. ILLEGALITY AND UNLAWFULNESS

The words 'unlawful' and 'illegality' are interchangeably used in criminal law. However, the word „unlawful“ is of broader connotation. Anything which is not lawful becomes „unlawful“. Here the word „law“ is not confined to any „statute“, „Act“ or legislation but also includes the „rules“, „notification“ and „bye-laws“ which have the executive indicia and product of delegated legislation un-passed in the legislative body of a country. It also includes the judge-made law. And also the „Statute“, Act or legislation includes penal, civil, substantive and procedural legislation. . A unlawful action or omission primarily fixed by the judge is called a *tort*¹⁶. A simple trespass which does not amount to criminal trespass under I.P.C or any other penal legislation becomes „unlawful“ as it is a civil wrong under tort. So also, not making signature on the FIR by the informant is „unlawful“ as sec 154 Crpc, says that the information to the police made u/s 154 be signed by the informant. It does not become „illegal“ as not signing on the FIR by the informant is not punishable under any section of the IPC or any Penal legislation. It can only amount to a refusal to lodge the FIR by the police being „unlawful“. However, it is interesting to note that under IPC u/s 43 the word “illegal” is defined in a broad and inclusive term. It not only defines anything which is an „offence“ or „prohibited by law“ but also anything which furnishes ground for a „civil action“. The word „anything which furnishes a ground for civil action“ may not only amount to a „civil wrong“ of „tortious nature“ but also a „contractual duty“ enforcing civil liability. So an “act” or “omission” within the meaning of sec 32 of I.P.C which is simple „contractual in nature“ may amount to „illegal“ read within the context of sec 43 of the IPC. Notwithstanding, the meaning of the word „illegal“ defined broadly in the I.P.C, the net effect is that an „act“ or „omission“ u/s 32 of I.P.C cannot become „illegal“ much less an offence (literal meaning) unless it comes within the mischief any offending section of IPC, ranging from sec 107 to sec.511. So, a „contractual duty“ cannot become an „illegal“ act unless it amounts to criminal breach of contract under the mischief of Chapter XIX of the IPC.

5. ILLEGALITY AND IRREGULARITY

Irregularity means unlawful and more particularly is used procedural law. The Code of Criminal Procedure, 1973 has at several occasion used the word. However, it has not defined it. "The word 'illegality' which is frequently used in the judgments is nowhere defined in the Code of Criminal. Procedure. This word had been used by the judges to convey that the trial has been irregular and the irregularity is not curable under the provisions of the Code"[17].. In case of procedural law generally, though some action can be declared as irregular, the consequence of the irregularity depends upon the totality of the circumstance. Means, whether entire action taken shall be declared as null and void due that only violation of procedure or that irregularity is a

mere defect depends upon circumstance. If there is a case of prejudice, in addition to irregularity, then the action is declared as void. The "irregularity, if it can be so-called when prejudice is disclosed was incurable and from that, they concluded that an incurable irregularity is nothing but an illegality: a perfectly possible and logical conclusion when the words "irregularity" and "illegality" are not defined¹⁸". Further reiterating and explaining the meaning The Hon'ble Supreme Court of India, observed, "The Code (Code of Criminal Procedure, 1973) neither uses the word, illegality 'nor defines, irregularity'. Thus the Code treats all errors, omissions or defects as irregularities and further need that 'illegality can only mean an incurable illegality'; incurable because of prejudice leading to a failure of justice"[19].

6. CONCLUSION

Even if the word "illegal" has been defined in the I.P.C broadly and inclusively the well-defined difference of the "illegal" and „unlawful" in the criminal jurisprudence still exists. Every illegality is unlawful whereas every unlawful is not illegality. Immoral act not necessarily becomes illegal and irregular act without prejudice is curable.

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