



SAFALTA CLASS<sup>TM</sup>

An Initiative by **अमरउजाला**

# ACQUITTAL AND DISCHARGE: DISTINCTIONS

## Acquittal:

1. A person once acquitted cannot be re-arrested in same case.

Art. 21/22  
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2. An acquittal may also result from absence of the complainant, or withdrawal, or a compounding of offence.

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3. An order of acquittal is a judicial decision, after the complete inquiry and establishing the innocence of the accused.

4. An acquittal bars a second trial on the same facts and for the same offence.

## Discharge:

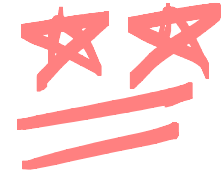
1. A person once discharged can be rearrested and committed for a further enquiry.

2. An order of discharge simply means that there is no prima facie evidence against the accused to justify further enquiry in relation to the charge.

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**3. A discharge does not bar the institution of fresh proceeding when new or better evidence become available against the accused.**

# RAPE AND ADULTERY: DISTINCTIONS



**Rape: (Section 375 of IPC)**

1. Rape is an offence against the **body**.

2. This offence is committed without the **consent of a woman**.

3. The aggrieved party is a woman.

4. A woman can be raped by her husband if she is below 15 years. ]

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5. This offence can be committed against married or unmarried woman.



5. Punishment – life imprisonment or 10 years or fine or both (But can be reduced).

## Adultery: (Section 497 of IPC)

1. It is an offence against marriage.

2. This offence is committed with the consent of a woman.

This offence lacks the consent of her husband.

3. The aggrieved party is the husband of the woman.

4. A husband cannot commit this offence against his wife.

5. This offence can be committed with married woman only.

**6. Punishment – period of five years or fine or both.**

## Section 497 of the IPC

- It mandates that whoever has sexual intercourse with the wife of another man, **without the consent or connivance of that man**, such sexual intercourse not amounting the offence of rape is guilty of the offence of adultery and shall be punished.



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**The law does not punish his wife**, since it presumes that only a man can seduce a woman into a sexual act, and that it is the husband who has suffered due to the sexual relationship of his wife, carried out without his consent.

**At the same time, the wife is not protected from similar behaviour committed by her husband.**

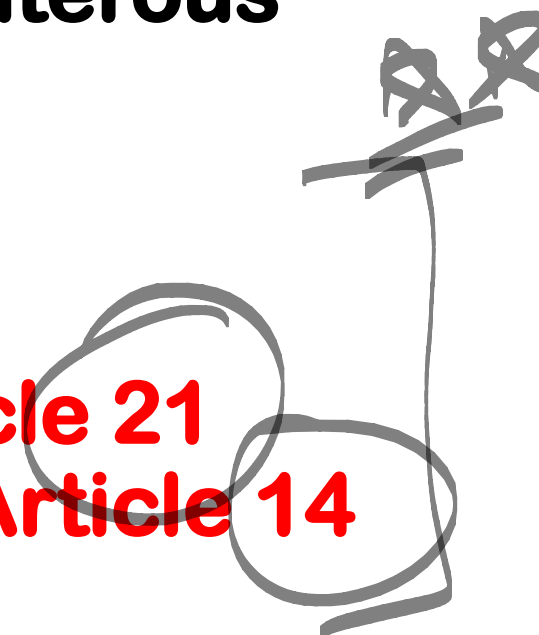
# Adultery is Not a Crime: Supreme Court

- The Supreme Court has struck down as unconstitutional, the 158 year old **Section 497 of the Indian Penal Code**, which criminalizes adultery.
- The five-Judge Bench led by Chief Justice of India Dipak Misra also declared **Section 198 of the Criminal Procedure Code** as unconstitutional, which deals with the procedure for filing a complaint for the offence of adultery.



**According to this, the husband alone could complain against adultery while an adulterous man's wife had no such right.**

**It said that the 158-year-old law was unconstitutional and is violative of **Article 21 (Right to life and personal liberty) and Article 14 (Right to equality).****



# RIGHT OF PRIVATE DEFENCE

## (Things Done in Private Defence (Section 96))

1. A private citizen whose life is threatened by a grave danger, need not wait for the State aid; however, where aid is available, it must be obtained.

2. The right of defence is protective or preventive and not punitive (i.e., not meant for punishing the aggressor); however, punitive measures may result in the exercise of the defence.

