# IPC Section 381: Theft by clerk or servant of property in possession of master.

## IPC Section 381: Theft by Clerk or Servant of Property in Possession of Master  
  
Section 381 of the Indian Penal Code (IPC) addresses a specific form of theft where the perpetrator is a clerk or servant and the stolen property is in the possession of their master. This section recognizes the breach of trust inherent in such situations, as the employer places faith in their employees to handle their property honestly. Consequently, it prescribes a harsher punishment compared to general theft (Section 379) or theft in a dwelling house (Section 380).  
  
\*\*The Text of Section 381:\*\*  
  
The section states: "Theft by clerk or servant of property in possession of master.—Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."  
  
\*\*Breaking Down the Elements of the Offense:\*\*  
  
1. \*\*"Being a clerk or servant, or being employed in the capacity of a clerk or servant":\*\* This element establishes the specific relationship between the perpetrator and the victim. The offender must be a clerk or servant, or employed in a similar capacity, working for the victim (master or employer). This includes individuals employed in various roles, such as domestic helpers, cashiers, office assistants, and factory workers. The key is the employment relationship and the element of trust associated with it.  
  
2. \*\*"Commits theft":\*\* The act must fulfill all the elements of theft as defined under Section 378 of the IPC, including dishonest intention, taking of movable property, taking from another's possession without consent, and moving the property.  
  
3. \*\*"In respect of any property in the possession of his master or employer":\*\* The stolen property must be in the possession of the master or employer. Similar to Section 378, "possession" doesn't necessarily mean ownership. The employer might be in possession of property belonging to clients or third parties. The crucial point is that the employer has control over the property at the time of the theft.  
  
  
\*\*Punishment:\*\*  
  
The punishment for theft by a clerk or servant is imprisonment of either description (rigorous or simple) for a term which may extend to seven years, and a fine. The fine amount is at the court's discretion. The maximum punishment is the same as theft in a dwelling house, reflecting the gravity of the breach of trust involved.  
  
\*\*Key Considerations and Interpretations:\*\*  
  
\* \*\*Clerk or Servant:\*\* The terms "clerk" and "servant" are broadly interpreted to include various employment relationships where an element of trust and responsibility exists between the employer and employee.  
  
\* \*\*Possession of Master/Employer:\*\* The property must be in the possession of the master or employer, even if temporarily. For example, if a servant steals money that the employer has entrusted to them for a specific purpose, it would fall under this section.  
  
\* \*\*Dishonest Intention:\*\* The prosecution must establish the dishonest intention of the clerk or servant to take the property. This can be inferred from the circumstances of the theft.  
  
\* \*\*Value of Property:\*\* The value of the stolen property does not impact the application of Section 381. Even stealing a small item can be prosecuted under this section if the other elements are met.  
  
\* \*\*Termination of Employment:\*\* Even if the theft occurs after the termination of employment, but involves property that was in the possession of the former employer during the period of employment, it can still fall under Section 381, provided the other elements are met.  
  
  
\*\*Examples:\*\*  
  
\* A cashier stealing money from the cash register.  
\* A domestic helper stealing jewelry from their employer's house.  
\* An office assistant stealing electronic equipment from the office.  
\* A factory worker stealing raw materials from the factory.  
  
  
\*\*Distinction from Other Offenses:\*\*  
  
\* \*\*Criminal Breach of Trust (Section 405):\*\* While there is an overlap between theft by a clerk or servant and criminal breach of trust, the key distinction lies in the nature of possession. In theft, the accused takes the property out of the possession of the employer. In criminal breach of trust, the accused is entrusted with the property and then dishonestly misappropriates or converts it to their own use. If a servant is given custody of specific property and then misappropriates it, it would be criminal breach of trust. If the servant takes property that is not specifically entrusted to them, it would be theft.  
  
  
\* \*\*Embezzlement (Section 408):\*\* Embezzlement is a specific form of criminal breach of trust committed by a clerk or servant. If the clerk or servant misappropriates property entrusted to them by their employer, it would be embezzlement.  
  
  
  
\*\*Conclusion:\*\*  
  
Section 381 of the IPC addresses the specific situation of theft committed by a clerk or servant against their master or employer. It recognizes the breach of trust inherent in such thefts and prescribes a harsher punishment compared to general theft. Understanding the specific elements of this section, including the employment relationship and the possession of the property, is crucial for its proper application. The distinction between this section and related offenses like criminal breach of trust and embezzlement is also important for determining the appropriate charge in a given case.