

Nothing, operation on
z, with z's consent. a



**ASSIGN
BUSTER**

Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm. Illustration: A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under the painful complaint, but not intending to cause Z's death, and intending, in good faith Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence. Thus an act not intended to know to be likely to cause death, done in good faith by consent of the person to whom harm is caused for his benefit is not an offence (Section 88).

This section allows the infliction of any injury if it is for the benefit of the person to whom it is caused. For example, A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under the painful complaint, but not intending to cause Z's death, and intending, in good faith to Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence. A, a surgeon examined Z and found him suffering from an abdominal pain which A knew could not cause Z's death. A, however, at the request of Z performs a difficult operation on Z which A knew was likely to cause Z's death, in order to relieve Z of the pain. Z dies as a result of the operation [Ans: No offence, covered by Section 88], It may be noted here that the persons who have no medical qualifications are not entitled to the protection given under this section as they can hardly be deemed to act in 'good faith' (as defined in Section 52). In English law it is

recognised that a school master may inflict corporeal punishment on a pupil for purposes of correction or enforcing school discipline.

In Regina v. Hopley) it was observed that by the law of England, a parent or a school master may for the purpose of correcting what is evil in a child inflict moderate and reasonable corporeal punishment. In R. v. Ghatge, it was observed that a headmaster of a school, inflicting in good faith moderate and reasonable corporeal punishment to correct the erring pupil and thus maintaining the discipline of the school, is protected under Section 88, as delegate of the parent of the child in the exercise of necessary corrective jurisdiction for the benefit of the child. In P. Rathinam Nagbhusan Patnaik v.

Union of India, 2 the Supreme Court declared Section 309 of I. P. C.

unconstitutional because it violates Articles 14 and 21 of the Constitution.

The question again arises if a person wants to finish his life and permits another to kill him whether killer will be responsible for the offence of murder. A, a snake-charmer claims magical powers of curing snake-bites and asks for a volunteer to be bitten by his poisonous cobra. B offers himself and dies: Has A committed any offence?