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Section 324 of IPC: Bailable and Compoundable- Explained

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Abstract: There has been some confusion with respect to the nature of offence punishable under Section 324 of Indian Penal Code, 1860 ("the IPC"). The question is whether the offence under Section 324 of IPC is a *bailable* or a *non-bailable* one, a *compoundable* or a *non-compoundable* one. This paper shall analyse the relevant statutory provisions, statutory amendments, Gazette Notifications and jurisprudential developments in order to understand how we can deal with the issue.

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Introduction

The offence under Section 324 of IPC (voluntarily causing hurt by dangerous weapons or means) is punishable with imprisonment extending to three years or/and fine. Both in the old Code as well as the new Code of 1973, the said offence was treated as *bailable* and *compoundable* one.

In the Cr.PC (Amendment) Bill of 1994, it was proposed that Section 324 of IPC should be omitted from the Table of compoundable offences. The apparent reason for such proposal was that the provision was likely to be misused by the accused by exerting pressure on the complainant to agree for composition. The proposal which was initiated during 1990s came to fruition in 2005 and by the Cr.PC (Amendment) Act, 2005 (Act no. 25 of 2005), Section 324 was omitted from the list of compoundable offences.

Section 324 of Indian Penal Code, 1860

Section 324 of IPC is reproduced hereunder:

"Section 324 of IPC: Voluntarily causing hurt by dangerous weapons or means.

Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stab-bing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

In order to establish whether an offence is a bailable offence or not, it is important to look into the First Schedule of the Code of Criminal Procedure, 1973 ("Cr.PC, 1973") in which classification of the offences have been made. The offence punishable under Section 324 of IPC was originally shown as a *bailable* one. Further, the Table under sub-section (1) and the Table under sub-section (2) of Section 320 of Cr.PC, 1973, list the offences that can be compounded by the person specified in third column of the said Tables. The offence under Section 324 of IPC was originally shown in the Table of compoundable offences. Thus, under the Code as originally enacted, an offence punishable under Section 324 of IPC was shown as *bailable* and *compoundable*.

The Code of Criminal Procedure (Amendment) Act, 2005 (Act no. 25 of 2005)

Section 28(a) and Section 42(f)(iii) of the Code of Criminal Procedure (Amendment) Act, 2005 made the offence under Section 324 of IPC as "*non-compoundable*" and "*non-bailable*", respectively. Though, the Cr.PC (Amendment) Act, 2005 was enacted and published on 23.06.2005, it was to take its effect only from the date appointed by the Central Government by a notification in the Official Gazette[1].

In exercise of power conferred by sub-section (2) of Section 1 of the Cr.PC (Amendment) Act, 2005, the Central Government, vide Gazette of India Notification dated 21.06.2006, appointed 23rd June, 2006, as the date on which the provisions of the Cr.PC

[1] Sub-section (2) of Section 1 of the Cr.PC (Amendment) Act, 2005, "(2) Save as otherwise provided in this Act, it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act."

(Amendment) Act, 2005, ***except the provisions of Sections 28(a), …, 42(f)(iii)***, …, shall come into force. Consequently, Sections 28(a) and 42(f)(iii) of the Cr.PC (Amendment) Act, 2005, which sought to make the offence under Section 324 of IPC as *non-compoundable* and *non-bailable*, respectively, have not yet been brought into force. Hence, the offence under Section 324 of IPC continues as a *bailable* and *compoundable*, as it originally stood.

It is pertinent to note that people ignore the Gazette of India Notification dated 21.06.2006 whereby only some provisions of the Cr.PC (Amendment) Act, 2005 were brought into force w.e.f. 23rd June, 2006. Due to the ignorance of the said Gazette Notification, in some of the places, the accused persons arrested for offence under Section 324 of IPC are not given bail as a matter of right immediately, despite it is still bailable offence. Further, sometimes, the parties are also not allowed to compound the offence under Section 324 of IPC despite the fact that the offence is still compoundable.

It is, further, pertinent to note that the Hon'ble Supreme Court and several High Courts have wrongly observed in their judgments that after coming into force of the Cr.PC (Amendment) Act, 2005, the offence under Section 324 of IPC is made *non-compoundable*. Many judicial officers do not allow compounding of offence under Section 324 of IPC, reflecting that the offence is no more compoundable.

The Hon'ble Supreme in ***Hirabhai Jhaverbhai v. State of Gujarat***[2], ***Md. Abdul Sufan Laskar v. State of Assam***[3], and ***Pravat Chandra Mohanty v. State of Odisha***[4] has wrongly and unwittingly held that after coming into force of the Cr.PC (Amendment) Act, 2005, the offence under Section 324 of IPC is made *non-compoundable*.