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**3. The right must be exercised when there is:**

**(a) real and immediate threat (not imaginary and remote), and**

**(b) a reasonable apprehension of such threat.  
The term 'reasonable' implies what any  
common man in that situation would apprehend.**



**4. The protective measures employed must be relative to the danger ahead i.e., violence used must be proportionate to the injury or threat to be averted, and must not exceed such limits;**

**However in such situations it cannot be expected of a person to minutely calculate the correct proportion of force to be used in defence.**

**The right of private defence is not available in the following situations: ≡**



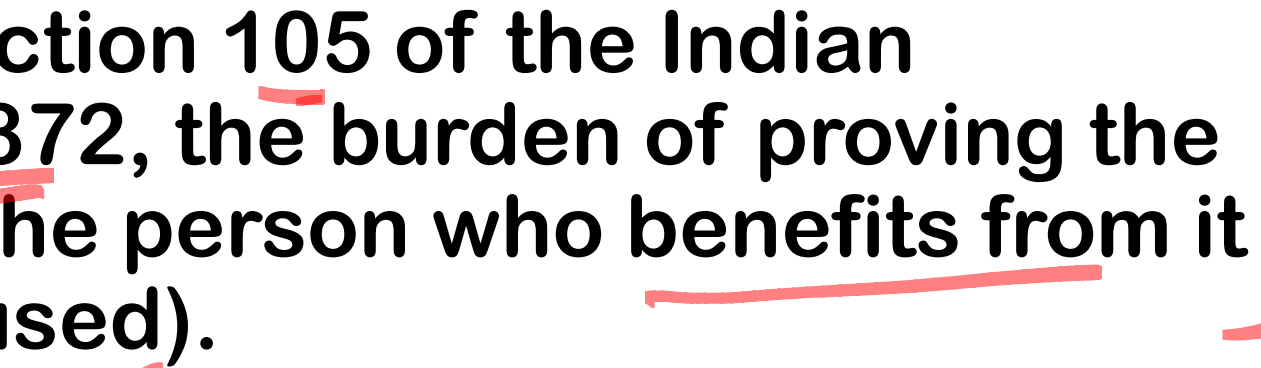
**1. The aggressors cannot claim the right to private defence; an aggressor himself creates a danger to his own life.**



**2. In a case when two parties are having a free fight without disclosing as to who is the initial aggressor.**

## BURDEN OF PROOF

According to Section 105 of the Indian Evidence Act, 1872, the burden of proving the exception is on the person who benefits from it (i.e., on the accused).





**It is well settled that even if an accused does not plead self-defence, it is open to the Court to consider such a plea if the same arises from the material on record.**

# COGNIZABLE AND NON-COGNIZABLE OFFENCES: DISTINCTIONS



## **Cognizable Offences :**

**1. ‘Cognizable offence’ means an offence for which a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant[Section 2(c) of Cr.P.C.]**

**2. In these offences, a police officer can take cognizance for arrest without any permission or order from a magistrate.**

**3.If among two or more offences, one is cognizable, the whole case shall be deemed to be a cognizable case.**

**4. These are offences for which punishment is imprisonment of three years or upwards, according to the First Schedule of the Cr.P.C.**

## Non-Cognizable Offences:

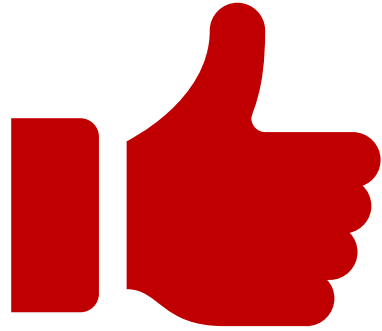
**1. Non-cognizable offence means an offence for which a police has no authority to arrest without warrant [Section 2(1), Cr.P.C.].**

**2. In these offences, a police officer cannot take cognizance for arrest without any permission or order from a magistrate.**

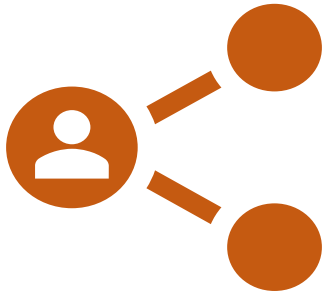


**3.If among two or more offences, one is non-cognizable, the whole case shall not be deemed to be non-cognizable.**

**4. These offences are punishable with imprisonment of not less than five years.**



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