The Hon'ble Gauhati High Court in ***Prabhat Das & others v. State of Tripura & others***[5] and the Hon'ble Kerala High Court in ***Bineesh & another v. State of Kerala and another***[6] have wrongly and unwittingly held that the offence under section 324 of IPC was made *non-compoundable* after the Cr.PC (Amendment Act) 2005 came into force. Further, the Hon'ble Patna High Court also in ***Prabhu Mahto & Ors vs State of Bihar***[7] has wrongly and unwittingly held that the offence under Section 324 of IPC is no more compoundable after the Cr.PC (Amendment Act) 2005 came into force.

The Gazette of India Notification dated 21.06.2006 had escaped the attention of the Hon'ble Supreme Court and High Courts. The attention of the Hon'ble Supreme Court and High Courts was not drawn to the said Gazette Notification whereby Sections 28(a) and 42(f)(iii) of the Cr.PC (Amendment) Act, 2005 which sought to make the offence under Section 324 of IPC as *non-compoundable* and *non-bailable*, respectively, have not yet been brought into force.

Date of enforcement of the Cr.PC (Amendment) Act, 2005 (25 of 2005)

In some judgments, the date of the enforcement of the Cr.PC (Amendment) Act, 2005 has been mentioned as 31st Dec., 2009. It is to be noted that on 31st Dec., 2009, the provisions of Cr.PC (Amendment) Act, 2008 were brought into force and not the provisions of the Cr.PC (Amendment) Act, 2005. The Hon'ble Supreme Court and High Courts were not apprised with the fact that by way of Gazette Notification dated 21.06.2006, the Central Government appointed 23rd June, 2006, on which date provisions of the Cr.PC (Amendment) Act, 2005, except some, came into force.

Cr.PC (Amendment) Act, 2008 (Act no. 5 of 2009)

People are also confused with the Cr.PC (Amendment) Act, 2008 (Act no. 5 of 2009) by taking the view that the Tables in Section 320 of Cr.PC, 1973 were replaced thereby and Section 324 of IPC is not present in the Tables, hence it is *non-compoundable*. It is pertinent to note that by way of Cr.PC (Amendment) Act, 2008, *inter alia*, the Tables forming part of Section 320 (1) and (2) of the Cr.PC, 1973, underwent certain changes. A number of offences in the Table falling under sub-section (2) of Section 320 were transferred to the Table falling under sub-section (1) of Section 320. Another important change that was made was the deletion of Section 354 of IPC from the list of compoundable offences. Further, Section 312 of IPC (causing miscarriage) was included in the Table under Section 320(2) of the Cr.PC, 1973. Interestingly, the offence under Section 324 of IPC which was already omitted from the list of compoundable offences by Cr.PC (Amendment) Act, 2005 was sought to be reinducted within the ambit of Section 320 of the Cr.PC, 1973. However, the Cr.PC (Amendment) Act, 2008 shows that the said change was not approved by Parliament, and Section 324 remained omitted from the list of compoundable offences as done by Section 28(a) of the Cr.PC (Amendment) Act, 2005 (though not yet notified). Thus, after the Cr.PC (Amendment) Act, 2008, which came into effect on 31st December, 2009, the number of compoundable offences in CrPC, 1973 stands at 56 i.e. 43 in the Table under Section 320 (1) and 13 in the Table under Section 320 (2).

It is pertinent to note that even though there were changes under Section 320 of the Cr.PC, 1973

[2] AIR 2010 SC 2321

[3] (Crl. Appeal No. 1343 of 2008) decided on 25th August, 2008

[4] (Cr. Appeal No. 125 of 2021) decided on 11th Feb., 2021

[5] 2013 Cr.L.J. 1712

[6] 2012 Cr.L.J. 4128

[7] (Crl. Appeal (SJ) No.219 of 2002) decided on 13th April, 2017

by the Cr.PC (Amendment) Act, 2008, the offence under Section 324 of IPC was not touched upon. Meaning thereby, the offence under Section 324 of IPC has remained as *non-bailable* and *non-compoundable* (though not yet notified) by virtue of the Cr.PC (Amendment) Act, 2005

Conclusion

After analysing the facts, the Cr.PC (Amendment) Act, 2005 followed by the Gazette of India Notification dated 21st June, 2006, the Cr.PC (Amendment) Act, 2008 followed by the Gazette of India Notification dated 31st Dec., 2009 and the judicial pronouncements, it would be clear that, at present, the offence punishable under Section 324 of IPC is bailable and compoundable.

References

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2. Code of Criminal Procedure, 1973
3. Code of Criminal Procedure (Amendment) Act, 2005 (Act no. 25 of 2005)
4. Hirabhai Jhaverbhai v. State of Gujarat, AIR 2010 SC 2321
5. Gazette of India Notification dated 31st Dec., 2009
6. Code of Criminal Procedure (Amendment) Amending Act, 2006 (Act no. 25 of 2006)
7. Code of Criminal Procedure (Amendment) Act, 2008 (Act no. 5 of 2009)
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12. Bineesh & another v. State of Kerala and another reported in 2012 Cr.L.J. 4128
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15. Discussions in Rajya Sabha on the Cr.PC (Amendment) Bill, 2006 on 18th Dec., 2008.

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